

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Deutsche Bank National Trust Company, as Trustee
for Long Beach Mortgage Loan Trust 2006-7,

Plaintiff,

vs.

Clayton McBride and GE Money Bank,

Defendants,

(015122 - 00089 JDW)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2012-CP-08-3119

ORDER

RECEIVED
 APR 09 2014
 SC Court of Appeals

BERKELEY COUNTY, SC
 CLERK OF COURT
 MARY P. BROWN

2014 APR 11 PM 2:29
 FILED

This is a foreclosure case. At the hearing on March 19, 2014 at 9:30 A.M., the Court heard Plaintiff's Motion to Strike, Plaintiff's Motion for Summary Judgment, and Defendant's Motion to Strike Plaintiff's Summary Judgment Motion. Jason D. Wyman, Esquire, appeared on behalf of the Plaintiff. Defendant Clayton McBride appeared at the hearing. Patricia McBride also appeared at the hearing. After considering the pleadings, the evidence presented at the hearing and in the motions and the arguments of the parties, the Court rules as follows:

Plaintiff's Motion to Strike

Defendant filed a vast number of documents in this case. Plaintiff's motion sought to strike Defendant's filings on the grounds that they were immaterial and impertinent. Specifically, several of the filings had the Defendant named as Plaintiff and named various unrelated entities as Defendants. After consideration of the evidence presented at the hearing and in the motion, the court finds Defendant's Filings are immaterial, impertinent, and are generally the kind of papers that SCRCP 12(f) contemplates be stricken. Accordingly, the Court grants Plaintiff's Motion to Strike and further orders the documents entitled "Notice to Dismiss with Prejudice According to UCC Files" and "Defendant's Affidavit of Default" be stricken and removed the record of the Clerk of Court for Berkeley County.

Plaintiff's Motion for Summary Judgment and Defendant's Motion to Strike

Plaintiff timely filed a motion for summary judgment. Defendant moved to strike the motion for summary judgment on the grounds that Plaintiff lacked standing to proceed with the foreclosure. In response, Plaintiff presented the original note and mortgage. The original note

was endorsed in blank. Based on the foregoing, Court denies Defendant's Motion to Strike the Plaintiff's Motion for Summary Judgment. After reviewing Plaintiff's Motion for Summary Judgment, I find and conclude as follows:

FINDINGS OF FACT:

1. The Lis Pendens was filed on October 29, 2012.
2. The Summons and Complaint were filed on October 29, 2012.
3. Service was made upon all Defendants as shown by the filed Affidavits of Service.
4. The Defendant GE Money Bank is in default.
5. The Defendant Clayton McBride did not file an Answer. Instead, Mr. McBride submitted various pro se filings to the court.
6. The Defendant Clayton McBride is not in the Military Service of the United States of America, as contemplated under The Servicemembers Civil Relief Act, 50 U.S.C. § 501 et. seq. as shown by affidavit, certificate or order filed herein.
7. Defendant Clayton McBride raised issues related to Plaintiff's standing to prosecute this action. Counsel for the Plaintiff's submitted the original note for the Court's inspection during the hearing. The note has been endorsed in blank and constitutes bearer paper under Article 3 of the Uniform Commercial Code. As Plaintiff is in possession of the note, it is presumably entitled to enforce the note. Accordingly, the Court finds that Plaintiff has standing to prosecute this action.
8. Attorney for the Plaintiff has fully complied with the South Carolina Supreme Court Administrative Order 2011-05-02-01 dated May 2, 2011.
9. All Pro Se Defendant(s) and all attorneys of record were notified of the time, date, and place of the hearing by letter and certificate of mailing of record herein.
10. The Plaintiff timely presented an affidavit from the Plaintiff itemizing the dollar amount claimed in this matter, as well as a detailed memorandum of law in support of Plaintiff's summary judgment motion. After carefully considering the facts and arguments presented, I find that Plaintiff is entitled to summary judgment and is further entitled to a judgment of foreclosure and sale.
11. Clayton McBride for value received, made, executed and delivered a Note dated July 10, 2006, promising thereby to pay to Plaintiff or its predecessor the sum of \$207,000.00

with interest at 8.400% per annum. Other terms and conditions are stated in the Note, of record herein.

