

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 THE SAVANNAH HOMEOWNERS)
 ASSOCIATION, INC.,)
)
 Plaintiff,)
)
 v.)
)
 DENISE H. JONES and LVNV FUNDING)
 LLC,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT
 CASE NO.: 2017-CP-10-6519

TRANSCRIPT OF TESTIMONY
 Deficiency Judgment Waived

2018 JUL 22 PM 2:38
 CLERK OF COURT
 CHARLESTON COUNTY

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 SC Court of Appeals

Charleston, South Carolina - November 6, 2018

Pursuant to an Order of Reference, this matter was referred to the to the Honorable Mikell R. Scarborough, Master-in-Equity for Charleston County. A final hearing was held on November 6, 2018, at 2:00 p.m., attended by:

APPEARANCE: Derek F. Dean/I. Sonja Taylor, Simons & Dean, Attorney for Plaintiff and Defendant Denise H. Jones.

 Derek F. Dean/I. Sonja Taylor, duly sworn:

As one of the attorneys for Plaintiff, I call to the attention of the Court the filing of the Lis Pendens, Summons and Complaint in this matter which was filed with the Clerk of Court for Charleston County on December 21, 2017. Defendant Denise H. Jones (“Jones”) was served January 19, 2018, and an Affidavit of Service has been filed of record. Jones mailed to my office a letter disputing the debt dated February 15, 2018, which was filed with the Clerk of Court February 16, 2018. Plaintiff made a Notice of and Motion to Strike, or for a More Definite Statement regarding such letter which has been filed of record. Following the hearing on such Motion, Jones was required to file an Answer to Plaintiff’s Complain within thirty (30) days of August 30, 2018. Jones mailed a letter, dated September 24, 2018, and without a certificate of service, which was received by me

October 1, 2018, and was not filed with the Court. By my letter to the Clerk of Court, Jones' letter was filed October 3, 2018. Thus, Jones' did not timely answer, otherwise plead or appear, and is in default. Notice of the hearing was served by mail on Jones on or about October 31, 2018.

From the records in my possession, from that information obtained from public records, from an abstract of the title to the subject property and as stated in Plaintiff's Complaint, I submit that Jones is/are the record owner(s), and has/have been since June 11, 2001, of that real property commonly known as 506 Arlington Drive, Apartment D, Charleston, Charleston County, South Carolina 29414, TMS No.: 310-07-00-104, in The Savannah Horizontal Property Regime ("Property"). Jones's title to the Property is offered into evidence as Exhibit A.

**TITLE TO THE PROPERTY IDENTIFIED
AND OFFERED INTO EVIDENCE AS EXHIBIT "A"**

MASTER: Exhibit A entered into evidence without objection.

Further, from the records in my possession, from that information obtained from public records, from an abstract of the title to the Property and as stated in Plaintiff's Complaint, the Property and its owner, Jones, are subject to the provisions of certain documents referred to as the Master Deed Establishing The Savannah Horizontal Property Regime, as amended, recorded at Book A357, Page 655 ("Master Deed"), in the office of the Register of Deeds for Charleston County, and the Bylaws of The Savannah Horizontal Property Regime, as amended ("Bylaws") (Master Deed and Bylaws collectively, "Governing Documents"). I call attention to the provisions of Plaintiff's Governing Documents with reference to default and the provisions contained therein referencing the payment of attorneys' fees and costs in the event of a legal action being commenced, as further set forth in Plaintiff's Complaint. Plaintiff's Governing Documents are offered into evidence as Exhibits B and C.

**GOVERNING DOCUMENTS IDENTIFIED
AND OFFERED INTO EVIDENCE AS EXHIBITS "B" AND "C"**

MASTER: Exhibits B and C entered into evidence without objection.

Additionally, from the records in my possession, from that information obtained from public records, from an abstract of the title to Property and as stated in Plaintiff's Complaint, I submit that on July 3, 2017, Plaintiff filed a Notice of Lien ("Lien") in favor of it in the amount of \$3,234.95. Plaintiff's Lien is offered into evidence as Exhibit D.

**NOTICE OF LIEN
IDENTIFIED AND OFFERED INTO EVIDENCE AS EXHIBIT "D"**

MASTER: Exhibit D entered into evidence without objection.

According to the public records, from an abstract of the title to the Property and as stated in Plaintiff's Complaint, I further submit that Bank of America, N.A., has or may have an interest in the Property as the holder of two mortgages and/or notes hereof (1) in the original amount of \$84,650.00, dated June 4, 2001, and recorded with the Charleston County Register of Deeds June 6, 2001, in Book P373 at Page 103; and (2) in the original amount of \$10,191.00, dated August 15, 2003, and recorded with the Charleston County Register of Deeds September 11, 2003, in Book R466 at Page 878. Such mortgages are offered into evidence as Exhibits E and F.

**MORTGAGE OF REAL ESTATE
IDENTIFIED AND OFFERED INTO EVIDENCE AS EXHIBITS "E" AND "F"**

MASTER: Exhibits E and F entered into evidence without objection.

The assessments and sums due and owing from Jones to Plaintiff have not been paid in accordance with the terms and conditions of the Governing Documents. Despite repeated notices by Plaintiff for Jones to pay the outstanding amounts owed related to the Property, Jones did not pay the past due amounts or keep this obligation current, all of which constitutes an unjustifiable failure to perform, a default and a breach of the Governing Documents.

