

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-08-1416

FILED
17 JAN 20 AM 10:44
HARRY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

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), SCRPC; Rule 41(a), 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 : _____

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

Circuit Court Judge *MASTER IN EQUITY*

3079
Judge Code

1/19/17
Date

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FEB 24 2017

SC Court of Appeals

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STATE OF SOUTH CAROLINA

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IN THE COURT OF COMMON PLEAS

COUNTY OF BERKELEY

FEB 21 2017

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

CitiFinancial Servicing LLC,

SC Court of Appeals

Plaintiff,

vs.

ORDER ON MOTION FOR RECONSIDERATION AND TO VACATE

Julia A. Thompson, et al.,

Defendant(s).

17 JAN 20 AM 10:14
CLERK OF COURT
BERKELEY COUNTY, S.C.

FILED

(File No. 4008.25210)

This matter came before the Court for a hearing on the merits on August 25, 2016. On October 21, 2016, an Order for Judgment of Foreclosure and Sale was filed. On November 7, 2016, counsel for Julia A. Thompson filed and served a Motion for Reconsideration and to Vacate. A hearing was held which was attended by counsel for Ms. Thompson and the Plaintiff. After hearing arguments, the motion is granted in part and denied in part.

- I. The Order for Judgment erroneously referenced two (2) TMS numbers: 057-01-01-032 and 057-01-033.

It is uncontested that the subject foreclosure action was on 721 General Moultrie Drive, Bonneau, SC 29431, including a mobile home which is more fully described as follows:

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

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SC Court of Appeals

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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.

As indicated by Thompson's counsel, the TMS No. for the subject property is 057-01-01-033. Plaintiff does not oppose an Order amending the judgment to reflect the property foreclosed only bears TMS No. 057-01-01-033. Accordingly, the motion is granted to the extent the property being foreclosed only involves TMS No. 057-01-01-033.

II. Ms. Thompson's argument that the Order for Judgment should be vacated based upon evidence introduced at trial that is contradictory to the pleadings.

Ms. Thompson argues that the Order for Judgment should be vacated because Plaintiff argued at trial that it did not need an Assignment of Mortgage when the pleadings alleged an Affidavit of Lost Assignment indicating that an assignment was inadvertently not completed or recorded. However, Ms. Thompson is relying on an Affidavit that was submitted in support of a motion for summary judgment, which was denied.

The pleadings in this case, the Complaint, alleged that Plaintiff is the owner and holder of the Note and Mortgage that was the subject of this foreclosure action. [Complaint, ¶ 3]. The Complaint alleged that the Note and Mortgage were given to Washington Mutual Finance, LLC and, thereafter, Washington Mutual Finance Corporation on behalf of Washington Mutual Finance, LLC, appointed Citifinancial Credit Company as its agent with full authority.

At trial, Ms. Thompson argued that lack of assignments of mortgage from Washington Mutual Finance, LLC, to the Plaintiff demonstrated that Plaintiff was not the proper party to bring this foreclosure action. [Transcript, p. 9, line 11-p. 10, line 24; p. 11, lines 7-9].

However, 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].

Accordingly, the testimony at trial was consistent with the factual allegations in the Complaint; that Plaintiff was the owner and holder of the Note and Mortgage that was the subject of this foreclosure action.

For the reasons set forth, Ms. Thompson's motion is denied.

III. Notice of Default.

Ms. Thompson argues that it was in error to allow the foreclosure where Plaintiff allegedly made no proof that it provided Ms. Thompson with notice of default as required by the terms of the Note which were incorporated to the Mortgage by specific reference.

Marvin J. Stanley (deceased) was the only named borrower on the Note. Ms. Thompson signed the Note for the sole purpose of giving a security interest. The Note defines "you" and "your" as the "borrower and any co-borrowers" and "we" as "Lender." The Note specifically provides the following:

DEFAULT: *You* will be in Default under this Agreement if any of the following occur;

- (1) If *you* are 10 or more days late in making required payments and *we* send *you* a notice giving *you* 20 days to eliminate the default and *you* fail to eliminate

the default or if *you* cure the that default but fail to make any further payment when due. (emphasis added).

As Ms. Thompson is not a "borrower" under the Note by definition, the terms set forth in the default provision does not apply to her. Moreover, the Note further provides that a borrower is in default "[I]f the prospects of your payment or your performance . . . is significantly impaired." In light of the borrower's death, the prospects of his payment were significantly impaired. Also, no notice is required to be sent under the second subsection. Accordingly, aside from establishing the borrower's failure to pay per the terms of the Note and Mortgage, no additional evidence regarding notice was required.

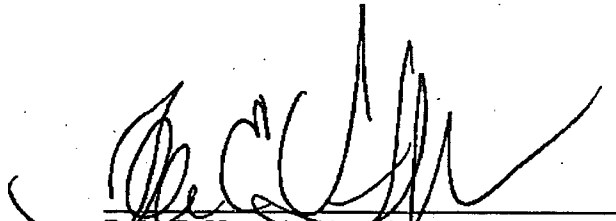
For the reasons set forth, Ms. Thompson's motion is denied.

IV. Protection under the South Carolina Consumer Protection Code

At the motion hearing, counsel for Ms. Thompson argued that certain provisions of the South Carolina Consumer Protection Code should offer relief. This argument was neither raised in the pleadings, at trial nor in the motion before the Court. Therefore, the motion is denied.

IT IS ORDERED, ADJUDGED AND DECREED that the Motion to Reconsider is granted to the extent the property being foreclosed is TMS No. 057-01-01-033. As to the remaining arguments, the motion is denied.

IT IS SO ORDERED.


Dale E. Van Slambrook
Master in Equity Berkeley County

Moncks Corner, South Carolina
January 19, 2017