

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-46-3526

YADKIN BANK

J.W. NEAL CONSTRUCTION, LLC, JOSHUA

WILFRED NEAL, and THE WALKER'S RIDGE

HOMEOWNERS ASSOCIATION, INC.

RECEIVED

JUN 22 2016

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Wright, Worley, Pope, Ekster & Moss, PLLC

Attorney for: Plaintiff or Defendant
or
 Self-Represented Litigant

SC Court of Appeals

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.

ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41, 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 : Foreclosure Action

RECEIVED
MAY 24 2016
By _____

INFORMATION FOR THE PUBLIC 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)
Yadkin Bank	J.W. Neal Construction, LLC	\$60,858.17
Yadkin Bank	Joshua Wilfred Neal	\$60,858.17

If applicable, describe the property, including tax map information and address, referenced in the order: Property located in York County, South Carolina as described in the Lis Pendens in this matter.

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.

Circuit Court Judge

M. Kimball 3063
Judge Code

5/17/16
Date

For Clerk of Court Office Use Only

This judgment was entered on the 18th day of May, 2016 and a copy mailed first class or placed in the appropriate attorney's box on this 18th day of May, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Wright, Worley, Pope, Ekster & Moss, PLLC
310 N Front St, Ste 4-147
Wilmington, NC 28401
ATTORNEY(S) FOR THE PLAINTIFF(S)

John Martin Foster, PO Box 106, Rock Hill, SC 29731
Michael K. Hatch, PO Box 707, Rock Hill, SC 29731
ATTORNEY(S) FOR THE DEFENDANT(S)
David Hamilton
CLERK OF COURT *43*

Court Reporter: Huseby, Inc.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
Civil Action No: 2015-CP-46-3526

YADKIN BANK,)
)
Plaintiff,)
)
vs.)
)
J.W. NEAL CONSTRUCTION, LLC, JOSHUA)
WILFRED NEAL, and THE WALKER'S RIDGE)
HOMEOWNERS ASSOCIATION, INC.,)
)
Defendants.)
_____)

ORDER OF FORECLOSURE
AND SALE

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MAY 24 2016
By _____

FILED-RECEIVED
2016 MAY 18 AM 9:58
DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, and by Order of the Clerk of Court of York County, South Carolina, this case was referred to the undersigned to make appropriate findings of fact and conclusions of law, with authority to enter a final judgment in the case. Any appeal from the final judgment so entered will be to the South Carolina Court of Appeals.

Pursuant to the order of reference a hearing was held May 3, 2016, with objection as to Plaintiff's request for attorney's fees held open to May 10, 2016, with Plaintiff's attorney and bank witness present, with counsel for J.W. Neal Construction, LLC and Joshua Wilfred Neal present. Though a response was filed on behalf of the HOA defendant, its counsel did not appear. Evidence was offered and received as shown in the Record of Hearing. No objection to Plaintiff's attorney's fees request has been lodged. Based on the evidence, I find and conclude as follows:

FINDINGS OF FACT

1. The Lis Pendens, Summons, and Complaint were filed on November 16, 2015.
2. Service was made upon the Defendants named in this Order as shown by the affidavits of the sheriff's department and affidavit of service by certified mail filed with the Court.
3. This matter was referred to me per order of reference filed March 3, 2016.
4. All parties were notified of the time, date, and place of the hearing in this matter.
5. For value received, J.W. Neal Construction, LLC, made, executed and delivered a commercial note dated September 12, 2008, in the original principal sum of \$100,000.00, to American Community Bank, with such original note later modified, with ultimate maturity of the debt extended to July 25, 2014.
6. To better secure the payment of the note described above, Joshua Wilfred Neal executed a personal guaranty for the benefit of American Community Bank regarding the aforementioned note. To further better secure the payment of the note described above, J.W. Neal Construction, LLC, made, executed, and delivered to American Community Bank a mortgage in writing, dated September 12, 2008, encumbering a commercially acquired vacant lot in York County and another lot since released due to sale to a third party, with the subject lot being the same as that described in the Complaint and Lis Pendens. The mortgage was filed and recorded on September 22, 2008, in Book or Volume 10316 at

Handwritten signature/initials

7. American Community Bank was merged into Yadkin Valley Bank and Trust Company, the previous legal name for Yadkin Bank. Yadkin Bank, formerly known as Yadkin Valley Bank and Trust Company, successor by merger to American Community Bank, is the current owner and holder of the Mortgage, the Note, and the Guaranty.

