

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Nationstar Mortgage LLC,

PLAINTIFF,

vs.

Carmen D. Sheppard a/k/a Carmen Sheppard, a/k/a  
Carmen Dillard Sheppard, Alan J. Sheppard a/k/a Alan  
Sheppard, TD Bank, National Association, LVNV  
Funding LLC, and Darrell Creek Plantation  
Homeowners Association, Inc.,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

MASTER'S ORDER AND  
JUDGMENT OF FORECLOSURE AND  
SALE

(NON-JURY MORTGAGE  
FORECLOSURE)

C/A NO: 2011-CP-10-4201

DEFICIENCY WAIVED

FILED  
2013 NOV 25 PM 3:11  
JULIE J. ARMSTRONG  
CLERK OF COURT

F11-03451

TO:

Korn Law Firm, P.A.  
Attorney for Plaintiff

The loan is no longer subject to the Supreme Court of South Carolina's Administrative Order 2011-05-02-01 because the mortgagor(s) have been served with the required notice of rights, and more than 30 days have elapsed since service upon the mortgagor(s), and, the mortgagor(s) have failed, refused, or voluntarily elected not to participate in any foreclosure intervention process.

Pursuant to Rule 53 SCRCP, the above-entitled matter was referred to the undersigned to make appropriate findings of fact and conclusions of law with authority to enter a final judgment in the cause.

Pursuant to the said order of reference, a hearing was held on September 6, 2013, on plaintiff's motion for summary judgment, attended by the attorneys of record, Dean A. Hayes of the Korn Law Firm, P.A. for the plaintiff, and David K. Haller, attorney for the defendants, Carmen D. Sheppard and Alan J. Sheppard. Also present at the September 6, 2013, hearing was the defendant, Alan J. Sheppard. Plaintiff's motion for summary judgment was orally granted at the hearing on September 6, 2013, and, at this hearing, the Court also granted David K. Haller's motion to be relieved as counsel.

A subsequent hearing was held on October 2, 2013, in order to allow plaintiff to update its judgment figures. Present at this hearing was Dean A. Hayes, attorney for the plaintiff. Despite being provided with notice of the hearing, no defendant appeared at the hearing.

From the evidence presented at the September 6, 2013, hearing and at the October 2, 2013, hearing, I find, conclude, and order as follows:

FINDINGS OF FACT:

1. The lis pendens was filed on June 14, 2011.
2. The summons and complaint were filed on June 14, 2011.
3. Service was made upon the defendant(s) named in this order as is shown by the proof(s) of service filed herein.
4. That the defendants, TD Bank, National Association , LVNV Funding LLC , and Darrell Creek Plantation Homeowners Association, Inc. are in default as shown by affidavit on file herein.
5. The defendants and/or all attorneys of record were notified of the time, date, and place of the hearing in this matter.
6. According to the affidavit filed herein, no defendant in default is in the Military Service of the United States of America, as contemplated under the Soldiers' and Sailors' Civil Relief Act of 1940, and any amendments thereto.
7. For value received, Carmen D. Sheppard made, executed and delivered a note dated November 17, 2006, promising thereby to pay to the order of American Brokers Conduit, its successors and assigns the sum of eight hundred eighty thousand and 00/100 dollars (\$880,000.00), with interest at an adjustable rate per annum. Other terms and conditions are stated in the note, which is of record herein.
8. To better secure the payment of the note described above, Carmen D. Sheppard made, executed and delivered to Mortgage Electronic Registration Systems, Inc., as nominee for American Brokers Conduit, its successors and assigns a mortgage in writing, dated November 17, 2006, covering real property in Charleston County, which is the same as that described in the complaint. The mortgage was filed on December 7, 2006, and is of record in the Office of the Register of Deeds for Charleston County in mortgage book A 608 at page 399.
9. By virtue of an assignment dated November 5, 2009, recorded November 17, 2009, in mortgage book 0092 at page 068, Mortgage Electronic Registration Systems, Inc., as nominee for American Brokers Conduit, its successors and assigns, assigned the mortgage to Aurora Loan Services, LLC.
10. By virtue of an assignment dated October 11, 2012, recorded November 15, 2012, in mortgage book 0291 at page 325, Aurora Loan Services, LLC assigned the mortgage to Nationstar Mortgage LLC.
11. The above referenced mortgage constitutes a first lien priority mortgage.
12. Payment due on the note has not been made as provided for therein, and the plaintiff, as the holder of the note, has elected to require immediate payment of the entire amount due thereon and has placed the note and mortgage in the hands of the attorney herein for collection.
13. I find that since the inception of this action, plaintiff's attorney has assumed responsibility for the institution of this action and has searched and updated the title on the subject property from the date the current owner received the property or the date the mortgage was executed to the date of the filing of the lis pendens. Plaintiff's attorney has been responsible for preparation of the following pleadings:

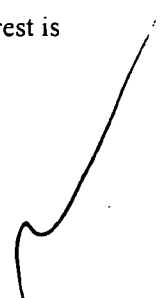
1. Lis Pendens
2. Summons and Complaint
3. Affidavit of Default
4. Order of Reference
5. Notice of Hearing
6. Proposed Final Decree
7. Notice of Sale
8. Transcript of Testimony
9. Other documents as applicable pertaining to service and finalization of this action.

Additionally, plaintiff's attorney has arranged for service of process on the defendant(s), has scheduled and attended the hearing in this matter, has provided reinstatement figures to the primary defendant, if requested, and has had telephone conversations with the defendant(s), if requested. Future duties include forwarding copies of the master's order and judgment of foreclosure and sale to the defendant(s), advising the defendant(s) of the date that the property will be sold, arranging and coordinating the amount to be bid by plaintiff, representation of plaintiff at sale and preparation of after sale documentation as required. In light of the potential liabilities inherent in a property matter, the attendant responsibilities and the size of the mortgage debt, I find that attorney fees in the amount of three thousand six hundred eighty-five and 50/100 dollars (\$ 3,685.50) are reasonable.

14. The amount due and owing on the note, with interest at the rate provided in the note, and other costs and expenses of collection, including an attorney's fee, secured by the note and mortgage, is as follows:

|     |   |                              |
|-----|---|------------------------------|
| (a) | Principal due as of 11/1/2009   | \$ 879,790.27                |
| (b) | Interest from 10/1/2009 through 10/2/2013 at 5.375%                                 | \$ 247,387.34                |
| (c) | Escrow adjustments (debits or credits)  | \$ 34,511.23                 |
| (d) | Late charges  | \$ 2,964.71                  |
| (e) | Appraisal fee   | \$ 190.00                    |
| (f) | Property Inspections  | \$ 366.00                    |
| (g) | Corporate Advance   | \$ 4,665.87                  |
| (h) | Costs of Collections Prior to Hearing   | \$ 1,136.00                  |
| (i) | Title Search Fee  | \$ 500.00                    |
| (j) | Attorney Fees   | \$ 3,685.50                  |
|     | <b>TOTAL DEBT</b> secured by note and mortgage,<br>including interest to date shown | <b><u>\$1,175,196.92</u></b> |

Interest for the period from the date shown in (b) above, through the date of this judgment at the above stated rate to be added to the above stated "Total Debt" to comprise the amount of the judgment debt entered herein and interest after the date of judgment at the rate of 5.375 percent per annum (pursuant to the terms of the note and mortgage) on the judgment debt should be added to such judgment debt to comprise the amount of plaintiff's debt secured by the mortgage through the date to which such interest is computed.



15. That the defendant, TD Bank, National Association s/b/m to Carolina First Bank, is made a party by virtue of the following:

(a). mortgage given by Alan Sheppard a/k/a Alan J. Sheppard and Carmen Sheppard, a/k/a Carmen D. Sheppard to Carolina First Bank, dated July 20, 2007 and recorded July 31, 2007, in book D 634 at Page 226, in the amount of \$100,000.00.

(b). default judgment obtained by Carolina First Bank against Alan Sheppard and Carmen Dillard Sheppard, dated January 12, 2010 and recorded January 14, 2010, in the amount of \$105,310.52 and identified as judgment roll/case # 09-CP-10-6666.

16. That the defendant, LVNV Funding LLC, is made a party by virtue of a default judgment obtained against Carmen D. Sheppard and Alan J. Sheppard, dated September 20, 2010 and recorded September 21, 2010, in the amount of \$13,201.09 and identified as judgment roll/case # 10-CP-10-4988.

17. That the defendant, Darrell Creek Plantation Homeowners Association, Inc., is made a party to this action by virtue of any homeowners liens or assessments recorded or unrecorded that are due or that may become due in the future.

AS TO THE SECOND CAUSE OF ACTION  
(EQUITABLE LIEN)

18. That defendants, Carmen D. Sheppard and Alan J. Sheppard, used the proceeds of plaintiff's loan described herein to pay off prior liens on the subject property.

19. That the defendant, Alan J. Sheppard, did not execute the mortgage described herein.

20. That the parties intended, expressly or impliedly, that the above described real property serve as security for the payment of obligation.


