STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Opportunity Investment Capital Inc.,

PLAINTIFF,

vs.

Ayodele Rivers,

DEFENDANT.

IN THE COURT OF COMMON PLEAS
C/A NO: 2012-CP-40-0068

MEMORANDUM, DECISION AND ORDER AFTER BENCH TRIAL

THE HONORABLE JOSEPH M. STRICKLAND, MASTER IN EQUITY FOR RICHLAND COUNTY:

Plaintiff Opportunity Investment Capital Inc.'s ("OIC") foreclosure action against Ayodele Rivers ("Defendant") having been tried before this Court in a non-jury proceeding, based on a preponderance of the evidence and on the arguments presented, this Court sets forth the following Findings of Fact and Conclusions of Law[1], pursuant to Rule 52(a), SCRCP, and finds that entry of judgment of foreclosure and sale against Defendant is proper and that Defendant's claims and defenses are dismissed with prejudice.

PROCEDURAL HISTORY

This matter was commenced by OIC's filing of a Lis Pendens, Summons and Complaint, and Notice of Foreclosure Intervention on January 5, 2012. Defendant was personally served on January 12, 2012 at 35 Olde Clayton Court, South Carolina, the property that is the subject of this foreclosure action. On February 22, 2012, OIC filed a Certification of Compliance with Administrative Order 2011-05-02-01, based on Defendant's failure to respond to the Notice of Foreclosure Intervention within thirty days after service of same. After OIC filed an affidavit of default and non-military service for Defendant on March 13, 2012, the case was then referred to the Master in Equity by Order entered on March 13, 2012.

A default foreclosure hearing was scheduled for May 15, 2012, but was cancelled as a result of Defendant having commenced Chapter 13 bankruptcy proceedings on May 14, 2012. On June 25, 2012, the District Court dismissed Defendant's bankruptcy proceedings for failure to timely file the required documents. The default foreclosure hearing was then rescheduled for August 14, 2012. This hearing was also cancelled as a result of Defendant having commenced a second Chapter 13 approximately twenty minutes prior to the hearing. On September 18, 2012, the District Court dismissed Defendant's second

[1] To the extent that any of the findings of fact may be deemed conclusions of law, they shall also be considered conclusions. Likewise, to the extent that any conclusions of law may be deemed findings of fact, they shall be considered findings. See Miller v. Fenton, 474 U.S. 104, 113-14 (1985) (noting the difficulty of distinguishing findings of fact and conclusions of law).

bankruptcy proceedings for failure to timely file the necessary documents and issued a Rule to Show Cause. At a hearing on the Rule to Show Cause on October 15, 2012, the District Court determined that Defendant was given two opportunities to comply with the Bankruptcy Code and failed to do so. The District Court therefore dismissed Defendant's second case with prejudice and prohibited Defendant from refiling under any chapter of the Bankruptcy Code for 180 days. A third default hearing was scheduled on November 13, 2012, and on November 7, 2012, Defendant filed a motion for a continuance on the grounds that she would be unavailable to attend the hearing. During a status conference with Judge Strickland, it was determined that Defendant had filed an Answer, however OIC had no record of receiving one and no certificate of service was annexed to the Answer filed with the Court. Over OIC's objection, the hearing was cancelled and the matter was transferred to the contested docket.

Thereafter, the parties engaged in written discovery and requests for admission were served on Defendant by registered mail, return receipt requested, on December 17, 2012. The requests were mailed to the subject property. After more than 35 days elapsed and Defendant failed to respond to the admissions, OIC filed a Motion for Summary Judgment on January 24, 2013 and served a copy on Defendant via certified mail sent to the property. A summary judgment hearing was scheduled for March 19, 2013. OIC sent Defendant a notice of hearing via certified mail to the subject property.

In communications with the Court on March 14, 2013, OIC was informed that Defendant had filed a Motion for a Continuance on March 13, 2013 on the grounds that she had a doctor's appointment and, *inter alia*, would be unavailable to attend the hearing. During these communications, OIC also learned that Defendant had filed an Amended Answer and Counterclaim on March 8, 2013. The Amended Answer alleges that OIC violated multiple provisions of Title 37 of the South Carolina Code of Laws. The Court scheduled a hearing on the merits for May 20, 2013, and on March 28, 2013, OIC filed a Motion to Strike Defendant's Amended Answer and Counterclaims.

It appears that sometime during the week prior to the merits hearing, Defendant retained an attorney to represent her in this matter and a notice of appearance was filed on May 13, 2013. During a status conference on May 17, 2013, Defendant's attorney requested a continuance of the merits hearing to investigate the factual allegations and research the issues. The continuance was denied with leave to renew the motion at the merits hearing. All other pending motions were scheduled to be heard at the merits hearing, and the parties were instructed to bring any proposed witnesses and exhibits. Defendant also filed an Affidavit in Opposition to Plaintiff's Motion for Summary Judgment on May 17, 2013, which states that she mailed a copy of the Answer to OIC's counsel on the same date it was filed. The affidavit also states that the property is Defendant's primary residence, and that her defenses to the foreclosure action are based on the allegation that the subject loan is a consumer home loan and that Plaintiff is not a licensed mortgage lender.

On May 20, 2013, the Court denied all pending motions and declined Plaintiff's request to hold the Defendant in default for failing to serve either the Answer or Amended Answer and Counterclaim on the Plaintiff. A bench trial was held. At the conclusion of the hearing, the Court permitted Defendant's counsel to file an amended answer, incorporating the various claims and defenses Defendant raised. Defendant served an Amended Answer on May 29, 2013. For purposes of this Order, this Answer is deemed part of the record. The Answer denotes the counterclaims Defendant raised in her Amended Answer and Counterclaim as defenses; to the extent that they state counterclaims, Plaintiff filed a Reply to Defendant's Answer on June 11, 2013.

FACTUAL FINDINGS

Upon due consideration of the developed factual record, including the testimony of witnesses and examination of exhibits presented at trial, this Court sets forth the following factual findings based on the credible evidence presented at trial:

1. OIC is a for-profit, South Carolina corporation engaged in financing the purchase of commercial and investment properties. OIC does not possess a mortgage license and does not offer financing for the purpose of purchasing real property that is to be occupied as a borrower's principal dwelling.[2]

2. Sometime in July of 2010, Defendant saw an online advertisement for the sale of 35 Olde Clayton Court (the "property"), listing the Department of Housing and Urban Development as the seller. Defendant testified that she contacted OIC through its independent contractor, Guido Evangelista, after viewing an online advertisement.

