

RECEIVED

FEB 24 2017

SC Court of Appeals

CitiFinancial Servicing LLC

PLAINTIFF

vs.

Julia A. Thompson, et al.

DEFENDANTS.

Submitted by: Riley Pope & Laney, LLC Post Office Box 11412, Columbia, SC 29211	Attorney for Plaintiff
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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), SCRCP; Rule 41(a), SCRCP (Voluntary Dismissal); Rule 43(k), SCRCP (Settled); Other --
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRCP; 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: _____

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)
		N/A

If applicable, describe the property, including tax map information and address, referenced in the order:
 Tax Map # 057-01-01-032 and 057-01-01-033; 721 General Moultrie, Bonneau, SC 29431

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


 Master-In-Equity Judge

307
 Judge Code

10/20/16
 Date

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

CitiFinancial Servicing LLC,

Plaintiff,

vs.

Julia A. Thompson, the Personal Representative, if any, whose name is unknown, of the Estates of Marvin J. Stanley and Greta J. Stanley, and any other Heirs-at-Law or Devisees of Marvin J. Stanley and Greta J. Stanley, Deceased, their heirs, Personal Representatives, Administrators, Successors and Assigns, and all other persons entitled to claim through them; all unknown persons with any right, title or interest in the real estate described herein; also any persons who may be in the military service of the United States of America, being a class designated as John Doe; and any unknown minors or persons under a disability being a class designated as Richard Roe, The South Carolina Department of Motor Vehicles, and The South Carolina Department of Revenue,

Defendant(s).

(File No. 4008.25210)

IN THE COURT OF COMMON PLEAS

C/A NO.: 2010-CP-08-01416

RECEIVED

FEB 24 2017

SC Court of Appeals

ORDER FOR JUDGMENT OF
FORECLOSURE AND SALE

(Deficiency Waived)

MARY LEIGH ARNOLD
CLERK OF COURT
BERKELEY COUNTY, S.C.

16 OCT 21 AM 9:49

FILED

This matter came before the Court for a hearing on the merits on August 25, 2016. Present representing the Plaintiff was Damon C. Wlodarczyk. Present representing the Defendant Julia Thompson was Mary Leigh Arnold. Evidence was presented in the form of testimony by Ms. Thompson as well as Amanda Friedoff, a business operations analyst employed by CitiMortgage, Inc. Additional evidence in the form of documents was also introduced.

After considering the evidence and arguments presented at trial, the Court makes the following findings of fact and conclusions of law.

This action arises out of a Note and Mortgage between Marvin J. Stanley (deceased) and Washington Mutual Finance, LLC (hereinafter "Washington Mutual"). It is uncontested that on May 13, 2003, Marvin J. Stanley executed and delivered unto Washington Mutual a Note in the

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principal sum of Thirty-Three Thousand Eight Hundred Sixty-Six and 98/100 (\$33,866.98) Dollars, payable in monthly installments of principal and interest of \$630.00 commencing June 17, 2003. The interest rate on the loan was fixed at 13.75 percent per year and the loan matured on May 17, 2010. [Transcript, p. 41, line 25-p. 42, line 22].

It is further uncontested that as additional security for the loan to Mr. Stanley, Ms. Thompson executed and delivered unto Washington Mutual, its successors and assigns, a certain real estate mortgage covering the following described property:

All that certain piece, parcel or lot of land, situate, lying and being in Lake Moultrie Recreational Subdivision, County of Berkeley, State aforesaid, and shown and designated as Lot 14 on a plat made by David A. Richardson, RLS and James E. Shuler, RLS dated March 1, 1976 and recorded in the Office of the Clerk of Court for Berkeley County in the File Cabinet. Said Lot having such size, shape, dimensions, boundings and content as will by reference to said plat, more fully appear, which is made a part and parcel hereof by reference thereto.

