

STATE OF SOUTH CAROLINA )

COUNTY OF DARLINGTON )

Thomas E. Goodson, as Trustee )  
of the Residuary Beneficiaries )  
Trust of the Estate of Margaret S. )  
Goodson and the Estate of Helen )  
S. Goodson, )

PLAINTIFF )

VS. )

Harriet E. Wilmeth, Debra J. )  
Freeman, Bank of America, N.A. )  
Lumber Yard, Inc., )  
St. Bartholomew's Episcopal )  
Church, Canal Wood, LLC, )  
Alexander C. West, Alexander C )  
West, Jr., Airport Technologies, LLC )  
Mutual Savings Bank, State of )  
South Carolina Department of )  
Revenue, United States of America )  
Acting through the Department of )  
Treasury/Internal Revenue Service, )  
Ford Motor Credit Company, LLC )  
James Gandy, Estate of Amelia H. )  
Anthony, Estate of Betty C. Wiggins, )  
Portfolio Recovery Associ, South )  
Carolina Department of Probation, )  
Parole, and Pardon Services, )  
Norwood C. Bizzell, Robert "B.W." )  
Bizzell, William E. Bizzell, Mary )  
Lathan Steele, and Vicki Eaddy )

DEFENDANT(S) )

IN THE COURT OF COMMON PLEAS

ACTION NUMBER: 2015-CP-16-950

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APR 19

SC Court of Appeals

TRUE CERTIFIED COPY,

*Scott B. Suggs*

CLERK OF COURT/RMG  
DARLINGTON COUNTY, SC

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APR 19 2017

SC Court of Appeals

SCOTT B. SUGGS  
CLERK OF COURT/RMG  
DARLINGTON COUNTY, S.C.

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Judge: Carl A. Saleeby, Special Referee  
Court Reporter: Donna Currey

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This matter came to be heard before me, the undersigned, as Special Referee, in regards to the above Judgment Foreclosure Action on the 9<sup>th</sup> day of March, 2017.

Present at the March 9, 2017 Hearing was the Plaintiff, represented by Thomas E. Goodson as Trustee of the Plaintiff, together with its Attorney J. Alex Stanton, IV of the Stanton Law Firm. Also present was Mrs. Barbara K. Lee, a Secretary of the Stanton Law Firm, the Plaintiff's Attorney.

In addition, present at said Hearing were the following Defendants:

DEFENDANT

REPRESENTED BY

Debra J. Freeman

Attorney Robert E. Lee

In addition, the following Defendants were represented as follows:

Bank of America N.A

Attorney Chad Burgess

Estate of Amelia H. Anthony

Attorney D. Malloy McEachin, Jr.

Alexander C. West

Attorney Martin S. Driggers, Jr.

Alexander C. West, Jr.

Attorney Martin S. Driggers, Jr.

Estate of Betty C. Wiggins

CPA Gregory M. Alexander

None of the other Defendants were present nor represented by Counsel.

The Special Referee decided to hear the Summary Judgment Motion filed by the Defendant, Bank of America, N.A. Attorney Burgess advised the Court that the Motion was to (a) determine the Validity of the Mortgage of the Defendant, Bank of America, N.A and to (b) determine that the Mortgage to the Defendant, Bank of America, N.A. was a first (1<sup>st</sup>) Lien on the subject premises. The Court inquired of the persons present at the Hearing as to whether there were any "Objections" to the Court granting the aforesaid Motion of the Defendant, Bank of America, N.A. All of the persons present advised the Court that "there were no objections" to the Court granting the Motion to the Defendant, Bank of America, N.A. Therefore, the Court "orally" Granted the Motion of the Defendant, Bank of America, N.A. and declared that (a) the Mortgage of the Defendant, Bank of America, N.A. (dated November 18, 2002 and recorded on November 25, 2002 in Mortgage Book 1024 at page 4218) was a Valid Mortgage on the subject premises and that (b) the aforesaid Mortgage of the Defendant, Bank of America, N.A. was the First (1<sup>st</sup>) Lien on the subject premises.

The Plaintiff's Attorney provided the Court with the information about the following:

2  
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A Civil Action Coversheet, Summons and Notice (Non-Jury), Notice of Lis Pendens, and Complaint (Non-Jury) (with Exhibits) were filed on December 22, 2015, (hereinafter referred to as "Lawsuit Documents").

The Lawsuit Documents were personally served upon the Defendant, Harriet E. Wilmeth, on the 19<sup>th</sup> day of January, 2016, as appears by the Affidavit of Personal Service filed herein.

The Lawsuit Documents were personally served upon the Defendant, Debra J. Freeman, on the 14<sup>th</sup> day of January, 2016, as appears by the Affidavit of Personal Service filed herein.

The Lawsuit Documents were served upon the Defendant, Bank of America, N.A., by Certified Mail, as evidenced by an Affidavit of Mailing dated 12/23/15, the original of which is filed herein.

The Lawsuit Documents were served upon the Defendant, Lumber Yard, LLC, by Certified Mail, as evidenced by an Affidavit of Mailing dated 12/23/15, the original of which is filed herein and an Acceptance of Service by said Defendant dated 29<sup>th</sup> day of December, 2015, the original of which is filed herein.

The Lawsuit Documents were served upon the Defendant, St. Bartholomew's Episcopal Church, by Certified Mail, as evidenced by an Affidavit of Mailing dated 12/23/15, the original of which is filed herein.

The Lawsuit Documents were served upon the Defendant, Canal Wood, LLC, by Certified Mail, as evidenced by an Affidavit of Mailing dated 12/23/15, the original of which is filed herein.

The Lawsuit Documents were served upon the Defendant, Alexander C. West, by Certified Mail, as evidenced by an Affidavit of Mailing dated 12/23/15, the original of which is filed herein.

The Lawsuit Documents were served upon the Defendant, Alexander C. West, Jr., by Certified Mail, as evidenced by an Affidavit of Mailing dated 12/23/15, the original of which is filed herein.

