

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Cenlar FSB,

Plaintiff,

vs.

Casey Scobie a/k/a Casey R. Clinton a/k/a  
Casey R. Scobie; GSH Properties, LLC; L.A.  
Yates; Briargate Condominium Association,  
Inc.,

Defendant(s).

(506951.00892 CSG)

Charles S. Gwynne Jr., Esquire  
Attorney for the Plaintiff

Pro Se Defendant  
Casey Scobie a/k/a Casey R. Clinton a/k/a Casey R. Scobie

Walter B. Todd, Jr., Esquire  
Attorney for Defendant Briargate Condominium Association, Inc.

Pro Se Defendant  
L.A. Yates

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2013-CP- 40-5367

JUDGMENT OF FORECLOSURE AND SALE  
Deficiency Judgment Waived

RECEIVED

MAY 14 2015

SC Court of Appeals

FILED  
APR 15 PM 2:14  
C.P. & C.S.  
RICHLAND

Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, the above-entitled matter was referred to the undersigned. A hearing was held on April 1, 2015 at 3:00 P.M. Present for the hearing was Charles S. Gwynne Jr., Esquire attorney for Plaintiff, Plaintiff's representative Clifford J. Priest; and Pro Se Defendant Mr. L.A. Yates. Evidence was presented, which is reported herewith, and from the evidence, I find and conclude as follows:

FINDINGS OF FACT:

1. The Lis Pendens was filed on September 9, 2013.
2. The Summons and Complaint were filed on September 9, 2013.
3. Service was made upon all Defendant(s) as shown by proof(s) of service filed herein.
4. The Defendant GSH Properties, LLC are in default.

5. The Defendant Casey Scobie a/k/a Casey R. Clinton a/k/a Casey R. Scobie is not in the Military Service of the United States of America, as contemplated under The Servicemembers Civil Relief Act, 50 U.S.C. § 501 et. seq. as shown by affidavit, certificate or order filed or will be filed herein.

6. The Court finds Plaintiff is the loan servicer for the subject loan and has standing to bring this action.

7. Pursuant to the South Carolina Supreme Court Administrative Order 2009-05-20-01 dated May 22, 2009, the Plaintiff set forth its belief in its Complaint or by Affidavit, which is already of record in this case, that the mortgage loan which is the subject of this foreclosure action is not eligible for modification pursuant to the terms of the Home Affordable Modification Program (HMP). Pursuant to the South Carolina Supreme Court Administrative Order dated May 22, 2009, Plaintiff's attorney has not received a counter affidavit from any Defendant(s).

8. Attorney for the Plaintiff has fully complied with the South Carolina Supreme Court Administrative Order 2011-05-02-01 dated May 2, 2011.

9. On or about September 10, 2013, Defendant Briargate Condominium Association, Inc. filed an Answer to the Complaint through their attorney, Walter B Todd, Jr., Esquire.

10. On or about February 10, 2013, Defendants Casey Scobie a/k/a Casey R. Clinton a/k/a Casey R. Scobie ("Scobie") and L.A. Yates ("Yates") filed an Answer to the Complaint.

11. On or about June 16, 2014, Defendants Scobie and Yates filed a First Amended Answer and Affirmative Defenses to the Complaint.

12. On or about July 22, 2014, Defendants Scobie and Yates filed a Counterclaim to the Complaint.

13. On March 26, 2015 Defendant L.A. Yates filed a Motion for Continuance of Hearing and Request to Bifurcate Counterclaim for Jury Trial in Circuit Court ("Motion"). Mr. Yates argued he was not properly notified that the hearing on April 1, 2015 would be a "Final Foreclosure Hearing" and renewed a prior motion seeking to bifurcate his counterclaim from the foreclosure claim. Additionally, Mr. Yates claims he needed to conduct discovery. The Court finds all parties were properly notified that the April 1, 2015 hearing would be a hearing on the merits of the case through a Notice of Hearing filed with the Court on January 26, 2015. In an Order filed on September 22, 2014 the Court denied a previous Motion for Continuance and request to bifurcate the counterclaim filed by Mr. Yates. The Court notes that this case has been pending for a year and a half and Mr. Yates has not attempted to conduct any discovery. The Court finds that the Motion was filed purely for delay purposes and the

Motion is denied.

14. All Pro Se Defendant(s) and all attorneys of record were notified of the time, date, and place of the hearing by letter and certificate of mailing of record herein.

15. Casey R. Clinton for value received, made, executed and delivered a Fixed Rate Note ("Note") dated March 31, 2000 promising hereby to pay to Plaintiff or its predecessor the sum of \$46,050.00 with interest at 8.000% per annum. Other terms and conditions are stated in the Note, of record herein.

