

Habitat for Humanity of Horry County, Inc.,
 PLAINTIFF(S)

Candice A. Simmons, et al.,
 DEFENDANT(S)

Submitted by: Douglas M. Zayicek, Esquire	Attorney for : <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
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DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- 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 : This is a foreclosure action and this Form 4C goes with the Special Referee's Report and Judgment of Foreclosure and Sale.

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)
Habitat for Humanity of Horry County, Inc.	Candice A. Simmons	TBD
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order: 1045 Mistletoe Court, Myrtle Beach, SC 29579 (Lot 17, Village of Dreams, Phase 2) TMS No. 172-39-01-019		

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.

Honorable Ralph P. Stroman
 Special Referee for Horry County

Judge Code

Date

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MAR 27 2018

SC Court of Appeals

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Douglas M. Zayicek, Esquire
**BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.**
P.O. Box 357
Myrtle Beach, SC 29578-0357
**ATTORNEY FOR PLAINTIFF HABITAT FOR
HUMANITY OF HORRY COUNTY, INC.**

Candice A. Simmons
1045 Mistletoe Court
Myrtle Beach, SC 29579
DEFENDANT

James K. Gilliam, Esquire
McNAIR LAW FIRM, P.A.
P.O. Box 336
Myrtle Beach, SC 29578
**ATTORNEY FOR DEFENDANT WACCAMAW
REGIONAL COUNCIL OF GOVERNMENTS
D/B/A WCCAMAW HOME CONSORTIUM**

Village of Dreams Homeowners Association, Inc.
Carla M. Schuessler, Registered Agent
165 Co-Op Road
Myrtle Beach, SC 29588
DEFENDANT

H. Guyton Murrell, Esquire
Tracey C. Easton, Esquire
ATTORNEYS AT LAW
300-C Outlet Pointe Boulevard
Columbia, SC 29210
**ATTORNEYS FOR DEFENDANT SC HOUSING
CORP.**

Pinnacle Financial Partners, Inc.,
successor in interest to Bank of North Carolina
H. Lee Whiteside, Jr., Vice President
3751 Grissom Parkway, Ste. 100
Myrtle Beach, SC 29577
DEFENDANT

CLERK OF COURT

Court Reporter: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2017-CP-26-05357

Habitat for Humanity of Horry County, Inc.,)
)
Plaintiff,)

vs.)

Candice A. Simmons; Waccamaw)
Regional Council of Governments d/b/a)
Waccamaw Home Consortium; Village of)
Dreams Homeowners Association, Inc.; SC)
Housing Corp.; and Bank of North Carolina,)
)
Defendants:)

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SC Court of Appeals

SPECIAL REFEREE'S REPORT AND JUDGMENT
OF FORECLOSURE AND SALE
(DEFICIENCY JUDGMENT DEMANDED)

Pursuant to Rule 53 SCRCPP, the above entitled matter was referred to the undersigned to make appropriate findings of fact and conclusions of law with authority to enter a final judgment in the case.

Pursuant to the said Order of Reference, a hearing was held, attended by Douglas M. Zayicek, as attorney for Habitat for Humanity of Horry County, Inc. ("Plaintiff"), Carla M. Schuessler, Executive Director of Plaintiff, Blakely J. Roof, Director of Administration of Plaintiff, and Prestige Court Reporting, Inc. The Defendant Waccamaw Regional Council of Governments d/b/a Waccamaw Home Consortium answered the Complaint of the Plaintiff by and through its attorney, James K. Gilliam, Esquire. The Defendant SC Housing Corp. answered the Complaint of the Plaintiff by and through its attorney, H. Guyton Murrell, Esquire. The

Defendant Candice A. Simmons appeared at the hearing, pro se, but was in default, as evidenced by the Affidavit of Default filed herein and testimony of Douglas M. Zayicek. Defendant Candice A. Simmons did not request to question the witnesses as to the debt, or any other matter. The testimony is accurately reported in the Record of Foreclosure Hearing, and from the testimony and evidence, I find and conclude as follows:

FINDING OF FACTS

1. The Lis Pendens, Summons & Notices and Complaint were filed on August 23, 2017. The Lis Pendens describes and defines the property that is the subject of this foreclosure action (“Mortgaged Premises”).
2. Defendants have been properly served pursuant to the Affidavits of Service and Acceptance of Service filed herein, and testimony of Plaintiff.
3. This matter was properly referred to the undersigned pursuant to a properly filed and served Order of Reference.
4. The Defendant Candice A. Simmons is in default as evidenced by the Affidavit of Default filed herein and testimony of Douglas M. Zayicek. The Defendant Candice A. Simmons has not filed any objections or motions concerning her default status.
5. The Defendant Waccamaw Regional Council of Governments d/b/a Waccamaw Home Consortium answered the Complaint of the Plaintiff by and through its attorney, James K. Gilliam, Esquire, by Answer dated September 20, 2017, and filed herein.
6. The Defendant SC Housing Corp. answered the Complaint of the Plaintiff by and

through its attorney, H. Guyton Murrell, Esquire, by Answer dated September 5, 2017, and filed herein.

7. All Defendants were notified of the time, date and place of the hearing in this matter by letter dated November 1, 2017.
8. On or about June 23, 2008, the Defendant, Candice A. Simmons (“Borrower,”) made, executed and delivered unto Plaintiff, Habitat for Humanity of Horry County, Inc., certain promissory notes in the principal sums of Seventy-four Thousand and 00/100 (\$74,000.00) Dollars (“Note 1”) and Thirty-four Thousand and 00/100 (\$34,000.00) Dollars (“Note 2,”) respectively, payable in monthly installments.
9. In order to secure the payment of Notes 1 and 2, according to the terms and conditions thereof, Borrower made, executed and delivered unto Plaintiff, Habitat for Humanity of Horry County, Inc., the following Mortgages covering the real property which is more fully described in the Lis Pendens (“Mortgaged Premises”):
 - a. Mortgage dated June, 23, 2008 and recorded on July 1, 2008 in the Office of the Register of Deeds for Horry County, South Carolina, in Mortgage Book 5088 at Page 1292 (“Mortgage 1”); and
 - b. Mortgage dated June 23, 2008 and recorded on July 1, 2008 in the Office of the Register of Deeds for Horry County, South Carolina, in Mortgage Book 5088 at Page 1307 (“Mortgage 2”).
10. Notes 1 and 2 are collectively hereinafter referred to as “Notes” and Mortgages 1 and 2 are collectively hereinafter referred to as “Mortgages.”
11. The Mortgages evidence and secure the repayment of money advanced by

Plaintiff to or on behalf of the Borrower and constitute liens on the Mortgaged Premises.

12. Pursuant to S.C. Code Ann §37-3-105, the Mortgage liens of Plaintiff are liens on real estate and are not “consumer loans” under the S.C. Consumer Protection Code.
13. Any notice required by the terms of the Mortgages or by state or federal law has been given to the applicable Defendant(s) prior to the commencement of this action.
14. Monthly payments and other affirmative obligations due on the said Notes have not been paid or met as provided for in the Notes. After all payments received by the Plaintiff have been credited to the subject loans, the loans are in default and due. As a result of the default in payment, Plaintiff made demand upon Borrower for payment and compliance with the Notes and Mortgages of the amounts owed.
15. A notice of default with right to cure and intent to accelerate indebtedness was sent to the Borrower, but to no avail.
16. The titleholder of record in and to the subject Mortgaged Premises as of the filing of the Lis Pendens in this action was Borrower.
17. Payments due on the Notes have not been made as provided for therein and the Plaintiff, as the holder thereof, has elected to accelerate payment of the entire indebtedness and has placed the Notes and Mortgages in the hands of the attorney herein for collection.
18. The Notes and Mortgages specifically provide that Plaintiff shall be reimbursed

for reasonable attorney's fees and costs and Plaintiff has requested that it be reimbursed for its actual out-of-pocket attorney's fees and costs as set forth in the Affidavit of Attorney's Fees. The Court has reviewed the Affidavit of Attorney's Fees and concludes that the fees and costs requested are fair and reasonable, and the findings and conclusions in the Affidavit are incorporated as if repeated verbatim herein.