The Lawsuit Documents were served upon the Defendant, Airport Technologies, LLC, by Certified Mail, as evidenced by an Affidavit of Mailing dated 12/23/15, the original of which is filed herein.

The Lawsuit Documents were served upon the Defendant, Mutual Savings Bank, by Certified Mail, as evidenced by an Affidavit of Mailing dated 12/23/15, the original of which is filed herein.

The Lawsuit Documents were served upon the Defendant, State of South Carolina Department of Revenue, by Certified Mail, as evidenced by an Affidavit of Mailing dated 12/23/15, the original of which is filed herein.

The Lawsuit Documents were served upon the Defendant, United States of America Department of Treasury/Internal Revenue Service , by Certified Mail, as evidenced by an Affidavit of Mailing dated 1/14/16, the original of which is filed herein.

The Lawsuit Documents were served upon the Defendant, Ford Motor Credit Company, LLC, by Certified Mail, as evidenced by an Affidavit of Mailing dated 12/23/15, the original of which is filed herein.

The Lawsuit Documents were served upon the Defendant, James Gandy, by Certified Mail, as evidenced by an Affidavit of Mailing dated 12/23/15, the original of which is filed herein.

The Lawsuit Documents were served upon the Defendant, the Estate of Amelia H. Anthony, by Certified Mail, as evidenced by an Affidavit of Mailing dated 12/23/15, the original of which is filed herein.

The Lawsuit Documents were served upon the Defendant, the Estate of Betty C. Wiggins, by Certified Mail to Attorney Vinton D. Lide, as evidenced by an Affidavit of Mailing dated 12/23/15, the original in which is filed herein and again by Certified Mail to Attorney Richard E. Conner, as evidenced by an Affidavit of Mailing dated 1/14/16, the original in which is filed herein.

The Lawsuit Documents were served upon the Defendant, Portfolio Recovery Associ, by Certified Mail, as evidenced by an Affidavit of Mailing dated 12/23/15, the original of which is filed herein.

The Lawsuit Documents were served upon the Defendant, South Carolina Department of Probation, Parole, and Pardon Services, by Certified Mail, as evidenced by an Affidavit of Mailing dated 12/23/15, the original of which is filed herein.

The Lawsuit Documents were served upon the Defendant, Norwood Bizzell, by Certified Mail as evidenced by an Affidavit of Mailing dated 12/23/15, the original of which is filed herein and an Acceptance of Service by said Defendant dated 30<sup>th</sup> day of December, 2015, the original of which is filed herein.

The Lawsuit Documents were served upon the Defendant, Robert B.W. Bizzell, by Certified Mail as evidenced by an Affidavit of Mailing dated 12/23/15, the original of which is filed herein and an Acceptance of Service by said Defendant dated 28<sup>th</sup> day of December, 2015, the original of which is filed herein.

The Lawsuit Documents were served upon the Defendant, William E. Bizzell, by Certified Mail as evidenced by an Affidavit of Mailing dated 12/23/15, the original of which is filed herein and an Acceptance of Service by said Defendant dated 31<sup>st</sup> day of December, 2015, the original of which is filed herein.

The Lawsuit Documents were served upon the Defendant, Mary Lathan Steele, by Certified Mail as evidenced by an Affidavit of Mailing dated 12/23/15, the original of which is filed herein and an Acceptance of Service by said Defendant dated 28<sup>th</sup> day of December, 2015, the original of which is filed herein.

The Lawsuit Documents were served upon the Defendant, Vicki Eaddy, by Certified Mail as evidenced by an Affidavit of Mailing dated 12/23/15, the original of which is filed herein and an Acceptance of Service by said Defendant dated 30<sup>th</sup> day of December, 2015, the original of which is filed herein.

The Lawsuit Documents were served upon the Defendant, St. Bartholomew's Episcopal Church, by Certified Mail as evidenced by an Affidavit of Mailing dated 12/29/15, the original of which is filed herein and an Acceptance of Service by said Defendant dated 1/12/16, the original of which is filed herein.

The Following Defendants filed an Answer to the Plaintiff's Complaint:

- (a) Debra J. Freeman, dated 2/15/16
- (b) Bank Of America N.A., dated 1/27/16
- (c) Lumber Yard, Inc., dated 12/29/15
- (d) St. Bartholomew's Episcopal Church, dated 12/30/15
- (e) Alexander C. West, dated 1/20/16
- (f) Alexander C. West, Jr., dated 1/20/16
- (g) Airport Technologies, LLC, dated 12/29/15
- (h) South Carolina Department of Revenue, dated 1/12/16
- (i) United States of America, Acting Through the Department of Treasury/Internal Revenue Service, dated 2/29/16
- (j) Ford Motor Credit Company, LLC, dated 1/20/16
- (k) James Gandy, dated 12/31/15
- (l) Estate of Amelia H. Anthony, dated 1/13/16
- (m) Norwood Bizzell, dated 12/30/15
- (n) Robert B.W. Bizzell, dated 12/28/15

5  


- (o) William E. Bizzell, dated 12/30/15.
- (p) Mary Lathan Steele, dated 12/28/15
- (q) Vicki Eaddy, dated 12/30/15
- (r) St. Bartholomew's Episcopal Church, dated 1/12/16

The Amended Answer of the Defendant, Debra J. Freeman, also dated 2/15/16, included a Cross-Claim against the Defendant, Harriet E. Wilmeth.

The Answer of the Defendant, Estate of Amelia H. Anthony, dated 1/13/16, included a Counterclaim against the Defendant, Harriet E. Wilmeth.

Affidavits of No Answer to Plaintiff's Complaint for the following Defendants were submitted to the Court --dated the following dates:

1. Harriet E. Wilmeth, dated 2/19/16
2. Canal Wood, LLC, dated 2/16/16
3. Mutual Savings Bank, dated 2/16/16
4. Estate of Betty C. Wiggins, Dated 2/19/16
5. Portfolio Recovery Associ, dated 2/16/16
6. South Carolina Department of Probation,  
Parole and Pardon Services, dated 2/16/16

The Plaintiff's Attorney informed the Court that after an Affidavit of No Answer for Debra J. Freeman (dated February 16, 2016 and recorded on February 16, 2016), that Plaintiff's Attorney on February 18, 2016 received a copy of an Answer for Debra J. Freeman (which was dated February 15, 2016), so the Plaintiff's Attorney "withdrew" the Affidavit of No Answer as to Debra J. Freeman.

