

STATE OF SOUTH CAROLINA  
COUNTY OF GREENWOOD

Wilmington Savings Fund Society, FSB,  
doing business as Christiana Trust, not in its  
individual capacity but solely as legal title  
Trustee for BCAT 2014-9TT,

Plaintiff,

v.

Stan J. Kimball; Carole Kimball; Bank of  
America, N.A.,

Defendant(s)

IN THE COURT OF COMMON PLEAS  
CASE NO.: 2011-CP-24-01448

FOURTH SUPPLEMENTAL SPECIAL  
REFEREE'S REPORT  
AND JUDGMENT OF FORECLOSURE AND  
SALE

DEFICIENCY

**RECEIVED**

DEC 21 2018

**SC Court of Appeals**

Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure (hereinafter "SCRCP"), the above-entitled matter was referred to the undersigned Special Referee to make appropriate findings of fact and conclusions of law, with authority to enter a final Judgment in the cause. Any appeal from the decision of the Special Referee shall be directly to the South Carolina Court of Appeals or Supreme Court.

Pursuant to the said reference, a hearing was held on September 12, 2013, attended by Brock & Scott PLLC, attorney for the Plaintiff, and a *Special Referee's Order and Judgment of Foreclosure and Sale* was entered on September 12, 2013 (hereinafter: "Original Judgment"). All findings of fact, conclusions of law, orders and judgments contained in the Original and Supplemental Judgments remain binding and in effect except as expressly modified herein below. Subsequent to said original hearing, the Defendant Stan Kimball filed several motions, bid at several foreclosure sales and failed to comply with said bids, and filed several separate bankruptcy actions. The most recent bankruptcy action was dismissed by order of the Bankruptcy Court on August 28, 2018 and this case was restored to the active docket on September 26, 2018. The Plaintiff now wishes to proceed to foreclosure sale and a fourth supplemental hearing was held on October 11, 2018, for the purpose of updating the

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debt due to the Plaintiff and setting a foreclosure sale date, a hearing was held, attended by the attorneys of record, the testimony was taken, which is reported herewith, and from the testimony and evidence, I find and conclude as follows:

FINDINGS OF FACT:

1. 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 \$8,126.00 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.
2. 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:	10/11/2018		\$ 104,069.71
Accrued interest from:	09/01/2011	to: 10/11/2018	\$ 37,216.89
Accruing at:			6% per annum
Advancements to Escrow			\$ 16,047.88
Late charges:			\$ 526.51
Credits:			\$ (886.31)
Costs of collection prior to hearing:			\$ 5,810.83
Attorney's fees:			\$ 8,126.00

Total Debt secured by note and mortgage, including interest to date is \$172,684.13. Interest for the period from the date shown in (b) 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 6% per annum, 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.

3. 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 mortgaged 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 \$172,684.13. 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 6% per annum.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. That the Defendants liable for the aforesaid mortgage debt shall, prior to the date and time of the sale of the subject 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 mortgaged premises, hereinafter described, shall be sold by the undersigned Special Referee at public auction, at the Greenwood County Courthouse, in the City of Greenwood, County and State aforesaid, on some convenient sales day hereafter, on the following terms, that is to say:

A. FOR CASH: The undersigned Special Referee shall require a deposit of 5% on the amount of the bid (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 thirty (30) the same to be forfeited and applied to the costs and then to the Plaintiffs debt.

B. Interest on the balance of the bid shall be paid to the day of compliance at the rate of 6% per annum.

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. That 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 Special Referee only the amount of the costs and expenses, crediting the balance of the bid on the Plaintiff's 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 Special Referee will, by advertisement according to law, give notice of the time and place of sale and the terms thereof; and that he will execute to the purchaser, or purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, or any other person may become a purchaser at such sale. Upon such sale being made, should the successful bidder, or his assignee, fail to

comply with the terms thereof within thirty (30) after the date of sale, then the undersigned Special Referee may re-advertise the 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.

6. That 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 Special Referee 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), SCRCF.

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 Greenwood 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 Defendants in possession herein, the Sheriff of Greenwood 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 Special Referee 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 premises herein ordered to be sold:

**ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND TOGETHER WITH IMPROVEMENTS THEREON, SITUATE, LYING AND BEING IN THE COUNTY OF GREENWOOD, STATE OF SOUTH CAROLINA, KNOWN AND DESIGNATED AS LOT NO. 14 OF HEATHWOOD SUBDIVISION, PHASE I AS SHOWN ON PLAT OF SURVEY PREPARED BY NEWBY-PROCTOR & ASSOCIATES DATED OCTOBER 29, 1989 WHICH IS RECORDED IN THE OFFICE OF THE CLERK OF COURT FOR GREENWOOD COUNTY IN PLAT BOOK 58 AT PAGE 91, SAID PLAT BEING INCORPORATED HEREIN BY REFERENCE. FOR A MORE FULL AND ACCURATE DESCRIPTION REFERENCE IS HEREBY SPECIFICALLY MADE TO THE AFORESAID PLAT.**

**THIS BEING THE SAME PROPERTY CONVEYED TO ELSE KIMBALL AND CAROLE KIMBALL AS JOINT TENANTS WITH RIGHTS OF SURVIVORSHIP BY DEED OF JAMES E. FORD, III AND PATRICIA W. FORD, DATED JULY 28, 1998 AND RECORDED JULY 30, 1998, IN THE REGISTER OF DEEDS OFFICE FOR GREENWOOD COUNTY, STATE OF SOUTH CAROLINA, IN BOOK 530 AT PAGE 247.**

**THEREAFTER SUBJECT PROPERTY WAS CONVEYED TO STAN J.**

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**KIMBALL BY DEED OF ELSE KIMBALL DATED MAY 25, 2004,  
RECORDED JUNE 1, 2004 IN THE REGISTER OF DEEDS FOR  
GREENWOOD COUNTY, IN BOOK 846 AT PAGE 248.**

CURRENT ADDRESS OF PROPERTY: 101 Barrett Drive, Greenwood, SC 29649

TMS: 6836-126-692

AND IT IS SO ORDERED.

\_\_\_\_\_  
The Honorable Curtis G Clark  
Special Referee for Greenwood County

Date: \_\_\_\_\_

Greenwood, South Carolina