

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

U.S. Bank National Association as Indenture
Trustee for CIM Trust 2015-4AG Mortgage-
Backed Notes, Series 2015-4-AG

Plaintiff,

v.

Bobbie J. Fraser aka Bobbie Jean Fraser, OneMain
Financial, Inc., The South Carolina Department of
Revenue

Defendant(s).

IN THE COURT OF COMMON PLEAS

DOCKET NO. 2018-CP-40-04429

ORDER

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SC Court of Appeals

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The above matter came before me on Friday, March 29, 2019, pursuant to the Motion to Set Aside Judgment and Sale by Defendant Bobbie J. Fraser and the Rule To Show Cause for a Writ of Assistance scheduled for March 29, 2019 and served on the Defendant on March 21, 2019. Present were Andrew S. Radeker, attorney for the Defendant Bobbie J. Fraser; Theodore von Keller, attorney for Shahzad Muhammad, the grantee of the Master's Deed and Damon C. Włodarczyk, the attorney for U.S. Bank National Association. After consideration of the filings of the parties, the Court file and the arguments of counsel, the Court denies the Motion to Set Aside Judgment and Sale.

The Court finds that Affidavit of Service of the Summons and Complaint in the above foreclosure matter was served on Gregory Macon at 4511 Colonial Dr., Columbia, SC 29203 on August 23, 2018. The affidavit identifies Mr. Macon as a co-resident.

In the affidavit of Bobbie J. Fraser she avers that, "Gregory Macon was staying overnight in August 2018." Rule 4 (D) (1), SCRCP provides that service may be accomplished "by leaving copies thereof at his dwelling house or usual place of abode was some person of suitable age and discretion then *residing* therein (emphasis added).

The South Carolina Court of Appeals in the case of the Estate of Nicholson ex rel Nicholson v. South Carolina Department of Health and Human Services, 377 S. C. 590, 660 S. E. 2d 303 (Ct. App 2008), held as follows: "[h]owever, in the legal field, the term (reside) has been defined as to "live, dwell, abide, sojourn, stay, remain[or] lodge." citing Black's Law Dictionary 1176 (5th ed. 1979).

The court finds therefore based on the defendant Bobbie J. Fraser's own affidavit that the service of process in this case met the requirements of Rule 4 (D) (1) SCRCP.

Furthermore, "an officer's return of process creates a legal presumption of proper service and cannot be impeached by the mere denial of service by the Defendant." Delta Apparel, Inc. v. Farina, 406 S. C. 257, 750 S. E. 2d 615 (S. C. App. 2013) and, "a presumption of proper service exists when the rules governing service are followed." BB&T v Taylor, 369 S. C. 548, 633 S. E. 2d 501, (S. C. 2006). The court finds that service was proper.

Defendant's motion is denied and the Court shall issue its Writ of Assistance ordering the Defendant to vacate the property at 4511 Colonial Drive, Columbia, SC by June 3, 2019.

AND IT IS SO ORDERED.

Joseph M. Strickland
Master in Equity for Richland County

Columbia, South Carolina

Dated: _____



Richland Common Pleas

Case Caption: Us Bank National Association , plaintiff, et al vs Bobbie J Fraser ,
defendant, et al
Case Number: 2018CP4004429
Type: Master/Order/Other

It is so Ordered

s/Joseph M. Strickland, 3055