

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Nationstar Mortgage LLC d/b/a Champion  
Mortgage Company,  
Plaintiff,

v.

Dina Del Rio, United States of America,  
acting by and through its agency, the  
Secretary of Housing and Urban  
Development,  
Defendant(s).

18-019990

IN THE COURT OF COMMON PLEAS

C/A NO.: 2018-CP-10-04261

JUDGMENT OF FORECLOSURE AND  
SALE

Deficiency Judgment Waived

**RECEIVED**

SEP 27 2019

SC Court of Appeals

This matter was referred to the Master in Equity by Order entered January 16, 2019. A trial was held on July 24, 2019 attended by William S. Koehler, Esq. and Shannon Kaufman, Esq. on behalf of the Plaintiff and Dina Del Rio; pro se. Testimony was taken and evidence was given and from the testimony and evidence, I find and conclude as follows.

**FINDINGS OF FACT**

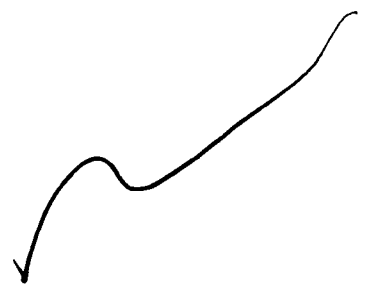
1. The Lis Pendens was filed on August 28, 2018.
2. The Summons and Complaint were filed on August 28, 2018.
3. Service was made upon all Defendants as shown by the proofs of service filed herein.
4. The Defendant Dina Del Rio is not in the Military Service of the United States of America, as contemplated in The Servicemembers' Civil Relief Act, 50 USC § 501 et seq. as shown by affidavit, certificate or order filed herein.
5. No Defendant raised any credible issues relating to Plaintiff's standing to prosecute this action.
6. Pursuant to the South Carolina Supreme Court Administrative Order 2009-05-22-01 dated May 22, 2009 ("2009 Order"), the Plaintiff set forth its belief in its Complaint or by

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JULIE J. AMSTRONG  
CLERK OF COURT

FILED

Affidavit, which is already of record in this case, that the mortgage loan which is the subject of this foreclosure action is not eligible for modification pursuant to the terms of the Home Affordable Modification Program (HMP). Pursuant to the 2009 Order, Plaintiff's attorney has not received a counter affidavit from any Defendant.

7. Attorney for the Plaintiff has fully complied with the South Carolina Supreme Court Administrative Order 2011-05-02-01 dated May 2, 2011.
8. Dina Del Rio filed an Answer. The United States of America has duly filed its Answer, which is of record herein, and has waived its 120 day right of redemption pursuant to 12 U.S.C. Section 1701k.
9. All pro se Defendants and all attorneys of record have been notified of the time, date and place of hearing by letter as evidenced by the certificate of mailing, which is of record.
10. Dina Del Rio, for value received, made, executed and delivered a Note ("Note") dated July 13, 2007 promising to pay to Plaintiff or its predecessor the sum of \$381,187.50. Other terms and conditions are stated in the Note, of record herein.
11. To better secure the payment of the Note Dina Del Rio, made, executed and delivered to Wells Fargo Bank, N.A. its successors and assigns a certain real estate mortgage ("Mortgage") in writing, dated July 13, 2007 covering real property in Charleston County, which is the same as that described in the complaint.
12. The Mortgage was filed on July 20, 2007 and is of record in Charleston County in the Office of RMC/ROD in Book Z632 at Page 860.

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13. Thereafter, by assignment recorded September 28, 2017 in Book 668 at Page 901, the mortgage was assigned to Nationstar Mortgage LLC d/b/a Champion Mortgage Company.

14. The description of the property secured by the Mortgage is

All that certain lot, piece or parcel of land, together with buildings and improvements thereon, situate lying and being on James Island, County of Charleston, State of South Carolina, known and designated as Lot 32B, as shown on plat by W.L. Glen, Reg. P.E. and L.S., dated March 20, 1965, entitled, "Resubdivision of Lots 32-33 Bay Front, James Island, Charleston County, S.C.", and duly recorded in the RMC Office for Charleston County in Plat Book T, at Page 61. Said lot having such size, shape, dimensions, buttings and boundings as reference to the aforesaid plat will more fully and at large appear.