16. To better secure the payment of the Note described above, Casey R. Clinton made, executed, and delivered to Carolina First Bank a certain real estate Mortgage in writing, dated March 31, 2000 covering real property in Richland County, which is the same as that described in the Complaint. This Mortgage was filed on April 6, 2000, and is of record in the Office of RMC/ROD in Book R 398 at Page 1296. This Mortgage was subsequently assigned to Mortgage Electronic Registration Systems, Inc. A Delaware Corporation, as Nominee for Centennial Bank an Arkansas Corporation, its successors and assigns (MIN #100424260008204121) by assignment dated July 17, 2006 and recorded August 25, 2006 in Book R 1222 at Page 832. This mortgage was subsequently assigned to the Plaintiff herein by assignment dated August 21, 2013 and recorded August 30, 2013 in Book 1891 at Page 3188.

17. This mortgage constitutes a first Priority lien on the subject property, subject to ad valorem taxes or other liens/taxes given priority by statute.

18. Plaintiff has the legal right to enforce the negotiable instrument secured by the Mortgage and is the real party in interest as defined by Rule 17(a) of the South Carolina Rules of Civil Procedure.

19. Payment due on the Note was not made as provided for therein, and Plaintiff, as the holder or nominee for the holder thereof, elected to require immediate payment of the entire amount due thereon and placed the Note and Mortgage in the hands of the attorney herein for remedy for collection by foreclosure.

20. The sum of \$7,083.75 is a reasonable fee and cost to allow Plaintiff's counsel for services performed and anticipated to be performed until final adjudication of this action, under the terms of the Note and Mortgage. This fee is likewise reasonable based on the time necessarily devoted to representation of Plaintiff during the several month course of these proceedings. The services of counsel performed for Plaintiff, which include the number and types of pleadings and documents prepared, the incumbent liabilities, and the difficulties involved in this particular case also support the fee awarded. The fee is also reasonable given the professional standing of Plaintiff's counsel and their experience in handling foreclosure matters. The fee awarded herein is also reasonable in light of the fees customarily

awarded by this court for similar services in this locality. Moreover, the efforts of Plaintiff's counsel have had the beneficial result of a prompt foreclosure of the Mortgage. Services anticipated to be performed until final adjudication contemplate completion of this matter within a reasonable time and does not include exceptional circumstances delaying conclusion beyond the normal time.

21. According to Plaintiff's accounting, after all payments received by Plaintiff have been credited to the subject loan, the amount due and owing on the Note, with interest at the rate provided in the Note, advances made by Plaintiff, and other costs and expenses of the action, including a reasonable attorney fee, all secured by the Note and Mortgage, is as follows:

Principal		\$37,369.22
Interest from February 1, 2013 through April 1, 2015 at 8.000%		\$6,477.38
Escrow Advance		
Taxes		
12/12/13	\$591.46	
12/05/14	\$403.66	
Total	\$995.12	\$995.12
Pre Acceleration Late Charges		
03/18/13	\$16.90	
04/16/13	\$16.90	
05/16/13	\$16.90	\$50.70
Property Inspections		
05/21/13	\$19.00	
06/24/13	\$17.50	
07/26/13	\$19.00	
08/26/13	\$19.00	
09/26/13	\$17.50	
11/26/13	\$19.00	
12/26/13	\$17.50	
01/28/14	\$19.00	
02/24/14	\$17.50	
03/26/14	\$19.00	
04/23/14	\$16.00	
05/23/14	\$17.50	
06/20/14	\$19.00	
07/22/14	\$17.50	
08/26/14	\$19.00	
09/25/14	\$17.50	
10/22/14	\$19.00	
11/19/14	\$16.00	
12/19/14	\$19.00	\$398.50

01/28/15	\$17.50	
02/23/15	\$17.50	
03/24/15	\$19.00	
Total	\$398.50	
Attorney's Fees incurred (paid, billed but unpaid or unbilled)		\$4,512.50
Anticipated attorney fees awarded herein		\$1,250.00
Expenses (Case filing fee; Service of process; Reference fee; Motions Fees; Title Search; and Recording Fees)		\$1,321.25
<b>TOTAL PRINCIPAL, INTEREST AND EXPENSES:</b>		<b>\$52,374.67</b>

Interest shall accrue to the above stated "Total Debt" after the date of judgment at the rate of 8.000% per annum (pursuant to the terms of the Note and First Mortgage). Accrued interest shall be added to the "Total Debt" and shall comprise the amount of the Plaintiff's debt secured by the first Mortgage through the date to which such interest is computed.