12. To better secure the payment of the Note described above, made, executed, and delivered to a certain real estate Mortgage in writing, dated July 10, 2006, covering real property in Berkeley County, which is the same as that described in the Complaint. This Mortgage was filed on July 28, 2006, and is of record in the Office of Register of Deeds in Book R, Volume 5822, and Page 189. This Mortgage was assigned to Plaintiff by written assignment recorded on August 31, 2012 in Book 9657 at Page 102.

13. This Mortgage constitutes a first priority lien on the subject property, subject only to ad valorem taxes or other liens given priority by statute.

14. Plaintiff has the legal right to enforce the negotiable instrument secured by the Mortgage and is the real party in interest as defined by Rule 17(a) of the South Carolina Rules of Civil Procedure.

15. Payment due on the Note was not made as provided for therein, and Plaintiff, as the holder or nominee for the holder thereof, elected to require immediate payment of the entire amount due thereon and placed the Note and Mortgage in the hands of the attorney herein for remedy by foreclosure.

16. The sum of \$4,250.00 is a reasonable fee to allow Plaintiff's counsel for services performed and anticipated to be performed until final adjudication of this action, under the terms of the Note and Mortgage. This fee is likewise reasonable based on the time necessarily devoted to representation of Plaintiff during the several month course of these proceedings. The services of counsel performed for Plaintiff, which include the number and types of pleadings and documents prepared, the incumbent liabilities, and the difficulties involved in this particular case also support the fee awarded. The fee is also reasonable given the professional standing of Plaintiff's counsel and their experience in handling foreclosure matters. The fee awarded herein is also reasonable in light of the fees customarily awarded by this court for similar services in this locality. Moreover, the efforts of Plaintiff's counsel have had the beneficial result of a prompt foreclosure of the Mortgage. Services anticipated to be performed until final adjudication contemplates completion of this matter within a reasonable time and does not include exceptional circumstances delaying conclusion beyond the normal time.

17. According to Plaintiff's accounting, after all payments received by Plaintiff have been credited to the subject loan, the amount due and owing on the Note, with interest at the rate provided in the Note, advances made by Plaintiff, and other costs and expenses of the action, including a reasonable attorney fee, all secured by the Note and Mortgage, is as follows:

Principal	\$195,955.50
Accrued Interest from 3/1/2010 to 3/19/2014 at 8.4 % per annum	\$64,946.38
Escrow Advance	\$8,777.88
Late Charges	\$94.62
Recoverable Balance	\$6,227.50
Attorney Fees and Costs	\$4,250.00
TOTAL debt secured by Fixed Rate Note and Mortgage, including interest to date shown	\$280,251.88

Interest shall accrue to the above stated "Total Debt" after the date of judgment at the rate of 8.400% per annum (pursuant to the terms of the Note and Mortgage). Accrued interest shall be added to the "Total Debt" and shall comprise the amount of the Plaintiff's debt secured by the Mortgage through the date to which such interest is computed.

18. Plaintiff is seeking the usual foreclosure of the purchase money first mortgage and has expressly demanded the right to a personal or deficiency judgment pursuant to S.C. Code Ann. §29-3-660 demanded against Defendant Clayton McBride. The Plaintiff may waive any of its rights, including its right to a personal or deficiency judgment, at any time prior to the foreclosure sale.

19. The following Defendant(s) may claim a subordinate lien upon or subordinate legal interest in the subject property and in the event there is a surplus from the sale of the subject property, these Defendant(s) may present through any such lien or legal interest a claim to the surplus at a hearing subsequent to the sale, in accordance with Rule 71(c) South Carolina Rules of Civil Procedure. The said Defendant(s) and such liens or legal interests are as follows:

a. The Defendant, GE Money Bank, by virtue of a judgment against Clayton McBride in the principal amount of \$1205.48, recorded on August 7, 2009 in Judgment Roll 2009-CP-1038 in the Clerk of Court's Office for Berkeley County.