19. The amount due and owing on the Notes and other costs and expenses of collection, including a reasonable attorney's fee secured by the Notes and Mortgages are as follows:

Note 1:	\$51,134.00
Note 2:	\$18,700.00
Escrow:	\$ 187.00
Attorney's Fees ¹ & Costs to date:	<u>\$ 6,320.30</u>

Total debt secured by the Notes and Mortgages including interest, to date shown: \$76,341.30

Interest for the period from January 18, 2018, through the date of this judgment shall be added to the above stated total debt to comprise the amount of the judgment debt entered herein. Interest after January 18, 2018, in the amount of Zero (\$.00) Dollars per day (0% per annum) is to be added to such judgment debt to comprise the amount of the Plaintiff's debt secured by the Mortgages through the date as to which the interest is computed.

20. The Plaintiff is seeking the collection of funds due under the Notes referred to above and has in the Complaint expressly demanded a personal or deficiency judgment against the Borrower.
21. Borrower intelligently and knowingly waived any and all appraisal rights under

¹Attorney's fees and costs to date listed in this paragraph cover Notes 1 and 2.

State and/or Federal law.

22. All the interests of the Defendants herein are inferior to Plaintiff's Mortgages, and are released from the Mortgaged Premises, so that the Mortgaged Premises shall be sold at the foreclosure sale free and clear.
23. Plaintiff may exercise its rights under the assignment of leases and rents provision in the Mortgages and shall be entitled to collect all rent until the Mortgaged Premises is sold, and apply any rental received to the debt of the Borrower. All rent to be paid directly to Plaintiff.
24. In the event of any surplus of funds which may be created at a sale of the Mortgaged Premises ordered herein, an additional hearing will be held at which time the parties may present such evidence as is appropriate to determine a claim which may be made to the surplus.
25. Although present at the hearing, Borrower did not request to question any witnesses on any issue, whatsoever. Therefore, Borrower's rights to do so were waived.

CONCLUSIONS OF LAW

I, therefore, conclude as follows:

26. The Plaintiff should have judgment of foreclosure of its Mortgages and the Mortgaged Premises should be ordered sold at public auction after due advertisement.
27. The Plaintiff is entitled to exercise its rights under the assignment of leases and rents provision in the Mortgages and receive all of said rental income and to apply

it on the amounts owed, if received prior to the foreclosure sale hereinafter ordered, or to apply it on the deficiency judgment, if any, if received after the foreclosure sale.

28. The South Carolina Supreme Court Administrative Order 2009-5-22-1 dated May 22, 2009, is not applicable because the Home Affordable Modification Program expired before commencement of this action. Plaintiff has fully complied with the South Carolina Supreme Court Administrative Order 2011-05-02-01 dated May 2, 2011, and the foreclosure action may proceed.
29. Plaintiff has complied with all administrative and procedural requirements regarding the foreclosure intervention process.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

- (a) There is due to the Plaintiff on the Notes and Mortgages set forth in the Complaint the sum of Seventy-six Thousand Three Hundred Forty-one and 30/100 (\$76,341.30) Dollars, representing the total debt due the Plaintiff as set out above as of the hearing date.
- (b) The amounts due on the Notes in the preceding paragraph and later accrued interest on the principal shall constitute the total judgment debt due the Plaintiff on the Notes and shall bear interest hereafter at the rate of Zero (\$.00) Dollars per day after the hearing date.
- (c) Borrower shall on or before the date of the sale of the Mortgaged Premises hereinafter described pay to the Plaintiff, or to the Plaintiff's attorneys, the amount of the Plaintiff's debt as aforesaid, together with costs and disbursements of this

action.