The Plaintiff's Attorney informed the Court that after an Affidavit of No Answer for James Gandy (dated February 16, 2016) and filed on February 16, 2016), that Plaintiff's Attorney received a copy of an Answer for James Gandy (dated 12/31/15), so the Plaintiff's Attorney "withdrew" the Affidavit of No Answer as to James Gandy.

Thereafter, by Order of Reference dated the 8<sup>th</sup> day of February, 2016, the above matter was referred, with Finality, to Carl A. Saleeby, as Special Referee, with said Order of Reference having been filed on the 11<sup>th</sup> day of February, 2016.

6  
*Carl A. Saleeby*

A Notice of Hearing (for February 19, 2016) was dated the 12<sup>th</sup> day of February and the original was filed on February 16, 2016.

A copy of the Order of Reference with Finality and the Notice of Hearing were mailed to all of the Defendants on 2/12/16, as evidenced by an Affidavit of Mailing to all Defendants dated 2/12/16, and the original of said Affidavit of Mailing was filed on 2/16/16.

However, a Hearing was not held on February 19, 2016, due to the Attorney for the Defendant, Debra J. Freeman, namely Robert E. Lee, having obtained an Order of Protection, dated and filed on February 18, 2016.

On February 18, 2016, Attorney Robert E. Lee (Attorney for the Defendant, Debra J. Freeman), "emailed" a letter and a copy of the Order for Protection to the Attorneys of Record in this Case.

On February 19, 2016, the Plaintiff's Attorney filed an Affidavit of Costs Paid by Plaintiff's Attorney, which was dated February 19, 2016.

The Defendant, Bank of America N.A., filed a Motion and Order Information Form and Coversheet, together with a Notice of Motion For Summary Judgment of the Defendant, Bank of America, N.A., together with a Memorandum in the Support of the Defendant, Bank of America, N.A.'s Motion For Summary Judgment (together with Exhibits attached to the Memorandum), and a Certificate of Service by Mail on the Parties of Record in this Case, with the aforesaid documents having been dated January 24, 2017.

Thereafter, the Attorneys for the Defendant, Bank of America, N.A., filed a Notice of Hearing on said Defendant's Motion For Summary Judgment (which was scheduled for March 9, 2017), together with a Certificate of Service by Mail on the Parties of Record in this Case, with the aforesaid documents having been dated February 24, 2017.

The Plaintiff's Attorney filed a Notice of Hearing (which was scheduled for March 9, 2017), together with an Affidavit of Mailing of the Notice of Hearing to the Parties of Record in this Case, with the aforesaid documents having been dated March 2, 2017 and filed on March 6, 2017.

Attorney Robert E. Lee, Attorney for the Defendant, Debra J. Freeman, filed a Motion and Order Information Sheet, Motion to Dismiss (with attachments), and a Certificate of Service which all were dated March 8, 2017. The Motion Documents were served upon the Plaintiff's Attorney in the afternoon of March 8, 2017.

7  
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The Court next decided to hear the Motion to Dismiss filed by the Defendant, Debra J. Freeman. Attorney Robert E. Lee provided argument to the Court in regards to the Motion to Dismiss of the Defendant, Debra J. Freeman. Attorney Lee, in regards to the two (2) 2006 Judgments filed by the Plaintiff, argued that the process to enforce the Judgments "cannot have active energy" after the expiration of the ten (10) year period and could not be foreclosed (Trial Transcript at page 13). However, Attorney Lee, in regards to the 2015 Judgment filed by the Plaintiff, admitted that the 2015 Judgment could be foreclosed by the Plaintiff.

Attorney Lee also argued that "the Court did not have Jurisdiction" to rule upon the 2006 Judgments (Trial Transcript at page 19).

The Plaintiff's Attorney responded to the arguments of Attorney Robert E. Lee and set forth the Plaintiff's Defenses to the aforesaid Motion of the Defendant, Debra J. Freeman.

Attorney Stanton argued that the Defendant, Debra J. Freeman, "Lacked Standing" to have filed the Motion to Dismiss since the Foreclosure Relief requested by the Plaintiff and requested by the Defendant, Estate of Amelia H. Anthony, did not request a Sale of the Ownership Interest of the Defendant, Debra J. Freeman. The Plaintiff's Attorney also "Objected" to the Motion of the Defendant, Debra J. Freeman, based Rule 6 of the South Carolina Rules of Civil Procedure due to the said Motion not allowing ten (10) days Notice, as the Plaintiff was only served on March 8, 2017. The Plaintiff's Attorney advised the Court that the Plaintiff was not only requesting to Foreclose the Plaintiff's Judgments against the Defendant, Harriett E. Wilmeth, which were filed on February 20, 2006 in favor the Estate of Helen S. Goodson and filed on February 20, 2006 in favor of the Estate Margaret S. Goodson, but was also requesting the Foreclosure of the Judgment granted in favor of the Helen S. Goodson Trust filed on September 2, 2015.

The Plaintiff's Attorney also informed the Court that other party Defendants (ie. Estate of Amelia H. Anthony) also specifically requested Foreclosure of its Judgment Lien against the Defendant, Harriett E. Wilmeth.

Attorney Stanton also advised the Court that he disagreed with the arguments of Attorney Robert E. Lee, Attorney for the Defendant, Debra J. Freeman, in regards to the Motion to Dismiss and Attorney Stanton referred to a South Carolina Supreme Court Case which Plaintiff's Attorney stated would back the position of the Plaintiff that the Motion of the Defendant, Debra J. Freeman, should be dismissed.