Subject to Restrictive Covenants for Lake Moultrie Recreational Subdivision dated November 25, 1975 and recorded in the Office of the Clerk of Court for Berkeley County in Book C-113, Page 108, and amendment thereto dated February 11, 1976 and recorded in Book C-114, Page 54 and amendment thereto dated May 6, 1976 and recorded in Book C-115, Page 137 in the Office aforesaid. Subject, also to grant of flowage rights and other rights over and upon the lot above described as more fully set forth in a deed from the South Carolina Public Service Authority to Marguerite R. Porcher and R. Dwight Porcher dated November 12, 1942 and recorded in the Office aforesaid in Book C-38 at Page 118. Subject also to perpetual easement for electric transmission lines by grant of R. Dwight Porcher and Marguerite R. Porcher dated August 26, 1946 and recorded in the Office aforesaid in Book C-41, Page 296. Subject also, to rights-of-way as may have been heretofore granted for the installation and maintenance of utilities serving the lot hereinabove described as may be recorded in the Office aforesaid.

Also includes a mobile/manufactured home, a 1984 Redman Mobile Home #6732AB/10406732A&B being the same property conveyed from Suddeth Development Corporation to Julia A. Thompson by Deed recorded November 8, 1978 in Book A366 at Page 111 in the RMC Office of Berkeley County, South Carolina.

TMS No. 057-01-01-032 and 057-01-01-033

Property Address: 721 General Moultrie, Bonneau, SC 29431

[Transcript, p. 16, line 21-p. 19, line 6; p. 32, lines 18-19]. At the time the Note, Mortgage and other closing documents were executed by Mr. Stanley and Ms. Thompson, no attorney was present. [Transcript p. 67, lines 21-25].

As a result of Mr. Stanley's passing, the payments under the loan documents were not made and the loan went into default as of October 1, 2009. [Transcript, p. 24, lines 2-6; p. 48, line 12-p. 50, line 16].

Ms. Thompson put forth several defenses to this foreclosure action which will be addressed in turn.

I. Standing

While not specifically pled in the Answer, the issue of whether or not Plaintiff has standing to bring the present foreclosure action was presented to this Court during prior hearings. [Transcript, p. 53, lines 15]. Accordingly, the Court will address this defense. See Rule 15(b), SCRCF.

Ms. Thompson argues that the assignments of mortgage, or lack thereof, from Washington Mutual to the Plaintiff demonstrates that Plaintiff is not the proper party to bring this foreclosure action. [Transcript, p. 9, line 11-p. 10, line 24; p. 11, lines 7-9].

CitiMortgage, Inc., services loans for the Plaintiff. Ms. Friedhoff testified that she was employed by CitiMortgage, Inc., and that upon personal knowledge Plaintiff had acquired all of Washington Mutual's loans through a merger. [Transcript, p. 50, line 18-p. 51, line 2]. This testimony was supported by public documents admitted into evidence demonstrating that Washington Mutual's assets and liabilities transferred and vested with Plaintiff. [Transcript, p. 51, line 13-p. 52, line 12; p. 55, lines 11-13].

Ms. Friedhoff also testified that as of 2015, the original Note was in Plaintiff's possession. Around this time the Note was lost during a transfer from Plaintiff's general counsel's office to the records storage center in Texas. Ms. Friedhoff stated that at no time has the loan been sold or

otherwise transferred and the Note was not intentionally or maliciously destroyed. [Transcript, p. 59, lines 8-21; p. 61, line 1-p. 62, line 22].

"Every action shall be prosecuted in the name of the real party in interest." Rule 17(a), SCRPC. In the present case, the evidence clearly established that Plaintiff became the owner of the Note and Mortgage by virtue of the merger agreement with Washington Mutual. Moreover, while the original Note was not presented at trial, there was credible evidence that the original was in Plaintiff's possession during the pendency of this action and was subsequently lost. Ms. Friedoff put forth additional evidence Plaintiff never sold or transferred the Note and Mortgage to any other entity by the Plaintiff. Finally, the duplicate copy of the Note introduced into evidence was sufficient as there was no evidence the Note was lost or destroyed by the Plaintiff in bad faith. Rule 1004, SCRE.