8. This mortgage constitutes a first lien on the subject property.

9. Payment due on the note has not been made when and as due upon the July 25, 2014, maturity date. Counsel for Plaintiff made elective demands upon borrower and guaranties for full payment of the debt, but no such payment was made. The Mortgage does not require notice or demand for payment that has matured, the Note waives demand, and Defendants received the demand letters sent by Plaintiff at its election. Given the default, Plaintiff placed the note and mortgage in the hands of the attorney of record herein for collection by foreclosure. The collateral is a vacant lot, and the loan is for a commercial purpose.

10. The sums hereinbelow, including reasonable attorneys' fees and costs to collect and foreclose, totaling \$60,858.17, is due under the terms of the note, as modified, and mortgage, as follows:

(a) Principal due as of November 6, 2015	\$45,684.42	Per Complaint
(b) Accrued Interest to November 6, 2015	\$ 3,104.63	Per Complaint
(c) Additional Interest as of April 27, 2016	\$ 1,152.58	(Complaint Per Diem)
(d) Costs of collection prior to hearing (service, filing, etc.)	\$ 530.34	
(e) Late Fee as of November 6, 2015	\$ 119.95	Complaint/Banker Affidavit
(f) Attorney's Fees to May 1, 2016	\$ 6,266.25	
(g) Attorney's Fees, to Close	\$ 2,700.00	
(h) Court Reporter for Hearing	\$ 300.00	
(i) Other permissible expenses	<u>\$ 1,000.00</u>	(new estimated costs, e.g. ad)
	\$ 60,858.17	

The foregoing total shall be entered together with interest after the date of judgment at the per diem rate of \$6.6623112.

11. Plaintiff is seeking the usual foreclosure of the mortgage and has in the Complaint expressly reserved its right to a deficiency judgment should the proceeds of sale not be sufficient to satisfy the judgment debt.

12. The Defendants are the borrower and the guarantors. The borrower owns the real property. The HOA has docketed a claim of lien for assessments, for the sum of \$600, September 25, 2014, York County Register of Deeds Number 90084064, Book or Volume 341, Page 288. The forgoing in capacity as borrower, guarantor, owner of record, or HOA may claim or assert a claim, the validity of which is not commented upon by Plaintiff and as all such Defendants are advised to retain counsel, as to any surplus

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from the sale of the subject property, with the validity, priority and amount of any such lien claim to be determined at a hearing subsequent to the sale, in accordance with Rule 71(c) South Carolina Rules of Civil Procedure.

CONCLUSIONS OF LAW

Based on the record herein and the pleadings filed in this proceeding and exhibits thereto, I conclude as follows:

1. The Plaintiff should have judgment of foreclosure of the mortgage and the mortgaged property should be ordered sold at public auction after due advertisement.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. There is due to the Plaintiff on the obligation and mortgage set forth in the Complaint the sum of \$60,858.17, jointly and severally, from J.W. Neal Construction, LLC and Joshua Wilfred Neal, representing the total debt due Plaintiff as set out in Findings of Fact above, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof and said judgment shall be against the foregoing Defendants, JOINTLY AND SEVERALLY.

2. The amount due in the preceding paragraph (the "Total Debt") and late accrued interest on the principal shall constitute the total judgment debt due the Plaintiff and shall bear interest hereafter at the per diem rate of \$6.6623112.

3. The Neal Defendants, or any one of them, 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.

4. On default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint shall be sold by the Master in Equity or by his agent and under his direction at public auction, at the location, and upon the date and time set forth in the Notice of Sale, and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales day shall be on Tuesday next succeeding such holiday, on the following terms, that is to say:

a. For cash: The Master in Equity or his agent and under his direction will require a deposit of 5% on the amount of the bid in cash or equivalent (unless Plaintiff is the successful bidder) the same to be applied to the purchase price upon compliance with the bid. In case of non-compliance within the time specified in the Notice of Sale, the deposit will be forfeited and applied to the costs and Plaintiff's debt.

b. Interest on the balance of the bid shall be paid to the day of compliance at the per diem rate of \$6.6623112.

c. The sale shall be subject to taxes and assessments, existing easements and restrictions and easements and restrictions of record, and any other senior encumbrances.

d. The Purchaser shall pay for the deed preparation and costs of recording the Deed and Deed Stamps.

5. If Plaintiff is the successful bidder at the sale for a sum not exceeding the amount of costs, expenses and the indebtedness due Plaintiff, Plaintiff may pay to the Master in Equity or his agent and under his direction only the amount of the costs and expenses, crediting the balance of the bid on Plaintiff's indebtedness.