3. After some preliminary discussions with OIC, Defendant submitted a loan application indicating that her monthly income ranged from $3,700 to $7,800 per month. Defendant testified that she worked as paralegal in Boston, Massachusetts, prior to moving to South Carolina, and was receiving income from two rental properties she owned, 36 Olde Clayton Court and 1320 Piney Grove Rd in Columbia, South Carolina, as well as a string of vending machines she operated.[3] Defendant was not able to provide the date she moved to South Carolina, or list the addresses she had lived in the 5 years prior to

---

[2] Q: ... Why is it that you intend to restrict your lending to commercial purpose loans?
A: Because we don't want to be involved in any residential loans.
....
A: No, sir. We deal only with commercial loans.
(Transcript p. 59, ln. 11-24.)

[3] Q: Did you provide a range of monthly income .... To OIC? And what was that range?
A: I don't remember off the top of my head, but I mentioned that my minimum like guaranteed monthly income from contracts that I had was $3250 a month.
Q: And do you recall stating that your monthly income for April of 2010 was $7834.86?
A: Yes.
(Transcript p. 138 ln. 5-13.)

January 1, 2010.[4] Defendant stated that while she was in the process of applying for the loan from OIC, she was living in 36 Olde Clayton Court.

4. Defendant was given a pre-approval letter from OIC dated November 1, 2010, for a loan in the amount of $21,000.00 to purchase a single family investment property. The letter was not executed. By email later that day, Defendant contacted Mr. Evangelista and requested that OIC issue another approval letter stating the Property was to be owner-occupied. In relevant part, the email states:

> I meant to tell you that I'm going to continue renting out the 1st property (36 Old Clayton) as an investment property and the second property I bought (1320 Piney Grove Rd), I bought last month for the purpose of flipping it for it's market value, which is more than double the payback on the 1st house. So the sale of the 2nd house, after the contractor is done fixing it up, will cover the payback amount for both 36 and 35 Old Clayton Court. The reason I bought the 2nd house was to intentionally flip it for that additional profit. 35 Old Clayton will end up being the property I decide to move into, so 35 Old Clayton Court will not be an investment property rather it will be "owner occupant". ***I just wanted to mention this FYI because HUD is only auctioning it off the "owner occupants" and if the pre-approval letter states that the property use is for "investment reasons" they will automatically decline my bid. So I was wondering if under "property use" you can edit it to state "owner occupant"?*** Thanks! (emphasis added).

5. Defendant received a second pre-approval letter from OIC, dated November 29, 2010, stating that she had been approved for a loan in the amount of $28,900.00 for the purchase of a single family owner occupied property. The letter was executed by Guido Evangelista.

6. Defendant and OIC, by its CEO Billie F. Attaway, executed a commitment letter dated December 3, 2010 OIC, which approved Defendant for a loan in the amount of $44,516.00, and set forth the basic terms of the loan. The commitment letter also contained a clause stating "[p]lease note that this is a commercial loan for investment purposes, not a personal loan."

---

[4] Q: So 35 Clayton Court has been your primary residence since January 2011 is your contention?
A: Uh-huh (affirmative response).
...
Q: What was your primary residence before January of 2011?
A: I didn't have a primary residence other than staying with my family in Boston from time to time.
...
Q: Could you provide a list of all the places that you've lived in the past five years?
A: I'd have to sit down and go over that, but yes.
Q: Give us as many as you can remember in the past five years, please.
A: I lived at 63 Bowden in Newton Highlands, Massachusetts, for a period of time. I've lived at 36 Olde Clayton Court for a period of time. I'm currently living at 35 Olde Clayton Court. ... I didn't memorize every single ... if it's temporary I didn't memorize, like if I stayed with a friend temporarily I didn't memorize their address, so I would have to sit down and go over some things.
Q: Is it your testimony then that up until January of 2011 you have never had a primary residence?
A: I've had a primary... like, 36 Olde Clayton Court was my primary residence when I first bought it.
(Transcript pp. 108 ln. 13– 109 ln. 20.)

7. On December 30, 2010, Defendant executed promissory note in favor of OIC in the original principal amount of $43,860.00. The note required one lump sum payment on or before October 1, 2011, and one year's interest at the rate of 20% to be paid at closing.

8. The note was secured by a mortgage given by Defendant simultaneously with the execution of the note, encumbering the following described property:

> All that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, being shown and designated as Lot 35, Moss Brook Plantation Cottages, and being shown on a plat prepared for Mossbrook Plantation Cottages, Phase I, dated March 5, 1986, and recorded in Book 50 at Page 7693. Said being incorporated herein by reference and made a part of this description and said lot having such boundaries and measurements as shown thereon, all being a little more or less.

TMS #: 13785-01-35
Property Address: 35 Olde Clayton Ct, Columbia, SC

9. Thereafter, the mortgage was recorded in the Office of the Register of Deeds for Richland County in book 1657 at page 1768 on December 31, 2010. The mortgage is a purchase money mortgage with the proceeds of the loan being used to purchase the subject property and constitutes a first lien.

10. The loan that is subject to this action is ***not*** owned, securitized, or guaranteed by Fannie Mae or Freddie Mac, and is not held by a servicer who is participating in the Home Affordable Modification Program (HMP) and, therefore is not subject to modification under the HMP.

11. A second mortgage was also executed on December 30, 2010 to secure the note. OIC testified that it required the second mortgage as a "place-holder" in order to better secure its first mortgage lien and to prevent Defendant from obtaining any other mortgages on the property.

12. The titleholder(s) of record in and to the subject property as of the filing of the Lis Pendens in this action is Ayodele Rivers.

13. Paragraph 14 of OIC's complaint states that pursuant to Sections 37-3-105, South Carolina Code of Laws (1976 as amended), the mortgage lien which is the subject of this action is a first lien on real estate and is not a 'consumer loan' for the purposes of the South Carolina Consumer Protection Code.

14. OIC advanced the pre-payment of interest due from Defendant at the closing.

15. OIC did not participate in the execution or preparation of any of the sale documents, closing documents, or the settlement statement, and had no contact with the Department of Housing and Urban Development in connection with making the loan to Defendant. OIC also did not provide any

information to the Richland County tax assessor regarding the assessment rate for the property, and did not provide any information to insurers relating to any policies on the property.[5]

16. Defendant testified that she moved into 35 Olde Clayton Court in January 2011, shortly after the loan closing. She stated that 35 Olde Clayton Court has been her primary residence since then and that she has never rented it.

