

F34675

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Green Tree Servicing LLC,

PLAINTIFF,

vs.

Joel Clay Bracken; and Bank of America, N.A.,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

C/A NO: 10-CP-23-8330

**ORDER AND JUDGMENT OF  
FORECLOSURE AND SALE**

(DEFICIENCY WAIVED)

**Subject to Home Affordable Modification  
Program, but will not be modified**

TO: Thomas A. Shook  
Susan S. White  
Elizabeth S. Moore  
Teresa Van Vlake  
Chris S. Truluck  
Carl D. Hiller  
Anthony J. Charles  
FINKEL LAW FIRM LLC  
Attorneys for the Plaintiff

FILED - CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL R. WICKENSIMER  
2015 APR 15 5 AM 10 07

RECEIVED

MAY 04 2015

SC Court of Appeals

ANSWERING DEFENDANTS:  
Joel Clay Bracken, *pro se*

Pursuant to Rule 53, SCRPC the above-entitled matter was referred. Any appeal from any order or judgment issued by the master or special referee shall be to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

Pursuant to the said Order of Reference, a hearing was held and was attended by counsel. The testimony was taken, which is reported herewith. From the testimony and evidence, I find, conclude and order as follows:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Based upon the Certification of Mortgage Compliance filed herein, the provisions of the Administrative Order issued by the Chief Justice of the Supreme Court of South Carolina on May 2, 2011, Order 2011-05-02-01, do not apply to the within foreclosure action.
2. The lis pendens was filed October 7, 2010.
3. The Summons and Complaint were filed October 7, 2010.
4. An Order of Publication was issued by the Court and filed on November 19, 2010.
5. Service was made upon the defendants as is shown by the proof(s) of service filed herein.

Verified

ENTERED COMPUTER

6. The defendant Bank of America, N.A. is in default as shown by Affidavit(s) on file herein.

7. Joel Clay Bracken, *pro se*, served an Answer on the plaintiff, which is on file herein.

8. All of the defendants herein and/or all attorneys of record were notified of the time, date and place of the hearing in this matter.

9. According to the Affidavit filed herein, the defendant Joel Clay Bracken is not in the Military Service of the United States of America, as contemplated under the Servicemembers Civil Relief Act (2003), and any amendments thereto.

10. For value received, Joel Clay Bracken made, executed and delivered a Note dated December 30, 2002, promising thereby to pay to the order of Coastal Mortgage Services, Inc., the sum of \$95,500.00, with interest at the rate of 6.25% per annum. 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 Joel Clay Bracken made, executed and delivered to Mortgage Electronic Registration Systems, Inc. as nominee for Coastal Mortgage Services, Inc., a Mortgage in writing dated December 30, 2002 covering real property in Greenville County, which is the same as that described in the Complaint. The Mortgage was filed on January 3, 2003 and is of record in the Office of the Register of Deeds for Greenville County in Book 3826 at Page 1384.

12. This mortgage constitutes a first mortgage lien on the subject property and is a purchase money mortgage.

13. The subject mortgage was subsequently assigned as follows:

(a) by assignment dated September 7, 2010 and recorded October 28, 2010 in Book 5097 at Page 5625, Mortgage Electronic Registration Systems, Inc. as nominee for Coastal Mortgage Services, Inc. assigned the subject mortgage to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing LP;

(b) by assignment dated May 16, 2013 and recorded August 27, 2013 in Book 5229 at Page 1325, Bank of America, N.A., who was successor by merger with BAC Home Loans Servicing, LP, assigned the subject mortgage to Green Tree Servicing, LLC, the present lienholder and plaintiff herein.

14. Pursuant to the Administrative Order of the Chief Justice, 2009-05-22-01, the subject loan is eligible for participation in the Home Affordable Modification Program (HMP), but that process has been completed without resulting in modification due to no response from borrower.

15. According to the terms of said mortgage, and as additional security, Joel Clay Bracken assigned all rents, issues and profits of the mortgaged premises from and after any default thereunder, and



should legal proceedings be instituted pursuant to said mortgage, the mortgagee, its successors and assigns, was given the right to have a Receiver appointed of the rents, issues and profits, who, after deducting all charges and expenses attending such proceedings, and the execution of his trust as a Receiver, shall apply the residue of the rents, issues and profits, towards the debt secured by said mortgage.

16. The titleholder of record in and to the subject property as of the filing of the Lis Pendens in this action is Joel Clay Bracken.