According to the records of Plaintiff, there is due and owing as of November 6, 2018, the past due sums of \$4,293.79 (as due from September 2016 only) not including late fees or interest and after crediting all payments made by Defendant, costs in the amount of \$904.76 and attorneys' fees of \$4,446.00. The total due Plaintiff as of this date is \$9,644.55.

An accounting of the indebtedness of Jones is offered into evidence as Exhibit G.

**AFFIDAVIT OF DEBT/STATEMENT OF THE ACCOUNT
IDENTIFIED AND OFFERED INTO EVIDENCE AS EXHIBIT "G"**

MASTER: Exhibit G entered into evidence without objection.

Plaintiff is also seeking recovery of attorneys' fees and costs. Article 6, Item H, of the Declaration states as follows:

Article VI, §6.6:

Each Co-Owner is bound to contribute and shall be assessed . . . pro rata . . . toward the expenses of administration and of maintenance, insurance, repair, replacement,

preservation and improvement. . . . All Units shall be subject to a lien for unpaid assessments.

And the Bylaws state as follows:

Article X, Section 10.1:

The Association shall assess each Co-Owner . . . for such Co-Owner's proportionate share of the Common Expenses.

Article X, Section 10.4(b):

If a Co-Owner shall be in default in the payment of an installment upon an assessment, the Board . . . may accelerate the remaining installments . . . , and thereupon the unpaid balance of the assessment shall become due upon the date stated in the notice

Article X, Section 10.6:

A Co-Owner shall be personally liable for all assessments coming due while he, she or it is the owner of a Unit.

Article X, Section 10.7(a):

. . . [S]ums not paid on or before ten (10) days after the date when due shall bear interest at the rate of eighteen percent (18%) per annum or the highest rate permitted by law, whichever is lower, from the date when due until paid.

Article X, Section 10.7(b):

All assessments against any Co-Owner shall constitute a lien against the Co-Owner's Unit in favor of the Association. . . . Any such lien may be foreclosed by the Association in the manner provided by law for the foreclosure of real estate mortgages. The lien shall secure the payment of all assessments as described in said claim of lien and, in addition thereto, shall secure the payment of subsequent assessments which come due after the filing of the claim of lien and prior to the satisfaction of such lien by foreclosure or otherwise, including interest thereon . . . , together with all costs and reasonable attorneys' fees incurred by the Association incident to the collection of such assessments or the enforcement of such lien. The right of the Association to foreclose a lien as aforesaid shall be in addition to any other remedy, at law or in equity, which may be available to it . . . , including the right to proceed personally against any delinquent owner for the recovery of a judgment "in personam". Any personal judgment against any such delinquent Co-Owner may include all unpaid subsequent assessments which come due after the institution of such suit and prior to such Order of Judgment, including interest thereon . . . , together with all costs and reasonable attorneys' fees.

Article X, Section 10.7(d):

In the event that . . . any assessment . . . is received more than ten (10) days after its

due date, an administrative fee of Thirty Dollars (\$30.00), or such reasonable amount as may be determined from time to time by the Board . . . , shall be charged to the Member . A separate administrative fee shall be charged for each instance in which payment is received more than ten (10) days after its due date.

Upon Plaintiff's Affidavit of Attorneys' Fees and Costs setting forth the time and effort that has been expended in this matter, Plaintiff is seeking recovery of attorneys' fees in the amount of \$4,446.00 and costs in the amount of \$904.76. The Affidavit of Attorneys' Fees and Costs is offered into evidence as Exhibit H.

**PLAINTIFF'S COUNSEL'S AFFIDAVIT OF ATTORNEYS' FEES AND COSTS
IDENTIFIED AND OFFERED INTO EVIDENCE AS EXHIBIT "H"**

MASTER: Exhibit H entered into evidence without objection.

The costs incurred or to be incurred by Plaintiff consist of the following:

Filing/Recording Fees	\$160.00
Title Examination	\$ 80.50
Service of Process	\$ 70.00
Motion/Order Fees	\$ 75.00
Reference Fee	\$125.00
Active Military Search	\$ 36.40
Court Reporter	\$275.00
Copies/Postage/Legal Research	<u>\$ 82.86</u>
Total	\$904.76

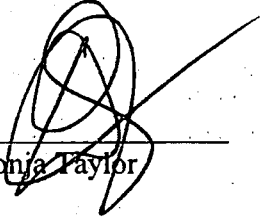
Under the terms of Plaintiff's Governing Documents and the lien foreclosed herein, Plaintiff seek to reserve its right to recover any costs incurred in this matter, including the cost of publication, and any Master's commission and other related expenses. Plaintiff is seeking relief in the form of order finding Jones in default, a judgment of foreclosure and sale of the Property, the sale of the Property in accordance with South Carolina law, with Jones's equity redemption being barred and immediate entry of judgment against Jones in the amount of \$9,644.55, including reasonable attorneys' fees and costs.

Plaintiff reserves the right to assert, claim and recover any additional attorneys' fees and costs it may incur after the within hearing (excluding any post-hearing fees awarded in the Decree) arising out of or related to the within action, including without limitation, any enforcement of the Decree; any appeal, reconsideration or motion to vacate any judgment; Defendant's (s') ownership (including

former) of the Property; any claim of entitlement and any writ of assistance.

Plaintiff waives its right to a deficiency judgment in this case.

Reference Ended.



Derek F. Dean/I. Sonja Taylor