

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Ditech Financial LLC,

PLAINTIFF,

VS.

Kevin G. Snyder and Kevin G. Snyder,
individually and as Personal Representative of the
Estate of Mary Snyder,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

CASE NO. 2010-CP-10-07838

MASTER IN EQUITY'S ORDER AND
JUDGMENT OF FORECLOSURE AND SALE

DEFICIENCY JUDGMENT IS WAIVED

Notice: The original of this document was filed
in the office of the Clerk of Court for Charleston
County:

(141093.00243K)

TO: G. Benjamin Milam, Esq.
Attorney for Plaintiff
Bradley Arant Boult Cummings LLP
Hearst Tower
214 North Tryon Street, Suite 3700
Charlotte, NC 28202

RECEIVED

MAY 02 2019

SC Court of Appeals

FILED
2019 APR 26 AM 9:56
JULIE J. ARMSTRONG
CLERK OF COURT

Jason S. Luck, Esq.
Attorney for Kevin G. Snyder
1075 E. Montague Ave.
North Charleston, SC 29405

Jason S. Luck, Esq.
Attorney for Kevin G. Snyder, as Personal Representative of the Estate of Mary Snyder
1075 E. Montague Ave.
North Charleston, SC 29405

Pursuant to Circuit Court Rule 53(b) of the South Carolina Rules of Civil Procedure, the above-entitled matter was referred to the undersigned to make appropriate findings of facts and conclusions of law with authority to enter a final judgment in the cause.

Pursuant to the said Order of Reference and based on the evidence, documents, and records received into evidence and reviewed by this Court, I find, conclude and order as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter of this action and the parties hereto

and it is the proper forum for the adjudication of this matter.

2. The Court has determined that Plaintiff has complied with the Administrative Order of the Supreme Court dated May 2, 2011 (2011-05-02-01) and the Administrative Order of the Supreme Court dated May 22, 2009 (2009-05-22-01).

3. The Lis Pendens, Summons, and Complaint (and any amendments thereto or joinders thereto) as well as service affidavits for all defendants have been filed with the Clerk of Court for this county.

4. The Defendants and/or all attorneys of record making either an appearance or filing a responsive pleading were notified of the time, date, and place of the hearing of this matter.

5. According to the affidavit(s) and certifications filed herein, any Defendant who is in default has been reviewed for his/her eligibility under The Servicemembers' Civil Relief Act of 2003 ("SCRA") and any amendments thereto and this review does not indicate any Defendant is eligible for protections.

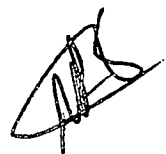
6. No Defendant raised any credible issues related to Plaintiff's standing to prosecute this action, and Plaintiff is the real party in interest as contemplated by Rule 17(a), SCRPC.

7. For value received, Kevin G. Snyder made, executed and delivered a Note dated April 21, 2005, promising thereby to pay to the order of Gateway Funding Diversified Mortgage Services L.P. the sum of \$135,000.00 with interest at the rate of 7.50000% per annum. 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 Kevin G. Snyder and Mary S. Snyder, made, executed and delivered to Mortgage Electronic Registration Systems, Inc., acting solely as a nominee for Gateway Funding Diversified Mortgage Services L.P. a Mortgage in writing, dated April 1, 2005, covering real property in Charleston County, which is the same as that described in the Complaint or Amended Complaint. The Mortgage was filed on May 6, 2005, and is of record in the Office of the Clerk of Court/Register of Deeds for Charleston County in Book W535, at Page 645. The Mortgage evidences and secures the repayment of money advanced by the mortgagee to, or on behalf of, the mortgagor(s).

9. Thereafter, the Note and Mortgage were modified pursuant to the Loan Modification Agreement executed by Kevin G. Snyder on October 29, 2007, increasing the unpaid principal balance on the Note to \$138,189.69. Other terms and conditions are stated in the Loan Modification Agreement, which is of record herein.

10. Plaintiff has produced the original Note for the Court's inspection. The Note is endorsed in blank and is in Plaintiff's possession.



11. Pursuant to the South Carolina Lis Pendens Statute (S.C. Code Section 15-11-10, et. seq.) Counsel for Plaintiff has accomplished a Report on Title whereby Counsel for Plaintiff has, upon information and belief, named all parties who claim or may claim an interest in the subject property. This Court further finds that this Report on Title is a recoverable charge, expense, or cost as provided for in the Mortgage and/or Note contracts and the amount is found to be reasonable.