6. A personal or deficiency judgment having been demanded, the bidding will remain open for



thirty days after the date of sale, with the sale to be final upon that date.

7. The Master in Equity or by his agent and under his direction will, by advertisement according to law, give notice of the date, 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. If the purchaser or purchasers at the sale should fail to comply with the terms thereof, then the Master in Equity or by his agent and under his direction may advertise the said premises for resale 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.

8. The Master in Equity or by his agent and under his direction will apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of the costs and expenses of this action;

NEXT: To the payment to the 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;

NEXT: Any surplus shall be held pending further Order of this Court.

9. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that in the event the successful bidder is other than the Defendants, if any, or any one of them, in possession herein, the Sheriff, upon receipt of a Writ of Assistance or other order of ejectment, is authorized 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 bidder or his or her assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his and her assigns in such peaceable possession.

10. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendants named herein, and all persons whosoever claiming under Defendants, 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.

11. IT IS FURTHER ORDERED that the deed of conveyance made pursuant to said sale shall contain the names of only the first-named Plaintiff and the first-named Defendant, and the Defendant who was the titleholder 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; and, the Register of Deeds is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

12. 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.

13. The following is a description of the premises herein ordered to be sold:

All that certain piece, parcel, or tract of land lying and being in the City of Rock Hill, County of York, State of South Carolina, and being shown and designated as Lot 73, containing .231 acres upon plat entitled "A Final Plat for Walker's Ridge" prepared by James T. Poore, Jr. SCPLS No. 15191, dated March 19, 2008, and recorded in the Office of the Clerk of Court for York County, South Carolina, in Plat Book D0322 at Page 9, which plat is incorporated herein by reference, and having such metes, bounds, courses, and distances as by reference to said plat will more fully appear.

This being the identical property conveyed to J.W. Neal Construction, LLC by deed dated September 12, 2008, and recorded September 22, 2008, in Book 10316 at Page 251 in the Office of the Clerk of Court for York County, South Carolina.

York Parcel No. 633-01-03-073

JW
4

Lot 73, Walker's Ridge, York County, SC

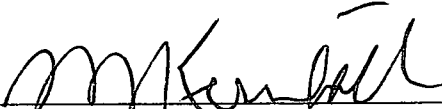
374 Village Loop Dr., Rock Hill, SC 29732

For a complete description of the property encumbered by the Mortgage, the undersigned craves reference to the Mortgage, the terms of which are incorporated herein by reference.

14. The Court notes that the Supreme Court's Administrative Order regarding the Home Affordable Modification Program is not applicable to this commercial loan upon a vacant lot.

AND IT IS SO ORDERED this 17th day of May, 2016.

York, York County, South Carolina



Honorable S. Jackson Kimball
York Master-in-Equity



STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
Civil Action No: 2015-CP-46-3526

YADKIN BANK,)
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 Plaintiff,)
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 vs.)
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 J.W. NEAL CONSTRUCTION, LLC, JOSHUA)
 WILFRED NEAL, and THE WALKER'S RIDGE)
 HOMEOWNERS ASSOCIATION, INC.,)
)
 Defendants.)
 _____)

Record of Hearing

FILED-RECEIVED
2016 MAY 18 AM 8:58
DAVID DANILTON
C.C.P. & S.
YORK COUNTY, SC

Pursuant to an Order of Reference, a mortgage foreclosure hearing was held before the undersigned Master-in-Equity for York County, on May 3, 2016, at 11:00 a.m., in York, South Carolina.

Plaintiff's Attorney, Elizabeth Wright of Wright, Worley, Pope, Ekster & Moss, PLLC, was present, together with Plaintiff's Witness, Seth Triplett, Special Collections Assets Officer and OREO Manager for Yadkin Bank. Appearing at the hearing for the Defendants was Defendants' Attorney, John Martin Foster, and ~~Defendant, Joshua Wilfred Neal~~, and the following, if noted: N/A

I. SUMMARY OF PLEADINGS BY THE COURT:

LIS PENDENS (S.C. Code Ann. §15-11-10) filed on November 16, 2015, as captioned above, naming the parties to the action noted hereinabove; the mortgage being foreclosed dated September 12, 2008, and recorded September 22, 2008, in Book 10316, Page 255, York County Registry, and describing the property being foreclosed.

SUMMONS AND VERIFIED COMPLAINT filed on November 16, 2015, and describing the same property as the Lis Pendens.