17. When the note matured by its own terms, Defendant did not make the lump sum payment. OIC sent a notice of default to Defendant via certified mail on October 2, 2011. Defendant admitted that she did not make any payments on the loan, did not cure the default, and used the proceeds of the loan to purchase the property.[6]

18. Payment due on the note was not been made as provided for therein, and Plaintiff, as the holder thereof, elected to require immediate payment of the entire amount due thereon and placed the note and mortgage in the hands of an attorney for collection.

---

[5] Q: Mr. Attaway, referring back to Defendant's Exhibit Number One, which is the contract of sale, did OIC provide any of the information to the closing attorney or to HUD regarding the information on that property?
A: No, ma'am.
...
Q: Defendant's Exhibit Three, the email between Ms. Rivers and, I believe its Mr. Evangelista.
...
Q: Would you read the date of that email, please?
A: November 1st, 2010.
Q: Does that email predate the commitment letter issued by OIC?
A: Yes, ma'am.
Q: Does it predate the Note and the Mortgage?
A: Yes, ma'am.
Q: And was there any other documentation that you're aware of, executed by OIC at the time that the loan was issued, stating that this was to be a consumer loan?
A: No, ma'am.
(Transcript pp. 73 ln. 23 – 75 ln. 3.)
Q: I'm asking whether you provided OIC, prior to executing the mortgage, any documents or other correspondence indicating that you intended this to be your primary residence.
A: No.
(Transcript p. 137, ln. 1–5.)

[6] Q: Did you execute a promissory note in favor of OIC in the amount of $43,860?
A: I believe so.
Q: Was that loan secured by a mortgage executed in favor of OIC?
A: Yes, I believe so.
...
Q: Do you recall the date on which the lump sum payment for the note was due?
A: It was due nine months after I received it.
...
Q: Did you make the payment on that date?
A: I did not.
Q: Have you made any payments to OIC?
...
A: No.
(Transcript pp. 139 ln. 21 – 140 ln. 19.)

19. OIC commenced a foreclosure action on January 5, 2012 seeking a deficiency judgment against the Defendant, Ayodele Rivers, pursuant to S.C. Code Ann. Section 29-3-660 (1976) for any deficiency in this action remaining after sale of the mortgaged premises.

20. Plaintiff testified that the total amount due and owing on the note, exclusive of attorneys fees, was as follows:

Principal due as of October 1, 2011	$43,860.00
Interest from October 1, 2011 through May 20, 2013 at 20.00%	15,462.75
Default Penalty	2,193.00
Property Taxes for 2012	534.26
Corporate Advances	1,607.00
TOTAL DEBT secured by Note and Mortgage, including interest to May 20, 2011	**$63,657.01**

Interest for the period from October 1, 2011 as shown above at the stated rate of 20.00% is to be added to the Principal Balance shown above through the date this Judgment is filed. After the date of judgment, interest at the rate of 20.00% on the total judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the Mortgage.

21. The affidavit of non-service filed on January 12, 2012 indicates that a USC student by the name of Brittany was renting 36 Olde Clayton Court, but did not know Defendant's address. It appears that the process server called Defendant at a phone number provided by Brittany on January 10, 2012, and that Defendant was in Greenville, South Carolina but agreed to try and meet at the property the following evening for service.

22. Defendant was then served at the property on January 12, 2012, but was not able to provide an explanation why the affidavit of service indicates that the subject property is not her primary residence. Defendant was also not able to state why the comments section of the affidavit states "met at property, did not provide current address of who she is staying with."

23. As proof of her occupancy of the subject property, Defendant offered the following exhibits: One, a contract of sale for 35 Olde Clayton Court from HUD to Defendant; Two, a pre-approval letter from OIC dated November 29, 2010; Three, an insurance policy for 35 Olde Clayton Court; Four, Objection to Defendant's Bankruptcy filed by A-plus Marine; Five, the second mortgage on 35 Olde Clayton Court given by Defendant in favor of OIC; Six, a settlement statement for 35 Olde Clayton Court; Seven, document reflecting 47% APR; Eight, Richland County Tax Assessor data for tax years 2011 and 2012 for 35 Olde Clayton Court; Nine, SCE& G bill for 35 Olde Clayton Court due May 24, 2013; Ten, City of Columbia Water Department bill due May 23, 2013; Eleven, bill from Gene Love

plumbing and emails; Twelve, Plaintiff's Certificate of Mortgagor Non-compliance; Thirteen, email chain between Defendant and Guido Evangelista regarding Defendant's income; Fourteen, email from Guido Evangelista to King & Knobeloch, PC; Fifteen, email from Defendant to Guido Evangelista; Sixteen, copy of advertisement of the sale of 36 Olde Clayton Court; and Seventeen, Consumer Affairs Complaint made by Defendant against OIC.

24. The Court notes that only pre-closing document offered by Defendant in support of the proposition that the property was intended to become her primary residence is the email from Defendant to Mr. Evangelista referenced in paragraph 4, *supra*. All of Defendant's remaining exhibits relating to her occupancy of the property post-date the closing for the subject loan transaction.

25. OIC offered the following documents as exhibits to its foreclosure action: One, commitment letter signed by Defendant; Two, promissory note; Three, mortgage for 35 Olde Clayton Court; Four, notice of default letter; Five, six pieces of unclaimed returned mail sent to the property address via certified mail during the pendency of this action; Six, Rule to Show Cause issued against Defendant; Seven, Richland County Public Index showing service on Defendant at 1403 Caroline Road for an eviction proceeding against 36 Olde Clayton Court; Eight, Resolution of Department of Consumer Affairs Complaint made by Defendant against A-plus Marine; Nine, Affidavit of Non-Service; Ten, Affidavit of Service; Eleven, Consent to Dual Representation by King & Knobeloch, PC signed by Defendant.

CONCLUSIONS OF LAW

A. Defendant's Claim for Violation of Chapter 22 of Title 37 of the South Carolina Code of Laws

26. The Mortgage Lending Chapter of the Consumer Protection Code defines a mortgage loan as "a loan made to a natural person primarily for personal, family, or household use, primarily secured by a mortgage, deed of trust, or other security interest on residential real property or security interest arising under an installment sales contract or equivalent security interest against the borrower's dwelling and: (i) located in South Carolina, (ii) negotiated, offered, or otherwise transacted within this State, in whole or in part, or (iii) made or extended within this State." S.C. Code § 37-22-110(30). This Chapter further requires any non-exempt person making mortgage loans in this state to possess a mortgage license. S.C. Code § 37-22-120.