Attorney McEachin, on behalf of the Defendant, Estate of Amelia H. Anthony, also responded to the Motion to Dismiss of the Defendant, Debra J. Freeman, and Attorney McEachin advised the Court that his Client, Estate of Amelia H. Anthony, had also requested that the subject Real Estate Interest of the Defendant, Harriet E. Wilmeth, be Foreclosed due to the Estate of Amelia H. Anthony's Judgment.



Attorney Martin S. Driggers, Jr. Attorney for the Defendants, Alexander C. West and Alexander C. West, Jr. advised the Court that he agreed with the arguments which the Plaintiff's Attorney had made to the Court in connection with the Motion to Dismiss filed by the Defendant, Debra J. Freeman.

CPA Gregory M. Alexander, advised the Court that he had no response on behalf of the Defendant, Estate of Betty C. Wiggins, to the Motion to Dismiss filed by the Defendant, Debra J. Freeman.

Attorney Robert E. Lee responded to the Court to the arguments of the above referenced Attorneys of some of the other Parties.

The Court stated that it would take the Motion of the Defendant, Debra J. Freeman, "Under Advisement". The Court allowed the parties a period of time to submit further Arguments and/or Cases to the Court in regards to the Motion to Dismiss of the Defendant, Debra J. Freeman.

Attorney Stanton provided the Court with a copy of the case entitled Linda Mc Company, Inc. vs James G. Shore and Jan Shore South Carolina Supreme Court Opinion Number 26878, 390 S.C. 543, 703 S.E. 2d 499(2010) which was re-filed on December 29, 2010.

This was a Case that had been referred to a Special Referee to enforce a Judgment granted to Linda Mc Company, Inc. (Respondent) by James G. Shore and Jan Shore (Petitioners).

The Petitioners "Confessed a Judgment" in favor of the Respondent which was dated December 8, 1994 and recorded on June 2, 1995 in the sum of \$110,000.00.

On October 1, 2004 the Special Referee conducted a Hearing to determine whether the Petitioners had any assets that could satisfy the Respondent's Judgment.

The Petitioners filed a Motion to Dismiss alleging the Judgment was void, and the Special Referee denied the Motion and concluded that the Respondent's Judgment was valid and enforceable.

On May 24, 2005 the Special Referee conducted another Hearing.

On June 3, 2005 the Special Referee issued his Report to the Circuit Court that the Petitioners owed the Judgment to the Respondent. Also, on June 3, 2015, the Circuit Court issued an Order to execute and levy upon the assets owned by the Petitioners.

The Petitioners appealed to the South Carolina Court of Appeals and the decision by the Trial Court was upheld by the South Carolina Court of Appeals with the decision being filed on November 2, 2007 in the case of Linda Mc Company, Inc. vs James G. Shore and Jan Shore, 375 S.C. 432, 653 S.E. 2d 279 (2007) in which the South Carolina Court of Appeals Affirmed the Order of the Trial Court.



The Petitioners appealed the decision of the South Carolina Court of Appeals to the South Carolina Supreme Court and "some of the issues" before the South Carolina Supreme Court were as follows:

1. Does section 15-39-30 deprive the judgment of "active energy"?
2. Did the expiration of the judgment render it and any supplemental proceedings to it "moot"?
3. Did the expiration of the judgment deprive the circuit court of jurisdiction to proceed with supplemental proceedings or execution?

The Petitioners argued section 15-39-30 "deprives the judgment of active energy" and execution may not issue thereon because ten years have passed since the entry of the judgment. **The Supreme Court Disagreed.**

The Supreme Court further stated our state's statutes "clearly evince the legislative purpose to nullify the effective force of a judgment after ten years, unless revived, or a suit thereon be brought before the expiration of the period allowed by law" The Supreme Court further stated that "filing an action preserves lien even though statutory period expires while matter is pending". Furthermore, the Supreme Court stated "hence, while section 15-39-30 is not a statute of limitations, it operates like a statute of limitations". The Supreme Court went further and stated that "when a party has complied with the applicable statutes, as Respondent did in this case, and is merely waiting on a court's order regarding execution and levy, the ten year limitation found in section 15-39-30 is extended to when the court finally issues an order. To hold otherwise would put those trying to enforce their judgments at the mercy of the court system to conclude the matter within the ten-year period".

The Supreme Court went further to state "in this case, the judgment was entered June 2, 1995 and the order was issued June 3, 2005. While the order came after the ten-year period, a petition for supplemental proceedings was filed before the ten-year period expired. Therefore, the judgment had active energy on June 3, 2005 because that order was the result of the supplemental proceeding filed during the ten-year period". The Supreme Court stated "if a party takes action to enforce a judgment within a ten-year statutory period of active energy, the resulting order will be effective even if issued after the ten-year period has expired. Hence, regarding this issue the decision of the court of appeals should be affirmed as modified".

In further Affirming the Decision of the Court of Appeals the Supreme Court Disagreed with the Petitioners' argument that the expiration of the Judgment "deprived the Court with Jurisdiction" to proceed with either the supplemental proceedings or execution. The Supreme Court further stated "the running of the ten-year period does not influence the power of the circuit court to hear disputes related to section 15-39-30".

In conclusion, the Supreme Court held that the Decision of the South Carolina Court of Appeals was Affirmed, as modified.

10  


Based upon the Supreme Court Ruling (as summarized above), the Court hereby Dismisses the Motion to Dismiss which was filed by the Defendant, Debra J. Freeman.

Prior to the Plaintiff presenting the Plaintiff's Case to the Court, the Plaintiff's Attorney requested that a List of the Plaintiff's Trial Exhibits numbered 1-43 be designated as a "Court Exhibit" and that the Plaintiff's Trial Exhibits numbered 1-43 (which consisted of documents which had been filed of record in the Office of the Clerk of Court and/or the Darlington County Probate Court be "Admitted into Evidence" under Rule 902 of South Carolina Rules of Evidence. The Court inquired of all persons present to determine whether or not there were any "Objections" to the Plaintiff's request to introduce the Plaintiff's Exhibits numbered 1-43 into Evidence. Upon hearing no objections, the Court allowed the Plaintiff's List of Exhibits 1-43 to be introduced as a Court Exhibit and allowed Plaintiff's Exhibits 1-43 to be admitted into Evidence.

