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SEP 27 2018

STATE OF SOUTH CAROLINA SUPREME COURT IN THE COURT OF COMMON PLEAS  
COUNTY OF AIKEN ) SECOND JUDICIAL CIRCUIT

Bank of America, NA )  
 )  
 Plaintiff, )  
 vs. )  
 )  
 Catherine L. Bishop )  
 Defendants )

ORDER

Docket No.: 2016-CP-02-00381

Plaintiff's Attorney: Chad Burgess  
Defendant's Attorney: Catherine Bishop, Pro Se  
Court Reporter: Roderick Fitzgerald, Creel Ct. Reporting, Inc.  
Hearing Date: August 8, 2018

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SEP 28 2018  
SC Court of Appeals

1. The Lis Pendens was filed on February 24, 2016.
2. The Summons and Complaint was filed on February 24, 2016.
3. An Affidavit of Default was filed on January 18, 2018.
4. The matter was referred to the Master in Equity on January 18, 2018.
5. A hearing was held on March 6, 2018. The Plaintiff presented the original Note and e-filed an affidavit of attorney's fees, affidavit of costs and copies of the Note and Mortgage. The matter was continued to determine the amount of damages.
6. Between the first hearing and the date scheduled for the second hearing, the Defendant filed discovery on the Plaintiff and filed a Motion to Dismiss on May 22, 2018. The Defendant also e-filed numerous exhibits.
7. An Order was filed on June 27, 2018 denying the defendant's motion to dismiss the action. The court also found the defendant failed to establish that the plaintiff lacked standing to pursue the action. The defendant's motion to dismiss pursuant to Rule 12 (b) (6) SCRCPP and the alleged fraud upon the court was also denied.
8. A hearing was scheduled for August 8, 2018. The defendant was notified and appeared at the hearing.

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9. The purpose of the hearing was to determine the damages incurred by the plaintiff. Prior to the hearing, Catherine Bishop (pro – se) filed a motion requesting a continuance. She also filed a motion for reconsideration of the following:

- a. Right to Counsel
- b. Discovery Request
- c. Lack of Capacity
- d. Failure to State a Claim
- e. Fraud upon the Court
- f. Lack of Jurisdiction
- g. Recusal

**Motion for Continuance and Recusal**

The Defendant requested the hearing be continued because she had received a copy of the previous order from the Plaintiff and the hearing notice from the Plaintiff. This was also the basis of her request for recusal. The court advised the Defendant that the order is e-filed with the Clerk of Court. The court did not have any conversation with the Plaintiff and it appears the order and hearing notice were sent in the normal fashion when the Defendant is pro se. Based on the argument submitted, the court denied the Defendant’s motion to recuse and for the continuance.

**Motions to Alter or Amend the Order filed June 27, 2018.**

**Motion to Alter or Amend Right to Counsel**

The Defendant requested the Court reconsider the prior ruling to prevent a layman from representing her. The facts presented had not changed. The Defendant requested that another individual be allowed to present her motion argument. “The South Carolina Constitution assigns to this court the duty to regulate the practice of law.” S.C. Const. Art V, §4. “South Carolina, like other jurisdictions, limits the practice of law to licensed attorneys.” *Brown v Coe*, 365 S.C. 137, 139, 616 S.E. 2d 705, 706 (2005) (citation omitted). “The policy of prohibiting layman from practicing law is not for the purpose of creating a monopoly in the legal profession, nor for its protection, but to assure the public adequate protection in the practice of law.” *State ex. Rel. Daniel v. Wells*, 191 S.C. 468, 5

S.E. 2d 181, 186 (1939). *Boone v. Quicken Loans*, 420 S.C. 452, 803 S.E. 2d 707 (2017). The individual was not a licensed attorney and was not allowed to represent the interests of the defendant. The Defendant's motion is denied.

#### **Motion to Alter or Amend Decision on Discovery Request**

Prior to the August 8, 2018 hearing the Plaintiff provided the name of the damages witness and identified her as an employee of the Plaintiff. The Plaintiff had previously provided the Defendant with numerous documents. As stated in the previous Order, the Defendant has never filed an Answer or denied any allegation in the Complaint. The Defendant's motion was to dismiss the action. Based on the prior Order, the pleadings and the discovery produced, the motion to alter or amend the previous Order related to the discovery issues is denied.

