

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Nationstar Mortgage LLC,

Plaintiff,

v.

Norman D. Lowery;

Defendant(s).

IN THE COURT OF COMMON PLEAS

DOCKET NO. 14-CP-46-2394

JUDGMENT OF FORECLOSURE AND SALE
Deficiency Judgment Waived

RECEIVED

NOV 19 2015

SC Court of Appeals

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, S.C.

FILED-ACTO-VPT
2015 SEP 28 AM 9:53

(013225-03514)

A. Montgomery
~~John L. Hearn~~, Esquire
Attorney for the Plaintiff

Norman Lowery

A hearing was held September 23, 2015 at 09:30 AM. 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 July 25, 2014.
2. The Summons and Complaint were filed on July 25, 2014.
3. Service was made upon all Defendant(s) as shown by the proof(s) of service filed herein.
4. The Defendant(s) Norman D. Lowery is in default.
5. The Defendant(s) Norman D. Lowery 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 herein.
6. No Defendant raised any issues related to Plaintiff's standing to prosecute this action.
7. Pursuant to the South Carolina Supreme Court Administrative Order 2009-05-22-01 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

[Handwritten initials]

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. 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.

10. Norman D. Lowery for value received, made, executed and delivered a(n) Fixed Rate Note dated July 13, 2010 promising thereby to pay to Plaintiff or its predecessor the sum of \$95,000.00 with interest at 5.375% per annum. Other terms and conditions are stated in the Fixed Rate Note, of record herein.

11. To better secure the payment of the Fixed Rate Note described above, Norman D. Lowery made, executed, and delivered to Mortgage Electronic Registration Systems, Inc. as nominee for Coldwell Banker Mortgage, its successors and assigns (MIN# 100020071169278699) a certain real estate Mortgage in writing, dated July 13, 2010 covering real property in York County, which is the same as that described in the Complaint. This Mortgage was filed on July 15, 2010, and is of record in the Office of RMC/ROD in Book 11495 at Page 56. This Mortgage was subsequently assigned to PHH Mortgage Corporation by assignment dated April 24, 2013 and recorded May 6, 2013 in Book 13395 at Page 245; subsequently, assigned unto Nationstar Mortgage LLC by assignment dated May 12, 2015 and recorded June 4, 2015 in Book 14909 at Page 307.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment that Mobile/Manufactured Home is
Subject to the Lien of Plaintiff's Mortgage)

12. The Plaintiff has alleged it is entitled to a declaratory judgment that the 1999 Palm Harbor Homes mobile home VIN No. PH3312482 on the subject property is subject to its first mortgage lien as an improvement to the secured real property. Despite being served with process in this case, the Defendant(s)/Mortgagor(s) Norman D. Lowery has failed to Answer or otherwise plead; therefore, the Plaintiff's allegations are deemed admitted. Furthermore, the Plaintiff's allegations are supported by the evidence presented on its behalf, including:
an Appraisal of the property conducted prior to the closing of the Plaintiff's first mortgage, showing that the mobile home was an improvement to the real property at the time the loan was originated; Based upon this evidence, I find that the intent of the parties at the closing of the Plaintiff's first mortgage was for the mobile home to be subject to the lien of the Plaintiff's first mortgage, in addition to the raw land, as an improvement to the real property and I conclude therefore that the Plaintiff is entitled to a declaratory judgment that the mobile home is subject to the first lien of the Plaintiff's first mortgage.

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FOR A SECOND CAUSE OF ACTION
(Foreclosure of the Mortgage)

13. This Mortgage constitutes a purchase money first Priority lien on the subject property, subject only to ad valorem taxes or other liens/taxes given priority by statute.

14. 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.

15. Payment due on the Fixed Rate Note has not been made as provided for therein, and the Plaintiff, as the holder or nominee for the holder, thereof, has elected to require immediate payment of the entire amount due thereon and has placed the Fixed Rate Note and purchase money first Mortgage in the hands of the attorney herein for collection by foreclosure.

16. The sum of \$3,225.00 is a reasonable fee to allow Plaintiff's counsel for services performed and anticipated to be performed until final adjudication of this action, under the terms of the Fixed Rate 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.

17. 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 Fixed Rate Note, with interest at the rate provided in the Fixed Rate Note, advances made by Plaintiff, and other costs and expenses of the action, including a reasonable attorney fee, all secured by the Fixed Rate Note and Mortgage, is as follows:

- (a) Principal due January 1, 2013 \$91,831.74
- (b) Interest from December 1, 2012 through
July 6, 2015 at 5.375% per annum \$12,818.85
- Interest from July 7, 2015 through
September 23, 2015 at 5.375% per annum \$1,068.08


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(c)	Allowable Advances (Escrow advances, corporate charges, paid attorney fees, paid costs and expenses from the foreclosure action, and/or other charges)	\$9,376.17
(d)	Costs of collection prior to hearing (service, filing, etc.).....	\$512.00
(e)	Title Abstract Search.....	\$425.00
(f)	Attorney Fee (awarded herein, but unpaid).....	\$3,225.00
	TOTAL debt secured by Fixed Rate Note and Mortgage, including interest to date shown.....	\$119,256.84

Interest shall accrue to the above stated "Total Debt" after the date of judgment at the rate of 5.375% per annum (pursuant to the terms of the Fixed Rate Note and purchase money first Mortgage). Accrued interest shall be added to the "Total Debt" and shall comprise the amount of the Plaintiff's debt secured by the purchase money first Mortgage through the date to which such interest is computed.

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

19. 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. None.

IT IS THEREFORE ORDERED:

20. 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.

21. Pursuant to S. C. Code Ann. § 15-53-20, et seq., the Plaintiff is entitled to a Declaratory Judgment that the mobile/manufactured home of Defendant(s) is an improvement to the

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property which is the subject of this action and it therefore subject to the lien of the Plaintiff's first mortgage. As such, any judicial sale of the subject property in this case shall include the mobile home as an improvement to the real property. Pursuant to S. C. Code Ann. § 56-19-390, following the sale, the South Carolina Department of Motor Vehicles, shall issue a Certificate of Title to the mobile/manufactured home to the successful purchaser, or its successor or assigns, at the foreclosure sale.

22. There is due on the Fixed Rate Note and purchase money first Mortgage set forth in the Complaint the sum of \$119,256.84, 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.

23. 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.

24. 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. Such additional costs, commissions and expenses may be established by affidavit and shall be adjudicated by the court without further hearing.

25. The Defendant(s) liable for the aforesaid judgment debt of the Fixed Rate Note and Mortgage including interest at the rate of 5.375% 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.

26. 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 Special Referee or other court-appointed or designated agent or auctioneer at public auction 1 North Congress Street, York, South Carolina, 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

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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 5.375%.

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 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. The Master in Equity will apply the proceeds of the sale as follows:

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