

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

JOHN T. LUCAS, SR., AS TRUSTEE OF THE
JOHN T. LUCAS REVOCABLE TRUST AND
CAROLYN C. LUCAS AS TRUSTEE OF THE
CAROLYN C. LUCAS REVOCABLE TRUST,

Plaintiff,

v.

THE BRISTOL CONDOMINIUM PROPERTY
OWNERS' ASSOCIATION,

Defendant.

AND

THE BRISTOL CONDOMINIUM PROPERTY
OWNERS' ASSOCIATION,

Plaintiff,

v.

JOHN T. LUCAS, SR., AS TRUSTEE OF THE
JOHN T. LUCAS REVOCABLE TRUST DATED
NOVEMBER 10, 2004, AND CAROLYN C.
LUCAS AS TRUSTEE OF THE CAROLYN C.
LUCAS REVOCABLE TRUST DATED
NOVEMBER 10, 2004,

Defendants/Counterclaim Plaintiffs

v.

THE BRISTOL CONDOMINIUM PROPERTY
OWNERS' ASSOCIATION,

Counterclaim Defendant.

IN COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

~~CASE NO. 2010-CP-10-3240~~

FILED
2013 SEP -6 PM 2:50
JULIE J. ARMSTRONG
CLERK OF COURT

FILED
2013 SEP -3 AM 10:41
JULIE J. ARMSTRONG
CLERK OF COURT
Checked in date

CASE NO. 2011-CP-10-2232

SPECIAL REFEREE'S DECREE
(DEFICIENCY DEMANDED)

RECEIVED
SEP 24 2014
SC Court of Appeals

THIS MATTER came before me, James C. Williams, Jr., as Special Referee, appointed under Section 15-31-150 et seq., South Carolina Code of Laws (1976), on May 22, 2013 through May 24, 2013, to take testimony, hear arguments of counsel for the parties, and to render final judgment. All parties were given notice of the final Hearing. I have held a final Hearing, and the

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{Client Matter\002116\0103\ORD\00419193.DOC} 1

EXHIBIT
A

record of which, together with the exhibits, are filed herewith.

This action was brought for foreclosure of that certain condominium regime lien recorded in Book 0173, Page 669 in the RMC Office for Charleston County, South Carolina (the "Lien").

This foreclosure action, initially designated as Charleston County Case No.: 2011-CP-10-2232, was initiated by the filing of a Civil Action Coversheet, Certificate of Exemption from ADR, Lis Pendens, Summons and Complaint with the Court of Common Pleas, County of Charleston, on March 25, 2011.

John T. Lucas, Sr., as Trustee of the John T. Lucas Revocable Trust, and Carolyn C. Lucas, as Trustee of the Carolyn C. Lucas Revocable Trust (the "Unit Owners") were properly served with process by The Bristol Condominium Property Owners' Association (the "POA" and/or the "Association") in its foreclosure action against the Unit Owners. The Unit Owners subsequently filed an Answer and Counterclaim to the POA's foreclosure Complaint on May 9, 2011. The POA then filed a Reply to the Counterclaim of the Unit Owners on May 26, 2011.

By Order of the Hon. Kristi Lea Harrington, Judge, Ninth Judicial Circuit, the foreclosure action initially designated as Charleston County Case No.: 2011-CP-10-2232 was consolidated with Charleston County Case No.: 2010-CP-10-3240.

The Association is now and was at the times hereinafter mentioned an eleemosynary corporation organized and existing under the laws of the State of South Carolina, with its principal place of business in Charleston County, South Carolina.