#### **Fraud upon the Court**

The Defendant presented no new evidence to support any claim of action that could be considered a fraud upon the court. The Defendant did cross examine the Plaintiff's witness about identifying the investor. There was no fraud upon the court. This motion is denied.

#### **Jury Trial Request**

The Defendant requested a jury trial on August 8, 2018. The Summons and Complaint were filed on February 24, 2016. The Complaint is based on a foreclosure claim. "It is well settle that Article 1, Section 14 secures the right to a jury trial only in cases in which that right existed at the time of the adoption the constitution in 1868", *Lester v. Dowson*, 327 SC 263, 491 S.E. 2d 240 (1997). "Because a foreclosure action is one sounding in equity, a party is not entitled, as a matter of right, to a jury trial." *South Carolina Community Bank v. Salon Proz, LLC* 420 S.C. 89 800 S.E. 2d 488 (Ct. App. 2017). As stated above the Defendant has not filed an answer or even requested a jury trial in writing pursuant to *SCRPC 38 (b)*. Therefore, the request for a jury trial is denied.

#### **Foreclosure Claim**

The plaintiff presented Laura Elder as a witness. She is employed with Bank of America as a Consumer Resolution Associate. She maintains loan records, has access to business records and provides testimony at hearings. She testified that she has knowledge of the plaintiff's account with the defendant.

The plaintiff again provided the original Note and the defendant reviewed the document. There was no objection to the entry of the Note as an exhibit (Plaintiff #1). The defendant did object to the certified copy of the Mortgage being entered as an exhibit but the court overruled the objection (Plaintiff #2). Both documents had the signature of the defendant. The Loan Modification Agreement was admitted as Plaintiff #3. The document had the signature of the defendant and a representative of Bank of America. The plaintiff then introduced the payment history, an affidavit of debt and provided testimony about the acceleration of the debt. An affidavit of Attorney Fees and Cost was also admitted as an exhibit. The witness testified about the specific entries on the affidavit of debt and the total debt.

The defendant was provided an opportunity to cross-examine the witness. The witness agreed that Bank of America was the servicer for the loan. She also admitted that Fannie Mae was a secondary investor. The defendant also questioned the witness about the Mortgage Electronic Registration Systems, Inc. (MERS). However, the mortgage does not reflect that MERS is a lender or serves in any capacity on this loan. The lender is identified as Bank of America, N. A. The defendant's exhibit was marked as Defendants Exhibit 2 for identification.

As previously stated, the defendant did not file an Answer. The allegations in the Complaint are admitted. The defendant has not contested signing the Note, Mortgage or the Loan Modification Agreement. "Generally, a party seeking foreclosure has the burden of establishing the existence of the debt and the mortgagee's default of that debt." *Bank of America vs. Draper*, 405 S. C. 214, 746 S.E 2d 478 (Ct. App. 2013). In that case, the Court recognized that the servicer of the loan is a real party in interest and can initiate the foreclosure action. The Plaintiff satisfied its burden of proof and is entitled to foreclose on the loan and for a foreclosure sale to be scheduled.

#### **FINDINGS OF FACT: AS TO THE FORECLOSURE CLAIM**

1. The Lis Pendens was filed on April 13, 2018.

2. The Summons and Complaint were filed on April 13, 2018.
3. Service was made upon the Defendants named in this Report as is shown by the proofs of service filed herein.
4. The Defendant(s) is in default as shown by Affidavit filed herein.
5. According to an Affidavit filed herein, no Defendant in default is in the military service of the United States of America, as contemplated under the Service members' Civil Relief Act fka Soldiers' and Sailors' Civil Relief Act of 1940, and any amendments thereto.
6. The Defendant(s) were notified of the time, date and place of hearing in this matter.
7. For value received, Catherine L. Bishop made, executed and delivered a note, dated November 12, 2004, promising thereby to pay to the order of Bank of America, N.A. the sum of \$66,900.00 with interest at the rate of 5.75% per annum (hereinafter "Note"). Other terms and conditions are stated in the note, which is of record herein.
8. To better secure the payment of the Note described above, the said Catherine L. Bishop made, executed and delivered a mortgage to Bank of America, N.A. in writing, dated November 12, 2004, covering real property in Aiken County, which is the same as that described in the Complaint. The Mortgage was recorded on November 15, 2004 and is of record in the Aiken County Registry in Book 3695 at page 126.
9. This mortgage constitutes a valid first lien on the subject property.
10. Thereafter, a Loan Modification Agreement was executed on November 17, 2014.
11. As required by South Carolina Supreme Court Administrative Order 2009-05-22-01 (hereinafter, "the Administrative Order"), Plaintiff states that this loan is owned or guaranteed by Fannie Mae, or it is owned or guaranteed by FHLMC, or the Servicer has signed an agreement to participate in the Home Affordable Modification Program (hereinafter, "the HAMP"); however,