SERVICE (Rule 4, SCRCP) of Summons, Complaint, and Lis Pendens as follows: Defendants, J.W. Neal Construction, LLC and Joshua Wilfred Neal, upon Mr. Neal as agent and principal of the entity and for himself on December 11, 2015, by the Sheriff of Mecklenburg County, NC; and, upon The Walker's Ridge Homeowners Association, Inc. on November 23, 2015, by service by certified mail upon its registered agent, as all of the foregoing is evidenced by the filed Mecklenburg Sheriff's Affidavits of Service in the Court file and the filed Affidavit of Service by Certified Mail in the Court file.

RESPONSES being by Attorney, Michael K. Hatch, dated November 25, 2015, giving notice of appearance for the HOA and requesting application of surplus funds, if any from Plaintiff's sale, to the HOA debt; and, by Attorney, John Martin Foster, dated January 11, 2016, presenting an Answer and other defenses to Plaintiff's Complaint.

MOTION and ORDER OF REFERENCE filed March 3, 2016, referring case to the Master-in-Equity (Rule 53, SC R. Civ. P.), signed by the Hon. David Hamilton, for hearing and final order with appeal directly to the Court of Appeals.

II. PLAINTIFF'S CASE:

Plaintiff's attorney delivered the following exhibits, and they were received into evidence by the Court: Lis Pendens and Verified Complaint and exhibits being the note, mortgage, guaranties, merger information for Plaintiff bank, and demands; the Affidavit of Plaintiff establishing the debt due and exhibits being the certified mailing return receipts upon the bank's demand letters to debtors regard notice of the Plaintiff's elective demand letters, NC Secretary of State information for the entity debtor, and search software address results for the entity debtor; and, Affidavit of Plaintiff's attorneys' fees and costs with exhibits being the invoices of costs and fees and instruments of title to resolve the title issue created by the entity debtor's transfer of Plaintiff's collateral.

III. NEAL DEFENDANTS' CASE:

The Answer contends Plaintiff did not give debtors notice required by the Mortgage; and, thus, the entire foreclosure proceeding is void.

The following is a summary of the case presented to the Court at the hearing:

The mortgage being foreclosed describes the same property as the Lis Pendens and Complaint. The Plaintiff is the present owner and holder of the note, guaranties, and mortgage, as successor in interest to American Community Bank.

The note, which financed the commercial acquisition of a vacant lot, and mortgage are in default due to nonpayment upon maturity of July 25, 2014, and the Neal Defendants received Plaintiff's demand letters. Notice at least 10 days in advance of the hearing in this matter has been given to all parties entitled to such notice. The initial hearing in this matter was rescheduled to May 3, 2016, to accommodate possible debtor refinance of this debt with another institution.

Plaintiff's mortgage is a first lien.

The Plaintiff's affidavit of debt and Attorney's fees and cost affidavit show the debt to be as follows:

- | | | |
|--|-------------|---------------|
| (a) Principal due as of November 6, 2015 | \$45,684.42 | Per Complaint |
| (b) Accrued Interest to November 6, 2015 | \$ 3,104.63 | Per Complaint |

(c) Additional Interest as of April 27, 2016	\$ 1,152.58	(Complaint Per Diem)
(d) Costs of collection prior to hearing (service, filing, etc.)	\$ 530.34	
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(g) Attorney's Fees, to Close	\$ 2,700.00	
(h) Court Reporter for Hearing	\$ 300.00	
(i) Other permissible expenses	\$ <u>1,000.00</u>	(new estimated costs, e.g. ad)
	\$ 60,858.17	

As permitted by the loan documents, Plaintiff seeks to recover the above-stated reasonable attorney's fees and out-of-pocket expenses incurred in this action.

The entire amount claimed by Plaintiff is \$60,858.17, plus interest and additional costs to the date of the Master in Equity's Deed in this action. Interest on the debt runs at the per diem rate of \$6.6623112. Plaintiff has preserved its right to seek a deficiency judgment.

As set forth in the Complaint, Plaintiff seeks foreclosure of its mortgage, establishment of the total debt on the note and mortgage, and sale of the subject property at a judicial sale on June 6, 2016, at 11:00 at the York County Equity Court.

S/S JACKSON KIMBALL

Master-in-Equity S. Jackson Kimball

York, York County, South Carolina

Date: May 17, 2016

Signed: *Elizabeth Wright*
Elizabeth Wright, Esq. for Plaintiff
Effective May 3, 2016, Signed May 2, 2016

Sworn to and subscribed before me this the 2nd day of May, 2016, in Wilmington, North Carolina.

Linda K. Solomon
Notary Public

My Commission Expires: 08-05-2020

