

State Of South Carolina)
County Of Greenville)

In The Court Of Common Pleas
Case No.: 2015 - CP-23-03181

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENCHMER
2016 JAN -6 AM 11 10

Jean P. Elliott, aka Betty Jean Elliott,
Individually and as Personal
Representative of the Estate of Ervin
W. Elliott,
Plaintiff,

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JAN 27 2016

Foreclosure Order
SC Court of Appeals

Vs.

Alberto Alvarez, J. Guadalupe Ledesma-
Martinez and Estela Gutierrez-Garcia
Defendants,

This Mortgage Foreclosure lawsuit was heard in part on November 5, 2015 and then was completed on December 15, 2015 at the Greenville County Court of Common Pleas. The matter was referred to me by Order Of Reference signed by The Honorable Perry H. Gravely, Presiding Judge for Greenville County, (after a contested hearing), on September 9, 2015 and recorded on September 10, 2015 in the Office of the Clerk Of Court, Greenville County. Plaintiff Jean P. Elliott (Elliott) appeared and was represented by C. Richard Stewart. Defendants Alberto Alvarez, J. Guadalupe Ledesma-Martinez and Estela Gutierrez-Garcia appeared *pro se*; Defendants Ledesma-Martinez and Gutierrez-Garcia are in default. At the continuation of the hearing on December 15, 2015, by Order of this Court, Defendants Alvarez, Ledesma- Martinez and Gutierrez-Garcia were assisted by Spanish language interpreters.

Plaintiff Elliott testified and the following evidence was admitted without objection: Elliott and her husband Ervin Elliott previously owned the property which is the subject of this lawsuit at 14 Henderson St., Greenville, SC (the subject property). Ervin Elliott is deceased and Plaintiff Elliott is the Personal Representative of his estate. On October 21, 2013, Elliott, herself and as Attorney-In-Fact for Ervin Elliott, deeded the subject property to Defendant Alvarez by deed recorded at Deed Book 2433, Page 2603, Greenville ROD.

As part of the consideration for the purchase of this property, and also on October 21, 2013, Alvarez gave Plaintiff and Ervin Elliott a promissory note in the principal sum of \$53,500.00, a copy of which was admitted into evidence without objection. To secure payment on this note, Alvarez granted

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to plaintiff and Ervin Elliott a mortgage, which was duly signed and probated and thereafter recorded at Mortgage Book 5235 at Page 4419, Greenville ROD, on October 21, 2013. This mortgage was also admitted into evidence.

The property which is the subject of this lawsuit is fully described as follows:

All that certain piece, parcel or lot of land with improvements thereon, situate, lying and being in the County of Greenville, State of South Carolina, the same being shown and designated as Lot 33 and part of Lot 32 on a plat of property of Ervin W. Elliott and Jean P. Elliott dated July 3, 2013, and recorded September 5, 2013, in the Office of the Register of Deeds for Greenville County in Plat Book PLL 1162 at Pages 33 - 33, reference to which is hereby made for a more complete and accurate description.

Thereafter, without the knowledge or permission of Elliott or Ervin, Alvarez sold the subject property to Ledesma-Martinez and Gutierrez-Garcia by quitclaim deed filed at Deed Book 2436, Page 5064, recorded December 23, 2013 at the Greenville ROD, a copy of which was admitted into evidence. This sale violated provision 2.7 of the mortgage (Transfer of Property or Interest in Mortgagor) which provides that Alvarez would not sell or in any other manner change the ownership of or title to the property without Elliott and Ervin's permission. Furthermore, Alvarez did not pay the balance due on the mortgage at the time he sold the property, and in fact stopped making monthly payments in August, 2014. The sale of the property without paying off the note and the failure to make payments after August, 2014 constituted defaults on the note and mortgage, entitling Elliott to pursue foreclosure.

The Foreclosure Summons and Complaint and Lis Pendens were filed on May 19 2015. All named Defendants were properly served with the Summons and Complaint and Lis Pendens, Alvarez filed an answer, but as noted before, Ledesma-Martinez and Gutierrez-Garcia are in default.

