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AUG 18 2017

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable J.C. Nicholson presiding judge for Charleston County

Appellate Case No. 2016-002249

Green Tree Servicing LLC.....Appellant

v.

Paula R. Illingworth.....Respondent

RECORD ON APPEAL

**B. LINDSAY CRAWFORD, III
THEODORE VON KELLER
SARA C. HUTCHINS
B. LINDSAY CRAWFORD, IV
CRAWFORD & VON KELLER, LLC
POST OFFICE BOX 4216
COLUMBIA, SOUTH CAROLINA 29240
(803) 790-2626
ATTORNEYS FOR APPELLANT**

**Shawn M. French
1476 Ben Sawyer Blvd., Ste 3
Mt. Pleasant, SC 29464
843-606-6440
Attorney for Respondent**

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable J.C. Nicholson presiding judge for Charleston County

Appellate Case No. 2016-002249

Green Tree Servicing LLC.....Appellant

v.

Paula R. Illingworth.....Respondent

RECORD ON APPEAL

**Crawford & von Keller, LLC
Theodore von Keller
B. Lindsay Crawford, III
Sara C. Hutchins
Post Office Box 4216
Columbia, South Carolina 29240
Telephone: (803) 790-2626
Attorneys for Appellant**

**Shawn M. French
1476 Ben Sawyer Blvd., Ste 3
Mt. Pleasant, SC 29464
843-606-6440
Attorney for Respondent**

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FILED

CASE NO 2014 CP-10-2042

Green Tize

2015 MAR 24 AM 11:11

Tillingworth

JULIE J. ARMSTRONG
 CLERK OF COURT

PLAINTIFF(S)

BY [Signature]

DEFENDANT(S)

Submitted by:

Attorney for : Plaintiff Defendant
 or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(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 :

Dismissed per Rule 41(a), Failure to Prosecute.

3rd Appearance by Δ - to not ready to proceed.

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

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

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

[Signature]

3062

Judge Code

Date

3/18/15

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-10-2322

Green Tree Servicing, LLC

Paula R. Illingworth

PLAINTIFF(S)

DEFENDANT(S)

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

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(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 BELOW):** Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT TRIBUNAL 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

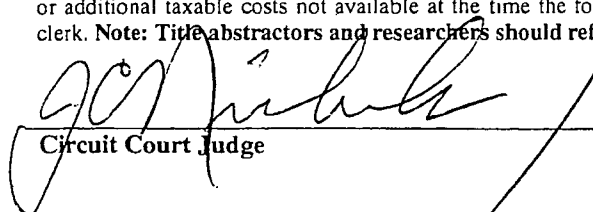
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

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N/A		\$

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

N/A

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.



Circuit Court Judge

2117
Judge Code

9/20/16
Date

FILED
2016 SEP 20 PM 3:22
JULIE J. BRISSETT
CLERK
CIRCUIT COURT

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

CASE NO: 2015-CP-10-2322

Green Tree Servicing, LLC.

PLAINTIFF

v.

Paula R. Illingworth

DEFENDANT

FILED

SEP 20 2015

JULIE J. ARMSTRONG
Order Granting Defendant's
Motion to Dismiss
CLARK, C.P. & G.S.

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

I. STATEMENT OF THE FACTS

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

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

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

II. Argument

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

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

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

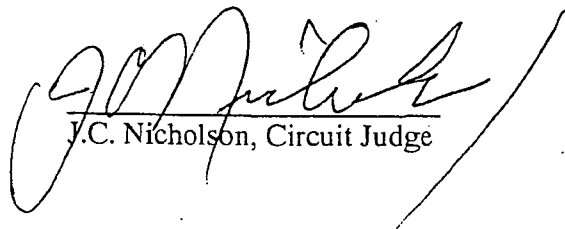
In this matter, the plaintiff filed the first case and voluntarily dismissed their action. Then it filed again. Over the course of many months, three separate hearings were scheduled with the court where the Defendant appeared but the Plaintiff was not prepared to present its case. At the second hearing,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

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

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

ACTION DISMISSED.

9/20, 2016
Charleston, SC


J.C. Nicholson, Circuit Judge

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-10-2322

Green Tree Servicing LLC

Paula R. Illingworth

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : Plaintiff Defendant
 or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRCP; Rule 41(a), SCRCP (Vol. Nonsuit); 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

FILED
 2016 OCT 13 AM 11:16
 SUPERIOR COURT OF CHARLESTON

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: Plaintiff's Motion to Reconsider is respectfully denied without a rehearing.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

[Handwritten Signature]
 Circuit Court Judge

2117
 Judge Code

10/12/16
 Date

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Green Tree Servicing LLC,

Plaintiff(s)

vs.

Paula R. Illingworth; Northbridge Terrace Recreation Park, Inc.;

Defendant(s)

IN THE COURT OF COMMON PLEAS

2013-CP-10-3160

CIVIL ACTION COVERSHEET

Submitted By: Samuel C. Waters (SC Bar #5958), Cheryl H. Fisher (SC Bar #15213), Reginald P. Corley (SC Bar #69453), Jennifer W. Rubin (SC Bar #16727), Ellie C. Floyd (SC Bar #68635), Michael P. Morris (SC Bar #73560), Eve Moredock Stacey (SC Bar #5300), Robert P. Davis (SC Bar #74030), William S. Koehler (SC Bar #74935), Vance L. Brabham, III (SC Bar #71250), Andrew W. Montgomery (SC Bar #79893), Andrew A. Powell (SC Bar #100210); J. Pamela Price (SC Bar # 014336); Attorneys for the Plaintiff 014293-00577

Rogers Townsend & Thomas, PC
220 Executive Center Drive, Suite 109
Post Office Box 100200
Columbia, SC 29202
(803) 744-4444
(803) 343-7013 - Fax
info@rt-law.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
 This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
 This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
 This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts: Constructions (100), Debt Collection (110), Employment (120), General (130), Breach of Contract (140), Other (199)
Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Previous Notice of Intent Case # 20__-CP-_____, Notice/File Med Mal (230), Other (299)
Torts - Personal Injury: Assault/Slander/Libel (300), Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Wrongful Death (360), Other (399)
Real Property: Claim & Delivery (400), Condemnation (410), Foreclosure (420), Mechanic's Lien (430), Partition (440), Possession (450), Building Code Violation (460), Other (499)
Inmate Petitions: PCR (500), Mandamus (520), Habeas Corpus (530), Other (599)
Administrative Law/Relief: Reinstate Drv. License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture-Petition (840), Forfeiture-Consent Order (850), Other (899)
Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript Judgment (740), Lis Pendens (750), Transfer of Structured Settlement Payment Rights Application (760), Confession of Judgment (770), Petition for Workers Compensation Settlement Approval (780), Other (799)
Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDOT (950), Worker's Comp (960), Zoning Board (970), Public Service Commission (990), Employment Security Comm (991), Other (999)
Special/Complex/Other: Environmental (600), Automobile Arb. (610), Medical (620), Other (699)
 Pharmaceuticals (630), Unfair Trade Practices (640), Out-of-State Deposition (650), Motion to Quash Subpoena in an Out-of-County Action (660), Sexual Predator (510)

Submitting Party Signature:

[Handwritten Signature]

Date:

8-30-13

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens (Family Court Only), Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code § 15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals;
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference had been concluded.

014293-00577

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA)
)
 CHARLESTON COUNTY)
)
 Green Tree Servicing LLC,)
)
 Plaintiff)
)
 vs.)
)
 Paula R. Illingworth; Northbridge Terrace Recreation Park,)
 Inc.;)
)
 Defendant.)

IN THE CIRCUIT COURT FOR THE
 NINTH
 JUDICIAL CIRCUIT

CERTIFICATE OF EXEMPTION
 FROM ADR
 DOCKET NO.

I certify that this action is exempt from ADR because:

- this is a special proceeding or action seeking extraordinary relief such as mandamus, habeas corpus of prohibition;
- this action is appellate in nature;
- this is a post-conviction relief matter;
- this is a contempt of court proceeding;
- this is forfeiture proceeding brought by the State;
- this is a case involving a mortgage foreclosure; or
- the parties submitted the case to voluntary mediation with a certified mediator prior to the filing of this action.

Plaintiff/Attorney(s) for Plaintiff(s)
 Samuel C. Waters (SC Bar #5958), Cheryl H. Fisher (SC Bar #15213), Reginald P. Corley (SC Bar #69453), Jennifer W. Rubin (SC Bar #16727), Ellie C. Floyd (SC Bar #68635), Michael P. Morris (SC Bar #73560), Eve Moredock Stacey (SC Bar #5300), Robert P. Davis (SC Bar #74030), William S. Koehler (SC Bar #74935), Vance L. Brabham, III (SC Bar #71250), Andrew W. Montgomery (SC Bar #79893), Andrew A. Powell (SC Bar #100210), J. Pamela Price (SC Bar # 014336)
 Rogers Townsend & Thomas, PC
 220 Executive Center Drive, Suite 109
 Post Office Box 100200
 Columbia, SC 29202
 (803) 744-4444

Defendant/Attorney(s) for Defendant(s)

Date: August 30, 2013

014293-00577

9/4/13
10:52 AM

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Green Tree Servicing LLC,

Plaintiff,

v.

Paula R. Illingworth; Northbridge Terrace
Recreation Park, Inc.;

Defendant(s).

IN THE COURT OF COMMON PLEAS

DOCKET NO. 2013-CP-10-5100

LIS PENDENS
Deficiency Judgment Waived

BY
JULIE L. ARMSTRONG
CLERK OF COURT

2013 SEP -4 AM 10:48

FILED

(014293-00577)

NOTICE IS HEREBY GIVEN THAT an action has been or will be commenced in this Court upon complaint of the above-named Plaintiff against the above-named Defendant(s) for the foreclosure of a certain mortgage of real estate given by Paula R. Illingworth to Bank of America, N.A. dated December 19, 2008, and recorded in the Office of the RMC/ROD for Charleston County on January 2, 2009, in Mortgage Book 0027 at Page 765. This Mortgage was assigned to the Plaintiff herein by assignment dated June 25, 2013 and recorded July 19, 2013 in Book 0346 at Page 832.

The premises covered and affected by the said mortgage and by the foreclosure thereof were, at the time of the making thereof and at the time of the filing of this notice, described as follows:

All that lot, piece or parcel of land, with the buildings and improvements thereon, situate, lying and being in St. Andrews Parish, Charleston County, S.C., known as Lot 11, Block E, Northbridge Terrace, as shown on a plat by W.L. Gaillard, Surveyor, dated August 11, 1956, entitled "Map of Northbridge Terrace, St. Andrews Parish, Charleston County, S.C." which plat is recorded in Plat Book K, at Page 148, in the RMC Office for Charleston County.

This being the same property conveyed to Paula R. Illingworth by deed of Thomas J. Cuff and Jean C. St. Arnaud f/k/a Jean Taylor, dated July 19, 2004 and recorded August 5, 2004 in Book T504 at Page 401.

Property Address: 1737 Afton Avenue
Charleston, SC 29407

TMS# 415-04-00-053



Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #5958) Cheryl H. Fisher (SC Bar #15213)
Reginald P. Corley (SC Bar #69453) Jennifer W. Rubin (SC Bar #16727)
Ellie C. Floyd (SC Bar #68635) Michael P. Morris (SC Bar #73560)
Eve Moredock Stacey (SC Bar #5300) Robert P. Davis (SC Bar #74030)
William S. Koehler (SC Bar #74935) Vance L. Brabham, III (SC Bar #71250)
Andrew W. Montgomery (SC Bar #79893) Andrew A. Powell (SC Bar #100210)
J. Pamela Price (SC Bar # 014336)

220 Executive Center Drive
Columbia, SC 29210

Post Office Box 100200 (29202)
(803) 744-4444

Columbia, South Carolina
August 30, 2013

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Green Tree Servicing LLC,

Plaintiff,

v.

Paula R. Illingworth; Northbridge Terrace
Recreation Park, Inc.;

Defendant(s).

(014293-00577)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 2013-CP-10 - 5140

SUMMONS
(NON-JURY)
FORECLOSURE OF REAL ESTATE
MORTGAGE
Deficiency Judgment Waiver

2013 SEP -4 AM 10:48
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

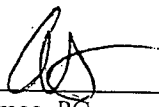
TO THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answering the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer on the subscribers at their offices, 220 Executive Center Drive, Suite 109, Post Office Box 100200, Columbia, South Carolina 29202, within thirty (30) days after the service hereof, exclusive of the day of such service, except that the United States of America, if named, shall have sixty (60) days to answer after the service hereof, exclusive of the day of such service; and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the Complaint.

YOU WILL ALSO TAKE NOTICE that Plaintiff will move for an order of reference or that the Court may issue a general order of reference of this action to a master in equity/special referee, pursuant to Rule 53, of the South Carolina Rules of Civil Procedure.

TO MINOR(S) OVER FOURTEEN YEARS OF AGE, AND/OR TO MINOR(S) UNDER FOURTEEN YEARS OF AGE AND THE PERSON WITH WHOM THE MINOR(S) RESIDES, AND/OR TO PERSONS UNDER SOME LEGAL DISABILITY:

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by Green Tree Servicing LLC.



Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #5958)	Cheryl H. Fisher (SC Bar #15213)
Reginald P. Corley (SC Bar #69453)	Jennifer W. Rubin (SC Bar #16727)
Ellie C. Floyd (SC Bar #68635)	Michael P. Morris (SC Bar #73560)
Eve Moredock Stacey (SC Bar #5300)	Robert P. Davis (SC Bar #74030)
William S. Koehler (SC Bar #74935)	Vance L. Brabham, III (SC Bar #71250)
Andrew W. Montgomery (SC Bar #79893)	Andrew A. Powell (SC Bar #100210)
J. Pamela Price (SC Bar # 014336)	

220 Executive Center Drive
Columbia, SC 29210

Post Office Box 100200 (29202)
(803) 744-4444

Columbia, South Carolina
August 30, 2013

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Green Tree Servicing LLC,
Plaintiff,

IN THE COURT OF COMMON PLEAS
DOCKET NO. 2013-CP-10-5160

COMPLAINT
(NON-JURY)

FORECLOSURE OF REAL ESTATE
MORTGAGE

Deficiency Judgment Waived

v.
Paula R. Illingworth; Northbridge Terrace
Recreation Park, Inc.;
Defendant(s).

