

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master in Equity

Case No. 2016-CP-40-02457

Appellate Case No. 2017-002410

RECEIVED
APR 30 2018
SC Court of Appeals

MidFirst Bank, ... Respondent,

v.

Richard Brady; State of South Carolina; and Richland County Clerk of Court, Defendants, of
whom Richard Brady is Appellant.

RECORD ON APPEAL

Leonard R. Jordan, Jr.
JORDAN LAW FIRM
211 Veterans Road, Suite D
Columbia, South Carolina 29209
Attorney for Appellant

Magalie A. Creech, Esquire
FINKEL LAW FIRM, LLC
P.O. Box 41489
Charleston, SC 29423
Attorney for Respondent

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51840.F45009R
STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

MidFirst Bank,
PLAINTIFF,
vs.

Richard Brady; State of South Carolina; and
Richland County Clerk of Court,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS
C/A NO: 2016CP4002457

(NON-JURY MORTGAGE FORECLOSURE)

ORDER OF PUBLICATION

NON-FILED
2016 MAY 13 PM 3:00
JEANETTE W. McBRIDE
CLERK OF COURT

I find that, based upon the affidavit of Plaintiff's attorney and the affidavit of the process server, which are incorporated herein, after a reasonable search and proper due diligence, the below named defendant could not be located for service within this State or elsewhere.

I find that, based upon the Plaintiff's Certificate of Mailing, a copy of the Lis Pendens, Summons, Complaint, and Notice of Foreclosure Intervention have been mailed to the Defendant, Richard Brady, at Defendant's last known address pursuant to S.C. Code Ann. § 15-9-740.

THEREFORE, IT APPEARING to my satisfaction from the Affidavit and the pleadings previously filed herein, that a cause of action for the foreclosure of a mortgage pertaining to certain real property located in Richland County, South Carolina, exists and that the Defendant, Richard Brady, could not be located and, therefore, personal service cannot be obtained, now, on motion of the plaintiff, it is hereby

ORDERED that service of the Summons, Complaint, Lis Pendens and Notice of Foreclosure Intervention, in this action be made upon the above-named defendant by publication of the Summons, together with the Notices, once a week for three (3) consecutive weeks in *Columbia Star* (f/k/a *The Star Reporter*), which is the newspaper most likely to grant notice to the defendant and is printed and published in the County and State aforesaid; and that a copy of the Summons, Complaint, Lis Pendens and Notice of Foreclosure Intervention be mailed to said defendant at the last known address: 1816 Haviland Cir., Columbia, SC 29210.

Jeanette W. McBride
Judge/Clerk of Court

Columbia, South Carolina
May 13, 2016

WE SO MOVE:
FINKEL LAW FIRM LLC

By:

- ☒ Thomas A. Shook, SC Bar # 68340
☐ Susan S. White, SC Bar # 5453
☐ Elizabeth S. Moore, SC Bar #69236
☐ Teresa D. Van Blake, SC Bar #11118
Attorneys for Plaintiff

51840.F45009R
STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

MidFirst Bank,

PLAINTIFF,

vs.

Richard Brady; State of South Carolina; and
Richland County Clerk of Court,

DEFENDANT.

IN THE COURT OF COMMON PLEAS
C/A NO: 2016CP4002457

(NON-JURY MORTGAGE FORECLOSURE)

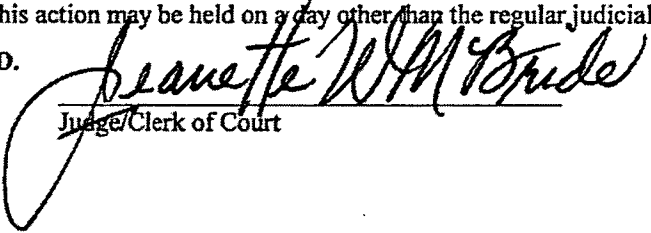
ORDER OF REFERENCE

RICHLAND COUNTY
FILED
2016 JUL 26 AM 10:15
JEANNETTE W. MCBRIDE
C.C.P. & C.S.

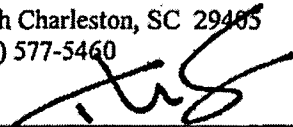
The within action being for foreclosure of a mortgage, upon motion of plaintiff's counsel, it is

ORDERED that this case is referred, pursuant to Rule 53 SCRPC, to Joseph M. Strickland, Master in Equity, who shall exercise all power and authority which a Circuit Judge sitting without a jury would have, including but not limited to, making findings of fact and conclusions of law; directing entry of final judgment; hearing any issues, including motions, after sale or judgment; issuing any and all orders, supplemental orders, and writs of assistance, and hearing any issues involving possession and/or removal of property and appraisal proceedings under Section 29-3-360, *et seq.* of the South Carolina Code, with any appeal from the final judgment being to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules. Any judicial sale of the property subject of this action may be held on a day other than the regular judicial sale day.

IT IS SO ORDERED.


Judge/Clerk of Court

Columbia, South Carolina
7/25, 2016

WE SO MOVE:
FINKEL LAW FIRM LLC
P.O. Box 71727
North Charleston, SC 29405
(843) 577-5460


☒ Thomas A. Shook, SC Bar # 68340
☐ Susan S. White, SC Bar # 5453
☐ Elizabeth S. Moore, SC Bar # 69236
☐ Teresa D. Van Blake, SC Bar# 11118
Attorneys for Plaintiff

F45009R

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

MidFirst Bank,

PLAINTIFF,

vs.

Richard Brady; State of South Carolina; and
Richland County Clerk of Court,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

C/A NO: 2016CP4002457

**ORDER AND JUDGMENT
OF
FORECLOSURE AND SALE**

(DEFICIENCY WAIVED)

RICHLAND COUNTY
FILED
2016 SEP 21 AM 10:54
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

TO: Thomas A. Shook
Susan S. White
Elizabeth S. Moore
Teresa D. Van Vlakte
Carl D. Hiller
Anthony J. Charles
FINKEL LAW FIRM LLC
Attorneys for the Plaintiff

ANSWERING DEFENDANTS:

T. Parkin Hunter, Senior Attorney General
for State of South Carolina

Pursuant to Rule 53, SCRCF, the above-entitled matter was referred. Any appeal from any order or judgment issued by the master or special referee shall be to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

Pursuant to the said Order of Reference, a hearing was held and was attended by counsel. The testimony was taken, which is reported herewith. From the testimony and evidence, I find, conclude and order as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Based upon the Certification of Non Owner Occupancy, the property is not owner occupied and provisions of the Administrative Order issued by the Chief Justice of the Supreme Court of South Carolina on May 2, 2011, Order 2011-05-02-01, do not apply to the within foreclosure action.
2. The Lis Pendens was filed on April 15, 2016.
3. The Summons and Complaint were filed on April 15, 2016.
4. An Order of Publication was issued by the Court and filed on May 13, 2016.
5. Service was made upon the defendant(s) as shown by the proof(s) of service filed herein.

6. The defendant(s) Richard Brady and Richland County Clerk of Court are in default as shown by affidavit(s) on file herein.

7. T. Parkin Hunter, Senior Attorney General, answered for the State of South Carolina, which is on file herein.

8. All of the defendants herein and/or all attorneys of record were notified of the time, date and place of the hearing in this matter.

9. According to the affidavit filed herein, the defendant Richard Brady is not in the Military Service of the United States of America, as contemplated under the Servicemembers Civil Relief Act (2003), and any amendments thereto.

10. For value received, Richard Brady made, executed and delivered a Note dated February 22, 1994, promising thereby to pay to the order of West Star Financial Corporation the sum of \$49,149.00, with interest at the rate of 8.5% per annum. Other terms and conditions are stated in the Note, which is of record herein.

11. To better secure the payment of the Note described above, the said Richard Brady made, executed and delivered to West Star Financial Corporation, a Mortgage dated February 22, 1994, covering real property in Richland County, which is the same as that described in the Complaint. The Mortgage was filed on March 22, 1994 and is of record in the Office of the Register of Deeds for Richland County in Book 1712 at Page 416.

12. This Mortgage constitutes a first mortgage lien on the subject property.

13. Thereafter, the subject mortgage was assigned or otherwise transferred as follows:

- (a) by assignment dated March 8, 1994 and recorded March 22, 1994 in book 1712 at page 421, West Star Financial Corporation assigned it to Mountain States Mortgage Centers, Inc.;
- (b) by assignment dated August 11, 1994 and recorded November 15, 1994 in book 1798 at page 360, Mountain States Mortgage Centers, Inc. assigned it to West Star Financial Corporation;
- (c) by assignment dated February 1, 1997 and recorded June 18, 1997 in book 2128 at page 571, The Vanderford Company, Inc. f/k/a West Star Financial Corporation, assigned it to Matrix Financial Services Corporation;
- (d) by assignment dated July 1, 1998 and recorded January 18, 1999 in book 271 at page 2254, Matrix Financial Services Corporation assigned the subject mortgage to Atlantic Mortgage & Investment Corporation;
- (e) by assignment dated January 6, 2012 and recorded January 17, 2012 in book 1734 at page 1673, CitiMortgage, Inc. successor in interest by merger to ABN AMRO Mortgage Group, Inc., successor in interest by merger to Atlantic Mortgage & Investment Corporation assigned it to MidFirst Bank, the present lienholder and plaintiff herein.

14. Due solely to inadvertence, the more-recent plat referenced in the legal description of the subject mortgage and the vesting deed recorded July 9, 1987 in Book 849 at Page 21 was not recorded.

15. The plaintiff is entitled to reformation of the legal description in the mortgage and vesting deed to remove reference to the unrecorded plat dated January 25, 1983 to comport with the public records of Richland County.

16. Pursuant to Administrative Order of the Chief Justice, #2009-05-22-01, the subject loan is held by a participant in the Home Affordable Modification Program (HMP) but is not subject to modification under the HMP because it is insured by HUD.

17. The titleholder of record in and to the subject property as of the filing of the lis pendens in this action is Richard Brady.

18. Payment due on the Note has not been made as provided for therein, and the plaintiff, as the holder thereof, has elected to require immediate payment of the entire amount due thereon and has placed the Note and Mortgage in the hands of an attorney for collection.

19. Counsel for Plaintiff filed an affidavit as to attorney's fees and costs in this case, which was not contested, and, therefore, I find as fact herein. Having considered the nature, extent and difficulty of the services rendered, the time involved in reviewing the various documents, performing the title search, preparing the pleadings, attending hearings and argument, the professional standing of counsel, the fee customarily charged for similar services, and the beneficial results obtained, I find that \$2,600.00 is a reasonable attorneys' fee for services performed and anticipated to be performed until final adjudication of the action.

20. The amount due and owing on the Note and secured by the Mortgage, with interest as provided therein, and the costs, is as follows:

Principal due as of October 1, 2015	\$ 27,384.37
Interest to September 1, 2016	2,334.05
Taxes	444.84
Insurance	813.60
Suspense balance	(3.38)
Corporate advances	1,772.50
Late charges	123.57
Costs of collection prior to hearing	1,218.96
Attorneys' fees	2,600.00
TOTAL DEBT with interest to date shown	\$36,688.51

Interest for the period from September 1, 2016 at the rate of 8.5% shall be added to the principal balance through the date this judgment is filed; thereafter, interest at the rate of 8.5% should be added to the total judgment debt to comprise the total due the plaintiff.

21. The plaintiff does not demand a deficiency judgment in the event the sale of the real estate herein does not yield a sum sufficient to satisfy all indebtedness due.

22. The State of South Carolina and Richland County Clerk of Court claim or may claim a lien upon or interest in the subject property by virtue of a judgment against Richard Allen Brady filed October 14, 2010, Judgment Roll No. 2010-CP-40-7560, in the amount of \$751.90.

The interests or liens of the above defendants, if any, are junior and subordinate to the plaintiff's first mortgage lien.

IT IS THEREFORE ORDERED:

1. There is due to Plaintiff on the obligation and Mortgage set forth in the Complaint the sum of \$36,688.51, representing the "Total Debt" due Plaintiff as set forth in the Findings of Fact, *supra*, together with interest at the rate provided therein from the date aforesaid to the date hereof.

2. The amount due in the preceding paragraph (the "Total Debt" as set forth in the Findings of Fact, *supra*, and later accrued interest) shall constitute the total judgment debt due the Plaintiff and shall bear interest hereafter at the rate of 8.50%.

3. The legal description in the Plaintiff's mortgage and vesting deed recorded July 9, 1987 in Book 849 at Page 21 are reformed to remove reference to the unrecorded plat dated January 25, 1983, to comport with public record.

4. The Defendant(s) liable for the aforesaid Mortgage debt shall, on or before the date of sale of the property hereinafter described, pay to Plaintiff, or Plaintiff's attorney, the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action. If such debt is paid in full, then the foreclosure sale shall be cancelled.

5. On default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, shall be sold by the Master in Equity, or his agent under the direction of the Master in Equity, at public auction, at the Richland County Courthouse, Columbia, South Carolina, on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales day shall be on Tuesday next succeeding such holiday), 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), same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within 20 days, the deposit may be forfeited without further hearing and applied to the costs and Plaintiff's debt.
- B. Interest on the balance of the bid shall be paid to the day of compliance at the rate of 8.50%.

- C. The sale shall be subject to taxes and assessments, existing easements and easements and restrictions of record. C....
- D. This Mortgage constitutes a first priority lien on the subject property.
- E. Purchaser to pay for deed preparation and costs of recording the Deed, and transfer taxes.

6. If Plaintiff be the successful bidder at the said sale, for a sum not exceeding the amount of costs, disbursements and expenses and the indebtedness of Plaintiff in full, Plaintiff may pay to the Master in Equity only the amount of the costs, disbursements and expenses crediting the balance of the bid on Plaintiff's indebtedness.

7. The Master in Equity will, by advertisement according to law, give notice of the time, date, place of sale, and the terms thereof, which Notice of Sale is incorporated herein by reference; and will execute to the Purchaser, or Purchasers, a deed to the premises sold. Plaintiff, or any other party to this action, may become a purchaser at such sale, and that if, upon such sale being made, the Purchaser, or Purchasers, should fail to comply with the terms thereof within 20 days after date of sale, then the Master in Equity may advertise the said premises for sale on the next, or some other subsequent sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured.

8. Should Plaintiff, Plaintiff's attorney, or Plaintiff's agent fail to appear on the day of sale, the property shall not be sold, and in that event any such sale shall be null and void and of no force and effect. The property shall be re-advertised and sold at some convenient sales day thereafter when Plaintiff, Plaintiff's attorney, or Plaintiff's agent is present.

9. That the Master in Equity will apply the proceeds of the sale as follows:

FIRST: To payment of the amount of the costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court.

NEXT: To the payment of Plaintiff, or Plaintiff's attorney, of the amount of Plaintiff's debt and interest, so much thereof as the purchase money will pay on the same.

NEXT: Any surplus funds will be held pending further order of the Court.

10. **IT IS FURTHER ORDERED** that in the event the successful bidder is other than the Defendant(s) in possession herein, upon full compliance with the bid, and upon issuance of a Writ of Assistance by this Court, the Sheriff of Richland County is ordered and directed to eject and remove from the premises the occupant(s) of the property sold, together with all personal property located thereon, and put the successful bidder or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.

11. **IT IS FURTHER ORDERED** that, in the event the successful bidder is other than the Defendant(s) in possession herein and the occupant(s) have voluntarily vacated the premises or have been

ejected from the premises leaving furnishings, fixtures and items not subject to Plaintiff's Mortgage in said premises, upon full compliance with the bid, Purchaser is authorized to remove therefrom all furnishings, fixtures and items not subject to the lien of Plaintiff's mortgage, which personal property, being deemed abandoned, shall be removed by Purchaser or its agents from the subject property by placing said personal property on the public street or highway or by any other means.

12. **IT IS FURTHER ORDERED** that, in addition to all parties deemed by law to have received constructive notice of the action herein, the Defendant(s) named herein and all persons whomsoever claiming under said defendant(s), be forever barred and foreclosed of all right, title, interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.

13. **IT IS FURTHER ORDERED** that the Deed of conveyances made pursuant to said sale shall contain the names of only the first named Plaintiff and the first named Defendant and the Defendant(s) who was/were the titleholder(s) of the mortgaged property at the time of filing of the notice of pendency of the within action, and the name of the grantee, and the Register of Deeds is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said Deed.

14. **IT IS FURTHER ORDERED** that the Master in Equity will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, issuing a Writ of Assistance and hearing any issues involving appraisal proceedings under Section 29-3-680 *et seq.*, South Carolina Code of Laws (1976), as amended.

15. Plaintiff does not warrant its title search to purchasers at foreclosure sale or other third parties, who should have their own title search performed on the subject property.

16. The Master in Equity shall direct the Register of Deeds to release of record the Mortgage lien being foreclosed, all subordinate liens and all prior liens ordered satisfied herein, after the Order Confirming Sale and Disbursements has been executed and filed. Plaintiff's Mortgage lien is described as follows:

That certain Mortgage given by Richard Brady to West Star Financial Corporation dated February 22, 1994 and recorded in the Office of the Register of Deeds for Richland County on March 22, 1994 in Book 1712 at Page 416.

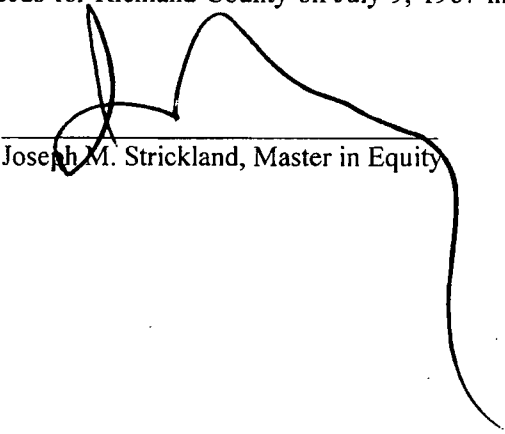
17. The following is a description of the premises herein ordered to be sold:

All that certain piece, parcel or lot of land, with all improvements thereon, situate, lying and being near the City of Columbia, in the County of Richland, State of South Carolina, the same being shown as Lot 15, Block "C", on a plat of Mandel Hall by William Wingfield dated March 7, 1958, revised June 10, 1958, and recorded in Plat Book 11, at Page 83, in the Office of the RMC for Richland County.

TMS Number: 06112-03-07

PROPERTY ADDRESS: 1816 Haviland Cir., Columbia, SC 29210

This being the same property conveyed to Richard Brady by deed of Sandra L. Parnell dated July 8, 1987 and recorded in the Office of the Register of Deeds for Richland County on July 9, 1987 in Deed Book 849 at Page 24.



Joseph M. Strickland, Master in Equity

Columbia, South Carolina

Sept. 19, 2016

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
JR Number 2016-CP-40-2457

MidFirst Bank,)
)
)
)

Plaintiff (s),)

vs.)
)
)

Richard Brady; State of South Carolina; and)
Richland County Clerk of Court,)
)
)

Defendant (s).)

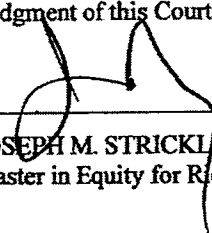
Master's Report on Sale and Disbursements
and
Order of Confirmation
Pursuant to Rule 71, SCRCF
(Public Sale)

2016 NOV -2 11:11:40
FILED
RICHLAND COUNTY

1. Pursuant to Order of Court and after due notice and advertisement, I sold subject property to:
 - (a) the Plaintiff for the sum of \$ 36,965.73, that amount being the highest bid made on Sales Day, October 3, 2016. The Plaintiff thereafter paid only the costs as provided in said Order and became the grantee/assigned its bid to
 - (b) the highest bidder on Sales Day, , for the sum of \$. The successful bidder thereafter complied with the bid, as provided for in said Order, and became the grantee/assigned the bid to
2. That I have executed and delivered to said grantee a good and sufficient deed of conveyance of said property.
3. I have received and disbursed the costs as set out on the attached Statement of Disbursements which resulted in the disbursement of proceeds of sale/a surplus of \$ _____
4. , notice of which is being sent to all parties who may wish to apply for said surplus, pursuant to Rule 71(c), SCRCF.

IS THEREFORE ORDERED that the said sale and the Master's Report on Sale and Disbursements are hereby confirmed as a judgment of this Court.

Nov. 1, 2016


JOSEPH M. STRICKLAND
Master in Equity for Richland County

C.A.# 2016-CP-40-2457

12

2016088006 11/07/2016 13:39:50:627
Fee: \$5.00 County Tax: \$0.00 Satisfaction of Mortgage
State Tax: \$0.00
2016088006 John T. Hopkins II Richland County R.O.D.

51840.F45009R
STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

MidFirst Bank,

PLAINTIFF,

vs.

Richard Brady; State of South Carolina; and
Richland County Clerk of Court,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS
C/A NO: 2016CP4002457

(NON-JURY MORTGAGE FORECLOSURE)

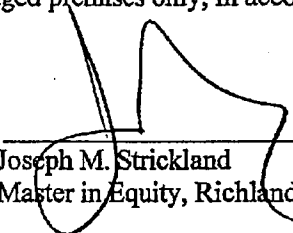
ORDER
(Lien Satisfied By Sale Under Mortgage
Foreclosure)

West Star Financial Corporation
(Original Mortgagee)

Richard Brady
(Original Mortgagor)

The lien of that certain mortgage given by Richard Brady to West Star Financial Corporation, recorded in Mortgage Book 1712 at Page 416, in the Office of the Register of Deeds is released, canceled and satisfied by foreclosure sale on October 3, 2016.

Also, the subordinate lien(s) of any lien creditor who was duly made a party to the referenced foreclosure is/are released, as to these mortgaged premises only, in accordance with S.C. Code 15-39-880.



Joseph M. Strickland
Master in Equity, Richland County

Columbia, South Carolina
Nov - 1, 2016

RETURN TO: FINKEL LAW FIRM, LLC P.O. Box 71727 N. Charleston, SC 29415

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

MidFirst Bank,

PLAINTIFF,

vs.

Richard Brady; State of South Carolina; and
Richland County Clerk of Court,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2016-CP-40-02457

ORDER

FILED
2017 MAY 10 PM 1:51
CLERK OF COURT
RICHMOND, S.C.

Date of Hearing: March 28, 2017
Presiding Judge: Hon. Joseph M. Strickland
Plaintiff's Attorney: Carl D. Hiller, Esquire
Defendant Richard Brady's
Attorney: Leonard R. Jordan, Jr., Esquire

The parties were before the Court on a Motion to Vacate Foreclosure Judgment and Sale ("Motion") filed by Defendant Richard Brady ("Defendant"). Plaintiff was represented in the courtroom by its attorney, Carl D. Hiller of the Finkel Law Firm, LLC. Defendant was represented in the courtroom by his attorney, Leonard R. Jordan, Jr. No representatives for Defendant the State of South Carolina or Defendant Richland County Clerk of Court were present at the hearing. Prior to the hearing, Defendant filed a Memorandum and Supplemental Memorandum in support of the Motion. Plaintiff filed a Return to Defendant's Motion.