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

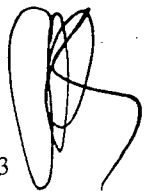
18. Counsel for Plaintiff filed an affidavit as to attorney's fees and costs in this case, which was not contested, and, therefore, I find as fact herein. Having considered the nature, extent and difficulty of the services rendered, the time involved in reviewing the various documents, performing the title search, preparing the pleadings, attending hearings and argument, the professional standing of counsel, the fee customarily charged for similar services, and the beneficial results obtained for the plaintiff, I find that the sum of \$1,425.00 is a reasonable fee to allow under the terms of the Note and Mortgage as attorney's fees for Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the action. The plaintiff has advanced \$300.00 to its counsel as partial payment of the attorney's fee, and this amount is included in the corporate advances.

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

Principal due as of October 1, 2009	\$ 86,535.59
Interest from September 1, 2009 through April 8, 2015	30,289.09
Escrow adjustments (debits and credits)	7,963.89
Corporate advances	550.00
Costs of collection	1,335.62
Attorney's Fees (awarded but unpaid)	<u>1,125.00</u>

**TOTAL DEBT** secured by Note and Mortgage, including interest to date shown \$127,799.19

Interest for the period from April 8, 2015 as shown above at the rate of 6.250% shall be added to the Principal Balance shown above through the date this judgment is filed. Thereafter, interest at the rate of 6.250% on the total judgment debt should be added to such judgment debt to comprise the amount secured by the mortgage.

3 

20. Plaintiff does not demand a deficiency judgment in the event the sale of the real estate herein does not yield a sum sufficient to satisfy all indebtedness due unto Plaintiff, including costs and Attorney's fees.

21. Bank of America, N.A. claims or may claim a lien upon or interest in the subject property by virtue of a mortgage from Joel Clay Bracken recorded March 14, 2008 in Book 4930 at Page 914 in the amount of \$22,913.00.

The interest or lien of the above defendant, if any, is junior and subordinate to the plaintiff's purchase money mortgage.

**IT IS THEREFORE ORDERED:**

1. There is due to Plaintiff on the obligation and Mortgage set forth in the Complaint the sum of \$127,799.19, representing the "Total Debt" due Plaintiff as set forth in the Findings of Fact, *supra*, together with interest at the rate provided therein from the date aforesaid to the date hereof.

2. 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 6.250%.

3. 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.

4. 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 Greenville County Courthouse, Greenville, 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 6.250%.
- 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. **IT IS FURTHER ORDERED** that in the event the successful bidder is other than the Defendant(s) in possession herein, upon full compliance with the bid, and upon issuance of a Writ of Assistance by this Court, the Sheriff of Greenville County is ordered and directed to eject and remove from the premises the occupant(s) of the property sold, together with all personal property located thereon, and put the successful bidder or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.

10. **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 therefrom 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.

11. **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.

12. **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.

13. **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.

14. 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.

15. 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 given by Joel Clay Bracken to Mortgage Electronic Registration Systems, Inc. as nominee for Coastal Mortgage Services, Inc. dated December 30, 2002 and recorded in the Office of the Register of Deeds for Greenville County on January 3, 2003 in Book 3826 at Page 1384.

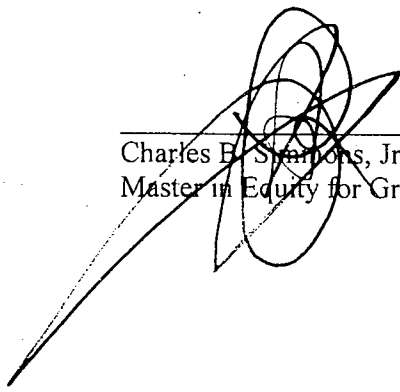
16. The following is a description of the premises herein ordered to be sold:

All that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being in the County of Greenville, State of South Carolina, being known and designated as Lot No. 36, Pine Forest, on the corner of Lanewood Drive and Dalegrove Drive, as shown on a plat of same dated August, 1959 and recorded in Plat Book QQ, Pages 106-107 in the Office of the RMC for Greenville County, SC and being further shown on a more recent survey prepared by Freeland-Clinkscates & Associates, Inc. and recorded September 10, 1990 in Plat Book 19-H at Page 17 in the aforesaid RMC Office. For a more particular description as to metes and bounds, courses and distances, reference is hereby made to most recent plat of record.

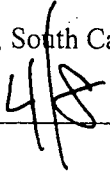
TMS Number: M009-04-09-009.00

PROPERTY ADDRESS: 313 Lanewood Drive, Greenville, SC 29607

This being the same property conveyed to Joel Clay Bracken by deed of Conseco Finance Servicing Corp. dated December 30, 2002 and recorded in the Office of the Register of Deeds for Greenville County on January 3, 2003 in Deed Book 2022 at Page 638.

