

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

Kondaur Capital Corporation as Separate
Trustee of Matawin Ventures Trust Series
2013-14,

Plaintiff,

v.

Michael T. Quinlan; Kendra J. Quinlan; HSBC
Bank f/k/a Beneficial South Carolina, Inc.;
Ocean 18, LLC,

Defendant(s)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2013-CP-29-01243

SPECIAL REFEREE'S ORDER AND JUDGMENT OF
FORECLOSURE AND SALE

DEFICIENCY DEMANDED AS TO DEFENDANT(S)
MICHAEL T. QUINLAN

RECEIVED

JUL 29 2014

SC Court of Appeals

Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure (hereinafter "SCRCP"), the above-entitled matter was referred to the undersigned Special Referee to make appropriate findings of fact and conclusions of law, with authority to enter a final Judgment in the cause. Any appeal from the decision of the Special Referee shall be directly to the South Carolina Supreme Court.

Pursuant to the said reference, a hearing was held, a record was made, which is reported herewith, and from the testimony and evidence, I find and conclude as follows:

FINDINGS OF FACT:

1. The Lis Pendens was filed on September 20, 2013.
2. The Summons and Complaint were filed on September 20, 2013.
3. Service was made upon the Defendants named in this Report as is shown by the proofs of service filed herein.
4. The Defendants HSBC Bank f/k/a Beneficial South Carolina, Inc.; Ocean 18, LLC; are in default as shown by Affidavit filed herein.
5. According to an Affidavit filed herein, no Defendant in default is in the military service of the United States of America, as contemplated under the Servicemembers' Civil Relief Act fka Soldiers' and Sailors' Civil Relief Act of 1940, and any amendments thereto.

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LANCASTER, SC

13-09019



6. The Defendants Kendra J. Quinlan and Michael T. Quinlan answered in this action and have been notified of the time and date of this hearing.
7. The Defendants filed a motion for Summary Judgment and a Motion to Strike on April 22, 2014.
8. The Plaintiff filed a motion for Summary Judgment on May 30, 2014
9. The Defendant(s) was/were notified of the time, date and place of hearing in this matter.
10. For value received, Michael T. Quinlan made, executed and delivered a note, dated February 9, 2000, promising thereby to pay to the order of Homegold, Inc. the sum of \$67,500.00 with interest at the rate of 9.9% per annum (hereinafter "Note"). Other terms and conditions are stated in the note, which is of record herein.
11. To better secure the payment of the Note described above, the said Michael T. Quinlan and Kendra J. Quinlan made, executed and delivered a mortgage to Homegold, Inc., in writing, dated February 9, 2000, covering real property in Lancaster County, which is the same as that described in the Complaint. The Mortgage was recorded on February 9, 2000, and is of record in the Lancaster County Registry in Book 0707 at page 0037.
12. This mortgage constitutes a valid purchase money, first lien on the subject property.
13. Thereafter, the Mortgage was assigned to Key Bank USA, NA by assignment recorded on May 15, 2002 in Book 0923 at Page 0332. Thereafter, the Mortgage was assigned to CitiFinancial Mortgage Company, Inc. by assignment recorded on February 23, 2004 in Book 01186 at Page 00228. Thereafter, the Mortgage was assigned to Christiana Trust, a division of Wilmington Savings Fund Society, FSB, as Trustee for Stanwich Mortgage Loan Trust, Series 2012-12 by assignment recorded on November 5, 2012 in Book 2569 at Page 255. Thereafter, the Mortgage was assigned to Kondaur Capital Corporation as Separate Trustee of Matawin Ventures Trust Series 2013-4 by assignment recorded on March 21, 2014 in Book 2800 at Page 286-287. Thereafter the Mortgage was transferred to the Plaintiff herein by assignment and/or corporate merger.

I offer a copy of the Assignment of Mortgage as evidence.