The Court finds Plaintiff is the owner of the subject Note and Mortgage and, therefore, has standing to bring this foreclosure action.

*** II. Fraud in the Inducement/Declaratory Judgment**

Ms. Thompson argues that the subject Mortgage should be held void or voidable on the grounds that she was fraudulently induced to give the Mortgage. Ms. Thompson contends that because the loan was not closed by an attorney, she did not understand the consequences of giving a mortgage on the subject property and what would have happened if Mr. Stanley defaulted on his payments. [Answer, p. 4; Transcript, p. 8, lines 13-23; p. 10, line 23-p. 11, line 3].

While it is uncontested that an attorney was not present during the closing of this loan, the following testimony was elicited from Ms. Thompson at trial:

Q. If they had explained to you when you signed that document, if Mr. Stanley, if something happened to him or if he didn't make a payment, that your property would've been lost, would you still have signed the document?

A. Yes.

(Transcript, p. 33, lines 1-6).

Additionally, Ms. Thompson testified that after Mr. Stanley passed away, she attempted to contact representatives of the Plaintiff in order to pay off the loan because she was aware that if someone did not make the payments the bank could foreclose on the property. [Transcript, p. 22, line 5-p. 23, line 6].

Finally, Ms. Thompson testified that based upon her general experience, she knew that if payments were not made on a loan secured by a mortgage, the bank had a right to take the property to pay off the debt. [Transcript, p. 15, line 20-p. 16, line 20].

The Court finds there was no fraud in the inducement based upon the fact that neither the Plaintiff nor its predecessor in interest solicited the loan from Ms. Thompson and she willfully allowed her property to be used as collateral for the loan obtained by Mr. Stanley. Moreover, to the extent an attorney did not close the loan, because the loan originated in 2003, the loan is not void. BAC Home Loan Servicing, L.P. v. Kinder, 398 S.C. 619, 624, 731 S.E.2d 547, 550 (2012). Additionally, Ms. Thompson testified that even if she was advised of the ramifications of providing a mortgage on behalf of Mr. Stanley and the potential to lose her property, she still would have signed the mortgage.

III. Lack of Consideration

Ms. Thompson argues that she did not receive any benefit from allowing Mr. Stanley to use her property as collateral for his loan and the Mortgage should be void for want of consideration. [Answer, p. 4].

"A mortgage and a note are separate securities for the same debt, and a mortgagee who has a note and a mortgage to secure a debt has the option to either bring an action on the note or to pursue a foreclosure action." U.S. Bank Trust Nat'l Ass'n V. Bell, 385 S.C. 364, 373, 684 S.E.2d 199, 204 (Cl.App. 2009).

There is uncontested evidence that Mr. Stanley obtained for his benefit a loan in the amount of \$33,866.98, secured by a Note and Mortgage. [Transcript, p. 42, lines 2-4; p. 21, lines 14-20; p. 57, line 6-p. 58, line 10]. The Mortgage represents security for a valid debt and it is not void for lack of consideration. Pennell & Harley, Inc. v. Harris, 210 S.C. 504, 513, 43 S.E.2d 490, 494 (1947)

IV. Waiver and Failure to Join Indispensable Parties

Ms. Thompson's Answer raises waiver and failure to join indispensable parties as defenses to this action. The Court finds that the loan went into default in October 1, 2009; this action was filed in 2010. Accordingly, there is no evidence to suggest Plaintiff has waived its right to seek to foreclose its mortgage.

The Court further finds Plaintiff is the owner of the subject Note and Mortgage by virtue of a merger with Washington Mutual. It is uncontested that Ms. Thompson is the sole owner of the mortgaged property. Therefore, there are no additional parties needed for the just adjudication of this action. See Rule 19(a), SCRCP.