2013 SEP -4 AM 10:48
JUDGE J. ARMSTRONG
CLERK OF COURT

FILED

(014293-00577)

Plaintiff alleges:

1. This is an action for the foreclosure of a mortgage upon certain real estate in Charleston County, South Carolina.
2. Pursuant to S.C. Code Section 33-15-101(b)(8) Plaintiff is a corporation or other legal entity collecting debts and / or enforcing mortgages, security interests or other rights in property securing debts.
3. Plaintiff has the legal right to enforce the negotiable instrument secured by the Mortgage and is the real party in interest as defined by Rule 17(a) of the South Carolina Rules of Civil Procedure.
4. The Plaintiff's servicing agent for the mortgage loan described in this foreclosure action is participating in the Home Affordable Modification Program ("HMP"), but the subject loan is not eligible for modification because the borrower did not provide all necessary documents after those documents had been requested.
5. Some lien on or interest in the real estate, the subject of this action, may be claimed by the Defendant(s) herein.
6. The Defendant(s) herein described as judgment creditors have by filing said judgments designated their attorney entering the judgment as their agent for service of process under the provisions of South Carolina Code Section 15-35-840.

7. Heretofore, on or about December 19, 2008, Paula R. Illingworth made, executed and delivered a certain Fixed Rate Note ("Note") in the principal sum of \$179,200.00, payable in monthly installments.

8. In order to secure the payment of the Note according to the terms and conditions thereof, Paula R. Illingworth made, executed and delivered unto Bank of America, N.A. a certain real estate mortgage ("Mortgage") covering the following described property and any and all improvements to the property, including but not limited to a mobile/manufactured home:

All that lot, piece or parcel of land, with the buildings and improvements thereon, situate, lying and being in St. Andrews Parish, Charleston County, S.C., known as Lot 11, Block E, Northbridge Terrace, as shown on a plat by W.L. Gaillard, Surveyor, dated August 11, 1956, entitled "Map of Northbridge Terrace, St. Andrews Parish, Charleston County, S.C." which plat is recorded in Plat Book K, at Page 148, in the RMC Office for Charleston County.

This being the same property conveyed to Paula R. Illingworth by deed of Thomas J. Cuff and Jean C. St. Arnaud f/k/a Jean Taylor, dated July 19, 2004 and recorded August 5, 2004 in Book T504 at Page 401.

Property Address: 1737 Afton Avenue
Charleston, SC 29407

TMS# 415-04-00-053

9. The Mortgage was signed, witnessed and probated December 19, 2008; thereafter the Mortgage was recorded in the Office of the RMC/ROD for Charleston County on January 2, 2009, in Mortgage Book 0027 at Page 765. This Mortgage was assigned to the Plaintiff herein by assignment dated June 25, 2013 and recorded July 19, 2013 in Book 0346 at Page 832.

10. The Mortgage evidences and secures the repayment of money advanced by Plaintiff or its predecessor in interest to, or on behalf of, the mortgagor(s) and constitutes a first lien on the mortgaged premises.

11. After all payments received by the Plaintiff have been credited to the subject loan, the loan is in default and due for April 1, 2013, and the conditions of the Note and Mortgage have been broken. Plaintiff elects to and does declare the entire balance of said indebtedness due and payable, and that there is due on the Note and Mortgage as of April 1, 2013, the principal sum of \$167,256.69, with interest from March 1, 2013, advances, late charges, and also for the costs and disbursements of this action, including attorney's fees.

12. Plaintiff's right to a personal or deficiency judgment pursuant to South Carolina Code Sections 29-3-650 and 29-3-660 is expressly waived.

13. Pursuant to the terms of the Mortgage, Plaintiff has employed counsel to prosecute

this action and a reasonable value of services of counsel in this action is the sum as the Court may find appropriate.

14. Plaintiff may be forced to pay sums for taxes and insurance and costs for securing the property, which sums, according to the terms of the Mortgage, should be added to the amount of the debt.

15. Pursuant to the terms of the Mortgage and applicable state law, Plaintiff requests the mortgage be foreclosed and that the property be sold at public auction in accordance with law, subject to any liens for taxes, special assessments of record against such property, and existing easements or restrictions of record.

16. The hereinafter named Defendant(s) may have some interest in or lien upon the premises covered by the Mortgage set forth above, or some part thereof, but that such interests or liens are junior and subsequent to the lien of Plaintiff's Mortgage or, if specified below, have been paid in full and either should be satisfied of record or the lien released from the subject real estate. Said liens or interests are of record in the Office of the RMC or Clerk of Court of the aforesaid county and are described as follows:

A. Northbridge Terrace Recreation Park, Inc. by virtue of any lien enforceable assessments claimed as provided for in the Declaration of Covenants, Conditions, and Restrictions recorded herein, and any amendments thereto. Also including any other liens they may have.

WHEREFORE, having fully set forth its Complaint, Plaintiff prays that this Honorable Court inquire into the matters as set forth herein and:

(1) Under the direction of this Court, ascertain and determine the amount due upon the Note and Mortgage held by Plaintiff together with attorney's fees and costs of this action.

(2) Declare Plaintiff's Mortgage a first lien and render judgment of foreclosure for the amount so found to be due and owing thereon, together with any ad valorem taxes, or insurance premiums, and any other expenses which may be due and have been advanced by Plaintiff, with reasonable attorney's fees, and for the costs of this action.

(3) Order the reimbursement of all costs for inspecting and securing the property incurred by the Plaintiff as a result of the delinquency.

(4) Appoint a Receiver to collect the rents, issues, profits or designated sums from the mortgagor(s), and/or the grantee(s) of the mortgagor(s), and/or tenant(s) occupying or exercising control over the mortgaged premises and hold the same subject to the further order of this Court.

(5) Under the direction of this Court, sell the mortgaged premises, bar any equity of redemption, and apply the proceeds of sale as follows:

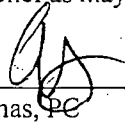
First, to the costs and expenses of the within action and sale;

Second, to the payment and discharge of the amount due on Plaintiff's Note and Mortgage, together with attorney's fees as aforesaid; and

Third, to the distribution of any surplus pursuant to Rule 71, of the South Carolina Rules of Civil Procedure;

(6) Issue an order directing the Sheriff of Charleston County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property should the same become necessary;

(7) Order such other and further relief as may be just and proper.



Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #5958)
Reginald P. Corley (SC Bar #69453)
Ellie C. Floyd (SC Bar #68635)
Eve Moredock Stacey (SC Bar #5300)
William S. Koehler (SC Bar #74935)
Andrew W. Montgomery (SC Bar #79893)
J. Pamela Price (SC Bar # 014336)

Cheryl H. Fisher (SC Bar #15213)
Jennifer W. Rubin (SC Bar #16727)
Michael P. Morris (SC Bar #73560)
Robert P. Davis (SC Bar #74030)
Vance L. Brabham, III (SC Bar #71250)
Andrew A. Powell (SC Bar #100210)

220 Executive Center Drive
Columbia, SC 29210

Post Office Box 100200 (29202)
(803) 744-4444

Columbia, South Carolina
August 30, 2013

NOTICE

1. As of August 30, 2013, you owe \$171,440.40. Because of interest, late charges, attorney fees and other charges that vary from day to day, the amount due on the day you pay may be greater.
2. Green Tree Servicing LLC is the Creditor to whom the debt is owed. Green Tree Servicing LLC is the servicing agent for the Creditor to whom the debt is owed.
3. The debt described in this notice will be assumed to be valid by the Creditor's law firm unless you, the Consumer, within thirty (30) days after the receipt of this notice, dispute the validity of the debt or any portion thereof.
4. If you, the Consumer, notify the Creditor's law firm in writing within thirty (30) days of the receipt of this notice that the debt or any portion thereof is disputed, the Creditor's law firm will obtain verification of the debt, and a copy of the verification will be mailed to you, the Consumer, by the Creditor's law firm.
5. If the Creditor named in this notice is different from the original Creditor, and if you, the Consumer, make a written request to the Creditor's law firm within the (30) days from the receipt of this notice, the name and address of the original Creditor will be mailed to you by the Creditor's law firm.
6. This notice should not be construed as a thirty (30) day grace period. If, in writing, you dispute the debt or any portion thereof or if, in writing, you request the name and address of the original creditor within the thirty (30) day period that begins with your receipt of this notice, the law requires the Creditor's law firm to suspend its efforts (through litigation or otherwise) to collect the debt until the Creditor's law firm mails the requested information to you.
7. This notice pertains to your dealings with the Creditor's law firm as a debt collector. It does not affect your dealings with the court, and in particular it does not change the time at which you must answer the complaint. The summons attached to the complaint is a command from the court, not from the Creditor's law firm, and you must follow its instructions even if you dispute the validity or amount of the debt. The advice in this notice also does not affect the Creditor's law firm's relations with the court. The Creditor's law firm may file papers in any such suit according to the court's rules and the judge's instructions.
8. This is an attempt to collect a debt, and any information obtained will be used for that purpose. The information provided in paragraphs 1 and 2 above has been provided to us by the Creditor or Servicer. If you have previously received a discharge in bankruptcy, this notice is not and should not be construed as an attempt to collect a debt but only as an attempt to enforce a lien.

STATE OF SOUTH CAROLINA
 COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

Green Tree Servicing LLC

Plaintiff,

Case No.: 2014-CP-10-2042

-vs-

Paula R. Illingworth

Defendant(s),

Submitted By: B. Lindsay Crawford, III, Theodore von Keller, Sara Hutchins, Adam Schanz

SC Bar #: 6510, SC Bar #: 5718 SC Bar #: 72879, SC Bar #: 80181

Address: 1640 St. Julian Place
 Columbia, SC 29204

Telephone #: (803) 790-2626
 Fax # 803-790-1277
 Email: lindsay@crawfordvk.com, ted@crawfordvk.com, sara@crawfordvk.com, adam@crawford.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this Cover Sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

JURY TRIAL demanded in complaint

NON-JURY TRIAL demanded in complaint

This case is subject to ARBITRATION pursuant to Circuit Court Annexed Alternative Dispute Resolution Rules.

This case is subject to MEDIATION pursuant to the Circuit Court Annexed Alternative Dispute Resolution Rules.

■ This case is exempt from ADR (Proof of ADR/Exemption Attached).

NATURE OF ACTION (Check One Box Below)

Contracts

- Constructions (100)
- Debt Collection (110)
- Employment (120)
- General (130)
- Breach of Contract (140)
- Other (199)

Torts-Professional Malpractice

- Dental Malpractice (200)
- Legal Malpractice (210)
- Medical Malpractice (220) Previous Notice of Intent Case # 20__-CP-
- Notice/File Med Mal (230)
- Other (299)

Torts-Personal Injury

- Assault/Slander/Libel (300)
- Conversion (310)
- Motor Vehicle Accident (320)
- Premises Liability (330)
- Products Liability (340)
- Personal Injury (350)
- Wrongful Death (360)
- Other (399)

Real Property

- Claim & Delivery (400)
- Condemnation (410)
- Foreclosure (420)
- Mechanic's Lien (430)
- Partition (440)
- Possession (450)
- Building Code Violation (460)
- Other (499)
- Appeals
- Arbitration (900)
- Magistrate-Civil (910)
- Magistrate-Criminal (920)
- Municipal (930)
- Probate Court (940)
- SCDOT (950)
- Worker's Comp (960)
- Zoning Board (970)
- Public Service Comm (990)
- Employment Security Comm (991)
- Other (999)

Inmate Petitions

- PCR (500)
- Mandamus (520)
- Habeas Corpus (530)
- Other (599)

Administrative Law/Relief

- Reinstate Driver's License (800)
- Judicial Review (810)
- Relief (820)
- Permanent Injunction (830)
- Forfeiture-Petition (840)
- Forfeiture-Consent Order (850)
- Other (899)

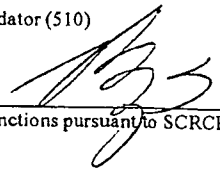
Judgments/Settlements

- Death Settlement (700)
- Foreign Judgment (710)
- Magistrate's Judgment (720)
- Minor Settlement (730)
- Transcript Judgment (740)
- Lis Pendens (750)
- Transfer of Structured Settlement Payment Rights Application (760)
- Confession of Judgment (770)
- Petition for Workers Compensation Settlement Approval (780)
- Other (799)

Special /Complex/Other

- Environmental (600)
- Automobile Arb (610)
- Medical (620)
- Other (699)

- Pharmaceuticals (630)
- Unfair Trade Practices (640)
- Out-Of State Depositions (650)
- Motion to Quash Subpoena in an Out-Of-County Action (660)
- Sexual Predator (510)

Submitting Party Signature: 

Date: 3/25/14

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10, et seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), Richland Union and York
SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held no later than 120 days after all defendants are served with the "Notice of Intent to File Suite" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special Proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals;
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
CASE NO. 2014-CP-10-2042

Green Tree Servicing LLC

Plaintiff,

-vs-

Paula R. Illingworth,

Defendant(s).

BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

2014 MAR 27 PM 4:13

FILED

**CERTIFICATE OF EXEMPTION FROM ADR
I CERTIFY THAT THIS ACTION IS EXEMPT FROM ADR BECAUSE:**

_____ this is a special proceeding or action seeking extraordinary relief such as mandamus, habeas corpus or prohibition;

_____ this action is appellate in nature;

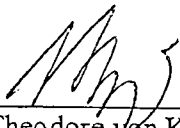
_____ this is a post-conviction relief matter;

_____ this is a contempt of court proceeding;

_____ this is a forfeiture proceeding brought by the State;

X this is a case involving a mortgage foreclosure; or

_____ the parties submitted the case to voluntary mediation with a certified mediator prior to the filing of this civil action.



Theodore von Keller, Esquire
B. Lindsay Crawford, III, Esquire
Sara Hutchins, Esquire
Adam Schanz, Esquire
Crawford & von Keller, LLC.
PO Box 4216
1640 St. Julian Place (29204)
Columbia, SC 29240

Phone: 803-790-2626

Attorneys for Plaintiff

Columbia, South Carolina
March 24, 2014

3/27/14 4:13PM

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

Green Tree Servicing LLC

CASE NO. 2014-CP-10-2042
LIS PENDENS

Plaintiff,

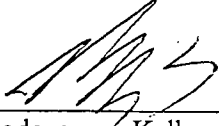
-vs-

Paula R. Illingworth,

Defendant(s).

FILED
2014 MAR 27 PM 4:12
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

NOTICE IS HEREBY GIVEN that an action has been commenced and is now pending in this Court upon the Complaint of the above-named Plaintiff for the foreclosure of a certain mortgage of real estate given by Paula R. Illingworth to Bank of America, N.A. dated December 19, 2008, and recorded in the Office of the Register of Deeds for Charleston County on January 2, 2009 at 10:31 am in Book 27 at Page 765. The premises covered and affected by the said mortgage and the foreclosure thereof, were, at the time of making thereof and at the time of the filing of the Lis Pendens, as described on the attached Exhibit "A".



Theodore von Keller, Esquire
B. Lindsay Crawford, III, Esquire
Sara Hutchins, Esquire
Adam Schanz, Esquire
Crawford & von Keller, LLC.
PO Box 4216
1640 St. Julian Place (29204)
Columbia, SC 29240
Phone: 803-790-2626

Columbia, South Carolina
March 24, 2014

Attorneys for Plaintiff

EXHIBIT "A"

ALL that lot, piece or parcel of land, with the buildings and improvements thereon, situate, lying and being in St. Andrews Parish, Charleston County, S.C., known as Lot 11, Block E, Northbridge Terrace, as shown on a plat by W.L. Gaillard, Surveyor, dated August 11, 1956, entitled "Map of Northbridge Terrace, St. Andrews Parish, Charleston County, S.C" which plat is recorded in Plat Book K, at page 148, in the RMC Office for Charleston County.

This being the same property conveyed to Paula R. Illingworth by deed of Thomas J. Cuff and Jean C. St. Arnaud f/k/a Jean Taylor, dates July 19, 2004 and recorded August 5, 2004 in the RMC Office for Charleston County, South Carolina in record Book T504 at Page 401.

TMS # 415-04-00-053

Physical Address: 1737 Afton Avenue, Charleston, SC 29407

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Green Tree Servicing LLC

Plaintiff,

-vs-

Paula R. Illingworth,

Defendant(s).

IN THE COURT OF COMMON PLEAS

CASE NO.: 2014-CP-10-2042

**SUMMONS
(Mortgage Foreclosure)
Non-Jury**

BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

2014 MAR 27 PM 4:13

FILED

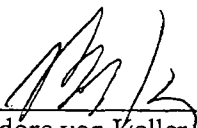
TO THE DEFENDANT(S) ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer on the subscribers at their offices, Crawford & von Keller, LLC., PO Box 4216, Columbia, SC 29240, within thirty (30) days after service hereof, exclusive of the day of such service; except that the United States of America, if named, shall have sixty (60) days to answer after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff will apply to the Court for a judgment by default granting the relief demanded in the Complaint.

TO MINOR(S) OVER FOURTEEN YEARS OF AGE, AND/OR TO MINOR(S) UNDER FOURTEEN YEARS OF AGE AND THE PERSON WITH WHOM THE MINOR(S) RESIDE(S), AND/OR TO PERSON UNDER SOME LEGAL DISABILITY, INCOMPETENTS AND PERSONS CONFINED:

YOUR ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a Guardian *ad Litem* within thirty (30) days after service of this Summons and Notice upon you. If

you fail to do so, application for such appointment will be made by the Plaintiff.



Theodore von Keller, Esquire
B. Lindsay Crawford, III, Esquire
Sara Hutchins, Esquire
Crawford & von Keller, LLC.
PO Box 4216
Columbia, SC 29240
Phone: 803-790-2626

Attorneys for Plaintiff

Columbia, South Carolina

March 24, 2014

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Green Tree Servicing LLC

Plaintiff,

-vs-

Paula R. Illingworth,

Defendant(s).

IN THE COURT OF COMMON PLEAS

CASE NO. 2014-CP-10-2042

COMPLAINT
(Mortgage Foreclosure)
Non-Jury

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2014 MAR 27 PM 4:13

FILED

The Plaintiff, complaining of the Defendants above-named, would respectfully show unto this Honorable Court:

1. Pursuant to S.C. Code Section 33-15-101, Plaintiff is a corporation or other legal entity doing business in the State of South Carolina.
2. That the Plaintiff has the legal right to enforce the negotiable instrument secured by the Mortgage and is the real party in interest as defined by Rule 17(a) of the South Carolina Rules of Civil Procedure.
3. The Plaintiff as servicing agent for the mortgage loan described in this foreclosure action is participating in the Home Affordable Modification Program ("HMP"), but subject loan is not eligible for modification as the Plaintiff has established Right Party Contact, has sent at least two written requests asking the borrower to supply required information in accordance with Section 2.2.2, and has otherwise satisfied the Reasonable Effort solicitation standard without establishing Right Party Contact.
4. That the real property hereinafter described, which is the subject of this action, is situated and located in Charleston County, South Carolina.
5. That some interest in or lien upon such real property is held or may be claimed by the Defendants herein.

6. That on or about December 19, 2008, for value received, Paula R. Illingworth executed and delivered to Bank of America, N.A. a certain promissory note, in writing, according to the terms and conditions set out therein, by which said maker promised to pay to Bank of America, N.A. the sum of \$179,200.00, together with interest thereon at the rate of 5.0% per annum.

7. That in order to better secure the payment of the said note and debt, in accordance with the terms and conditions thereof, the said Paula R. Illingworth executed and delivered on

December 19, 2008 a mortgage, of real estate to Bank of America, N.A., its successors and

assigns, covering the following described property:

ALL that lot, piece or parcel of land, with the buildings and improvements thereon, situate, lying and being in St. Andrews Parish, Charleston County, S.C., known as Lot 11, Block E, Northbridge Terrace, as shown on a plat by W.L. Gaillard, Surveyor, dated August 11, 1956, entitled "Map of Northbridge Terrace, St. Andrews Parish, Charleston County, S.C" which plat is recorded in Plat Book K, at page 148, in the RMC Office for Charleston County.

This being the same property conveyed to Paula R. Illingworth by deed of Thomas J. Cuff and Jean C. St. Arnaud f/k/a Jean Taylor, dates July 19, 2004 and recorded August 5, 2004 in the RMC Office for Charleston County, South Carolina in record Book T504 at Page 401.

TMS #: 415-04-00-053

Physical Address: 1737 Afton Avenue, Charleston, SC 29407

8. That on January 2, 2009, said mortgage was recorded in the Office of the Register of Deeds for Charleston County in Book 27 at Page 765.

9. That the said Bank of America, N.A. assigned said mortgage unto Green Tree Servicing LLC by Assignment of Mortgage dated June 25, 2013, and recorded in the Office of the Register of Deeds for Charleston County Book 0346 at Page 832 on July 19, 2013. By virtue of said assignment, the Plaintiff in this action is the mortgagee/beneficiary of record.

10. That said mortgage evidences and secures the repayment of money advanced by the mortgagee to, or on behalf of, the mortgagor and constitutes a first lien on the mortgaged premises.

FOR A FIRST CAUSE OF ACTION
(Mortgage Foreclosure)

11. The Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.
12. That according to the terms and conditions of said Note and Mortgage, it is provided that, in the event of default in the payment of any installment when due, the entire principal and accrued interest shall at once become due and payable at the option of the holder.
-
13. That the monthly payments due on said Note and Mortgage are in default since June 1, 2013; that the conditions of said Note and Mortgage have been broken; that the Plaintiff elects to and does, declare the entire balance of said indebtedness due and payable; that the principal balance as of said default date is \$166,725.41; that also due and owing is interest as provided at the rate set forth in the Note; that also due are late charges and the costs and disbursements of this action, including attorney's fees.
14. That it has become and is necessary for the Plaintiff to employ legal counsel to prosecute this action; and that a reasonable fee for the services of the Plaintiff's counsel should, according to the terms of said note and mortgage, be added to the amount of the mortgage debt.
15. Pursuant to §37-3-105, *South Carolina Code of Laws* (1976 as amended), the mortgage lien, which is subject to this action, is a first lien on real estate and is not a '*consumer loan*' for the purposes of the South Carolina Consumer Protection Code. Any notices of right to cure have been given as required.
16. That the Plaintiff has advanced and/or may advance certain sums for taxes and insurance and for inspecting and/or securing the subject property, which sums, according to the terms of said mortgage, should be added to the amount of the mortgage debt.
17. Plaintiff reserves all rights and benefits to which it may be entitled, including but not limited to the right to a deficiency judgment against any obligor and/or guarantor of the Note described herein, pursuant to S.C. Code Ann. § 29-3-660 (1976, as amended), following a

judicial sale of the mortgaged premises. Plaintiff may waive its right to a deficiency judgment at any time prior to the sale herein.

WHEREFORE, having fully set forth its Complaint, the Plaintiff prays that this Honorable Court inquire into the matters set forth herein; and

Find that the Plaintiff's Mortgage be declared a first lien and that the Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes, insurance premiums and/or inspection or securing expenses, which may have been paid, a reasonable sum as attorney's fees and the costs of this action; and

That the Plaintiff's real property be sold under the direction of this Court, that the equity of redemption be barred, and that the proceeds of sale be applied as follows:

First, to the costs and expenses of the within action and sale, and

Second, to the payment and discharge of the amount due on the Plaintiff's note and mortgage, together with attorney's fees and costs as aforesaid, and

Third, the surplus, if any, be distributed pursuant to Rule 71 of the South Carolina Rules of Civil Procedure; and

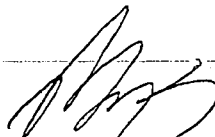
That the Court issue an Order directing the Sheriff to place the successful purchaser at the foreclosure sale in possession of the subject real property, and all persons claiming thereunder and the removal therefrom of all furnishings, fixtures and items not subject to the lien of the Plaintiff's Mortgage, which personal property, if not removed shall be deemed abandoned and shall be removed by the Plaintiff or its agents from the Mortgaged Property by placing said property on the public street or highway or by any other means, including by force if necessary; and

An Order granting the appointment of a receiver should it become necessary, to secure and supervise the rental of the property to be foreclosed with the authority to take possession

thereof and collect rents, issues and profits thereon during the pendency of this action and to hold the same as further security for Plaintiff's debt; and

An Order be entered for reimbursement of all costs of inspecting and securing the property incurred by the Plaintiff as a result of the delinquency; and

For such other and further relief as may be just and proper.



Theodore von Keller, Esquire
B. Lindsay Crawford, III, Esquire
Sara Hutchins, Esquire
Adam Schanz, Esquire
Crawford & von Keller, LLC.
PO Box 4216
Columbia, SC 29240
Phone: 803-790-2626

Columbia, South Carolina
March 24, 2014

Attorneys for Plaintiff

**NOTICE REQUIRED BY THE
FAIR DEBT COLLECTION PRACTICES ACT**
15 U.S.C. §1692, et seq., as amended

1. The Plaintiff named in the attached Summons and Complaint is the creditor to whom the debt is owed.

2. If the Plaintiff is different from the original creditor, the Plaintiff's firm will provide the debtor with the name and address of the original creditor, if requested by the debtor, in writing, within thirty (30) days of the receipt of this notice.

3. The debt described in the Complaint attached hereto and evidenced by the Note and Mortgage described therein will be assumed to be valid by the Plaintiff's law firm unless the debtor, within thirty days (30) after the receipt of this notice, disputes the validity of the debt or some portion thereof.

4. If the debtor notifies the Plaintiff's law firm, in writing within thirty days (30) of the receipt of this notice, that the debt or any portion thereof is disputed, the Plaintiff's law firm will obtain a verification of the debt, and a copy of such verification will be mailed to the debtor by the Plaintiff's law firm.

5. As of the date of the attached complaint you owe \$172,154.98 (this amount represents payoff plus attorney fees). Because of interest, late charges, and other charges that may vary from day to day, the amount due on the day you pay may be greater. Hence, if you pay the amount shown above, an adjustment may be necessary after we receive your check, in which event we will inform you before depositing the check for collection. For further information, you may write or call the Plaintiff's law firm as set forth below.

6. Written requests should be addressed to Theodore von Keller, B. Lindsay Crawford, III, Sara Hutchins, or Adam Schanz, Attorneys at Law, PO Box 4216, Columbia, SC 29240. Telephone requests should be directed to said attorney at 803-790-2626

**THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY
INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Green Tree Servicing LLC,

Plaintiff,

-vs-

Paula R. Illingworth,

Defendant(s).

IN THE COURT OF COMMON PLEAS

CASE NO. 2014-CP-10-2042

NOTICE OF RIGHT TO FORECLOSURE
INTERVENTION

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2014 MAR 27 PM 4:11

FILED

TO: Paula R. Illingworth

PLEASE TAKE NOTICE THAT pursuant to the Supreme Court of South Carolina Administrative Order 2011-05-02-01, you may have a right to Foreclosure Intervention.