27. Section 37-22-230 exclusively governs the penalties for violations of Chapter 22 of the Consumer Protection Code, and criminalizes willful violations of this Chapter. Specifically, a person who willfully violates a provision of this chapter is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than six months, or both, for each violation. As such, Defendant lacks standing to raise such a claim.

28. Because Chapter 22 of the Consumer Protection Code does not provide a private right of action, this Court finds and concludes that this claim fails as a matter of law and is accordingly dismissed.

B. Defendant's Claim for Violation of High Cost and Consumer Home Loans Act

29. A "consumer home loan" is defined as "a loan in which: (a) the borrower is a natural person; (b) the debt is incurred primarily by the borrower for personal, family, or household purposes; and (c) the loan is secured by a mortgage on real estate upon which is located or to be located a structure designed principally for occupancy of from one to four families and that is or is to be occupied by the borrower as the borrower's principal dwelling." S.C. Code Ann. § 37-23-20(4) (2010).

30. A "high-cost home loan" is "(a) a loan, other than an open-end credit plan or reverse mortgage transaction in which the: (i) principal amount does not exceed the conforming size limit for a single-family dwelling as established from time to time by the Federal National Mortgage Association; (ii) the borrower is a natural person; (iii) the debt is incurred primarily for personal, family, or household purposes; (iv) the loan is secured by ... a mortgage on real estate upon which there is located or to be located a structure designed principally for occupancy from one to four families and which is or is to be occupied as the borrower's principal dwelling; and (v) the terms of the loan exceed one or more of the thresholds defined in item (15) of this section...." S.C. Code Ann. § 37-23-20(9).

31. The term "threshold" in item 15 means the total points and fees ***payable by the borrower at or before the loan*** closing exceed five percent of the total loan amount if the total loan amount is twenty thousand dollars or more. S.C. Code Ann. § 37-23-15(b)(1) (emphasis added).

32. The subject loan was for $43,680.00, and the settlement statement indicates that $14,955.37 was due from the borrower at closing. However, Defendant testified she did not pay any costs associated with the loan, for closing or otherwise.[7] OIC advanced all funds required to close the loan. Therefore, this Court finds that even if the loan could be considered a high cost home loan, Defendant cannot show any resulting damages because of her failure to make any payments on the loan whatsoever.

33. Furthermore, OIC offered testimony stating that it does not extend credit to, and would not extend credit to borrowers who intend to purchase property to be occupied as their primary residence. OIC testified that it only makes loans for commercial and investment purposes, but does not make consumer loans. Defendant testified that she did intend to occupy the property prior to closing; however, the only document in the record exchanged between the parties prior to the closing which evidences this

[7] Q: And did you make any of the prepayment of interest that was due at the closing?
A: I was told everything was due in one lump sum.
Q: But the prepayments that were due at closing, those were advanced by OIC; you didn't pay for them?
A: I was told not to.
Q: So you didn't pay for them?
A: No.
(Transcript pp. 140 ln. 20 – 141 ln. 2.)

intent is the Defendant's email to Mr. Evangelista requesting that the approval letter be modified to state that the property would be owner occupied. Defendant acknowledged in this same email that her bid would be rejected if the loan was for investment purposes. A reasonable interpretation of this email could be construed as a request by the Defendant to characterize the purchase as a consumer loan so that she could in fact buy the property regardless of her occupancy intentions.

34. Notwithstanding the foregoing, it is dispositive that Defendant and OIC executed a commitment letter prior to the closing agreeing that the loan was for commercial purposes only. This is the only pre-closing document in the record executed by both parties relating to the mutual intention of the parties to treat this loan as a non-consumer investment loan.[8] The Court finds and concludes that the commitment letter constitutes a valid agreement between the parties, setting forth the material terms of the agreement to finance the purchase of the property. ("The necessary elements of a contract are an offer, acceptance, and valuable consideration." Roberts v. Gaskins, 327 S.C. 478, 483, 486 S.E.2d 771, 773 (Ct.App.1997)). Therefore, the parol evidence rule bars the admission of extrinsic evidence presented by Defendant to contradict the terms of the commitment agreement. "The parol evidence rule prevents the introduction of extrinsic evidence of agreements or understandings contemporaneous with or prior to execution of a written instrument when the extrinsic evidence is to be used to contradict, vary, or explain the written instrument." See Estate of Holden v. Holden, 343 S.C. 267, 539 S.E.2d 703 (2000).

35. Defendant freely negotiated the terms of the note and mortgage, as evidenced by her correspondence with Mr. Evangelista and execution of the consent to dual representation stating that she had an opportunity to negotiate the terms of the loan with the lender and that the terms were agreed to prior to the closing firm's involvement with the transaction. Defendant is sophisticated in real estate matters, having testified to the purchase of three properties other than the one that is the subject of this action and admitted that as a paralegal she possesses more than a lay-person's understanding of legal proceedings. By executing the commitment agreement, Defendant participated in the very conduct she now complains of; the Court therefore declines to retroactively deem the loan a consumer loan based on the unilateral allegations of one party. To subject OIC to penalties for violations of the High Cost and Consumer Loans Act under these facts would be violative of public policy and deprive OIC of Due Process. See Tilley v. Pacesetter Corporation, 585 S.E.2d 292 (2003) (Holding that under South Carolina's "retroactivity jurisprudence," applying amended version of § 37-10-105 to determine buyer's damages for claims prior to the amendment would violate Due Process).

---

[8] Q: I am asking whether you provided OIC, prior to executing the note and mortgage, any documents or correspondence indicating that you intended this to be your primary residence.
A: No.
(Transcript p. 137 ln. 1–5.)

36. Even if Defendant could establish OIC violated the High Cost and Consumer Loans Act, this Court determines that Defendant has not suffered any actual damages from these purported violations and that they should accordingly be dismissed.[9] ("If a lender, or party charged with a violation, when making a high-cost home loan violates the provisions of this article, the borrower has a right in action, other than a class action, to recover from the lender or party charged with the violation ***actual damages*** and also a penalty in an amount determined by the court of not less than one thousand five hundred dollars and not more than seven thousand five hundred dollars for each loan transaction." S.C. Code Ann. § 37-23-20(4) (2010)(emphasis added).