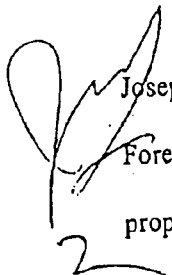
BACKGROUND

This is an action for foreclosure on real property. The monthly payments due on the subject note and mortgage are in default. The Summons, Lis Pendens, Complaint, and Notice of Foreclosure Intervention were filed April 15, 2016. Plaintiff's agent for service of process attempted service on the Defendant at the subject property located at 1816 Haviland Circle on

April 16, 2016, and at 3240 Dreher Shoals Road, Immo, South Carolina on April 29, 2016. Defendant was unable to be served at either location.

In a prior foreclosure action against Defendant regarding the subject property, civil action 2014-CP-40-05813, Plaintiff effectuated personal service upon Defendant at the 3240 Dreher Shoals Road address on September 24, 2014. At that time, the 3240 Dreher Shoals Road address was Defendant's residence. This address is also where Defendant was personally served in another foreclosure, civil action 2014-CP-40-04625 on October 19, 2014.

An Order of Publication for service upon Defendant was issued by the Court and filed on May 13, 2016. The Order was supported by affidavit of Plaintiff's counsel, attesting that Defendant could not be located for service and that a copy of the pleadings was sent to the subject property. An Affidavit of Default by Publication was filed with the Court July 16, 2016, indicating that service was completed by publication in the Columbia Star on May 27, 2016, June 3, 2016, and June 10, 2016.



Pursuant to Order entered on July 26, 2016, the matter was referred to the Honorable Joseph M. Strickland, Master in Equity for Richland County. An Order and Judgment of Foreclosure and Sale was entered on September 21, 2016, and for three consecutive weeks the property was advertised for public auction to be held on October 3, 2016. The subject property sold to Plaintiff as the successful bidder at the foreclosure sale, and a Master's Deed was recorded November 7, 2016 in Book R2162 at Page 3151 in the Richland County Register of Deeds Office.

Defendant filed this Motion on October 24, 2016, alleging that service upon him by publication was improper and thus the Order and Judgment of Foreclosure and Sale was void. Defendant also seeks to set aside the judicial sale held October 3, 2016. Defendant contends that

Plaintiff and Plaintiff's counsel knew that Defendant did not reside at either 1816 Haviland Circle or 3240 Dreher Shoals Road when it submitted its affidavit to the clerk of court in support of its request for an Order of Publication. Defendant further contends that Plaintiff and Plaintiff's counsel knew that Defendant maintained a post office box (PO Box 727, Irmo, SC 29063), and that Plaintiff failed to attempt to serve Defendant at this post office box.

STANDARD

A party seeking to set aside a judgment pursuant to Rule 60(b) has the burden of presenting evidence entitling him to the requested relief. *Bowers v. Bowers*, 304 S.C. 65, 67 403 S.E.2d 127, 129 (Ct. App.1991). Whether to grant or deny a motion under Rule 60(b) lies within the sound discretion of the judge. *Coleman v. Dunlap*, 306 S.C. 491, 494 413 S.E.2d 15, 17 (1992). Rule 60, SCRPC, is entitled "Relief from Judgment or Order," and subsection (b) states in pertinent part as follows:

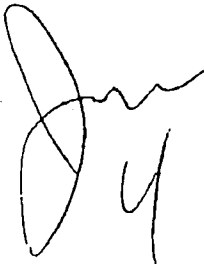
(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) ***
- (2) ***
- (3) ***
- (4) the judgment is void;

The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken.

A judgment of a court without subject matter jurisdiction is void and constitutes grounds for the court to vacate the judgment under Rule 60(b)(4). *Thomas & Howard Co., Inc. v. T.W. Graham & Co.*, 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995); Rule 60(b)(4) (stating a court may relieve a party from a final judgment if the judgment is void). "A void judgment is one that, from its inception, is a complete nullity and is without legal effect and must be distinguished from one which is merely 'voidable.'" *Id.* 318 S.C. at 291, 457 S.E.2d at 343 (1995). The definition of "void" under Rule 60, SCRCP only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction. See *McDaniel v. U.S. Fidelity and Guar. Co.*, 324 S.C. 639, 478 S.E.2d 868, 871 (Ct. App. 1996) (citing *Thomas*, 318 S.C. 286, 457 S.E.2d 340 (1995)).

S.C. Code § 15-9-710 grants the ability to serve a defendant via publication. § 15-9-710 states in pertinent part:



When the person on whom the service of the summons is to be made cannot, after due diligence, be found within the State and (a) that fact appears by affidavit to the satisfaction of the court or judge thereof, the clerk of the court of common pleas, the master, or the probate judge of the county in which the cause is pending and (b) it in like manner appears that a cause of action exists against the defendant in respect to whom the service is to be made or that he is a proper party to an action relating to real property in this State, the court, judge, clerk, master, or judge of probate may grant an order that the service be made by the publication of the summons in any one or more of the following cases:

(1) ***

(2) ***

(3) when the defendant is a resident of this State and after a diligent search cannot be found;

(emphasis added). "When the issuing officer is satisfied by the affidavit, his decision to order service by publication is final absent fraud or collusion." *Yarbrough v. Collins*, 293 S.C. 290, 360 S.E.2d 300 (1987) (emphasis added). See also *Montgomery v. Mullins*, 325 S.C. 500, 506,

480 S.E.2d 467, 470 (Ct. App. 1997), *Ingle v. Whitlock*, 282 S.C. 391, 318 S.E.2d 367 (1984); *Gibson v. Everett*, 41 S.C. 22, 19 S.E. 286 (1894); *Yates v. Gridley*, 16 S.C. 496 (1882).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Upon review of the Motion, the parties' Memoranda and Return, the arguments of the parties' respective counselors, and the statutory and decisions law of the State of South Carolina, I find and conclude the following:

1. I have jurisdiction over this action pursuant to Order entered on July 26, 2016;
2. Defendant has failed to provide sufficient evidence to convince this Court that Plaintiff and/or Plaintiff's counsel committed fraud or colluded in any manner in obtaining an Order of Publication from the clerk of court. Plaintiff attempted personal service of the Defendant at the subject property located at 1816 Haviland Circle and at 3240 Dreher Shoals Road, Irmo, South Carolina on April 29, 2016. The property at 3240 Dreher Shoal Road was the Defendant's last known residence and he was served their successfully in two previous foreclosure actions; and
3. Since there is no basis for finding the judgment void, there is no basis for vacating the judicial sale held October 3, 2016.

NOW, THEREFORE, based on the pleadings duly filed, the evidence before the Court and the Findings of Fact and Conclusions of Law set forth above,

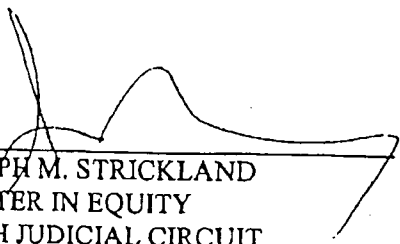
IT IS HEREBY ORDERED THAT:

- a. Defendant has failed to provide sufficient evidence to convince this Court that Plaintiff and/or Plaintiff's counsel committed fraud or colluded in any manner in obtaining an Order of Publication from the clerk of court and therefore Defendant's Motion must be **DENIED**.

IT IS SO ORDERD.



Columbia, South Carolina
May 5, 2017



JOSEPH M. STRICKLAND
MASTER IN EQUITY
FIFTH JUDICIAL CIRCUIT

RECEIVED

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

MidFirst Bank,

PLAINTIFF,

vs.

Richard Brady; State of South Carolina; and
Richland County Clerk of Court,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS 2017

CASE NO.: 2016-CP-40-02457 Court of Appeals

ORDER

RICHLAND COUNTY
FILED
2017 SEP 15 PM 12:30
JEANETTE W. HILLER
C.C.P. & C.S.

Date of Hearing:	August 8, 2017
Presiding Judge:	Hon. Joseph M. Strickland
Plaintiff's Attorney:	Carl D. Hiller, Esquire
Defendant Richard Brady's Attorney:	Leonard R. Jordan, Jr., Esquire

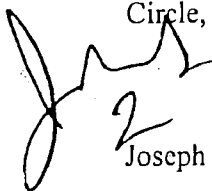
The parties were before the Court on a Motion to Reconsider and Alter or Amend Master's Order ("Motion") filed by Defendant Richard Brady ("Defendant"). Plaintiff was represented in the courtroom by its attorney, Carl D. Hiller of the Finkel Law Firm, LLC. Defendant was represented in the courtroom by his attorney, Leonard R. Jordan, Jr. No representatives for Defendant the State of South Carolina or Defendant Richland County Clerk of Court were present at the hearing.

BACKGROUND

This is an action for foreclosure on real property. The monthly payments due on the subject note and mortgage are in default. The Summons, Lis Pendens, Complaint, and Notice of Foreclosure Intervention were filed April 15, 2016. Plaintiff's agent for service of process attempted service on the Defendant at the subject property located at 1816 Haviland Circle on April 16, 2016, and at 3240 Dreher Shoals Road, Irmo, South Carolina on April 29, 2016. Defendant was unable to be served at either location.

In a prior foreclosure action against Defendant regarding the subject property, civil action 2014-CP-40-05813, Plaintiff effectuated personal service upon Defendant at the 3240 Dreher Shoals Road address on September 24, 2014. At that time, the 3240 Dreher Shoals Road address was Defendant's residence. This address is also where Defendant was personally served in another foreclosure, civil action 2014-CP-40-04625 on October 19, 2014.

An Order of Publication for service upon Defendant was issued by the Court and filed on May 13, 2016. The Order was supported by affidavit of Plaintiff's counsel, attesting that Defendant could not be located for service after due diligence and that a copy of the pleadings was sent to the subject property. An Affidavit of Default by Publication was filed with the Court July 16, 2016, indicating that service was completed by publication in the Columbia Star on May 27, 2016, June 3, 2016, and June 10, 2016 and requiring that a copy of the Summons, Complaint, Lis Pendens and Notice of Foreclosure Intervention be mailed to Defendant at 1816 Haviland Circle, Columbia, SC 29210.



Pursuant to Order entered on July 26, 2016, the matter was referred to the Honorable Joseph M. Strickland, Master in Equity for Richland County. An Order and Judgment of Foreclosure and Sale was entered on September 21, 2016, and for three consecutive weeks the property was advertised for public auction to be held on October 3, 2016. The subject property sold to Plaintiff as the successful bidder at the foreclosure sale, and a Master's Deed was recorded November 7, 2016 in Book R2162 at Page 3151 in the Richland County Register of Deeds Office.

Defendant filed a Motion to Vacate Judgment of Foreclosure and Sale and Foreclosure Sale on October 24, 2016, alleging that service upon him by publication was improper and thus the Order and Judgment of Foreclosure and Sale was void. Defendant also sought to set aside

the judicial sale held October 3, 2016. Defendant contends that Plaintiff and Plaintiff's counsel knew that Defendant did not reside at either 1816 Haviland Circle or 3240 Dreher Shoals Road when it submitted its affidavit to the clerk of court in support of its request for an Order of Publication. Defendant further contends that Plaintiff and Plaintiff's counsel knew that Defendant maintained a post office box (PO Box 727, Irmo, SC 29063), and that Plaintiff failed to attempt to serve Defendant at this post office box.

This Court issued an Order on May 10, 2017 denying Defendant's Motion to Vacate Judgment of Foreclosure and Sale and Foreclosure Sale. The Order is attached hereto as **Exhibit A** and incorporated herein. On May 22, 2017, Defendant filed this Motion reiterating his previous arguments and contending that the affidavit submitted by Plaintiff's counsel in support of its request for the Order of Publication was facially defective.

STANDARD

A party seeking to set aside a judgment pursuant to Rule 60(b) has the burden of presenting evidence entitling him to the requested relief. *Bowers v. Bowers*, 304 S.C. 65, 67 403 S.E.2d 127, 129 (Ct. App.1991). Whether to grant or deny a motion under Rule 60(b) lies within the sound discretion of the judge. *Coleman v. Dunlap*, 306 S.C. 491, 494 413 S.E.2d 15, 17 (1992). Rule 60, SCRPC, is entitled "Relief from Judgment or Order," and subsection (b) states in pertinent part as follows:

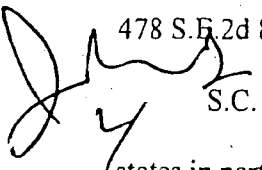
(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) ***
- (2) ***
- (3) ***

(4) the judgment is void;

The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken.

A judgment of a court without subject matter jurisdiction is void and constitutes grounds for the court to vacate the judgment under Rule 60(b)(4). *Thomas & Howard Co., Inc. v. T.W. Graham & Co.*, 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995); Rule 60(b)(4) (stating a court may relieve a party from a final judgment if the judgment is void). "A void judgment is one that, from its inception, is a complete nullity and is without legal effect and must be distinguished from one which is merely 'voidable.'" *Id.* 318 S.C. at 291, 457 S.E.2d at 343 (1995). The definition of "void" under Rule 60, SCRPC only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction. *See McDaniel v. U.S. Fidelity and Guar. Co.*, 324 S.C. 639, 478 S.E.2d 868, 871 (Ct. App. 1996) (citing *Thomas*, 318 S.C. 286, 457 S.E.2d 340 (1995)).

 S.C. Code § 15-9-710 grants the ability to serve a defendant via publication. § 15-9-710 states in pertinent part:

When the person on whom the service of the summons is to be made cannot, **after due diligence**, be found within the State and **(a) that fact appears by affidavit to the satisfaction of the court or judge thereof, the clerk of the court of common pleas**, the master, or the probate judge of the county in which the cause is pending and **(b) it in like manner appears that a cause of action exists against the defendant in respect to whom the service is to be made or that he is a proper party to an action relating to real property in this State, the court, judge, clerk, master, or judge of probate may grant an order that the service be made by the publication of the summons in any one or more of the following cases:**

(1) ***

(2) ***

(3) when the defendant is a resident of this State and **after a diligent search cannot be found;**

(emphasis added). The order shall direct the publication to be made by newspaper and it shall also direct "that a copy of the summons be forth with deposited in the post office directed to be served at his last place of residence, **unless it appears that such residence is neither known to the party making the application nor can, with reasonable diligence, be ascertained by him.**" S.C. Code Ann. § 15-9-740.

Generally, "when the issuing officer is satisfied by the affidavit, his decision to order service by publication is final **absent fraud or collusion.**" *Yarbrough v. Collins*, 293 S.C. 290, 360 S.E.2d 300 (1987) (emphasis added). *See also Montgomery v. Mullins*, 325 S.C. 500, 506, 480 S.E.2d 467, 470 (Ct. App. 1997), *Ingle v. Whitlock*, 282 S.C. 391, 318 S.E.2d 367 (1984); *Gibson v. Everett*, 41 S.C. 22, 19 S.E. 286 (1894); *Yates v. Gridley*, 16 S.C. 496 (1882). When the affidavit submitted is "facially defective" and not in compliance with the publication statute, a court may overturn the order of publication in the absence of fraud of collusion. *See Belle Hall Plantation Homeowner's Association v. Murray*, 419 S.C. 605, 799 S.E.2d 310 (Ct. App. 2017) and *Caldwell v. Wiquist*, 402 S.C. 565, 741 S.E.2d 128 (Ct. App. 2013).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Upon review of the Motion and the Order, the arguments of the parties' respective counselors, and the statutory and decisions law of the State of South Carolina, I find and conclude the following:

1. I have jurisdiction over this action pursuant to Order entered on July 26, 2016;
2. Defendant has failed to provide sufficient evidence to convince this Court that Plaintiff and/or Plaintiff's counsel committed fraud, colluded, or was grossly negligent in any manner in obtaining an Order of Publication from the clerk of court.

Plaintiff attempted personal service of the Defendant at the subject property located at 1816 Haviland Circle and at 3240 Dreher Shoals Road, Irmo, South Carolina on April 29, 2016. Defendant was served at 3240 Dreher Shoal Road successfully in two previous foreclosure actions;

3. Defendant has failed to provide sufficient evidence to convince this Court that the Affidavit filed in support of Plaintiff's request for an Order of Publication is facially defective. Plaintiff stated that it attempted to personally serve Defendant with proper due diligence, including attempting to serve him at the subject property. Plaintiff was not aware of the Defendant's residence (the reason an Order of Publication was necessary), therefore it was appropriate for the clerk of court to issue an Order of Publication requiring that the Summons, Complaint, Lis Pendens and Notice of Foreclosure Intervention be mailed to the subject property in accordance with S.C. Code Ann. § 15-9-740; and

4. Since there is no basis for finding the judgment void, there is no basis for vacating the judicial sale held October 3, 2016.

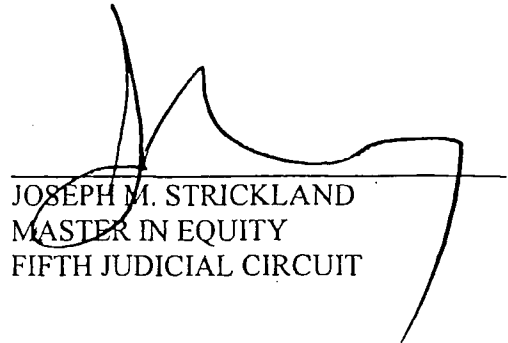
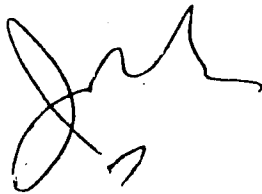
NOW, THEREFORE, based on the pleadings duly filed, the evidence before the Court and the Findings of Fact and Conclusions of Law set forth above,

IT IS HEREBY ORDERED THAT:

- a. Defendant has again failed to provide sufficient evidence to convince this Court that Plaintiff and/or Plaintiff's counsel committed fraud, colluded, or was grossly negligent in any manner or that the affidavit submitted by the Plaintiff was facially defective in and therefore Defendant's Motion must be **DENIED**.

IT IS SO ORDERD.

Columbia, South Carolina
Sept 13, 2017



JOSEPH M. STRICKLAND
MASTER IN EQUITY
FIFTH JUDICIAL CIRCUIT

Affidavit of Non-Service



DOCKET NUMBER: 2016CP4002457
 COURT OF COMMON PLEAS FOR RICHLAND COUNTY, SC
 CASE STYLE:

FILE NUMBER: F35009R

PLAINTIFF MIDFIRST BANK, et seq.

vs.

DEFENDANT RICHARD BRADY, et al.

SERVICE OF PROCESS ON: RICHARD BRADY

METHOD OF SERVICE: A true and correct copy of the above-described papers were served on the below-named party in the following manner:

(x) (NON-SERVICE - PROOF OF DUE DILIGENCE) After due and diligent efforts, undersigned was unable to effect service.

PLACE OF SERVICE: 1816 Haviland Cir
Columbia, SC 29210

Is the place of service the dwelling house or usual place of abode for the party being served? () Yes () No

DATE OF NON-SERVICE: 04/16/2016 TIME OF NON-SERVICE: 4:33 PM

TYPE OF DOCUMENTS: SUMMONS AND NOTICE AND COMPLAINT, LIS PENDENS, FDCA NOTICE, NOTICE OF RIGHT TO FORECLOSURE INTERVENTION

IS THE SUBJECT PROPERTY A MOBILE HOME? () YES (x) NO () MOBILE HOME VIN NOT VISIBLE
 VIN #:

COMMENTS: Non-service tenant occupied. No other adults 18 years or older reside; Mr. Wiggins resides here, no Richard brady living here, soes believe him to own house but had no further information to provide.

Signature of Process Server: The undersigned declares, under penalty of perjury, that the foregoing is true and correct and that the deponent is over the age of 18 and is not a party to nor interested in this action.

NAME: WENDY LANIER

Signature of Process Server: [Signature] ProVest Case id # 4569402

Date

4-18-16

STATE OF SC

COUNTY OF Richland

Sworn and subscribed before me this 18th day of April, in the year of 2016

(x) Personally known to me or () identified by the following document:

Type: _____ Number Reference: _____

[Signature] Notary Public for South Carolina

Notary Public, Let of Signature
 Commission Expiration 2/23/2019



CLIENT: FINKEL LAW FIRM, LLC
DATE: 5/3/2016
FILE NUMBER: F45009R
MAIN DEFENDANT: RICHARD BRADY
SPOUSE'S NAME:
SKIP DEFENDANT: RICHARD BRADY

FINAL REPORT - NO NEW ADDRESS

During the skip trace of the defendant, RICHARD BRADY, no new addresses were found

The most current address being attempted is:

Unknown - see comments below

COMMENTS: No additional addresses could be located for this defendant.

The only current address listed to this defendant in our reports is: 3240 Dreher Shoals Road Imo SC 29063

Possible phone:

803-361-9205 -called-there was no answer-left a voicemail.

No employment found

No current DL

No current MVR

Military check is complete

Address is valid through Melissa data

A postal request is pending.

Final Report Prepared By: Joshua Marsh

F45009R
STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

MidFirst Bank,

PLAINTIFF,

vs.

Richard Brady; State of South Carolina; and
Richland County Clerk of Court,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS
C/A NO: 2016CP4002457

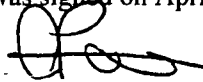
(NON-JURY MORTGAGE FORECLOSURE)

**AFFIDAVIT OF SERVICE BY CERTIFIED
MAIL**

2016 MAY 13 PM 3:01
JERAMIE W. MCGRIDE
CLERK OF COURT
RICHLAND COUNTY
FILED

The undersigned, being sworn says that she served the Summons and Notices, Complaint, and Lis Pendens in the above referenced foreclosure action upon Alan Wilson, Attorney General for the Defendant, State of South Carolina, by placing copies of the Summons, Complaint, Lis Pendens and Notices in the United States Mail to be delivered by Certified Mail, Return Receipt Requested, to the said Defendant at Post Office Box 11549, Columbia, SC 29211, on April 19, 2016.

The Return Receipt, which is attached hereto was signed on April 22, 2016.



Crystal Patrick, Paralegal
FINKEL LAW FIRM LLC
P. O. Box 71727
North Charleston, South Carolina 29415

SWORN TO AND SUBSCRIBED before me on
this 28 day of April, 2016



NOTARY PUBLIC FOR SOUTH CAROLINA
NOTARY PUBLIC/PRINT NAME: ANA SILVA
My Commission Expires: 02/23/2021

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

MidFirst Bank,

PLAINTIFF,

vs.

Richard Brady; State of South Carolina; and
Richland County Clerk of Court,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS
C/A NO: 2016CP4002457

(NON-JURY MORTGAGE FORECLOSURE)

AFFIDAVIT OF SERVICE BY CERTIFIED
MAIL2016 MAY 13 PM 3:01
RICHLAND COUNTY
CLERK OF COURT
C.P. & D.S.