V. Violation of the Attorney Preference Form

Ms. Thompson contends Plaintiff violated S.C. Code § 37-10-102(a) and is entitled to monetary damages. [Answer, p. 5].

Whenever the primary purpose of a loan that is secured in whole or in part by a lien on real estate is for a personal, family or household purpose:

(a) The creditor must ascertain prior to closing the preference of the *borrower* as to the legal counsel that is employed to *represent the debtor* in all matters of the transaction relating to the closing of the transaction and except in the case of a loan on property that is subject to the South Carolina Horizontal Property Act (Section 27-31-10, et seq.) the insurance agent to furnish required hazard and flood property insurance in connection with the mortgage and comply with such preference . . .

S.C. Code Ann. § 37-10-102 (emphasis added).

It is uncontested that Ms. Thompson is neither a borrower nor debtor under the Note or Mortgage. [Transcript, p. 24, line 22-p. 25, line 21; p. 41, line 25-p. 42, line 1]. Accordingly, Ms. Thompson cannot seek monetary damages because there is no violation of the statute.

Additionally, the counterclaim was brought more than three (3) years after the loan was closed and even if Ms. Thompson was a borrower or debtor under the statute, she would only be entitled to a setoff as a defense. S.C. Code § 37-10-105(A). As the statute does not apply to Ms. Thompson is not be entitled to a setoff defense. See Rule 8, SCRCPP (stating when a defense is mistakenly designated as a counterclaim, the court shall treat the pleading has if there had been a proper designation).

VI. Accounting

Ms. Thompson seeks a complete accounting of this loan. [Answer: p. 5].

Ms. Friedhoff testified that a principal balance in the amount of \$27,750.52 remains on the loan and that interest has accrued from the last payment made in the amount of \$19,053.02. [Transcript, p. 49, lines 7-14]. Additionally, the loan payment history was made an exhibit. [Transcript, p. 50, line 10-16].

The issue was raised that the amount "financed" on the payment history indicated \$42,464.02, yet the actual amount borrowed was \$33,866.98. It was further argued that had Mr. Stanley made his regular payments from 2003 until his death until 2009, the principal balance should have been significantly less. [Transcript, p. 69, line 13-p. 73, line 13].

In response, Ms. Friedhoff testified that the amount "financed" on the payment history is not the amount financed in the Note, and may include other charges incurred on the loan which are not subject to interest. [Id.].

In reviewing the Plaintiff's payment history, beginning on April 1, 2004, there was a principal balance of \$47,874.00. Presuming that Mr. Stanley made his first ten (10) regularly scheduled payments beginning when the first payment was due on June 17, 2003, an amortization

calculator shows the principal balance would have been \$31,319.00. However, the payment history shows that on June 21, 2004, the principal balance was adjusted down by \$14,181.66; this reflected a principal balance of \$32,550.34. Accordingly, the adjusted principal balance is substantially close to what the principal balance would have been assuming *arguendo* that all payments were timely made.

However, the payment history clearly shows that Mr. Stanley failed to make timely regular payments beginning in April 2004. The history shows Mr. Stanley made underpayments, overpayments, and sometimes missed one or more months of scheduled payments. Additionally, some payments that were made were reversed due to insufficient funds.

It appears from the payment history that Mr. Stanley made \$24,157.48 in unreversed principal and interest payments from April 2004 until September 2009, one month prior to his death. The Note provides for \$33,866.93 in principal balance payments and \$19,053.02 in interest payments for a total amount of \$52,920.00 in payments to be made. Again, assuming *arguendo* that the first ten regular payments were timely made, an amortization calculator shows that \$2,547.98 in principal and \$3,752.00 in interest would have been paid from June 2003 until April 2004. Therefore, at most the total amount paid on this loan prior to Mr. Stanley's death would be \$30,057.46 ($\$24,157.48 + \$2,547.98 + 3,752.00$). Since Mr. Stanley died eight months prior to the loan's maturity date, the total amount remaining to be paid under the terms of the Note was \$22,862.54, which is a difference of \$4,887.98 from the principal amount claimed to be owed at the time of default.