IT IS THEREFORE ORDERED:

1. Plaintiff's Motion to Strike is granted.
2. Defendant's Motion to Strike Plaintiff's Motion for Summary Judgment is denied.
3. Plaintiff's Motion for Summary Judgment is granted.
4. There is due on the Note and Mortgage set forth in the Complaint the sum of \$280,251.88, as set out in the Findings of Fact *supra*, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.

5. The amount due in the preceding paragraph (the "Final Total Debt" as set out in the Findings of Fact *supra*) shall accrue interest at the rate of the respective note rate(s) per annum and together with such interest shall constitute the total judgment debt due Plaintiff.

6. The amount of the judgment shall be subject to increase to permit Plaintiff to recover additional costs, commissions, and expenses not included in the minimum deposit previously made in compliance with S.C. Code Ann. §14-11-310 (1976). It may also increase to include supplemental compensation for attorneys' services not contemplated by the initial fee award. Jurisdiction over the fee award and total debt is reserved to facilitate the assessment and payment of any such costs or supplemental compensation. Such additional costs, commissions and expenses may be established by affidavit and shall be adjudicated by the court without further hearing.

7. The Defendant(s) liable for the aforesaid judgment debt of the Note and Mortgage including interest at the rate of 8.400% per annum shall pay on or before the date of sale of the property hereinafter described, to Plaintiff or Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, including with the costs and disbursements of this action.

8. On default of payment at or before the time of the sale of the property, the mortgaged property described hereinafter shall be sold by the below signed Master in Equity or Special Referee or other court-appointed or designated agent or auctioneer at public auction at the Berkeley County Courthouse, in the City of Moncks Corner, and State of South Carolina on a sales day determined by the below signed Master in Equity or Special Referee, on the following terms:

- a. For cash or its equivalent: An immediate deposit of 5% is required on the amount of the bid. The deposit will be applied to the purchase price when total

compliance is made. In the event compliance is not made, the deposit shall be forfeited without further hearing and applied first to costs and expense of the action and then to plaintiff's debt. Should the successful bidder at the regularly conducted sale fail or refuse either to make the required deposit at time of bid or to comply with the other terms of the bid within 30 days, then the property may be re-sold on the same terms and conditions on the same or some subsequent sales day and at the risk of the defaulting bidder.

- b. Interest on the balance of the bid after the deposit is applied shall be paid through the day of compliance at the note rate of 8.40%.
- c. The sale shall be subject to taxes and assessments, existing easements and restrictions, and any other senior encumbrances.
- d. Purchaser shall pay for any statutory commission on sale from the proceeds of the final bid amount.
- e. Purchaser to pay for deed preparation, costs of recording the deed, and transfer taxes on the deed.
- f. Purchaser shall be entitled to possession of the premises only after Purchaser fully complies with the bid amount and a deed is issued by the Master in Equity or Special Referee.

9. Personal or deficiency judgment having been demanded, the sale will remain open for thirty (30) days pursuant to S.C. Code Ann. Sec. 15-39-720 (1976). Plaintiff may waive any of its rights, including its right to a deficiency judgment in accordance with Rule 71, of the South Carolina Rules of Civil Procedure, prior to sale.

10. The Master in Equity will give notice of the time and place of the sale by advertisement according to law and the terms thereof by advertisement according to law and will execute to the Purchaser a deed to the property sold. Plaintiff or any other party to this action may become a purchaser at such sale. If, upon such sale being made, the Purchaser should fail to comply with the terms thereof within 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. In the event an agent of Plaintiff does not appear at the time of sale, the within property shall be

withdrawn from sale and sold at the next available sales date upon the same terms and conditions as set forth in this Judgment of Foreclosure and Sale or such terms as may be set forth in a supplemental order.

11. If Plaintiff is the successful bidder at the said sale for a sum not exceeding the amount of costs and expenses of the sale, plus the indebtedness of Plaintiff in full, Plaintiff may pay to the Master in Equity only the amount of the costs and expenses crediting the balance of the bid on Plaintiff's indebtedness.