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
- Complete items 1, 2, and 3. - Print your name and address on the reverse so that we can return the card to you. - Attach this card to the back of the mailpiece, or on the front if space permits.	A. Signature <i>Anthony K. Muck</i> ☐ Agent ☐ Addressee X B. Received by <i>Anthony K. Muck</i> C. Date of Delivery <i>4/19</i> D. Is delivery address different from item 1? ☒ Yes If YES, enter delivery address below: ☐ No <i>F45009R Sent 4-19</i>
1. Article Addressed to: Alan Wilson, Attorney General P. O. Box 11549 Columbia, SC 29211  9590 9403 0880 5223 4385 74	3. Service Type ☒ Adult Signature ☐ Priority Mail Express® ☐ Adult Signature Restricted Delivery ☐ Registered Mail™ ☒ Certified Mail® ☐ Registered Mail Restricted Delivery ☐ Certified Mail Restricted Delivery ☐ Return Receipt for Merchandise ☐ Collect on Delivery ☐ Signature Confirmation™ ☐ Collect on Delivery Restricted Delivery ☐ Signature Confirmation Restricted Delivery ☐ Insured Mail ☐ Signature Confirmation Restricted Delivery (over \$500)
2. Article Number (Transfer from service label) 7015 0640 0005 9046 1246	

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

51840.F45009R
STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

MidFirst Bank,
PLAINTIFF,
vs.

Richard Brady; State of South Carolina; and
Richland County Clerk of Court,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS
C/A NO: 2016CP4002457
(NON-JURY MORTGAGE FORECLOSURE)

AFFIDAVIT

RECEIVED
CLERK OF COURT
2016 MAY 13 PM 3:01
RICHLAND COUNTY, S.C.

PERSONALLY appeared before me, the undersigned, who being duly sworn, says that:

1. She/he is one of the attorneys for the Plaintiff in the above-entitled action.
2. This action was brought for the purpose of having the rights of the parties herein to the real estate described in the said action adjudicated and to forever bar any and all claims, rights, titles, interest, estates and/or liens, other than those of the plaintiff, in, or upon the said real estate; that a part of the relief which the Plaintiff demands in this action is to exclude the defendant, Richard Brady from any interest in the said real estate; and that the said defendant, therefore, is a proper party to this action.
3. Based upon the affidavit of the process server on file herein, and after proper due diligence, the aforementioned defendant could not be located for service at the last known address: 1816 Haviland Cir., Columbia, SC 29210
4. As evidenced by the Certificate of Mailing included herewith, a copy of the Lis Pendens, Summons, Complaint, and Notice of Foreclosure Intervention has been mailed to the last known address of the Defendant pursuant to S.C. Code Ann. § 15-9-740.
5. Deponent is informed and believes that under the circumstances the Court should issue an Order for service upon said defendant by publication of a copy of the Summons, Lis Pendens and Notice of Foreclosure Intervention in this case according to the publication statutes of the State of South Carolina.

FINKEL LAW FIRM LLC
Post Office Box 71727
North Charleston, South Carolina 29415
(843) 577-5460

By:

Date: May 9, 2016

☒ Thomas A. Shook, SC Bar # 68340
☐ Susan S. White, SC Bar # 5453
☐ Elizabeth S. Moore, SC Bar #69236
☐ Teresa D. Van Blake, SC Bar #11118
Attorneys for Plaintiff

Sworn to and Subscribed before me on

May 9, 2016
Notary Public for South Carolina
My Commission Expires: 02/23/2021

Notary (L.S.) AS
Notary (printed name) Ana Silva

51840.F45009R
STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

☒ MidFirst Bank

PLAINTIFF,

vs.

Richard Brady; State of South Carolina; and
Richland County Clerk of Court

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS
C/A NO: 2016CP4002457

(NON-JURY MORTGAGE FORECLOSURE)

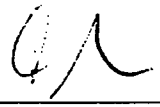
CERTIFICATE OF MAILING

REC'D
2016 MAY 13 PM 3:01
JANET L. W. MORRIS
CLERK OF COURT
C.P. 2.5.5.

The undersigned, hereby certifies that she mailed copies of the Summons, Complaint, Lis Pendens and Notice of Foreclosure Intervention to the defendant, Richard Brady, by placing copies of same in the United States Mail, postage prepaid, by certified mail, return receipt requested, with delivery restricted to the addressee, addressed as follows:

Richard Brady
1816 Haviland Cir.
Columbia, SC 29210

By:



Ana Silva
Paralegal

5/9/16

51840.F45009R
STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

MidFirst Bank,

PLAINTIFF,

vs.

Richard Brady; State of South Carolina; and
Richland County Clerk of Court,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS
C/A NO: 2016CP4002457

CERTIFICATION OF EXEMPTION FROM
ADMINISTRATIVE ORDER 2011-05-02-01
(NON-OWNER OCCUPIED PROPERTY)

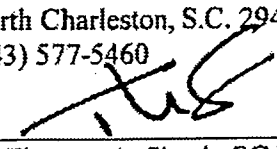
MAY 13 PM 3:01
CLERK OF COURT
RICHLAND COUNTY

The undersigned Plaintiff's attorney certifies as follows:

1. That this is an action for the foreclosure of real property located in Richland County, South Carolina.
2. That the Administrative Order of the Supreme Court of South Carolina dated May 2, 2011, (2011-05-02-01) does not apply to this foreclosure, in that the real property that is the subject of this foreclosure is not an "Owner-Occupied dwelling" as defined in the order.

FINKEL LAW FIRM LLC
P.O. Box 71727
North Charleston, S.C. 29415
(843) 577-5460

By:


☒ Thomas A. Shook, SC Bar # 68340
☐ Susan S. White, SC Bar # 5453
☐ Elizabeth S. Moore, SC Bar # 69236
☐ Teresa D. Van Vlake, SC Bar # 11118
Attorneys for Plaintiff

51840.F45009r

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

MidFirst Bank,

PLAINTIFF,

vs.

Richard Brady; State of South Carolina; and
Richland County Clerk of Court,

DEFENDANT.

IN THE COURT OF COMMON PLEAS

C/A NO: 2016CP4002457

(NON-JURY MORTGAGE FORECLOSURE)

AFFIDAVIT OF DEFAULT BY
PUBLICATION

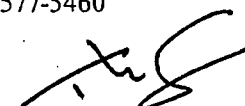
2016 JUL 26 AM 10:45
FILED
RICHLAND COUNTY
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

PERSONALLY APPEARED BEFORE ME, the undersigned attorney, who first being duly sworn, under oath, deposes and says:

That (s)he is one of the attorneys for the Plaintiff above named; that the Summons and Complaint were served upon the Defendant, Richard Brady, by publication in *Columbia Star (f/k/a The Star Reporter)*, on May 27, 2016, June 3, 2016, and June 10, 2016, and that more than thirty (30) days have expired since such service during which time the said Defendant has failed to answer, appear or otherwise plead in this cause and is now in default.

FINKEL LAW FIRM LLC
P.O. Box 71727
North Charleston, South Carolina 29415
(843) 577-5460

By:


☒ Thomas A. Shook, SC Bar # 68340
☐ Susan S. White, SC Bar # 5453
☐ Elizabeth S. Moore, SC Bar # 69236
☐ Teresa D. Van Vlakte, SC Bar # 11118
Attorneys for Plaintiff

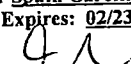
Date: July 13, 2016

Sworn to and Subscribed before me on

July 13, 2016

Notary Public for South Carolina

My Commission Expires: 02/23/2021

Notary (L.S.) 

Notary (printed name) Ana Silva

SUMMONS AND
NOTICES
STATE OF
SOUTH CAROLINA
COUNTY OF
RICHLAND
IN THE COURT OF
COMMON PLEAS
(NON-JURY
MORTGAGE
FORECLOSURE)

CIA NO: 2016CP4002457
MidFirst Bank,
PLAINTIFF,
vs.
Richard Brady; State of
South Carolina; and Rich-
land County Clerk of Court,
DEFENDANT(S).
TO THE DEFENDANTS
ABOVE NAMED:
YOU ARE HEREBY SUM-
MONED and required to
answer the Complaint here-
in, a copy of which is here-
with served upon you, or to
otherwise appear and
defend, and to serve a copy
of your Answer to said
Complaint upon the sub-
scribers at their office, 4000
Faber Place, Suite 450, P.O.
Box 71727, North
Charleston, South Caroli-
na, 29415, or to otherwise
appear and defend the
action pursuant to applica-
ble court rules, within thirty
(30) days after service
hereof, exclusive of the day
of such service; except that
the United States of Ameri-
ca, if named, shall have
sixty (60) days to answer,
after the service hereof,
exclusive of such service;
and if you fail to answer the
Complaint or otherwise
appear and defend within
the time aforesaid, the
Plaintiff in this action will
apply to the Court for relief
demanded therein, and
judgment by default will be
rendered against you for
the relief demanded in the
Complaint.
TO MINOR(S) OVER
FOURTEEN YEARS OF
AGE, AND/OR TO
MINOR(S) UNDER FOUR-
TEEN YEARS OF AGE
AND THE PERSON WITH
WHOM THE MINOR(S)
RESIDE(S) AND/OR TO
PERSONS UNDER SOME
LEGAL DISABILITY:
YOU ARE FURTHER
SUMMONED AND NOTI-
FIED 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 the Plaintiff.
YOU WILL ALSO TAKE
NOTICE that pursuant to
Rule 53(b) SCRPC, as
amended effective Septem-
ber 1, 2002, the Plaintiff
will move for a general
Order of Reference to the
Master in Equity for Rich-
land County, which Order
shall, pursuant to Rule
53(b) of the South Carolina
Rules of Civil Procedure,
specifically provide that the
said Master in Equity is
authorized and empowered
to enter a final judgment in
this action. If there are
counterclaims requiring a
jury trial, any party may
file a demand under rule
38, SCRPC and the case
will be returned to the Cir-
cuit Court.

THE COLUMBIA STAR

COLUMBIA, SOUTH CAROLINA

State of South Carolina
County of Richland

Personally appeared before me,
MIMI M. MADDOCK,
PUBLISHER OF THE COLUMBIA STAR,
who makes oath that the advertisement

SUMMONS AND NOTICES
MidFirst Bank
vs. Richard Brady, et al.

a clipping of which is attached hereto, was printed in
THE COLUMBIA STAR, a weekly newspaper of general circulation
published in the City of Columbia, State and County aforesaid, in the issues of
May 27, June 3, and 10, 2016

Mimi M. Maddock
Mimi M. Maddock, Publisher

Sworn to before me on this
10th day of June 2016.

J. Michael Maddock
J. Michael Maddock, Notary Public
My commission expires December 30, 2025

145009 R
2016 JUL 26 AM 10:45
JEANNETTE W. MCBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

**NOTICE OF FILING
COMPLAINT**
NOTICE IS HEREBY
GIVEN that the original
Complaint in the above
entitled action, together
with the Summons, was
filed in the Office of the
Clerk of Court for Richland
County on April 15, 2016 at
11:12 a.m.

PLEASE TAKE NOTICE
THAT pursuant to the
Supreme Court of South
Carolina Administrative
Order 2011-05-02-01, you
may be eligible for fore-
closure intervention programs
for the purpose of resolving
the above-referenced fore-
closure action. If you wish
to be considered for a fore-
closure intervention pro-
gram, you must contact
Finkel Law Firm LLC,
4000 Faber Place Drive,
Suite 450 (29405), P.O. Box
71727 (29415), North
Charleston, SC 29405, or
call (843) 577-5460 within
thirty (30) days from the
date of this notice. Finkel
Law Firm LLC represents
the Plaintiff in this action.
Our law firm does not rep-
resent you and is not
authorized to provide you
any legal advice. IF YOU
FAIL, REFUSE, OR VOL-
UNTARILY ELECT NOT
TO PARTICIPATE IN
THIS FORECLOSURE
INTERVENTION
PROCESS, THE FORE-
CLOSURE MAY PRO-
CEED.

**NOTICE PURSUANT TO
THE FAIR DEBT COL-
LECTION PRACTICES
ACT (15 U.S.C. § 1692 et
seq.)** This is an attempt to
collect a debt and any infor-
mation you provide will be
used for that purpose.
However, if you have previ-
ously received a discharge
from bankruptcy, this mes-
sage is not and should be
construed as an attempt to
collect a debt, but only as a
requirement pursuant to
the administrative order.
FINKEL LAW FIRM LLC
THOMAS A. SHOOK
Post Office Box 71727
North Charleston, South
Carolina 29415
(843) 577-5460
Attorney for Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

MidFirst Bank,

PLAINTIFF,

vs.

Richard Brady; State of South Carolina; and
Richland County Clerk of Court,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS
C/A NO: 2016CP4002457

(NON-JURY MORTGAGE FORECLOSURE)

NOTICE OF FORECLOSURE HEARING

TO THE DEFENDANTS ABOVE NAMED:

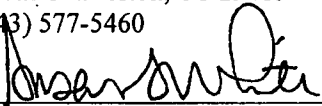
PLEASE TAKE NOTICE THAT a hearing will be held before Joseph M. Strickland, Master in Equity for Richland County, on August 17, 2016 at 9:45 AM. This hearing will be held at the Richland County Judicial Center, Courtroom 2-D; 1701 Main Street, Columbia, South Carolina.

You will also take notice that the Plaintiff's attorney will submit written testimony on behalf of the Plaintiff pursuant to South Carolina Code Ann. §14-11-110 (as amended). All issues raised in the pleadings will be decided at this hearing.

If you would like to receive advance notification in the event your scheduled hearing is canceled or postponed for any reason, please contact the firm's scheduling clerk at (843) 577-5460 with a telephone number where you may be reached.

FINKEL LAW FIRM LLC
Post Office Box 71727
North Charleston, SC 29415
(843) 577-5460

By:

- 
- ☐ Thomas A. Shook, SC Bar # 68340
☒ Susan S. White, SC Bar # 5453
☐ Elizabeth S. Moore, SC Bar # 69236
☐ Teresa D. Van Vlakte, SC Bar #11118
Attorneys for Plaintiff

August 1, 2016

2016 AUG 17 PM 12:45
JEANETTE W. COOPER
C.C.P. CLERK
RICHLAND COUNTY
FILED

F45009R

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

MidFirst Bank,

PLAINTIFF,

VS.

Richard Brady; State of South Carolina; and
Richland County Clerk of Court,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

C/A NO: 2016CP4002457

(NON-JURY MORTGAGE FORECLOSURE)

CERTIFICATE OF SERVICE BY MAIL

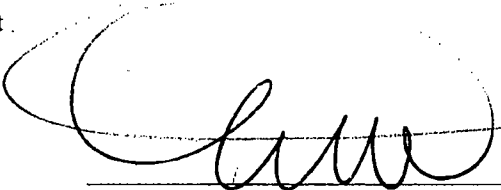
I, Kathy Heavner, do hereby certify that I served a copy of the **Notice of Foreclosure Hearing** on the persons as listed below, by depositing same in the United States Mail, postage prepaid, at Charleston, South Carolina, where there is regular communication by mail, on 8-1-16

Richard Brady
1816 Haviland Circle
Columbia, SC 29210

Occupant
1816 Haviland Circle
Columbia, SC 29210

T. Parkin Hunter
State of South Carolina
P. O. Box 11549
Columbia, SC 29211-1549

Richland County Clerk of Court
1701 Main St #205
Columbia, SC 29201


Kathy Heavner, Foreclosure Paralegal
FINKEL LAW FIRM LLC
Post Office Box 71727
North Charleston, SC 29415
(843) 577-5460

RICHLAND COUNTY
FILED
2016 AUG 17 PM 1:32
JEANETTE W. MCBRIDE
C.C.P. & G.S.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

MidFirst Bank,

PLAINTIFF,

vs.

Richard Brady; State of South Carolina; and
Richland County Clerk of Court,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

C/A NO: 2016CP4002457

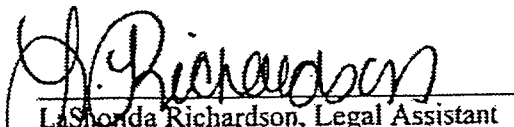
(NON-JURY MORTGAGE FORECLOSURE)

NOTICE OF FORECLOSURE SALE

2016 OCT -4 PM 3:00
RICHLAND COUNTY
FILED

TO THE DEFENDANTS ABOVE NAMED:

PLEASE TAKE NOTICE THAT the sale in the foreclosure action herein will be held on October 3, 2016 at 12:00 P.M. at the Richland County Judicial Center, Courtroom 2-D, 1701 Main Street, Columbia, South Carolina.


LaShonda Richardson, Legal Assistant
Finkel Law Firm LLC
P.O. Box 71727
North Charleston, SC 29415
(843) 577-5460
September 30, 2016

.F45009R
STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

MidFirst Bank,

PLAINTIFF;

vs.

Richard Brady; State of South Carolina; and
Richland County Clerk of Court,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS
C/A NO: 2016CP4002457

(NON-JURY MORTGAGE FORECLOSURE)

CERTIFICATE OF SERVICE BY MAIL

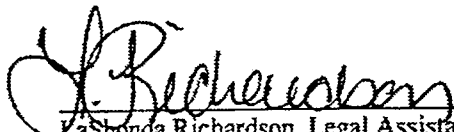
2016 OCT -4 PM 3:00
RICHLAND COUNTY
CLERK OF COURT

I, LaShonda Richardson, do hereby certify that I served a copy of the Notice of Sale and Order and Judgment of Foreclosure Sale on the persons as listed below, by depositing same in the United States Mail, postage prepaid, at Charleston, South Carolina, where there is regular communications by mail, on September 30, 2016.

Richard Brady
1816 Haviland Cir.
Columbia, SC 29210

T. Parkin Hunter, Senior Attorney General
Attorney for State of South Carolina
P. O. Box 11549
Columbia, SC 29211

Richland County Clerk of Court
1701 Main St #205
Columbia, SC 29201


LaShonda Richardson, Legal Assistant
FINKEL LAW FIRM LLC
Post Office Box 71727
North Charleston, SC 29415
(843) 577-5460

Plaintiff does not warrant its title search to purchasers at foreclosure sale or other third parties, who should have their own title search performed on the subject property.
Joseph M. Strickland
Master in Equity for Richland County
Columbia, South Carolina 29216
FINKEL LAW FIRM LLC
Post Office Box 71727
North Charleston, South Carolina 29415
(843) 577-0400
Attorneys for Plaintiff
204

THE COLUMBIA STAR

COLUMBIA, SOUTH CAROLINA

2016 CP4002457

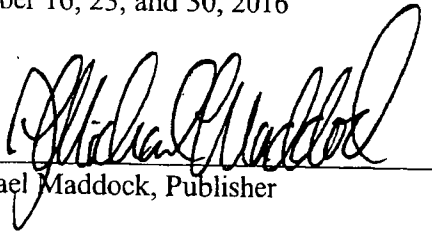
State of South Carolina
County of Richland

Personally appeared before me,
J. MICHAEL MADDOCK,
PUBLISHER OF THE COLUMBIA STAR,
who makes oath that the advertisement

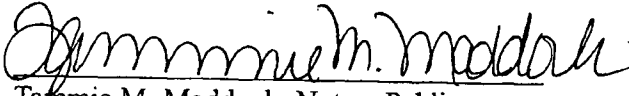
MASTER'S SALE
MidFirst Bank
vs. Richard Brady, et al.

a clipping of which is attached hereto, was printed in
THE COLUMBIA STAR, a weekly newspaper of general circulation
published in the City of Columbia, State and County aforesaid, in the issues of

September 16, 23, and 30, 2016


J. Michael Maddock, Publisher

Sworn to before me on this
30th day of September 2016.


Tammie M. Maddock, Notary Public
My commission expires June 27, 2026

2016 OCT -4 AM 8:33
JEANETTE W. MCBRIDE
C.C.P. & G.S.
FILED
RICHLAND COUNTY

BY VIRTUE OF A DECREE of the Court of Common Pleas for Richland County, South Carolina, heretofore entered in the case of MidFirst Bank, Plaintiff, vs. Richard Brady, et al., Defendants, at the County of Richland, State of South Carolina, to the highest bidder:
ALL that certain place, parcel or lot of land, with all improvements thereon, situate, lying and being near the City of Columbia, in the County of Richland, State of South Carolina, the same being shown as Lot 15, Block "C", on a plat of Mandal Hall by William Wingfield dated March 7, 1966, revised June 19, 1968, and recorded in Plat Book 11, at Page 62, in the Office of the REC for Richland County. TMS #: 08112-68-07
PROPERTY ADDRESS: 1816 Hayland Cir., Columbia, SC 29210
This being the same property conveyed to Richard Brady by deed of Sandra L. Pernell, dated July 8, 1987, and recorded in the Office of the Register of Deeds for Richland County on July 9, 1987, in Deed Book 649 at Page 24.
TERMS OF SALE: FOR CASH. The Master in Equity will require a deposit of 5% of the bid amount in cash or certified funds, which is to be applied on the purchase price upon compliance with the bid. Interest on the balance of the bid at 8.50% shall be paid to the day of compliance. In case of non-compliance within 30 days, after the sale, the deposit of 5% is to be forfeited and applied to Plaintiff's judgment debt and the property re-advertised for sale upon the same terms at the risk of the former highest bidder. Purchaser to pay for deed recording fees and deed stamps.
Deficiency judgment not being demanded, the bidding will not remain open after the date of sale, but compliance with the bid may be made immediately. Should Plaintiff, Plaintiff's attorney, or Plaintiff's agent fail to appear on the day of sale, the property shall not be sold, but shall be re-advertised and sold at some convenient sales day thereafter; when Plaintiff, Plaintiff's attorney, or Plaintiff's agent, is present. The sale shall be subject to taxes and assessments, existing encumbrances and covenants and restrictions of record.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2016-CP-40-02457

MidFirst Bank,

Plaintiff,

v.

Richard Brady; State of South Carolina; and
Richland County Clerk of Court,

Defendants.

**NOTICE OF MOTION AND
MOTION TO VACATE JUDGMENT
OF FORECLOSURE AND SALE
AND FORECLOSURE SALE
AND MEMORANDUM**

TO: THOMAS A. SHOOK, ESQUIRE, ATTORNEY FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the Defendant, Richard Brady (the "Defendant"), by and through his undersigned attorney, will move before the Honorable Joseph M. Strickland, Master in Equity for Richland County, at such time as is convenient to the Court, pursuant to Rule 60(b)(4) of the South Carolina Rules of Civil Procedure, and pursuant to Sections 15-9-710 and 740, Code of Laws of South Carolina, for an Order vacating the Judgment of Foreclosure and Sale ("Judgment"), which was filed in the Office of the Clerk of Court for Richland County on September 16, 2015, and the foreclosure sale, which was held on October 3, 2016.