12. This Court therefore finds that this Mortgage constitutes a first lien on the mortgaged premises.

13. The Court finds that Plaintiff and its counsel have fully complied with all of their obligation(s) as required under the specific terms of the Note and Mortgage being foreclosed as well as all applicable Federal or State statutes or regulations, including, but not limited to, the furnishing of any notices, where applicable (e.g. post referral loss mitigation solicitation letter and/or acceleration warning letter, if or where applicable).

14. According to the records of Plaintiff and its counsel, neither Plaintiff nor its counsel is aware of any party to this action currently being on active duty or recently discharged.

15. According to the records of Plaintiff and its counsel, neither Plaintiff nor its counsel is aware of any Defendant currently being under the protection of the United States Bankruptcy Court. Any demand for a deficiency is not applicable if a Defendant has received a discharge in bankruptcy during the life of the mortgage, or is currently under the active protection of the bankruptcy courts. Moreover, any party to this action who is a discharged borrower to the debt of the Plaintiff shall not be subject to and is specifically excluded from both the calculation and collection of any amounts due and owing to the Plaintiff, as required by Rule 71(a) of the South Carolina Rules of Civil Procedure.

16. The Note is currently in default for failure to make the monthly payments due for September 1, 2008 and all subsequent months. Payment due on the Note has not been made as provided for in the Note and Plaintiff has elected to require immediate payment of the entire amount due thereon and has placed the Note and Mortgage in the hands of the attorney herein for collection.

17. With respect to attorney fees and in view of the potential financial liabilities and likely continuing professional obligations inherent in judicially prosecuting a real property mortgage credit matter, the attendant professional duties and responsibilities, and the size of the mortgage debt and consistent with similar case proceedings before this Honorable Court, I find that \$6,626.25 is a reasonable attorney's fee in this matter. This award is consistent with the laws of this state in the awarding of attorney fees. I have considered the six (6) factors (none of these factors is controlling in the singular) as follows: (1) the nature, extent and difficulty of the legal service rendered; (2) the time and labor necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of

compensation; (5) the fee customarily charged in the locality for similar legal services; and (6) the beneficial results obtained. *Taylor v. Medenica*, 331 S.C. 575, 503 S.E.2d 458 (1998); *Baron Data Systems v. Loter*, 297 S.C. 382, 377 S.E.2d 296 (S.C. 1989), *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997). Pursuant to the language in the Note and Mortgage, this Court has specifically reviewed and satisfied itself with all six (6) factors, as well as the disclosed client billing by Plaintiff's counsel considered in awarding reasonable attorneys' fees and costs/expenses/charges in this matter as set forth herein in this paragraph as well as Paragraph 18. As itemized below, I find all of the itemized fees and costs/expenses/charges to be reasonable.

18. Although I have heretofore given consideration to all six (6) factors in the awarding of attorney fees and costs herein, jurisdiction over the fee award shall be reserved as granted in the Order of Reference with the right to re-visit the question of attorney fees should the action proceed in an unexpected way and/or to facilitate the assessment and payment of any such current or additional professional compensation.

19. The amount due and owing on the Note, with interest at the rate provided in the Note, including attorney's fee and allowable costs and charges allowable under and secured by the Note and Mortgage, is as follows:

| | |
|--|---|
| (a) Principal due | \$137,020.25 |
| (b) Interest Due from 08/01/2008 to 04/01/2019 | \$109,616.64 |
| (c) Late Charges | \$396.16 |
| (d) Escrow Advances (Itemized in Plaintiff's Disbursement Records) | \$39,816.39 |
| (e) Final Monthly Private Mortgage Insurance Premium | \$45.00 |
| (f) Inspection costs | \$410.00 |
| (g) Attorney's fees and costs (Foreclosure) | \$6626.25 \$7,111.25 1937.95 \$294,495.69 |

TOTAL DEBT secured by Note and Mortgage including interest to date shown

~~\$ 293,930.69~~

Interest shall continue to accrue on the unpaid principal balance shown in (a) above, at the 7.500% from the date of hearing until entry of judgment, and such interest shall be added to the above stated "Total Debt": to comprise the amount of the judgment debt entered herein. Interest after the date of entry of judgment at the rate of 7.500% per annum (pursuant to the terms of the Note and Mortgage) shall accrue on the judgment debt and shall be added to such judgment debt to comprise the amount of Plaintiff's debt

secured by the Mortgage through the date of compliance with the terms of judicial sale.

20. Based upon a search of the public records of the aforesaid county pursuant to the South Carolina Lis Pendens statute, all persons or entities having an interest or lien or possible claim in or upon the mortgaged premises subordinate to the lien of Plaintiff as of the date and time of the filing of the Lis Pendens herein have been made defendants.

