

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-18-1681

SSC Real Estate, LLC, 2017 JUN 28 AM 11:22

David A. Thompson, et al.,

PLAINTIFF(S) CHERYL GRANA
CLERK OF COURT
DORCHESTER COUNTY DEFENDANT(S)

Submitted by: A. Parker Barnes III, Esq. 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. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON): Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): Affirmed; Reversed; Remanded; Other

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SEP 07 2017
SC Court of Appeals

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 : Quiet Title hearing

INFORMATION FOR THE JUDGMENT 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: Lot 18, Plat Book 20 at Page 207 and Plat Book 1009 at Page 27; TMS#171-01-01-007.000; Property Address: 126 Lancer Drive, Dorchester, County, SC

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. E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Special Referee

Patrick Watts

Judge Code

Date

June 26 2017

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF DORCHESTER

Case No. 2016-CP-18-1681

SSC Real Estate, LLC,

Plaintiff,

vs.

FINAL ORDER
(Action to Quiet Tax Title)
(Reference with Finality)

David A. Thompson, Kimberly A. Thompson, Sharonview Federal Credit Union, Citibank, National Association f/k/a Citibank Federal Savings Bank, and John Doe and Mary Roe, representing all unknown persons having or claiming to have any right, title, or interest in or to, or lien upon, the real estate described as 126 Lancer Drive, Dorchester County, SC, their heirs and assigns, and all other persons, firms, or corporations entitled to claim under, by or through the above-named Defendant(s), and all other persons or entities unknown claiming any right, title, interest, estate in, or lien upon, the real estate described as 126 Lancer Drive, Dorchester County, SC,

Defendants.

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SEP 07 2017

SC Court of Appeals

CHERYL DANIEL
CLERK OF COURT
DORCHESTER COUNTY

2017 JUN 28 AM 11:22

FILED - RECORDED

THIS MATTER comes before me pursuant to the Amended Order of Reference filed on May 11, 2017, for a merits hearing upon the action of Plaintiff SSC Real Estate, LLC ("Plaintiff") to quiet its tax title to real property and seeking an order of the Court confirming marketable, fee simple title.

The hearing occurred on June 14, 2017. Plaintiff appeared through its attorney. Defendant Kimberly A. Thompson ("Mrs. Thompson") appeared *pro se*, but Defendant David A. Thompson ("Mr. Thompson") did not attend the hearing. Sidney B. Jones III, the Dorchester County Delinquent Tax Collector (the "Tax Collector"), appeared as a witness.

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FINDINGS OF FACT

The real property that is the subject of this action is known as 126 Lancer Drive, Dorchester County, South Carolina, tax map number 171-01-01-007.000 (the "Property"), as is more fully described in Plaintiff's Notice of Lis Pendens and as follows:

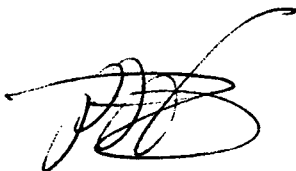
ALL that certain piece, parcel or lot of land, together with the buildings and improvements thereon, situate, lying and being in Dorchester County, South Carolina, shown and designated as Lot 18, Block 2, Kings Grant Patio Houses as a "Plat Showing King's Grant Patio Houses by C. Roger Jennings, RLS, dated February, 1973 and recorded in the ROD Office for Dorchester County in Plat Book 20, Page 207; said lot having such size, shape, metes, buttings and boundaries, as will more fully appear by reference to the foresaid plat; plat prepared by Paul C. Lawson, Jr. dated June 17, 1992 and recorded in Book 1009, Page 27 shown and Encroachment of Easement on plat of Plat Book 20, Page 207.

BEING the same property conveyed to David A. Thompson and Kimberly A. Thompson by deed recorded September 19, 2012 in the ROD Office for Dorchester County in Book 8463, Page 327; being the same property conveyed to SSC Real Estate, LLC by Title to Real Estate by the Tax Collector dated and recorded on February 11, 2015, in the Office of the Register of Deeds for Dorchester County in Deed Book 9612, page 152, and re-recorded in the ROD on April 28, 2014, in Book 9708, page 127.

TMS#: 171-01-01-007.000.

The Tax Sale and Tax Deed

Sunshine State Certificates IV, LLLP purchased the Property at the Dorchester County tax sale held on November 18, 2013 (the "Tax Sale") with a bid of \$75,000.00, and subsequently assigned its bid to Plaintiff through an Assignment of Bid form dated January 26, 2015. The Tax Sale bid of \$75,000 left surplus funds of \$71,490.17 (the "Overage"). Dorchester County conveyed title to Plaintiff by tax deed dated and recorded on February 11, 2015, in the Dorchester County Register of Deeds Office (the "ROD") in Deed Book 9612, page 152, and re-recorded in the ROD on April 28, 2014, in Book 9708, page 127.