GROUND FOR MOTION

The Judgment, and all ensuing actions based upon the Judgment, including the sale by foreclosure of the Defendant's residential property, are void because the Court lacked personal jurisdiction of the Defendant, who was not properly served with the Summons and Complaint. The Defendant is entitled to notice of the suit and opportunity to be heard.

FACTUAL BASIS FOR MOTION

The Defendant, by his Affidavit attached hereto as Exhibit "A," asserts that he never received a copy of the Summons and Complaint in this action, that he has never seen the said pleadings, and that he has never made a voluntary appearance in this case.

The Defendant, by his Affidavit, further asserts that he was first made aware of this suit on or about October 11, 2016, when his attorney, who had caused the title of another real property owned by the Defendant to be examined, was informed of the Judgment and notified the Defendant.

According to the Affidavit of Non-Service of Wendy Lanier, dated April 18, 2016, the said process server attempted to serve the Defendant with the Summons and Complaint (and other documents) on April 16, 2016, at 1816 Haviland Circle, Columbia, SC 29210, which is the address of the mortgaged (subject) real property.

According to the Plaintiff's counsel's Certificate of Mailing, dated May 9, 2016, the Affidavit (supporting a request for an Order of Publication), dated May 9, 2016, the Order of Publication, issued by the Clerk of Court (through a staff member) on May 13, 2016, and the Notice of Hearing dated August 1, 2016, the only address used to attempt to serve, contact or inform the Defendant was the said address of the subject real property.

The Defendant, by his Affidavit, further asserts that he does not reside, and has never resided, at 1816 Haviland Circle, Columbia, SC 29210, that the said address was, at all relevant times, including when the subject loan was originated (March 22, 1994), used as investment (rental) property, and that the said address is presently, and at all relevant times was, occupied by a tenant or tenants (unrelated to the Defendant) pursuant to a lease or leases between them and the Defendant.

MEMORANDUM OF AUTHORITY

RELEVANT RULE/STATUTES.

This Motion is made pursuant to Rule 60(b)(4) of the South Carolina Rules of Civil Procedure, which provides, in relevant part, that, "On motion and upon such terms as are just, the court may relieve a party . . . from a final judgment . . . [if] the judgment is void"

This Motion is also made pursuant to §§15-9-710 and 740, Code of Laws of South Carolina, 1976, as amended, which provide, in relevant parts, as follows:

§15-9-710

When the person on whom the service of the summons is to be made cannot, after due diligence, be found within the State and (a) that fact appears by affidavit to the satisfaction of the court. . . in which the cause is pending and (b) it in like manner appears that a cause of action exists against the defendant in respect to whom the service is to be made or that he is a proper party to an action relating to real property in this State, the court . . . may grant an order that the service be made by the publication of the summons in any one or more of the following cases: . . .

(2) when the defendant, being a resident of this State, has departed therefrom, with intent to defraud his creditors or to avoid the service of a summons or keeps himself concealed therein with like intent;

(3) when the defendant is a resident of this State and after a diligent search cannot be found; . . .

(5) when the subject of the action is real or personal property in this State and the defendant has or claims a lien or interest, actual or contingent, therein or the relief demanded consists wholly or partly in excluding the defendant from any interest or lien therein; . . .

§15-9-740

The order of publication shall direct the publication to be made in one newspaper, to be designated by the officer before whom the application is made, most likely to give notice to the person to be served . . . The court . . . shall also direct that a copy of the summons be forthwith deposited in the post office directed to the person to be served at his place of residence, unless it appears that such residence is neither known to the party making the application nor can, with reasonable diligence, be ascertained by him.

DEFENDANT'S ADDRESSES.

The one address used by the Plaintiff's counsel, 1816 Haviland Circle, Columbia, SC

29210, is not, and never has been, the Defendant's address.

The Defendant has not concealed his whereabouts, and his addresses are clearly reflected on search engines, such as TLO, a copy of which is attached hereto as Exhibit "A." Exhibit "A" also reflects that the 1816 Haviland Circle address is not a current or previous address of the Defendant.

Most importantly, the Plaintiff knew the Defendant's best address was P.O. Box 727, Irmo, SC 29063-0727; and, in fact, the Plaintiff's servicing company, Midland Mortgage, communicated with the Defendant regarding this mortgage loan using said address as late as September 16, 2016, a copy of which is attached to the Defendant's Affidavit; and no effort was made by the Plaintiff's counsel to contact the Defendant using this address.

SERVICE BY PUBLICATION.

The Plaintiff's Affidavit requesting service by publication fails to describe any efforts made to serve or contact the Defendant, except:

3. Based upon the affidavit of the process server on file herein, and after proper due diligence, the aforementioned defendant could not be located for service at the last known address: 1816 Haviland Cir., Columbia, SC 29210.

4. As evidenced by the Certificate of Mailing included herewith, a copy of the Lis Pendens, Summons, Complaint and Notice of Foreclosure Intervention has been mailed to the last known address of the Defendant pursuant to S.C. Code Anno. §15-9-740.

This Affidavit is facially defective because it fails to state specifically what due diligence was undertaken, including attempts to locate the Defendant at any address other than that of the Defendant's rental property.

Simply stating "after proper due diligence" is insufficient. The Plaintiff must demonstrate that sufficient attempts were made to locate the Defendant "within the State" not just at the mortgaged property.

It can only be concluded that the Plaintiff and its counsel mistakenly assumed that the mortgaged property was the Defendant's residence, as no apparent effort was made by the Plaintiffs' counsel to discover the Defendant's actual residence.

In Caldwell v. Wilquist, 402 S.C. 565, 741 S.E.2d 583 (Ct.App. 2013), the Court found that, "... the affidavit must include some factual basis upon which the court issuing the order of service by publication can find that the defendant cannot, after due diligence, be found within the state."; and it cited the following as persuasive:

Affidavits devoid of averments of facts showing that due diligence was exercised to make service have consistently been held to be insufficient, and orders for service by publication based (upon such affidavits) have uniformly been held to have been beyond jurisdiction and void. Calvin Mem'l Corp. v. Regua, 5 Cal. App. 3d 345, 85 Cal. Rptr. 107, 113 (Cal. Ct. App. 1970).

[S]ervice by publication is constitutionally insufficient where actual notice by mail is feasible. United States v. Borromeo, 945 D.2d 750, 752 (4th Cir. 1991).

If the name and address of an individual is reasonably ascertainable, then notice by publication is insufficient to satisfy due process. Montgomery v. Scott, 802 F. Supp. 930, 935 (W.D.N.Y. 1992).

... [E]verything necessary to dispense with personal service of [the] summons must appear by affidavit. ... [a]n affidavit on which publication is predicated is fatally defective in the absence of an allegation that the person on whom the summons is so served cannot, after due diligence, be found within the State. Nash Cnty. V. Allen, 241 N.C. 543, 85, S.E.2d 921, 923 (N.C. 1955).

The Court in Caldwell v. Wilquit also pointed-out that the South Carolina Constitution provides that "[n]o person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard."

S.C. Const. art. I, §22

VOID JUDGMENT.

"A judgment is void if a court acts without personal jurisdiction." BB&T v. Taylor, 369

S.C. 548, 551, 633 S.E.2d 501, 503 (2006); Stearns Bank Nat. Ass'n v. Glenwood Falls, LP, 373 S.C. 331, 644 S.E.2d 793 (S.C.App 2007); rehearing denied; certiorari denied.

“When a defendant is not properly served, ‘the Court has no jurisdiction of the defendant, and all proceedings based on the pretended service are void.’” Momani v. Van Surdam, 296 S.C. 409, 410, 373 S.E.2d 691 (Ct.App. 1988).

“A void judgment is one that, from its inception, is a complete nullity and is without legal effect . . . The definition of void under the rule only encompasses judgments from courts which failed to provide proper due process, or judgment from courts which lacked subject matter jurisdiction or personal jurisdiction.” (citations omitted) Ware v. Ware, 404 S.C. 1, 11, 743 S.E.2d 817 (2013).

“The movant in a Rule 60(b) motion has the burden of presenting evidence proving the facts essential to entitle him to relief. . . ‘Further, an [officer’s] return of process creates the legal presumption of proper service that cannot be ‘impeached by the mere denial of service by the defendant.’” (citations omitted) Delta Apparel, Inc. v. Farina, 406 S.C. 257, 267, 750 S.E.2d 615 (Ct.App. 2013).

The following factors, while relevant to a motion under Rule 60(b)(1), do not apply to a motion pursuant to Rule 60(b)(4): (1) the promptness with which relief is sought; (2) the reasons for the failure to act promptly; (3) the existence of a meritorious defense; and (4) the prejudice to the other parties. BB&T v. Taylor, *supra*, n.l.

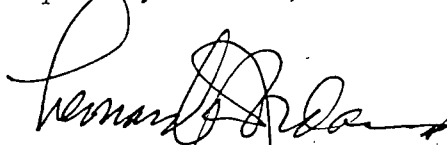
LACK OF PERSONAL JURISDICTION.

“The plaintiff has the burden to establish that the court has personal jurisdiction over the defendant . . . The Plaintiff need only show compliance with the rules . . . When the civil rules on service are followed, there is a presumption of proper service Exacting compliance with the rules is not required to effect service of process . . . Rather, inquiry must be made as to

whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings.” (internal citations omitted) Moore v. Simpson, 322 S.C. 518, 523, 473 S.E.2d 64, 66 (Ct.App. 1996).

The Plaintiff failed to comply with §§15-9-710 and 740, and the Court, therefore, never acquired personal jurisdiction of the Defendant. The service by publication and the proceedings in this case leading up to the entry of the Judgment and the actions taken based upon the Judgment, including the sale of the Defendant’s real property, are each a complete nullity and without legal effect with the regard to the Defendant, and the Judgment should, pursuant to Rule 60(b)(4), be vacated, and the Plaintiff should be directed to properly serve the Summons and Complaint upon the Defendant.

Respectfully submitted,



Leonard R. Jordan, Jr.
JORDAN LAW FIRM
211 Veterans Road, Suite D
Columbia, South Carolina 29209
(803) 726-1950 Tel
(803) 726-1951 Fax
ljordan@ljordanlaw.com
Attorney for Defendant, Richard Brady

Columbia, South Carolina
October 19, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2016-CP-40-02457

MidFirst Bank,)
Plaintiff,)
v.)
Richard Brady; State of South Carolina; and)
Richland County Clerk of Court,)
Defendants.)

AFFIDAVIT OF RICHARD BRADY

RICHLAND COUNTY
FILED
2016 OCT 24 AM 11:53
JEANETTE W. MCBRIDE
C.O. & G.S.

PERSONALLY appeared before me Richard Brady, who, after being duly sworn, states:

1. I am a Defendant in this case, and I reside at 213 Kirkstone Road, Irmo, South Carolina 29063.
2. I was first made aware of this suit on October 11, 2016, when my attorney, Leonard R. Jordan, Jr., reported to me the findings of his title examination on another property of mine, which turned up the judgment entered in this case.
3. I have never seen the pleadings in this case, and I have never made an appearance in this case.
4. I have never been informed by the Plaintiff, or any representative of the Plaintiff, that a foreclosure suit involving this mortgage loan has been instituted against me.
5. I do not reside at 1816 Haviland Circle, Columbia, South Carolina 29210.
6. I have never resided at 1816 Haviland Circle, Columbia, South Carolina 29210.
7. When I closed on the subject mortgage loan on March 22, 1994, it was the understanding of all parties that the said property was investment (rental) property.
8. Since 1994, the said property has been used exclusively as rental property and the

property has been occupied by a tenant or tenants (unrelated to me) pursuant to a lease or leases in which I was the landlord.

9. I have been easy to locate, and I have certainly made no effort to conceal my whereabouts or to avoid service of process.

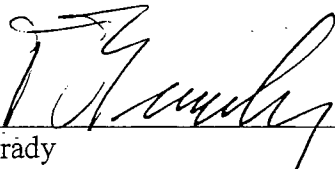
10. My primary mailing address is P.O. Box 727, Irmo, South Carolina 29063-0727, and I have used this address for decades.

11. The Plaintiff knows this address, and its servicing company, Midland Mortgage, which claims to be a Division of MidFirst Bank, regularly communicates with me using said address.

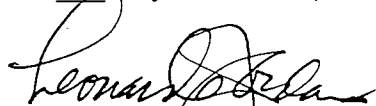
12. As late as September 16, 2016, Midland Mortgage sent a correspondence to me with regard to this mortgage loan. A copy of this correspondence is attached hereto.

13. Since I never received notice of this suit and never had an opportunity to respond to the Plaintiff's claim, it is my belief that the Judgment of Foreclosure and Sale and the foreclosure sale are void as the Court had no personal jurisdiction over me.

FURTHER AFFLIANT SAYETH NAUGHT.


Richard Brady

SWORN to and subscribed before me
this 19th day of October, 2016

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 1/8/23

Midland Mortgage

A Division of MidFirst Bank

P.O. Box 26648
Oklahoma City, OK 73126-0648**Mortgage Statement**

Statement Date 09/16/16



0-573-49815-0039361-008-1-100-010-000-000

RICHARD BRADY
PO BOX 727
IRMO SC 29063-0727

Account Number:	0055271400
Payment Due Date:	Immediately Upon Receipt
Amount Due	\$36,092.50

Property Address:	1816 HAVILAND CIR COLUMBIA SC 29210
-------------------	--

Customer Service 1-800-654-4566

TDD for the Hearing Impaired 1-800-946-7481

www.MyMidlandMortgage.com

Delinquency Assistance Center 1-800-552-3000

Insurance (Hazard and Flood) 1-866-439-2712

www.UpdateMyInsurance.com**Account Information**

Outstanding Principal	\$27,384.37
Escrow Balance	-\$1,258.44
Unapplied Balance	\$3.38
Interest Rate	8.500000%
Next Payment Installment Due	10/01/15
Prepayment Penalty	No
Amount to Bring Loan Current*	\$13,280.36

* Amount includes past due payments and the payment that would be due next month if your loan had not been accelerated. It also includes fees and charges billed to your loan as of the Statement Date. The fees and charges may be subject to adjustment.

Explanation of Amount Due

Principal	\$27,384.37
Interest	\$2,521.61
Escrow (Taxes and Insurance)	\$1,258.44
Total Fees and Charges	\$4,931.46
Available Credits	-\$3.38
Total Amount Due*	\$36,092.50

* Please refer to the Amount Due Information box below.

Transaction Activity (08/17 to 09/16)

Transaction Date	Description	Due Date	Principal	Interest	Escrow	Optional Products	Fees and Charges	Unapplied Funds	Total Transaction
08/17/16	EXPENSE ADVANCES						-\$400.00		-\$400.00
08/26/16	EXPENSE ADVANCES						-\$2,758.96		-\$2,758.96

Past Payments Breakdown

	Paid Last Month	Paid Year-To-Date
Principal	\$0.00	\$0.00
Interest	\$0.00	\$0.00
Escrow (Taxes and Insurance)	\$0.00	\$0.00
Fees and Charges	\$0.00	\$0.00
Partial Payment (Unapplied)*	\$0.00	\$3.38
Total	\$0.00	\$3.38

Amount Due Information

Your loan has been accelerated. The Amount Due is NOT the amount necessary to pay off your loan or bring your loan current. There may be fees and charges due under your loan documents that may not be reflected on the statement or may be subject to adjustment under certain circumstances. Please contact us at 1-800-654-4566 Monday through Friday from 8:00 a.m. - 5:00 p.m. Central Time to obtain the final figure.

Important Messages (see back for other important information)

*Partial payments: Any partial payments that you make are not applied to your mortgage, but instead are held in a separate unapplied funds account. If you pay the balance of a partial payment, the funds will then be applied to your mortgage.



Google Authenticator is now available!

Switch today to start getting PIN codes even when you have no phone service!
[click here for more info](#)

Customer Support (888) 493-2209

customersupport@tlo.com

Logged in as : LJORDAN@LJORDANLAW.COM View Cost this Session

Search History

Use Certifications - GLBA/DPPA

Preferences

My Account

Favorites

User Tips

Admin Tips

Sign Out

1

Welcome to the Message Center!

Learn more about the latest resource available in your TLOxp account.

[Back to Notifications](#)

People

Business Plus

Courts

Assets

California

Your Current Reference ID: NONE

1 result found for people named RICHARD BRADY located in IRMO, SOUTH CAROLINA.

RICHARD N BRADY, 65 Years Old (South Carolina, Georgia, Florida) 213 KIRKSTONE RD, IRMO, SC (12/14/2015 to 10/18/2016)

Subject Information	Address History	Possible Other Phones
RICHARD N BRADY (04/01/1983 to 07/05/2016)	213 KIRKSTONE RD, IRMO, SC 29063-2309 (RICHLAND COUNTY) (12/14/2015 to 10/18/2016)	(803) 732-0717 (ET)
RICHARD G BRADY (03/01/1985 to 09/07/2005)	Subdivision Name: FRIARSGATE	(803) 361-9205 (ET) (M)
RICK BRADY (06/01/1988 to 06/01/1992)	PO BOX 727, IRMO, SC 29063-0727 (RICHLAND COUNTY) (01/2003 to 10/07/2016)	(803) 448-0202 (ET) (M)
	3240 DREHER SHOALS RD, IRMO, SC 29063-9349 (RICHLAND COUNTY) (12/1993 to 04/13/2016)	(803) 331-5045 (ET) (M)
Other Observed Names	6356 SAINT ANDREWS RD, COLUMBIA, SC 29212-3169 (LEXINGTON COUNTY) (08/2005 to 04/08/2016)	(803) 738-0923 (ET) (M)
RICHARD BRADEY (12/11/1994 to 06/08/2005)	Address contains: 2 suites Current Commercial: Phones at address (803) 772-1333 (ET) - BAUER ENTERPRISES (803) 561-9999 (ET) - BAUER MOTORS	(803) 776-7771 (ET) (L)
SSN: [REDACTED] Issued: MARYLAND 1968-1969		(803) 216-8170 (ET)
		(803) 738-0235 (ET)

Dates of Birth

DOB: 03/28/1951

Age: 65

Other DOB: 03/28 Year of Birth
UNKNOWN

Other DOB: 08/11 Year of Birth
UNKNOWN

PO BOX 727, COLUMBIA, SC 29202-0727 (RICHLAND COUNTY) (09/30/2007 to 09/30/2007)

520 BEAR CREEK RD, CHAPIN, SC 29036-9412 (LEXINGTON COUNTY) (07/01/2005 to 11/09/2005)

PO BOX 23389, COLUMBIA, SC 29224-3389 (RICHLAND COUNTY) (01/1989 to 08/01/2003)

116 DORIS CT, COLUMBIA, SC 29210-4612 (RICHLAND COUNTY) (04/1983 to 08/01/2003)
 Subdivision Name: HOMEWOOD TERRACE

901 FAIRWOOD DR, COLUMBIA, SC 29209-2162 (RICHLAND COUNTY) (07/21/2003 to 07/21/2003)
 Subdivision Name: PINEWOOD PARK

7566 CABIN CREEK RD, HOPKINS, SC 29061-8935 (RICHLAND COUNTY) (11/1993 to 01/23/2003)

204 OAKBROOK DR, COLUMBIA, SC 29223-8135 (RICHLAND COUNTY) (10/1986 to 01/23/2003)
 Subdivision Name: WILDEWOOD
 1 Current Private Phone
 Current Private Phone at address
 (803) 865-0963 (ET) - NEEDLE, LARRY

2206 DECKER BLVD, COLUMBIA, SC 29206-3564 (RICHLAND COUNTY) (10/1986 to 01/23/2003)

125 CRESTMORE DR, COLUMBIA, SC 29209-4309 (RICHLAND COUNTY) (07/1998 to 12/2001)
 Subdivision Name: PINE LAKES
 1 Current Private Phone
 Current Private Phone at address
 (803) 728-0636 (ET) - LEE, KIA

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2016-CP-40-02457

MidFirst Bank,

Plaintiff,

v.

Richard Brady; State of South Carolina; and
Richland County Clerk of Court,

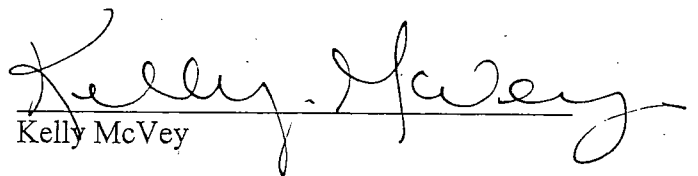
Defendants.

CERTIFICATE OF SERVICE

2016 OCT 24 AM 11:53
JENNIFER W. MCBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

I, Kelly McVey, an employee of Jordan Law Firm, attorney for Defendant, Richard Brady, hereby certify that I have, this 20th day of October, 2016, served a copy of the Notice of Motion and Motion to Vacate Judgment of Foreclosure and Sale and Foreclosure Sale and Memorandum, upon the Plaintiff, by mailing a copy thereof, postage prepaid, to the Plaintiff's attorney at the address indicated below:

Thomas A. Shook, Esquire
Finkel Law Firm, LLC
P.O. Box 71727
North Charleston, SC 29415


Kelly McVey

RETURN TO:
FINKEL LAW FIRM LLC
P.O. Box 71727
N. Charleston, SC 29415

51840.F45009R. /HS
STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

DEED
(PUBLIC SALE)
2016CP4002457

To Whom These Presents shall concern:

I, Joseph M. Strickland, as Master in Equity for Richland County, in the State of South Carolina, send Greetings:

WHEREAS, in an action in the Court of Common Pleas, in Richland County between MidFirst Bank, as Plaintiff, and Richard Brady, et al., as Defendant(s), by an Order dated September 19, 2016, it was decreed that the property hereinafter described should be sold by the Master in Equity for Richland County, on the terms and for the purposes mentioned in the Order(s) granted in the case; and

WHEREAS, I, the undersigned, as Master in Equity for Richland County, after due advertisement of the said property for sale at public outcry, did openly and publicly, and after the matter of auction, sell the said property on October 3, 2016, for the sum of \$36,965.73, said sum being the highest amount bid, to Plaintiff;

NOW, THEREFORE KNOW ALL MEN, that I, the undersigned, as Master in Equity for Richland County, pursuant to the foregoing and also in consideration of the said bid paid as aforesaid by the said hereinbelow named grantee, the receipt whereof is hereby acknowledged, have granted, bargained, sold released, and by these presents do grant bargain, and release the following described property unto the grantee,

MidFirst Bank,
its successors and assigns,

All that certain piece, parcel or lot of land, with all improvements thereon, situate, lying and being near the City of Columbia, in the County of Richland, State of South Carolina, the same being shown as Lot 15, Block "C", on a plat of Mandel Hall by William Wingfield dated March 7, 1958, revised June 10, 1958, and recorded in Plat Book 11, at Page 83, in the Office of the RMC for Richland County.

TMS # 06112-03-07

PRIOR OWNER OF RECORD: [§30-9-31] Richard Brady

Book 2162-3151
2016088005 11/07/2016 13:39:50:507
Fee: \$10.00 County Tax: Exempt Master's Deed-Foreclosure
State Tax: Exempt
2016088005 John T. Hopkins II
Richland County R.O.D.