21. Plaintiff has waived its right to a personal or deficiency judgment.

22. None of the named Defendant(s) have established any claims or defenses, legal or equitable, for relief against Plaintiff, and therefore, no relief, be it legal or equitable, shall be granted to any of the named Defendant(s). In addition, all persons and/or entities who may be or may have been entitled to claim through or under the title or interest of the named Defendant(s) in the subject property shall likewise be absolutely barred and forever foreclosed of any rights, titles, or interests.

CONCLUSIONS OF LAW

I, therefore, conclude as follows:

1. The Court's authority to render judgment in this matter is not stayed by the Notice of Appeal filed by Plaintiff on March 29, 2019, giving notice of an appeal from certain interlocutory orders of this Court dated March 12, 2014, March 18, 2019, March 18, 2019, and March 27, 2019 (the "Interlocutory Orders"). The Interlocutory Orders are not immediately appealable under S.C. Code § 14-3-330, and the proceedings before this Court are not stayed by a premature appeal. Alternatively, pursuant to South Carolina Appellate Court Rules 205 and 241, this Court retains jurisdiction over matters not affected by the appeal, including the authority to make findings, conclusions, and determinations ancillary to the matters determined in the Interlocutory Orders, so that all matters can be heard and adjudicated in an efficient and wholesale manner.

2. Defendant(s)' counterclaims for Breach of Contract, Unfair Trade Practices, and (to the extent it seeks a monetary award) Civil Compensatory Contempt are stayed as a result of the Petition for Bankruptcy filed by Plaintiff and its affiliates in the United States Bankruptcy Court for the Southern District of New York ("Bankruptcy Court") under Case No. 19-10412 (JLG), pursuant to the automatic stay imposed by 11 U.S.C. § 362(a) as modified by the subsequent orders of the Bankruptcy Court.

3. Defendant(s) have failed to establish any legal or equitable grounds for avoiding the lien of Plaintiff's Mortgage, nor have Defendants shown that Plaintiff lacks standing to enforce the Mortgage. Accordingly, Defendant(s) have not shown that they are entitled to the remedy of quiet title.

4. Plaintiff has met the requirements of the Administrative Order of the South Carolina Supreme Court (2011-05-02-01) issued by Chief Justice Jean H. Toal, dated May 2, 2011, and also that



Plaintiff has met the requirements of the Administrative Order of the South Carolina Supreme Court (2009-05-22-01) issued by Chief Justice Jean H. Toal, dated May 22, 2009.

5. By virtue of its possession of the Note endorsed in blank, Plaintiff is the holder of the Note and has standing to enforce both the Note and the Mortgage securing the Note.

6. Plaintiff should have judgment of foreclosure of the Mortgage and the mortgaged property should be ordered sold at public auction after due advertisement.

7. All of the named Defendant(s) have not established any claims or defenses, legal or equitable, for relief against Plaintiff, and therefore, no relief, be it legal or equitable, shall be granted to any of the named Defendant(s). In addition, all persons who may be entitled to claim through or under the title or interest of the named Defendant(s) in the subject property shall likewise be absolutely barred and forever foreclosed.

Now, on motion or notice of Plaintiff's attorney,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. Plaintiff has met the requirements of the Administrative Order of the South Carolina Supreme Court (2011-05-02-01) issued by Chief Justice Jean H. Toal, dated May 2, 2011, and also that Plaintiff has met the requirements of the Administrative Order of the South Carolina Supreme Court (2009-05-22-01) issued by Chief Justice Jean H. Toal, dated May 22, 2009.

2. That there is due to Plaintiff on the obligation and mortgage as set forth in the Complaint or Amended Complaint the sum of ~~\$294,415.69~~, representing the total debt due Plaintiff as set forth supra, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.

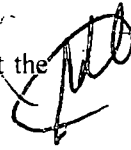
\$293,930.69

3. The amount due in the preceding paragraph (the "total debt" as set forth in Paragraph hereinabove, and later accrued interest on the principal) shall constitute the total judgment debt due the Plaintiff (may be supplemented as permitted by the Court) and shall bear interest hereafter at the rate of 7.500 percent per annum.

4. That on default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint or Amended Complaint, as hereinafter set forth, be sold by this Court at public auction, after giving Notice of the time and place of such sale by advertisement according to law. Any sales date is tentative and may be rescheduled at any time prior to the sale without further order of this Court or written notice to the parties of the notice of sale, provided notice of the new sales date is duly advertised as required by law. The sale shall be according to the following terms, that is to say:

(a) CERTIFIED FUNDS: The Master in Equity will require a deposit of 5% on the amount of the bid (in certified funds or equivalent) said 5% deposit being due and payable immediately

upon the closing of the bidding, same to be applied to the purchase price only upon compliance with the bid, but in case of non-compliance within 30 days same to be forfeited 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 7.500 percent.~~ 

(c) The sale shall be subject to taxes and assessments, existing easements and restrictions of record and prior liens of record.