Testimony was presented by the Plaintiff's representative, Mr. Thomas E. Goodson as Trustee of the Residuary Beneficiaries Trust of the Estate of Margaret S. Goodson and the Estate of Helen S. Goodson, upon the Direct Examination by the Plaintiff's Attorney.

Mr. Goodson testified about the three (3) Judgments which had been granted against the Defendant, Harriett E. Wilmeth, and he further Testified that the Plaintiff desired that the three (3) Judgments be Foreclosed by the Court as it relates to the one-half (1/2) Ownership Interest of the Defendant, Harriet E. Wilmeth, in the subject premises. He further testified that the Plaintiff has not received any monies paid by the Defendant, Harriett E. Wilmeth, on any of the aforesaid three (3) Judgments which the Plaintiff requested to be Foreclosed. Mr. Goodson further requested that any Costs that had been incurred either by the Plaintiff and/or the Plaintiff's Attorney to be paid from the Sales Proceeds of the one-half (1/2) Ownership Interest of the Defendant, Harriet E. Wilmeth, in the subject premises and that any Costs which might be paid by any Party relating to the Court Reporter Fees also be paid out of the Sales Proceeds. He further requested that any Fees of the Special Referee, the Notice of Sale Publication Cost, and the Special Referee Costs and Special Referee Commissions be paid out of any Sales Proceeds.

The Court provided all persons present the opportunity to Cross-Exam Mr. Goodson, but no person present desired to Cross-Exam Mr. Goodson.

The following additional persons presented Testimony and/or Evidence at the Hearing:

1. The Defendant, Debra J. Freeman

The Defendant, Debra J. Freeman, testified upon Direct Examination by her Attorney, Robert E. Lee. Ms. Freeman testified that she and the Defendant, Harriet E. Wilmeth, purchased a lot at 1309 Quail Meadow Lane (reference Plaintiff's Trial Exhibit Number 1) and that they later built a house on it. Ms. Freeman testified that the two (2) of them lived in the house and that the two (2) of them gave the Defendant, Bank of America., N.A. a Mortgage on it (reference the Plaintiff's Trial Exhibit Number 2). Ms. Freeman stated that prior to the Defendant, Harriet E. Wilmeth, getting into trouble and losing her ability to practice law and being incarcerated, the two (2) of them had handled the payments and other expenses regarding the house jointly.

However, Ms. Freeman testified that for the last approximate ten (10) years, Ms. Freeman had solely been paying the expenses related to the house – including the Bank of America, N.A. Mortgage.

Ms. Freeman testified that she has spent over the last ten (10) years an enormous amount of money on the house.

Ms. Freeman's Cross-claim against the Defendant, Harriet E. Wilmeth, was for \$75,000.00 and upon Cross-Examination by the Plaintiff's Attorney, Ms. Freeman requested Judgment against the Defendant, Harriet E. Wilmeth, in the sum of \$75,000.00.

None of the other parties present asked any questions of the Defendant, Debra J. Freeman, on Cross-Examination.

2. Attorney D. Malloy McEachin, Jr. (Attorney for the Defendant, Estate of Amelia H. Anthony)

Attorney McEachin advised the Court that the Estate of Amelia H. Anthony also desired to Foreclose its Judgment and that nothing had been paid by the Defendant, Harriet E. Wilmeth, on the Judgment in favor of the Estate of Amelia H. Anthony.

3. Martin S. Driggers, Jr. (Attorney for the Defendant, Alexander C. West, and for the Defendant, Alexander C. West, Jr.)

Attorney Driggers advised the Court that no monies had been paid by the Defendant, Harriet E. Wilmeth, on the Judgments of his Clients.

Based upon the Testimony and Evidence presented, I make the following Findings of Fact:

### FINDINGS OF FACT

1. I find that this Court has Jurisdiction both of the parties and of the subject matter. I further find that this Court has the Authority and Jurisdiction to make a ruling on the priority of the Plaintiff's two (2) 2006 Judgments against the Defendant, Harriet E. Wilmeth.

2. I find that the Defendants, Harriet E. Wilmeth and Debra J. Freeman, each own an undivided one-half (1/2) interest in a house and lot located at 1309 Quail Meadow Lane, Hartsville, South Carolina and known as Tax Map Number 036-07-07-037. (Plaintiff's Trial Exhibit 1).

3. I find further that the Defendants, Harriet E. Wilmeth and Debra J. Freeman, duly executed a Mortgage in favor of the Defendant, Bank of America, N.A., in the original sum of \$234,666.00, being dated November 18, 2002 and recorded on November 25, 2002 in Mortgage Book 1024 at page 4218 (Plaintiff's Trial Exhibit 2)

4. I find that the Mortgage Balance due to the Defendant, Bank of America, was the sum of \$147,864.42 --as of the 18th day of February, 2016 (**Plaintiff's Trial Exhibit 3**).

5. I find that the aforesaid Mortgage of the Defendant, Bank of America, N.A., constitutes a First and Prior Lien on the subject premises.

6. I find that any Judgment Foreclosure Sale of the undivided one-half (1/2) interest of the Defendant, Harriet E. Wilmeth, shall be Subject to the First and Prior Lien of the Defendant, Bank of America, N.A.

7. I find that all other persons and/or entities having an interest in or lien or possible claim in or upon the undivided one-half (1/2) interest of the Defendant, Harriet E. Wilmeth, in the subject premises as of the date and time of the filing of the Notice of Lis Pendens and the "Lawsuit Documents" (filed on December 22, 2015) are Parties to this Action and that the liens are set forth hereinbelow and that the Judgments and/or Tax Liens of the Parties to this Action are set forth below in the following "Order of Priority" EXCEPT that the Mortgage Lien of the Defendant, Bank of America, N.A., is the First and Prior Lien on the subject premises.

