

Exhibit "B"

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

CitiMortgage, Inc.,

Plaintiff,

vs.

Bruce W. Gardner and First Citizens Bank  
and Trust Company, Inc.,

Defendants.

(File No. 4088.01014)

RILEY POPE & LANEY, LLC  
Attorneys for Plaintiff

IN THE COURT OF COMMON PLEAS

C/A NO.: 2010-CP-40-1571

**SPECIAL REFEREE'S ORDER OF  
JUDGMENT OF FORECLOSURE AND  
SALE DECREE**

(Non-Jury)

(Not Eligible for HAMP)

(Deficiency Waived)

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Bruce W. Gardner  
*Pro Se*

MAY 09 2016

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COURT OF COMMON PLEAS  
RICHLAND COUNTY

SC Court of Appeals

Pursuant to Rule 53 SCRPC, the above entitled matter was referred to the undersigned to make appropriate findings of fact and conclusions of law with authority to enter a final judgment in this cause without further order of court. Any appeal from this Order shall be directly to the South Carolina Court of Appeals.

This matter came before the Court on March 9, 2016, for a hearing on Plaintiff's Motion for Summary Judgment. Present at the hearing representing the Plaintiff was Peter M. Balthazor. The Defendant Bruce W. Gardner appeared, *pro se*.

This is an action for a foreclosure of a mortgage of real property located in Richland County, South Carolina. Plaintiff filed and served a Motion for Summary Judgment supported by an Affidavit and attachments on July 20, 2015. Defendant has not filed any counter-affidavits prior to the hearing as required by Rules 6(d) and 56(e), SCRPC.

STANDARD

Summary Judgment is warranted only if there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRPC. "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party." Bloom v. Ravoira, 339 S.C. 417, 529 S.E.2d 710 (2000). The moving party has the initial burden of demonstrating the absence of a genuine issue of material fact. However, once the party moving for summary judgment meets the initial burden of showing an absence of

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evidentiary support for the opponent's case, the opponent must come forward with specific facts showing there is a genuine issue for trial." Garvin v. Bi-Lo, Inc., 337 S.C. 436, 523 S.E.2d 481 (Ct. App. 1999). The opponent cannot merely rely upon the pleadings, but must submit some additional evidence creating a genuine issue of material fact.

"Generally, the party seeking foreclosure has the burden of establishing the existence of the debt and the mortgagor's default on that debt. Once the debt and default have been established, the mortgagor has the burden of establishing a defense to foreclosure such as lack of consideration, payment, or accord and satisfaction." Bell, 385 S.C. at 374-75, 684 S.E.2d at 205 (internal citations omitted).

In support of its motion, Plaintiff submitted an Affidavit from Marc Handley, Vice President – Document Control for CitiMortgage, Inc., the servicer of this mortgage loan. The Affidavit established the authenticity of the Note and Mortgage, terms of the loan agreement, default on the terms of the loan agreement, debt figures, and compliance with all statutory requirements regarding notice. As no counter-affidavits or other admissible evidence was presented, the evidence before the Court is uncontested. Based upon the uncontested evidence, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT:

- 1) The Lis Pendens was filed on March 9, 2010.
- 2) The Summons and Complaint were filed on March 9, 2010.
- 3) Service was made upon the Defendants as shown by the proof of service filed herein.
- 4) The Defendant First Citizens Bank and Trust Company is in default as shown by Affidavit, Notice, or Order filed herein.
- 5) The Defendants and all attorneys of record were notified of the time, date, and place of the hearing in this matter.
- 6) According to the affidavit filed herein, a good faith investigation did not determine that the Defendant, Bruce W. Gardner is in the military service and therefore entitled to protection under the Servicemembers' Civil Relief Act (SCRA) of 2003, 50 U.S.C. § 501 et. seq., or any amendments thereto.
- 7) For value received, Bruce W. Gardner made, executed and delivered a note ("Note") dated December 14, 2007, promising thereby to pay to the order of CitiMortgage, Inc.

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the sum of Eighty Two Thousand Eight Hundred and 00/100 (\$82,800.00) Dollars, with interest at the rate of 6.375% per annum, with a current rate of 6.3750% per annum. 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, Bruce W. Gardner made, executed, and delivered to Mortgage Electronic Registration Systems, Inc. (MERS) as nominee for CitiMortgage, Inc. a certain real estate mortgage ("Mortgage") in writing, dated December 14, 2007, covering real property in Richland County, which is the same as that described in the Complaint. The Mortgage was filed in the Office of the Register of Mesne Conveyances/Register of Deeds for Richland County on December 28, 2007, in Book 1388 at Page 1494. Thereafter the mortgage was assigned to the Plaintiff herein by assignment dated April 17, 2009 and recorded May 13, 2009 in Book 1520 at Page 3794 in the Register of Deeds Office of Richland County.