Being the same premises conveyed to Dina Del Rio by Deed from Harold S. Burk dated December 30, 2002 and recorded in the Charleston County RMC Office in Book R-431, at Page 408.

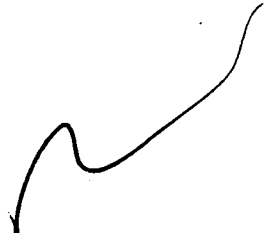
TMS No. 425-04-00-069

Property Address: 1546 Patterson Ave, Charleston, SC 29412

### **PLAINTIFF'S FIRST CAUSE OF ACTION**

15. The Mortgage constitutes a First mortgage on the subject property subject only to ad valorem taxes or other liens/taxes given priority by statute. Plaintiff has the legal right to enforce the negotiable instrument secured by the Mortgage and is the real party in interest as defined by Rule 17(a) of the South Carolina Rules of Civil Procedure.

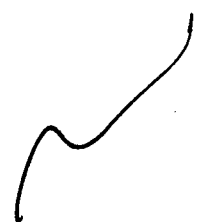
16. This Mortgage is a Home Equity Conversion Mortgage, also known as a Reverse Mortgage. In and by the terms of the Note and Mortgage securing the same, it is provided, amount other things, that upon death of a Borrower, or if any of the conditions and requirements in the Mortgage securing the same not be complied with, then the



whole principal sum and accrued interest shall at the option of the legal holder thereof become at once due and payable without notice, and collectible by foreclosure. The Borrower is in default for failure to pay taxes and insurance on the subject property.

17. Payment due on the Note has not been made as provided therein, and the Plaintiff as the holder or nominee for the holder, thereof, 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 by foreclosure.

18. The sum of \$7,625.00 is a reasonable fee to allow Plaintiff's counsel for services performed and anticipated to be performed until final adjudication of this action, under the terms of the Note and Mortgage. This fee is likewise reasonable based on the time necessarily devoted to representation of Plaintiff during the several month course of these proceedings. The services of counsel performed for Plaintiff, which include the number and types of pleadings and documents prepared, the incumbent liabilities, and the difficulties involved in this particular case also support the fee awarded. The fee is also reasonable given the professional standing of Plaintiff's counsel and their experience in handling foreclosure matters. The fee awarded herein is also reasonable in light of the fees customarily awarded by this Court for similar services in this locality. Moreover, the efforts of Plaintiff's counsel have had the beneficial result of a prompt foreclosure of the Mortgage. Services anticipated to be performed until the final adjudication contemplate completion of this matter within a reasonable time and does not include exceptional circumstances delaying conclusion beyond the normal time.

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19. According to Plaintiff's accounting, after all payments received by Plaintiff have been credited, the amount due and owing on the Note and secured by the Mortgage is as follows:

a. Principal due	\$185,363.41
b. Interest due through July 24, 2019	\$42,271.97
c. MIP	\$2,202.53
d. Servicing Fees	\$720.00
e. Taxes	\$2,248.47
f. Attorney Expenses	\$270.00
g. Outstanding Costs of Collection	\$775.00
h. Attorneys' Fees	<u>\$7,675.00</u>
Total debt secured by Note and Mortgage	\$241,526.38

Interest shall accrue to the above stated principal balance at 3.410% from the date of hearing until the date of entry of judgment. Such amount shall be added to the amount above to comprise the "Judgment Debt". After entry of judgment interest shall continue to accrue on the Judgment Debt at 3.410%. Accrued interest shall be added to the Judgment Debt and shall comprise the amount of Plaintiff's debt secured by the Mortgage through the date which such interest is computed.


20. Plaintiff is seeking the usual foreclosure of the First mortgage and has expressly waived the right to a personal or deficiency judgment.