22. Plaintiff is seeking the usual foreclosure of the First mortgage and has in the Complaint (or subsequently thereto in writing) expressly waived the right to a personal or deficiency judgment.

23. The following Defendant(s) may claim a subordinate lien upon or subordinate legal interest in the subject property and in the event there is a surplus from the sale of the subject property, these Defendant(s) may present through any such lien or legal interest a claim to the surplus at a hearing subsequent to the sale, in accordance with Rule 71(c) South Carolina Rules of Civil Procedure. The said Defendant(s) and such liens or legal interests are as follows:

a. Briargate Condominium Association, Inc. by virtue of any lien enforceable assessments claimed as provided for in the Declaration of Covenants, Conditions, and Restrictions and any amendments thereto. Also including any other liens they may have.

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IT IS THEREFORE ORDERED:

24. Plaintiff has fully complied with The South Carolina Supreme Court Administrative Orders 2009-05-22-01 dated May 22, 2009 and 2011-05-02-01 dated May 2, 2011, and the foreclosure action may proceed.

25. There is due on the Note and purchase money first Mortgage set forth in the

Complaint the sum of \$52,374.67, as set out in the Findings of Fact *supra*, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.

26. Defendants Scobie and Yates' Counterclaim is dismissed with prejudice.

27. Defendants Yates' Motion for Continuance of Hearing and Request to Bifurcate Counterclaim for Jury Trial in Circuit Court filed on March 26, 2015 is denied.

28. The amount due in the preceding paragraph (the "Final Total Debt" as set out in the Findings of Fact *supra*) shall accrue interest at the rate of the respective note rate(s) per annum and together with such interest shall constitute the total judgment debt due Plaintiff.

29. The amount of the judgment shall be subject to increase to permit Plaintiff to recover additional costs, commissions and expenses not included in the minimum deposit previously made in compliance with S.C. Code Ann. §14-11-310 (1976). It may also increase to include supplemental compensation for attorneys' services not contemplated by the initial fee award. Jurisdiction over the fee award and total debt is reserved to facilitate the assessment and payment of any such costs or supplemental compensation.

30. The Defendant(s) liable for the aforesaid judgment debt of the Note and Mortgage including interest at the rate of 8.000% per annum shall pay on or before the date of sale of the property hereinafter described, to Plaintiff or Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, including with the costs and disbursements of this action.

31. On default of payment at or before the time of the sale of the property, the mortgaged property described hereinafter shall be sold by the below signed Master in Equity or other court-appointed or designated agent or auctioneer at public auction at the Richland County Courthouse, in the City of Columbia, and State of South Carolina on a sales day determined by the below signed Master in Equity or Special Referee, on the following terms:

a. For cash or its equivalent: An immediate deposit of 5% is required on the amount of the bid. The deposit will be applied to the purchase price when total compliance is made. In the event compliance is not made, the deposit shall be forfeited without further hearing and applied first to costs and expense of the action and then to plaintiff's debt. Should the successful bidder at the regularly conducted sale fail or refuse either to make the required deposit at time of bid or to comply with the other terms of the bid within 20 days, then the property may be re-sold on the same terms and conditions on the same or some subsequent sales day and at the risk of the defaulting bidder.

b. Interest on the balance of the bid after the deposit is applied shall be paid through the day of compliance at the note rate of 8.000%.

c. The sale shall be subject to taxes and assessments, existing easements and

restrictions, and any other senior encumbrances.

d. Purchaser shall pay for any statutory commission on sale from the proceeds of the final bid amount.

e. Purchaser to pay for deed preparation, costs of recording the deed and the satisfaction of mortgage, and transfer taxes on the deed.

f. Purchaser shall be entitled to possession of the premises only after Purchaser fully complies with the bid amount and a deed is issued by the Master in Equity or Special Referee.

32. A personal or deficiency judgment having been waived, the bidding will not remain open after the date of sale and compliance with the bid may be made immediately.

33. Plaintiff may waive any of its rights, including its right to a deficiency judgment in accordance with Rule 71, of the South Carolina Rules of Civil Procedure, prior to sale.

34. The Master in Equity will give notice of the time and place of the sale by advertisement according to law and the terms thereof by advertisement according to law and will execute to the Purchaser a deed to the property sold. Plaintiff or any other party to this action may become a purchaser at such sale. If, upon such sale being made, the Purchaser 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.

35. In the event an agent of 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 same terms and conditions as set forth in this Judgment of Foreclosure and Sale or such terms as may be set forth in a supplemental order.