The Unit Owners are residents of Greenville County, South Carolina, but are also the fee simple owners of that certain property located within the Regime, known as Unit 313, also referred to as 3013 (the "Property"), which property is located in Charleston County, South Carolina and is more fully described as follows:

ALL that certain apartment known as UNIT NUMBER 3013, also referred to as UNIT NUMBER 313, in THE BRISTOL HORIZONTAL PROPERTY REGIME as shown on the plans and specifications attached to that certain Master Deed and By-Laws attached thereto, dated August 30, 2002, and recorded in Book D417, at Page 001, in the R.M.C. Office for Charleston County, S.C., as amended by First Amendment to Master Deed of The Bristol Horizontal Property Regime dated November 13, 2002 and recorded in the R.M.C. Office aforesaid in Book M426, at Page 296; as amended by Second Amendment to Master Deed of The Bristol Horizontal Property Regime dated February 28, 2003 and recorded in the R.M.C. Office aforesaid in Book P439, at Page 828; as amended by Third Amendment to



Master Deed of The Bristol Horizontal Property Regime dated February 20, 2004 and recorded in the R.M.C. Office aforesaid in Book Y485, at Page 178, together with all that certain undivided interest in the common elements and limited common elements as set forth in the above-referred to Master Deed.

This being the property conveyed to John T. Lucas, Sr., as Trustee of the John T. Lucas Revocable Trust dated November 10, 2004, and Carolyn C. Lucas as Trustee of the Carolyn C. Lucas Revocable Trust dated November 10, 2004 by deed of John T. Lucas and Carolyn C. Lucas recorded January 27, 2005 in the Office of the Register of Mesne Conveyances for Charleston County in Book W-523, page 207. This being the same property conveyed to John T. Lucas and Carolyn C. Lucas by deed of Brittlebank Condominium, LLC, dated April 23, 2004, and recorded April 26, 2004, in Book Y-491 at Page 779 in the Office of the Register of Mesne Conveyances for Charleston County. TMS # 460-10-01-021

That the Unit Owners took title to the Property subject to the terms and conditions of that certain Master Deed of the Association (the "Master Deed"), recorded in the Office of the R.M.C. for Charleston County in Book D-417, Page 001, as amended. The Master Deed is incorporated herein by reference.

That the Master Deed, including the Association Bylaws incorporated therein, provides that the Association has the right to file a notice of lien against the Property and enforce its lien rights according to South Carolina law, in order to secure payment of delinquent Association assessments.

That the Master Deed, including the Association Bylaws incorporated therein, provide, inter alia, that all property owners are members of the Association, that they are obligated to pay assessments levied by the Association on the units owned by them, that members of the Association are obligated to pay late charges and interest at the rate established by the Board of Directors of the Association (the "Board") for assessments that are not paid by the due date, as well as reasonable attorneys' fees incurred in the collection of same, all as may be seen by reference to the pertinent sections of the Master Deed.

That assessments levied by the Association against the Unit Owners remain unpaid through the date of the Final Hearing.

That due demand was made for the payment of the outstanding assessments, and the Unit Owners have refused to make same.

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As of May 13, 2013, after being credited with all payments received, the Unit Owners are obligated to the Association in the sum of \$64,581.82, plus any and all accruing interest, late fees, costs, expenses, and attorneys' fees.

The Counterclaims asserted by the Unit Owners, which correspond with the claims asserted thereby in Case No. 2010-CP-10-3240, are more specifically addressed in the Order being filed in that case simultaneously herewith. Suffice it to say however, that the Unit Owners failed to present sufficiently probative testimony that: (a) the Association and its Board demonstrated bad faith in its management of Association's business affairs; (b) there has been an attempt to hide the actions of the Board, or to keep the Association's property owners ignorant of Association's business affairs (c) there has been any fraud committed by the Association's Board directed toward the Unit Owners or anyone else; (d) there has been a breach of any duty by the Association's Board; (e) there has been mismanagement of the Association's business affairs by the Board.