The Court cannot presume that Mr. Stanley made the first ten payments according to the terms of the Note based upon the erratic payment history. The debt figures set forth are supported by a preponderance of the evidence; the Court finds that the principal balance due on the Note is \$27,750.52 and that interest has accrued since the date of default to the date of the trial in the amount of \$19,053.02. Accordingly, the total debt on the Note and Mortgage is \$46,803.54.

VII. Breach of Contract and Breach of Covenant of Good Faith

Ms. Thompson alleges that she is entitled to damages due to Plaintiff's failure to consider her for a loan modification agreement. [Answer, pp. 6-7].

As a threshold matter, Ms. Thompson admits that she does not live on the property and that she resides in a home on an adjacent lot. Ms. Thompson admitted that she does not own the mobile home on the land, just the land itself. [Transcript, p. 13, line 9-p. 14, line 20; p. 27, lines 5-11]. Accordingly, the property does not qualify for HAMP relief or relief under the SC Administrative Order and Ms. Thompson's claim fails.

The implied covenant of good faith and fair dealing is not an independent cause of action separate from the claim for breach of contract. RoTec Servs., Inc. v. Encompass Servs., Inc., 359 S.C. 467, 473, 597 S.E.2d 881, 884 (Ct. App. 2004). Ms. Thompson has presented no facts to establish Plaintiff violated any term contained within the Mortgage. [Transcript, p. 26, line 19-p. 27, line 4]. Therefore, Ms. Thompson's claim fails.

VIII. Foreclosure of Mortgage

"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).

- 1) The Lis Pendens was filed on March 8, 2010. An Amended Lis Pendens was filed on April 16, 2010.
- 2) The Summons and Complaint were filed on April 16, 2010.
- 3) Service was made upon the Defendants as shown by the proof of service filed herein.
- 4) The Defendants and all attorneys of record were notified of the time, date, and place of the hearing in this matter.

5) According to the affidavit filed herein, a good faith investigation did not determine that the Defendants are in the military service and therefore entitled to protection under the Servicemembers' Civil Relief Act, 50 U.S.C. §3901 et seq., or any amendments thereto.

6) 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.

7) The Personal Representative, if any, of the Estate of Marvin J. Stanley and Greta J. Stanley, is a Defendant in this action in such fiduciary capacity as representative of any person or entity that may be a creditor or claimant against such Estate, and by virtue of the powers granted by decedent's Will or by statute.

8) Any unknown heirs or devisees of the Estate of Marvin J. Stanley and Greta J. Stanley, including any persons who may be in the military service of the United States of America, being a class designated as John Doe, and any unknown minors or persons under a disability being a class designated as Richard Roe are Defendants in this action by virtue of any interest claimed under the law of intestate succession (S.C. Code Ann. §62-2-109) or under decedent's Will.

9) Kelley Y. Woody, Esq., a member of the South Carolina Bar, has been appointed Guardian ad Litem for each Defendant who are unknown persons, persons in the military service of the United States of America, designated as "John Doe"; unknown minors and persons under disability, constituted as a class designated as "Richard Roe", and has filed an answer, appeared and actively participated herein. The sum of \$500.00 is a reasonable fee to allow such Guardian ad Litem for services rendered until final adjudication of this action, which fee shall constitute a cost of this action.

10) The Defendant Marvin Stanley resided in a mobile/manufactured home described as a **1984 Redman Mobile Home #6732AB/10406732A&B.**

11) The mobile home described above sits upon the real property previously described.

12) The Plaintiff, pursuant to South Carolina Code §15-53-20, et seq., is entitled to a declaratory judgment that the mobile/manufactured home is an improvement to the property that is the subject of this action and that the mobile/manufactured home is subject to the lien of the Plaintiff's Mortgage.

