

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

RECEIVED

SEP 26 2016

APPEAL FROM RICHLAND COUNTY
Court of Master in Equity
The Honorable Joseph M. Strickland, Master in Equity

SC Court of Appeals

Case No. 2014-CP-40-3950

Eugene G McDonald, Individually,

Appellant,

v.

First Citizens Bank and Trust Company, Inc.,
Successor by merger to Community Resource
Bank, N. A.

Respondents.

AMENDED NOTICE OF APPEAL

Eugene G McDonald, Individually appeal the Order of the Honorable Joseph M. Strickland dated July 20, 2010. Appellant received written notice of entry of this order on August 18, 2016.

September 25, 2016



Eugene G. McDonald

Pro se

4533 Ivy Hall Dr

Columbia, South Carolina 29206

Other Counsel of Record:

Mary M. Caskey

Attorney for the Respondents

Haynsworth Sinkler Boyd P.A.

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

Case No. 2014-CP-40-3950

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SC Court of Appeals

First Citizens Bank and Trust Company,
Inc., successor by merger to Community
Resource Bank, N.A.,

Plaintiff,

vs.

SOH Properties, LLC, Ivan A. Roldan,
and Eugene G. McDonald aka Eugene G.
McDonald III,

Defendants.

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

(Deficiency Demanded as to SOH Properties, LLC,
Ivan A. Roldan, and Eugene G. McDonald aka
Eugene G. McDonald III)

FILED
AUG -2 PM 4:00
CLERK OF COURT

I, the undersigned, Master in Equity for Richland County, hereby find that pursuant to Order of Default and Mandatory Order of Reference granted in the above captioned case, a hearing was held on June 29, 2016, attended by Mary M. Caskey of Haynsworth Sinkler Boyd, P.A., attorneys for First Citizens Bank and Trust Company, Inc., successor by merger to Community Resource Bank, N.A. ("Plaintiff") and David Walker as witness for Plaintiff. Defendant Eugene G. McDonald aka Eugene G. McDonald III appeared pro se. Defendants SOH Properties, LLC and Ivan A. Roldan did not appear.

Since this foreclosure action involves mortgages on commercial property, the Home Affordable Modification Program is inapplicable.

This foreclosure action is exempt from the Supreme Court of South Carolina's May 2, 2011 Administrative Order ("Administrative Order") because this action involves the foreclosure of commercial loans. As such, the subject property is not an Owner-occupied dwelling as defined in the Administrative Order, as evidenced by the Certificate of Exemption.

Testimony was proffered, which is herewith reported, and from the testimony and evidence, I find and conclude as follows:

FINDINGS OF FACT

1. The Lis Pendens, Civil Action Coversheet, Certificate of Exemption from ADR, Notice of Foreclosure Intervention, Summons, and Complaint with Exhibits (collectively hereinafter referred to as "Pleadings") in the Office of the Clerk of Court for Richland County on June 20, 2014.
2. The Pleadings were served upon the president of SOH Properties, LLC ("SOH") on September 11, 2014, as evidenced by the Affidavit of Service item on file with the Court.
3. The Pleadings were served upon Ivan A. Roldan ("Roldan") via personal service on July 1, 2014, as evidenced by the Affidavit of Service item on file with the Court.
4. The Pleadings were served upon Eugene G. McDonald aka Eugene G. McDonald III ("McDonald") via personal service on July 1, 2014, as evidenced by the Affidavit of Service item on file with the Court.
5. The Order of Default as to Roldan was filed with the Court on March 2, 2015.
6. SOH and McDonald filed an Answer and Crossclaim on August 28, 2014. SOH and McDonald filed a Notice of Motion and Motion to Amend Answer of SOH and McDonald on November 26, 2014. McDonald filed a second Notice of Motion and Motion to Amend Answer of Defendant McDonald on February 25, 2015. Both of McDonald's motions for leave to amend were denied, and on motion of the Plaintiff, the answer of SOH was stricken by Order entered on March 2, 2015. An Order Granting Plaintiff's Motion for Order of Reference and Denying Defendant McDonald's Motion for Leave to Amend Answer to Assert Counterclaims was filed on November 13, 2015.

7. Upon information and belief, the no defendant is not an individual entitled to protection under the Servicemembers Civil Relief Act, 50 USCS Appx. §§ 501 *et seq.* (2004).