C. Defendant's Claim for Violation of Truth in Lending Act

37. The Truth in Lending Act ("TILA") requires creditors to disclose certain information about the terms of the loan to the prospective buyer. See, e.g. 15 U.S.C. §§ 1631-32; 15 U.S.C. § 1683; 12 C.F.R. § 226.17. Only creditors are liable under TILA and Regulation Z. Harris v. Option One Mortgage Corp., 261 F.R.D. 98, 105 (D.S.C. 2009); Mincey v.World Sav. Bank, FSB, 614 F. Supp.2d 610, 625 (D.S.C. 2008). 15 U.S.C. § 1602(f) defines a creditor as person who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments and to whom the obligation is initially payable. See also 12 C.F.R. § 226.2(a)(17) (2013).

38. Even if the subject loan could be categorized as a consumer loan, the record contains no evidence that OIC regularly extends consumer credit; in fact OIC testified that it does not do so.[10] Furthermore, the subject loan is payable in a single lump sum payment and by its very terms, cannot be a consumer loan for purposes of TILA and Regulation Z.

39. Therefore, the Court finds and concludes that because OIC is not a creditor pursuant to 15 U.S.C. § 1602(f) and because the subject loan was not payable in more than four installments, Defendant's claim for violation of TILA is without merit and is dismissed.

D. Defendant's Claim for Violation of Attorney Preference Statute

40. Section 37-10-102 requires creditors to ascertain the borrower's preference for counsel in regards to closing prior to closing whenever the primary purpose of a loan secured by real estate is for a personal, family, or household purpose. S.C. Code Ann. § 37-10-102(a) (2012).

---

[9] Q: ... Has the plaintiff actually caused you damages in this matter?
A: Yes.
Q: What are those damages?
A: Attorney's fees, filing fees for the bankruptcy Court, and filing fees when I filed things for this matter.
(Transcript p. 150 ln. 9–15.)

[10] Q: ... How many loans do you have outstanding in OIC?
A: Two or three.
Q: Okay. In an average year, how many loans would you make?
A: In 2012 we did not make any loans. And year-to-date we have not made any loans.
(Transcript p. 59 ln. 4–10.)

41. Defendant executed a dual representation agreement and buyers affidavit, whereby she acknowledged that she had the right to select her own attorney and consented to OIC's choice of the closing attorney.

42. Therefore, the Court finds and concludes that because Defendant was properly informed of her right to obtain her own counsel for the subject closing, Defendant's claim for violation of the Attorney Preference statute is without merit and is dismissed.

E. **Defendant's Affirmative Defenses**

1. Waiver

43. Waiver is the "voluntary and intentional relinquishment or abandonment of a known right." Strickland v. Strickland, 375 S.C. 76, 85, 650 S.E.2d 465, 470 (2007). The party claiming waiver must show the other party possessed, at the time, actual or constructive knowledge of his rights or of all the material facts upon which they were dependent. Janasik v. Fairway Oaks Villas Horizontal Prop. Regime, 307 S.C. 339, 344, 415 S.E.2d 384, 387-88 (1992). "The doctrine of waiver does not necessarily imply that the party asserting waiver has been misled to his prejudice or into an altered position." Id. at 344, 415 S.E.2d at 388.

44. As an affirmative defense, Defendant has the burden of proof on this issue. Provident Life & Accident Ins. Co. v. Driver, 317 S.C. 471, 478, 451 S.E.2d 924(Ct. App. 1994) (citing Frady v. Smith, 247 S.C. 353, 147 S.E.2d 412 (1966)). Defendant has not shown, nor has Defendant introduced any evidence supporting her claim that Plaintiff has in any way abandoned its right to foreclose on the note and mortgage. As such, this Court concludes that this defense is without merit and fails as a matter of law.

2. Estoppel

45. "The elements of equitable estoppel as related to the party being estopped are: (1) conduct which amounts to a false representation, or conduct which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) the intention that such conduct shall be acted upon by the other party; and (3) actual or constructive knowledge of the real facts." Strickland v. Strickland, 375 S.C. 84–85, 650 S.E.2d 465, 470 (S.C. 2007). "The party asserting estoppel must show: (1) lack of knowledge, and the means of knowledge, of the truth as to the facts in question; (2) reliance upon the conduct of the party estopped; and (3) a prejudicial change of position in reliance on the conduct of the party being estopped." Id. Estoppel is also an affirmative defense like waiver, and the asserting party bears the burden of proof. Frady v. Smith, 247 S.C. 353, 147 S.E.2d 412 (1966).

46. Defendant appears to claim that Plaintiff should be estopped from bringing the foreclosure action based on its alleged knowledge that the loan was a consumer loan and its various

alleged violations of the High Cost and Consumer Loans Act. The Court finds no authority to support the position that a mortgagee is barred from enforcing its rights under a mortgage where violations of the High Cost and Consumer Loans Act have occurred. The High Cost and Consumer Loans Act allows a borrower to recover statutory penalties limited between $1,500.00 and $7,500.00. Therefore, this Court concludes that this defense is without merit and fails as a matter of law.

3. Judicial Estoppel

47. Judicial estoppel requires: "(1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must have been part of an intentional effort to mislead the Court; and (5) the two positions must be totally inconsistent." Id. at 215–16, 592 S.E.2d at 632. Judicial estoppel must be "applied sparingly, with clear regard for the facts of the particular case," and "must not be applied to impede the truth-seeking function of the Court." Id. at 216, 592 S.E.2d at 632.

48. Defendant introduced the Certification of Mortgagor Non-Compliance in support of her argument that Plaintiff should be judicially estopped from their position that the property was not owner-occupied and that the transaction was not a consumer credit transaction. Pursuant to S.C. Supreme Court Administrative Order 2011-05-02-01, a party seeking foreclosure must file either a Certification of Non-Compliance or a Certification of Exemption in order to proceed with the action. This Order applies to all mortgage foreclosure proceedings concerning "real property that is the principal residence of any mortgagor," and provides that no foreclosure hearing may be held until the Mortgagee certifies to the Court either that the Mortgagor has had notice of and an opportunity to participate in foreclosure intervention or that the Mortgagor has failed, refused, or voluntarily elected not to participate in foreclosure intervention. Re Mortgage Foreclosure Actions, 396 S.C. 209, 720 S.E.2d 908 (2011).

49. Based on facts available to OIC from public records, OIC could not certify that the property was not owner occupied, and thus necessarily had to file the Certification of Compliance after the Defendant failed to respond to the notice of foreclosure intervention. OIC's mandated compliance with the Administrative Orders applicable to the subject action is not determinative of the parties intent to treat the subject loan as a consumer loan and irrelevant to the Court's analysis of Defendant's claims. The Certification of Mortgagor Non-Compliance can only be deemed an admission that as of its execution date of February 16, 2013, this was an action for the foreclosure of owner-occupied property. This Court declines to construe this document as an admission relating back to occupancy status of the property before the foreclosure action was commenced or to the original loan transaction.