21. That the aforesaid loan created a debt, duty or obligation owing from the defendant, Alan J. Sheppard, to plaintiff, and the obligation of the defendant, Alan J. Sheppard, attaches to the above real property.

22. That the aforesaid establishes an equitable lien upon the defendant, Alan J. Sheppard's, interest in the above described real property.

23. Plaintiff is entitled to an order of the court establishing its equitable lien upon the defendant, Alan J. Sheppard's, interest in the subject property and foreclosing Plaintiff's equitable lien.

FOR A THIRD CAUSE OF ACTION  
(UNJUST ENRICHMENT/RESTITUTION)

24. Plaintiff conferred a nongratuitous benefit upon the defendant, Alan J. Sheppard, who realized some value from the benefit.



25. It would be inequitable for the defendant, Alan J. Sheppard, to retain this benefit without paying the plaintiff its value, and plaintiff is entitled to judgment against the defendant, Alan J. Sheppard, for the benefit of the value so conferred.

26. That upon information and belief, certain costs for inspecting and securing the subject property have been incurred by the plaintiff as a result of this delinquency, and plaintiff is informed and believes it is entitled to reimbursement for such charges, if any.

27. The notice of consumer's right to cure, as contemplated under S.C. Code Sections 37-5-110 and 37-5-111, has been given or is not required, and all conditions precedent to the acceleration of the debt and foreclosure of the mortgage have been performed or have occurred.

28. That the plaintiff specifically waives its rights to a deficiency judgment in the event the sale of the real estate herein does not yield a sum sufficient to satisfy all indebtedness due to the plaintiff, including costs and attorney fees.

29. Since a personal or deficiency judgment is being waived, the bidding will not remain open but compliance with the bid may be made immediately.

30. That the servicer is participating in the Home Affordable Modification Program (HMP). The loan is not subject to modification under the HMP because the principal balance exceeds \$729,750.00.

#### MOTION FOR NEW TRIAL FILED BY ALAN J. SHEPPARD

31. On October 1, 2013, the court and plaintiff's attorney received, via facsimile, a document entitled "motion for new trial" that purports to be from the defendant, Alan J. Sheppard, and the court is treating this motion as a Rule 59, SCRPC, motion for reconsideration of the court's oral order granting plaintiff's motion for summary judgment. After reviewing the motion, I find that the motion does not state grounds that would justify the relief requested in the motion.

#### CONCLUSIONS OF LAW

I, therefore, conclude as follows:

1. There is no genuine issue as to any material fact, and plaintiff is entitled to judgment as a matter of law. Plaintiff should have judgment of foreclosure of the mortgage and the mortgaged property should be ordered sold at public auction after due advertisement.

2. That plaintiff is entitled to the relief sought in its second and third causes of action.

3. The motion for new trial filed by the defendant, Alan J. Sheppard, should be denied.

#### IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. Plaintiff's motion for summary judgment be and hereby is granted.

2. The motion for new trial filed by Alan J. Sheppard be and hereby is denied.

3. There is due to the plaintiff on the obligation and mortgage set forth in the complaint the sum of one million one hundred seventy-five thousand one hundred ninety-six and 92/100 dollars

(\$1,175,196.92) representing the "total debt" due plaintiff as set forth supra, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.

4. The amount due in the preceding paragraph (the "total debt" as set forth supra and later accrued interest on the principal) shall constitute the total judgment debt due the plaintiff and shall bear interest hereafter at the rate of 5.375% percent per annum.

5. That the defendant liable for the aforesaid mortgage debt shall, on or before the date of sale of the property hereinafter described, pay to the plaintiff, or plaintiff's attorney the amount of plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

6. That on default of payment at or before the time herein indicated, the mortgaged premises described in the complaint, as hereinafter set forth, be sold by the master in equity at public auction at the Charleston County Courthouse in Charleston, South Carolina, on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in the such event, the sales day shall be on Tuesday next succeeding such holiday), on the following terms, that is to say:

A. FOR CASH: The master in equity will require a deposit of five percent (5%) on the amount of the bid (in cash or equivalent) at the time of the sale, same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within thirty (30) days same to be forfeited and applied to the costs and plaintiff's debt.

~~B. Interest on the balance of the bid shall be paid to the day of compliance at the rate of 5.375 percent.~~

C. The sale shall be subject to taxes and assessments, existing easements and easements and restrictions of record.

D. The above-referenced instrument constitutes a first lien priority mortgage.

E. The purchaser is to pay for the deed preparation, for deed stamps and costs of recording the deed.

7. If plaintiff be the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of the plaintiff in full, plaintiff may pay to the undersigned master in equity only the amount of the costs and expenses crediting the balance of the bid on plaintiff's indebtedness.