This being the same property conveyed to Richard Brady by deed of Sandra L. Parnell, dated July 8, 1987, and recorded in the Office of the Register of Deeds for Richland County on July 9, 1987, in Book 849 at Page 24.

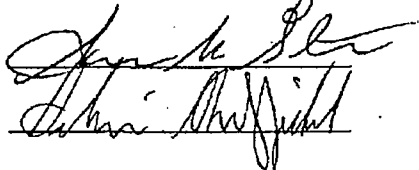
GRANTEE'S ADDRESS: 999 N.W. Grand Blvd. 4th Floor, Oklahoma City, OK 73118

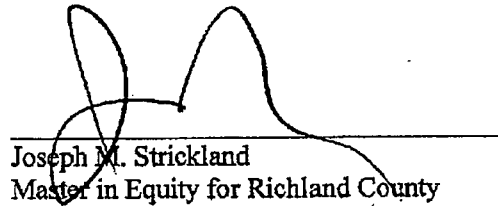
TOGETHER, with all and singular the hereditaments, rights, members and appurtenances whatsoever to the said property belonging or in any wise incident or appertaining, and the reversions and remainders, rents, issues, and profits thereof; and also any estate, right, title, interest, dower, possession, benefit, claim or demand therein whatsoever of all parties to the said suit and of all other persons who might rightfully claim the same or any part thereof, by, from, or under them, or either of them;

TO HAVE AND TO HOLD the said property, with its hereditaments, privileges, and appurtenances, unto the said grantee, his successors and assigns for their own use, benefit, and behoof, forever.

IN WITNESS WHEREOF, I, the undersigned Master in Equity for Richland County, under and by virtue of the said order(s), have hereunto set my Hand and Seal the 14 day of Nov, in the Year of our Lord Two Thousand and Sixteen, and in the Two Hundred and Forty-First year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
in the Presence of:


Notary Public for South Carolina


Joseph M. Strickland
Master in Equity for Richland County

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

ACKNOWLEDGMENT
S.C. Code Sec. 30-5-30
(Effective January 1, 1995)

The undersigned, Notary Public for the State of South Carolina, do hereby certify that Joseph M. Strickland, Master in Equity for Richland County, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand this 14 day of Nov, 2016


Notary Public for South Carolina
Printed Name: Sebrina Sheffield
My commission expires: 11/8/23

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

MidFirst Bank,

PLAINTIFF,

vs.

Richard Brady; State of South Carolina; and
Richland County Clerk of Court,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2016-CP-40-02457

**PLAINTIFF'S RETURN TO DEFENDANT'S
MOTION FOR RELIEF FROM JUDGMENT
AND SALE**

Plaintiff, by and through its undersigned counsel, respectfully submits this Return to the Motion to Vacate Foreclosure Judgment and Sale ("Motion") filed by Richard Brady ("Defendant"), and states as follows:

I. PROCEDURAL HISTORY

This is an action for foreclosure on real property. The monthly payments due on the subject note and mortgage are in default since October 1, 2014. The Summons, Lis Pendens, Complaint, and Notice of Foreclosure Intervention were filed April 15, 2016. Plaintiff's agent for service of process attempted service at the subject property on April 16, 2016, and at 3240 Dreher Shoals Road, Irmo, South Carolina on April 29, 2016. *See* Affidavits of Non-Service, attached hereto as Exhibit A. A Certificate of Exemption from S.C. Supreme Court Administrative Order 2011-05-02-01 was filed May 13, 2016.

In a prior foreclosure action against the subject property, civil action 2014-CP-40-05813, Plaintiff effectuated personal service upon Defendant at the 3240 Dreher Shoals Road address on September 24, 2014. *See* 2014-CP-40-05813 Foreclosure Affidavit of Service, attached hereto as Exhibit B. At that time, the 3240 Dreher Shoals Road address was Defendant's residence. This address is also where Defendant was personally served in another foreclosure, civil action 2014-CP-40-04625, on October 19, 2014. *See* 2014-CP-40-04625 Foreclosure Affidavit of Service, attached hereto as Exhibit C.

Plaintiff's agent for service of process executed an Affidavit of Diligent Search and Inquiry on May 5, 2016 indicating that 3240 Dreher Shoals Road was the last known address of Defendant, which

appeared to be unoccupied and was listed for sale when service was attempted on April 29, 2016. *See* Affidavit of Joshua March, attached hereto as Exhibit D. The process server's Affidavit of Diligent Search and Inquiry also indicates that the Defendant's real estate agent confirmed Defendant was not living at this address, and that the subject property at which service was also attempted was rented to a Mr. Wiggins. *See* Marsh Aff.

Subsequently, an Order of Publication for service upon Defendant was issued by the Court and filed on May 13, 2016. The Order was supported by affidavit of Plaintiff's counsel, attesting that Defendant could not be located for service and that a copy of the pleadings was sent to the subject property. An Affidavit of Default by Publication was filed with the Court July 16, 2016, indicating that service was completed by publication in the Columbia Star on May 27, 2016, June 3, 2016, and June 10, 2016.

Pursuant to Order entered on July 26, 2016, the matter was referred to the Honorable Joseph M. Strickland, Master in Equity for Richland County. An Order and Judgment of Foreclosure and Sale was entered on September 21, 2016, and for three consecutive weeks the property was advertised for public auction to be held on October 3, 2016. The subject property sold to Plaintiff as the successful bidder at the foreclosure sale, and a Master's Deed was recorded November 7, 2016 in Book R2162 at Page 3151 in the Richland County Register of Deeds Office.

Defendant filed the instant Motion on October 24, 2016, alleging that service upon him by publication was improper and thus the Order and Judgment of Foreclosure and Sale was void. Defendant also seeks to set aside the judicial sale held October 3, 2016.

II. STANDARD

A party seeking to set aside a judgment pursuant to Rule 60(b) has the burden of presenting evidence entitling him to the requested relief. *Bowers v. Bowers*, 304 S.C. 65, 67 403 S.E.2d 127, 129 (Ct. App.1991). Whether to grant or deny a motion under Rule 60(b) lies within the sound discretion of the judge. *Coleman v. Dunlap*, 306 S.C. 491, 494 413 S.E.2d 15, 17 (1992). Rule 60, SCRPC, is entitled "Relief from Judgment or Order," and subsection (b) states in pertinent part as follows:

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) ***
- (2) ***
- (3) ***
- (4) the judgment is void;

...

The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken.

A judgment of a court without subject matter jurisdiction is void and constitutes grounds for the court to vacate the judgment under Rule 60(b)(4). *Thomas & Howard Co., Inc. v. T.W. Graham & Co.*, 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995); Rule 60(b)(4) (stating a court may relieve a party from a final judgment if the judgment is void). "A void judgment is one that, from its inception, is a complete nullity and is without legal effect and must be distinguished from one which is merely 'voidable.'" *Id.* 318 S.C. at 291, 457 S.E.2d at 343 (1995). The definition of "void" under Rule 60, SCRCF only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction. *See McDaniel v. U.S. Fidelity and Guar. Co.*, 324 S.C. 639, 478 S.E.2d 868, 871 (Ct. App. 1996) (citing *Thomas*, 318 S.C. 286, 457 S.E.2d 340 (1995)).

"A judgment is not rendered void by irregularities which do not involve jurisdiction." *Universal Benefits, Inc.*, 349 S.C. at 183, 561 S.E.2d at 661. There is a wide difference between a want of jurisdiction in which case the court has no power to adjudicate at all, and a mistake in the exercise of undoubted jurisdiction in which case the action of the trial court is not void although it may be subject to direct attack on appeal. *Thomas*, 318 S.C. at 291, 457 S.E.2d at 343 (citing *Piana v. Piana*, 239 S.C. 367, 123 S.E.2d 297 (1961)).

III. ARGUMENT

A. Service was properly effectuated upon Defendant by publication.

Defendant argues that service by publication upon him was improper, and thus that the judgment is void. Defendant claims that Plaintiff did not exercise actual due diligence and should have served him at his P.O. Box where it sends Defendant's mortgage statements. Defendant also notes that the supporting affidavit for the order of publication states the subject property was Defendant's last known address, when it has never been Defendant's residence.

Nevertheless, the Affidavit of Due and Diligent Search satisfies the statutory requirements of S.C. Code §15-9-710 *et seq.* and establishes that the process server did in fact exercise due diligence. "An order for service by publication may be issued pursuant to S.C. Code Ann. §15-9-710 when an affidavit, satisfactory to the issuing officer, is made stating that the defendant, a resident of the state, cannot, after the exercise of due diligence, be found, and that a cause of action exists against him." *Wachovia Bank of South Carolina v. Player*, 341 S.C. 424, 428-49 535 S.E.2d 128, 130 (2000); *see also* §15-9-710 (3). "When the issuing officer is satisfied by the affidavit, his decision to order service by publication is final absent fraud or collusion." *Yarbrough v. Collins*, 293 S.C. 290, 360 S.E.2d 300 (1987); *Ingle v. Whitlock*, 282 S.C. 391, 318 S.E.2d 367 (1984); *Gibson v. Everett*, 41 S.C. 22, 19 S.E. 286 (1894); *Yates v. Gridley*, 16 S.C. 496 (1882).

The Affidavit of Due and Diligent Search complies with the statutory requirements and the issuing officer was satisfied the requisites for service by publication were met. Thus, the order of publication is final and cannot be overruled by the trial court. Moreover, Defendant has offered no evidence and made no argument that the order of publication was obtained by fraud or collusion. "In the absence of fraud or collusion, the decision of the officer ordering service by publication is final." *See Yarbrough*, 293 S.C. at 292-293, 360 S.E.2d at 301, *citing Yates v. Gridley*, 16 S.C. 496 (1882); *see also Montgomery v. Mullins*, 325 S.C. 500, 506, 480 S.E.2d 467, 470 (Ct. App. 1997) (holding the trial court is without authority to overrule the clerk of court's decision ordering service by publication). Also, an individual cannot be served at a post office box, and the court should summarily reject Defendant's

argument that Plaintiff should have attempted service in this manner. *See* Rule 4(d)(1), SCRPC (service upon individuals, other than a minor under the age of 14 years or an incompetent person, is made by delivering a copy of the summons and complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by delivering a copy to an agent authorized by appointment or by law to receive service of process). Service by publication was proper and effective. Thus, Defendant's Motion should be denied because the judgment is not void.

B. No grounds exist to vacate the judicial sale.

A foreclosure sale may be deemed invalid if the opponent of the sale can satisfy one of two prongs: by showing that either 1) the sales price is so inadequate that it "shocks the conscience of the court," or 2) the inadequacy of price is coupled with circumstances that require the court to intervene. *Eastern Sav. Bank, FSB v. Sanders*, 373 S.C. 349, 644 S.E.2d 802 (2007). Therefore, if the court finds the foreclosure sales price is adequate, the analysis ends there and the opponent's argument against the sale fails at the first prong. Courts rationalize that when a party fails to employ unfair means to deter a judicial sale, "mere inadequacy of price is no ground for setting [the sale] aside." *Id.* at 356. Although no bright line rule has been established by the courts to determine what sales value shocks the conscience, the law is well-settled that a sales price which falls below ten [10] percent of the property's assessed value will effectively shock the conscience of the court. *Bloody Point Prop. Owners Ass'n, Inc. v. Ashton*, 410 S.C. 62, 70 S.E.2d 729, 729 (2014).

Assuming *arguendo*, that Defendant could successfully vacate the foreclosure decree under Rule 60(b)(4), Defendant would also have to satisfy his burden to set aside the judicial sale. Defendant is simply unable to do so because the sales price of the property was adequate under applicable law. Here, the property was sold at public auction for the sum of \$36,965.73 on October 3, 2016 after proper advertisement. The Richland County Assessor values the property for tax purposes at \$67,700.00. *See* Assessor Data View, attached hereto as Exhibit E. The sales price here was well above the ten percent required by the courts to warrant setting aside the sale for inadequacy of price. The Plaintiff's Motion is

an improper attempt to attack the integrity of the judicial sale, which is not supported under any authority.

Accordingly, the Motion should be denied.

III. CONCLUSION

Defendant was properly served by publication, and has presented no evidence that the order of publication was obtained by fraud or collusion. Furthermore, Defendant cannot satisfy the requisite elements to set aside the judicial sale. Accordingly, the Order and Judgment of Foreclosure is not void and the judicial sale must be upheld. The Motion should be denied based upon the facts of this case and applicable law.

FINKEL LAW FIRM LLC



Magalie A. Creech (S.C. Bar 78855)

Post Office Box 41489

Charleston, South Carolina 29423

Phone: (843) 577-5460

Facsimile: (866) 800-7954

Attorneys for the Plaintiff

Dated: December 27, 2016



Affidavit of Non-Service

DOCKET NUMBER: 2016CP4002457
COURT OF COMMON PLEAS FOR RICHLAND COUNTY, SC
CASE STYLE:
PLAINTIFF: MIDFIRST BANK, et seq.
vs.
DEFENDANT: RICHARD BRADY, et al.
SERVICE OF PROCESS ON: RICHARD BRADY

FILE NUMBER: F45009R

METHOD OF SERVICE: A true and correct copy of the above-described papers were served on the below-named party in the following manner:

☒ (X) (NON-SERVICE - PROOF OF DUE DILIGENCE) After due and diligent efforts, undersigned was unable to effect service.

PLACE OF SERVICE: 1816 Hayland Cir
Columbia, SC 29210

Is the place of service the dwelling house or usual place of abode for the party being served? () Yes () No

DATE OF NON-SERVICE: 04/16/2016 TIME OF NON-SERVICE: 4:33 P.M.

TYPE OF DOCUMENTS: SUMMONS AND NOTICE AND COMPLAINT, LIS PENDENS, FDCPA NOTICE, NOTICE OF RIGHT TO FORFEITURE
INTERVENTION

IS THE SUBJECT PROPERTY A MOBILE HOME? ☐ YES ☒ NO ☐ MOBILE HOME VIN NOT VISIBLE
VIN#:

COMMENTS: Non-service tenant occupied. No other adults 18 years or older reside; Mr. Wiggins resides here, no Richard brady living here, soes believe him to own house but had no further information to provide.

Signature of Process Server: The undersigned declares, under penalty of perjury, that the foregoing is true and correct and that the deponent is over the age of 18 and is not a party to nor interested in this action.

NAME: WENDY LANIER

Signature of Process Server / ProVest Case id #4569402

Date

STATE OF SC
COUNTY OF Richland

Sworn and subscribed before me this 18th day of April, in the year of 2016.
Type: ☒ Personally known to me or identified by the following document:
Number/Reference:

Notary Public for South Carolina
Notary Public Legal Signature
Commission Expiration 2/23/2019

Affidavit of Non-Service



DOCKET NUMBER: 2016CP4002457

FILE NUMBER: F45009R

COURT OF COMMON PLEAS FOR RICHLAND COUNTY, SC

CASE STYLE:

PLAINTIFF MIDFIRST BANK, et seq.

vs.

DEFENDANT: RICHARD BRADY, et al.

SERVICE OF PROCESS ON: RICHARD BRADY

METHOD OF SERVICE: A true and correct copy of the above-described papers were served on the below-named party in the following manner:

☒ (NON-SERVICE - PROOF OF DUE DILIGENCE) After due and diligent efforts, undersigned was unable to effect service.

PLACE OF SERVICE: 3240 Dreher Shoals Road
Irmo, SC 29063

Is the place of service the dwelling house or usual place of abode for the party being served? () Yes () No

DATE OF NON-SERVICE: 04/29/2016 TIME OF NON-SERVICE: 4:10 PM

TYPE OF DOCUMENTS: SUMMONS AND NOTICE AND COMPLAINT, FDCPA NOTICE, NOTICE OF RIGHT TO FORECLOSURE INTERVENTION, LIS
PENDENS

IS THE SUBJECT PROPERTY A MOBILE HOME? ☐ YES ☐ NO ☐ MOBILE HOME VIN NOT VISIBLE
VIN #:

COMMENTS: Non serve, unoccupied, house for sale by exit realty, talked to agent he is forwarding my name and number, confirmed he is not living here.

Signature of Process Server: The undersigned declares, under penalty of perjury, that the foregoing is true and correct and that the deponent is over the age of 18 and is not a party to nor interested in this action.

NAME: WENDY LANIER

Signature of Process Server / ProVest Case id # 4569402

Date

STATE OF SC

COUNTY OF Richland

Sworn and subscribed before me this 29th day of May, in the year of 2016.

☒ Personally known to me or ☐ identified by the following document:

Type: Number/Reference:

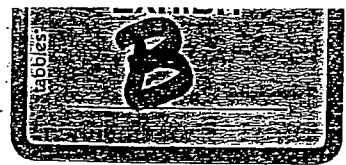
Notary Public for South Carolina

Notary Public (Legal Signature)

Commission Expiration

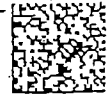
2-23-2019

Quick Status Document Print



1 of 1

Affidavit of Service



DOCKET NUMBER: 14-CP-40-5813
COURT OF COMMON PLEAS FOR RICHLAND COUNTY, SC
CASE STYLE:
PLAINTIFF: MIDFIRST BANK; et seq.
VS.
DEFENDANT: RICHARD BRADY; et al.
SERVICE OF PROCESS ON: RICHARD BRADY

FILE NUMBER: F45009

METHOD OF SERVICE: A true and correct copy of the above-described papers were served on the below-named party in the following manner:

(x) (PERSONAL) By personally delivering a copy into the hands of the person to be served.

PLACE OF SERVICE: 3240 Dreher Shoals Road
Irmo, SC 29063

Is the place of service the dwelling house or usual place of abode for the party being served? (x) Yes () No

DATE OF SERVICE: 09/24/2014 TIME OF SERVICE: 4:10 PM

TYPE OF DOCUMENTS: (x) SUMMONS & COMPLAINT (x) LIS PENDENS
(x) OTHER: NOTICE OF FORECLOSURE INTERVENTION

DESCRIPTION OF PARTY RECEIVING DOCUMENTS: The person receiving the documents is described as follows:

Sex MALE; Race WHITE; Facial Hair No;
Age(prox.) 51-65; Height(prox.) 5' 10"; Weight(prox.) 360

MARITAL STATUS: (x) Single () Married () Separated () Unknown

MILITARY STATUS: PER MY INVESTIGATION, SAID PERSON
() WAS (x) WAS NOT ENGAGED IN THE U.S. MILITARY AT THE TIME OF SERVICE () UNKNOWN
MILITARY BRANCH, IF APPLICABLE:

IS THE SUBJECT PROPERTY () YES (x) NO () MOBILE HOME VIN NOT VISIBLE
A MOBILE HOME? VIN #:

COMMENTS:

Signature of Process Server: The undersigned declares, under penalty of perjury, that the foregoing is true and correct and that the deponent is over the age of 18 and is not a party to nor interested in this action.

NAME: Jeff Costner

Signature of Process Server / ProVer Case id # 4100008

Date

STATE OF

COUNTY OF

Sworn and subscribed before me this 24 day of September in the year of 2014.

Identified by the following document:

Type: Number/Reference:

Notary Public for South Carolina

Notary Public (Legal Signature)
Commission Expiration June 29, 2022

2014 SEP 26 AM 9:35
JEANNETTE W. MCBRIDE
C.O.P. & G.S.
FILED
RICHLAND COUNTY

AFFIDAVIT OF SERVICE

State of South Carolina

County of Richland

Common Pleas Court

Case Number: 2014-CP-40-04625

Plaintiff:

Security Federal Bank, formerly known as Security Federal Savings and Loan Association of Aiken and as Security Federal Savings Bank of South Carolina

vs.

Defendant:

ATCF REO Holding LLC, also known as ATCF REO Holdings LLC, et al.

For:

Walter B. Todd, Jr.
Walter B. Todd, Jr., PC
P O Box 1549
Columbia, SC 29202

Received by Walter B. Todd, Jr., PC to be served on Richard Brady, 3240 Dreher Shoals Rd, Irmo, SC 29063.

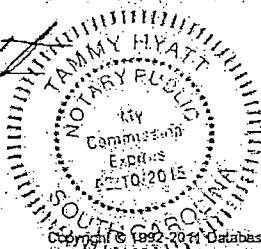
I, Tonya Reep, being duly sworn, depose and say that on the 19th day of October, 2014 at 5:57 pm, I:

INDIVIDUALLY/PERSONALLY served by delivering a true copy of the Answer of the Defendant, Middleborough Horizontal Property Regime Council of Co-Owners and Cross-Claim Against the Defendant Richard Brady and Affidavit and Verified Statement of Account For Cross-Claim of the Defendant, Middleborough Horizontal Property Regime Council of Co-Owners, Against the Defendant, Richard Brady to: Richard Brady at the address of: 3240 Dreher Shoals Rd, Irmo, SC 29063, and informed said person of the contents therein, in compliance with state statutes.

I certify that I am over the age of 18, have no interest in the above action, and am a Process Server, in good standing, in the judicial circuit in which the process was served.

Subscribed and Sworn to before me on the 20th day of October, 2014 by the affiant who is personally known to me.

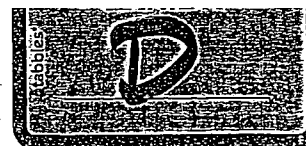
NOTARY PUBLIC



Tonya Reep
Process Server

Walter B. Todd, Jr., PC
P.O. Box 1549
Columbia, SC 29202
(803) 779-4383

Our Job Serial Number: SJB-2014006263
Ref: 11-045



STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

MIDFIRST BANK
PLAINTIFF,

vs.

RICHARD BRADY
DEFENDANT(S).

IN THE COURT OF COMMON PLEAS
C/A NO: 2016CP4002457
**AFFIDAVIT OF DILIGENT SEARCH
AND INQUIRY**

I, Joshua Marsh, an employee of ProVest Services LLC ("ProVest"), having been duly sworn on my oath, depose and state as follows:

1. That I am over the age of 18 and do not have an interest in the legal action captioned above.
2. That I have made a diligent search and inquiry to discover the current residence and whereabouts of the Subject named below by using data obtained from nationally recognized data aggregators as well as skip trace industry best practices and proprietary investigative techniques so that the Subject could be located and served with legal process in the above captioned legal action. After a diligent search and inquiry by me the residence and whereabouts of the Subject are unknown to me.

SUBJECT/DEFENDANT NAME: RICHARD BRADY

LAST KNOWN ADDRESS OF SUBJECT: 3240 DREHER SHOALS ROAD IRMO, SC 29063

The efforts made to locate the Subject, as are set forth with particularity below, are based on my personal knowledge and upon my review of ProVest's business records, which are memorandum, reports, records, or data compilations of acts and events made at or near the time by, or from information transmitted by, a person with knowledge, that are kept in the course of a regularly conducted ProVest business activity ("Business Records").

