

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

FORM 4

JUDGMENT IN A CIVIL CASE

RECEIVED

CASE NO. 2015-CP-10-2322

NOV 16 2016

SC Court of Appeals

Green Tree Servicing LLC

Paula R. Illingworth

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or
	<input type="checkbox"/> Self-Represented Litigant

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

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 2016 OCT 13 AM 11:16  
 FILED  
 CLERK OF COURT  
 CHARLESTON, SC

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: Plaintiff's Motion to Reconsider is respectfully denied without a rehearing.

ORDER INFORMATION

This order  ends  does not end the case.

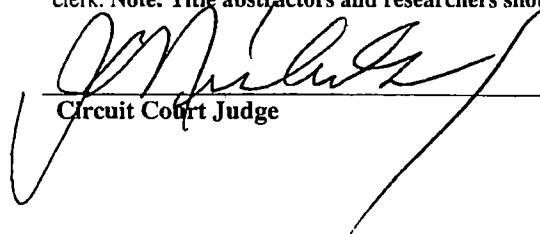
Additional Information for the Clerk : \_\_\_\_\_

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)
If applicable, describe the property, including tax map information and address, referenced in the order: N/A		

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

2117  
 Judge Code

10/12/16  
 Date

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 COUNTY OF CHARLESTON  
 IN THE COURT OF COMMON PLEAS

FORM 4

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CASE NO. 2015-CP-10-2322

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Green Tree Servicing, LLC

Paula R. Illingworth

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 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 AND 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 :

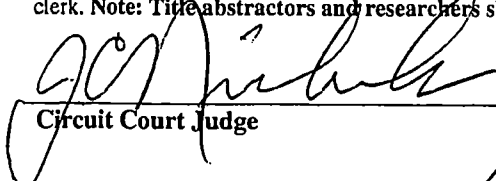
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 Circuit Court Judge

2117  
 \_\_\_\_\_  
 Judge Code

9/20/16  
 \_\_\_\_\_  
 Date

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

CASE NO: 2015-CP-10-2322

Green Tree Servicing, LLC.

PLAINTIFF

v.

Paula R. Illingworth

DEFENDANT

**FILED**

SEP 20 2016

**JULIE J. ARMSTRONG**  
Order Granting Defendant's  
Motion to Dismiss  
**CLERK, E.P. & G.S.**

**RECEIVED**

NOV 16 2016

**SC Court of Appeals**

This matter came before the court on the Motion to Dismiss filed by the Defendant, Paula R. Illingworth, ("Defendant"). Defendant moves to dismiss the Summons and Complaint of the Plaintiff Green Tree Servicing, LLC, ("Plaintiff"), pursuant to Rules 12 and 41 of the South Carolina Rules of Civil Procedure. For the reasons set forth below, the Motion is Granted.

#### **I. STATEMENT OF THE FACTS**

This case arises from a foreclosure initially filed in Case Number 2013-CP-10-5160. This case was voluntarily dismissed by Plaintiff prior to receiving a response from the Defendant pursuant to Rule 41(a)(1) on January 13, 2014.

On March 27, 2014, Plaintiff recommenced the action, filed as Case Number 2014-CP-10-2042. Mrs. Illingworth filed a response to the complaint. The case was referred to the Master in Equity for Charleston County in September 2014. In October 2014 the judge entered an order stating that she was not in default. Subsequent to the reference to the Master in Equity, there were three separate hearings scheduled where Mrs. Illingworth appeared, but the Plaintiff was not prepared to go forward. On March 18, 2015, Judge Scarborough dismissed the action. The Form 4 order checked the box marked "ACTION DISMISSED: . . . Rule 41(a)." The Master in Equity wrote in the section titled "Order Information," "Dismissed per Rule 41(a), Failure to Prosecute, Third Appearance by Defendant--Plaintiff not ready to proceed." Neither a motion to reconsider nor an appeal was filed in this matter.

After dismissal, Plaintiff refiled the action as Case Number 2015-CP-10-2322 on April 23, 2015. Defendant filed its Motion to Dismiss pursuant to Rule 12 and Rule 41 South Carolina Rules of Civil Procedure on May 26, 2015.