50. Plaintiff's positions that the property is owner occupied but was not intended to be owner occupied when the loan was originated, are *not* inconsistent with one another; therefore the first and fifth elements of judicial estoppel is therefore not satisfied. The third and fourth requirements are also not met because there is no indication that Plaintiff received any benefit from the characterization of the property as owner-occupied in the Certification of Non-Compliance. Finally, Defendant has failed to show any change in her position in reliance upon the Certification of Non-Compliance, which was filed *after* the commencement of this action. Defendant has also failed to offer any evidence that the Certification of Non-Compliance was an intentional effort of Plaintiff to mislead this Court. Therefore, the Court concludes that this defense is without merit and fails as a matter of law.

4. Unclean hands

51. Unclean hands precludes recovery in equity if the party against whom unclean hands is asserted acted unfairly in the matter that is the subject of litigation to the prejudice of the other party. Ingram v. Kasey's Assocs., 340 S.C. 98, 531 S.E.2d 287, 292 n.2 (S.C. 2000).

52. Defendant's unclean hands defense appears to be premised upon the same allegation that the subject loan is a consumer loan and is the product of an illegal agreement based on OIC's lack of a mortgage license. As this Court has already determined that violations of the High Cost and Consumer Home Loans Act are limited to statutory penalties, the Court is similarly unwilling to apply to the defenses of unclean hands as to these facts. Regardless of the type of loan the parties intended make, it is undisputed that Plaintiff financed the purchase of the property in its entirety and possesses an equitable lien. Defendant has not shown any resulting prejudice to her from this transaction. Therefore, this Court concludes that this defense is without merit and fails as a matter of law.

5. Unjust enrichment

53. Unjust enrichment is an equitable doctrine allowing recovery of the amount the party against whom it is asserted has been unjustly enriched at the expense of the other party. Regions Bank v. Wingard Props., Inc., 394 S.C. 241, 256-57, 715 S.E.2d 348, 356 (Ct. App. 2011). The elements to recover for unjust enrichment based on quantum meruit, quasi-contract, or implied by law contract, which are equivalent terms for equitable relief, are: (1) a benefit conferred by the plaintiff upon the defendant; (2) realization of that benefit by the defendant; and (3) retention of the benefit by the defendant under circumstances that make it inequitable for him to retain it without paying its value. Id. at 256–57, 715 S.E.2d at 356.

54. Defendant has failed to demonstrate that she conferred any benefit upon Plaintiff; rather, Defendant testified she has not made any payments on the loan that is the subject of this suit.[11] Conversely, Plaintiff *has* conferred a benefit on Defendant by advancing the funds needed to purchase the property to Defendant. Defendant has realized that benefit by using the proceeds of the loan to purchase the property and obtaining title to the property at no financial expense of her own. Denial of the foreclosure remedy Plaintiff seeks would allow Defendant to retain this benefit without paying for the value of the property because Defendant has admitted to not making any payments. As such, this Court concludes that this defense is without merit and fails as a matter of law.

6. *Unconscionability*

55. Unconscionability requires the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms which are so oppressive that no reasonable person would make them and no fair and honest person would accept them. Fanning v. Fritz's Pontiac-Cadillac-Buick, Inc., 322 S.C. 399, 402, 472 S.E.2d 242, 245 (1996). Absence of meaningful choice on the part of one party generally speaks to the fundamental fairness of the bargaining process in the contract at issue. See Carlson v. General Motors Corp., 883 F.2d 287, 295 (4th Cir.1989). In determining whether a contract was "tainted by an absence of meaningful choice," Id. at 295, Courts should take into account the nature of the injuries suffered by the plaintiff; whether the plaintiff is a substantial business concern; the relative disparity in the parties' bargaining power; the parties' relative sophistication; whether there is an element of surprise in the inclusion of the challenged clause; and the conspicuousness of the clause. Id. at 293. Courts should not refuse to enforce a contract on grounds of unconscionability, even when the substance of the terms appear grossly unreasonable, unless the circumstances surrounding its formation present such an extreme inequality of bargaining power, together with factors such as lack of basic reading ability and the drafter's evident intent to obscure the term, that the party against whom enforcement is sought cannot be said to have consented to the contract. Gladden v. Boykin, 739 S.E.2d 882, 884–85 (2013).

---

[11] Q: My final question to you, Ms. Rivers, would be that you testified previously that you felt OIC treated you unfairly in dealing with this loan. My question to you is whether you think its fair for you to keep this property without making any payments to OIC for the loan it advanced to you to purchase that property.
A: Because of the fact that, of the three properties that I... one of them I paid for 100 percent with my savings, and so I feel as if it would be unfair to, you know, to pay for a second property. Like, I mean, they were clever in putting different names on the different properties, but every single correspondence was through one person, Guido. And I think that, yes, it would be unfair for them to take this property, or for me to like pay for a mortgage when they took my house that I paid for with all of my savings. (Transcript pp. 144 ln. 16 –145 ln. 8.)
Q: You received no money from OIC that was used to purchase 36 Olde Clayton Court or 1320 Piney Grove, correct? The only money you received from OIC was to purchase 35 Olde Clayton?
A: Correct.
(Transcript pp. 147 ln. 23 –148 ln. 2.)

56. Defendant negotiated the terms of the loan, executed an agreement setting forth the basic terms of the loan, and executed a consent to dual representation. Defendant has failed to show any absence of meaningful choice with regards to the loan transaction. Finally, there is no evidence that Plaintiff obscured any of the loan terms; indeed, the record indicates that Defendant was provided with multiple documents evidencing the terms of the loan prior to closing. Therefore, this Court concludes that this defense is without merit and fails as a matter of law.

1. Violation of the implied covenant of good faith and fair dealing

57. Every contract carries an implied covenant of good faith and fair dealing. Time Warner Cable v. Condo Servs. Inc., 381 S.C. 275, 285, 672 S.E.2d 816, 820 (Ct. App. 2009) (quoting Parker v. Byrd, 309 S.C. 189, 193–94, 420 S.E.2d 850, 853 (1992). A claim for breach of the implied covenant of good faith and fair dealing may not be maintained if the party seeking damages is in default under the contract. Swinton Creek Nursery v. Edisto Farm Credit, ACA, 334 S.C. 469, 514S.E.2d 126 (1999). "One who seeks to recover damages for breach of contract, to which he was a party, must show that the party has been performed on his part, or at least he was, at the appropriate time, able, ready and willing to perform it." Id. at 487, 514 S.E.2d at 135 (quoting Parks v. Lyons, 219 S.C. 40, 48, 64 S.E.2d 123, 126 (1951)).