8. The defendants were notified of the time, date, and place of the hearing in this matter.

9. For value received, on or about April 20, 2007, SOH executed and delivered to Plaintiff a South Carolina – Universal Note in the original principal amount of Seventy Four Thousand Five Hundred and No/100 (\$74,500.00) Dollars (“Note-1”).

10. To secure the repayment of the Note-1, and the debt evidenced thereby, SOH executed and delivered unto Plaintiff a certain Real Estate Mortgage dated April 20, 2007 (“Mortgage-1”), whereby SOH mortgaged to Plaintiff the real property described in the Mortgage-1 (“Mortgaged Property”). The Mortgage-1 was recorded on April 26, 2007, in the Office of the Register of Deeds for Richland County in Book 1306 at Page 3670.

11. SOH is the legal owner of the Mortgaged Property.

12. Mortgage-1 is a valid first priority mortgage lien on the Mortgaged Property.

13. Plaintiff is the current owner and holder of Note-1 and Mortgage-1.

14. On or about August 31, 2009, SOH executed and delivered to Plaintiff a Commercial Note in the original principal amount of Fourteen Thousand Nine Hundred Thirty Seven and 37/100 (\$14,937.37) Dollars (“Note-2”).

15. To secure the repayment of Note-2, and the debt evidenced thereby, SOH executed and delivered unto Plaintiff a certain Mortgage of Real Estate dated August 31, 2009 (“Mortgage-2”), whereby SOH mortgaged to Plaintiff the Mortgaged Property. Mortgage-2 was recorded on September 3, 2009, in the Office of the Register of Deeds for Richland County in Book 1553 at Page 2704.

16. Mortgage-2 is a valid mortgage lien on the Mortgaged Property.

17. To further induce Plaintiff to enter into the Note, and as additional security for the Note and the debt evidenced thereby, and for valuable consideration given, Roldan and McDonald made, executed and delivered unto Plaintiff those certain Guaranty items dated April 30, 2007, October 30, 2007, June 18, 2008, and August 31, 2009 (collectively, the "Guaranties").

18. Plaintiff is the current owner and holder of Note-2 and Mortgage-2.

19. Note-1 and Note-2 may hereinafter be referred to collectively as the "Note."

20. Mortgage-1 and Mortgage-2 may hereinafter be referred to collectively as the "Mortgage."

21. Payments due on Plaintiff's Note and Mortgage have not been made as provided for therein, and the Plaintiff, as the holder thereof, has elected to require immediate payment of the entire amounts due thereon and has placed the Note and Mortgage in the hands of the attorney herein for collection.

22. The following amounts are due and owing on Plaintiff's Note, Mortgage, and Guaranties as of June 29, 2016, including costs and expenses of collection and attorneys' fees, which were divided evenly between Note-1 and Note-2:

As to Note-1

(a) Principal Balance	\$66,330.98
(b) Accrued Interest Due	\$17,142.90
(c) Late Charges	\$555.57
(d) Appraisal	\$1,105.00
(e) Taxes	\$10,423.15
Balance due on Note-1	\$95,557.60
(f) Filing, service, motion, and referral fees	\$1,704.83
Total Balance due on Note-1	\$97,262.43
(g) Attorneys' Fees	\$8,750.00
Total Debt on Note-1	\$106,012.43

Interest continues to accrue on Note-1 after June 29, 2016, at the rate of 8.25% *per annum* (which is currently \$17.52 *per diem*).

As to Note-2

(a) Principal Balance	\$12,737.06
(b) Accrued Interest Due	\$5,461.15
Balance due on Note-2	\$18,198.21
(c) Filing, service, motion, and referral fees	\$1,704.83
Total Balance due on Note-2	\$19,903.04
(d) Attorneys' Fees	\$8,750.00
Total Debt on Note-2	\$28,653.04

Interest continues to accrue on Note-2 after June 29, 2016, at the rate of 7.00% *per annum* (which is currently \$2.48 *per diem*).

23. Plaintiff is seeking foreclosure of the Mortgage and the right to a personal or deficiency judgment against SOH, Roldan, and McDonald, with a credit against the judgment to be given for the net proceeds received by Plaintiff for the sale of the Mortgaged Property. However, Plaintiff reserves the right to waive deficiency prior to the sale.