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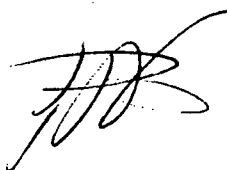
Procedural History and Relevant Title History

On August 19, 2016, Plaintiff commenced this action by filing its Civil Action Cover Sheet, Summons, Complaint, and Notice of Lis Pendens (collectively, the "Pleadings").

Plaintiff named Mr. Thompson and Mrs. Thompson (collectively, the "Thompsons") because they were the record owners of the Property prior to the Tax Sale. The Thompsons acquired title to the Property through a Special Warranty Deed dated June 28, 2012, and recorded on September 19, 2012, in the ROD in Book 8463, page 327. By virtue of this deed, the Thompsons owned 100% of fee simple title to the Property, but through this action, Plaintiff has eliminated all interests of the Thompsons in the Property.

Plaintiff named Defendant Sharonview Federal Credit Union (the "Credit Union") as a party due to the Order of Default Judgment in the amount of \$19,624.22, dated August 19, 2014, and filed on August 22, 2014, in the Dorchester County Clerk of Court's Office, Case Number 2014-CP-18-161 (the "CU Judgment"). Through this action, Plaintiff has eliminated the CU Judgment as a lien upon the Property, as well as all other interests that the Credit Union may have or claim to have in, to, or upon the Property.

Plaintiff named Defendant Citibank, National Association f/k/a Citibank Federal Savings Bank ("Citibank"), as a party due to the Mortgage from Raymond W. Baldwin and Lillian A. Baldwin (prior owners in the chain of title) in the original amount of \$28,000.00, dated November 23, 2005, and recorded on April 26, 2006, in the ROD in Book 5324, page 310 (the "Mortgage"). The Mortgage was foreclosed through an action filed in the Dorchester County Court of Common Pleas captioned, *CitiMortgage, Inc. v. Raymond W. Baldwin a/k/a Ray W. Baldwin, Lillian A. Baldwin, King's Grant Homeowners Association, Inc., and Citibank* (Case No. 2011-CP-18-0829). However, the Mortgage was not satisfied of record. Through this



action, Plaintiff has eliminated the Mortgage as a lien upon the Property, as well as all other interests that Citibank may have or claim to have in, to, or upon the Property.

Plaintiff named John Doe and Mary Roe as fictitious defendants to represent the interests of any unknown persons or entities claiming any right, title, interest, estate in, or lien upon the Property, but Plaintiff elected not to proceed against the unknown defendants. Accordingly, the unknown defendants are dismissed as parties to this action without prejudice.

Service of the Pleadings and Status of the Defendants

Plaintiff served the Pleadings upon the Thompsons on September 4, 2016, as evidenced by the separate Affidavits of Service filed on September 22, 2016. Mr. Thompson did not respond to the Pleadings or make any appearance in this action, and he is in default.

Mrs. Thompson filed an Answer to Complaint on September 29, 2016, seeking to retain ownership of the Property. On October 17, 2016, Plaintiff filed its Reply to Mrs. Thompson's Answer. In its Reply, Plaintiff asserted, among other affirmative defenses, that Mrs. Thompson's claims are barred by S.C Code §§ 12-51-90(C) and 12-51-160 because Mrs. Thompson did not assert them within two years from the date of the Tax Sale, and that the equitable doctrine of waiver bars Mrs. Thompson's claims because the Thompsons claimed the Overage.

Plaintiff served the Pleadings upon the Credit Union on September 1, 2016, as evidenced by the Affidavit of Service filed on September 22, 2016. The Credit Union did not serve or file any response to the Pleadings and is in default pursuant to the Order of Default filed on November 1, 2016.

A handwritten signature in black ink, appearing to be initials or a stylized name, located at the bottom left of the page.


Plaintiff served the Pleadings upon Citibank on September 7, 2016, as evidenced by the Affidavit of Service filed on September 22, 2016. As evidenced by the Consent Order Regarding Tax Sale and Setting Aside Order of Default filed on May 24, 2017, Citibank consented to the Tax Sale of the Property.

On May 16, 2017, Plaintiff served notice of the hearing upon all named defendants, and the Notice of Hearing was filed on May 18, 2017.