(d) This Mortgage constitutes a first lien covering the real estate and improvements therein described.

(e) Purchaser to pay for deed stamps/transfer taxes and cost of recording the deed with Plaintiff to pay the Statutory allowed fee to the preparer of said deed (be it this Court or Counsel for Plaintiff).

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

6. This Court will by advertisement according to law, give notice of the time and place of such sale, and the terms thereof. Any sales date is tentative and may be rescheduled at any time prior to the sale without further order of this court or written notice to the parties of the notice of sale, provided notice of the new sales date is duly advertised as required by law. This Court 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 30 days after the date of sale, then this Court 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. In the event Plaintiff is the successful bidder, at its option, or the option of its assignee, the deed may be taken subject to payment by grantee of any taxes or assessments constituting a lien against the property sold under this order and hereinafter more fully described. All bidders are hereby and herein noticed that in the event the successful bidder is a third party, neither Plaintiff nor Plaintiff's counsel make any warranties or representations of any kind as to the subject property, including but not limited to its title or habitability on behalf of the third party bidder or any subsequent purchasers.

7. The sale will not be held unless either Plaintiff's attorney or Plaintiff's bidding agent is present at the sale and either Plaintiff's attorney or Plaintiff's bidding agent enters the authorized bid of Plaintiff for this individually captioned matter. In the alternative, Plaintiff's counsel, if permitted by the

Court, may advise this Court directly of its authorized bidding instructions. In the event a sale is inadvertently held without Plaintiff's Counsel or Counsel's bidding agent entering the authorized bid of Plaintiff for this specifically captioned matter, the sale shall be null and void and the property shall be re-advertised for sale on the next available sale date.

8. In the event of a third party bidder wherein the successful third party bidder fails to deliver the required deposit in certified (immediately collectible) funds to this Court by close of bidding on the day of the sale, this Court will re-sell the subject property at the most convenient time thereafter (including the day of sale) upon notification to counsel for Plaintiff.

9. That this Court shall apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of the permitted costs, charges, and expenses of this action, including any Guardian ad Litem or SCRA Attorney Fee or fees of any attorneys appointed by motion of Plaintiff's Counsel and under Order of the Court;

NEXT: To the payment to Plaintiff or Plaintiff's attorney, of the amount of Plaintiff's debt and interest or so much thereof as the purchase money will pay on the same; and Plaintiff's attorney shall receive and disburse such funds only in total and absolute compliance with the debt, interest, escrow, and related calculations of this Court including the Court's award for attorney fees, court permitted charges and taxable costs pursuant to Rules 54 and 71, South Carolina Rules of Civil Procedure;

NEXT: Any surplus will be held pending further order of the Court as provided for in the South Carolina Rules of Civil Procedure and particularly Rule 71(c) of the South Carolina Rules of Civil Procedure.

10. It is further ORDERED, that if the successful bidder is other than the person(s) or entity in possession herein, the Sheriff of this County is ordered and directed to evict and remove from the premises the occupants 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, ADJUDGED AND DECREED that in the event there is a mobile/manufactured home located on the subject property, the South Carolina Department of Motor Vehicles is directed and ordered to provide the new Certificate of Title to the attorneys for the Plaintiff as agent for the grantee on the deed upon payment of the required title fees on any mobile/manufactured home which is herein located on the subject property and intended to be collateralized by the Plaintiff's security documents as heretofore received into evidence by this Court, or which may be received into evidence at any necessary hearing post sale of the subject property.



12. And it is further ORDERED, ADJUDGED AND DECREED that none of the named Defendant(s) have established any claims or defenses, legal or equitable, for relief against Plaintiff, and therefore, no relief, be it legal or equitable, shall be granted to any of the named Defendant(s). In addition, all persons and/or entities who may be or may have been entitled to claim through or under the title or interest of the named Defendant(s) in the subject property shall likewise be absolutely barred and forever foreclosed of any rights, titles, or interests.

13. IT IS FURTHER ORDERED that the deed of conveyance made pursuant to said sale shall contain the names of only the first-named Plaintiff and the first-named Defendant, and the Defendant who was the titleholder of the mortgaged property at the time of the filing of the notice of pendency of the within action, and the name of the grantee, and the applicable recorder of deeds is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

14. This Court will retain exclusive jurisdiction to do all necessary acts incident to this foreclosure, including, but not limited to, all matters post-sale which may affect the transfer of the title to the subject real property and all improvements thereon, as well, the issuance of a Writ of Assistance.