58. Defendant has admitted to being in default under the terms of the note and testified as to her inability to perform at the time the note was due. As such, a claim for breach of the implied covenant of good faith and fair dealing may not be maintained and this claim is without merit.

59. Finally, this Court further finds that Defendant has failed to present any evidence in support of the equitable defenses asserted in this matter. It is well established that a party pleading an affirmative defense has the burden of proving it. Pike v. South Carolina Dep't of Transp., 343 S.C. 224, 540 S.E.2d 87 (2000); Hoffman v. County of Greenville, 242 S.C. 34, 129 S.E.2d 757 (1963). This Court concludes that Defendant's defenses are without merit and accordingly, constitute no bar to the foreclosure.

F. Plaintiff's Foreclosure Action

60. A party seeking foreclosure must establish a prima facie showing of the existence of a debt, that the plaintiff is the owner of the debt, and that the debtor is in default. See U.S. Bank Trust Nat. Ass'n v. Bell, 385 S.C. 364, 375, 684 S.E.2d 199, 205 (Ct. App. 2009) (citing Franklin Credit Mgmt. Corp. v. Nicholas, 73 Conn. App. 830, 812 A.2d 51, 57–58 (2002) ("In a mortgage foreclosure action, to make out its prima facie case, the foreclosing party had to prove by a preponderance of the evidence that it was the owner of the note and mortgage and that the [defendant] had defaulted on the note."); Campaign v. Barba, 23 A.D.3d 327, 805 N.Y.S.2d 86, 86 (N.Y. App. Div. 2005) ("To establish a prima

facie case in an action to foreclose a mortgage, the plaintiff must establish the existence of the mortgage and mortgage note, ownership of the mortgage and the defendant's default in payment.")).

61. The credible evidence produced at trial showed that OIC was the holder of a promissory note and mortgage executed by Defendant on December 30, 2010. Paragraph 7, *supra*. Defendant admitted, and this Court has found that she has made no payment on the note, did not cure the default, and used the loan proceeds in purchasing the property. Paragraph 14, *supra*. This Court thus concludes that OIC has established a prima facie case for foreclosure of this note and mortgage.

62. As to the various equitable defenses raised by Defendant, this Court notes that one who seeks equity must do equity. In this case, Defendant seeks to avoid foreclosure of the property purchased with funds advanced by Plaintiff. Defendant has failed to cure her default on the note, despite ample opportunity during the pendency of this action to do so. This Court concludes that granting the relief Defendant seeks would result in her retention of title to the property, statutory damages against Plaintiff, and would bar further actions by Plaintiff to collect on the note. Not only has Defendant not shown how Plaintiff would be unjustly enriched by a grant of foreclosure but, conversely, granting Defendant's remedy sought would result in unjust enrichment to her.

63. Notwithstanding the foregoing, Plaintiff OIC has an equitable lien on the Property. "For an equitable lien to arise, there must be a debt, specific property to which the debt attaches, and an expressed or implied intent that the property serve as security for payment of the debt." Regions Bank v. Wingard Props., Inc., 394 S.C. 241, 250, 715 S.E.2d 348, 353 (Ct. App. 2011) (quoting First Fed. Sav. & Loan Ass'n of S.C. v. Finn, 300 S.C. 228, 231, 387 S.E.2d 253, 254 (1989)). An equitable lien is a "mere floating equity until a judgment or decree subjecting the property to the payment of the debt or claim is rendered." Id. at 250, 715 S.E.2d at 353 (quoting Horry Cnty. v. Ray, 382 S.C. 76, 83-84, 674 S.E.2d 519, 524 (Ct. App.2009) (internal citation and quotation marks omitted)). Even though an equitable lien is not judicially recognized until a judgment is entered declaring its existence, the lien relates back to the time it was created by the conduct of the parties. Id. at 250, 715 S.E.2d at 353 (quoting Horry Cnty. v. Ray, 382 S.C. 76, 84, 674 S.E.2d 519, 524 (Ct. App. 2009).

64. Defendant has admitted to owing a debt to OIC. The funds advanced by OIC which create this debt were used to purchase the property. Paragraph 14, *supra*. The mortgage encumbering the property, executed by Defendant, shows an express intent for the property to serve as security for payment of the debt. Paragraph 8, *supra*. As such, Plaintiff OIC has an equitable lien on the property.

65. Equity abhors a forfeiture and will not lend its aid to enforce them. Jones v. N.Y. Guar. & Indem. Co., 101 U.S. 622, 628, 25 L.Ed. 1030 (1879). The Court has the power in equity to deny or delay forfeiture when fairness demands. Lewis v. Premium Inv. Corp., 351 S.C. 167, 172, 568 S.E.2d 361, 364 (2002).

66. This Court further notes that Defendant has made no payments whatsoever to Plaintiff regarding this transaction. Plaintiff has an equitable interest in the property as a result of the funds advanced to Defendant for purchase. It would be without precedent to deny Plaintiff's foreclosure action and allow Defendant to retain title to the Property without payment. As a Court of equity, this Court is required to do equity between the parties and refuses to leave Defendant so unjustly enriched and enact a forfeiture against Plaintiff.

67. The terms of the mortgage provide that in the event foreclosure proceedings are commenced to enforce the lender's right thereunder, Defendant shall be liable for reasonable attorneys' fees incurred by the lender. Counsel for Plaintiff has offered an affidavit in the amount of $8,780.00 in attorneys' fees and $1,712.12 for reimbursement of expenses. Given the nature, extent, and difficulty of the legal services rendered, the time and labor necessarily devoted to the case, the professional standing of counsel, the contingency of compensation, the customary fee charged in the locality for similar services, and the beneficial result obtained, the Court finds the total award of $10,492.12 for attorneys' fees and costs is reasonable and that such amount shall be added to the total Debt set forth in paragraph 20 *supra.*

IT IS THEREFORE ORDERED:

1. Plaintiff's cause of action for foreclosure against Defendant is granted.

2. Defendant's claims and defenses are dismissed with prejudice.

3. There is due to Plaintiff on the obligation and Mortgage set forth in the Complaint the sum of $74,149.13, representing the "Total Debt" due Plaintiff as set forth in the paragraph 60 of the Findings of Fact, *supra,* together with interest at the rate provided therein from the date aforesaid to the date hereof.