To be considered for any available Foreclosure Intervention, you must communicate with an otherwise deal with Plaintiff through its law firm, Crawford & von Keller, LLC. You must communicate any requests for Foreclosure Intervention consideration to Crawford & von Keller, LLC. within thirty (30) days from your receipt of this Notice by writing to the undersigned attorney PO Box 4216, Columbia, SC 29240 or calling (803) 790-2626.

When submitting your request, or soon as possible thereafter, provide the following Documentation:

1. A signed statement that details any hardship that may exist;
2. Evidence of income from all sources, including, but not limited to, pay check stub, Social Security income statement, retirement income statement, disability income statements, leave and earnings statements.
3. An itemized list of all household expenses per month.
4. Verification of contact information that include home, cellular and employment telephone number, and e-mail address.
5. Any other documents(s) and/or information that will help determine your qualification for assistance through loss mitigation options.
6. Amount you are able to pay toward arrearage.

IF YOU FAIL TO COMMUNICATE AN INTEREST IN BEING EVALUATED FOR FORECLOSURE INTERVENTION TO THE PLAINTIFF'S ATTORNEY WITHIN THIRTY (30) DAYS AFTER BEING SERVED WITH THIS NOTICE, THEN THE PLAINTIFF WILL CONSIDER SUCH FAILURE AN ELECTION NOT TO PARTICIPATE IN FORECLOSURE INTERVENTION AND WILL PROCEED WITH THE FORECLOSURE ACTION.

CRAWFORD & VON KELLER, LLC.

By: 

Theodore von Keller, Esquire

B. Lindsay Crawford, III, Esquire

Sara Hutchins, Esquire

Adam Schanz, Esquire

Crawford & von Keller, LLC.

PO Box 4216

Columbia, SC 29240

Phone: 803-790-2626

Columbia, South Carolina
March 24, 2014

Attorneys for Plaintiff

THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL
BE USED FOR THAT PURPOSE

Answer

8/22/2014

The Court of Common Pleas
1200 Broad street
Charleston SC
29401

FILED
2014 AUG 22 PM 4:46
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

To whom it may concern:

This is a response to complaint number 2014.CP.10.2042
Greentree Sewrving LLC (plaintiff)
vs
Paula Illingworth (defendant)

In May of 2013 Bank of America sold my loan , property address 1737 Afton Ave, Charlston SC 29407 to Greentree Servicing, LLC. Current Greentree mortgage acct.no. 688167410. At the time of the sale my mortgage with BAC was \$1,197.94. When I first talked to a customer service representative at Greentree I was told that my mortgage had risen to \$1850.00, an increase of more than 30%.

The explanation for this meteoric rise was a shortfall in my escrow. Upon the transfer of my mortgage I had an escrow surplus of \$955.00. I refused to pay this amount fearing that once paid the amount would be locked in.

When I asked for a letter documenting the new calculations I was told by my representative that I needed to talk to someone in the escrow department. My calls to the escrow department were unsuccessful. They continually referred me back to my account representative. After weeks of frustration I talked with a woman named Anne that caught the problem, realized it was at Greentrees end, and was told that she would research the matter further. After months I recieved, out of the blue, approval for a loan modification. I did not apply for this modification, but was advised by Joe Roberson with Fannis Mae Atlanta to agree to it, that his experiences with Greentree were nothing if not difficult and that the modification was my best option. Even though I would have no trouble in paying the corrcet mortgage amount of \$1200.00.

I diligently paid my mortgage for the trial period. In late November I went to Nicaragua on a charity mission. I had my mail forwarded to 8 Anita Drive, Charleston, SC , the home of a responsible friend. I did not recieve a letter in that location that would have, if signed and sent back to Greentree, continued my modification. This unfortunate situation as well as the first three months of attempting to correct the amount of my mortgage caused Greentree to put my home in foreclosure.

I proceeded to reapply for a new modification, a nearly impossible task from a third world country. Documents were recieved then lost, transferred to various departments and lost again. I was lied to, representatives refused to talk to me, I was bounced back and forth, receiving no cooperation from Greentree whatsoever.

I finally dealt with a representative named Rick that would not allow me to provide documents such as soft income and rent from roomamtes at the property, documents that would easily have put my income well within the range of modification requirements.

I was denied. And the worst part was how intentionally cruel this man was to me. Simply cruel and unprofessional.

According to my research such unethical business practices are common procedure with this company, a company whose practices tear down the very fabric of this countrys middle and lower classes.

I am now dealing with a Ms. Sanchez at the Fannie Mae help center in Chicago. I have resubmitted all documentation, and Ms. Sanchez has been nothing but patient and professional. The final approval for my modification, however, is still the decision of Greentree, not Fannis Mae. Ms. Sanchez is merely an advocate.

If not approved for loan modification I will take legal action.

If I have editorialized it is due to the fact that the past 9 months of dealing with this company has been the most painful experiece of my life.

Sincerely,

Paula Illingworth

1737 Afton Ave
Ches SC 29407

243 - 364 - 9214
P. 34

STATE OF SOUTH CAROLINA
 COUNTY OF CHARLESTON

Green Tree Servicing LLC

Plaintiff,

-vs-

Paula R. Illingworth

Defendant(s).

IN THE COURT OF COMMON PLEAS
 CIVIL ACTION COVER SHEET

Case No.: _____

2015CP 10 -2322

FILED
 2015 APR 23 AM 11:13
 JUDGE J. ARMSTRONG
 CLERK OF COURT

Submitted By: B. Lindsay Crawford, III, Theodore von Keller, Sara Hutchins,

SC Bar #: 6510, SC Bar #: 5718 SC Bar #: 72879,

Address: 1640 St. Julian Place
 Columbia, SC 29204

Telephone #: (803) 790-2626
 Fax # 803-790-1277

Email: lindsay@crawfordvk.com, ted@crawfordvk.com, sara@crawfordvk.com
adam@crawford.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this Cover Sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

JURY TRIAL demanded in complaint

NON-JURY TRIAL demanded in complaint

This case is subject to ARBITRATION pursuant to Circuit Court Annexed Alternative Dispute Resolution Rules.

This case is subject to MEDIATION pursuant to the Circuit Court Annexed Alternative Dispute Resolution Rules.

■ This case is exempt from ADR (Proof of ADR/Exemption Attached).

NATURE OF ACTION (Check One Box Below)

Contracts	Torts-Professional Malpractice	Torts-Personal Injury	Real Property
Constructions (100)	Dental Malpractice (200)	Assault/Slander/Libel (300)	Claim & Delivery (400)
Debt Collection (110)	Legal Malpractice (210)	Conversion (310)	Condemnation (410)
Employment (120)	Medical Malpractice (220) Previous	Motor Vehicle Accident (320)	Foreclosure (420)
General (130)	Notice of Intent Case # 20__-CP-	Premises Liability (330)	Mechanic's Lien (430)
Breach of Contract (140)	Notice/File Med Mal (230)	Products Liability (340)	Partition (440)
Other (199)	Other (299)	Personal Injury (350)	Possession (450)
		Wrongful Death (360)	Building Code Violation (460)
		Other (399)	Other (499)
Inmate Petitions	Administrative Law/Relief	Judgments/Settlements	Appeals
PCR (500)	Reinstate Driver's License (800)	Death Settlement (700)	Arbitration (900)
Mandamus (520)	Judicial Review (810)	Foreign Judgment (710)	Magistrate-Civil (910)
Habeas Corpus (530)	Relief (820)	Magistrate's Judgment (720)	Magistrate-Criminal (920)
Other (599)	Permanent Injunction (830)	Minor Settlement (730)	Municipal (930)
	Forfeiture-Petition (840)	Transcript Judgment (740)	Probate Court (940)
	Forfeiture-Consent Order (850)	Lis Pendens (750)	SCDOT (950)
	Other (899)	Transfer of Structured Settlement	Worker's Comp (960)
		Payment Rights Application (760)	Zoning Board (970)
			Public Service Comm (990)
			Employment Security Comm (991)
			Other (999)
		Confession of Judgment (770)	
		Petition for Workers Compensation	
		Settlement	
		Approval (780)	
		Other (799)	
Special /Complex/Other			
Environmental (600)	Pharmaceuticals (630)		
Automobile Arb (610)	Unfair Trade Practices (640)		
Medical (620)	Out-Of State Depositions (650)		
Other (699)	Motion to Quash Subpoena in an Out-Of-County Action (660)		
	Sexual Predator (510)		

Submitting Party Signature: _____

Date: 4/20/15

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10, et seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), Richland Union and York
SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held no later than 120 days after all defendants are served with the "Notice of Intent to File Suite" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special Proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals;
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
CASE NO.

Green Tree Servicing LLC

2015CP 10 -2322

Plaintiff,

-vs-

Paula R. Illingworth,

Defendant(s).

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2015 APR 23 AM 11:13

FILED

**CERTIFICATE OF EXEMPTION FROM ADR
I CERTIFY THAT THIS ACTION IS EXEMPT FROM ADR BECAUSE:**

this is a special proceeding or action seeking extraordinary relief such as mandamus, habeas corpus or prohibition;

this action is appellate in nature;

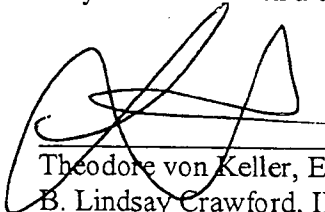
this is a post-conviction relief matter;

this is a contempt of court proceeding;

this is a forfeiture proceeding brought by the State;

this is a case involving a mortgage foreclosure; or

the parties submitted the case to voluntary mediation with a certified mediator prior to the filing of this civil action.



Theodore von Keller, Esquire
B. Lindsay Crawford, III, Esquire
Sara Hutchins, Esquire
Crawford & von Keller, LLC.
PO Box 4216
1640 St. Julian Place (29204)
Columbia, SC 29240

Phone: 803-790-2626

Attorneys for Plaintiff

Columbia, South Carolina
April 20, 2015

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Green Tree Servicing LLC

Plaintiff,

-vs-

Paula R. Illingworth,

Defendant(s).

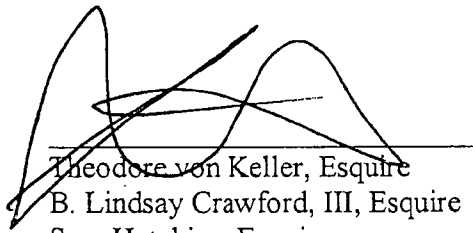
IN THE COURT OF COMMON PLEAS

CASE NO. 2015CP 10 -2322

LIS PENDENS

FILED
2015 APR 23 AM 11:14
JULIE J ARMSTRONG
CLERK OF COURT

NOTICE IS HEREBY GIVEN that an action has been commenced and is now pending in this Court upon the Complaint of the above-named Plaintiff for the foreclosure of a certain mortgage of real estate given by Paula R. Illingworth to Bank of America, N.A. dated December 19, 2008, and recorded in the Office of the Register of Deeds for Charleston County on January 2, 2009 at 10:31 am in Book 27 at Page 765. The premises covered and affected by the said mortgage and the foreclosure thereof, were, at the time of making thereof and at the time of the filing of the Lis Pendens, as described on the attached Exhibit "A".



Theodore von Keller, Esquire
B. Lindsay Crawford, III, Esquire
Sara Hutchins, Esquire
Crawford & von Keller, LLC.
PO Box 4216
1640 St. Julian Place (29204)
Columbia, SC 29240
Phone: 803-790-2626

Columbia, South Carolina
April 20, 2015

Attorneys for Plaintiff

EXHIBIT "A"

ALL that lot, piece or parcel of land, with the buildings and improvements thereon, situate, lying and being in St. Andrews Parish, Charleston County, S.C., known as Lot 11, Block E, Northbridge Terrace, as shown on a plat by W.L. Gaillard, Surveyor, dated August 11, 1956, entitled "Map of Northbridge Terrace, St. Andrews Parish, Charleston County, S.C" which plat is recorded in Plat Book K, at page 148, in the RMC Office for Charleston County.

This being the same property conveyed to Paula R. Illingworth by deed of Thomas J. Cuff and Jean C. St. Arnaud f/k/a Jean Taylor, dates July 19, 2004 and recorded August 5, 2004 in the RMC Office for Charleston County, South Carolina in record Book T504 at Page 401.

TMS # 415-04-00-053

Physical Address: 1737 Afton Avenue, Charleston, SC 29407

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Green Tree Servicing LLC

Plaintiff,

-vs-

Paula R. Illingworth,

Defendant(s).

IN THE COURT OF COMMON PLEAS

CASE NO.: 2015CP 10 -2322

SUMMONS
(Mortgage Foreclosure)
Non-Jury
(Deficiency Judgment Waived)

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2015 APR 23 AM 11:14

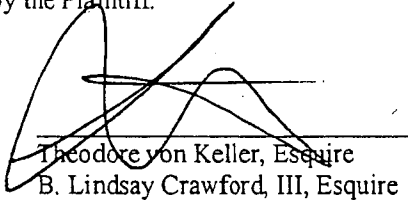
FILED

TO THE DEFENDANT(S) ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer on the subscribers at their offices, Crawford & von Keller, LLC., PO Box 4216, Columbia, SC 29240, within thirty (30) days after service hereof, exclusive of the day of such service; except that the United States of America, if named, shall have sixty (60) days to answer after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff will apply to the Court for a judgment by default granting the relief demanded in the Complaint.

TO MINOR(S) OVER FOURTEEN YEARS OF AGE, AND/OR TO MINOR(S) UNDER FOURTEEN YEARS OF AGE AND THE PERSON WITH WHOM THE MINOR(S) RESIDE(S), AND/OR TO PERSON UNDER SOME LEGAL DISABILITY, INCOMPETENTS AND PERSONS CONFINED:

YOUR ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a Guardian *ad Litem* within thirty (30) days after service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Plaintiff.