9) The Mortgage evidences and secures the repayment of money advanced by the mortgagee to, or on behalf of, the mortgagor and constitutes a first mortgage lien on the mortgaged premises.

10) The Plaintiff is the real party in interest pursuant to SCRPC 17(a) and is entitled to enforce the terms of the subject Note and Mortgage. The uncontested affidavit filed in support of summary judgment attests that Plaintiff is the holder of the Note and Mortgage. Moreover, Plaintiff's counsel is in possession of the original Note and Mortgage, which were supplied for the Court's review at the hearing on this matter.

11) The titleholder of record of the subject property as of the filing of the Lis Pendens in this action is Bruce W. Gardner, who is the original mortgagor.

12) Any notice required by the terms of the Note and Mortgage or by state or federal statutes has been given to the applicable Defendants prior to the commencement of this action.

13) The loan evidenced by the Note and Mortgage is serviced by a servicer participating in the Home Affordable Modification Program (HAMP). It is not owned, securitized or guaranteed by Fannie Mae or Freddie Mac. Based on the allegations in the Complaint that the subject loan is not eligible for HAMP modification, the Court finds that there are no HAMP issues to be resolved before foreclosure is ordered or the sale is commenced.

14) As stated in the Certification of Exemption from Administrative Order 2011-05-02-01 filed herein, the real property which is the subject of this action is not an "owner occupied

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dwelling” as defined in the Order. Moreover, Defendant admitted receiving notice of foreclosure intervention but that he failed to respond within 30 days of its delivery.

15) The Note payments which became due on September 1, 2008, and subsequent months, have not been made as provided for therein, and the 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 its attorney for collection by foreclosure.

16) The sum of \$2,947.00 is a reasonable fee to allow as attorney’s fees for Plaintiff’s attorney for services performed and anticipated to be performed until final adjudication of this action, under the terms of the Note and Mortgage. The inclusion of services anticipated to be performed until final adjudication contemplates completion of this matter within a reasonable time and does not include exceptional circumstances delaying conclusion beyond the normal time.

17) The amount due and owing on the Note, with interest at the rate provided in the Note, and other costs and expenses of the within action, including an attorney’s fee, secured by the Note and Mortgage, is as follows:

(a) Principal amount due as of September 1, 2008	\$82,254.59
(b) Interest from August 1, 2008 to April 5, 2015 at a current rate of 6.3750%	\$35,015.87
Additional Per Diem Interest through 3/9/2016	\$4,870.21
(c) Advances	
Property Inspections, BPOs, Appraisals	\$1,702.50
Property Taxes	\$13,728.58
Escrow	\$5,993.69
Prior Counsel FC Fees/Costs	\$2,373.00
Servicing Fees (Interest Accrued on Escrow Advances)	\$2,852.64
(d) Late charges	\$0.00
(e) Costs of collection prior to hearing (service of process, filing fees, etc.	\$25.00
(f) Attorneys Fee	\$2,947.00
<b>Total debt secured by Note and Mortgage, including interest to date shown</b>	<b>\$151,763.08</b>

Interest for the period from the date shown in (b) 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 6.3750% per

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annum (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 Plaintiff's debt secured by the Mortgage through the date to which such interest is computed.

18) The Plaintiff is seeking the usual foreclosure of the mortgage and although deficiency was demanded in the Complaint, Plaintiff now wishes to waive the right to a personal or deficiency judgment pursuant to Rule 71(b) SCRPC.

19) The sale is subject to assessments, county taxes, existing easements, easements and restrictions of record, and other senior encumbrances.

20) The following Defendant claims or may claim a lien upon or interest in the subject property or are otherwise involved in this matter. In the event there is a surplus from the sale of the subject property, the validity, priority and amount of such liens will be determined at a hearing subsequent to the sale, in accordance with Rule 71(c), SCRPC. The Clerk of Court/Register of Deeds is hereby ordered to release said lien in so much as it pertains to the property which is the subject of this action:

*First Citizens Bank and Trust Company, Inc. by virtue of a mortgage not to exceed the amount of \$25,200.00 and recorded January 16, 2008 in Book R1392 at Page 3563 in the Office of the Register of Deeds for Richland County. Any such interest in or lien upon the property is junior and subordinate to Plaintiff's mortgage.*

#### CONCLUSIONS OF LAW

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

- 1) The Plaintiff's Mortgage should be declared a first mortgage lien and Plaintiff should have judgment of foreclosure of the mortgage and the mortgaged property should be ordered sold at public auction after due advertisement.
- 2) The Court finds that there are no HAMP issues to be resolved before foreclosure is ordered or the sale is commenced.
- 3) The Court also finds the real property is not an "owner occupied dwelling" as defined in the May 2, 2011 Administrative Order, and is therefore exempt from said Order.
- 4) The Defendants named herein, and all persons whosoever claiming under Defendants, are forever barred and foreclosed of all right, title, interest, equity of redemption or lien in the said mortgaged premises so sold, or any part thereof.
- 5) Pursuant to Rule 53, SCRPC, this Order shall constitute a final judgment.