Evidence Presented at the Hearing

Sidney B. Jones III, the Tax Collector, testified that all notices of delinquent taxes, the execution, levy, posting, advertisements, tax sale, and notices of the approaching end of redemption period sent to the interested parties entitled to notice were performed in accordance with the usual procedures of his office and were in strict conformity with all statutory requirements.

Specifically, the Tax Collector testified that on or about April 1, 2013, his office mailed the notice of delinquent taxes described in S.C. Code § 12-51-40(a) to the Thompsons at 126 Lancer Drive, Summerville, SC 29465 (the "Lancer Drive Address"). This notice is mailed by regular mail, and the Tax Collector testified that the United States Postal Service did not return this notice to his office. The Lancer Drive Address is the address listed on the deed conveying the Property to Thompsons and is also the Property address. The Tax Collector testified that at the time of the Tax Sale, the Tax Collector's office had no record of any other address for the Thompsons. Accordingly, the Lancer Drive Address was the "best address" for the Thompsons, as defined in S.C. Code § 12-51-40(a).



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With respect to the notice described in S.C. Code § 12-51-40(b), the Tax Collector testified that his office mailed this notice to the Thompsons at the Lancer Drive Address by certified mail, return receipt requested-restricted delivery on or about May 8, 2013. With respect to this notice, the Tax Collector testified that the Lancer Drive Address was the address listed on the tax receipt. The Tax Collector testified that the United States Postal Service returned this notice marked "Unclaimed."¹ Accordingly, the Tax Collector's office took exclusive possession of the Property by posting the Property with the notice of the Tax Sale described in S.C. Code § 12-51-40(c), which occurred on August 23, 2013.

The Tax Collector testified that as required by S.C. Code § 12-51-40(d), his office advertised the Property for sale at public auction in both The Eagle Record and The Summerville Journal Scene. The Property was advertised for sale in The Eagle Record on October 24, October 31, and November 7, 2013, and the Property was advertised for sale in The Summerville Journal Scene on October 25, November 1, and November 8, 2013.

With respect to the notice of approaching end of redemption period described in S.C. Code § 12-51-120, the Tax Collector testified that on or about October 15, 2014, his office mailed separate redemption notices to the Thompsons at the Lancer Drive Address by certified mail, return receipt requested-restricted delivery. The Tax Collector testified that his office did not have a record of receiving the signed receipt cards for these two redemption notices, but the Tax Collector also testified that the United States Postal Service did not return either redemption notice.

¹ While the Tax Collector obtained exclusive possession of the Property by posting, as provided in S.C. Code § 12-51-40(c), the Court notes that "[p]ursuant to [Chapter 51 of Title 12 of the South Carolina Code of Laws] the return of the certified mail 'undelivered' is not grounds for a tax title to be withheld or be found defective and ordered set aside or canceled of record." S.C. Code § 12-51-120.



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The Tax Collector also testified that on June 14, 2015, the Thompsons claimed and received the Overage of \$71,490.17, which funds were generated by the Tax Sale bid for the Property. Mrs. Thompson similarly testified that she claimed and received the Overage, and Mrs. Thompson admitted that she deposited the Overage funds into her bank account. Mrs. Thompson also testified that when she claimed the Overage, she knew that the Overage funds came from the Tax Sale of the Property.

In sum, all of the testimony and evidence presented at the hearing demonstrates that the Tax Collector strictly complied with the tax sale statutes in all respects, and that the Tax Sale of the Property should be upheld. The testimony and evidence presented at the hearing also demonstrates that the Thompsons claimed, received, and deposited the Overage, and that Mrs. Thompson knew the Overage came from the Tax Sale of the Property. Thus, the equitable doctrine of waiver bars Mrs. Thompson's challenges to the Tax Sale of the Property, and Mrs. Thompson's challenges to the Tax Sale are also barred by the two-year statute of limitations set forth in S.C. Code §§ 12-51-90(c) and 12-51-160.

It is also noted that while Mrs. Thompson sought to set aside the Tax Sale of the Property, Mrs. Thompson failed to name the Tax Collector as a party. The taxing authority is a necessary party when a tax sale is challenged because the desired result is a finding that the taxing authority failed to adhere to the tax sale statutes and an order vacating the resulting tax deed. Because Mrs. Thompson did not name the Tax Collector as a defendant, the Tax Collector is not subject to jurisdiction in this action, and thus, the relief Mrs. Thompson seeks could not be awarded, even assuming that grounds existed for challenging the Tax Sale, which they do not.