4. The amount due in the preceding paragraph (the "Total Debt" as set forth in the Findings of Fact, *supra,* and later accrued interest) shall constitute the total judgment debt due the Plaintiff and shall bear interest hereafter at the rate of 20.00%.

5. The Defendant(s) liable for the aforesaid Mortgage debt shall, on or before the date of sale of the property hereinafter described, pay to Plaintiff, or Plaintiff's attorney, the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action. If such debt is paid in full, then the foreclosure sale shall be cancelled.

6. On default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, shall be sold by the Master in Equity, or his agent under the direction of the Master in Equity, at public auction, at the Richland County Courthouse, Columbia, South Carolina, on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in 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 5% on the amount of the bid (in cash or equivalent), same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within 20 days, the deposit may be forfeited without further hearing 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 20.00%.

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

D. This Mortgage constitutes a first priority lien on the subject property and is a Purchase Money Mortgage.

E. Purchaser to pay for deed preparation and costs of recording the Deed, and transfer taxes.

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

8. As a deficiency judgment is demanded, the bidding will remain open for a period of thirty (30) days after the date of sale as provided by law in such cases; however, Plaintiff may waive any of its rights, including withdrawing its demand for a deficiency judgment prior to sale.

9. The Master in Equity will, by advertisement according to law, give notice of the time, date, place of sale, and the terms thereof, which Notice of Sale is incorporated herein by reference; and will execute to the Purchaser, or Purchasers, a deed to the premises sold. 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 20 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.

10. Should Plaintiff, Plaintiff's attorney, or Plaintiff's agent fail to appear on the day of sale, the property shall not be sold, and in that event any such sale shall be null and void and of no force and effect. The property shall be re-advertised and sold at some convenient sales day thereafter when Plaintiff, Plaintiff's attorney, or Plaintiff's agent is present.

11. That 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 of 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 funds will be held pending further order of the Court.

12. **IT IS FURTHER ORDERED** that, in the event the successful bidder is other than the Defendant(s) in possession herein and the occupant(s) have voluntarily vacated the premises or have been ejected from the premises leaving furnishings, fixtures and items not subject to Plaintiff's Mortgage in said premises, upon full compliance with the bid, Purchaser is authorized to remove there from all furnishings, fixtures and items not subject to the lien of Plaintiff's mortgage, which personal property, being deemed abandoned, shall be removed by Purchaser or its agents from the subject property by placing said personal property on the public street or highway or by any other means.

13. **IT IS FURTHER ORDERED** that, in addition to all parties deemed by law to have received constructive notice of the action herein, the Defendant(s) named herein and all persons whomsoever claiming under said defendant(s), 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. **IT IS FURTHER ORDERED** that the Deed of conveyances made pursuant to said sale shall contain the names of only the first named Plaintiff and the first named Defendant and the Defendant(s) who was/were the titleholder(s) 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.

15. **IT IS FURTHER ORDERED** that the Master in Equity will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, issuing a Writ of Assistance and hearing any issues involving appraisal proceedings under Section 29-3-680 *et seq.*, South Carolina Code of Laws (1976), as amended.

16. Plaintiff does not warrant its title search to purchasers at foreclosure sale or other third parties, who should have their own title search performed on the subject property.

17. The Master in Equity shall direct the Register of Deeds to release of record the Mortgage lien being foreclosed, all subordinate liens and all prior liens ordered satisfied herein, after the Order Confirming Sale and Disbursements has been executed and filed. Plaintiff's Mortgage lien is described as follows:

> That certain mortgage of real estate given by Ayodele Rivers to Opportunity Investment Capital Inc in the amount of $43,860.00, dated December 30, 2010, and recorded in the Office of the Register of Deeds for Richland County in Book 1657 at Page 1768 on December 31, 2010.

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

All that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, being shown and designated as Lot 35, Moss Brook Plantation Cottages, and being shown on a plat prepared for Mossbrook Plantation Cottages, Phase I, dated March 5, 1986, and recorded in Book 50 at Page 7693. Said being incorporated herein by reference and made a part of this description and said lot having such boundaries and measurements as shown thereon, all being a little more or less.

TMS #: 13785-01-35
Property Address: 35 Olde Clayton Ct, Columbia, SC

IT IS SO ORDERED.

Joseph M. Strickland
Master in Equity for Richland County

Columbia, South Carolina

70020.F39134

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Opportunity Investment Capital Inc,

PLAINTIFF,

vs.

Ayodele Rivers,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS
C/A NO: 2012-CP-40-0068

SUPPLEMENTAL ORDER (DEFICIENCY REQUESTED AGAINST AYODELE RIVERS)

On February 4, 2014, this Court issued its Order and Judgment of Foreclosure and Sale, following a merits hearing held in this matter on May 20, 2013. Thereafter, the foreclosure sale was stayed pending adjudication of the Defendant's Motion to Reconsider and to Alter or Amend Judgment, pursuant to Rule 59(e), SCRCP ("Motion"), filed on February 27, 2014. A hearing was held on May 19, 2014, and attended by counsel for the parties. Based upon the arguments of counsel and the memoranda submitted by the parties, Defendant's Motion was denied and the Court directed that the property be sold at public auction on July 7, 2014. This Order is issued for the limited purpose of updating the judgment debt figures. I find that $14,288.58 is a reasonable fee to award the plaintiff as attorneys' fees, based upon the Affidavit filed by Plaintiff's counsel herein on May 12, 2014. It is, therefore, hereby

ORDERED that the Order for Judgment of Foreclosure and Sale filed May 4, 2011, is supplemented to reflect the total debt as follows:

Principal due as of October 1, 2011	$43,860.00
Interest from October 1, 2011 through May 19, 2013 at 20.00% (961 days @ $23.04 *per diem*)	23,095.59
Property taxes	534.26
Late fee	2,193.00
Corporate Advance	1,607.00
Attorney Fees (awarded but unpaid)	14,288.58
TOTAL DEBT including interest to date shown	$85,578.43

Plaintiff specifically demands a deficiency judgment against the Defendant(s), Ayodele Rivers, pursuant to S.C. Code Ann. Section 29-3-660 (1976) for any deficiency in this action remaining after sale of the mortgaged premises. *Plaintiff reserves the right to withdraw its demand for deficiency judgment at any time prior to the foreclosure sale.*

AND IT IS SO ORDERED.

Joseph M. Strickland
Master in Equity for Richland County

Columbia, South Carolina
June 4 2014