21. The following Defendant may claim a subordinate lien upon or subordinate legal interest in the Subject Property, and in the event there is a surplus from the sale of the Subject Property, these Defendants may present such claim or interest in accordance with Rule 71(c) of the South Carolina Rules of Civil Procedure. The said Defendant and such liens or legal interests are as follows:



- a. The Defendant United States of America, acting by and through its agency, the Secretary of Housing and Urban Development is made a Defendant by virtue of a Mortgage given by Dina Del Rio in the amount of \$381,187.50, dated July 13, 2007 and recorded July 20, 2007 in Book 2632 at Page 870 and by virtue of any other interest they may claim in the subject property.

IT IS THEREFORE ORDERED:

22. Plaintiff has fully complied with the South Carolina Supreme Court Administrative Orders 2009-05-22-01 and 2011-05-02-01, and the foreclosure may proceed.
  23. There is due on the Note and Mortgage the sum of \$241,526.38 as set forth in the Findings of Fact, *supra*, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.
  24. The amount due in the preceding paragraph shall accrue interest at 3.410% and together with such interest shall constitute the total debt due Plaintiff.
  25. The amount of judgment shall be subject to increase to permit Plaintiff to recover additional costs, commission, and expenses not included in the minimum deposit previously made in compliance with S.C. Code Ann § 14-11-310 (1976). It may also increase to include supplemental compensation for attorneys' services not contemplated by the initial fee award. Jurisdiction over the fee award and total debt is reserved to facilitate the assessment and payment of any such costs or supplemental compensation. Such additional costs, commissions and expenses may be established by affidavit and shall be adjudicated by the Court without further hearing.
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26. The Defendant(s) liable for the aforesaid judgment debt of the Note and Mortgage including interest at the rate of 3.410% per annum shall pay on or before the date of sale of the property hereinafter described to Plaintiff or Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, including the costs and disbursements of this action.

27. On default of payment at or before the time of the sale of the property the mortgaged property described hereafter shall be sold by the below signed Master in Equity or Special Referee or other court-appointed or designated agent or auctioneer at public auction at the Charleston County Courthouse in the City of Charleston and State of South Carolina on a sales day determined by the below signed Master in Equity or Special Referee on the following terms:

- a. For cash or its equivalent: an immediate deposit of 5% is required on the amount of the bid. The deposit will be applied to the purchase price when total compliance is made. In the event compliance is not made, the deposit shall be forfeited without further hearing and applied first to costs and expenses of the action and then to Plaintiff's debt. Should the successful bidder at a regularly conducted sale fail or refuse either to make the required deposit at time of bid or to comply with the terms of the bid within 30 days, then the property may be re-sold on the same terms and conditions on the same or some subsequent sales day at the risk of the defaulting bidder.
- b. The sale shall be subject to taxes and assessment, existing easement and restrictions and any other senior encumbrances.
- c. Purchaser shall pay for any statutory commission on sale from the proceeds of the final bid amount.

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- d. Purchaser to pay for deed preparation, costs of recording the deed and transfer taxes on the deed.
- e. Purchaser shall be entitled to possession of the premises only after Purchaser fully complies with the bid amount and a deed is issued by the Master in Equity or Special Referee.

28. A personal or deficiency judgment having been waived, the bidding will not remain open after the date of the initial sale.

29. Plaintiff may waive any of its rights, including its right to a deficiency judgment in accordance with Rule 71 SCRPC prior to sale.

30. The Master in Equity or Special Referee will give notice of the time and place of the sale by advertisement according to law and the terms thereof by advertisement according to law and will execute to the Purchaser a deed to the property sold. Plaintiff or any other party to this action may become a purchaser at such sale. If, upon such sale being made, the Purchaser should fail to comply with the terms thereof within 30 days after date of sale, then the Master in Equity/Special Referee may advertise the said premises for sale on the next of some subsequent sales day at the risk of the highest bidder and so from time to time thereafter until a full compliance shall be secured.

31. In the event an agent of 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 same 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.