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

37. The Master in Equity or Special Referee will apply the proceeds of the sale as follows:

FIRST: To the payment of the permitted costs, charges, and expenses of this action, including any Guardian ad Litem fee, servicemember Civil Relief Act attorney fee, or any other attorney's awarded under this or any other Order of this Court;

NEXT: To the payment to Plaintiff or Plaintiff's attorney of the amount of Plaintiff's debt and interest or so much thereof as the purchase money will pay on the same; and the Plaintiff's attorney

shall receive and disburse such funds only in absolute compliance with Plaintiff's principal, interest allowable advances, and related calculations of this Court, including the Court's award for attorney fees, court permitted charges and taxable costs pursuant to Rules 54 and 71 of the South Carolina Rules of Civil Procedure and the terms of the Note and Mortgage; After crediting the proceeds of sale, net of any commission on sale, an Order for Deficiency Judgment shall be entered without further notice or hearing.

NEXT: Any surplus should be held pending further Order of this court as provided for in the South Carolina Rules of Civil Procedure, particularly Rule 71(c) of the South Carolina Rules of Civil Procedure.

38. In the event the successful bidder is someone other than the Defendant(s) in possession of the subject property, the Sheriff of Richland County is ordered and directed to eject and remove from the property 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 property without delay, and to keep said successful bidder or his assigns in such peaceable possession.

39. In the event the successful bidder is other than the Defendant(s) in possession of the subject property and the occupants have voluntarily vacated the property or have been ejected from the property leaving furnishings, fixtures and items not subject to Plaintiff's Mortgage in said property, the Purchaser is authorized to remove from the property all furnishings, fixtures and items not subject to the lien of Plaintiff's Mortgage. The personal property, being deemed abandoned, shall be removed by the Purchaser or its agents from the subject property by placing said personal property on the public street or highway or by any other means.

40. The Defendant(s) named herein, and all persons whosoever claiming under Defendant(s), is forever barred and foreclosed of all right, title, interest, equity of redemption or lien in the said mortgaged property so sold, or any part thereof.

41. In accordance with Rule 77(d), of the South Carolina Rules of Civil Procedure, the Clerk of Court shall serve a notice of entry of this Judgment of Foreclosure upon all parties not in default for failure to appear in this action.

42. The deed of conveyance made pursuant to the foreclosure sale shall contain the names of only the first-named Plaintiff and the first-named Defendant(s), and the Defendant(s) who was/were the titleholder(s) of the mortgaged property at the time of the filing of the notice of pendency of the within action, and the name of the grantee. The Register of Deeds/Clerk of Court is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

43. The undersigned will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance.

44. The following is a description of the property herein ordered to be sold:

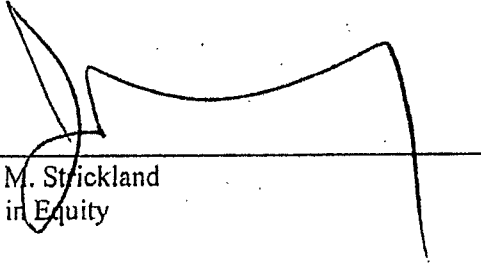
Unit 705 of Briargate Horizontal Property Regime created under Title 27, Chapter 31, Section 10, et seq., as amended, of the Code of Laws of South Carolina, and as established by a Master Deed of record in Book D689 at Page 1, Office of the Register of Deeds for Richland County, South Carolina, together with the undivided percentage interest in the Common Elements appurtenant to said Unit as set forth in Exhibit A-1 of said Master Deed. Reference is hereby made to the Plans of Briargate Horizontal Property Regime set forth in Exhibit A-2 of said Master Deed for a more complete identification and description of such unit.

This being the same property conveyed to Casey R. Clinton by deed of Gerald Earles and S. Jane Earles dated March 31, 2000 and recorded April 6, 2000 in Book R398 at Page 1294. Subsequently, Casey R. Scobie a/ka Casey R. Clinton conveyed the subject property to D&L Property Investments LLC dated July 16, 2004 and recorded August 9, 2004 in Book R965 at Page 2654. Subsequently, D&L Property Investments, LLC conveyed the subject property to Casey Scobie by deed dated December 12, 2006 and recorded February 20, 2007 in Book R1283 at Page 2008. Subsequently, Casey Scobie conveyed the subject property to GSH Properties, LLC and L.A. Yates by deed dated March 27, 2013 and recorded April 19, 2013 in Book R1853 at Page 2898.

Property Address: 712 Old Manor Road, Unit #705  
Columbia, SC 29210

TMS# R06081-04-37

April 15, 2015  
Columbia, South Carolina

  
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Joseph M. Strickland  
Master in Equity