- (d) That on default of payment at or before the time indicated, the Mortgaged Premises shall be sold by the Master-in-Equity at public auction, at the Horry County Government and Justice Complex, 1301 Second Avenue, in the City of Conway, County and State aforesaid, on the sales day specified in the Notice of Sale filed in this action, on the following terms, that is to say:
- a. FOR CASH: The Master-in-Equity will require a deposit of 5% on the amount of the bid (in cash or equivalent) within twenty-four (24) hours of the sale, same to be applied on the purchase price only upon compliance with the bid, but in the case of non-compliance within thirty (30) days, same to be forfeited to Plaintiff and applied to the costs and the Plaintiff's debt.
 - b. Interest on the bid shall be paid to the date of compliance at the rate of 0% per annum.
 - c. The sale shall be subject to taxes (however, in the event of a surplus, Plaintiff shall be entitled to make a claim for any taxes outstanding, as well as any other amount found to be due and owing), existing easements and restrictions and all matters of record.
 - d. Purchaser shall pay for the cost of recording the deed.
- (e) If the Plaintiff is the successful bidder at the sale, for a sum not exceeding the amount of the costs and expenses not included in the judgment, Master's commission, and the amount of the judgment in favor of Plaintiff, Plaintiff may pay to the Master-in-Equity only the amount of the Master's commission, crediting the balance of the bid on the Plaintiff's indebtedness.
- (f) Personal or deficiency judgment having been demanded, the bidding will remain open for thirty (30) days following the date of the sale.

- (g) The Master-in-Equity will by advertisement according to law, give notice of the time and place of sale, and the terms thereof; and will execute to the Purchaser or Purchasers a deed to the Mortgaged Premises sold. The Plaintiff, or any other party to this action, may become a Purchaser at such sale. If the successful bidder is anyone else than the Plaintiff, that bidder must comply with the terms of the Notice of Sale.
- (h) The Master-in-Equity will apply the proceeds of sale as follows:
FIRST: To the payment of the amount of the costs and expenses of this action;
NEXT: To the payment to the Plaintiff or its attorneys, the amount of the Plaintiff's total debt or so much thereof as the purchase money will pay on same;
NEXT: Any surplus will be held pending further order of this Court.
- (i) It is further ORDERED, ADJUDGED AND DECREED that in the event the successful bidder is other than the Borrower in possession herein and a Writ of Assistance is presented, the Sheriff of Horry County is ordered and directed to eject and remove from the Mortgaged Premises the occupants of the Mortgaged Premises sold, together with all personal property located thereon not subject to the lien of Plaintiff's Mortgages, and put the successful bidder or its assigns in full, quiet and peaceful possession of said Mortgaged Premises without delay, and to keep such successful bidder or its assigns in such peaceable possession. All valid tenant rights shall be protected pursuant to Protecting Tenants at Foreclosure Act of 2009.
- (j) And it is further ORDERED, ADJUDGED AND DECREED that Defendants and

all other persons whomsoever claiming under him, her, them, or it, be forever barred and foreclosed of all right, title, interest and equity of redemption in the Mortgaged Premises so sold, or any part thereof.

- (k) It is further ORDERED that pursuant to S.C. Code Ann. Section 30-9-31 (Supp.1987), the deed of conveyance made pursuant to this sale shall be indexed in the grantor index by the Register of Deeds in the name of the owner of record of the Mortgaged Premises immediately prior to execution of the deed, as well as in the name of the Master-in-Equity who executes such deed as grantor.
- (l) It is further ORDERED that S.C. Code §12-54-124 is inapplicable.
- (m) It is further ORDERED that the lien(s) of all Defendants, and any lien(s) after the Lis Pendens and prior to the filing of the Master's Deed given herein, is/are released, as to these mortgaged premises only, in addition to the provisions in S.C. Code Ann §§15-39-880, 15-11-10, et. seq., and all other provisions of law.
- (n) It is further ORDERED that should the Plaintiff exercise its rights under the assignment of leases and rents provision in the Mortgages, that it shall receive all income which accrues from rental of the Mortgaged Premises secured by Plaintiff's Mortgages, to be applied on the outstanding Notes of the Borrower, if received prior to the foreclosure sale, and to be applied to the deficiency judgment, if any, if received after the foreclosure sale.
- (o) The Master-in-Equity will retain jurisdiction to do all the necessary acts incident to this foreclosure, including, but not limited to, the issuance of a Writ of Assistance and disposing of any surplus of funds pursuant to Rule 71(c), SCRCF.

- (p) The legal description of the Mortgaged Premises ordered to be sold is more fully described in the Lis Pendens.

IT IS SO ORDERED!

JUDGE'S SIGNATURE PAGE TO FOLLOW.