15. Upon issuance of this Court's Report on Sale and Disbursements, the Clerk of Court/Register of Deeds is directed to release of record the mortgage lien being foreclosed, which mortgage lien is described as follows:

Mortgage from Kevin G. Snyder and Mary S. Snyder to Mortgage Electronic Registration Systems, Inc., acting solely as a nominee for Gateway Funding Diversified Mortgage Services L.P., dated April 1, 2005, covering real property in Charleston County, filed on May 6, 2005, and is of record in the Office of the Clerk of Court/Register of Deeds for Charleston County in W535, at Page 645.

16. This sale is specifically subject to all title matters of record, including but not limited to any other senior lien or encumbrance, and any interested party should consider performing an independent title examination of the subject property as no warranty is given at all by the Court, Plaintiff or its Counsel.

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

ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND, TOGETHER WITH THE BUILDINGS AND IMPROVEMENTS THEREON, WITHIN, LYING AND BEING IN THE CITY AND COUNTY OF CHARLESTON, STATE OF SOUTH CAROLINA, KNOWN AND DESIGNATED AS LOT NO. 22 ORANGE GROVE SHORES, AS SHOWN ON A PLAT MADE BY GEORGE A.Z. JOHNSON, INC., DATED JUNE 15, 1988 AND RECORDED IN THE RMC OFFICE FOR CHARLESTON COUNTY IN PLAT BOOK BT, PAGE 14, SAID LOT HAVING SUCH SIZE, SHAPE, DIMENSIONS, BUTTINGS AND BOUNDINGS AS WILL BY

REFERENCE TO SAID PLAT MORE FULLY APPEAR.

THIS BEING THE SAME PROPERTY CONVEYED TO KEVIN G. SNYDER AND MARY S. SNYDER BY VIRTUE OF A DEED FROM H.A. ROOKE COMPANY, INCORPORATED, DATED APRIL 28, 1989 AND RECORDED APRIL 28, 1989, IN BOOK X 183 AT PAGE 681, IN THE OFFICE OF THE REGISTER OF DEEDS FOR CHARLESTON COUNTY, SOUTH CAROLINA.

1752 ORANGE GROVE SHORES, CHARLESTON, SC 29407

~~TMS# 352-13-00-218~~

TMS No. 352-13-22-218

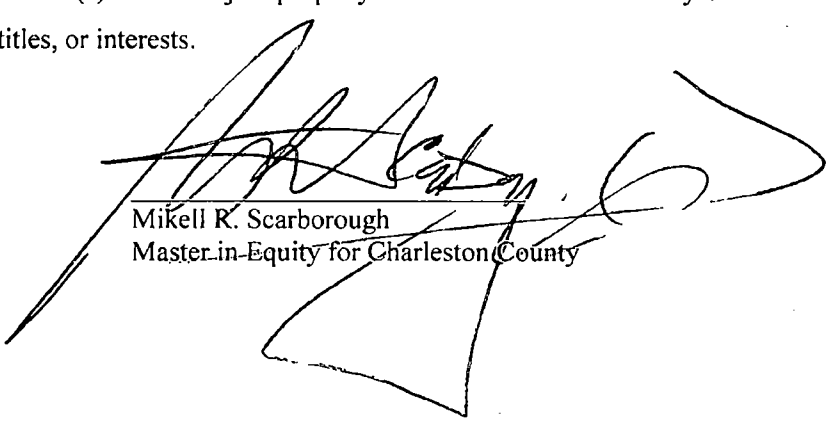
Property address: 1752 Orange Grove Shores Dr., Charleston, SC 29407

18. IT IS FURTHER ORDERED that if Plaintiff or Plaintiff's representative does not appear at the scheduled sale of the above-described property, then the sale of the property will be null, void and of no force and effect. In such event, the sale will be rescheduled for the next available sales day as ordered by this court.

19. IT IS FURTHER ORDERED that no Defendant raised any credible issues related to Plaintiff's standing to prosecute this action.

20. All of the named Defendant(s) have not established any claims or defenses, legal or equitable, for relief against Plaintiff, and therefore, no relief, be it legal or equitable, shall be granted to any of the named Defendant(s). In addition, all persons who may be entitled to claim through or under the title or interest of the named Defendant(s) in the subject property shall likewise be absolutely barred and forever foreclosed of any rights, titles, or interests.

Charleston, South Carolina
4/15, 2019


Mikell R. Scarborough
Master in Equity for Charleston County