Theodore von Keller, Esquire
B. Lindsay Crawford, III, Esquire
Sara Hutchins, Esquire
Crawford & von Keller, LLC.
PO Box 4216
Columbia, SC 29240
Phone: 803-790-2626

Attorneys for Plaintiff

Columbia, South Carolina
April 20, 2015

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Green Tree Servicing LLC

Plaintiff,

-vs-

Paula R. Illingworth,

Defendant(s).

IN THE COURT OF COMMON PLEAS

CASE NO. 2015CP 10 - 2322

COMPLAINT
(Mortgage Foreclosure)
Non-Jury
(Deficiency Judgment Waived)

2015 APR 23 AM 11:14
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

The Plaintiff, complaining of the Defendants above-named, would respectfully show unto this Honorable Court:

1. Pursuant to S.C. Code Section 33-15-101, Plaintiff is a corporation or other legal entity doing business in the State of South Carolina.
2. That the Plaintiff has the legal right to enforce the negotiable instrument secured by the Mortgage and is the real party in interest as defined by Rule 17(a) of the South Carolina Rules of Civil Procedure.
3. The Plaintiff as servicing agent for the mortgage loan described in this foreclosure action is participating in the Home Affordable Modification Program ("HMP"), but subject loan is not eligible for modification as the Plaintiff has established Right Party Contact, has sent at least two written requests asking the borrower to supply required information in accordance with Section 2.2.2, and has otherwise satisfied the Reasonable Effort solicitation standard without establishing Right Party Contact.
4. That the real property hereinafter described, which is the subject of this action, is situated and located in Charleston County, South Carolina.
5. That some interest in or lien upon such real property is held or may be claimed by the Defendants herein.

6. That on or about December 19, 2008, for value received, Paula R. Illingworth executed and delivered to Bank of America, N.A. a certain promissory note, in writing, according to the terms and conditions set out therein, by which said maker promised to pay to Bank of America, N.A. the sum of \$179,200.00, together with interest thereon at the rate of 5.0% per annum.

7. That in order to better secure the payment of the said note and debt, in accordance with the terms and conditions thereof, the said Paula R. Illingworth executed and delivered on

December 19, 2008 a mortgage, of real estate to Bank of America, N.A., its successors and

assigns, covering the following described property:

ALL that lot, piece or parcel of land, with the buildings and improvements thereon, situate, lying and being in St. Andrews Parish, Charleston County, S.C., known as Lot 11, Block E, Northbridge Terrace, as shown on a plat by W.L. Gaillard, Surveyor, dated August 11, 1956, entitled "Map of Northbridge Terrace, St. Andrews Parish, Charleston County, S.C" which plat is recorded in Plat Book K, at page 148, in the RMC Office for Charleston County.

This being the same property conveyed to Paula R. Illingworth by deed of Thomas J. Cuff and Jean C. St. Arnaud f/k/a Jean Taylor, dates July 19, 2004 and recorded August 5, 2004 in the RMC Office for Charleston County, South Carolina in record Book T504 at Page 401.

TMS #: 415-04-00-053

Physical Address: 1737 Afton Avenue, Charleston, SC 29407

8. That on January 2, 2009, said mortgage was recorded in the Office of the Register of Deeds for Charleston County in Book 27 at Page 765.

9. That the said Bank of America, N.A. assigned said mortgage unto Green Tree Servicing LLC by Assignment of Mortgage dated June 25, 2013, and recorded in the Office of the Register of Deeds for Charleston County Book 0346 at Page 832 on July 19, 2013. By virtue of said assignment, the Plaintiff in this action is the mortgagee/beneficiary of record.

10. That said mortgage evidences and secures the repayment of money advanced by the mortgagee to, or on behalf of, the mortgagor and constitutes a first lien on the mortgaged premises.

FOR A FIRST CAUSE OF ACTION
(Mortgage Foreclosure)

11. The Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

12. That according to the terms and conditions of said Note and Mortgage, it is provided that, in the event of default in the payment of any installment when due, the entire principal and accrued interest shall at once become due and payable at the option of the holder.

13. That the monthly payments due on said Note and Mortgage are in default since June 1, 2013; that the conditions of said Note and Mortgage have been broken; that the Plaintiff elects to and does, declare the entire balance of said indebtedness due and payable; that the principal balance as of said default date is \$166,725.41; that also due and owing is interest as provided at the rate set forth in the Note; that also due are late charges and the costs and disbursements of this action, including attorney's fees.

14. That it has become and is necessary for the Plaintiff to employ legal counsel to prosecute this action; and that a reasonable fee for the services of the Plaintiff's counsel should, according to the terms of said note and mortgage, be added to the amount of the mortgage debt.

15. Pursuant to §37-3-105, *South Carolina Code of Laws* (1976 as amended), the mortgage lien, which is subject to this action, is a first lien on real estate and is not a '*consumer loan*' for the purposes of the South Carolina Consumer Protection Code. Any notices of right to cure have been given as required.

16. That the Plaintiff has advanced and/or may advance certain sums for taxes and insurance and for inspecting and/or securing the subject property, which sums, according to the terms of said mortgage, should be added to the amount of the mortgage debt.

17. That the Plaintiff claims no deficiency judgment, and any right to same is specifically waived.

WHEREFORE, having fully set forth its Complaint, the Plaintiff prays that this Honorable Court inquire into the matters set forth herein; and

Find that the Plaintiff's Mortgage be declared a first lien and that the Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes, insurance premiums and/or inspection or securing expenses, which may have been paid, a reasonable sum as attorney's fees and the costs of this action; and

~~That the Plaintiff's real property be sold under the direction of this Court, that the equity~~
of redemption be barred, and that the proceeds of sale be applied as follows:

First, to the costs and expenses of the within action and sale, and

Second, to the payment and discharge of the amount due on the Plaintiff's note and mortgage, together with attorney's fees and costs as aforesaid, and

Third, the surplus, if any, be distributed pursuant to Rule 71 of the South Carolina Rules of Civil Procedure; and

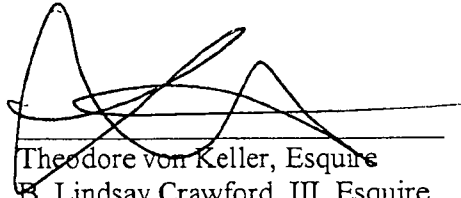
That the Court issue an Order directing the Sheriff to place the successful purchaser at the foreclosure sale in possession of the subject real property, and all persons claiming thereunder and the removal therefrom of all furnishings, fixtures and items not subject to the lien of the Plaintiff's Mortgage, which personal property, if not removed shall be deemed abandoned and shall be removed by the Plaintiff or its agents from the Mortgaged Property by placing said property on the public street or highway or by any other means, including by force if necessary; and

An Order granting the appointment of a receiver should it become necessary, to secure and supervise the rental of the property to be foreclosed with the authority to take possession thereof and collect rents, issues and profits thereon during the pendency of this action and to hold the same as further security for Plaintiff's debt; and

An Order be entered for reimbursement of all costs of inspecting and securing the property incurred by the Plaintiff as a result of the delinquency; and

The Defendant(s), and all persons whomever claiming by and through said Defendant(s), be forever barred of right, title and interest, of, in and to the Mortgaged Property and Collateral, and each and every part thereof; and

For such other and further relief as may be just and proper.



Theodore von Keller, Esquire
B. Lindsay Crawford, III, Esquire
Sara Hutchins, Esquire
Crawford & von Keller, LLC.
PO Box 4216
Columbia, SC 29240
Phone: 803-790-2626

Columbia, South Carolina
April 20, 2015

Attorneys for Plaintiff

**NOTICE REQUIRED BY THE
FAIR DEBT COLLECTION PRACTICES ACT.**
15 U.S.C. §1692, et seq., as amended

1. The Plaintiff named in the attached Summons and Complaint is the creditor to whom the debt is owed.

2. If the Plaintiff is different from the original creditor, the Plaintiff's firm will provide the debtor with the name and address of the original creditor, if requested by the debtor, in writing, within thirty (30) days of the receipt of this notice.

3. The debt described in the Complaint attached hereto and evidenced by the Note and Mortgage described therein will be assumed to be valid by the Plaintiff's law firm unless the debtor, within thirty days (30) after the receipt of this notice, disputes the validity of the debt or some portion thereof.

4. If the debtor notifies the Plaintiff's law firm, in writing within thirty days (30) of the receipt of this notice, that the debt or any portion thereof is disputed, the Plaintiff's law firm will obtain a verification of the debt, and a copy of such verification will be mailed to the debtor by the Plaintiff's law firm.

5. As of the date of the attached complaint you owe \$172,154.98 (this amount represents payoff plus attorney fees). Because of interest, late charges, and other charges that may vary from day to day, the amount due on the day you pay may be greater. Hence, if you pay the amount shown above, an adjustment may be necessary after we receive your check, in which event we will inform you before depositing the check for collection. For further information, you may write or call the Plaintiff's law firm as set forth below.

6. Written requests should be addressed to Theodore von Keller, B. Lindsay Crawford, III, Sara Hutchins, Attorneys at Law, PO Box 4216, Columbia, SC 29240. Telephone requests should be directed to said attorney at 803-790-2626

**THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY
INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**

State of South Carolina) In Common Pleas Court
County of Charleston) Ninth Judicial Circuit

Green Tree Servicing, LLC,) Transcript of Record
Plaintiff,) 2015-CP-10-2322

V.)

~~Paula R. Illingworth,~~)
Defendant.)

November 13, 2015

Charleston, South Carolina

B E F O R E:

The Honorable J. C. Nicholson, Jr., Presiding Judge

A P P E A R A N C E S:

Ted Von Keller, Esquire

Attorney for the Plaintiff

Shawn M. French, Esquire

Attorney for the Defendant

SHARON L. VIZER
CIRCUIT COURT REPORTER

I N D E X

Defendant's Motion to Dismiss.....3
Certificate of Reporter.....19

NO EXHIBITS WERE MARKED

1 Friday, November 13, 2015

2 THE COURT: Green Tree Servicing vs. Illingworth.
3 Is anybody here on that? Mr. French?

4 MR. FRENCH: Good morning, afternoon, Your Honor.

5 THE COURT: And who is here representing the
6 plaintiff?

7 ~~MR. VON KELLER: Your Honor, Ted Von Keller from~~
8 Crawford and Von Keller.

9 THE COURT: Let me see. What is it, a motion to
10 dismiss? Whose motion?

11 MR. FRENCH: It's my motion, Your Honor.

12 THE COURT: All right. Let me see. I'll be glad
13 to hear you, Mr. French.

14 MR. FRENCH: Thank you, Your Honor. This is a
15 motion to dismiss under Rule 41, and this action -- or
16 not in this action but with this matter and this set of
17 facts there have been two prior motions to dismiss.

18 The first motion to dismiss -- or the first
19 ~~dismissal was done by notice of dismissal under Rule~~

20 41(a)(1). The second -- that was without an answer or
21 anything had happened in the case.

22 The second was a dismissal after there were three
23 hearings at which the plaintiff was not ready to go
24 forward or didn't show up at, in which Ms. Illingworth
25 was at each hearing, and at the third hearing Judge

1 Scarborough, the Master in Equity, dismissed the action,
2 and we believe that dismissal should be deemed to be with
3 prejudice as opposed to without prejudice.

4 THE COURT: Tell me what this lawsuit is about a
5 little bit.

6 MR. FRENCH: It's a foreclosure lawsuit.

7 ~~THE COURT: It's a foreclosure on?~~

8 MR. FRENCH: Ms. Illingworth's home.

9 THE COURT: It's her residence?

10 MR. FRENCH: Yes, Your Honor.

11 THE COURT: And they dismissed it how many times
12 under voluntarily dismissal?

13 MR. FRENCH: They dismissed it once, three hearings
14 where she showed up and it was continued. The third
15 hearing it was dismissed a second time.

16 THE COURT: By the plaintiff or by the Judge?

17 MR. FRENCH: Well, the second time it was dismissed
18 by the Judge.

19 THE COURT: After the first you got to give consent
20 to the judge to dismiss it. Why was it dismissed a
21 second time?

22 MR. FRENCH: Because they weren't prosecuting. For
23 failure to prosecute, Your Honor, because they kept
24 showing up at these scheduled hearings and they weren't
25 ready to go forward.

1 THE COURT: Okay.

2 MR. FRENCH: And my contention is that --

3 THE COURT: Well, what's your contention on why it
4 should be with prejudice?

5 MR. FRENCH: Because it's --

6 THE COURT: What does the rule say about prejudice
7 versus non-prejudice?

8 MR. FRENCH: The rule says that -- Rule 41(a)(1) is
9 a very specific kind of dismissal. The second dismissal
10 of that kind is with prejudice. The first dismissal was
11 clearly, I think we don't argue about, under Rule
12 41(a)(1). That was the first time.

13 The second dismissal was a dismissal by the Court
14 but it was not a voluntary dismissal. It wasn't a motion
15 or anything filed or made to dismiss the action. It was
16 dismissed for failure to prosecute which is 41(b), and it
17 says clearly in 41(b) for failure to prosecute it is with
18 prejudice unless otherwise stated. It also says after --
19 in that same paragraph any other kind of dismissal --

20 THE COURT: Well, you got Judge Scarborough's
21 order? Did he issue a written order?

22 MR. FRENCH: He did, Your Honor. I've got a copy.

23 THE COURT: What did the order say? Let me take a
24 look at the order real quick.

25 MR. FRENCH: To be frank, part of the confusion --

1 here's the order.

2 (A document was handed to the Court.)

3 THE COURT: Thank you.

4 (PAUSE.)

5 THE COURT: All right. It's dismissed under Rule
6 41(a), is what it says.

7 ~~MR. FRENCH: I know what the rule says but it also~~
8 says down in the additional information for failure to
9 prosecute.