- (a) Judgment Roll Number 54,639 originally granted in favor of the Estate of Helen S. Goodson against the Defendant, Harriet E. Wilmeth, in the original sum of \$317,970.97 (**Plaintiff's Trial Exhibit 4**). Thereafter, this Judgment "was Assigned" to the Plaintiff by Assignment dated November 18, 2013 and recorded on November 21, 2013 (**Plaintiff's Trial Exhibit 5**). Thereafter, an Execution on this Judgment was issued on November 30, 2015 and "Returned Nulla Bona" to the Clerk of Court and recorded on December 22, 2015 (**Plaintiff's Trial Exhibit 6**). This Judgment is held by the Plaintiff.
- (b) Judgment Roll Number 54,640 originally granted in favor of the Estate of Margaret S. Goodson against the Defendant, Harriet E. Wilmeth, in the original sum of \$150,010.00 (**Plaintiff's Trial Exhibit 7**). Thereafter, this Judgment "was Assigned" to the Plaintiff by "Assignment" dated November 18, 2013 and recorded on November 21, 2013 (**Plaintiff's Trial Exhibit 8**). Therefore, an Execution on this Judgment was issued on November 30, 2015 and "Returned Nulla Bona" to the Clerk of Court and recorded on December 22, 2015 (**Plaintiff's Trial Exhibit 9**). This Judgment is held by the Plaintiff.
- (c) Judgment Roll Number 54,874 granted in favor of Lumber Yard, Inc. against the Defendant, Harriet E. Wilmeth, in the original sum of \$4,310.96 (**Plaintiff's Trial Exhibit 10**).

- (d) Judgment Roll Number 54,916 granted in favor of St. Bartholomew's Episcopal Church against the Defendant, Harriet E. Wilmeth, in the original sum of \$160,027.21 (**Plaintiff's Trial Exhibit 11**).
- (e) Judgment Roll Number 55,252 granted in favor of Canal Wood, LLC against the Defendant, Harriet E. Wilmeth, in the original sum of \$154,698.60 (**Plaintiff's Trial Exhibit 12**).
- (f) Judgment Roll Number 55,352 granted in favor of Alexander C. West against the Defendant, Harriet E. Wilmeth, in the original sum of \$160,000.00 (**Plaintiff's Trial Exhibit 13**).
- (g) Judgment Roll Number 55,353 granted in favor of Alexander C. West Jr. against the Defendant, Harriet E. Wilmeth, in the original sum of \$60,000.00 (**Plaintiff's Trial Exhibit 14**).
- (h) Judgment Roll Number 55,474 granted in favor of Airport Technologies, LLC against the Defendant, Harriet E. Wilmeth, in the original sum of \$437,556.05 (**Plaintiff's Trial Exhibit 15**).
- (i) Judgment Roll Number 55,560 granted in favor of Mutual Savings Bank against the Defendant, Harriet E. Wilmeth, in the original sum of \$277,099.40 (**Plaintiff's Trial Exhibit 16**).
- (j) South Carolina Department of Revenue Tax Lien Number 2006-00001837 against the Defendant, Harriet E. Wilmeth, in the original sum of \$3,163.35 (**Plaintiff's Trial Exhibit 17**).
- (k) South Carolina Department of Revenue Tax Lien Number 2007-00000127 against the Defendant, Harriet E. Wilmeth, in the original sum of \$3,230.65 (**Plaintiff's Trial Exhibit 18**).
- (l) Federal Tax Lien Number 2007-00000031 against the Defendant, Harriet E. Wilmeth, in the original sum of \$90,310.63 (**Plaintiff's Trial Exhibit 19**).
- (m) Judgment Roll Number 56,338 granted in favor of Ford Motor Credit Company, LLC against the Defendant, Harriet E. Wilmeth, in the original sum of \$3,811.69 (**Plaintiff's Trial Exhibit 20**).
- (n) Federal Tax Lien Number 2007-00000106 against the Defendant, Harriet E. Wilmeth, in the original sum of \$101,048.53 (**Plaintiff's Trial Exhibit 21**).
- (o) Judgment Roll Number 56,378 granted in favor Mutual Savings Bank against the Defendant, Harriet E. Wilmeth, in the original sum of \$277,099.40 (**Plaintiff's Trial Exhibit 22**).

- (p) Judgment Roll Number 56,555 granted in favor of James Gandy against the Defendant, Harriet E. Wilmeth, in the original sum of \$75,000.00 (Plaintiff's Trial Exhibit 23).
- (q) Judgment Roll Number 56,710 granted in favor of the Estate of Amelia H. Anthony against the Defendant, Harriet E. Wilmeth, in the original sum of \$1,691,346.08 (Plaintiff's Trial Exhibit 24).
- (r) Judgment Roll Number 2005-CP-16-0947 granted in favor of the Estate of Batty C. Wiggins against the Defendant, Harriet E. Wilmeth, in the original sum of \$2,500,000.00 (Plaintiff's Trial Exhibit 25).
- (s) Judgment Roll Number 58,979 granted in favor of Portfolio Recovery Associ against the Defendant, Harriet E. Wilmeth, in the original sum of \$19,244.06 (Plaintiff's Trial Exhibit 26).
- (t) Judgment Roll Number 2011-CP-16-0679 granted in favor of South Carolina Department of Probation, Parole and Pardon Services against the Defendant, Harriet E. Wilmeth, in the original sum of \$260.60 (Plaintiff's Trial Exhibit 27).
- (u) Judgment Roll Number 2015-CP-16-925 granted in favor of South Carolina Department of Probation, Parole and Pardon Services against the Defendant, Harriet E. Wilmeth, in the original sum of \$1,472.90 (Plaintiff's Trial Exhibit 28).
- (v) Judgment Roll Number 2015-CP-16-677 granted in favor of Norwood C. Bizzell against the Defendant, Harriet E. Wilmeth, in the original sum of \$550.89 (Plaintiff's Trial Exhibit 29).
- (w) Judgment Roll Number 2015-CP-16-678 granted in favor of Robert "B.W." Bizzell against the Defendant, Harriet E. Wilmeth, in the original sum of \$550.89 (Plaintiff's Trial Exhibit 30).
- (x) Judgment Roll Number 2015-CP-16-679 granted in favor of William E.. Bizzell against the Defendant, Harriet E. Wilmeth, in the original sum of \$550.89 (Plaintiff's Trial Exhibit 31).
- (y) Judgment Roll Number 2015-CP-16-680 granted in favor of Mary Lathan Steele against the Defendant, Harriet E. Wilmeth, in the original sum of \$1,673.40 (Plaintiff's Trial Exhibit 32).