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6) There is due to the Plaintiff on the Note and Mortgage set forth in the Complaint the sum of \$151,763.08, as set out in the Findings of Fact *supra*.

7) The amount due in the preceding paragraph (the "Total Debt" as set out in the Findings of Fact *supra*, and later accrued interest on the principal), shall constitute the total judgment debt due Plaintiff and shall bear interest hereafter at the rate of 6.3750% per annum. The amount of the judgment shall be subject to increase to permit the Plaintiff to recover additional costs, commissions and expenses not included in the judgment figures set forth herein. It may also increase to include supplemental compensation for attorney's services not contemplated by the initial fee awarded. Jurisdiction over the fee award and total debt is reserved to facilitate the assessment and payment of any such costs and/or supplemental compensation. Such additional costs, commissions and expenses may be established by statement and shall be adjudicated by the Court without further finding.

8) The Defendants liable for the aforesaid judgment debt including interest at the rate of 6.3750% per annum shall on or before the date of sale of the property hereinafter described, pay to the Plaintiff, or Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

9) 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 Special Referee, at public auction, at 12:00 p.m. at the County Courthouse in Richland, 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 some other day appointed by the Court), on the following terms, that is to say:

10) For cash: The Special Referee, will require, at the time of the bid, a deposit of 5% of the amount of the bid (in cash or equivalent) same to be applied to purchase price if compliance is made, but in the event of non-compliance, the deposit may be forfeited without further hearing and applied first to the costs of the action and then to plaintiff's debt. Should the successful bidder at the regularly conducted sale fail or refuse to make the required deposit at time of bid or comply with the other terms of the bid within twenty (20) days, then the property may be re-sold on the same terms and conditions on some subsequent Sales Day, but at the risk of the defaulting bidder(s).

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11) Interest on the balance of the bid shall be paid through the day of compliance at the rate of 6.3750%.

12) Purchaser shall pay for any statutory commission on sale from the proceeds of sale, deed preparation, costs of recording the deed, and deed stamps.

13) 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.

14) The sale is subject to assessments, county taxes, existing easements, easements and restrictions of record, and other senior encumbrances.

15) The Special Referee, will, by advertisement according to law, give notice of the time and place of such sale and the terms thereof and will execute to the purchaser, or purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, may become a purchaser at such sale, and if, upon such sale being made, the purchaser, or purchasers, should fail to comply with the terms thereof within twenty (20) days after the conclusion of the bidding, then the Special Referee, 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.

16) 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 day upon the 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.

17) If Plaintiff is the successful bidder at the sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of Plaintiff in full, Plaintiff may pay to the Special Referee, only the amount of the costs and expenses crediting the balance of the bid on Plaintiff's indebtedness.

18) The Special Referee will 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;

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

NEXT: Any surplus should be held pending further Order of this court.

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19) In the event the successful bidder is other than the Defendant(s) in possession of the subject property, upon full compliance and title by deed from the Court vested into such purchaser, and upon issuance of a Writ of Assistance by the Court, the Sheriff of Richland 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 purchaser 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.

20) In the event the successful purchaser is someone 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 is said property, and title by deed from the Court is vested into such purchaser, 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 property on the public street or highway or by any other means.

21) In accordance with S.C. Code Ann. §30-9-31, the deed of conveyance made pursuant to said sale shall be indexed by the R.M. C. in the name of the owner of record of subject property immediately prior to execution of the deed, as well as in the name of the Special Referee, who executes such deed as grantor.

22) 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.

23) 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 near the City of Columbia, in the County of Richland, State of South Carolina, the same being shown as Lot Number 220 on a plat of Greenview by Columbia Engineering Company dated April 28, 1950, revised September 4, 1951 and recorded in Plat Book O at Page 136 in the Clerk of Court Office for Richland County SC. Also, being shown on a plat prepared for Leola Darley by R.E. Collingwood, Jr., RLS, dated February 16, 1966 and recorded March 17, 1966 in the Office of the ROD for Richland County, SC in Plat/Record Book 28 at Page 543.

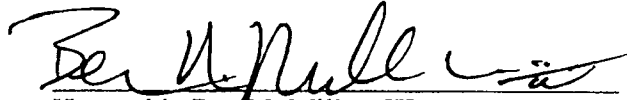
This being the same property heretofore conveyed to Bruce W. Gardner by Deed of Wachovia Bank of Delaware, N.A. dated September 17, 2007 and recorded October 26, 2007 in the Office of the Register of Deeds for Richland County in Deed/Record

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Book 1370 at Page 1416. Subject to Restrictive Covenants recorded in Deed/Record  
Book 1370 at Page 1416.

TMS No. 14203-10-04

Property Address: 104 Abraham Street, Columbia, SC 29203



Honorable Ben N. Miller, III  
Special Referee Richland County

April 28, 2016  
Columbia, South Carolina

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