The greater weight of the testimony demonstrates that the individual acts complained of by the Unit Owners, including: (1) the amendment of the Master Deed by the Association's Board; (2) the decision to litigate by the Association's Board; (3) the manner in which the litigation was handled by the Association, the Board, and the Association's legal counsel; (4) the assessments made by the Association's Board; and (5) the disposition of the insurance refund by the Association, were all: (A) based on decisions made by the Association's Board in compliance with the Association's Master Deed and other governing documents and after considering all reasonable options; (B) made by the Association's Board after consulting with legal counsel; and (C) affected all of the Association's property owners equally and were not made with any bias or prejudice towards the Unit Owners.

The foreclosure action against the Unit Owners was filed lawfully and on a good faith basis on account of the Unit Owners' refusal to pay certain assessments lawfully levied in compliance with the Association's Master Deed and other governing documents. There is no evidence that the Unit Owners were singled out by the Association for any dissimilar or retaliatory treatment.

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Pursuant to §27-31-10 of the S.C. Code of Laws and by virtue of the Association's Master Deed, other governing documents and the Lien, the Association holds a valid fully perfected sustaining lien on the Property, which secures payment of the assessments levied against the Unit Owners and the Property, plus costs of collection.

The Association has not waived any deficiency arising from the foreclosure sale. However, the Association reserves its right to withdraw its demand for deficiency judgment up to one week prior to the foreclosure sale herein.

The Association is entitled to have the Property sold by public auction in order to satisfy the amounts due and owing by the Unit Owners.

The Association's counsel has proffered his affidavit with respect to the attorney's fees sought to be recovered in this matter. The Affidavit indicates that prior to the final Hearing, approximately 82.60 hours have been spent on this matter, with an additional 6-8 hours expected before this matter is brought to a conclusion. The remaining factors to be considered by the Court are the nature, extent and difficulty of the legal services rendered, the professional standing of counsel and the beneficial results obtained. The Court notes counsel's good professional standing in this area of practice. Finally, this case has been pending since March 25, 2011, and the outcome is favorable to the Association.

Upon due consideration to the statement regarding attorneys' fees, the record before this Court, and the terms of the Master Deed, including the Association Bylaws incorporated therein, that in addition to awarding the fees and costs already incurred and paid by the Association, so as to reimburse it, the further fee for accrued-but-unbilled fees and estimated fees to complete in the amount of \$3,500.00, is both reasonable and appropriate in this case.

The Property is not owner occupied and furthermore the relief being sought herein does not arise out of the foreclosure of a real estate mortgage and, therefore, is not subject to the S. C. Supreme Court Admin. Order 2011-05-02-01.

NOW, THEREFORE,

IT IS ORDERED that:

1. There is due to the Association under the obligations of the Master's Deed,

ps [signature]

including the Association Bylaws incorporated therein set forth in the Complaint the sum of:

a.	<u>Regular Regime Fees:</u>	\$28,093.75
b.	<u>Capital Reserve Contributions:</u>	\$ 4,496.25
c.	<u>Insurance Assessments:</u>	\$ 8,726.98
d.	<u>Special Assessments:</u>	\$42,354.90
e.	<u>Late Fees:</u>	<u>\$14,104.08</u>
	SUB-TOTAL:	\$97,775.96
	LESS: Payments Received:	<u>\$(49,184.92)</u>
	SUB-TOTAL	\$48,591.04
	Interim Collection Costs:	\$15,990.78
	DEBT:	\$64,581.82
	Awarded Attorneys' Fees:	\$ 3,500.00
	TOTAL DEBT:	<u>\$ 68,081.82</u>

representing the "Total Debt" due Plaintiff as set forth herein, *supra*, together with interest therein from the date aforesaid to the date hereof.

2. The amount due in the preceding paragraph (the "Total Debt" as set forth herein, *supra*, and later accrued interest) shall constitute the total judgment debt due the Association and shall bear interest hereafter. After compliance with the bid, any deficiency balance shall accrue interest.

3. The Unit Owners are liable for the Total Debt. The Unit Owners shall on or before the date of sale of the Property hereinafter described, pay to the Association, or the Association's attorneys, the amount due of the Association'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 canceled.