12. The Master in Equity will apply the proceeds of the sale as follows:

FIRST: To the payment of the permitted costs, charges, and expenses of this action, including any Guardian ad Litem fee, Servicemember Civil Relief Act attorney fee, or any other attorney's awarded under this or any other Order of this Court;

NEXT: To the payment to Plaintiff or Plaintiff's attorney of the amount of Plaintiff's debt and interest or so much thereof as the purchase money will pay on the same; and the Plaintiff's attorney shall receive and disburse such funds only in absolute compliance with Plaintiff's principal, interest allowable advances, and related calculations of this Court, including the Court's award for attorney fees, court permitted charges and taxable costs pursuant to Rules 54 and 71 of the South Carolina Rules of Civil Procedure and the terms of the Note and Mortgage;

NEXT: Any surplus will be held pending further Order of the Court as provided for in the South Carolina Rules of Civil Procedure, particularly Rule 71(c) of the South Carolina Rules of Civil Procedure.

13. In the event the successful bidder is someone other than the Defendant(s) in possession of the subject property, the Sheriff of Berkeley County is ordered and directed to eject and remove from the property the occupant(s) of the property sold, together with all personal property located thereon, and put the successful bidder or his assigns in full, quiet, and peaceable possession of said property without delay, and to keep said successful bidder or his assigns in such peaceable possession. All valid tenant rights shall be protected pursuant to the Protecting Tenants at Foreclosure Act of 2009.

14. In the event the successful bidder is other than the Defendant in possession herein, the Sheriff, upon receipt of a Writ of Assistance or other order of ejectment, is authorized and directed to eject and remove from the premises the occupant(s) of the property sold, together

with all personal property located thereon, and put the successful bidder 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.

15. The Defendant(s) named herein, and all persons whosoever claiming under Defendant(s), is forever barred and foreclosed of all right, title, interest, equity of redemption or lien in the said mortgaged property so sold, or any part thereof.

16. In accordance with Rule 77(d), of the South Carolina Rules of Civil Procedure, the Clerk of Court shall serve a notice of entry of this Judgment of Foreclosure upon all parties not in default for failure to appear in this action.

17. The deed of conveyance made pursuant to the foreclosure sale shall contain the names of only the first-named Plaintiff and the first-named Defendant(s), and the Defendant(s) who was/were the titleholder(s) of the mortgaged property at the time of the filing of the notice of pendency of the within action, and the name of the grantee. The Register of Deeds/Clerk of Court is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

18. The undersigned will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance.

19. The following is a description of the property herein ordered to be sold:
All of that certain piece, parcel, parcel or tract of land, situate, lying and being in the Whitesville area of Second St. Johns Tax District, County of Berkeley and said State of South Carolina, containing 1.75 acre, more or less, and designated as Tract C on a plat entitled "Plat of land owned by heirs of James Gibbs, divided as shown", prepared by Cleatwood E. Droze, RLS, dated July 21, 1986, and revised on December 8, 1986, and revised again on June 5, 1989, and recorded in the R.C.M. Office for Berkeley County, South Carolina, in Plat Cabinet H, at page 307; and having such shape, form, course, distance, butting, boundaries and delineations as will by more fully shown by reference to said plat and same is made a part and parcel of this description.

This being the same properly conveyed to Clayton McBride by deed of Pauline Baker recorded November 8, 2000 in Deed Book 2075 at page 226.

TMS# 141-15-00-054

1447 Old Whitesville Road
Moncks Corner, South Carolina 29461

Robert E. Watson

Robert E. Watson, Master in Equity

4/1, 2014
Moncks Corner, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Deutsche Bank National Trust Company, as
Trustee for Long Beach Mortgage Loan Trust
2006-7,

Plaintiff,

vs.

Clayton McBride and GE Money Bank,

Defendants.

