

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEALS FROM DORCHESTER COUNTY
Court of Common Pleas

James E. Chellis, Master-In-Equity

Case No. 2013-CP-18-00519

RECEIVED
JUN 18 2015
SC Court of Appeals

WELLS FARGO BANK, N.A., Respondent,

vs.

Latisa L. Cunningham, et al., Defendants,

Of Whom Latisa L. Cunningham is the Appellant.

COPY OF MASTER IN EQUITY'S ORDER AND JUDGMENT OF
FORECLOSURE AND SALE

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STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
CASE NO.: 2013-CP-18-00519

ORIGINAL

Wells Fargo Bank, N.A.,

FILED - RECORDED
2015 MAY 13 AM 4:40
CANCELLED
Plaintiff, **CHERYL GRAHAM**
CLERK OF COURT
DORCHESTER COUNTY

**MASTER IN EQUITY'S ORDER AND JUDGMENT OF
FORECLOSURE AND SALE**

**(GRANTING PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT)**

DEFICIENCY WAIVED

v.

Richard B. Cunningham; Latisa L.
Cunningham; SC Housing Corp.;
Drakesborough Homeowners Association, Inc.,

Defendant(s)

FILED - RECORDED
2015 MAY 13 AM 9:56
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure (hereinafter "SCRCP"), the above-entitled matter was referred to the undersigned Master In Equity 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 Master In Equity shall be directly to the South Carolina Court of Appeals or 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 March 26, 2013.
2. The Summons and Complaint were filed on March 26, 2013.
3. Service was made upon the Defendants named in this Report as is shown by the proofs of service filed herein.
4. 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.
5. The Plaintiff's Motion for Summary Judgment was filed on February 13, 2015.
6. The Defendant(s) Richard B. Cunningham; Latisa L. Cunningham; SC Housing Corp.; Drakesborough Homeowners Association, Inc. have been notified of the time and date of this hearing.
7. For value received, Latisa L. Cunningham and Richard B. Cunningham made, executed and delivered a note, dated November 25, 2008, promising thereby to pay to the order of WR Starkey Mortgage, L.L.P. the sum of \$183,919.00 with interest at the rate of 6% per annum (hereinafter "Note"). Other terms and conditions are stated in the note, which is of record herein.
8. To better secure the payment of the Note described above, the said Latisa L. Cunningham and Richard B. Cunningham made, executed and delivered a mortgage to Mortgage Electronic Registration Systems, Inc. as nominee for WR Starkey Mortgage, L.L.P., in writing, dated November 25, 2008,

CA No. 2013-CP-18-00519

File reference: 13-03642



covering real property in Dorchester County, which is the same as that described in the Complaint. The Mortgage was recorded on November 26, 2008, and is of record in the Dorchester County Registry in Book 6871 at page 69.

9. This mortgage constitutes a valid purchase money mortgage on the subject property.

10. Thereafter, the Mortgage was assigned to Wells Fargo Bank, N.A. by assignment recorded on December 22, 2011 in Book 8121 at Page 321.

11. As required by South Carolina Supreme Court Administrative Order 2009-05-22-01 ("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 ("HMP"); however, Plaintiff alleges upon information and belief, that this loan is not eligible for modification under the HMP because the loan is owned or guaranteed by the Federal Housing Administration (HUD) or the Veterans' Administration (VA) and said entities are not participants in the HMP Program and are not eligible as contemplated under the Administrative Order issued by the Supreme Court of South Carolina on May 22, 2009

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

13. The titleholder(s) of record of the Property as of the filing of the Lis Pendens in this action were Latisa L. Cunningham and Richard B. Cunningham.

14. 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.

15. 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 \$5,350.00 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.

16. 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: 05/04/15
CA No. 2013-CP-18-00519

\$ 173,443.06

File reference: 13-03642

Accrued interest from:	01/01/13	to: 01/26/15	\$ 21,526.06
Accruing at:	6% per annum		
Advancements to Escrow			\$ 5,486.66
Corporate Advances			\$ 30.00
Credits to Borrower:			\$ -172.65
PMAMIP Insurance:			\$ 1,921.56
Costs of collection prior to hearing:			\$ 1,303.38
Attorney's fees:			\$ 5,350.00

Total Debt secured by Note and Mortgage, including interest to date is \$208,654.83. 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 6% 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.

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

18. 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:

C. The Defendant, Drakesborough Homeowners Association, Inc., has or may claim to have some interest in the Property by virtue of a homeowners' dues or assessment lien against Richard B. Cunningham and Latisa L. Cunningham, in the original principal amount of \$1,167.00, which lien was recorded/filed or assigned to Defendant in the Dorchester County Records on 09/16/2011 in Book 8012 at Page 243. 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.

D. The Defendant, SC Housing Corp., has or may claim to have some interest in the Property by virtue of a mortgage given by Richard B. Cunningham and Latisa L. Cunningham, in the original principal amount of \$36,000.00, which mortgage was recorded/filed or assigned to Defendant in the Dorchester County Records on 01/18/2012 in Book 8146 at Page 312. 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 Plaintiff's Motion for Summary Judgment should be granted and the Plaintiff should have judgment of foreclosure of its Mortgage; and the Property should be ordered sold at public auction after due advertisement.

2. That there is due to the Plaintiff on its Note and Mortgage the sum of \$208,654.83, representing the Total Debt due to the Plaintiff as outlined above, together with interest thereon at the rate provided in the Note to the date hereof.
3. That the amount due in the preceding paragraph (the "Total Debt") and later accrued interest and costs shall constitute the total judgment debt due to the Plaintiff and shall bear interest hereafter at the rate of 6% per annum, the current interest rate of the Note.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. That the Plaintiff's Motion for Summary Judgment is granted.
2. 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.
3. That on default of payment prior to the date and time of the sale, the Property, hereinafter described, shall be sold by the undersigned Master In Equity at public auction, at the Dorchester County Courthouse, City of Saint George, County and State aforesaid, on some convenient sales day hereafter, on the following terms, that is to say:
 - A. FOR CASH: The undersigned Master In Equity 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 6% 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.
4. 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 Master In Equity only the amount of the costs and expenses, crediting the balance of the bid on the Plaintiff's indebtedness.
5. That a personal or deficiency Judgment being Waived, the bidding will not remain open for thirty (30) days and bidding will be final on the date of the sale, and compliance with the bid may be made immediately.
6. That the undersigned Master In Equity 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 Master In Equity 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.

7. 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.
8. That the undersigned Master In Equity 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 Plaintiffs 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.
9. 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.
10. 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 Dorchester 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.
11. 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 Dorchester County is 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.
12. That it is further ORDERED ADJUDGED AND DECREED that after the Order Confirming Sale and Disbursements has been issued and filed, the undersigned Master In Equity 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.
13. That it is further ORDERED ADJUDGED AND DECREED that the following is a description of the Property herein ordered to be sold:

ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND, TOGETHER WITH ALL IMPROVEMENTS THEREON, SITUATE, LYING AND BEING IN THE COUNTY OF DORCHESTER, STATE OF SOUTH CAROLINA, KNOWN AND DESIGNATED AS LOT 272, OF DRAKESBOROUGH SUBDIVISION, IN THE JEDBURG COMMUNITY, AS SHOWN ON THAT CERTAIN PLAT ENTITLED: "FINAL PLAT SHOWING THE SUBDIVISION OF LOTS 99-115, LOTS 272-284, A PORTION OF HOA 1 AND HOA 4 OF PHASE 1, DRAKESBOROUGH SUBDIVISION FROM TRACT WITH TMS# 121-00-00-