10 THE COURT: I can't tell if that's an (a) or a (c).
11 Is that an (a)? Third appearance by the plaintiff. The
12 plaintiff not ready to proceed. Okay. So he put 41(a)
13 on the rule but -- all right. I was trying to find the
14 case number. Okay. It's 2042, right? And this case
15 number is 2322, right? A new action here.

16 Let me give you this back. Thank you very much.

17 MR. FRENCH: I don't need it, Your Honor. I've got
18 another copy.

19 THE COURT: Okay. All right. Thank you.

20 All right. Go ahead.

21 MR. FRENCH: Basically, because it wasn't a
22 voluntary nonsuit it can't be a 41(a) because 41(a)(1)
23 and (a)(2) both require the plaintiff to ask for it.
24 41(a)(2) says shall not be dismissed at the plaintiff's
25 instance save upon order of the Court.

1 It has to be under 41(b), and 41(b) says failure of
2 the plaintiff to prosecute, and goes on. And it says in
3 the second paragraph of 41(b), middle of it, unless the
4 Court in its order for dismissal otherwise specifies a
5 dismissal under this subdivision and any dismissal not
6 provided for in this rule, other than some instances that
7 ~~don't apply, operates as an adjudication on the merits,~~
8 meaning with prejudice.

9 So the order is not clear. So it's either with
10 prejudice or it's something that isn't clearly covered
11 under Rule 41. So it should be deemed to be with
12 prejudice. That's all I have, Your Honor.

13 THE COURT: Let me just ask you one question. The
14 order very clearly just says it's dismissed. It doesn't
15 say with or without prejudice.

16 MR. FRENCH: Right.

17 THE COURT: Is there any cases on the issue when
18 it's solid as to prejudice versus without prejudice, or
19 with prejudice as if it's solid on that issue what it is?

20 MR. FRENCH: Well, I don't think there need to be
21 cases. The rules --

22 THE COURT: Pardon?

23 MR. FRENCH: The Rules 41(a) and 41(b) both have
24 covered that when it is silent. 41(a) says when it is
25 silent it is without prejudice.

1 THE COURT: Right.

2 MR. FRENCH: Unless it's 41(a)(1) and it's the
3 second dismissal.

4 THE COURT: Right.

5 MR. FRENCH: 41(b) says if it's silent it's with
6 prejudice, and I believe Mr. Von Keller, he has some
7 cases. I don't think they -- the facts are different in
8 the case.

9 THE COURT: Okay. Thank you, Mr. French.

10 MR. FRENCH: Thank you, Your Honor.

11 THE COURT: Mr. Von Keller?

12 MR. VON KELLER: Thank you, Your Honor. Let me,
13 just so we are pretty clear on this, the first action was
14 in case 2013-CP-5160. That was brought by another law
15 firm and that was dismissed under 41(a)(1) in January
16 2014. That was without prejudice, and the order says
17 with leave the recommence.

18 The new action was brought by my law firm in 2014
19 which was case number 2014-2042. Mr. French is correct,
20 we could not get an affidavit for our client for the
21 foreclosure hearing and my client was going through a
22 reorganization. We had to have an affidavit of debt to
23 submit to the Master. We could not get it so we had to
24 strike three hearings, and the Judge then did this rule,
25 this dismissal.

1 The dismissal is very clear on two places on the
2 dismissal. And with your permission, if I may approach.
3 I have prepared for your law clerk a little memorandum
4 and behind it are the orders of dismissal.

5 (Document was handed to the Court.)

6 MR. VON KELLER: It is very clear in that order
7 ~~that it is 41(a)(2). That it is~~

8 THE COURT: Well, it can't be (a)(2). It can't be
9 (a)(2) because it very clearly says dismissed for lack of
10 prosecution. So I got to assume based upon the written
11 part of the order it's 41(b). It's got to be because
12 there's nothing in (a)(1) or (2) about lack of
13 prosecution.

14 MR. VON KELLER: Yes, sir. The Judge handwrote --

15 THE COURT: He handwrote in there --

16 MR. VON KELLER: Yes, sir, and checked -- excuse
17 me.

18 THE COURT: -- lack of prosecution and he checked
19 (a)(2) -- excuse me, 41(a) is what he checked.

20 MR. VON KELLER: Yes, sir. He checked 41(a) and
21 handwrote 41(a). So clearly he was intending, and there
22 are cases, Your Honor --

23 THE COURT: See, that's where I disagree with you.
24 I think he was clear in saying it was failure to
25 prosecute and instead of putting 41 like -- quite

1 frankly, I can't tell whether it's (a) or (c), to be
2 honest with you. (C) would be dismissed with
3 counterclaims so it can't be (c) but go ahead.

4 Your position is because he says (a) therefore it's
5 not lack of prosecution. What do you think it was then?

6 MR. VON KELLER: I think it was --

7 ~~THE COURT: Why do you think he dismissed it?~~

8 MR. VON KELLER: I think he was essentially
9 granting a voluntary dismissal because the plaintiff was
10 not prepared to go forward, that it was the equivalent of
11 the plaintiff asking to take a voluntary dismissal and
12 the Court granting it.

13 As Your Honor knows, you can either do -- the
14 plaintiff himself can do an order of dismissal or if he
15 doesn't have consent of all parties the Court can do it.

16 Your Honor, I might mention to you that in both of
17 these actions the defendant had not appeared. She was in
18 default of both actions. And Mr. French was mentioning
19 that the -- about the case law. There is case law that
20 says that unless the order expressly states that it is
21 without prejudice.

22 THE COURT: I thought there was some case law along
23 that effect --

24 MR. VON KELLER: Yes, sir.

25 THE COURT: -- that's why I asked Mr. French.

1 MR. VON KELLER: Yes, sir. It is the Bowers case
2 that is cited in my memorandum. The Bowers case states
3 that; that unless it is stated clearly it is without
4 prejudice it is without prejudice.

5 But let me tell you what the more compelling
6 argument we think we have is. We rely on the case, Your
7 Honor, of Knight vs. Wagner. In that case, the plaintiff
8 brought an action for trespass. The defendant filed an
9 answer and counterclaim.

10 At trial, the defendant never mentioned nothing
11 about her counterclaim and the plaintiff moved for a
12 directed verdict. The defendant realizing she was in
13 trouble asked the Court for a voluntary dismissal and the
14 Court gave her a voluntary dismissal without prejudice.

15 The plaintiff appealed and said, No, that dismissal
16 should have been with prejudice. The Supreme Court said
17 it's moot because this was a continuing trespass that
18 each one created a new cause of action. And the Court
19 said, Therefore, the respondent could file a later suit
20 against appellant identical to this regardless of the
21 judge's ruling.

22 This is a foreclosure action. Every month that
23 goes by that she doesn't make a payment we have a brand
24 new cause of action.

25 THE COURT: So she hasn't been making any payment?

1 MR. VON KELLER: No, sir. Payments haven't been
2 made.

3 THE COURT: Well, she's still obligated to make the
4 payments under the note.

5 MR. VON KELLER: Absolutely.

6 THE COURT: That doesn't have anything to do with
7 the mortgage. ~~She's got to promise to pay so much a~~
8 month.

9 MR. VON KELLER: Well, my point is, is each month
10 that she does not make a payment under the note --

11 THE COURT: I understand but my question to you has
12 she paid anything?

13 MR. VON KELLER: She paid for some number of years
14 but she hasn't paid and I didn't look at that, but I
15 think the last thing I saw she hasn't paid in about two
16 years. I think that's correct.

17 THE COURT: Okay. All right.

18 MR. VON KELLER: So my point is, is that
19 irrespective of your Court's ruling walk out of here
20 tomorrow and file a whole new foreclosure because every
21 breach, each time she doesn't pay the note creates a
22 whole new cause of action for me. So the relief sought
23 by the defendant is essentially as in that Wagner case,
24 is moot. We can bring one every time.

25 So I believe my position is the Judge wrote on two

1 occasions that it was 41(a). That is obviously without
2 prejudice.

3 THE COURT: Well, I know we are dealing with a Form
4 4, and if you look at the Form, 4 there's no place to mark
5 for a 41(b).

6 MR. VON KELLER: That's correct.

7 ~~THE COURT: Okay. You would have to mark other and~~
8 write in 41(b), but he very clearly says failure to
9 prosecute.

10 MR. VON KELLER: Yes.

11 THE COURT: And there's no failure to prosecute
12 under 41(a). So I'm of the opinion his intent was (b).
13 I disagree with you on that. Okay?

14 MR. VON KELLER: Yes, sir, and I understand that.

15 THE COURT: Because there's no failure to prosecute
16 under 41(a) so he couldn't be talking about 41(a), and I
17 think he made a scrivener's error by saying 41(a) rather
18 than 41(b).

19 Now, as far as your argument on respective cause of
20 action arising from the failure to pay, you've probably
21 got a very valid point. Okay?

22 MR. VON KELLER: Yes, sir. Thank you, sir.

23 THE COURT: All right. Mr. French, let me hear you
24 on the --

25 MR. FRENCH: Thank you, Your Honor. First of all,

1 in the second action Ms. Illingworth did file a pro se
2 answer. It wasn't sophisticated but she wasn't actually
3 in default. Just to --

4 THE COURT: Well, what about the fact she hasn't
5 paid in two years? . . .

6 MR. FRENCH: That would get into the merits.

7 ~~THE COURT: I mean, the note is still there. She's~~
8 still obligated. Whether they can foreclose or not she
9 still made a promise to pay. She's still got a note
10 which she's obligated to pay and she hasn't paid a dime
11 in two years. So why doesn't every month a cause of
12 action arise for failure to pay?

13 MR. FRENCH: Because there's --

14 THE COURT: Now, you may be right in the suit to
15 collect on the note. You may not be able to foreclose
16 but you can sure sue her for the amount due.

17 MR. FRENCH: Well --

18 THE COURT: And then turn around and take your
19 judgment and execute on the property.

20 MR. FRENCH: That's a 50,000-dollar difference
21 though, Your Honor. I don't think they can.

22 THE COURT: It may be, it may not.

23 MR. FRENCH: I mean, I don't think they can, Your
24 Honor, because they are suing under the note and the
25 mortgage.

1 THE COURT: No, they're not. They are suing on the
2 promise to pay and the note -- the property is
3 collateral.

4 MR. FRENCH: Right.

5 THE COURT: And they are foreclosing on the
6 collateral. The bank doesn't have to take the
7 collateral. They can sue you personally on the note and
8 not foreclose.

9 MR. FRENCH: Correct, Your Honor. They can.

10 THE COURT: So if the foreclosure is dismissed your
11 position is the note is dismissed, too?

12 MR. FRENCH: Correct. My understanding on the case
13 law, and I'm not fully prepared for this argument today,
14 but if you choose to sue on a note you can then later
15 foreclose, that's the Leiber (phonetic) vs. Lighted
16 Galleries case, at any point within the mortgage's
17 statute of limitations.

18 THE COURT: Right. You can turn around and
19 foreclose later.

20 MR. FRENCH: Right. I don't think -- and there's
21 no case law, okay, Your Honor, unless Mr. Von Keller is
22 aware of some. I don't think there's anything saying one
23 way or another the other way, but I think that if you
24 have tried to foreclose -- because in order to foreclose
25 you have to have a debt and a mortgage and if you try to

1 turn around and sue on the note either they've got to pay
2 Ms. Illingworth \$50,000 or they can't foreclose at all.

3 I mean, they can't sue on the note at all because
4 the note is so essential to the underlying foreclosure.
5 If you don't have a note, if you don't have a debt the
6 mortgage is worthless. The great case, and the name just
7 escapes me. It starts with a B.

8 THE COURT: I'll agree with you. Now, what were
9 you talking about 50,000? They owe her 50,000? What are
10 you talking about?

11 MR. FRENCH: Well, if they are only suing on the
12 note and the mortgage is -- they can't foreclose, they
13 have no rights under the mortgage, then if they get a
14 judgment they are a judgment creditor collecting. They
15 are not a mortgagee anymore.

16 THE COURT: Well, I understand but if they are
17 getting a judgment against her that's going to attach to
18 the property then all they've got to do then is to
19 execute on the attachment to the property then they can
20 foreclose on the judgment.

21 MR. FRENCH: They can but South Carolina allows you
22 to an exemption of -- I believe it's --

23 THE COURT: Well, you've got a household exemption.

24 MR. FRENCH: Right. That's exactly what it would
25 be, Your Honor. And these issues haven't been fully

1 tested in the court system, so I haven't fully prepared
2 for them today but that's what I think would happen.

3 THE COURT: Okay.

4 MR. FRENCH: As far as the 41(a) or whether or not
5 multiple dismissals or whether or not, the cases that are
6 in the memorandum all deal with what I concede 41(a)(1),
7 ~~which the first time is always without prejudice but the~~
8 rule is very clear that the second time is.

9 THE COURT: All right. Thank you all very much.
10 Give me a chance the look at the cases, and, quite
11 frankly, digest 1(a) and (b) a little more thorough.
12 Thank you very much. Give me a chance to read it when
13 y'all aren't barking at me. Okay?

14 MR. FRENCH: Sorry.

15 THE COURT: Thank you very much.

16 MR. VON KELLER: If I may, Your Honor. I said
17 something that I wanted to clarify that I was incorrect
18 on. In the second lawsuit, Your Honor, the 2042 case,
19 the one styled in March of '14, the defendant did file a
20 pro se answer but it was in August. So it was many
21 months late. So that's why I said --

22 THE COURT: Well, I don't think that affects this
23 issue at all.

24 MR. VON KELLER: No. I just didn't want you to
25 think I misstated facts to the Court.

1 THE COURT: Okay. I understand but I don't think
2 that affects the issue.

3 MR. VON KELLER: I don't either.

4 THE COURT: All right. Thank you very much.

5 (WHEREUPON, the hearing was concluded.)