24. McDonald testified that Plaintiff promised him that the Note and Mortgage would be modified or refinanced. McDonald called Dave Davies, a former employee of Plaintiff, to question Mr. Davies about the proposed modification. Mr. Davies testified that while Plaintiff was willing to consider a resolution to resolve the debt, Roldan, a co-guarantor and member of SOH, never provided any financial documentation or otherwise applied for any modification of the Note and Mortgage. Mr. Davies testified that he never promised McDonald that the Note and Mortgage would be modified, or that an extension on the debt would be granted. Although McDonald offered several emails between McDonald and Plaintiff or its representatives concerning the debt, none of the emails evidenced any written modification or renewal of the Note and Mortgage. Mr. McDonald admitted that he had no written agreement with Plaintiff to modify the Note and Mortgage, and instead believed he was entitled to a modification because

Plaintiff told him they would consider a modification and because the loan had previously been modified.

CONCLUSIONS OF LAW

I, therefore, conclude that the Mortgage is not subject to modification under the Home Affordable Modification Program, and that the foreclosure proceeding is exempt from the Administrative Order. I further concluded that the Plaintiff should have judgment of foreclosure of the Mortgage and the Mortgaged Property should be ordered sold at public auction after due advertisement, and a personal or deficiency judgment against SOH, Roldan, and McDonald, with a credit against the judgment to be given for the net proceeds received by the Plaintiff for the sale, shall be entered upon the judgment rolls for Richland County. I find that McDonald failed to present any evidence that the Note and Mortgage had been modified or to support any defense to the claims asserted by Plaintiff. The Mortgaged Property shall be sold at the foreclosure sale conducted by the Master in Equity for Richland at the next available sales date.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. Since this foreclosure action involves mortgages on commercial property, the Home Affordable Modification Program is inapplicable.
2. This foreclosure action is exempt from the Administrative Order because this action involves the foreclosure of commercial loans. As such, the subject property is not an Owner-occupied dwelling as defined in the Administrative Order, as evidenced by the Certificate of Exemption.
3. That there is due to the Plaintiff on Note-1 set forth in the Complaint the sum \$106,012.43 as of June 29, 2016, and Plaintiff is entitled to judgment for said amount.

4. The amount due in the proceeding paragraph shall constitute the total judgment debt due under Note-1 to the Plaintiff and shall bear interest hereafter until paid on Note-1 at the rate of 8.25% *per annum* (which is currently \$17.52 *per diem*) from June 29, 2016, until the entry of judgment and at the Note-1 rate thereafter. Further, to the extent Plaintiff advances money for insurance or other expenses to preserve the property after June 29, 2016, such advances may be added to the total judgment debt.

5. That there is due to the Plaintiff on Note-2 set forth in the Complaint the sum \$28,653.04 as of June 29, 2016, and Plaintiff is entitled to judgment for said amount.

6. The amount due in the proceeding paragraph shall constitute the total judgment debt due under Note-2 to the Plaintiff and shall bear interest hereafter until paid on Note-2 at the rate of 7.00% *per annum* (which is currently \$2.48 *per diem*) from June 29, 2016, until the entry of judgment and at the Note-2 rate thereafter. Further, to the extent Plaintiff advances money for insurance or other expenses to preserve the property after June 29, 2016, such advances may be added to the total judgment debt.

7. That SOH, Roldan, and McDonald are liable for the aforesaid debt, shall on or before the date of sale of the property hereinafter described, may pay to the Plaintiff's attorneys, the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

8. That on default of payment at or before the time herein indicated, the Mortgaged Property be sold by the Richland County Master in Equity or his agent, at public auction, at the Richland County Courthouse, Columbia, South Carolina, County and State aforesaid, 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 the day designated by the selling officer succeeding such holiday), on the following terms, that is to say:

The sale shall be for cash, and the highest bidder shall be required to make a cash deposit of five (5%) percent on the bid as earnest money and as evidence of good faith. If the Plaintiff is the successful bidder at the sale, the Plaintiff may, after paying the costs of the sale, apply the debt due upon its Mortgage against its bid in lieu of cash. Should the person making the highest bid at the sale fail to comply with the terms of his bid by depositing the said five (5%) percent in cash, then the property shall be sold at the risk of such bidder on the same sales date or some subsequent date as the selling officer may find convenient and advantageous. Should the last and highest bidder fail to comply with the terms of his bid within thirty (30) days of the final acceptance of his bid, then the selling officer shall re-advertise and resell the property on the same terms on a subsequent date at the risk of such bidder. Persons submitting additional bids after the initial sale shall deposit five (5%) percent of their bids in cash as prescribed above. The Richland County Master in Equity or his designated representative, shall promptly return all deposits except the deposit securing the highest bid. The sale shall be subject to taxes, to existing easements and restrictions, and to homeowners association assessments accruing subsequent to the date of the deed/title issued to the purchaser. Purchaser shall pay all costs of recording the deed.