#### **II. Argument**

Rule 41 of the South Carolina Rules of Civil Procedures governs the dismissal of actions. Subsection 41(a) governs "Voluntary Dismissals" and subsection 41(b) governs "Involuntary Dismissals." The first dismissal in this matter was completed pursuant to Rule 41(a)(1) by the

Plaintiff. Under the rule, the first such dismissal is without prejudice, but a second would be with prejudice. Subsection (a)(2) contemplates when other parties have appeared and the plaintiff asks for the case to be dismissed. 41(a) only applies with the Plaintiff has asked for the dismissal.

Subsection 41(b) concerns "Involuntary Dismissals." By definition, this section contemplates times when the plaintiff has not asked for the action to be dismissed. It says, "For failure of the plaintiff to Prosecute or to comply with these rules or any order of court, the Defendant may move for dismissal of an action..." It further states that "unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule . . . operates as an adjudication upon the merits." The notes to this section reinforce the clarity of the rule saying "Rule 41(b) also makes clear when involuntary dismissal operates as an adjudication on the merits." The clear meaning of Rule 41(b) is that when a case is dismissed for failure to prosecute, this is the same as an adjudication on the merits and will act as a bar against further action. It is the same as if the plaintiff lost.

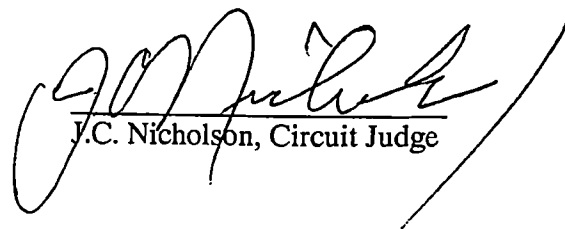
In this matter, the plaintiff filed the first case and voluntarily dismissed their action. Then it filed again. Over the course of many months, three separate hearings were scheduled with the court where the Defendant appeared but the Plaintiff was not prepared to present its case. At the second hearing, the Master in Equity warned the Plaintiff that he would dismiss their action if they appeared before him again unprepared to proceed. On the third such occasion, the court dismissed the case for failure to prosecute.

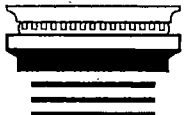
The dismissal was well within the discretion of the trial court. In *Georganne Apparel, INC. v. Todd*, the South Carolina Appellate Court found a trial court had the discretion to dismiss for failure to prosecute. It said, "Plaintiff has been given abundant opportunity to litigate. There is a limit beyond which the court should allow a litigant to consume the time of the court and to prolong unnecessarily time, effort, and costs to defending parties. The granting of the order was a discretionary matter." 303 S.C. 87, 92, 399 SE 2d 16 (Ct.App. 1990). In this matter, the Plaintiff called the defendant to court on three separate occasions and was then unprepared to proceed. This consumed the time of the court and that of the defendant.

For these reasons, I find that the dismissal in Case number 2014-CP-10-2042 was, under Rule 41(b) of the South Carolina Rules of Civil procedure, an adjudication on the merits. Under the principle of res judicata, the Plaintiff is judicially estopped from bringing this matter again. Accordingly, I grant the Defendant's Motion to Dismiss.

ACTION DISMISSED.

9/20, 2016  
Charleston, SC

  
J.C. Nicholson, Circuit Judge



**CRAWFORD & VON KELLER, LLC**

November 11, 2016

South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211

**RECEIVED**  
NOV 16 2016  
SC Court of Appeals

**RE: Green Tree Servicing, LLC v. Paula R. Illingworth**  
**C/A NO.: 2015-CP-10-02322**  
**Our File No.: 3323.0264**

Dear Ms. Kitchings:

Pursuant to your November 8, 2016 deficiency letter I am enclosing the two (2) copies of the orders being challenged on appeal that were omitted from the initial filing. I would appreciate your filing one copy and returning a clocked copy in the envelope provided for your convenience.

Should you require anything further please do not hesitate to contact me.

Sincerely,



Sara C. Hutchins

Enclosure(s)

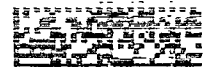
cc: Shawn M. French (w/enclosures)

Crawford & von Keller, LLC  
Post Office Box 4216  
Columbia, SC 29210

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**SC Court of Appeals**