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C E R T I F I C A T E

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I, Sharon L. Vizer, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had ~~and the evidence introduced in the hearing of the~~ captioned case in Circuit Court on the 13th day of November 2015.

I do further certify that I am neither of kin, counsel nor have an interest to any party hereto.

December 29, 2016



SHARON L. VIZER

CIRCUIT COURT REPORTER

FILED
2013 SEP -5 AM 10:20
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

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

Green Tree Servicing LLC

Plaintiff/Petitioner

vs.

Paula R. Illingworth; et. al.

Defendant/Respondent

DOCKET NO:
13-CP-10-5160

AFFIDAVIT OF SERVICE OF:
Lis Pendens; Civil Action Coversheet;
Summons; Complaint; Notice of Foreclosure
Intervention

The undersigned, being first duly sworn, on oath deposes and says: That s(he) is now and at all times herein mentioned was a citizen of the United States, over the age of eighteen, not an officer of a plaintiff corporation, not a party to nor interested in the above entitled action, has the authority to serve pleadings in the State named below, and is competent to be a witness therein.

On the **4th day of September, 2013**, at **7:40 PM**, at the address of **1737 AFTON Avenue, CHARLESTON, Charleston County, SC 29407**; this affiant served the above described documents upon **Paula R. Illingworth** by then and there personally delivering 1 true and correct copy(ies) thereof, by then presenting to and leaving the same with **Unidentified Female, Family Member, A white female approx. 45-55 years of age 5'4"-5'6" in height weighing 120-140 lbs with brown hair.**, a person of suitable age and discretion who stated they reside at the defendant's/respondent's usual place of abode listed above.

Is defendant active duty military? (X) NO () YES

Is the place of service the dwelling house or usual abode for the party being served? () NO (X) YES

Is the Subject Property a Mobile Home? (X) NO () YES

Is a Mobile Home VIN # visible? (X) NO () YES VIN #: _____

Affiant hereby states under penalty of perjury under the laws of the State of South Carolina that the statement above is true and correct.

DATED this 6 day of September, 2013.

Bob Mode

Bob Mode, CHARLESTON, SC

SUBSCRIBED AND SWORN to before me this 6th day of September, 2013

Notary Signature

NOTARY PUBLIC in and for the State of South Carolina



FOR: Rogers Townsend & Thomas, PC
REF: 014293-00577-2

ORIGINAL AFFIDAVIT OF SERVICE

Tracking #: 10039829 CAE FIL



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Green Tree Servicing LLC,

Plaintiff,

v.

Paula R. Illingworth; Northbridge Terrace
Recreation Park, Inc.;

Defendant(s).

(014293-00577)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 13-CP-10-5160

NOTICE OF DISMISSAL AND
CANCELLATION OF LIS PENDENS
Deficiency Judgment Waived

JULIE J. ARMSTRONG
CLERK OF COURT
2014 JAN 17 AM 11:11

FILED

Pursuant to Rule 41(a)(1) of the South Carolina Rules of Civil Procedure, Plaintiff hereby dismisses the above entitled action without prejudice with leave to Plaintiff to commence another action should it so desire. The Clerk of Court is hereby directed to cancel the Lis Pendens and Summons and Complaint heretofore filed herein.

Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #5958)
Reginald P. Corley (SC Bar #69453)
Ellie C. Floyd (SC Bar #68635)
Robert P. Davis (SC Bar #74030)
Vance L. Brabham, III (SC Bar #71250)
Andrew A. Powell (SC Bar #100210)
Laura R. Baer (SC Bar # 101076)

Cheryl H. Fisher (SC Bar #15213)
Jennifer W. Rubin (SC Bar #16727)
Michael P. Morris (SC Bar #73560)
William S. Koehler (SC Bar #74935)
Andrew W. Montgomery (SC Bar #79893)
J. Pamela Price (SC Bar # 014336)
Mary R. Powers (SC Bar # 16534)

220 Executive Center Drive
Columbia, SC 29210

Post Office Box 100200 (29202)
(803) 744-4444

Columbia, South Carolina
January 13, 2014

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

GREEN TREE SERVICING, LLC,
Plaintiff,

Vs.

PAULA R. ILLINGWORTH,
Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 14-CP-10-2042

AFFIDAVIT OF SERVICE

FILED
2014 AUG 11 PM 2:53
JULIE J. ARISTON
CLERK OF COURT

RICHARD CORBIN personally appeared before me, a duly appointed Notary Public for the State of South Carolina. The undersigned deponent, upon being duly sworn says that on the 25th day of July, 2014 at 12:35 P.M. he served a certified true copy of a Certificate Of Exemption From ADR, Notice Of Right To Foreclosure Intervention, Lis Pendens, Summons and Complaint on Paula R. Illingworth, the Defendant herein, by leaving a copy of same with Paula R. Illingworth personally at: 1668 Old Towne Road, Charleston, South Carolina 29407.

The Defendant does not reside at the property address.

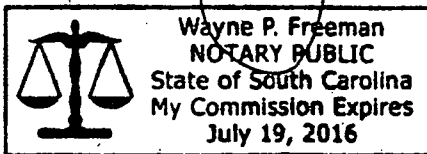
That Deponent is not a party to this action.

Richard Corbin
Wayne Freeman Investigations
S.L.E.D. License No. 1340
General Investigations
Legal Process Service

SWORN to before me this

26 day of July, 2014

Wayne P. Freeman
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires 7/19/16



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

Green Tree Servicing LLC

CASE NO. 2014-CP-10-2042

Plaintiff,

AFFIDAVIT OF DEFAULT

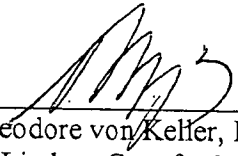
-vs-

Paula R. Illingworth,

Defendant(s).

FILED
2014 SEP -3 PM 2:11
JULIE J. ARMSTRONG
CLERK OF COURT
BY [Signature]

PERSONALLY appeared before me Theodore von Keller, B. Lindsay Crawford, and Sara Hutchins who, first being duly sworn deposes and says: That s/he is the attorney for the Plaintiff above-named, that Defendant(s), was/were served with copies of the Notice of Right To Foreclosure Intervention, Lis Pendens, Summons and Complaint as is shown on the proof of service filed herein; that s/he has not received an Answer or other appearance from said Defendant(s): Paula Illingworth; and that said Defendant(s) is/are now in default.



Theodore von Keller, Esquire
B. Lindsay Crawford, Esquire
Sara Hutchins, Esquire

SWORN to and subscribed before me

This 29 day of August, 2014



(L.S.)
Notary Public for South Carolina

My Commission Expires: 5/30/2023

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

Green Tree Servicing LLC

CASE NO. 2014-CP-10-2042

Plaintiff,

MOTION INFORMATION FORM AND
COVERSHEET

-vs-

Paula R. Illingworth,

Defendant(s)

Plaintiff's Attorney

B. Lindsay Crawford, III - S.C. Bar No. 6510
Theodore von Keller - S.C. Bar No. 5718
Sara C. Hutchins - S.C. Bar No. 72879
PO Box 1640, Columbia, SC 29240

TELEPHONE: 803-790-2626 FAX: 803-790-1277
EMAIL: SARA@CRAWFORDVK.COM

Defendants Attorney:

_____, Bar No.:

Address:

Phone: _____ Fax: _____

E-mail: _____ Other: _____

- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I AND III)
- FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II AND III)

SECTION I: Hearing Information

Nature of Motion: _____

Estimated Time Needed: _____ Court Reporter Needed: YES NO

SECTION II: Motion Type

- Written motion attached
- Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for Plaintiff / Defendant

Date Submitted

SECTION III: Motion Fee

PAID -AMOUNT:

\$25.00

EXEMPT:

(check reason)

- Rule to show cause in Child or Spousal Support
 - Domestic Abuse of Abuse and Neglect
 - Indigent Status State Agency v. Indigent Party
 - Sexually Violent Predator Act Post-Conviction Relief
 - Motion for Stay in Bankruptcy
 - Motion for Publication Motion for Execution (Rule 69, SCRPC)
 - Proposed order submitted at request of the court; or reduced to writing from motion and made in open court per judge's instructions
- Name of Court Reporter: _____
- Other: _____

JUDGE'S SECTION

- Motion Fee to be paid upon filing of the attached order
- Other: _____

JUDGE CODE:

Date: _____

CLERK'S VERIFICATION

Collected By: _____ Date Filed: _____

Motion Fee Collected: \$ _____

CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

Green Tree Servicing LLC

CASE NO. 2014-CP-10-2042

Plaintiff,

**PLAINTIFF'S MOTION AND ORDER FOR
REFERENCE**

-vs-

Paula R. Illingworth,

Defendant(s).

FILED
2014 SEP -9 AM 10:40
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

~~IT APPEARING~~, pursuant to Rule 53(b) of the *South Carolina Rules of Civil Procedure*, that the above entitled action for foreclosure of a mortgage on real property situated in Charleston County, South Carolina, is a proper matter to refer to the Master In Equity for Charleston County, by order of a Circuit Court Judge or the Clerk of Court, with authority to enter a final judgment in the case;

NOW, upon the motion of the attorneys for the Plaintiff,

ORDERED that the above entitled action be, and the same hereby is, referred to The Honorable Mikell R. Scarborough, Master In Equity for Charleston County, to make findings of fact and conclusions of law; dispose of any and all issues and enter a final judgment in the case; order a judicial sale on any day, not just the regular judicial sale day; hear and dispose of any issues after sale or judgment, including, but not limited to, issuance of a Writ of Assistance and any issues involving appraisal under Code Section 29-3-680, et seq.

Any appeal from the decision of the Master In Equity shall be directly to the South Carolina Supreme Court or Court of Appeals.

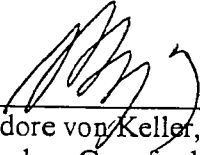

PRESIDING JUDGE/CLERK OF COURT

~~August~~ Sept 9, 2014

Charleston County, South Carolina

PAID
Date 9/2/14
Amount \$125
MIKELL R. SCARBOROUGH
MASTER IN EQUITY
By: ABS

I SO MOVE:



Theodore von Keller, Esquire
B. Lindsay Crawford, Esquire
Sara Hutchins, Esquire

Attorneys for Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Green Tree Servicing LLC
Plaintiff,

-vs-

Paula R. Illingworth,

Defendant(s)

IN THE COURT OF COMMON PLEAS


CASE NO. 2014-CP-10-2042

**CERTIFICATION OF COMPLIANCE
WITH ADMINISTRATIVE ORDER 2011-
05-02-01**

The undersigned Plaintiff's attorney does hereby certify as follows:

- 1) That this is an action for the foreclosure of owner occupied real property.
- 2) That pursuant to Supreme Court Administrative Order 2011-05-02-01:
 - a) The Mortgagor(s) have been served with the required notice of rights, and more than 30 days have elapsed since service upon the Mortgagor(s), and
 - b) The Mortgagor(s) have failed, refused, or voluntarily elected not to participate in any foreclosure intervention process.

FILED
 2014 SEP -3 PM 12:13
 JULIE J ARMSTRONG
 CLERK OF COURT


 Theodore von Keller, Esquire
 B. Lindsay Crawford, III, Esquire
 Sara Hutchins, Esquire
 Adam Schanz, Esquire
 Crawford & von Keller, LLC.
 PO Box 4216
 Columbia, SC 29240
 Phone: 803-790-2626

Columbia, South Carolina
August 27, 2014

Attorneys for Plaintiff

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

Green Tree Servicing LLC

CASE NO. 2014-CP-10-2042

Plaintiff,

MOTION INFORMATION FORM AND
COVERSHEET

-vs-

Paula R. Illingworth,

Defendant(s)

Plaintiff's Attorney B. Lindsay Crawford, III - S.C. Bar No. 6510 Theodore von Keller - S.C. Bar No. 5718 Sara C. Hutchins - S.C. Bar No. 72879 Adam H. Schanz - S.C. Bar No. 80181 PO Box 1640, Columbia, SC 29240 TELEPHONE: 803-790-2626 FAX: 803-790-1277 EMAIL: SARA@CRAWFORDVK.COM	Defendants Attorney: _____, Bar No.: _____ Address: _____ Phone: _____ Fax: _____ E-mail: _____ Other: _____
--	---

MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I AND III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II AND III)

SECTION I: Hearing Information

Nature of Motion: _____
 Estimated Time Needed: _____ Court Reporter Needed: YES NO

SECTION II: Motion Type

Written motion attached
 Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

 Signature of Attorney for Plaintiff / Defendant

 Date Submitted

SECTION III: Motion Fee

<input checked="" type="checkbox"/> PAID - AMOUNT: <input type="checkbox"/> EXEMPT: (check reason)	\$ <u>25.00</u> <input type="checkbox"/> Rule to show cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse of Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP) <input type="checkbox"/> Proposed order submitted at request of the court; or reduced to writing from motion and made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____
--	---

JUDGE'S SECTION

<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order <input type="checkbox"/> Other: _____	JUDGE CODE: Date: _____
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CLERK'S VERIFICATION

Collected By: _____ Date Filed: _____
 Motion Fee Collected: \$ _____
 CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

Green Tree Servicing LLC

CASE NO. 2014-CP-10-2042

Plaintiff,

MOTION AND ORDER
WITHDRAWING AFFIDAVIT OF
DEFAULT

-vs-

Paula R. Illingworth,

Defendant(s).

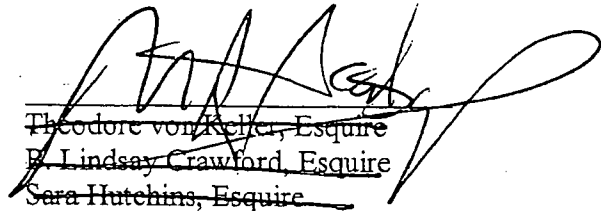
FILED
2014 OCT - 1 PM 4:36
JULIE J. ARMSTRONG
CLERK OF COURT

It appearing to the satisfaction of the Court that the Plaintiff filed an Affidavit of Default against Paula R. Illingworth, who has contacted the Plaintiff, pro se, in the above captioned action. *Plaintiff is desirous of withdrawing the Affidavit of Default.