14. As required by South Carolina Supreme Court Administrative Order 2009-05-22-01 (hereinafter, "the Administrative Order"), Plaintiff states that this loan is owned or guaranteed by Fannie Mae, or it is owned or guaranteed by FHLMC, or the Servicer has signed an agreement to participate in the Home Affordable Modification Program (hereinafter, "the HAMP"); however, Plaintiff alleges upon information and belief, that the HAMP review process has been completed without modification.

Furthermore, Plaintiff complied with Administrative Order 2011-05-02-1 issued by the South Carolina Supreme Court.

15. The titleholders of record of the Property as of the filing of the Lis Pendens in this action were Michael T. Quinlan and Kendra J. Quinlan.

16. Payment due on the Note has not been made as provided for therein, and the Plaintiff, as the holder thereof, has elected to accelerate payment of the entire indebtedness and has placed the Note and Mortgage in the hands of its attorney of record herein for collection.

17. Having considered the nature, extent and difficulty of the services rendered (the field of mortgage foreclosures being a specialized area of practice); the time involved in reviewing the various loan documents, performing the title search, preparing the pleadings and preparing for and attending hearings; the professional standing of the Plaintiff's attorney; the fee customarily charged in this jurisdiction for similar services; and the beneficial results obtained for the Plaintiff, I find that the sum of \$12,850.00 is a reasonable attorney's fee for the Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the within action, under the terms of the note and mortgage. Services anticipated to be performed until final adjudication contemplates completion of this matter within a reasonable time and does not include exceptional, unanticipated circumstances delaying conclusion beyond the normal time.

18. The amount due and owing on the Note and Mortgage, with interest at the rate provided in the Note, and other costs and expenses of collection, including attorney's fees, secured by the Note and Mortgage, is as follows:

Principal due as of today's date:	06/12/14		\$64,882.50
Accrued interest from:	06/19/12	to: 06/12/14	\$ 12,698.60
Accruing at:	9.9% per annum		
Advancements to Escrow			\$ 1,863.66
Corporate Advances			\$ 1,050.00
Late charges:			\$ 0.00
Other charges:			\$ 9.50
Costs of collection prior to hearing:			\$ 1,060.00
Attorney's fees:			\$ 12,850.00

Total Debt secured by Note and Mortgage, including interest to date is \$94,414.26. Interest for the period from the date shown above through the date of this judgment, at 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 9.9% per annum, the Note's current rate, 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 the Plaintiff's debt secured by the Mortgage through the date to which such interest is computed.

19. The Plaintiff is seeking foreclosure of its mortgage and has, in the Complaint or subsequently thereto in writing, expressly Demanded the right to a personal or deficiency Judgment pursuant to Rule 71(b), SCRPC.

20. The Defendant(s), below listed, claim or may claim liens upon or interests in the subject property; and in the event there is a surplus from the sale of the subject property, the validity, priority and amount of any such lien claims will be determined at a hearing subsequent to the sale, in accordance with Rule 71(c), SCRPC. The said Defendants and such claims or liens are as follows:

A. The Defendant, HSBC f/k/a Beneficial South Carolina, Inc., has or may claim to have some interest in the Property by virtue of a judgment lien against Michael T. Quinlan, in the original principal amount of \$10,637.51, which lien was filed in the Lancaster County Records on 10/11/2006 in Civil Action No., 2006-CP-29-857. Said lien is junior and subordinate to Plaintiff's Mortgage and should be removed from the

title to the Property upon the completion of a properly held foreclosure sale of the Property.

B. The Defendant, Ocean 18, LLC, has or may claim to have some interest in the Property by virtue of a mortgage given by Michael T. Quinlan and Kendra Quinlan, in the original principal amount of \$22,500.00, which mortgage was recorded/filed or assigned to Defendant in the Lancaster County Records on 02/09/2000 in Book 707 at Page 43. Said lien is junior and subordinate to Plaintiff's mortgage and should be removed from the title to the Property upon the completion of a properly held foreclosure sale of the Property.