By email on or about June 21, 2017, about seven days after Ms. Thompson had rested her case at trial on June 14, 2017, she made a claim for components she and Mr. Thompson had



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installed in the house after the Tax Sale such as doors, cabinetry, appliances and other finish items.

CONCLUSIONS OF LAW

Based upon the pleadings, motions, and orders filed, the testimony and evidence presented, and the arguments of counsel at the merits hearing, I make the following conclusions of law:

1. Any finding of fact stated above that is also a conclusion of law is incorporated herein by reference.
2. This matter is properly before the Court. Notice of the Hearing was properly given to all defendants, and the Court has personal jurisdiction over all defendants. Further, this matter is within the subject matter jurisdiction of this Court, having been properly referred for the purpose of taking testimony, receiving evidence, and making findings of fact and conclusions of law with respect to all issues with the authority and power to enter a final judgment in this cause with any appeal to the Court of Appeals of South Carolina.
3. Prior to the Tax Sale of the Property, the Thompsons were the record owners of the Property, and held good, fee simple title to the Property. No other person or entity held any ownership interest of record in the Property.
4. In strict accordance with all statutory requirements, the Tax Collector provided all required notices to all interested parties entitled to notice, properly executed, levied upon, and thereafter properly advertised and sold the Property at the Tax Sale.
5. After providing the statutorily required notice of the approaching end of the redemption period to all interested parties entitled to notice in strict compliance with S.C. Code § 12-51-120, the Tax Collector issued to Plaintiff a tax deed to the Property dated and recorded



on February 11, 2015, in the ROD in Deed Book 9612, page 152, and re-recorded in the ROD on April 28, 2014, in Book 9708, page 127.

6. Plaintiff timely and properly served the Pleadings upon the Thompsons. Mr. Thompson did not respond to the Pleadings or make any other appearance in this action, and Mr. Thompson is in default. Mrs. Thompson timely responded to the Pleadings by filing an Answer on September 29, 2016.

7. In her Answer, Mrs. Thompson sought to retain ownership of the Property. However, as noted above, a two-year limitations period applies to claims seeking to set aside a tax sale. S.C. Code §§ 12-51-90(c) and 12-51-160. In this case, the Tax Sale occurred on November 18, 2013, so the limitations period expired on November 19, 2015. Mrs. Thompson's Answer was filed on September 29, 2016, which was long after the two-year limitations period expired. Thus, Mrs. Thompson's challenges to the Tax Sale of the Property are barred by S.C. Code §§ 12-51-90(c) and 12-51-160.

8. Further, Mrs. Thompson's claims to retain ownership of the Property are barred by the equitable doctrine of waiver because the Thompsons claimed and received the Overage, which funds were left by the Tax Sale bid. The Thompsons may not receive the financial benefits of the Tax Sale of the Property and then seek to undo that Tax Sale and retain ownership of the Property as well.

9. Plaintiff timely and properly served the Pleadings upon the Credit Union, as evidenced by the affidavit of service filed herein. Thereafter, the Credit Union failed to answer and therefore defaulted to the Complaint, as set forth in the Order of Default filed on November 1, 2016.



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10. Plaintiff timely and properly served the Pleadings upon Citibank, as evidenced by the affidavit of service filed herein. Thereafter, Citibank consented to the Tax Sale of the Property, as evidenced by the Consent Order Regarding Tax Sale and Setting Aside Order of Default filed on May 24, 2017.

11. At all times concerned, the provisions of Chapter 51 of Title 12 of the South Carolina Code of Laws entitled, "Alternative Procedure for Collection of Property Taxes," controlled. At the hearing, no issues were raised concerning the actions of the Tax Collector, and based upon the testimony of Sidney B. Jones III and the other evidenced received, I find that all requirements of the South Carolina Code of Laws with regard to the Tax Sale of the Property were properly followed and were in strict compliance therewith.

12. Because the Tax Sale of the Property was conducted in strict compliance with the statutory requirements pertaining to tax sales and the additional grounds set forth herein, all rights, titles, claims, interests, estates, liens, mortgages, judgments, and any other creditors' claims of any of the defendants in, to, or upon the Property were extinguished by the Tax Sale. Accordingly, all rights, titles, claims, interests, estates, liens, mortgages, judgments, and any other creditors' claims that any of the defendants had or claims to have in, to, or upon the Property are hereby extinguished, and all rights, titles, claims, interests, estates, liens, mortgages, judgments, and any other creditors' claims of any person or entity claiming under, by, or through any of the defendants in, to, or upon the Property are hereby extinguished. Thus, all adverse claims to the Property are forever barred, and Plaintiff's marketable, fee simple title to the Property is certain and free from all reasonable doubt.