9. Plaintiff is seeking foreclosure of the Mortgage and does not waive the right to a personal or deficiency judgment. However, Plaintiff reserves the right to waive deficiency prior to the sale.

10. That after advertisement according to law, give notice of the time and place of such sale, and the terms thereof, that the Richland County Master in Equity convey to the purchaser, or purchasers, a deed to the premises sold; and that the Plaintiff, or any other party to this action, may become a purchaser at such sale, and that if, upon such sale being made, the purchaser or purchasers should fail to comply with the terms thereof, the Court may advertise the said premises of sale on the next, or some other subsequent Sales Day, at the risk of the former highest bidder, and so from time to time thereafter until a compliance shall be secured. The deed will be taken subject to payment by grantee of any taxes or special assessments constituting a lien against the property sold under this Report and hereinafter more fully described. Pursuant to

S.C. Code §12-24-40(13), the successful bidder other than Plaintiff shall pay the cost of deed stamps on said deed.

11. That the proceeds of the sale be applied as follows:

FIRST, to payment of the amount of the costs and expenses of this action, including the Master in Equity fee and the costs of advertising the Notice of Sale, and any taxable disbursements by the attorneys in the action;

SECOND, to the payment of 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; and

THIRD, any surplus proceeds to be held subject to further order of this Court.

12. That upon the making of the sale of the Mortgaged Property, as hereby ordered, and the execution and delivery to the purchaser of a deed to the premises, the said purchaser or purchasers be let into possession of the premises on production of the deed; and the Sheriff of Richland County shall put the holder of the deed into possession of the premises.

13. That each Defendant named herein and all persons whosoever claiming under him, them or it, be forever barred and foreclosed of all right, title and interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.

14. The undersigned Master in Equity will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance and disposing of any surplus funds pursuant to Rule 71(c) SCRPC.

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

All that certain piece, parcel, or lot of land, with improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, described as Lot Nine (9), Hutto Court as shown on a plat of Hutto Court and showing Hutto Court Extension by William Wingfield, dated July 10, 1952, recorded July 25, 1952 in Book 'O' at Page 130, Slide 14, having the following boundaries and measurements to wit: on the Northwest by Lot Eight (8) whereon it measures for a

distance of 115.2 feet; on the Northeast by property now or formerly of "Bayview" whereon it measures for a distance of 120.0 feet; on the Southeast by Lot No. 10 whereon it measures for a distance of 145.1 feet; on the Southwest by the right-of-way of Hutto Court whereon it fronts and measures for a distance of 50.0 feet, all as more fully shown on a said plat, to which reference is hereby, all as more fully shown on said plat, to which reference is hereby craved, be all measurements a little more or less.

This being the same property conveyed unto SOH Properties, LLC, by deed from Ivan A. Roldan and Shannon M. McDonald, dated September 15, 2004, recorded September 17, 2004, in the Register Deeds Office for Richland County in the Record Book 978 at Page 1709, 1710, 1711, and 1712.

TMS No: 14107-04-25

Property Address: 52 Hutto Court, Columbia, SC 29204.

16. If the Plaintiff or the Plaintiff's representative does not appear at the scheduled sale of the above-referenced property, then the sale of the property will be null, void and of no force and effect. In such event, the sale will be rescheduled for the next available sales day.

July 20, 2016


Joseph M. Strickland
Richland County Master in Equity

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Eugene G McDonald

Appellants,

v.

First Citizens Bank and Trust Company, Inc.,
Successor by merger to Community Resource
Bank, N. A

Respondents.

PROOF OF SERVICE

I certify that I have served the Amended Notice of Appeal on First Citizens Bank and Trust Company, Inc., Successor by merger to Community Resource Bank, N. A by depositing a copy of it in the United States Mail, postage prepaid, on September 26, 2016, addressed to the attorney of record, Mary M. Caskey, Haynsworth Sinkler Boyd P. A., P. O. Box 11889.

September 26, 2016



Eugene G. McDonald
4533 Ivy Hall Dr
Columbia, South Carolina 29206
Pro se