THEREFORE, upon motion of the Plaintiff,

IT IS ORDERED that the Affidavit of Default filed by Plaintiff on September 3, 2014 is withdrawn.


AND IT IS SO ORDERED


~~Theodore von Keller, Esquire~~
~~B. Lindsay Crawford, Esquire~~
~~Sara Hutchins, Esquire~~

Mikell R. Scarborough
Master-in-Equity
SBS
9/22

Charleston, South Carolina
9/22, 2014

I SO MOVE:


Theodore von Keller
B. Lindsay Crawford, II
Sara Hutchins
Attorneys for Plaintiff

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

CASE NO: 2015-CP-10-2322

Green Tree Servicing, LLC.

PLAINTIFF

v.

Paula R. Illingworth

DEFENDANT

Motion to Dismiss

TO: Theodore Von Keller, ATTORNEY FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that Defendant Paula R. Illingworth moves before this Court pursuant to Rules 12 and 41 SCRCP as well as pursuant to all other applicable law, for an Order dismissing the complaint in this action.

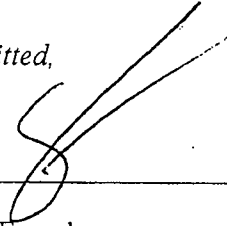
FILED
2015 MAY 26 AM 10:45
JULIE J. ANASTASIO
CLERK OF COURT

Defendants so move on the following grounds:

1. An action was twice previously filed for this cause of action by the Plaintiff.
2. The action case number 2013-CP-10-5160 was dismissed under rule 41(a)(1) SCRCP at the request of the plaintiff.
3. The second action, case number 2014-CP-10-2042, was dismissed by the court for failure to prosecute the action after three attempted hearings where the Defendant showed but the plaintiff was unprepared to proceed.
4. Because of the two prior dismissals, the Defendant asks that this court dismiss this action with costs awarded to her under Rule 41.

Respectfully submitted,

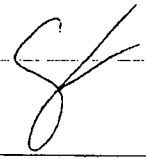
May 26, 2015


Shawn M. French
Attorney for Defendant
SC BAR No.: 75007
1476 Ben Sawyer Blvd, Ste. 3
Mount Pleasant, SC 29464
843-606-6440

CERTIFICATE OF SERVICE

I, the undersigned, so hereby certify that I have this 4 day of May, 2015 caused the foregoing Motion to Amend to be served on the Attorneys of record by depositing in the US MAIL, postage prepaid, addressed as follows:

ATTN: Theodore von Keller
Crawford & von Keller, LLC
PO Box 4216
Columbia, SC 29420



Shawn M. French

FILED
2015 MAY 26 AM 10:45
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
JUDICIAL CIRCUIT

COUNTY OF CHARLESTON)

CASE NO.: 2015-CP-10-02322

Green Tree Servicing, LLC,)

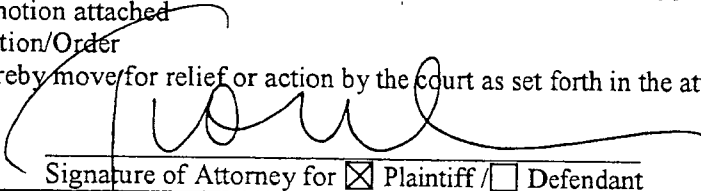
**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff,)

vs.)

Paula R. Illingworth,)

Defendant.)

Plaintiff's Attorney: Theodore von Keller, Bar No. 5718 Address: PO Box 4216 Columbia, SC Phone: 8037902626 Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: ted@crawfordvk.com Other: _____
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Motion to Reconsideration Estimated Time Needed: 30 minutes Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for <input checked="" type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant	10/05/2016 Date submitted
SECTION III: Motion Fee	
<input checked="" type="checkbox"/> PAID - AMOUNT: \$ 25.00 <input type="checkbox"/> EXEMPT: (check reason)	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____	
JUDGE'S SECTION	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)

Green Tree Servicing LLC,)
)
Plaintiff,)

vs.)

Paula R. Illingworth,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS

C/A NO.: 2015-CP-10-02322

NOTICE OF MOTION FOR
RECONSIDERATION

FILED
2016 OCT 12 PM 12:49
JULIE J. ARMSTRONG
CLERK OF COURT

TO: SHAWN FRENCH, ESQUIRE ATTORNEY FOR DEFENDANT NAMED ABOVE:

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorney for the Plaintiff named above, pursuant to South Carolina Rules of Civil Procedure 59(E), will ten (10) days from the service of this Motion, or as soon thereafter as counsel may be heard, move before the Honorable J.C. Nicholson, Circuit Court Judge, Charleston County, for Reconsideration of the Order Granting Defendant Paula Illingworth's Motion to Dismiss filed on September 20, 2016 and received from Defendant's counsel on October 4, 2016. The grounds of this Motion are as follows:

1. Plaintiff filed a Motion to Dismiss on May 26, 2015 pursuant to SCRCP 12 and 41.
2. The Order granting Plaintiff's Motion to Dismiss is in error as, in a Rule 12 motion, the facts contained in the pleadings are read in the light most favorable to the non-movant "[A] judgment on the pleadings is considered to be a drastic procedure by our courts." *Overcash v. S.C. Elect. & Gas Co.*, 356 S.C. 165, S.E.2d 116, 118 (Ct. App. 2003). "Therefore, pleadings in a case should be construed liberally and the trial court and this Court must presume

all well plead facts to be true so that substantial justice is done between the parties.” *Id.* Furthermore, dismissal is only proper where there is no disputed issue of fact raised by an affirmative defense, and nothing further can be developed by discovery or trial. *Spence v. Spence*, 368 S.C. 106, 123, 628 S.E.2d 869, 878 (2006).

3. The Order granting Plaintiff’s Motion to Dismiss is in error as, it contains evidence not in the record, to wit, no evidence was introduced by the Defendant as to any alleged instructions of the Master in Equity. The insertion of this alleged evidence in the Court’s order is error.

4. The Order granting Plaintiff’s Motion to Dismiss is in error as the Plaintiff’s first foreclosure action (2013-CP-10-5160) was dismissed pursuant to Rule 41(a) without prejudice. Plaintiff’s second foreclosure action (2014-CP-10-2042) was dismissed by order of the court citing Rule 41(a). Plaintiff contends that the second dismissal was under Rule 41(a)(2) and was also dismissed without prejudice. The court not only checked the Rule 41(a) box on the Form 4 Order, but also handwrote “dismissed per 41(a)” on the Form 4.

It is clear, therefore, that the court did not intend to dismiss the action with prejudice. The court’s citing of Rule 41(a) expresses a clear intention that the dismissal was to be without prejudice. This follows the rule set forth in the cases *Bowen & Smoot v. Plumlee*, 301 S.C. 262, 391 S.E.2d 558 (1990) and *Prime Medical Corp. v. First Medical Corp.*, 291 S.C. 296, 353 S.E.2d 294 (Ct. App. 1987), which hold that a dismissal by order of the court should be interpreted as without prejudice and that a Plaintiff is entitled to a voluntary nonsuit without prejudice unless legal prejudice is shown. At no time has the Defendant shown the legal prejudice necessary to make the dismissal with prejudice.

5. The Order granting Plaintiff's Motion to Dismiss is in error as the issue to whether the earlier dismissal was with or without prejudice is moot. As noted in *Knight v. Waggoner*, 359 S.C. 492, 496, 597 S.E.2d 894, 896 (Ct. App. 2004), the issue of whether the earlier dismissal of Plaintiff's foreclosure was with or without prejudice is moot because Plaintiff can file a later suit against Defendant, identical or similar to the present case, regardless of this court's ruling on the motion in issue.

While the *Knight* case concerned an ongoing continuous trespass and this case involves a foreclosure, the result is the same. In both cases, a new cause of action accrues for the Plaintiff after dismissal. As noted by the Florida Supreme Court, a dismissal of a foreclosure action, even with prejudice, does not bar a subsequent action. In *Singleton v. Greymar Associates*, 29 Fla. L. Weekly S481, 882 So.2d 1004 (Fla), the Florida Supreme Court held, "res judicata does not prevent mortgages from foreclosing on a mortgage in successful foreclosure cases when the alleged dates are different. In this case the subsequent and separate alleged default created a new and independent right in the mortgagee to accelerate payment on the note in a subsequent foreclosure action." (882 So.2d 1004 at 1005 and 1008).

In the present case, the default that existed in case number 2014-CP-10-2042 was the default of payments as of the filing date March 27, 2014. The default in the present case is for all subsequent payments up to and including April 23, 2015. Because Plaintiff has waived its claim for a deficiency judgment in the present case, each missed monthly payment creates a new cause of action.

As noted in *Singleton*, "the ends of justice require that the doctrine of res judicata not be applied so strictly so as to prevent mortgages from being able to challenge multiple defaults on a

mortgage” 882 So.2d 1004 at 1006 citing *State Street Bank & Trust Co. v. Badra* 765 So.2d 251, 254 (Fla. 4th DCA 2000).

The holding by the Florida Supreme Court is also the general rule in the 4th Circuit, see, e.g. *Singleton*, 840 So.2d at 356; *Capital Bank v. Needle*, 596 So.2d at 1138; *Olympia Mortgage Corp. v. Pugh*, 774 So.2d 863, 867 (Fla. 4th DCA 2000); *State Street Bank & Trust Co. v. Badra* 765 So.2d 251, 254 (Fla. 4th DCA 2000).

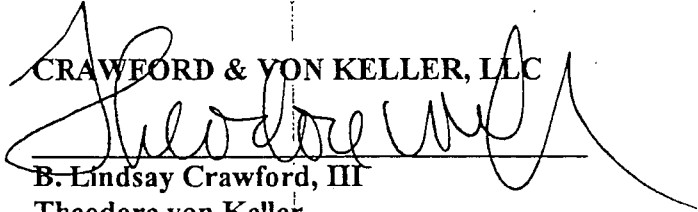
In sum, Defendant’s Motion is moot because whatever the dismissal was in the previous foreclosure, Plaintiff retains the right to sue on this, a subsequent different default.

6. The Order granting Plaintiff’s motion to Dismiss is in error as the Court’s reliance on *Georgame Apparel Inc. v. Todd*, 303 D.C.87, 399S.E.2d, 16 (Ct. App. 1990) was misplaced as there was no asserting that by the Master in Equity that dismissal was clearly governed by SCRCP 41(a).

WHEREFORE, based on the foregoing Defendants move to reconsider the Motion for Dismissal as a matter of law.

CRAWFORD & VON KELLER, LLC

BY:


B. Lindsay Crawford, III
Theodore von Keller
Sara C. Hutchins
B. Lindsay Crawford, IV
Post Office Box 4216
Columbia, South Carolina 29240
Telephone: (803) 790-2626
Attorneys for Plaintiff

Columbia, South Carolina
October 5, 2016

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable J.C. Nicholson presiding judge for Charleston County

Case No: 2015-CP-10-02322

Green Tree Servicing LLC.....Appellant
v.
Paula R. Illingworth.....Respondents

FILED
2016 NOV -7 PM 12:22
JULIE J. ANASTRONG
CLERK OF COURT

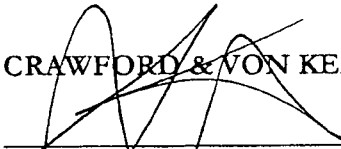
NOTICE OF APPEAL

Green Tree Servicing LLC appeals the Order Granting Defendant's Motion to Dismiss of the Honorable J.C. Nicholson dated September 20, 2016 and the Order Denying Plaintiff's Motion to Reconsider dated October 13, 2016. Appellant received written notice of entry of the order on October 14, 2016.

November 03, 2016

CRAWFORD & VON KELLER, LLC

BY:


B. Lindsay Crawford, III
Theodore von Keller
Sara C. Hutchins
B. Lindsay Crawford, IV
Post Office Box 4216
Columbia, South Carolina 29240
(803) 790-2626
Attorneys for Appellant

Other Counsel of Record:
Shawn M. French
1476 Ben Sawyer Blvd., Ste 3
Mt. Pleasant, SC 29464

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson presiding judge for Charleston County

Case No: 2015-CP-10-02322

Green Tree Servicing LLC.....

v.

Paula R. Illingworth.....


FILED
2016 NOV - 7 PM 12:22
JULIE ARMSTRONG
CLERK OF COURT
Appellants
Respondents

CERTIFICATE OF SERVICE

I, Sara C. Hutchins, an employee of Crawford & von Keller, LLC, do hereby certify that on this date, served a copy of **NOTICE OF APPEAL** on counsel listed below, by U. S. Mail on the said date, addressed as follows:

Shawn M. French
1476 Ben Sawyer Blvd., Ste 3
Mt. Pleasant, SC 29464

Columbia, South Carolina
November 03, 2016


Sara C. Hutchins

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

The Honorable J.C. Nicholson presiding judge for Charleston County

Appellate Case No. 2016-002249

Green Tree Servicing LLC.....Appellant

v.

Paula R. Illingworth.....Respondent

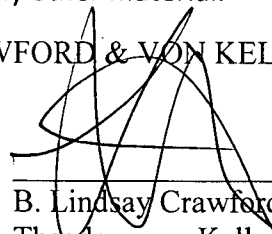
CERTIFICATE OF COUNSEL

RECEIVED
AUG 18 2017
SC Court of Appeals

The undersigned certified that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

CRAWFORD & VON KELLER, LLC

BY:


B. Lindsay Crawford, III
Theodore von Keller
Sara C. Hutchins
Post Office Box 4216
Columbia, South Carolina 29240
Telephone: (803) 790-2626
Attorney for Appellant