

STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

JAN 05 2015

CASE NO. 2011 CP-07-02679

SC Court of Appeals

BANK OF THE OZARKS

RIVER CITY REAL ESTATE, LLC AND BENJAMIN C. GECY

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: BEAUFORT COUNTY MASTER IN EQUITY

Attorney for :  Plaintiff  Defendant  
or  
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order  ends  does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

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

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|--|--|--|
| BANK OF THE OZARKS                           | RIVER CITY REAL ESTATE, LLC              | \$N/A  |
|  |  | \$   |
|  |  | \$   |

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

TMS# R200 005 000 0027 0000, SEE ORDER FOR PROPERTY DESCRIPTION.

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

3069  
Judge Code

Date

11/5/14

**For Clerk of Court Office Use Only**

This judgment was entered on the 6<sup>th</sup> day of Nov, 2014 and a copy mailed first class or placed in the appropriate attorney's box on this 4<sup>th</sup> day of Dec, 2014 to attorneys of record or to parties (when appearing pro se) as follows:

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Irena Attleson / Staff

CLERK OF COURT

**Court Reporter: N/A**

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF BEAUFORT )  
 )  
 BANK OF THE OZARKS, )  
 )  
 PLAINTIFF, )  
 )  
 vs. )  
 )  
 RIVER CITY REAL ESTATE, LLC and )  
 BENJAMIN C. GECY, )  
 )  
 DEFENDANTS. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 FOURTEENTH JUDICIAL CIRCUIT  
 CIVIL ACTION NO.: 2011-CP-07-2679

ORDER ON PLAINTIFF'S AMENDED  
 MOTION FOR SUMMARY JUDGMENT  
 AND DEFENDANTS' MOTION TO  
 AMEND AND SUPPLEMENT THEIR  
 ANSWER

**RECEIVED**  
 JAN 05 2015  
**SC Court of Appeals**

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 COURT OF COMMON PLEAS  
 BEAUFORT COUNTY, SOUTH CAROLINA

This matter came before the Court on September 9, 2014, on Plaintiff's Amended Motion for Summary Judgment and Defendants' Motion to Amend and Supplement Their Answer. Plaintiff was represented by attorney Dean S. Haskell and Defendants were represented by attorney Robert V. Mathison, Jr. The Court fully considered all of the evidence presented, including the pleadings, admissions of the Defendants, and affidavits, and the arguments of the parties and for the reasons that follow, the Court grants Plaintiff's Amended Motion for Summary Judgment and denies Defendants' Motion to Amend and Supplement Their Answer.

LITIGATION HISTORY

On June 27, 2011, Plaintiff Bank of the Ozarks ("Plaintiff" or "Bank of the Ozarks") filed a complaint against Defendants River City Real Estate, LLC (hereinafter "River City") and Benjamin C. Gecy (hereinafter "Gecy") seeking a mortgage foreclosure and deficiency judgment against Defendants. On August 8, 2011, Defendants filed an answer, asserting affirmative defenses and a counterclaim. On October 16, 2012, this Court entered an Order to strike this case from the active roster due to the bankruptcy filing of Gecy. On April 9, 2013, Bank of the Ozarks filed a Motion for

Summary Judgment. The case was restored to the active roster by The Honorable Carmen T. Mullen relative to the claims and defenses of River City by Order entered April 23, 2013. On June 10, 2014, an Order was entered by The Honorable Carmen T. Mullen removing the stay of claims and defenses of Gecy and restoring same to the active trial roster.

Bank of the Ozarks filed a Notice of Amended Motion and Amended Motion for Summary Judgment (the "AMSJ") on July 25, 2014. The Notice and AMSJ were served on Robert V. Mathison, Jr. and Benjamin C. Gecy. The AMSJ seeks an Order granting the Plaintiff summary judgment for mortgage foreclosure against Defendant River City, including the Plaintiff's reservation of its right to seek a deficiency judgment against River City and for an Order dismissing the counterclaim and all affirmative defenses asserted by River City and Gecy. The Defendants' filed a Motion to Amend and Supplement Their Answer on September 3, 2014.

#### LEGAL ANALYSIS

Rule 56(c) of the South Carolina Rules of Civil Procedure requires Summary Judgment to be granted if "there is no genuine issue of material fact and ... the moving party is entitled to judgment as a matter of law." S.C.R. Civ. P. 56(c). Although the moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact, "this initial responsibility may be discharged by 'showing' - that is, pointing out to the [trial] court - that there is an absence of evidence to support the nonmoving party's case." Baughman v. Am.Tel. & Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991).

The purpose of Summary Judgment is to expedite the disposition of cases not requiring the services of a fact finder. George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). "The trial court should grant summary judgment if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Turner v.

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Milliman, 381 S.C. 101, 108, 671 S.E.2d 636 640 (Ct. App. 2009)(citing S.C.R. Civ. P. 56(c) and Russell v. Wachovia Bank, N.A., 353 S.C. 208, 217, 578 S.E.2d 329, 334 (2003).

When a party moves for summary judgment, “an adverse party may not rest upon the mere allegations or denials of his pleadings, but his response, by affidavits or as otherwise provided in this Rule, must set forth specific facts showing that there is a genuine issue for trial.” S.C. Elec. & Gas Co. v. Combustion Eng’g, Inc., 283 S.C. 182, 188-89, 322 S.E.2d. 453, 457 (Ct. App. 1984). If the adverse party does not respond accordingly, the trial court shall enter summary judgment against him if appropriate. Id. at 189, 322 S.E.2d at 457. “[When] a party makes no factual showing in opposition to a motion for summary judgment the court must grant summary judgment to the moving party if, under the facts presented, the latter is entitled to summary judgment as a matter of law.” Id.; see also Hancock vs. Mid-South Mgm’t Co., Inc., 381 S.C. 326, 330-31, 673 S.E.2d 801, 803 (2009) (indicating summary judgment is appropriate where plaintiff has not proven even a scintilla of evidence).