A. INQUIRY OF SOCIAL SECURITY INFORMATION:

SOCIAL SECURITY NUMBER ("SSN"): XXX-XX-XXXX

My inquiry shows SSN with addresses of
3240 DREHER SHOALS ROAD IRMO, SC 29063
1816 HAVILAND CIR COLUMBIA, SC 29210

B. BANKRUPTCY SEARCH:

NO RECORD FOUND.

Provest Case ID: 4569402

C. EMPLOYMENT SEARCH:

BBH, INC., FLORIDA WEST VENTURES, INC

THE SOUTH CAROLINA SECRETARY OF STATE WEBSITE SHOWS NO RECORD OF THESE BUSINESSES.

FLORIDA WEST VENTURES, INC. AND KEY WEST NEWS AGENCY, INC, WHO TO BE INACTIVE IN THE FLORIDA NATIONAL SECRETARY OF STATE WEBSITE.

NO ADDITIONAL EMPLOYMENT INFORMATION WAS PROVIDED PRIOR TO THE INVESTIGATION OR FOUND DURING THE INVESTIGATION.

D. INQUIRY OF ADDRESS:

1. Inquiry of neighbors at last known address:

(803) 781-3404 -called-there was no answer.

2. Inquiry of relatives of Subject:

(803) 399-8003 -called-there was no answer.

3. Tax collector's records in area where Subject was last known to reside:

BRADY RICHARD OWNS THE PROPERTY OF 1816 HAVILAND CIR.
COLUMBIA SC 29210 AND THE TAX BILL IS MAILED TO P O BOX 727 IRMO
SC 29063

E. TELEPHONE INFORMATION SEARCH:

1. Telephone listings in the last known location(s) of Subject's residence:

(803) 216-8170 -disconnected.

2. Statewide directory assistance search:

NO VERIFIABLE RECORD LOCATED.

3. Other phone search:

803-361-9205 -called-there was no answer-left a voicemail.

803-361-9205 -called again-there was no answer-left a voicemail.

803-732-0717 -disconnected.

803-216-8170 -disconnected.

F. INQUIRY OF STATE DEPARTMENT OF MOTOR VEHICLES:

1. Driver license records in the state of Subject's last known address:

NO CURRENT RECORD FOUND.

2. Department of motor vehicles records in the state of Subject's last known address:

NO CURRENT RECORD FOUND.

Provest Case ID: 4569402

G. OTHER INQUIRIES:

1. Tax assessor's records in the area where Subject was last known to reside:
BRADY, RICHARD OWNS THE PROPERTY OF 1816 HAVILAND CIR,
COLUMBIA SC 29210-4036 AND THE TAX BILL IS MAILED TO THE SAME
ADDRESS
2. Voter registration in area where the Subject was last known to reside:
NO CURRENT RECORD FOUND.
3. Freedom of Information Act inquiry made to U.S. Postal Service: My review of
ProVest's Business Records indicates that a request was sent to the post master pursuant
to the Freedom of Information Act ("FOIA") for the forwarding address for the Last
Known Address of the Subject set forth above. As of the date of my signature below
ProVest's Business Records do not indicate that there has been any response to the
aforementioned FOIA request.
PO BOX 727 | IRMO | SC | 29063 0727 | LEXINGTON

AND

U.S. POSTAL SERVICE CHANGE OF ADDRESS SEARCH: ProVest maintains
records pertaining to searches for individuals made in the regular course of its business.
Such records include inquiry into change of address records which are on file with the
U.S. Postal Service. In this matter, ProVest's business records show that ProVest
searched for a change of address record as to the following names and/or addresses with
the following results:

3240 DREHER SHOALS RD. | IRMO | SOUTH CAROLINA | 29063 | RICHLAND
COUNTY

1816 HAVILAND CIR. | COLUMBIA | SOUTH CAROLINA | 29210 | RICHLAND
COUNTY

NO FORWARDING ADDRESS FOUND

4. Regulatory agencies for professional or occupational licensing:
NO RECORD FOUND.
5. Inquiry to determine if Subject is in military service:
Not on Active Duty; Did not leave Active Duty within the past 367 days; Has not been
notified of a future call up to Active Duty

Provest Case ID: 4569402

6. Nationwide masterfile death search:
NO RECORD FOUND.

7. Internet search:

GOOGLE- NO ADDITIONAL INFORMATION WAS FOUND. UNABLE TO DETERMINE IF THE REMAINING RECORDS PERTAIN TO OUR DEFENDANT.

FACEBOOK- NO VERIFIABLE INFORMATION WAS FOUND. UNABLE TO DETERMINE IF THE REMAINING RECORDS PERTAIN TO OUR DEFENDANT.

LINKEDIN- NO VERIFIABLE INFORMATION WAS FOUND. UNABLE TO DETERMINE IF THE REMAINING RECORDS PERTAIN TO OUR DEFENDANT.

8. Countywide hospital search:

Lexington Medical Center - 2720 Sunset Boulevard West Columbia, SC 29169-4816 -
803-791-2000 -called-the defendant is not a patient

H. CORRECTIONAL FACILITIES SEARCHES:

1. Federal prison records search:

Our defendant was not found to be currently incarcerated.

2. Department of corrections in the state of Subject's last known address:

Our defendant was not found to be currently incarcerated.

3. County jail records search in the county of Subject's last known address:

Our defendant was not found to be currently incarcerated.

I. PUBLIC RECORDS SEARCH:

1. Marriage and divorce records search:

NO RECORD FOUND.

2. Traffic infraction search:

NO CURRENT RECORD FOUND.

3. All other court searches:

NO ADDITIONAL INFORMATION FOUND.

J. ADDITIONAL EFFORTS MADE TO LOCATE SUBJECT:

NO ADDITIONAL INFORMATION FOUND.

K. ATTEMPTS TO SERVE PROCESS AND RESULTS: My review of ProVest's Business Records indicates that, on different times and dates, service of process was attempted on the Subject by one or more Process Servers at the addresses, dates and times indicated below with the following results:

1. Process server attempted service at 3240 DREHER SHOALS ROAD IRMO, SC 29063

Process server states: 04/29/2016 - Non serve, unoccupied, house for sale by exit realty, talked to agent he is forwarding my name and number, confirmed he is not living here.

2. Process server attempted service at 1816 HAVILAND CIR COLUMBIA, SC 29210

Process server states: 04/16/2016 - Non-service tenant occupied. No other adults 18 years or older reside; Mr. Wiggins resides here, no Richard Brady living here, does believe him to own house but had no further information to provide.

L. CONTACT WITH THE OCCUPANT OF PREMISES:

1816 HAVILAND CIR. COLUMBIA SC 29210 - Non-service tenant occupied. No other adults 18 years or older reside; Mr. Wiggins resides here, no Richard Brady living here, does believe him to own house but had no further information to provide.

Under penalties of perjury, I, the Affiant, declare that I have read the foregoing Affidavit of Diligent Search and Inquiry and that the facts stated in it are true.

AFFIANT



Joshua Marsh PV File# F45009R
Pro Vest Services LLC
4520 Seedling Circle
Tampa, FL 33614
(813) 250-6450

MAY 11 2016

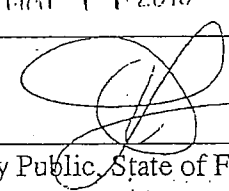
Date

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

Sworn (or affirmed) to and signed before me on MAY 11 2016 by Affiant.



Dorimar Mosley
Commission # FF928862
Expires: December 14, 2019
Bonded thru Aaron Notary



Notary Public, State of Florida

Dorimar Mosley
Printed Name of Notary Public as Commissioned

☒ Personally known to me or ☐ Produced _____ as identification

Provest Case ID: 4569402

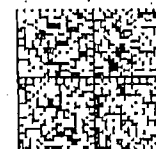
FINKEL
LAW FIRM LLC

P.O. Box 71727
N. Charleston, SC 29415
ATTN: SERVICE / F45009R / Brady

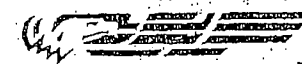
CERTIFIED MAIL



91 7108 2133 3932 1272 1058



U.S. POSTAGE >> PITNEY BOWES



ZIP 29405 \$011.62⁵
02 1W
0001399679 MAY 04, 2016

CERTIFIED MAIL / RESTRICTED DELIVERY!

Richard Brady
3240 Dreher Shoals Road
Irmo, SC 29063

Assessor Data View



The information provided on this page reflects data as of December 31, 2015 and should be used for reference only. For official assessment information, please contact the Richland County Assessor's Office.

Information presented on the Assessor's Database is collected, organized and provided for the convenience of the user and is intended solely for informational purposes. **ANY USER THEREOF OR RELIANCE THEREON IS AT THE SOLE DISCRETION, RISK AND RESPONSIBILITY OF THE USER.** While every attempt is made to provide information that is accurate at the date of publication, portions of such information may be incorrect or not current. **RICHLAND COUNTY HEREBY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, AS TO ITS ACCURACY, COMPLETENESS OR FITNESS FOR ANY PARTICULAR PURPOSE.** All official records of the County and the countywide elected officials are on file in their respective offices and may be viewed by the public at those offices.

Owner Information

Tax Map Number:	R06112-03-07
Owner:	BRADY RICHARD
Address 1:	P O BOX 727
Address 2:	
Address 3:	
City/State/Zip:	IRMO SC 29063
Property Location/Code:	1816 HAVILAND CIR

Tax Information

Year:	2016
Property Tax Relief:	\$0.00
Local Option Sales Tax Credit:	(\$100.06)
Tax Amount:	\$2,019.79
Paid:	Yes
Homestead:	No
Assessed:	\$4,060.00

Assessment Information

Year Of Assessment:	2017	Legal Residence:	No
Tax District:	1UR	Sewer Connection:	SEPTIC
Acreage Of Parcel:	0.00	Water Connection:	CITY
Non-Agriculture Value:	\$10,000.00	Agriculture Value:	\$0.00
Building Value:	\$57,700.00	Improvements:	\$0.00
Taxable Value:	\$67,700.00		
Zoning:	RS-MD	RESIDENTIAL, SINGLE-FAMILY-MEDIUM DENSITY	

Property Information

Legal Description:	LOT 15 BLOCK C	#SU MANDEL HALL
	90X154.5X36.9X65.8X125	#PR 11-83
Land Type:	RESIDENTIAL LAND	

Sales History

Current Owner Name	Sale Date	V/I	Book / Page	Sale Price	Qual Code
BRADY RICHARD	07/00/1987	I	D849 / 24	\$0.00	9
PARNELL SANDRA L	01/00/1986	I	D777 / 577	\$40,000.00	9
SECRETARY OF HOUSING &	08/00/1985		D752 / 554	\$0.00	
HARVILLE KEVIN D	06/00/1984		D698 / 568	\$0.00	

Qualification Code Definitions

Structure Information

Building Number	Year Structure Was Assessed	Building Description	Actual Year Built	Number Of Bathrooms	Number Of Bedrooms	Total Number Of Stories	Heated Square Footage	Total Square Footage
1	2014	SGL FAM - WALL GROUP 3	1970	2.0	3	1.0	1532	1680
1	2009	SGL FAM - WALL GROUP 3	1970	2.0	3	1.0	1532	1680

Structure Details

Structure Type	Structure Description	Building Number
Building Element	AC TYPE...GAS PAC	1
Building Element	ARCHITECTURAL STYLE...RANCH/1 LEVEL	1
Building Element	BUILDING SHAPE...RECTANGLE	1
Building Element	ELECTRICAL...AVERAGE	1
Building Element	EXTERIOR WALL 1...FACE BRICK VENEER	1
Building Element	EXTERIOR WALL 2	1
Building Element	FOUNDATION...PIERS	1
Building Element	HEAT TYPE/FUEL...FORCED AIR DUC/GAS	1
Building Element	INSULATION...AVERAGE	1
Building Element	INTERIOR FLOOR 1...CARPET	1
Building Element	INTERIOR FLOOR 2	1
Building Element	INTERIOR WALL 1...3- PLASTER/DRYWALL	1
Building Element	INTERIOR WALL 2	1
Building Element	ROOF COVER...ASPHALT SHINGLE	1
Building Element	ROOF STRUCTURE...GABLE OR HIP	1
Building Element	STRUCTURAL FRAME	1
Misc Improvement	FIREPLACE-1 STORY SINGLE/RESID.	1

Exemptions

Exemption Year	Exemption Description
----------------	-----------------------

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

MidFirst Bank,

PLAINTIFF,

vs.

Richard Brady; State of South Carolina; and
Richland County Clerk of Court,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2016-CP-40-02457

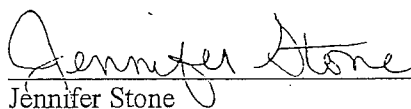
CERTIFICATION OF SERVICE

The undersigned states that on **December 27, 2016**, she caused a true and correct copy of the *Plaintiff's Return to Defendant's Motion for Relief from Judgment* to be served upon the party identified below by depositing in the United States mail, proper postage affixed and addressed as follows:

Leonard R. Jordan, Esquire
211 Veterans Road, Suite D
Columbia, South Carolina 29209
Attorney for Defendant Richard Brady

T. Parkin Hunter, Esquire
P.O. Box 11549
Columbia, South Carolina 29211
Attorneys for Defendant State of South Carolina

FINKEL LAW FIRM LLC



Jennifer Stone
Post Office Box 41489
Charleston, South Carolina 29423
Tel: (843) 577-5460
Facsimile: (866) 800-7954
Administrative Assistant

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2016-CP-40-02457

MidFirst Bank,

Plaintiff,

v.

Richard Brady; State of South Carolina; and
Richland County Clerk of Court,

Defendants.

**SUPPLEMENTAL MEMORANDUM
IN SUPPORT OF MOTION TO
VACATE JUDGMENT OF
FORECLOSURE AND SALE
AND FORECLOSURE SALE**

RICHLAND COUNTY
FILED
2017 MAR 28 PM 4:16
JEANNETTE W. MERIEUX
C.C.P. & G.S.

TO: MAGALIE A. CREECH, ESQUIRE, ATTORNEY FOR PLAINTIFF:

The Defendant, Richard Brady, supplements his Memorandum, which was included with his Motion to Vacate Judgment of Foreclosure and Sale and Foreclosure Sale, filed herein on October 24, 2016.

INSUFFICIENT SERVICE ATTEMPTS

According to the Plaintiff's Return to Defendant's Motion for Relief from Judgment and Sale, the Plaintiff's process server knew, and advised the Plaintiff's counsel in the Affidavit of Non Service, that Mr. Brady did not reside at 1816 Haviland Circle (that the said property was rented to a Mr. Wiggins). Furthermore, the process server, in his Affidavit of Diligent Search and Inquiry, advised the Plaintiff's counsel that Mr. Brady's tax bill for 1816 Haviland Circle was addressed to "P.O. Box 727, Irmo, SC 29063."¹ This mailing address coincides with the address used regularly by the Plaintiff's loan servicer, Midland Mortgage, to communicate through the mails with Mr. Brady (as discussed in the initial Memorandum).

Based upon the assertions by the process server and the Plaintiff's counsel, no effort

¹ The Richland County Assessor's Data View (attached to the Plaintiff's Return) corroborates the said post office box address as a current address for Mr. Brady.

whatsoever was made to provide notice to Mr. Brady of the mortgage foreclosure suit directed to the said post office box address, which is/was the best address available to contact Mr. Brady by mail. Of course, this error was perpetuated; and the notice of the merit hearing was sent to Mr. Brady again addressed to 1816 Haviland Circle, a bad address.

IMPROPER ORDER OF PUBLICATION

The Order of Publication, which was unquestionably prepared and submitted by the Plaintiff's counsel, directs the Plaintiff to mail the pleadings to Mr. Brady "*at the last known address: 1816 Haviland Circle, Columbia, SC 29210.*" (emphasis supplied)

Notwithstanding the Affidavits of the process server, which stated that 1816 Haviland Circle was known to be a bad address for Mr. Brady, of which the Plaintiff's counsel had knowledge, the Plaintiff's counsel prepared the Order of Publication to reflect that 1816 Haviland Circle address was *the last known address* of Mr. Brady, when it was NEVER an address for Mr. Brady.

Due to the fact that the Order of Publication incorrectly stated that the last known address of Mr. Brady was 1816 Haviland Circle, which was an obviously incorrect conclusion, and the facts that an address (post office box) for Mr. Brady was determined by the process server to be, likely, a current address and that such address was used regularly (for years) by the Plaintiff's loan servicer to communicate with Mr. Brady, even as late as September 2016 (shortly before the foreclosure sale on October 3, 2016), the Order of Publication, which was prepared by the Plaintiff's counsel, was erroneous and misleading.

FRAUD OR COLLUSION

Whether there was fraud by the Plaintiff's counsel or collusion between the said counsel and the Clerk of Court for Richland County with regard to the issuance of the Order of Publication cannot be known, but the Court must be aware that the issuing officer (i.e. the Clerk of Court) does

not routinely consider or actually issue Orders of Publication except through members of her staff and that no evaluation of the affidavit accompanying the proposed Order is ever made by members of the staff, who routinely (automatically, without consideration) sign such Orders on behalf of the Clerk of Court. In other words, no decision to issue an Order of Publication is ever made by the Clerk of Court (personally) except possibly in extraordinary circumstances.

Notwithstanding that fraud or collusion cannot be known, it is clear from the facially defective Affidavit (requesting the Order of Publication) that the Plaintiff's counsel, intentionally or more likely mistakenly, misled the Court as to the due diligence made to locate Mr. Brady, when no effort whatsoever was made to contact him through his post office box address, which was, at all relevant times, known to the Plaintiff to be an active, current address for Mr. Brady, and then counsel misrepresented the known circumstances when seeking the Order of Publication.

GROSS NEGLIGENCE

Although fraud or collusion cannot be known, it is clear that the Plaintiff's counsel was grossly negligent in failing to provide actual notice of the mortgage foreclosure suit to Mr. Brady. "Gross negligence" is a relative term, and means the absence of care that is necessary under the circumstances." Hollins v. Richland County School Dist. One, 310 S.C. 486, 490, 427 S.E.2d 654, 656 (1993).

Service only by publication (and mailing to an incorrect address) was not harmless error, when a good (current) mailing address was known. It was defective service as a consequence of a lack of due diligence, using information readily available to the Plaintiff (and its counsel).

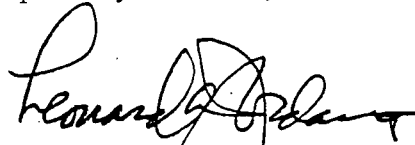
See Belle Hall Plantation Homeowner's Association, Inc. v. Murray, ____ S.C. ____, ____ S.E.2d ____ (Ct.App. February 8, 2017), a copy of which is attached hereto. This recent case affirmed the decision of Hon. Mikell R. Scarborough, Master-in-Equity for Charleston County, declaring void the judgment of foreclosure because the court lacked personal jurisdiction over the

defendant, who was served by publication when the attempts by the Plaintiff to serve him were grossly negligent, notwithstanding that fraud or collusion were not established. The Court of Appeals found that “the master had the authority to override the Clerk of Court’s order of publication because [the Plaintiff] failed to comply with the publication statute.”

Because the service was defective, the Court lacked personal jurisdiction over Mr. Brady, and therefore the Judgment of Foreclosure and Sale and the resulting foreclosure sale were void.

“Courts have the inherent power to do all things reasonably necessary to ensure that just results are reached to the fullest extent possible.” Buckley v. Shealy, 390 S.C. 317, 323-34, 635 S.E.2d 76, 79 (2006).

Respectfully submitted,



Leonard R. Jordan, Jr.
JORDAN LAW FIRM
211 Veterans Road, Suite D
Columbia, South Carolina 29209
(803) 726-1950 Tel
(803) 726-1951 Fax
ljordan@ljordanlaw.com
Attorney for Defendant, Richard Brady

Columbia, South Carolina
March 22, 2017

Belle Hall Plantation Homeowner's Association, Inc., Plaintiff,
v.

**John A. Murray, Trustee of John E. Murray &
Gloria C. Murray Family Trust, Respondent,
and**

David Conor Keys & Karen Keys, Appellants.

**Appellate Case No. 2014-002018
Opinion No. 5467**

STATE OF SOUTH CAROLINA In The Court of Appeals

**Heard December 7, 2016
February 8, 2017**

Appeal From Charleston County
Mikell R. Scarborough, Master-in-Equity

AFFIRMED

David Conor Keys, of Charleston, for Appellants.

Amanda Megan Reece, of Reece Law Firm, LLC, of Mount Pleasant, for Respondent.

LOCKEMY, C.J.: In this foreclosure action, D. Conor Keys and Karen Keys (the Keys) allege the Master-in-Equity erred by vacating a foreclosure sale, denying

Page 2

their motion to stay the order vacating the sale, and denying their motion to strike affidavits presented to the master. We affirm.

FACTS

On July 22, 2013, Belle Hall Plantation Homeowners Association (Belle Hall) filed a complaint for foreclosure of its lien on property located at 378 Jardiniere Walk in Mount Pleasant, South Carolina. The property, originally bought by John E. Murray and Gloria C. Murray, was transferred to John A. Murray as Trustee for the John E. Murray and Gloria C. Murray Family Trust.¹ The complaint alleged John A. Murray (Murray) failed to pay assessments to Belle Hall and owed \$1590.31 in principal, late fees, and interest.

Belle Hall attempted to serve Murray with notice of the suit at three different addresses, two of which were nursing homes, but was unsuccessful. Belle Hall filed an Affidavit for Order of Publication on September 30, 2013. Accompanying the affidavit were four documents. The first was a Westlaw search for John E. Murray. That document showed five separate addresses for John E. Murray. The remaining pages showed Belle Hall attempted service at the first three addresses but was unable to effect service. On October 4, 2013, the Charleston County Clerk of Court

issued an Order for Service Via Publication. In its order, the clerk of court stated, "the Defendant, Murray, Trustee of John E. Murray and Gloria C. Murray Family Trust, on whom service of the Summons and Complaint is to be made cannot, after due diligence, be found in this State" The order provided that service could be effected by publication in the *Moultrie News*.² Belle Hall published the notice as required.

Murray failed to file a responsive pleading and Belle Hall filed an affidavit of default. The case was then referred to the Master-in-Equity for Charleston County for a hearing. The master held a final hearing on March 18 and filed an order foreclosing Belle Hall's lien and ordering the property sold to pay the lien on April 8, 2014. On March 26, 2014, the tenants staying at the 378 Jardinere Walk property left Murray a letter at his home giving him notice of the final hearing. That same day, Murray attempted to contact counsel for Belle Hall by telephone and email, offering to pay any money owed. He never received a response and

Page 3

retained an attorney on May 9, 2014. Murray's counsel checked the court's docket, which reflected the house was not to be sold before May 20, 2014.

The master sold the property to the Keys for \$100,000 on May 6, 2014.³ Pursuant to the master's order, the Keys paid the required deposit and had twenty days to pay the remainder of their bid.