13) The South Carolina Department of Motor Vehicles is hereby directed to issue a new Certificate of Title to the mobile/manufactured home in the name of the successful purchaser at the foreclosure sale, free of any lien, and to enter it into the state registry, if necessary.

14) The Plaintiff is the real party in interest pursuant to SCRCP 17(a) and is entitled to enforce the terms of the subject Note and Mortgage as discussed above.

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

16) The loan evidenced by the Note and Mortgage is not owned, securitized or guaranteed by Fannie Mae or Freddie Mac, and is not serviced by a servicer participating in the Home Affordable Modification Program (HAMP). Therefore, the Court finds that there are no HAMP issues to be resolved before foreclosure is ordered or the sale is commenced.

17) The Note payments which became due on October 31, 2009, 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.

18) 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 October 31, 2009	\$27,750.52
(b) Interest at a current rate of 9.0000%	\$19,053.02
Total debt secured by Note and Mortgage, including interest to date shown	\$46,803.54

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 9.0000% per 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.

19) The Plaintiff is seeking the usual foreclosure of the mortgage and has in the Complaint, or subsequently thereto in writing, expressly waived the right to a personal or deficiency judgment pursuant to Rule 71(b) SCRCP.

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

21) The following Defendant(s) claim(s) 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 liens in so much as it pertains to the property which is the subject of this action:

The South Carolina Department of Motor Vehicles, by virtue of the allegations contained in the Plaintiff's First Cause of Action.

Marvin J. Stanley by virtue of any equitable interest he may have in the property with regard to a Lease recorded in Book 588 at Page 26 on October 28, 1994. Plaintiff asserts that the Special Assignment of Lease to Associates Financial Services Company of South Carolina, Inc. recorded in Book 588 at Page 28 on October 28, 1994 is canceled because the corresponding loan has been paid. Any interest of Marvin J. Stanley in the property is junior and subordinate to Plaintiff's mortgage.

Marvin J. Stanley as record owner of the mobile home described in the Note. Plaintiff asserts that the mobile home was pledged as collateral for the subject loan, therefore, any such interest in or lien upon the property is junior and subordinate to Plaintiff's mortgage.

Greta J. Stanley as record owner of the mobile home described in the Note. Plaintiff asserts that the mobile home was pledged as collateral for the subject loan, therefore, any such interest in or lien upon the property is junior and subordinate to Plaintiff's mortgage.

The South Carolina Department of Revenue by virtue of any lien(s) of record, including, but not limited to, a Tax Lien or Warrant for Distraint against Marvin Stanley, hearing Tax Lien/Warrant No. 3-51070531-3 and File/Identifying No. 78033910, in the amount of \$3,482.00, recorded on September 28, 2009 in Book 181 at Page 167. Any such interest in or lien upon the said property is junior and subordinate to Plaintiff's mortgage.

As discussed above, Plaintiff has established the existence of the debt, the default on the terms of repayment of the debt, the amounts currently due, and the existence of the mortgage securing the debt. Ms. Thompson has not denied that she agreed to allow her property to be used as security for the loan obtained by Mr. Stanley. Ms. Thompson does not deny that payments have not been made on the debt since Mr. Stanley's death. Moreover, the defenses asserted do not bar Plaintiff's right to foreclosure.

CONCLUSIONS OF LAW

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

- 1) The counterclaims are dismissed with prejudice.

2) 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.

3) The Court finds that there are no HAMP issues to be resolved before foreclosure is ordered or the sale is commenced.

4) The Court also finds that the Plaintiff is in compliance with Administrative Order 2011-05-02-01 and that the foreclosure action may proceed to Judgment and Sale.

5) 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.

6) Pursuant to Rule 53, SCRPC, this Order shall constitute a final judgment.