8. Personal nor deficiency judgment having been waived, the bidding will not remain open after the date of sale and compliance with the bid may be made immediately.

9. Since a personal or deficiency judgment is being waived, the bidding will not remain open but compliance with the bid may be made immediately.

10. That the master in equity will, by advertisement according to law, give notice of the time, and place of sale, and the terms thereof; and will execute to the purchaser, or purchasers, a deed to the

premises sold. The plaintiff, or any other party to this action, may become a purchaser at such sale, and that if, upon such sale being made, the purchaser, or purchasers, should fail to comply with the terms thereof within thirty (30) days after date of sale, then the master in equity may advertise the said premises for sale on the next, or some other subsequent sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured.

11. The master in equity will apply the proceeds of the sale as follows:

FIRST: To payment of the amount of the costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under order of court.

NEXT: To the payment to the plaintiff or plaintiff's attorney, of the amount of plaintiff's debt and interest, so much thereof as the purchase money will pay on the same.

NEXT: Any surplus will be held pending further order of the court.

12. It is further ORDERED, ADJUDGED AND DECREED that in the event the successful bidder to whom the deed of conveyance has been issued subsequent to the sale is other than the defendants in possession herein, the sheriff of Charleston County is ordered and directed to eject and remove from the premises the occupants of the property sold, together with all personal property located thereon, and put the successful bidder to whom the deed of conveyance has been issued or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession. All valid tenant rights shall be protected.

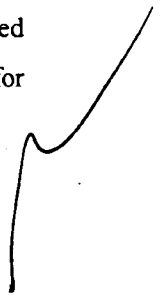
13. And it is further ORDERED, ADJUDGED AND DECREED that each defendant and all persons whomsoever claiming under him, her or them, be forever barred and foreclosed of all right, title, interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.

14. And it is further ORDERED, ADJUDGED AND DECREED that any prior lien that has been paid in full is hereby satisfied and cancelled of record.

15. IT IS FURTHER ORDERED that the deed of conveyance made pursuant to said sale shall contain the names of only the first named plaintiff and the first named defendant and the defendant who was the titleholder of the mortgaged property at the time of filing of the notice of pendency of the within action, and the name of the grantee, and the register of deeds is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

16. The master in equity will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a writ of assistance.

17. Upon issuance of a master in equity report on sale and disbursements, the register of deeds is directed to release of record the mortgage lien being foreclosed, which mortgage lien is described as follows: mortgage originally given to Mortgage Electronic Registration Systems, Inc., as nominee for



American Brokers Conduit, its successors and assigns by Carmen D. Sheppard, dated 11/17/2006 and recorded 12/7/2006, in mortgage book A 608 at page 399.

18. The following is a description of the premises herein ordered to be sold:

**LEGAL DESCRIPTION AND PROPERTY ADDRESS:**

ALL THAT CERTAIN piece, parcel or lot of land, situate, lying and being in Christ Church Parish, Charleston County, South Carolina, and shown and designated as Lot 6 on a plat by E.M. Seabrook, Jr., Inc., dated October 22, 1988, and entitled, Darrell Creek Plantation, Christ Church Parish, Charleston County, Plat of Lots 1-18 and a 28.40 Acre Residual Tract, and recorded in Plat Book BT at page 162, in the RMC Office of Charleston County, South Carolina, said property having such location, butts, bounds, metes, courses and distances as will by reference to said plat appear. Said property also being described as Lot 6, River Station as shown on a plat made by E. M. Seabrook, Jr., Inc., dated May 17, 1994, and entitled, Final Plat of River Station, Christ Church Parish, Charleston County, S.C., Final Plat of Lots 1-44, Block A, Lots 1-12, Block B, Lots 1 & 2, Block C, Containing 41.84 AC. And a Pump Station Lot, as recorded in Plat Book EA at Page 86, in the RMC Office of Charleston County.

TOGETHER with a Non-Exclusive Commercial Easement appurtenant to the above described property for pedestrian and vehicular access and for the construction and maintenance for all utilities over the road shown on the aforesaid plat designated "Commonwealth Road 60' R/W" which said access Easement shall terminate upon the dedication and acceptance of said road for continued maintenance by Charleston County, S.C., and which said utility easement shall expire at such time that utilities are available to the aforesaid lot over, in, upon and across the said sixty (60') foot right-of-way.