On May 15, 2014, Murray served a motion to vacate the entry of default and set aside the sale. Also on May 15, Murray's counsel called an area attorney to discuss "a host of legal developments and caselaw." During that conversation, Murray's counsel described his case to the other attorney. The attorney then asked Murray's counsel if the case involved Belle Hall. The attorney notified Murray's counsel that the winning bidder at the master's sale worked as an attorney in her office. The two did not discuss the case any further.

On May 16, 2014, the Keys paid the remaining balance of their bid amount. That same day, the master issued a deed to the Keys conveying the property. The Keys presented the deed to the Register of Mesne Conveyances on May 23, 2014, and the Register recorded the deed.

The master held a hearing on Murray's motion to vacate on July 3, 2014. Murray argued the judgment should be vacated pursuant to Rule 60(b), SCRPC,⁴ and "there was an [a]ffidavit of [s]ervice that was a misrepresentation to the [c]ourt. And that misrepresentation to the court we would argue is fatal." Murray presented the master an affidavit he prepared detailing the issues with service and an affidavit from Peter Tecklenburg, the Charleston County Auditor, which detailed that the property tax records indicated the property tax bill for the property was sent to Murray at his home address.

Belle Hall argued it searched the Charleston County property records website and the mailing address it showed was 3100 Tradition Lane, a location at which Belle Hall

attempted service. Belle Hall also argued that in order to vacate the foreclosure sale, Murray must prove something more than misrepresentation-he

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must prove fraud. Belle Hall asserted it attempted to find an address to serve Murray but could not find him.

The Keys presented the master with a memorandum in opposition to the motion⁵ and argued Murray's motion was untimely under Rule 59(e), SCRC⁶, and there was insufficient evidence to support Murray's 60(b) motion. The Keys also argued they were bona fide purchasers. Finally, the Keys asserted the price they paid for the property was not so grossly inadequate as to shock the conscience, such that the sale should be voided.

The master took the matter under advisement and issued its formal ruling on July 22, 2014. The master's order stated, "The [c]ourt finds that in the interest of equity and for good cause shown that [Murray's] motion be granted." The order then provides an accounting of funds held by the master, disperses those funds accordingly, and voids the master's deed issued to the Keys.

Prior to the master's written order, he notified the parties he would be ruling in favor of Murray. On July 22, 2014, before the master filed its written order, the Keys filed a motion to stay the order vacating the sale and for an order of supersedeas.

On August 1, 2014, the Keys filed a motion pursuant to Rule 59(e) to alter or amend the order vacating the judgment. The Keys again argued they were bona fide purchasers, that Murray did not contest that the Keys were bona fide purchasers, Murray failed to show evidence of extrinsic fraud as required under Rule 60(b)(3), SCRC⁷, the master used an incorrect standard to vacate the sale, the master had no authority to overrule the Clerk of Court's order of publication, and Murray came to the court with unclean hands because he slept on his rights.

On August 4, 2014, Murray also filed a motion pursuant to Rule 59(e) to alter or amend the master's order. Murray asserted the master should amend its order to make specific findings of fact and conclusions of law.

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On August 18, 2014, the master held a hearing on the motions filed by the Keys and Murray. The Keys first argued the Clerk of Court made a finding that Belle Hall acted with due diligence in attempting to serve Murray and the master was without authority to overrule the Clerk of Court absent fraud or collusion. The Keys again argued they were bona fide purchasers. The Keys argued any affidavits produced by Murray at this stage to rebut his bona fide purchaser argument were inappropriate in a 59(e) hearing. During the hearing, the Keys acknowledged they had actual notice of Murray's intent to file a motion to vacate the sale prior to paying the remaining bid amount.

Murray asserted he did not discover when the Keys paid the balance of their bid until August 7, so any questions about bona fide purchasers should be treated as newly discovered evidence. Murray also argued his 59(e) filing should be considered responsive to the factual allegations in the Keys' 59(e) motion. Murray asserted actual knowledge of his impending motion disqualified the Keys from bona fide purchaser status.

The Keys again argued Murray failed to present any evidence or argument regarding their bona fide purchaser status during the first hearing and should therefore be prohibited from arguing those points during a 59(e) motion. The Keys also asserted the only ground for Murray's motion to vacate was under Rule 60(b)(3) and any other finding was not presented to the court previously.

The master stated, "This [c]ourt has inherent equitable powers and in the interest of justice as to make decisions that impact other people's lives. . . . I don't find there was fraud, but I do find there was negligence in the failure to notify Mr. Murray." The master orally granted Murray's motion and requested he prepare a proposed order. The master also denied the Keys' motions to stay the order vacating the sale and to strike the affidavits presented prior to the 59(e) hearing. The master declined to rule on the bona fide purchaser issue.

The master filed its amended order on February 10, 2015. The master included the findings of fact Murray requested in his motion to amend and found Belle Hall's actions in attempting to serve Murray to be grossly negligent. Recognizing the fraud or collusion standard generally required in cases regarding orders of publication, the master found the service process in this case "a 'structural defect in the constitution of the trial, (defying) analysis by harmless error standards.'" Because of the defective service, the master found it lacked personal jurisdiction over Murray; therefore, the judgment of foreclosure was void. The master found it

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unnecessary to rule on the Keys' assertion they were bona fide purchasers because the original order of foreclosure was void.

The Keys filed a motion to reconsider the master's February 10, 2015 order on February 18, 2015. The Keys asserted: (1) the master erred by including findings of gross negligence, lack of procedural due process, and lack of personal jurisdiction; (2) that the judgement was void pursuant to Rule 60(b)(4); and (3) that Belle Hall violated the publication statute because those issues were not raised during the hearing on the motion to vacate. The Keys also asserted that some facts were contested. The Keys averred Murray failed to show there was fraud, collusion, or a facially defective affidavit in order to overrule the Clerk of Court's order of publication. The Keys again argued they were bona fide purchasers and cited to this court's decision in *Bloody Point Property Owner's Ass'n, v. Ashton*, 410 S.C. 62, 762 S.E.2d 729 (Ct. App. 2014) for the proposition that the master should make a ruling on their status as bona fide purchasers regardless of the master's decision on vacating the foreclosure order.

The master heard argument on the Keys' motion to reconsider on April 9, 2015. The Keys again acknowledged they had notice of Murray's intent to file a motion to vacate prior to paying the balance of their bid, but they argued "there is a distinction between . . . a defect in the procedure of a civil action versus a defect in title." Murray asserted the Keys did not have legal title prior to getting notice about the adverse claim and were therefore not bona fide purchasers. The Keys responded that the relevant date was May 6, 2014, when the gavel for the judicial sale fell, and at that time, they had no notice of adverse claims.

The master denied the Key's motion, finding the Keys actually paid the purchase price and acquired legal title to the property through the master's Deed. However, the master found the Keys did not acquire the deed in good faith and with integrity of dealing without notice of a lien or defect. The master filed its written order to that effect on April 9, 2015. This appeal followed.

STANDARD OF REVIEW

"The appellate court's standard of review in equitable matters is our own view of the preponderance of the evidence." *Horry Cty. v. Ray*, 382 S.C. 76, 80, 674 S.E.2d 519, 522 (Ct. App. 2009).

LAW/ANALYSIS

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a) Vacating Foreclosure Sale

"The determination of whether to set aside a foreclosure sale is a matter within the discretion of the trial court." *Bloody Point*, 410 S.C. at 66, 762 S.E.2d at 731. "An abuse of discretion occurs when the conclusions of the circuit court are either controlled by an error of law or are based on unsupported factual conclusions." *Id.* (quoting *Carson v. CSX Transp., Inc.*, 400 S.C. 221, 229, 734 S.E.2d 148, 152 (2012)). "[T]he inartful use of an abuse of discretion deferential standard of review merely represents the appellate courts' effort to incorporate the two sound principles underlying the proper review of an equity case." *Crossland v. Crossland*, 408 S.C. 443, 452, 759 S.E.2d 419, 423-24 (2014) (quoting *Lewis v. Lewis*, 392 S.C. 381, 391, 709 S.E.2d 650, 655 (2011)). "[T]hose two principles are the superior position of the [master] to determine credibility and the imposition of a burden on an appellant to satisfy the appellate court that the preponderance of the evidence is against the finding of the [master]." *Id.* at 452, 759 S.E.2d at 424 (quoting *Lewis*, 392 S.C. at 391, 709 S.E.2d at 655).

1. Order of Publication

The Keys argue Murray failed to present evidence of fraud or collusion; therefore, the master had no authority to overrule the Clerk of Court's order of publication. We disagree.

The clerk of court may order a person to be served by publication when

the person on whom the service of the summons is to be made cannot, after due diligence, be found within the [s]tate and (a) that fact appears by affidavit to the satisfaction of the . . . clerk of the court of common pleas . . . of the county in which the cause is pending and (b) it in like manner appears that a cause of action exists against the defendant in respect to whom the service is to be made . . . [the] clerk . . . may grant an order that the service be made by the publication of the summons

S.C. Code Ann. § 15-9-710 (2005).

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Generally, "[w]hen the issuing officer is satisfied by the affidavit, his decision to order service by publication is final absent fraud or collusion." *Wachovia Bank of S.C., N.A. v. Player*, 341 S.C. 424, 429, 535 S.E.2d 128, 130 (2000). However, this court in *Caldwell v. Wiquist* found affidavits requesting service by publication that are facially defective and do not comply with the publication statute will not be sustained even in the absence of fraud or collusion. 402 S.C. 565, 571-72, 741 S.E.2d 583, 586-87 (Ct. App. 2013). In *Caldwell*, this court distinguished the affidavits in *Player* and previous cases by noting the affidavit at issue in *Caldwell* only established the plaintiff attempted service on the defendant in Beaufort County, not in the State of South Carolina. *Id.* at 571, 741 S.E.2d at 586-87. Because the affidavit failed to comply with the publication statute, the court of appeals reversed the circuit court's order denying appellant's motion to set aside the default judgment. *Id.* at 577, 741 S.E.2d at 590. ✓

This case is similar to *Caldwell* because the affidavit presented to the Clerk of Court was facially defective. The affidavit filed by Belle Hall states, "After due diligence, as demonstrated by the attached Exhibit A which is incorporated herein by reference, Plaintiff's counsel has been unable to ascertain the location of Defendant, John A. Murray" However, the search attached to the affidavit as Exhibit A reflects Belle Hall attempted to locate John E. Murray. As evidenced by its own affidavit, Belle Hall failed to comply with the publication statute because the attached search demonstrates it attempted service on the wrong defendant. See § 15-9-710 (noting one requirement for service by publication is that it "appears that a cause of action exists against the *defendant in respect to whom the service is to be made*" (emphasis added)); *Caldwell*, 402 S.C. at 572, 741 S.E.2d at 587 ("South Carolina courts have repeatedly required strict compliance with publication statutes.").

Accordingly, we find the master had the authority to overrule the Clerk of Court's order of publication because Belle Hall failed to comply with the publication statute. See § 15-9-710 (providing for service by publication if "the person on whom the service of the summons is to be made cannot, after due diligence, be found within the [s]tate").

2. Rule 60(b)(4)

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The Keys also assert this court's decision in *Universal Benefits, Inc. v. McKinney*, 349 S.C. 179, 561 S.E.2d 659 (Ct. App. 2002), precludes the master from vacating the sale under Rule 60(b)(4) in this case.² We disagree.

"Whether to grant or deny a motion under Rule 60(b) lies within the sound discretion of the [master]." *Raby Constr., L.L.P. v. Orr*, 358 S.C. 10, 17, 594 S.E.2d 478, 482 (2004).

Rule 60(b) provides,

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

- 1) mistake, inadvertence, surprise, or excusable neglect;
- 2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
- 3) fraud, misrepresentation, or other misconduct of an adverse party;
- 4) the judgment is void;
- 5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it

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is no longer equitable that the judgment should have prospective application.

"A void judgment is one that, from its inception, is a complete nullity and is without legal effect." *Universal Benefits*, 349 S.C. at 183, 561 S.E.2d at 661 (quoting *Thomas & Howard Co. v. T.W. Graham & Co.*, 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995)). "The definition of void under the rule only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject-matter jurisdiction or personal jurisdiction." *Id.* (quoting *McDaniel v. U.S. Fid. & Guar. Co.*, 324 S.C. 639, 644, 478 S.E.2d 868, 871 (Ct. App. 1996)). "Generally, a person against whom a judgment or order is taken without notice may rightly ignore it and may assume that no court will enforce it against his person or property." *Id.*

In *Universal Benefits*, this court affirmed the circuit court's denial of Universal Benefits' motion to set aside an order of dismissal pursuant to Rule 60(b)(4). *Id.* at 181, 561 S.E.2d at 660. Universal sued its former employee to enforce a covenant

not to compete. *Id.* Universal failed to attend a roster meeting, and the circuit court dismissed the complaint with prejudice for failure to prosecute. *Id.* at 182, 561 S.E.2d at 661. Universal subsequently filed a Rule 60(b)(4) motion, alleging it had not received notice of the roster meeting and requesting the court set aside the dismissal. *Id.* The circuit court denied Universal's motion. *Id.*

This court found Universal received written notice of the circuit court's order dismissing its case and had the opportunity to timely move for reconsideration. *Id.* at 183, 561 S.E.2d at 661. Because Universal had the ability to file a motion for reconsideration or file a direct appeal but did not, it had sufficient opportunity to be heard and its due process rights were protected. *Id.* at 184, 561 S.E.2d at 662. Accordingly, the court of appeals found the judgment was not void and affirmed the circuit court. *Id.*

We acknowledge Murray had an opportunity to request reconsideration of the order of foreclosure; however, we find the master properly granted Murray's 60(b)(4) motion because the master never had personal jurisdiction over Murray. *See id.* at 183, 561 S.E.2d at 661 ("Generally, a person against whom a judgment or order is taken without notice may rightly ignore it and may assume that no court will enforce it against his person or property."); *id.* ("The definition of void under the rule only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or

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personal jurisdiction." (quoting *McDaniel*, 324 S.C. at 644, 478 S.E.2d at 871)). Accordingly, we affirm the master's decision to vacate the order of foreclosure.

3. Laches

The Keys assert Murray failed to pay the homeowners association fees for two years, failed to perform an adequate title check prior to a transfer of the property in 2013, and failed to adequately respond to stop the foreclosure sale once he received notice of the action. According to the Keys, Murray's request for equitable relief should be precluded by the doctrine of laches. We disagree.

"Laches is neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." *Emery v. Smith*, 361 S.C. 207, 215, 603 S.E.2d 598, 602 (Ct. App. 2004) (quoting *Mid-State Trust, II v. Wright*, 323 S.C. 303, 474 S.E.2d 421 (1996)). "Under the doctrine of laches, if a party, knowing his rights does not seasonably assert them, but by unreasonable delay causes his adversary to incur expenses or enter into obligations or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce those rights." *Id.* "The party seeking to establish laches must show (1) delay, (2) unreasonable delay, and (3) prejudice." *Id.* "[T]he determination of whether laches has been established is largely within the discretion of the trial court." *Id.* at 216, 603 S.E.2d at 602.

We find Murray's actions were not sufficient to establish a defense of laches. We are

troubled by Murray's delay in formally responding to the foreclosure action after receiving notice in late March 2014. However, by May 2014, Murray hired an attorney who filed a motion to vacate the foreclosure judgment. We do not believe this delay was unreasonable; therefore, we find the master did not abuse its discretion in granting Murray equitable relief in the face of the Keys' laches argument.

b) Bona Fide Purchasers

The Keys argue they are bona fide purchasers because at the time the gavel fell on the judicial sale, they satisfied the three elements to be bona fide purchasers.⁸ We disagree.

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Section 15-39-870 of the South Carolina Code (2005) provides,

Upon the execution and delivery by the proper officer of the court of a deed for any property sold at a judicial sale under a decree of a court of competent jurisdiction the proceedings under which such sale is made shall be deemed res judicata as to any and all bona fide purchasers for value without notice, notwithstanding such sale may not subsequently be confirmed by the court.

The statute exists because "sound public policy requires that the validity of judicial sales be upheld, if in reason and justice it can be done." *Cumbe v. Newberry*, 251 S.C. 33, 37, 159 S.E.2d 915, 917 (1968).

To qualify as a bona fide purchaser, a party must show "(1) actual payment of the purchase price of the property, (2) acquisition of legal title to the property, or the best right to it, and (3) a bona fide purchase, 'i.e., in good faith and with integrity of dealing, without notice of a lien or defect.'" *Robinson v. Estate of Harris*, 378 S.C. 140, 146, 662 S.E.2d 420, 423 (Ct. App. 2008) (quoting *Spence v. Spence*, 368 S.C. 106, 117, 628 S.E.2d 869, 874-75 (2006)). "In addition, '[t]he bona fide purchaser must show all three conditions-actual payment, acquiring of legal title, and bona fide purchase-occurred before he had notice of a title defect or other adverse claim, lien, or interest in the property.'" *Id.* (quoting *Spence*, 368 S.C. at 117, 628 S.E.2d at 875).

There is no question the Keys paid a portion of their bid to the master and did not know at that time there was any adverse claim against the property. Before the Keys paid the entire purchase price, however, they received actual knowledge that there could be a claim or defect that would affect title to the property.⁹

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Accordingly, the Keys cannot claim status as a bona fide purchaser for value. *Robinson*, 378 S.C. at 146, 662 S.E.2d at 423 ("The bona fide purchaser must show all three conditions-actual payment, acquiring of legal title, and bona fide purchase-occurred before he had notice of a title defect or other adverse claim, lien, or interest

in the property." (quoting *Spence*, 368 S.C. at 117, 628 S.E.2d at 875)).

The Keys assert South Carolina bankruptcy decisions indicate the appropriate date to consider in determining bona fide purchaser status is the date of the foreclosure sale. See, e.g., *In re Watts*, 273 B.R. 471 (Bankr. D.S.C. 2000). The court in *Watts* interpreted federal statutes regarding a debtor's right to cure defaults after a foreclosure sale. The *Watts* court found the statute's language to be "clear and unambiguous in establishing the date of the actual foreclosure sale as the cut-off date for curing mortgage defaults." *Id.* at 476. According to the Keys, that same interpretation supports their argument that the applicable date for bona fide purchaser status is the foreclosure sale.

The bankruptcy court's analysis of a federal statute in *Watts* is inapplicable to our determination of the Keys' status as a bona fide purchaser. The South Carolina case law is clear that a purchaser must complete all three requirements prior to notice of a defect to be a bona fide purchaser.¹⁰ Accordingly, the master did not err in finding the Keys were not bona fide purchasers.

CONCLUSION

For the foregoing reasons, the decision of the master is

AFFIRMED.

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KONDUROS and MCDONALD, JJ., concur.

Footnotes:

¹ John A. Murray is the son of John E. Murray.

² The *Moultrie News* is a newspaper of general circulation in Charleston County.

³ Neither party could provide a reason the master sold the property before the date provided in the court's docket.

⁴ Rule 60(b), SCRCP (providing five grounds for relieving a party from a judgment, order, or proceeding).

⁵ It appears from the record the Keys did not provide the memorandum to the master or opposing counsel prior to the hearing.

⁶ Rule 59(e), SCRCP (providing the time for filing a motion pursuant to the rule).

⁷ The Keys also argue the master erred in vacating the foreclosure sale pursuant to Rule 60(b)(4), SCRCP, because Murray never requested the court do so. During the hearing on the motion to vacate, Murray requested the master set aside the order of foreclosure pursuant to Rule 60(b), SCRCP. We find this request was sufficient for the master to grant relief pursuant to Rule 60(b)(4) under the circumstances of this case. See *Busillo v. City of N. Charleston*, 404 S.C. 604, 608, 745 S.E.2d 142, 145 (Ct. App. 2013) ("It is possible . . . that the context of the proceeding may make the specific ground for the objection sufficiently apparent to the trial court . . .").

⁸ The Keys assert Murray's arguments opposing their status as bona fide purchasers are not

preserved because Murray failed to assert them during the hearing on the motion to vacate the foreclosure sale. We disagree. See *Smith v. NCCI, Inc.*, 369 S.C. 236, 247-48, 631 S.E.2d 268, 274 (Ct. App. 2006) ("When a trial court does not explicitly rule on an argument raised, and the *appellant* makes no Rule 59(e), SCRCP, motion to obtain a ruling, the appellate court may not address the issue." (emphasis added)).

⁹. The Keys assert the master erred in considering certain affidavits presented during the hearing on the Rule 59(e) motions. The statements in the affidavits were cumulative to statements made by the Keys during the hearing; therefore, the Keys have waived their right to argue error on appeal. *Campbell v. Jordan*, 382 S.C. 445, 453-54, 675 S.E.2d 801, 805-06 (Ct. App. 2009) (holding failure to object to cumulative testimony at trial waives the issue on appeal).

¹⁰. The Keys also argue the master erred in denying their request for a stay of the July 22, 2014 order vacating the foreclosure sale. Because we affirm the master's order vacating the sale, we decline to reach this issue. See *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (ruling an appellate court need not review remaining issues when disposition of prior issues are dispositive).

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2016-CP-40-02457

MidFirst Bank,

Plaintiff,

v.

Richard Brady; State of South Carolina; and
Richland County Clerk of Court,

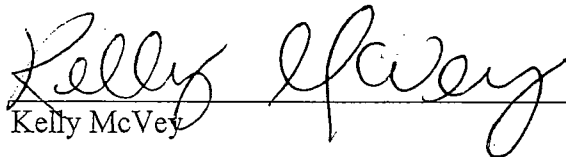
Defendants.

CERTIFICATE OF SERVICE

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RICHLAND COUNTY
JEANNETTE W. HARRIS
C.C.P. & C.V.

I, Kelly McVey, an employee of Jordan Law Firm, attorney for Defendant Richard Brady, hereby certify that I have, this 22nd day of March, 2017, served a copy of the Supplemental Memorandum in Support of Motion to Vacate Judgment of Foreclosure and Sale and Foreclosure Sale, upon the Plaintiff, by mailing a copy thereof, postage prepaid, to the Plaintiff's attorney at the address indicated below:

Magalie A. Creech, Esquire
Finkel Law Firm, LLC
P.O. Box 41489
Charleston, SC 29423


Kelly McVey

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2016-CP-40-02457

MidFirst Bank,

Plaintiff,

v.

Richard Brady; State of South Carolina; and
Richland County Clerk of Court,

Defendants.

**NOTICE OF MOTION AND
MOTION TO RECONSIDER
AND ALTER OR AMEND
MASTER'S ORDER**

TO: HON. JOSEPH M. STRICKLAND, MASTER IN EQUITY FOR RICHLAND COUNTY
CARL D. HILLER, ESQUIRE, ATTORNEY FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the Defendant, Richard Brady (the "Defendant"), by and through his undersigned attorney, will move before the Honorable Joseph M. Strickland, Master in Equity for Richland County, at such time as is convenient to the Court, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, to reconsider the Order issued by the Master on May 5, 2017, which was filed in the Office of the Clerk of Court for Richland County on May 10, 2017, and received by the undersigned on May 17, 2017, and to alter or amend said Order to address the following points:

1. The Master erred in finding, specifically or by implication, that the court had personal jurisdiction over the Defendant.
2. The Master erred in failing to conclude that the Plaintiff failed to comply with the publication statutes: §§15-9-710, 740.
3. The Master erred in failing to find that the Plaintiff's counsel's Affidavit requesting service by publication was facially defective because it did not state specifically what due diligence was undertaken to locate the Defendant.