4. On default of payment at or before the time herein indicated, the Property described in the Complaint, and as hereinafter set forth, shall be sold by the Undersigned as Special Referee for Charleston County, or his agent under the direction of the Special Referee, at public auction, at the Charleston County Judicial Center, 100 Broad Street, Charleston, South Carolina, on some convenient sales day hereafter (and should the regular day of judicial sales fall on a holiday, then and in such event, the sales day shall be on the business day next succeeding

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such holiday), on the following terms:

(A) FOR CASH: the Special Referee 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 30 days, the deposit may be forfeited without further hearing and applied to the costs and Association's debt.

(B) The sale shall be subject to taxes and assessments, existing liens, easements and restrictions of record and determined to be valid.

(C) Purchaser to pay for deed preparation and costs of recording the Deed and transfer taxes.

5. If the Association is the successful bidder at the sale, for a sum not exceeding the amount of costs, disbursements and expenses and the indebtedness of the Association in full, the Association may pay to the Special Referee only the amount of the costs, disbursements and expenses crediting the balance of the bid on Association's indebtedness.

6. The Special Referee 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. The Association, or any other party to this action, may become a purchaser at such sale, and that if, upon such sale being made, the Purchaser, or Purchasers, should fail to comply with the terms thereof within thirty (30) days after date of sale, then the Special Referee may advertise the Property 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.

7. Should the Association or the Association's attorney, or the Association'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 readvertised and sold at some convenient sales day thereafter when the Association, the Association's attorney, or the Association's agent is present.

8. **IT IS FURTHER ORDERED** that, in addition to all parties deemed by law to have received constructive notice of the action, the Unit Owners named herein and all persons whomsoever claiming under said Unit Owners, be forever barred and foreclosed of all right, title, interest and equity of redemption in the Property so sold, or any part hereof.

9. **IT IS FURTHER ORDERED** that the deed of conveyance made pursuant to the sale shall contain the names of only the Association and the names of the titleholders (the Unit Owners) of the Property at the time of filing of the notice of pendency of the within action, and the name of the grantee, and the Clerk of Court is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said Deed.

10. **IT IS FURTHER ORDERED** that the Special Referee 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 issued involving appraisal proceedings under Section 29-3-680 *et seq.*, South Carolina Code of Laws (1976), as amended.

11. The Association 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.

12. The Special Referee shall direct the Clerk of Court to release of record the 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.

13. The following is a description of the Property herein ordered to be sold:

ALL that certain apartment known as UNIT NUMBER 3013, also referred to as UNIT NUMBER 313, in THE BRISTOL HORIZONTAL PROPERTY REGIME as shown on the plans and specifications attached to that certain Master Deed and By-Laws attached thereto, dated August 30, 2002, and recorded in Book D417, at Page 001, in the R.M.C. Office for Charleston County, S.C., as amended by First Amendment to Master Deed of The Bristol Horizontal Property Regime dated November 13, 2002 and recorded in the R.M.C. Office aforesaid in Book M426, at Page 296; as amended by Second Amendment to Master Deed of The Bristol Horizontal Property Regime dated February 28, 2003 and recorded in the R.M.C. Office aforesaid in Book P439, at Page 828; as amended by Third Amendment to Master Deed of The Bristol Horizontal Property Regime dated February 20, 2004 and recorded in the R.M.C. Office aforesaid in Book Y485, at Page 178, together with all that certain undivided interest in the common elements and limited common elements as set forth in the above-referred to Master Deed.