The real property ("Property") herein conveyed is hereby made SUBJECT to the following Covenants and Restrictions:

- 1.) The Property may not be subdivided.
- 2.) No livestock of any nature may be kept or raised on the property.
- 3.) No mobile home or trailer may be located on the property.
- 4.) The property may be used only for single-family residential purpose.
- 5.) The architectural plans for any residence must receive the prior written approval of the Darrell Creek Plantation Property Owners Association and must contain a minimum of 1,800 square feet of living area.
- 6.) The property shall be SUBJECT to such side lot line, front lot line, and real lot line setbacks as the Darrell Creek Plantation Property Owners Association may reasonable require.
- 7.) These restrictions shall run with and bind the above described property for a period of twenty (20) years and shall be automatically renewed and extended for successive ten (10) year period unless terminated or modified by the vote of two-thirds (2/3) of the owners of the lots in Darrell Creek Plantation; all owners of any one lot collectively having one vote.
- 8.) Such property shall be made SUBJECT to such additional Restrictive Covenants as Darrell Creek Associates LP, a South Carolina Limited Partnership, as developer, may adopt as the development-wide restrictions for all lots in Darrell Creek Plantation Development, provided such covenants do not conflict with the covenants stated herein.

SUBJECT to any and all Easements, Restrictions and Right of Ways of public record.

THIS BEING the subject property ( Lot 6 ) conveyed unto Carmen D. Sheppard by virtue of a Deed from Marion L. Welch and Julia L. Welch, dated March 3, 1995 and recorded March 8, 1995, in Deed Book F253 at Page 29, in the Office of the Register of Deeds for Charleston County, South Carolina.

THEREAFTER, said Carmen D. Sheppard conveyed an undivided one-half (2) interest in subject property ( Lot 6 ) unto Alan J. Sheppard by virtue of a Deed dated March 10, 1997 and recorded March

18, 1997, in Deed Book J281 at Page 877, in the Office of the Register of Deeds for Charleston County, South Carolina.

ALSO:

ALL THAT marshland and highland situated in River Station Subdivision, Christ Church Parish, Charleston County, South Carolina, and being more specifically shown as a parcel of marshland within the extended boundary lines of LOT 6, BLOCK "A", and running from the rear property line of Lot 6, Block "A" to Alston Creek and the island of highland all as shown on a plat by Andrew Wadsworth, R.L.S., dated June 4, 1997, entitled "MAP OF AN ISLAND ADJACENT TO LOT 6 BLOCK "A" RIVER STATION SUBDIVISION SITUATED IN CHRIST CHURCH PARISH, CHARLESTON COUNTY, SOUTH CAROLINA". The said property having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

THIS BEING the same subject property ( parcel of marshland and a small island of highland ) was conveyed unto Carmen D. Sheppard and Alan J. Sheppard by virtue of a Quit Claim Deed from Darrell Creek Plantation, LLC, dated June 17, 1997 and recorded July 21, 1997, in Deed Book G287 at Page 578, in the Office of the Register of Deeds for Charleston County, South Carolina.

THEREAFTER, the same subject property ( parcel of marshland and a small island of highland ) was conveyed unto Carmen D. Sheppard and Alan J. Sheppard by virtue of a Quit Claim Deed from David L. Sullivan and Angela K. Sullivan, dated August 12, 1999 and recorded September 18, 2000, in Deed Book A355 at Page 199, in the Office of the Register of Deeds for Charleston County, South Carolina.

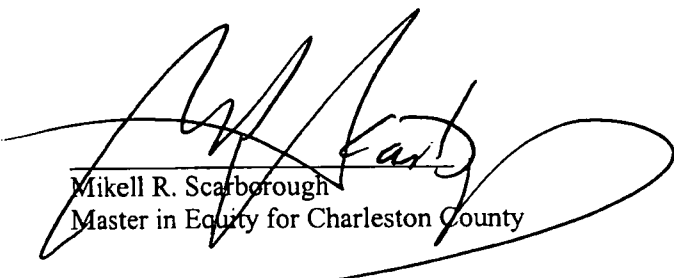
462 Commonwealth Road, Mt. Pleasant, SC 29466

TMS 596-08-00-006

19. IT IS FURTHER ORDERED that if the plaintiff or the plaintiff's representative does not appear at the scheduled sale of the above-described property, then the sale of the property will be null, void and of no force and effect. In such event, the sale will be rescheduled for the next available sales day.

20. IT IS FURTHER ORDERED that the servicer is participating in the Home Affordable Modification Program (HMP), but the loan is not subject to modification under the HMP because the principal balance exceeds \$729,750.00.

Charleston, South Carolina  
11/19, 2013.

  
Mikell R. Scarborough  
Master in Equity for Charleston County