4. The Master erred in failing to find that insufficient effort was made by the Plaintiff's counsel to discover the Defendant's actual residence.

5. The Master erred in finding that the "property at 3240 Dreher Shoals Road was the Defendant's last known address" when the Plaintiff's counsel's Affidavit (mentioned above) and the Order of Publication indicated, instead, that the Defendant's last known address was 1816 Haviland Circle.

6. The Master erred in failing to find that the last known address of the Defendant was not 1816 Haviland Circle based upon the Affidavit of the process server.

7. The Master erred in failing to find that the statement in the Order for Publication that the last known address for the Defendant was 1816 Haviland Circle, which from all the evidence presented, was not only not the last known address but also was never an address for the Defendant.

8. The Master erred in failing to find the Plaintiff's counsel's Affidavit (mentioned above) and the Order of Publication, both of which were prepared by the Plaintiff's counsel, were incorrect with regard to the Defendant's last known address and were therefore misleading to the court.

9. The Master erred in failing to find that, if the Plaintiff's counsel had prepared the Order of Publication to direct the mailing of the suit papers to the Defendant at 3240 Dreher Shoals Road, which the Plaintiff's counsel knew was previously the Defendant's residence, rather than at 1816 Haviland Circle, which was never the Defendant's residence, was not harmless error.

10. The Master erred in failing to find that the Plaintiff failed to exercise due diligence to locate the Defendant through the listing broker, who was marketing the property at 3240 Dreher Shoals Road for sale (with posted "For Sale" sign), and in addition, failed to prepare the Order of

Publication citing 3240 Dreher Shoals Road, rather than 1816 Haviland Circle, as the Defendant's last known address.

11. The Master erred in failing to conclude that the service by publication, coupled with mailing to the suit papers directed to 1816 Haviland Circle (known to be a bad address), was defective service.

12. The Master erred in failing to find that the Plaintiff possessed actual knowledge of the Defendant's current mailing address (P.O. Box 727, Irmo, SC 29063) but made no effort to contact the Defendant at this address.

13. The Master erred in failing to find that the Defendant's post office box address was, likely, a good address for him when the Plaintiff's process server stated that conclusion and when such address was used regularly by the Plaintiff's loan servicer to communicate with the Defendant even as late as September 2016 (shortly before the foreclosure sale on October 3, 2016).

14. The Master erred in failing to find that, in performing due diligence, the Plaintiff should have, at least, tried to serve the Defendant by certified mail, return receipt requested, directed to his post office box mailing address, which was the address routinely used by the Plaintiff to communicate with the Defendant.

15. The Master erred in failing to find that the publication conducted pursuant to an Order of Publication is insufficient as the Order failed to direct the mailing of the suit papers to the Defendant at his correct mailing address, which was known to the Plaintiff.

16. The Master erred in finding that "there is no basis for finding the judgment void" when the evidence is clear that the Order of Publication was facially defective.

17. The Master erred in concluding, specifically or by implication, that the sole precedent for overturning service by publication is fraud or collusion between the Plaintiff and the

Clerk of Court.

18. The Master erred in failing to find that, upon the Plaintiff's failure to comply with the publication statutes, service by publication will not be sustained even in the absence of fraud or collusion. See Caldwell v. Wilquest, 402 S.C. 565, 571-72, 742 S.E.2d 583, 586-87 (Ct.App. 2013).

19. The Master failed to find that the actions of the Plaintiff's counsel, although not capable of being charged as fraud, collusion or even intentional, were the result of gross negligence by the Plaintiff's counsel, requiring that the Order of Publication, being facially defective and misleading to the court, to be declared void and ineffective.

Respectfully submitted,



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Attorney for Defendant, Richard Brady

Columbia, South Carolina
May 18, 2017

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2016-CP-40-02457

MidFirst Bank,

Plaintiff,

v.

Richard Brady; State of South Carolina; and
Richland County Clerk of Court,

Defendants.

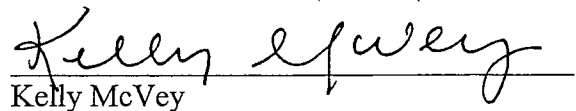
CERTIFICATE OF SERVICE

I, Kelly McVey, an employee of Jordan Law Firm, attorney for Defendant, Richard Brady, hereby certify that I have, this 18th day of May, 2017, served a copy of the Notice of Motion and Motion to Reconsider and Alter or Amend Master's Order, upon the Hon. Joseph M. Strickland, Master in Equity for Richland County and the Plaintiff, by mailing a copy thereof, postage prepaid, to the addresses indicated below:

Hon. Joseph M. Strickland
Master in Equity for Richland County
Richland County Judicial Center
1701 Main Street, Room 212
Columbia, SC 29201

Carl D. Hiller, Esquire
Finkel Law Firm, LLC
P.O. Box 1799
Columbia, SC 29202

FILED
2017 MAY 26 AM 9:45
CLERK OF COURT
C.C.P. # 65


Kelly McVey

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master in Equity

Case No. 2016-CP-40-02457

RECEIVED
NOV 06 2017
SC Court of Appeals

MidFirst Bank, ... Respondent,

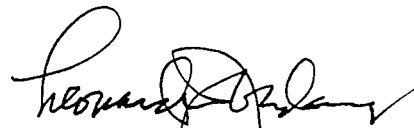
v.

Richard Brady; State of South Carolina; and Richland County Clerk of Court, Defendants, of whom Richard Brady is Appellant.

NOTICE OF APPEAL

Richard Brady appeals the Orders issued by the Honorable Joseph M. Strickland, Master in Equity for Richland County, filed on September 15, 2017, and on May 10, 2017. Copies of the appealed Orders are attached hereto. The Order filed on September 15, 2017, was received by Appellant on October 11, 2017.

November 6, 2017



Leonard R. Jordan, Jr.
JORDAN LAW FIRM
211 Veterans Road, Suite D
Columbia, South Carolina 29209
(803) 726-1950 Tel
(803) 726-1951 Fax
ljordan@ljordanlaw.com
Attorney for Appellant, Richard Brady

Other Counsel of Record:

Carl D. Hiller, Esquire
Finkel Law Firm, LLC
P.O. Box 1799
Columbia, SC 29202
(803) 765-2935

51840.F45009R

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

MidFirst Bank,

PLAINTIFF,

vs.

Richard Brady; State of South Carolina; and
Richland County Clerk of Court,

DEFENDANT(S).

2016LP400 618

IN THE COURT OF COMMON PLEAS

C/A NO: 2016-CP-40-2457

LIS PENDENS

(NON-JURY MORTGAGE FORECLOSURE)

2016 APR 15 AM 11:11
CLERK OF COURT
RICHLAND COUNTY

NOTICE IS HEREBY GIVEN that an action has been commenced and is now pending in this court upon Complaint of the above-named Plaintiff against the above-named Defendant(s) for foreclosure of a certain mortgage of real estate given by Richard Brady to West Star Financial Corporation in the amount of \$49,149.00, dated February 22, 1994, and recorded in the Office of the Register of Deeds for Richland County in Book 1712 at Page 416 on March 22, 1994 at 1:58 PM.

The premises covered and affected by the said mortgage as 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 certain piece, parcel or lot of land, with all improvements thereon, situate, lying and being near the City of Columbia, in the County of Richland, State of South Carolina, the same being shown as Lot 15, Block "C", on a plat of Mandel Hall by William Wingfield dated March 7, 1958, revised June 10, 1958, and recorded in Plat Book 11, at Page 83, in the Office of the RMC for Richland County.

TMS#: 06112-03-07

Property Address: 1816 Haviland Cir., Columbia, SC 29210

FINKEL LAW FIRM LLC

Post Office Box 71727

North Charleston, South Carolina 29415

(843) 577-5460

By:

Teresa D. Van Vlase

☐ Thomas A. Shook, SC Bar # 68340

☐ Susan S. White, SC Bar # 5453

☐ Elizabeth S. Moore, SC Bar # 69236

☒ Teresa D. Van Vlase, SC Bar # 11118

Attorneys for Plaintiff

April 13, 2016

51840.F45009R

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

MidFirst Bank,

PLAINTIFF,

VS.

Richard Brady; State of South Carolina; and
Richland County Clerk of Court,

DEFENDANT(S).

TO THE ABOVE NAMED DEFENDANT(S):

IN THE COURT OF COMMON PLEAS
C/A NO: 2016-CP-

SUMMONS AND NOTICES

(NON-JURY MORTGAGE FORECLOSURE)

2016 APR 15 AM 11:11
CLERK OF COURT
C.C.P. & C.V.

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, or to otherwise appear and defend, and to serve a copy of your Answer to said Complaint upon the plaintiff's attorneys at their office, 4000 Faber Place, Suite 450 (29405), P.O. Box 71727, North Charleston, South Carolina, 29415, or to otherwise appear and defend the action pursuant to applicable court rules, 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 such service; and if you fail to answer the Complaint or otherwise appear and defend within the time aforesaid, the Plaintiff in this action will apply to the Court for relief demanded therein, and judgment by default will be rendered against you for the relief demanded in the Complaint.

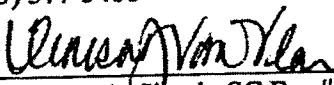
TO MINOR(S) OVER FOURTEEN YEARS OF AGE, AND/OR TO MINOR(S) UNDER FOURTEEN YEARS OF AGE AND THE PERSON WITH WHOM THE MINOR(S) RESIDE(S), AND/OR TO PERSONS UNDER SOME LEGAL DISABILITY:

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 the Plaintiff.

YOU WILL ALSO TAKE NOTICE that pursuant to Rule 53(b) of the South Carolina Rules of Civil Procedure, as amended effective September 1, 2002, the Plaintiff will move for a general Order of Reference to the Master in Equity for Richland County, which Order shall, pursuant to Rule 53(b) of the

SCRCP, specifically provide that the said Master in Equity is authorized and empowered to enter a final judgment in this action.

FINKEL LAW FIRM LLC
P.O. Box 71727
North Charleston, S.C. 29415
(843) 577-5460

By: 
☐ Thomas A. Shook, SC Bar # 68340
☐ Susan S. White, SC Bar # 5453
☐ Elizabeth S. Moore, SC Bar # 69236
☒ Teresa D. Van Vlakte, SC Bar # 11118
Attorneys for Plaintiff

April 13, 2016

51840.F45009R

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

MidFirst Bank,

PLAINTIFF,

vs.

Richard Brady; State of South Carolina; and
Richland County Clerk of Court,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS
C/A NO: 2016-CP-

COMPLAINT

(NON-JURY MORTGAGE FORECLOSURE)

2016 APR 15 AM 11:12
CLERK OF COURT
C.C.P. & C.A.

The Plaintiff alleges as follows:

1. The Plaintiff, a corporation or other legal entity, brings this foreclosure action to collect a debt and/or enforce a mortgage, security interest, or other rights in property securing the debt.
2. The Plaintiff is the mortgagee of the note and mortgage covering real property located in Richland County, which is the subject of the within captioned action, and is entitled to enforce same.
3. Midland Mortgage is the current servicing agent; however, the servicing agent may change from time to time subsequent to the filing of the complaint and the proof of debt, in an event of default for failing to answer the complaint, may be submitted by affidavit of the Plaintiff's current servicing agent.
4. The defendant(s) named herein may have an interest in the property that is the subject of this action.
5. Any defendant(s) described herein as Judgment Creditor(s) have by filing judgment(s) designated the attorney(s) entering the judgment(s) as their agent for service of process pursuant to the provisions of §15-35-840 of the South Carolina Code of Laws (1976 as amended).
6. Upon information and belief, the defendant Richard Brady is not in the military service of the United States of America pursuant to the provisions of the Servicemembers Civil Relief Act (2003).
7. On or about February 22, 1994, for value received, Richard Brady executed and delivered to West Star Financial Corporation a certain promissory note in the sum of \$49,149.00, together with interest thereon pursuant to the terms of the note.
8. To secure the payment of the said note and debt, secured thereby, and in accordance with the terms and conditions thereof, on February 22, 1994, Richard Brady executed and delivered to West Star Financial Corporation, its successors and assigns, a mortgage covering the following described property:

All that certain piece, parcel or lot of land, with all improvements thereon, situate, lying and being near the City of Columbia, in the County of Richland, State of South Carolina, the same being shown as Lot 15, Block "C", on a plat of Mandel Hall by William Wingfield dated March 7, 1958, revised June 10, 1958, and recorded in Plat Book 11, at Page 83, in the Office of the RMC for Richland County; also being shown on a plat prepared for Kevin D. Harville and Regina A. Harville by Robert E. Collingwood, Jr., Registered Surveyor dated January 25, 1983, to be recorded.

TMS #: 06112-03-07

Property Address: 1816 Haviland Cir., Columbia, SC 29210

9. Thereafter the mortgage was recorded in the Office of the Register of Deeds for Richland County in book 1712 at page 416 on March 22, 1994.

10. The mortgage constitutes a first mortgage lien on the subject property.

11. Thereafter, the subject mortgage was assigned or otherwise transferred as follows:

- (a) by assignment dated March 8, 1994, and recorded March 22, 1994, in book 1712 at page 421, West Star Financial Corporation assigned the subject mortgage to Mountain States Mortgage Centers, Inc.;
- (b) by Assignment dated August 11, 1994, and recorded November 15, 1994, in book 1798 at page 360, Mountain States Mortgage Centers, Inc. assigned the subject mortgage to West Star Financial Corporation;
- (c) by Assignment dated February 1, 1997, and recorded June 18, 1997, in book 2128 at page 571, The Vanderford Company, Inc. f/k/a West Star Financial Corporation assigned the subject mortgage to Matrix Financial Services Corporation;
- (d) by Assignment dated July 1, 1998, and recorded January 18, 1999, in book 271 at page 2254, Matrix Financial Services Corporation assigned the subject mortgage to Atlantic Mortgage & Investment Corporation;
- (e) by Assignment dated January 6, 2012, and recorded January 17, 2012, in book 1734 at page 1673, CitiMortgage, Inc. successor in interest by merger to ABN AMRO Mortgage Group, Inc., successor in interest by merger to Atlantic Mortgage & Investment Corporation assigned the subject mortgage to MidFirst Bank, the present lienholder and Plaintiff herein.

12. Due to inadvertence, the plat dated January 25, 1983 referenced in the legal description of the subject mortgage, as well as the vesting deed recorded July 9, 1987 in Book 849 at Page 21 was not recorded.

13. Plaintiff is entitled to reformation of the legal description of the subject property to remove reference to the plat dated January 25, 1983, to comport with the public records of Richland County.

14. Pursuant to the Administrative Order of the Chief Justice, 2009-05-22-01, the loan that may be subject of this action is held by a participant in the Home Affordable Modification Program (HMP). However, the loan is not subject to modification under the HMP because the loan is insured by HUD.

15. Pursuant to the terms of the mortgage, any sums paid by the plaintiff for inspecting and securing the subject property, for fire and other hazard insurance, taxes and assessments for the mortgaged premises, and any costs of collection, including reasonable attorney's fees, are secured by the mortgage.

16. The monthly payments due on said note and mortgage are in default since October 1, 2015, although demand for payment thereof has been made and the plaintiff, as the holder of the said note and mortgage, after providing all required notices, elects to, and does declare the entire balance of said indebtedness due and payable; and that there is due on said note and mortgage as of October 1, 2015, a principal amount of \$ 27,384.37, together with interest at the rate of 8.5% per annum, from September 1, 2015, and also for the costs and disbursements of this action, including attorney's fees.

17. Pursuant to Section 37-3-105, South Carolina Code of Laws (1976 as amended), the mortgage lien, which is the subject of 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 notice of right to cure has been given as required.

18. The Plaintiff does not demand a deficiency judgment in the event the sale of the real estate herein does not yield a sum sufficient to satisfy all indebtedness due unto the plaintiff, including costs and attorney's fees.

19. State of South Carolina and Richland County Clerk of Court claim, or may claim a lien upon or interest in the subject property by virtue of a judgment against Richard Allen Brady, filed October 14, 2010, Judgment Roll No. 2010-CP-40-7560, in the amount of \$751.90.

The interests or liens of the above Defendants, if any, are junior and subordinate to the plaintiff's first mortgage lien.

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

1. The amount due upon the said note and mortgage held by Plaintiff be ascertained and determined under the direction of this Court, together with attorney's fees and the costs of this action.

2. The said Plaintiff's Mortgage be declared a first mortgage lien and that the said Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums which may be due, with a reasonable sum as attorney's fees and for the costs of this action.

3. The legal description in the Plaintiff's mortgage and vesting deed recorded July 9, 1987 in Book 849 at Page 21 be reformed to remove reference to the unrecorded plat dated January 25, 1983 to comport with public record.

4. The mortgaged premises be sold under the direction of this Court, 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.

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

Third, the surplus, if any be distributed according to law.

5. An Order be entered directing and empowering the Sheriff of Richland County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property hereinabove described should the same become necessary.

6. An Order be entered for the ejectment of the defendants in possession herein 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 subject property by placing said property on the public street or highway or by any other means.

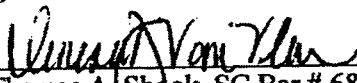
7. An Order be entered granting the appointment of a Receiver to secure and supervise the rental of the property sought to be foreclosed with authority to take possession thereof and collect rents, issues and profits thereon during the pendency of this action and to hold the same as further security for Plaintiff's debt.

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

9. An Order be entered for such other and further relief as may be just and proper.

FINKEL LAW FIRM LLC
P.O. Box 71727
N. Charleston, SC 29415
(843) 577-5460

By:


☐ Thomas A. Shook, SC Bar # 68340
☐ Susan S. White, SC Bar # 5453
☐ Elizabeth S. Moore, SC Bar # 69236
☒ Teresa D. Van Vlase, SC Bar # 11118
Attorneys for Plaintiff

April 13, 2016

51840.F45009R

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

MidFirst Bank,

PLAINTIFF,

VS.

Richard Brady; State of South Carolina; and
Richland County Clerk of Court,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS
C/A NO: 2016-CP-

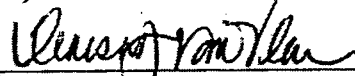
**NOTICE OF FORECLOSURE
INTERVENTION**

TO RICHARD BRADY:

PLEASE TAKE NOTICE THAT pursuant to the Supreme Court of South Carolina Administrative Order 2011-05-02-01, you may be eligible for foreclosure intervention programs for the purpose of resolving the above-referenced foreclosure action. If you wish to be considered for a foreclosure intervention program, you may contact Finkel Law Firm LLC, 4000 Faber Place Drive, Suite 450 (29405), P.O. Box 71727 (29415), North Charleston, SC 29405, or call (843) 577-5460 within **thirty (30) days** from the date of this notice. Finkel Law Firm LLC represents the Plaintiff in this action. Our law firm does not represent you and is not authorized to provide you any legal advice. **IF YOU FAIL, REFUSE, OR VOLUNTARILY ELECT NOT TO PARTICIPATE IN THIS FORECLOSURE INTERVENTION PROCESS, THE FORECLOSURE MAY PROCEED.**

FINKEL LAW FIRM LLC
P.O. Box 71727
North Charleston, S.C. 29415
(843) 577-5460

By:


☐ Thomas A. Shook, SC Bar # 68340
☐ Susan S. White, SC Bar # 5453
☐ Elizabeth S. Moore, SC Bar #69236
☒ Teresa D. Van Vlakte, SC Bar #11118
Attorneys for Plaintiff

April 13, 2016

NOTICE PURSUANT TO THE FAIR DEBT COLLECTION PRACTICES ACT (15 U.S.C. § 1692 et seq.): This is an attempt to collect a debt and any information you provide will be used for that purpose. However, if you have previously received a discharge from bankruptcy, this message is not and should be construed as an attempt to collect a debt, but only as a requirement pursuant to the administrative order.

Foreclosure Intervention Response Form

This information is requested for the express purpose of foreclosure intervention pursuant to S.C. Supreme Court Administrative Order 2011-05-02-01.

Please check one of the two choices below regarding (1816 Haviland Cir., Columbia SC 29210):

☐ I am the owner of and occupy the property as my principal residence.

☐ I am the owner but **do not** occupy the property.

If you own and occupy (1816 Haviland Cir., Columbia SC 29210) as your principal residence and are interested in the following type(s) of loss mitigation, please indicate your interest(s) below (check all that interest you):

☐ Reinstatement

☐ Deed in Lieu

☐ Payoff

☐ Short Sale

☐ Payment Plan

☐ I am already working with my mortgage company.

☐ Forbearance Agreement

☐ Other: _____

☐ Loan Modification

PLEASE NOTE THAT YOU MAY NOT QUALIFY FOR ALL THE OPTIONS LISTED ABOVE. NO REPRESENTATION OF ANY KIND IS BEING MADE REGARDING THE AVAILABILITY OF ANY LOSS MITIGATION OPTION OR YOUR QUALIFICATION FOR ANY OPTION.

☐ I **do not** wish to participate in any Foreclosure Intervention Program.

So that we may offer you the fullest possible assistance, please provide the information requested below.

Contact Information

May we leave a phone message?

At home? ☐ Yes ☐ No

Home #: _____

On your cell? ☐ Yes ☐ No

Cell #: _____

At work? ☐ Yes ☐ No

Work # : _____

May we send you an e-mail message? ☐ Yes ☐ No

Email: _____

(Signature)

(Signature)

(Signature)

(Signature)

1816 Haviland Cir., Columbia SC 29210
Richard Brady

NOTICE PURSUANT TO THE FAIR DEBT COLLECTION PRACTICES ACT (15 U.S.C. § 1692 *et seq.*): This is an attempt to collect a debt and any information you provide will be used for that purpose. However, if you have previously received a discharge from bankruptcy, this message is not and should be construed as an attempt to collect a debt, but only as a requirement pursuant to the administrative order.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master in Equity

Case No. 2016-CP-40-02457

Appellate Case No. 2017-002410

MidFirst Bank, ... Respondent,

v.

Richard Brady; State of South Carolina; and Richland County Clerk of Court, Defendants, of
whom Richard Brady is..... Appellant.

CERTIFICATE OF COUNSEL

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

s/Leonard R. Jordan, Jr.

Leonard R. Jordan, Jr.

JORDAN LAW FIRM

211 Veterans Road, Suite D

Columbia, South Carolina 29209

Attorney for Appellant

April 23, 2018

RECEIVED
APR 30 2018
SC Court of Appeals