15  


- (z) Judgment Roll Number 2015-CP-16-681 granted in favor of South Carolina Department of Probation, Parole and Pardon Services against the Defendant, Harriet E. Wilmeth, in the original sum of \$330.70 (**Plaintiff's Trial Exhibit 33**).
- (aa) Judgment Roll Number 2015-CP-16-682 granted in favor of South Carolina Department of Probation, Parole and Pardon Services against the Defendant, Harriet E. Wilmeth, in the original sum of \$330.70 (**Plaintiff's Trial Exhibit 34**).
- (bb) Judgment Roll Number 2015-CP-16-683 granted in favor of South Carolina Department of Probation, Parole and Pardon Services against the Defendant, Harriet E. Wilmeth, in the original sum of \$334.84 (**Plaintiff's Trial Exhibit 35**).
- (cc) Judgment Roll Number 2015-CP-16-684 granted in favor of Vicki Eaddy against the Defendant, Harriet E. Wilmeth, in the original sum of \$330.70 (**Plaintiff's Trial Exhibit 36**).
- (dd) Judgment Roll Number 2015-CP-16-685 granted in favor of South Carolina Department of Probation, Parole and Pardon Services against the Defendant, Harriet E. Wilmeth, in the original sum of \$19,302.79 (**Plaintiff's Trial Exhibit 37**).
- (ee) Judgment Roll Number 2015-CP-16-0686 granted in favor of Helen S. Goodson Trust against the Defendant, Harriet E. Wilmeth, in the original sum of \$95,513.15 (**Plaintiff's Trial Exhibit 38**). Thereafter, this Judgment "was Assigned" to the Plaintiff by Assignment dated November 18, 2013 and recorded on November 21, 2013 (**Plaintiff's Trial Exhibit 39**).
- (ff) Judgment Roll Number 2015-CP-16-687 granted in favor of South Carolina Department of Probation, Parole and Pardon Services against the Defendant, Harriet E. Wilmeth, in the original sum of \$16,901.65 (**Plaintiff's Trial Exhibit 40**).
- (gg) Judgment Roll Number 2015-CP-16-0688 granted in favor of St. Bartholomew's Episcopal Church against the Defendant, Harriet E. Wilmeth, in the original sum of \$84,507.43 (**Plaintiff's Trial Exhibit 41**).

8. I find that either the Plaintiff or the Plaintiff's Attorney has expended money "for the Costs" and that "these Costs" shall be reimbursed or paid to the Plaintiff and/or Plaintiff's Attorney from the "Sales Proceeds", whichever is applicable (**Plaintiff's Trial Exhibit 42**). I further find that if any other Party or Attorney has expended money "for Costs", that "these Costs" shall also be repaid from the "Sales Proceeds".

9. I find that the Darlington County Probate Court Order dated October 4, 2013 and filed on October 4, 2013 "Approved" a Trust Agreement for the Residuary Beneficiaries of the Estate of Margaret S. Goodson and the Estate of Helen S. Goodson, with Thomas E. Goodson being designated as the Trustee.

10. The premises which are the subject of this action are as follows:

**THE DEFENDANT'S, HARRIET E. WILMETH'S, UNDIVIDED ONE-HALF (1/2) INTEREST IN AND TO:**

All that certain piece, parcel or lot of land situate, lying and being near to and West or Southwest of the City of Hartsville, in Darlington County, South Carolina, designated as Lot No. One (1) on plat of Subdivision of property situated near the City of Hartsville prepared for P.L. McCall, Sr., by J. E. Tucker, Jr., Registered Land Surveyor, dated February 10, 1977, as revised April 22, 1977, and recorded in the office of the Clerk of Court for Darlington County in Plat Book 73 at Page 237; the said lot being slightly irregular in shape, and being bounded and measuring, according to said plat, as follows:

- NORTH: By 50-foot street indicated on said plat, a distance of 135 feet;
- EAST: By Lot No.2 on said plat, a distance of 230.3 feet;
- SOUTH: By 15-foot utility alley indicated on said plat, a distance of 133.2 feet; and
- WEST: By land now or formerly of C.K. Dunlap, a distance of 227.2 feet.

PROVIDED, HOWEVER, that this conveyance is made subject to the protective covenants, limitation and restrictions set forth in the instrument executed by the aforesaid P.L. McCall, Sr., and dated May 17, 1977.

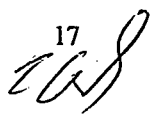
Being the same premises conveyed unto Harriet E. Wilmeth and Debra J. Freeman by Deed of Travis L. Dixon, dated March 30, 1984 and recorded on April 3, 1984 in Deed Book 867 at Page 790.

Tax Map Number: 036-07-01-037

**CONCLUSIONS OF LAW**

NOW, THEREFORE, based upon the pleadings filed in this case, the testimony and evidence presented, and the findings set forth above, I conclude the following:

- 1. The Defendant, Bank of America, N.A.'s Mortgage (dated November 18, 2002 and recorded on November 25, 2002 in Mortgage Book 1024 at page 4218) is a Valid Mortgage on the subject premises and is the First (1<sup>st</sup>) Lien on the subject premises.

17  


2. The Plaintiff shall have Judgment of Foreclosure of the above described premises.

3. The one-half (1/2) undivided interest of the Defendant, Harriet E. Wilmeth, in the subject premises shall be sold at public auction after due advertisement. The sale shall be made subject to current year taxes and assessments that are due on the day of sale.