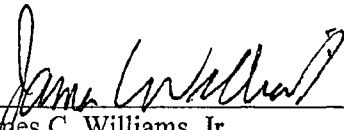
This being the property conveyed to John T. Lucas, Sr., as Trustee of the John T. Lucas Revocable Trust dated November 10, 2004, and Carolyn C. Lucas as Trustee of the Carolyn C. Lucas Revocable Trust dated November 10, 2004 by deed of John T. Lucas and Carolyn C. Lucas recorded January 27, 2005 in the Office of the Register of Mesne Conveyances for Charleston County in Book W-523, page 207. This being the same property conveyed to John T. Lucas and Carolyn C. Lucas by deed of Brittlebank Condominium, LLC, dated April 23,

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2004, and recorded April 26, 2004, in Book Y-491 at Page 779 in the Office of the Register of Mesne Conveyances for Charleston County. TMS # 460-10-01-021

14. **IT IS FURTHER ORDERED** that the final amount of the deficiency judgment to be entered against the Unit Owners will be determined at the conclusion of the second sale (the "Deficiency Sale") after any bid amount is credited to the debt due and owing under the Association documents.

IT IS SO ORDERED.



James C. Williams, Jr.
Special Referee, Charleston County

~~CHARLESTON~~^{Sumter}, SOUTH CAROLINA

Aug 31, 2013

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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2011-CP-10-2232

The Bristol Condominium Property Owners' Association,)
)

Plaintiff,)

v.)

John T. Lucas, Sr., as Trustee of the)
John T. Lucas Revocable Trust Dated)
November 10, 2004, and Carolyn C.)
Lucas as Trustee of the Carolyn C.)
Lucas Revocable Trust Dated)
November 10, 2004,)

Defendants/Counterclaim Plaintiffs,)

v.)

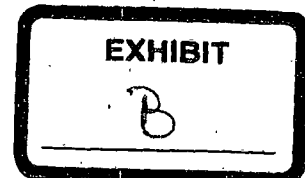
The Bristol Condominium Property Owners' Association,)
)

Counterclaim Defendant.)

ORDER

This matter is before the Court on post-trial motions filed by John and Carolyn Lucas, after the Court, sitting as a special referee and at the conclusion of a nonjury trial, found that the foreclosure action brought against the Lucases by the Bristol Condominium Property Owners' Association, was not filed in bad faith, and after the Court awarded attorneys' fees and costs to the Property Owners' Association, and authorized the foreclosure action to proceed.

Pursuant to Rule 52, *SCRPC* 52, the Lucases moved for the alteration or amendment of the judgment on the grounds that the uncontradicted testimony of the sole witness for the foreclosure plaintiff testified at trial that the amounts set forth in the complaint were incorrect, and in particular that the award of attorneys' fees was incorrect.



Further, the Lucases moved for a new trial absolute on the grounds that greater weight of the evidence supported their position that the foreclosure action was filed in bad faith, in an attempt to force them to dismiss or compromise the claims that were pending against the Property Owners Association at the time of the filing of the foreclosure.

After due re-consideration of the all the evidence presented in the case, I find that the previously awarded attorney fees should be reduced as set forth below.

Therefore, the relief sought by the Lucases is granted in part, and denied in part.

Specifically, the Order previously entered in this matter and filed for record on September 6, 2013, is amended as follows:

1. The paragraph in the body of the Order on page 5, awarding \$3,500.00 in attorneys' fees to counsel for the Homeowner's Association, is amended to reduce that award to \$1,500.00;
2. Paragraph 1, on page 5 and page 6 of the Order, whereby the "Total Debt" owed by the Lucases is calculated, is amended to reduce the attorneys' fees awarded from \$3,500.00 to \$1,500.00, and therefore the total indebtedness referenced in that paragraph is reduced from \$68,081.82 to \$66,081.82.

In all other respects, the Order previously entered in this matter as it relates to the foreclosure action filed as Case No.: 2011-CP-10-2232 shall remain the Order of this Court, with all findings and rulings from that Order adopted hereby and made a part hereof by reference.

AND IT IS SO ORDERED.

James C. Williams, Jr.
Special Referee, Charleston County

August 11, 2014

Seneca, South Carolina