(015122 - 00089 JDW)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2012-CP-08-3119

**CERTIFICATE OF SERVICE
BY MAIL**

I, Jason D. Wyman, an attorney with the law offices of Rogers Townsend and Thomas, PC, attorneys for Plaintiff, do hereby certify that I have served a copy of the following documents by mailing a copy of the same by United States mail, postage prepaid, on April 1, 2014, to each of the following:

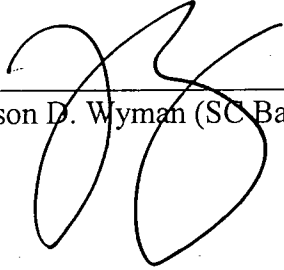
Documents:

Order

Parties served:

Clayton McBride
1447 Old Whitesville Road
Moncks Corner, SC 29461

RECEIVED
APR 09 2014
SC Court of Appeals



Jason D. Wyman (SC Bar# 100271)

ROGERS TOWNSEND & THOMAS, PC
POST OFFICE BOX 100200 (29202)
220 EXECUTIVE CENTER DRIVE
COLUMBIA, SOUTH CAROLINA 29210
P 803.771.7900 F 803.343.7017
W RTT-LAW.COM

JASON D. WYMAN
ASSOCIATE
JASON.WYMAN@RTT-LAW.COM
P 803.744.5303
F 803.343.7017

LICENSED IN SOUTH CAROLINA



April 1, 2014

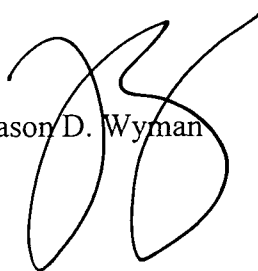
Mary P. Brown
Clerk of Court for Berkeley County
P.O. Box 219
Moncks Corner, SC 29461

Re: Deutsche Bank National Trust Company as Trustee for Long Beach Mortgage
Loan Trust 2006-7 v. Clayton McBride and G.E. Money
Civil Action No.: 2012-CP-08-3119
RTT File No.: 015122.00089

Dear Ms. Brown:

Please find enclosed an original and one copy of the *Certificate of Service* in the above referenced matter. Please file the original and return the clocked copy in the envelope provided for your convenience.

Sincerely,


Jason D. Wyman

JDW:rd

Enclosure

cc:

Clayton McBride
1447 Old Whitesville Road
Moncks Corner, SC 29461

RECEIVED
APR 09 2014
SC Court of Appeals

STATE OF SOUTH CAROLINA
JUDGMENT IN A CIVIL CASE
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS

CASE NO. 2012-CP-08-3119

RECEIVED
APR 09 2014
SC Court of Appeals

Deutsche Bank National Trust Company, as Trustee for
Long Beach Mortgage Loan Trust 2006-7

Clayton McBride and GE Money Bank

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Jason D. Wyman (SC Bar 100271)
Rogers Townsend & Thomas, PC
220 Executive Center Drive, Suite 109
Post Office Box 100200
Columbia, SC 29202
(803) 744-4444
(803) 343-7013 - Fax

Attorney for : Plaintiff Defendant
or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2/3 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41, SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other _____

FILED
2014 APR - 11 PM 2:27
MARY P. JOHNS
CLERK OF COURT
BERKELEY COUNTY, SC

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: _____

ORDER INFORMATION

This order ends does not end the case. Additional Information for the Clerk : As required by statute, a foreclosure sale has been or will be scheduled, which will officially end the case. Also, if a deficiency judgment remains demanded, a separate Order for Deficiency Judgment will be entered at the completion of the foreclosure sale.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

All of that certain piece, parcel, parcel or tract of land, situate, lying and being in the Whitesville area of Second St. Johns Tax District, County of Berkeley and said State of South Carolina, containing 1.75 acre, more or less, and designated as Tract C on a plat entitled "Plat of land owned by heirs of James Gibbs, divided as shown", prepared by Cleatwood E. Droze, RLS, dated July 21, 1986, and revised on December 8, 1986, and revised again on June 5, 1989, and recorded in the R.C.M. Office for Berkeley County, South Carolina, in Plat Cabinet H, at page 307; and having such shape, form, course, distance, butting, boundaries and delineations as will by more fully shown by reference to said plat and same is made a part and parcel of this description.