4. The sale of the one-half (1/2) undivided interest of the Defendant, Harriet E. Wilmeth, in the subject premises shall be sold **SUBJECT TO THE MORTGAGE OF THE DEFENDANT, BANK OF AMERICA, N.A. (Reference Plaintiff's Trial Exhibit Number 2).**

5. The proceeds arising from such sale shall be applied, first, to the "Costs and Disbursements" of this Action- either to the Plaintiff and/or Plaintiff's Attorney and/or to any other Party or Attorney who has paid "any such Costs", and, next, to be applied against the Judgment and/or Tax Lien Holders in the "Order of Priority" as set forth under Paragraph 7 of the Findings of Fact, or so much as the proceeds will pay in the "Order of Priority". In the event that there is any surplus proceeds after the payment of all of the Judgment and/or Tax Lien Holders, such surplus shall be held pending further Order of this Court.

NOW, on Motion of Brock and Scott, PLLC, Attorneys for the Defendant, Bank of America, N.A., it is,

**ORDERED, ADJUDGED AND DECREED:**

1. That the Motion for Summary Judgment of the Defendant, Bank of America, N.A. is hereby Granted and it is Declared that (a) the Mortgage of the Defendant, Bank of America, N.A. (dated November 18, 2002 and recorded on November 25, 2002 in Mortgage Book 1024 at page 4218) is a Valid Mortgage on the subject premises and the (b) the aforesaid Mortgage of the Defendant, Bank of America, N.A. is the First (1<sup>st</sup>) Lien on the subject premises.

NOW, in connection with the Motion to Dismiss filed by the Defendant, Debra J. Freeman, it is,

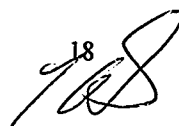
**ORDERED, ADJUDGED AND DECREED:**

1. That the Motion to Dismiss filed by the Defendant, Debra J. Freeman, is hereby Dismissed.

NOW, on Motion of the Plaintiff's Attorneys, The Stanton Law Firm,

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED:**

1. The premises hereinabove described shall be sold by the Special Referee, on Sales Day in June of 2017 with said date being May 1, 2017 at 12:00 o'clock Noon, or on some convenient Sales Day thereafter, after due and legal advertisement in The Messenger, a newspaper regularly published in Darlington County, South Carolina; that such sale shall be made to the

18  


highest bidder for Cash, and, that the successful bidder (other than the Plaintiff) shall immediately deposit five (5%) percent of the bid as earnest money, with the purchaser to pay for any unpaid current year real property taxes owed, thereon, the preparation of deed, documentary stamps, and recording of deed, together with such Sale being subject to existing easements and restrictions

**AND THAT SUCH SALE BEING SUBJECT TO THE FIRST (1<sup>ST</sup>) MORTGAGE OF THE DEFENDANT, BANK OF AMERICA, N.A. RECORDED IN MORTGAGE BOOK 1024 AT PAGE 4218.** The bidding shall be closed after the highest bid has been made on Sales day. The successful bidder shall have a period of fifteen (15) days after the close of bidding to comply with the bid, and, if the successful bidder fails to comply within the time aforesaid, the successful bidder shall forfeit the five (5%) percent deposit, and the premises will be re-sold on the next Sales Day at the risk of the former successful bidder. **THE DEFENDANT, UNITED STATES OF AMERICA IS ENTITLED TO ASSERT ITS RIGHT OF REDEMPTION PURSUANT TO SECTION 2410 (C) TITLE 28, U.S. CODE AND THAT THIS PERIOD OF REDEMPTION IS 120 DAYS BY STATUTE. TO OBTAIN A RELEASE OF THE RIGHT OF REDEMPTION, A PURCHASER OF THE SUBJECT PROPERTY MUST PURSUE AN ADMINISTRATIVE PROCEDURE THROUGH THE OFFICE OF THE UNITED STATES ATTORNEY, 1441 MAIN STREET, SUITE 500, COLUMBIA, SOUTH CAROLINA 29201.**

2. If Plaintiff is the successful bidder at said sale, for a sum not exceeding the amount of costs, expenses and the Judgment Indebtedness due to the Plaintiff in full, Plaintiff may pay to the Court only the amount of the costs and expenses, crediting the balance of the bid on Plaintiff's Judgment Indebtedness.

3. The Court shall apply the proceeds of sale in the following order of priority:

- (a) The costs and disbursement of this action – either to the Plaintiff and/or the Plaintiff's Attorney and/or any other Party or Attorney who has paid any such Costs.
- (b) To be applied against the Judgment and/or Tax Lien Holders in the "Order of Priority" as set forth under Paragraph 7 of the Findings of Fact, or so much as the proceeds will pay in the "Order of Priority".
- (c) In the event that there is any surplus proceeds after the payment of all of the Judgment and/or Tax Lien Holders, such surplus shall be held pending further Order of this Court.

4. **EXECPT FOR THE DEFENDANT, BANK OF AMERICA, N.A.,** all other Parties to this action and all persons whosoever claiming under them, be forever barred and foreclosed of all right, title, interest and equity of redemption in the subject premises so sold, or any part thereof.

5. That pursuant to S.C. CODE ANN Section 30-9-31 (supp 1987), the deed of conveyance made pursuant to this sale shall be indexed in the grantor index by the Register of Mesne Conveyances in the name Harriet E. Wilmeth (for her undivided one-half (1/2) interest in the subject premises) as well as in the name of the undersigned Special Referee who executes such deed as grantor.

6. That the undersigned Special Referee will retain jurisdiction to do all necessary acts incident to this Judgment 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.


**AND IT IS SO ORDERED, ADJUDGED, AND DECREED.**

Hartsville, South Carolina

6 day of April, 2017.

  
Carl A. Saleeby, Special Referee

TRUE CERTIFIED COPY,

  
CLERK OF COURT/RMC  
DARLINGTON COUNTY, SC

2017 APR -7 PM 4:25  
SCOTT B. SUGGS  
CLERK OF COURT/R.O.D.  
DARLINGTON COUNTY, S.C.

FILED