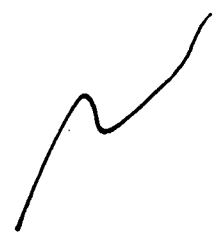
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32. If Plaintiff is the successful bidder at the said sale for a sum not exceeding the amount of costs and expenses of the sale, plus the indebtedness of Plaintiff in full, Plaintiff may pay to the Master in Equity only the amount of the costs and expenses crediting the balance of the bid on Plaintiff's indebtedness.

33. The Master in Equity/Special Referee will apply the proceeds of the sale as follows:

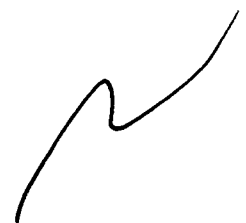
- a. First to the payment of the permitted costs, charges, and expenses in this action including any Guardian ad Litem fee, Servicemember Civil Relief Act attorney fee, or any other attorneys' fee awarded under this or any other Order of this Court;
- b. Next to the payment to Plaintiff or Plaintiff's attorney of the amount of Plaintiff's debt and interest or so much thereof as the purchase money will pay on the same; and the Plaintiff's attorney shall receive and disburse such funds only in absolute compliance with Plaintiff's principal, interest, allowable advances and related calculations of this Court, including the Court's award for attorneys' fees, court permitted charges and taxable costs pursuant to Rules 54 and 71 of the South Carolina Rules of Civil Procedure and the terms of the Note and Mortgage;
- c. Next, any surplus will be held pending further Order of the Court as provided for in the South Carolina Rules of Civil Procedure, particularly Rule 71(c) SCRCP

34. In the event the successful bidder is someone other than the Defendant(s) in possession of the Subject Property, the Sheriff of Charleston County is ordered and directed to eject and remove from the property the occupant(s) 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 property without delay and to keep said successful bidder or his assigns in such peaceable possession.

35. In the event the successful bidder is other than the Defendant(s) in possession of the subject property and the occupants have voluntarily vacated the property or have been ejected from the property leaving furnishing, fixtures and items not subject to Plaintiff's Mortgage in said property, the Purchaser is authorized to remove from the property all furnishings, fixtures and items not subject to the lien of Plaintiff's Mortgage. The personal property, being deemed abandoned, shall be removed by the Purchaser or its agents from the subject property by placing said personal property on the public street or highway or by other means.
36. The Defendant(s) named herein, and all persons whosoever claiming under Defendant(s), are forever barred and foreclosed of all right, title, interest, equity of redemption or lien in the said mortgaged property so sold, or any part thereof.
37. In accordance with Rule 77(d), of the South Carolina Rules of Civil Procedure, the Clerk of Court shall serve a notice of entry of this Judgment of Foreclosure upon all parties not in default for failure to appear in this action.
38. The deed of conveyance made pursuant to the foreclosure sale shall contain the names of only the first-named Plaintiff and first named Defendant, and the Defendant(s) who was/were the titleholder(s) 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. The Register of Deeds/Clerk of Court is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

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39. The undersigned will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance.

40. The subject property is:

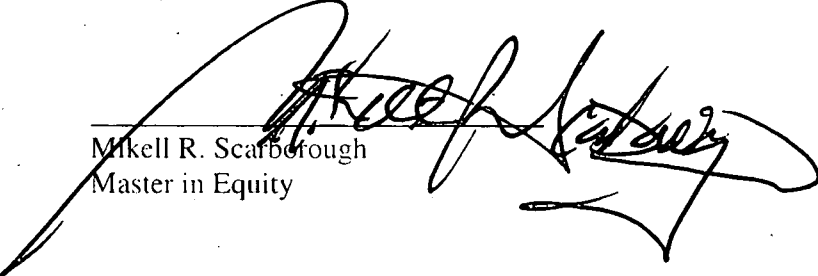
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Being the same premises conveyed to Dina Del Rio by Deed from Harold S. Burk dated December 30, 2002 and recorded in the Charleston County RMC Office in Book R-431, at Page 408.

TMS No. 425-04-00-069

Property Address: 1546 Patterson Ave. Charleston, SC 29412

Date: 8/12/19  
Charleston, South Carolina

  
Mikell R. Scarborough  
Master in Equity