Elliott testified that the following amounts were due on the note:

Principal	\$49,512.31
Interest at 10% since August 14, 2014	\$6,078.39
Attorney's fees and costs	\$2,820.00
<hr/>	
Total Amount Due	\$58,410.70



Plaintiff requested that this Court enter an Order of Judgment for the above Total Amount Due, to be satisfied through Foreclosure Sale. The Plaintiff waived any deficiency judgment.

Defendant Alvarez testified at length, and it was stipulated that he is an intelligent person well-versed in the real estate business. Although he admitted signing the Promissory Note and Mortgage which were in evidence, he testified that he did not owe the money being requested by Plaintiff because he felt he had been defrauded. However, Alvarez called as a witness Andrew J. White, Jr., who was his lawyer when the Promissory Note and Mortgage were signed and in fact drafted those documents as well as the Deed. Attorney White testified that he discussed the details of the Promissory Note, Deed and Mortgage with Alvarez prior to Alvarez' signing the Note and Mortgage and that Alvarez understood the documents, particularly the provision in the Mortgage which prohibited him from selling the property without Plaintiff's permission. Alvarez' contention that he was somehow defrauded into signing the Promissory Note and Mortgage is not credible.

Defendants Ledesma-Martinez and Gutierrez-Garcia testified that they have made payments of approximately \$650.00 per month on the subject property to Alvarez since 2013 and that they are up-to-date with their payments as required under the quitclaim deed from Alvarez. Although Alvarez has received in excess of \$10,000.00 from the other Defendants since August, 2014, he has not paid any of that money to Elliott. Alvarez had no explanation either for why he has not paid the money to Elliott or what else he has done with the money.

THEREFORE, BASED ON THE EVIDENCE AND TESTIMONY, I find:

1. Alberto Alvarez is the owner of the subject property and Plaintiff Jean P. Elliott, individually and as Personal Representative of the estate of Ervin W. Elliott, holds a note and mortgage on this property.
2. Defendant Alvarez is obviously an intelligent individual experienced in real estate transactions.
3. Defendant Alvarez retained attorney Andrew J. White, Jr. to prepare the Promissory Note and Mortgage in this matter, and both of these documents are clearly enforceable under South Carolina law.

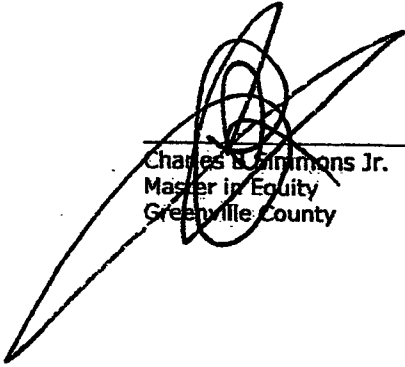
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4. Defendant Alvarez acknowledges signing the Promissory Note and Mortgage with the advice of counsel, and he offered no proof of fraud or other wrongdoing in the execution of those documents.
5. The Promissory Note and Mortgage placed no limit on Defendant Alvarez's ability to sell the subject property, except that he could not sell the property without Plaintiff's permission and, if he sold the property, under the "due on sale" clause of the mortgage he was supposed to pay off the entire debt as represented by the Promissory Note to the Elliotts. Defendant Alvarez did not get Plaintiff's permission to sell the property and failed to pay off the Promissory Note, and in fact has made no payments since August, 2014.
6. Defendants J. Guadalupe Ledesma-Martinez and Estela Gutierrez-Garcia received a quitclaim deed to the subject property from Alberto Alvarez in December, 2013 and now occupy the subject property. This quitclaim deed, which was recorded at Deed Book 2436, Page 5064, Greenville ROD, is void because it violates the provision in the mortgage which forbids Alvarez from selling the property without Plaintiff's permission.
7. Alberto Alvarez is in default on the note and mortgage, having sold the property to Defendants Ledesma-Martinez and Gutierrez-Garcia without Plaintiff's permission and without paying off the note, and in fact has made no payments since August, 2014 on the Note, despite having been paid in excess of \$10,000.00 since that date by Ledesma-Martinez and Gutierrez-Garcia.
8. The principal amount due on the subject note is \$49,512.31; the interest due on this note at 10% since August 14, 2014 is \$6078.39. Given that Defendant Alvarez contested every aspect of this action including the reference of the matter to me and that he presented a lengthy defense which never addressed the actual issues in the case, I find that \$2820.00, as requested by Plaintiff, is a reasonable attorney's fee. Therefore, the total amount of damages awarded to Plaintiff is \$58,410.70.
9. The Summons and Complaint and Lis Pendens in this matter were filed and served properly on all Defendants. Although each Defendant was given every opportunity to present a defense, no Defendant proved any defense to the relief requested in the Complaint.