CONCLUSIONS OF LAW: I, therefore, conclude as follows:

1. The Defendants' Motion to Strike the Affidavit of Lost Note and Mortgage is denied on the grounds that the affidavit is proper under the circumstances and establishes the existence of the debt. The Defendants do not deny the execution of the note, simply that it was not the original.
2. The Defendants' Motion for Summary Judgment is denied as there are material issues of fact and law to be determined by the Referee as Trier of Facts.
3. The Plaintiff's Motion for Summary Judgment is denied as there are material issues of fact and law to be determined by the Referee as Trier of Facts.
4. After hearing testimony and reviewing the evidence presented at trial, the Plaintiff should have judgment of foreclosure of its Mortgage and the Property should be ordered sold at public auction after due advertisement as the Defendants are in default under the terms of the note and mortgage.
5. That there is due to the Plaintiff on its Note and Mortgage the following:

Principal due as of today's date:	06/12/14		\$64,882.50
Accrued interest from:	06/19/12	to: 06/12/14	\$ 12,698.60
Accruing at:	9.9% per annum		
Advancements to Escrow			\$ 1,863.66
Corporate Advances			\$ 1,050.00
Late charges:			\$ 0.00
Other charges:			\$ 9.50
Costs of collection prior to hearing:			\$ 1,060.00
Attorney's fees:			\$ 12,850.00

Total Debt secured by Note and Mortgage, including interest to date is \$94,414.26. Interest for the period from the date shown above through the date of this judgment, at 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 9.9% per annum, the Note's current rate, 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 the Plaintiff's debt secured by the Mortgage through the date to which such interest is computed.

6. That the fees charged, while high for a foreclosure case, were necessary in this case given the degree to which the Defendants contested the Plaintiff's successful action to foreclose, including the voluminous discovery requests and necessary responses. The fees were deemed appropriate based on the factors for consideration set out in the Glasscock vs. Glasscock case. The six factors cited by the appellate courts in determining a reasonable attorney's fee are (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. Glasscock vs. Glasscock, 304 S.C. 158 403 S.E. 2d 313 (1991), citing Donahue v. Donahue, 299 S.C. 353. 384 S.E.2d 741 (1989).

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. That the Plaintiff's Motion for Summary Judgment is denied.
2. That the Defendants' Motion for Summary Judgment and Motion to Strike should be denied.
3. The Plaintiff is granted judgment of foreclosure of its Mortgage and the Property should be ordered sold at public auction after due advertisement.
4. That the Defendant(s) liable for the aforesaid Mortgage debt shall, prior to the date and time of the sale of the Property, hereinafter described, pay to the Plaintiff, or the Plaintiff's attorney, the amount of the Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.
5. That on default of payment prior to the date and time of the sale, the Property, hereinafter described, shall be sold by the undersigned Special Referee at public auction, at the Lancaster County

Courthouse, Courtroom B, City of Lancaster, County and State aforesaid, on some convenient sales day hereafter, on the following terms, that is to say:

- A. FOR CASH: The undersigned Special Referee shall require a deposit of 5% on the amount of the bid (in cash or equivalent) the same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within thirty (30) days the same to be forfeited and applied to the costs and then to the Plaintiff's debt.
 - B. Interest on the balance of the bid shall be paid to the day of compliance at the rate of 9.9% per annum, which is the Note's current interest rate.
 - C. The sale shall be subject to taxes and assessments, existing easements and restrictions of record, and any other senior encumbrances.
 - D. Purchaser to pay for the deed and the cost of recording the deed.
6. If the Plaintiff is 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, the Plaintiff may pay to the undersigned Special Referee only the amount of the costs and expenses, crediting the balance of the bid on the Plaintiff's indebtedness.
 7. That a personal or deficiency Judgment being Demanded, the bidding will remain open for thirty (30) days after the date of sale (pursuant to S.C. Code Ann. § 15-39-760(1976) but compliance with the bid may be made immediately.
 8. That the undersigned Special Referee will, by advertisement according to law, give notice of the time and place of sale and the terms thereof; and that he will execute to the purchaser, or purchasers, a deed to the Property sold. The Plaintiff, or any other party to this action, or any other person may become a purchaser at such sale. If such sale is made to anyone other than the Plaintiff or its assignee, should the successful bidder, or his assignee, fail to comply with the terms thereof within thirty (30) after the date of sale, then the undersigned Special Referee may re-advertise the Property for sale on the next, or some other subsequent, sales day, at the risk of the highest bidder, and so on from time to time thereafter until a full compliance shall be secured.