13. Additionally, Plaintiff's tax title is incontestable on procedural or other grounds and all claims against or challenges to the Tax Sale of the Property are barred by the two-year statute of limitations set forth in S.C. Code §§ 12-51-90(c) and 160, because more than two years have passed since the date of the Tax Sale.

14. Because the Tax Sale of the Property was conducted in strict compliance with the statutory requirements pertaining to tax sales, the Thompsons must vacate the Property and remove all items of personal property by Friday, July 28, 2017, as set forth below, and the Thompsons shall maintain the condition of the Property without causing any harm or damage to the Property.

15. "Maintaining the condition of the Property without causing any harm or damage" includes leaving in place, intact and fastened all components the Thompson's installed in or on the Property after the Tax Sale. Ms. Thompson asked for reimbursement of such in paragraph 11 of her Answer. However, she did not address that at all at trial. Thus, she did not preserve that claim; she has waived it.

NOW, THEREFORE, based upon the foregoing, it is hereby ordered as follows:

1. All claims, rights, titles, interests, estates, liens, mortgages, judgments, and any other creditors' claims of any of the defendants in, to, or upon the Property are forever barred, including, but not limited to, the prior ownership interests of the Thompsons, the CU Judgment, and the Mortgage.

2. All claims, rights, titles, interests, estates, liens, mortgages, judgments, and any other creditors' claims of any other person or entity claiming under, by, or through any of the defendants in, to, or upon the Property are forever barred.



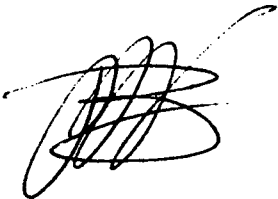
3. The Tax Sale extinguished all rights, titles, claims, interests, estates, liens, mortgages, judgments, and other creditors' claims in, to, or upon the Property, and all claims to the Property adverse to Plaintiff are forever barred.

4. This Court hereby quiets and confirms marketable, fee simple title to the Property in Plaintiff, SSC Real Estate, LLC, and the marketable, fee simple title of Plaintiff, SSC Real Estate, LLC, to the Property is certain and free from all reasonable doubt.

5. The Thompson shall vacate the Property by Friday, July 28, 2017, and shall maintain the condition of the Property without causing any harm or damage to the Property, and leaving in place, intact and fastened all components the Thompson's installed in or on the Property after the Tax Sale. In the event that the Thompsons do not vacate the Property by Friday, July 28, 2017, Plaintiff shall provide a copy of this Final Order to the Dorchester County Sheriff or his authorized deputies (collectively the "Sheriff"), and upon receipt of a copy of this Final Order, the Sheriff is hereby ordered to perform as follows:

a. The Sheriff is hereby ordered, directed, and authorized to post a copy of this Final Order and/or to serve a copy of this Final Order upon any persons occupying the Property;

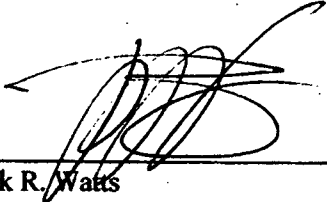
b. Not less than 15 days after said posting or service, the Sheriff shall be authorized to enter upon the Property, by force if necessary, and to seize the Property and to remove any persons occupying the Property from the Property, together with all of his/her/their personal property and possessions, and to put Plaintiff in full, peaceful and quiet possession of the Property without delay, and thereafter, within ten (10) days, make due Return to the Clerk of Court for Dorchester County, South Carolina, showing how this Final Order has been executed; and



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c. The Sheriff shall have discretion to extend the date of seizure, but not more than 30 days from the date of said service or posting, absent a further Order.

AND IT IS SO ORDERED.



Patrick R. Watts
Special Referee for Dorchester County

June 26, 2017

For Clerk of Court Office Use Only

This judgment was entered on the *25th* day of *April* 2017 and a copy mailed first class or placed in the appropriate attorney's box on this *28th* day of *April* 2017 to attorneys of record or to parties (when appearing pro se) as follows:

A. Parker Barnes III, Esq.
PO Box 11889
Columbia, SC 29211-1889

David A. Thompson
PO Box 50254
Summerville, SC 29485

Kimberly A. Thompson
PO Box 50254
Summerville, SC 29485

Sharonview Federal Credit Union
55 Corporate Drive, Building A, Floor 2
Bridgewater, NJ 08807

Citibank, National Association f/k/a Citibank Federal
Savings Bank
11800 Spectrum Center Drive
Reston, VA 22090

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Prohan
CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.