7) The South Carolina Department of Motor Vehicles is hereby directed to issue a new Certificate of Title to the mobile/manufactured home to the successful purchaser at the foreclosure sale, free of any lien, and to enter it into the state registry, if necessary.

8) There is due to the Plaintiff on the Note and Mortgage set forth in the Complaint the sum of \$46,803.54, as set out in the Findings of Fact *supra*.

9) 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 9.0000% 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.

10) The Defendants liable for the aforesaid judgment debt including interest at the rate of 9.0000% 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.

11) 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 Master in Equity, at public auction, at 11:00 a.m. at the County Courthouse in Berkeley, 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:

12) For cash: The Master in Equity, 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 thirty (30) 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).

13) Interest on the balance of the bid shall be paid through the day of compliance at the rate of 9.0000%.

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

15) 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.

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

17) The Master in Equity, 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 thirty (30) days after the conclusion of the bidding, then the Master in Equity, 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.

18) 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.

19) 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 Master in Equity, only the amount of the costs and expenses crediting the balance of the bid on Plaintiff's indebtedness.

20) The Master in Equity 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.

21) 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 Berkeley 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.

22) 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.

23) 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 Master in Equity, who executes such deed as grantor.

24) 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.

25) The following is a description of the premises herein ordered to be sold:

All that certain piece, parcel or lot of land, situate, lying and being in Lake Moultrie Recreational Subdivision, County of Berkeley, State aforesaid, and shown and designated as Lot 14 on a plat made by David A. Richardson, RLS and James E. Shuler, RLS dated March 1, 1976 and recorded in the Office of the Clerk of Court for Berkeley County in the File Cabinet. Said Lot having such size, shape, dimensions, boundings and content as will by reference to said plat, more fully appear, which is made a part and parcel hereof by reference thereto.

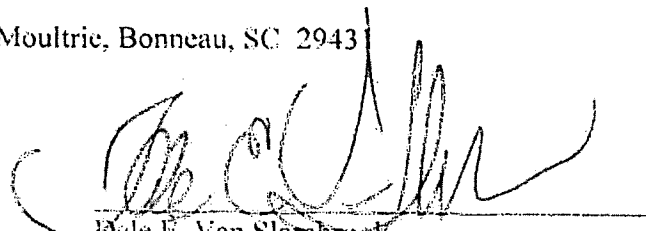
Subject to Restrictive Covenants for Lake Moultrie Recreational Subdivision dated November 25, 1975 and recorded in the Office of the Clerk of Court for Berkeley County in Book C-113, Page 108, and amendment thereto dated February 11, 1976 and recorded in Book C-114, Page 54 and amendment thereto dated May 6, 1976 and recorded in Book C-115, Page 137 in the Office aforesaid. Subject, also to grant of flowage rights and other rights over and upon the lot above described as more fully set forth in a deed from the South Carolina Public Service Authority to Marguerite R. Porcher and R. Dwight Porcher dated November 12, 1942 and recorded in the Office aforesaid in Book C-38 at Page 118. Subject also to perpetual easement for electric transmission lines by grant of R. Dwight Porcher and Marguerite R. Porcher dated August 26, 1946 and recorded in the Office aforesaid in Book C-41, Page 296. Subject also, to rights-of-way as may have been heretofore granted for the installation and maintenance of utilities serving the lot hereinabove described as may be recorded in the Office aforesaid.

Also includes a mobile/manufactured home, a 1984 Redman Mobile Home #6732AB/10406732A&B.

Being the same property conveyed from Suddeth Development Corporation to Julia A. Thompson by Deed recorded November 8, 1978 in Book A366 at Page 111 in the RMC Office of Berkeley County, South Carolina.

TMS No. 057-01-01-032 and 057-01-01-033

Property Address: 721 General Moultrie, Bonneau, SC 2943



Dale E. Van Slambrook
Master in Equity Berkeley County

October 20, 2016
Moncks Corner, South Carolina