  
\_\_\_\_\_  
Charles E. Sharpton, Jr.  
Master in Equity for Greenville County

Greenville, South Carolina

  
\_\_\_\_\_, 2015

60440.F34675

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

BAC Home Loans Servicing, LP f/k/a  
Countrywide Home Loans Servicing LP

PLAINTIFF,

vs.

Joel Clay Bracken; and Bank of America, N.A.,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS  
C/A NO: 10-CP-23-8330

ORDER TO AMEND CAPTION  
TO  
SUBSTITUTE PLAINTIFF

FILED - CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL A. WICKENS/SMITH  
2015 APR 15 3 AM 10 88

The plaintiff moves before this Court for an Order allowing the amendment of the within caption to substitute Green Tree Servicing, LLC as plaintiff herein pursuant to Rules 15(b) and 17(a), SCRPC on the grounds that by assignment dated May 16, 2013 and recorded August 27, 2013 in Book 5229 at Page 1325, Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing LP, assigned the subject mortgage to Green Tree Servicing LLC, making Green Tree Servicing, LLC the real party in interest.

The plaintiff makes this motion based upon a transfer of interest and does not plead any new claims, nor does the proposed amendment give rise to any new defenses. Accordingly, there is no prejudice to any other party and amendment to conform to the evidence by substituting the real party in interest is both proper and just. *Twelfth RMA Partners, L.P. v. National Safe Corp.*, 335 S.C. 635, 641, 518 S.E.2d 44, 47 (Ct.App. 1999). Therefore, it is hereby

**ORDERED** that the caption is amended to substitute Green Tree Servicing, LLC as plaintiff herein. It is so

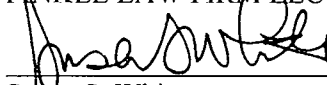
**ORDERED** this 15 day of April, 2015.

Charles B. Blumens, Jr., Master in Equity

Greenville, South Carolina

WE SO MOVE:

FINKEL LAW FIRM LLC



Susan S. White  
Attorneys for Plaintiff

RECEIVED

MAY 04 2015

SC Court of Appeals

ENTERED COMPUTER

Recording Requested By:  
Bank of America  
When recorded mail to:  
CoreLogic  
Mail Stop: ASGN  
1 CoreLogic Drive  
Westlake, TX 76262-9823

DocID#  
Tax ID:  
Property Address:  
313 Lanewood Dr  
Greenville, SC 29607-5617

2013072755 ASNT  
1 PG  
Book: MO 5229 Page: 1325-1325  
August 27, 2013 01:11:52 PM  
Rec: \$8.00 Cnty Tax: \$0.00 State Tax: \$0.00  
FILED IN GREENVILLE COUNTY, SC

This space for Recorder's use

**ASSIGNMENT OF MORTGAGE**

For Value Received, the undersigned holder of a Mortgage (herein "Assignor") whose address is 1800 TAPO CANYON ROAD, SIMI VALLEY, CA 93063 does hereby grant, sell, assign, transfer and convey unto GREEN TREE SERVICING LLC whose address is 7360 S. KYRENE ROAD, TEMPE, AZ 85283 all beneficial interest under that certain Mortgage described below together with the note(s) and obligations therein described and the money due and to become due thereon with interest and all rights accrued or to accrue under said Mortgage.

Original Lender: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR COASTAL MORTGAGE SERVICES, INC.

Original Borrower(s): JOEL CLAY BRACKEN, UNMARRIED

Date of Mortgage: 12/30/2002

Original Loan Amount: \$95,500.00

Recorded in Greenville County, SC on: 1/3/2003, book 3826, page 1384 and instrument number 2003001061

IN WITNESS WHEREOF, the undersigned has caused this Assignment of Mortgage to be executed on  
Dated: MAY 16 2013

Bank of America, N.A.

By: Matthew Gordon  
Matthew Gordon  
Assistant Vice President

*[Signature]*

Witness: Patricia Quintanilla

Witness: Erica Mejia

State of California  
County of LOS ANGELES

On MAY 16 2013 before me, Jeffrey Yu, Notary Public, personally appeared Matthew Gordon

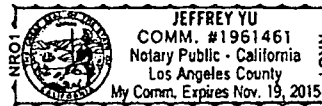
, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity (ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

*[Signature]*

Notary Public: Jeffrey Yu  
My Commission Expires: Nov. 19, 2015



(Seal)

FILED FOR RECORD IN GREENVILLE COUNTY, SC ROD  
2013072755 Book: MO 5229 Page: 1325-1325  
August 27, 2013 01:11:52 PM

*Timothy J. Manning*

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