this loan is not eligible for modification under the HAMP because the loan is owned or guaranteed by the Federal Housing Administration (FHA) or the Veterans' Administration (VA) and said entities are not participants in the HAMP Program and are not eligible as contemplated under the Administrative Order issued by the Supreme Court of South Carolina on May 22, 2009.

12. Furthermore, Plaintiff complied with Administrative Order 2011-05-02-1 issued by the South Carolina Supreme Court.

13. The titleholder(s) of record of the Property as of the filing of the Lis Pendens in this action was/were Catherine L. Bishop.

14. Payment due on the Note has not been made as provided for therein, and the Plaintiff, as the holder thereof, has elected to accelerate payment of the entire indebtedness and has placed the Note and Mortgage in the hands of its attorney of record herein for collection.

15. Having considered the nature, extent and difficulty of the services rendered (the field of mortgage foreclosures being a specialized area of practice); the time involved in reviewing the various loan documents, performing the title search, preparing the pleadings and preparing for and attending hearings; the professional standing of the Plaintiff's attorney; the fee customarily charged in this jurisdiction for similar services; and the beneficial results obtained for the Plaintiff, I find that the sum of \$5,760.00 is a reasonable attorney's fee for the Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the within action, under the terms of the note and mortgage. Services anticipated to be performed until final adjudication contemplates completion of this matter within a reasonable time and does not include exceptional, unanticipated circumstances delaying conclusion beyond the normal time. The amount due and owing on the Note and Mortgage, with interest at the rate provided in the Note, and other costs

and expenses of collection, including attorney's fees, secured by the Note and Mortgage, is as follows:

|                                       |                 |              |             |
|---------------------------------------|-----------------|--------------|-------------|
| Principal due as of today's date:     | 08/08/18        |              | \$55,757.86 |
| Accrued interest from:                | 08/01/17        | to: 08/08/18 | \$ 3,267.53 |
| Accruing at:                          | 5.75% per annum |              |             |
| Taxes                                 |                 |              | \$ 107.47   |
| PMZ                                   |                 |              | \$ 9.48     |
| Hazard Insurance                      |                 |              | \$ 379.14   |
| Property Inspection                   |                 |              | \$ 120.00   |
| Credits: Escrow                       |                 |              | \$ 74.64    |
| Partial Payment:                      |                 |              | \$ 132.36   |
| Costs of collection prior to hearing: |                 |              | \$ 203.48   |
| Attorney's fees:                      |                 |              | \$ 5,760.00 |

16. Total Debt secured by Note and Mortgage, including interest to date is \$65,898.06. Interest for the period from the date shown above through the date of this judgment, at above stated rate, to be added to the above stated "Total Debt" to comprise the amount of the Judgment debt entered herein, and interest after the date of Judgment at the rate of 5.75% per annum, the Note's current rate, pursuant to the terms of the Note and Mortgage on the judgment debt should be added to such judgment debt to comprise the amount of the Plaintiff's debt secured by the Mortgage through the date to which such interest is computed.

17. The Plaintiff is seeking foreclosure of its mortgage and has, in the Complaint or subsequently thereto in writing, expressly Waived the right to a personal or deficiency Judgment pursuant to Rule 71(b), SCRCP.