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10. Plaintiff has proven her entitlement to foreclosure of the mortgage; and to judgment against Defendant Alvarez in the amount of \$58,410.70.
11. The foreclosure sale of the subject property, as described above, shall be advertised in the manner provided by law and shall occur at the February, 2016 sale (February 1, 2016 at 11:00 am) in Greenville County. Counsel for Plaintiff shall make all necessary legal notices, etc.
12. The high bidder at the sale shall pay 5% cash or certified funds at the time of sale and fully comply within 20 days of the sale. If Plaintiff is the successful bidder up to the above judgment amount, she is only responsible for court and sale costs. No deficiency judgment is sought so the sale will be final as of sale date.
13. If it becomes necessary to have Defendants Ledesma-Martinez and Gutierrez-Garcia removed from the subject property after the foreclosure sale, Plaintiff or any other successful bidder at the sale shall have the right to apply for a Writ of Assistance from this Court.
14. All Defendants are hereby restrained from damaging the subject property pending further order of this Court.

AND IT IS SO ORDERED.



Charles B. Simmons Jr.
Master in Equity
Greenville County

Greenville, SC
12/28, 2015

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

JUDGMENT IN A CIVIL CASE
CASE NO: 2015CP2303181

Jean P Elliott vs. Alberto Alvarez

CHECK ONE:

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

FILED-CLERK OF COURT
GREENVILLE, S.C.
PAUL B. WICKENSIMER
2016 JAN 06 PM 11:11

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; Statement of Judgment by the Court:

NOTICE

This is a notice to you that an Order Of Foreclosure in this case has been filed in the Clerk of Court's Office. To obtain a certified copy, you may contact our office by phone (864) 467-8551 or email a request to bjeffords@gmail.com.

If you would like a copy via email, please provide a valid email address.

Dated at Greenville, South Carolina, this 6th Day of January, 2016.

Court Reporter:

PRESIDING JUDGE -

C. Richard Stewart 11 Whitsett St. Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

Alberto Alvarez 17 Latham Dr. Greenville, SC 29617

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the 6th day of Jan., 2016 and a copy mailed first class or placed in the appropriate attorney's box on this 6th day of Jan., 2016 to attorneys of record or to parties (when appearing pro se) as follows:

C. Richard Stewart

11 Whitsett St.

Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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

FORM 4

JUDGMENT IN A L CASE

CASE NO. 2015 CP-23-03181

Jean P. Elliott, et al

Alberto Alvarez et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: C. Richard Stewart	Attorney for : <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
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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. See Page 2 for additional information.
- 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 : Mortgage Foreclosure

INFORMATION FOR THE JUDGMENT 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 (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Jean P. Elliott aka Betty Jean Elliott, individually and as Personal Representative of the Estate of Ervin W. Elliott	Alberto Alvarez; J. Guadalupe Ledesma-Martinez and Estela Gutierrez-Garcia	\$Foreclosure- Deficiency Waived
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:
 14 Henderson St., Greenville SC; Tax Map #0126000301300

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.

3023

12/1/15

FILED-CLERK OF COURT
 GREENVILLE CO. SC.
 PAUL B. W. KLEISER
 2016 JAN 6 PM 11:40