#### RECITATION OF UNDISPUTED RELEVANT FACTS

Based on the evidence presented, the Court hereby finds that River City executed a Universal Note made payable to Plaintiff’s predecessor in interest, Woodlands Bank (“Woodlands”) in the original principal amount of \$569,000.00, as subsequently modified and renewed (the “Note”). Concurrently with the execution of the Note and in order to secure payment of the indebtedness outstanding under and evidenced by the Note, River City executed and delivered to Woodlands a Mortgage (the “Mortgage”) recorded in Book 2694 at Page 399 of the Office of the Record of Deeds for Beaufort County, South Carolina on March 11, 2008, conveying to Woodlands certain real property, in part, consisting of 13.056 acres on Lady’s Island, South Carolina and more particularly described as follows (the “Property”):

All that certain piece, parcel or tract of land, situate, lying and being on Lady’s Island, Beaufort County, South Carolina, containing 13.056

acres, more or less, as shown on a plat prepared by David S. Youmans, RLS, dated January 13, 1995 and recorded in Plat Book 52 at Page 199 in the Office of the Register of Deeds for Beaufort County, South Carolina. For a more complete description as to metes, courses, distances and bounds of said property, reference may be had to the aforementioned plat of record.

ALSO, all those certain pieces, parcels or lots or land, situate, lying and being on Lady's Island, Beaufort County, South Carolina, shown and described as Parcel "A" containing 0.09 acre, more or less, and Parcel "B" containing 0.01 acre, more or less, on a plat prepared by David E. Gasque, RLS, dated April 13, 1995 and recorded in Plat Book 52 at Page 198 in the office of the Register of Deeds for Beaufort County, South Carolina. For a more complete description as to metes, courses, distances and bounds of said properties, reference may be had to the aforementioned plat of record.

This being the same property conveyed unto River City Real Estate, LLC by Deed of Oakwood Properties of Beaufort, LLC, dated February 14, 2008 and recorded March 11, 2008 in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 2694 at Page 394.

TMS#: R200 005 000 0027 0000

The Court also finds that on February 18, 2008, Gecy executed and delivered to Woodlands that certain Guaranty (the "Guaranty") whereby Gecy waived his rights to assert any affirmative defenses or counterclaims.

The Court finds further that on July 16, 2010, the Federal Deposit Insurance Corporation (the "FDIC") was appointed as Receiver of Woodlands; and Plaintiff and the FDIC, as Receiver of Woodlands, entered into that certain Purchase and Assumption Agreement whereby Plaintiff acquired most of the assets of Woodlands, including the Note, the Guaranty, and the Mortgage. A Master Assignment memorialized the transfer of the Note and Mortgage and was recorded on September 13, 2010 in Record Book 2990 at Page 1821 in the Office of the Register of Deeds for Beaufort County, South Carolina. River City is in default of the Note by failing to pay the outstanding balance due and owing thereon upon the Note's maturity on July 20, 2010.

This is a dispute between Plaintiff, a successor lender, and River City, a South Carolina development company, and its sole member, Gecy, who executed a Guaranty of the loan to River

City. It is undisputed that the loan in this case came due and was not paid. It is undisputed in this case that the loan was secured by the Property. It is undisputed that there was no written agreement to further extend the loan between River City and the Plaintiff. It is undisputed that the loan was not paid off at maturity. Prior to River City's default under the loan, the loan was extended several times. However, the Plaintiff and River City could not reach an agreement on the terms of a further extension.

There is no allegation or evidence that either Plaintiff or Woodlands prevented River City from paying off the loan from other sources.

While River City hoped for a further favorable-term extension and was disappointed by the Plaintiff's refusal to further extend, River City was not contractually entitled to another extension.

This is contract matter entered into by two sophisticated business entities operating at arm's length. As such, the rights and remedies as set forth in the unambiguous documents are binding upon them. Further, Defendants' allegations of facts outside the contract documents are inadmissible.

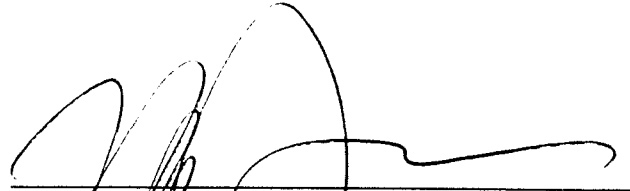
NOW, THEREFORE, IT IS HEREBY ORDERED, that summary judgment is granted on the Plaintiff's claims against River City and that:

- (i) The amount due and owing under the terms of River City's Note and Mortgage on the Property shall be ascertained and determined under the direction of the Court together with all costs and disbursements of this action and attorneys' fees; and
- (ii) Plaintiff shall have judgment for foreclosure for the principal amount found to be due and owing under the Note and Mortgage, together with any and all accrued interest, taxes, insurance premiums or assessments that have been paid by the Plaintiff, together with all costs and disbursements of this action and attorneys' fees.

IT IS FURTHER ORDERED, that summary judgment is granted denying and dismissing the counterclaim of River City and Gecy and dismissing affirmative defenses raised by River City and Gecy.

IT IS FURTHER ORDERED, that with the granting of Plaintiff's Amended Motion for Summary Judgment, Defendants' Motion to Amend and Supplement Their Answer is moot and is denied.

AND IT IS SO ORDERED.



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The Honorable Marvin H. Dukes, III  
Master-In-Equity  
Fourteenth Judicial Court, Beaufort County

November 4, 2014  
Beaufort, South Carolina.