9. In the event an agent of the 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 terms and conditions as set forth in the Judgment of Foreclosure and Sale or such terms as may be set forth in a supplemental order.
10. That the undersigned Special Referee shall apply the proceeds of the sale as follows:
 - FIRST: To the 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; and
 - NEXT: To the payment of the amount to the Plaintiff, or the Plaintiff's Attorney, of the amount of the Plaintiff's debt and interest (including attorney fees) or so much thereof as the purchase money will pay on the same; and
 - NEXT: Any surplus will be held pending further Order of this Court pursuant to Rule 71(c), SCRPC.
11. That it is further ORDERED, ADJUDGED AND DECREED that each Defendant named herein, and all persons whomsoever claiming under him, them or it, 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.
12. That it is further ORDERED ADJUDGED AND DECREED that the deed of conveyance made pursuant to this judgment and said sale shall contain the names of only the Plaintiff, the first-named Defendant, who was the title holder of the mortgaged property at the time of the filing of the Lis Pendens, and the Grantee; and that the Lancaster County Register of Deeds is hereby authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.
13. 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 Lancaster County may be 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.

14. That it is further ORDERED ADJUDGED AND DECREED that after the Order Confirming Sale and Disbursements has been issued and filed, the undersigned Special Referee shall direct the Register of Deeds to release of record the lien(s) being foreclosed, which lien(s) are described in the Findings of Fact herein above.

15. That it is further ORDERED ADJUDGED AND DECREED that the following is a description of the Property herein ordered to be sold:

ALL THOSE CERTAIN PIECES, PARCELS OR LOTS OF LAND, TOGETHER WITH ALL IMPROVEMENTS THEREON, LYING, BEING AND SITUATE IN GILLS CREEK TOWNSHIP, LANCASTER COUNTY, SOUTH CAROLINA, APPROXIMATELY 4 MILES EAST OF THE CITY OF LANCASTER IN ANTIOCH COMMUNITY, ON THE NORTH SIDE OF SOUTH CAROLINA HIGHWAY #903, AND BEING SHOWN, DESCRIBED AND DESIGNATED AS LOT NUMBERS EIGHTY-ONE (81) AND EIGHTY-TWO (82) ON PLAT ENTITLED "SUB-DIVISION OF WILLIAM HARPER" MADE BY PAUL CLARK, RLS IN OCTOBER AND NOVEMBER, 1964 AS FOUND RECORDED IN THE OFFICE OF THE CLERK OF COURT FOR LANCASTER COUNTY IN PLAT BOOK 16, AT PAGE 146, REFERENCE TO WHICH PLAT IS CRAVED FOR A MORE MINUTE DESCRIPTION.

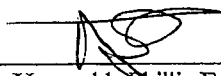
THIS BEING THE SAME PROPERTY CONVEYED TO MICHAEL T. QUINLAN AND KENDRA J. QUINLAN BY DEED OF MILTON R. JONES III AND HARRIETT L. JONES, A/K/A HARRIET L. JONES DATED FEBRUARY 9, 2000 AND RECORDED FEBRUARY 9, 2000 IN BOOK 72 PAGE 221, IN THE RECORDS FOR LANCASTER COUNTY, STATE OF SOUTH CAROLINA.

CURRENT ADDRESS OF PROPERTY: 821 Woodbridge Street, Lancaster, SC 29720

TMS: 0080F-0B-008.0

AND IT IS SO ORDERED.

Date: June 30, 2014
Lancaster, South Carolina


The Honorable Phillip E. Wright
Special Referee for Lancaster County