**CONCLUSIONS OF LAW:** I, therefore, conclude as follows:

1. The Plaintiff should have judgment of foreclosure of its Mortgage; and the Property should be ordered sold at public auction after due advertisement.
2. That there is due to the Plaintiff on its Note and Mortgage the sum of \$65,898.06, representing the Total Debt due to the Plaintiff as outlined above, together with interest thereon at the rate provided in the Note to the date hereof.
3. That the amount due in the preceding paragraph (the "Total Debt") and later accrued interest and costs shall constitute the total judgment debt due to the Plaintiff and shall bear interest hereafter at the rate of 5.75% per annum, the current interest rate of the Note.

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

1. That the Defendant(s) liable for the aforesaid Mortgage debt shall, prior to the date and time of the sale of the Property, hereinafter described, pay to the Plaintiff, or the Plaintiff's attorney, the amount of the Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.
2. That on default of payment prior to the date and time of the sale, the Property, hereinafter described, shall be sold by the undersigned Master in Equity at public auction, at the Aiken County Courthouse, City of Aiken, County and State aforesaid, on some convenient sales day hereafter, on the following terms, that is to say:

- A. FOR CASH: The undersigned Master in Equity shall require a deposit of 5% on the amount of the bid by 1:00 p.m. on the date of sale (in cash or equivalent) the same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within twenty (20) days the same to be forfeited and applied to the costs and then to the Plaintiff's debt.
  - B. Interest on the balance of the bid shall be paid to the day of compliance at the rate of 5.75% per annum, which is the Note's current interest rate.
  - C. The sale shall be subject to taxes and assessments, existing easements and restrictions of record, and any other senior encumbrances.
  - D. Purchaser to pay for the deed and the cost of recording the deed.
3. If the Plaintiff is the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of the Plaintiff in full, the Plaintiff may pay to the undersigned Master in Equity only the amount of the costs and expenses, crediting the balance of the bid on the Plaintiffs indebtedness.
  4. That a personal or deficiency Judgment being Waived, the bidding will not remain open for thirty (30) days and bidding will be final on the date of the sale, and compliance with the bid may be made immediately.
  5. That the undersigned Master in Equity will, by advertisement according to law, give notice of the time and place of sale and the terms thereof; and that he/she will execute to the purchaser, or purchasers, a deed to the Property sold. The Plaintiff, or any other party to this action, or any other person may become a purchaser at such sale. If such sale is made to anyone other than the Plaintiff or its assignee, should the successful bidder, or his/her assignee, fail to comply with the terms thereof

within twenty (20) days after the date of sale, then the undersigned Master in Equity may re-advertise the Property for sale on the next, or some other subsequent, sales day, at the risk of the highest bidder, and so on from time to time thereafter until a full compliance shall be secured.

6. In the event an agent of the Plaintiff does not appear at the time of sale, the within property shall be withdrawn from sale and sold at the next available sales date upon the terms and conditions as set forth in the Judgment of Foreclosure and Sale or such terms as may be set forth in a supplemental order.
7. That the undersigned Master in Equity shall apply the proceeds of the sale as follows:
  - FIRST: To the 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; and
  - NEXT: To the payment of the amount to the Plaintiff, or the Plaintiff's Attorney, of the amount of the Plaintiff's debt and interest (including attorney fees) or so much thereof as the purchase money will pay on the same; and
  - NEXT: Any surplus will be held pending further Order of this Court pursuant to Rule 71(c), SCRPC.
8. That it is further ORDERED, ADJUDGED AND DECREED that each Defendant named herein, and all persons whomsoever claiming under him, them or it, 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.
9. That it is further ORDERED ADJUDGED AND DECREED that the deed of conveyance made pursuant to this judgment and said sale shall contain the names of only the Plaintiff, the first-named Defendant, who was the title holder of the mortgaged property at the time of the filing of the Lis Pendens, and the Grantee; and that the Aiken County Register of Deeds is hereby

authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

10. It is further ORDERED, ADJUDGED AND DECREED that in the event the successful bidder to whom the deed of conveyance has been issued subsequent to the sale is other than the Person(s) in possession herein, the Sheriff of Aiken County may be ordered and directed to eject and remove from the premises the occupants of the property sold, together with all personal property located thereon, and put the successful bidder to whom the deed of conveyance has been issued 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. That it is further ORDERED ADJUDGED AND DECREED that after the Order Confirming Sale and Disbursements has been issued and filed, the undersigned Master in Equity shall direct the Register of Deeds to release of record the lien(s) being foreclosed, which lien(s) are described in the Findings of Fact herein above.
12. That it is further ORDERED ADJUDGED AND DECREED that the following is a description of the Property herein ordered to be sold:

All that certain piece, parcel or lot of land, together with improvements thereon, situate, lying and being in the Town of Belvedere, Aiken County, South Carolina, and being known and designated as LOT NO.7, BLOCK 17, OF BELVEDERE RIDGE SUBDIVISION as shown on a plat thereof recorded in Plat Book 1, at Page 154, records of Aiken County, South Carolina, and being more recently shown on an individual plat of said lot for C. Paul Jacobs and Linda H. Jacobs by Thomas M. Graham, Jr., R.L.S. , dated March 22, 1975, and recorded in Misc. Book 205 at Page 129 in the Office of the RMC for Aiken County, to which said plats reference is herein made for a more specific description of the metes and bounds of said property.

This being the same property conveyed to Catherine L. Bishop by deed of Curtis A. Briscoe dated November 9, 2004 and recorded on November 15, 2004, in Deed Book 2467 at Page 91, in the ROD Office of Aiken County, South Carolina.

CURRENT ADDRESS OF PROPERTY: 306 Coral Way, Belvedere, SC 29841

TMS: 012-10-20-008

AND IT IS SO ORDERED.

**JUDGE'S SIGNATURE PAGE TO FOLLOW**

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**FORM 4**

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-02-00381

Bank of America, N.A.

Catherine L. Bishop

PLAINTIFF(S)

DEFENDANT(S)

**Submitted by:** Brock & Scott, PLLC  
Westpark Center  
3800 Fernandina Road Suite 110  
Columbia, SC 29210

**Attorney for :**  Plaintiff     Defendant  
 or  
 Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**

Affirmed;  Reversed;  Remanded;  Other

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

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

**ORDER INFORMATION**

This order  ends  does not end the case.

Additional Information for the Clerk :

| <b>INFORMATION FOR THE JUDGMENT INDEX</b>   |  |  |
|---|--|--|
| <b>Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.</b>   |  |  |
| Judgment in Favor of<br>(List name(s) below)  | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
| Bank of America, N.A.   | Catherine L. Bishop                      | \$0  |
| <p>If applicable, describe the property, including tax map information and address, referenced in the order:</p> <p>All that certain piece, parcel or lot of land, together with improvements thereon, situate, lying and being in the Town of Belvedere, Aiken County, South Carolina, and being known and designated as LOT NO.7, BLOCK 17, OF BELVEDERE RIDGE SUBDIVISION as shown on a plat thereof recorded in Plat Book 1, at Page 154, records of Aiken County, South Carolina, and being more recently shown on an individual plat of said lot for C. Paul Jacobs and Linda H. Jacobs by Thomas M. Graham, Jr., R.L.S. , dated March 22, 1975, and recorded in Misc. Book 205 at Page 129 in the Office of the RMC for Aiken County, to which said plats reference is herein made for a more specific description of the metes and bounds of said property.</p> <p>This being the same property conveyed to Catherine L. Bishop by deed of Curtis A. Briscoe dated November 9, 2004 and recorded on November 15, 2004, in Deed Book 2467 at Page 91, in the ROD Office of Aiken County, South Carolina.</p> |  |  |

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details. E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.**

Master In Equity

Judge Code

Date

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_ day of \_\_\_\_\_, 2018 and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_ day of \_\_\_\_\_, 2018 to attorneys of record or to parties (when appearing pro se) as follows:

Brock & Scott, PLLC

Westpark Center

3800 Fernandina Road Suite 110

Columbia, SC 29210

\_\_\_\_\_  
**ATTORNEY(S) FOR THE DEFENDANT(S)**

\_\_\_\_\_  
**ATTORNEY(S) FOR THE PLAINTIFF(S)**

\_\_\_\_\_  
**CLERK OF COURT**

**Court Reporter:** Judith Warner

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

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.





Aiken Common Pleas

**Case Caption:** Bank Of America Na VS Catherine L Bishop  
**Case Number:** 2016CP0200381  
**Type:** Master/Order/Foreclosure & Sale and Form 4

AND IT IS SO ORDERED

s/M Anderson Griffith-3076

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