

F47991
STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Home Investment Fund III, LP,

PLAINTIFF,

vs.

Nehemiah Bryant,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS
C/A NO: 2016CP0802325

**ORDER AND JUDGMENT OF
FORECLOSURE AND SALE
(DEFICIENCY WAIVED)**

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

2018 MAY 30 AM 9:56

FILED

TO: Thomas A. Shook
Susan S. White
Elizabeth S. Moore
Teresa Van Vlakte
Carl D. Hiller
Anthony J. Charles
FINKEL LAW FIRM LLC
Attorneys for the Plaintiff

ANSWERING DEFENDANTS:

Nehemiah Bryant
Pro Se

RECEIVED

OCT 02 2019

SC Court of Appeals

Pursuant to Rule 53 SCRPC, the above-entitled matter was referred. Any appeal from any order or judgment issued by the master or special referee shall be to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

Pursuant to the said Order of Reference, a hearing was held and was attended by counsel. The testimony was taken, which is reported herewith. From the testimony and evidence, I find, conclude and order as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Based upon the Certification of Mortgagor Non-Compliance filed herein, the provisions of the Administrative Order issued by the Chief Justice of the Supreme Court of South Carolina on May 2, 2011, Order 2011-05-02-01, do not apply to the within foreclosure action.

2. The Lis Pendens was filed on September 28, 2016.
3. The Summons and Complaint were filed on September 28, 2016.
4. Service was made upon the Defendant(s) named in this Report as is shown by the proof(s) of service filed herein.
5. All of the defendants herein and/or all attorneys of record were notified of the time, date and place of the hearing in this matter.
6. According to the Affidavit filed herein, the Defendant(s) Nehemiah Bryant is not in the Military Service of the United States of America, as contemplated under the Servicemembers Civil Relief Act (2003), and any amendments thereto.
7. For value received, Nehemiah Bryant made, executed and delivered a Note dated October 1, 2007, promising thereby to pay to the order of MortgageIT, Inc., the sum of \$134,000.00, together with interest pursuant to the terms of the Note and any extensions, amendments, or modifications thereto. 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 Nehemiah Bryant made, executed and delivered to Mortgage Electronic Registration Systems, Inc., as nominee for MortgageIT, Inc., a Mortgage in writing, dated October 1, 2007, covering real property in Berkeley County, which is the same as that described in the Complaint. The Mortgage was filed on October 5, 2007, and is of record in the Office of the Register of Deeds for Berkeley County in Book 6907 at Page 169.
9. This Mortgage constitutes a first mortgage lien on the subject property and is a Purchase Money Mortgage.
10. The subject mortgage was assigned or otherwise transferred as follows:
 - (a) by assignment dated June 19, 2012 and recorded June 27, 2012, in book 9541 at page 308, Mortgage Electronic Registration Systems, Inc., as nominee for MortgageIT, Inc., assigned the subject mortgage to Federal National Mortgage Association;
 - (b) by Assignment dated July 17, 2012 and recorded September 25, 2012, in book 9700 at page 68, Federal National Mortgage Association assigned the subject mortgage to CitiMortgage Inc.;
 - (c) by Assignment dated April 12, 2013 and recorded August 1, 2013, in book 10286 at page 220, CitiMortgage, Inc., f/k/a Citicorp Mortgage Inc., assigned the subject mortgage to CitiMortgage, Inc.;

- (d) by Assignment dated March 14, 2014 and recorded March 24, 2014, in book 10666 at page 107, CitiMortgage, Inc., assigned the subject mortgage to Capital Income and Growth Fund, LLC;
- (e) by Assignment dated December 11, 2014 and recorded February 18, 2015 in book 11217 at page 142, Capital Income and Growth Fund, LLC assigned the subject mortgage to Rocktop Partners I, LP;
- (f) by Assignment dated September 22, 2016 and recorded December 9, 2016 in book 2342 at page 690, Rocktop Partners I, LP assigned the subject mortgage to Home Investment Fund III, LP, the present lienholder and Plaintiff herein.
- (g) by Corrective Assignment dated April 6, 2018 and recorded April 13, 2018 in book 2720 at page 745, Rocktop Partners I, LP assigned the subject mortgage to Home Investment Fund III, LP, the present lienholder and Plaintiff herein.

12. Pursuant to the Administrative Order of the Chief Justice, 2009-05-022-01, the loan that is the subject of this action is not held by a former participant in the Home Affordable Modification Program (HMP). Additionally, the loan is not subject to modification under the HMP because the program terminated on December 31, 2016 pursuant to Section 709(b) of the Consolidated Appropriations Act, 2016, P.L. 114-113.

13. The titleholder(s) of record in and to the subject property as of the filing of the Lis Pendens in this action is Nehemiah Bryant.

14. Payment due on the Note has not been made as provided for therein, and Plaintiff, as 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 an attorney for collection.

15. Counsel for Plaintiff filed an affidavit as to attorney's fees and costs in this case, which was not contested, and, therefore, I find as fact herein. Having considered the nature, extent and difficulty of the services rendered, the time involved in reviewing the various documents, performing the title search, preparing the pleadings, attending hearings and argument, the professional standing of counsel, the fee customarily charged for similar services, and the beneficial results obtained for Plaintiff, I find that the sum of \$3,050.00 is a reasonable fee to allow under the terms of the Note and Mortgage as attorney's fees for Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the action.

16. The amount due and owing on the Note, with interest at the rate provided in the Note, and other costs and expenses of collection, including an attorney's fee, secured by Note and Mortgage, is as follows:

Principal due as of July 1, 2015	\$123,944.42
Interest from August 1, 2015 to April 1, 2018	19,831.04
Escrow adjustments (debits and credits)	1,263.42
Costs of collection prior to hearing	643.00
Attorney Fees	3,050.00
TOTAL DEBT secured by Note and Mortgage, including interest to date shown	\$148,731.88

Interest for the period from April 1, 2018 as shown above at the rate of 6.0% shall be added to the Principal Balance shown above through the date this Judgment is filed. After the date of judgment, interest at the rate of 6.0% on the total judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the Mortgage.

17. Plaintiff does not demand a deficiency judgment in the event the sale of the real estate herein does not yield a sum sufficient to satisfy all indebtedness due unto Plaintiff, including costs and Attorney's fees.

18. The following Defendant(s) claim, or may claim a lien upon or interest in the subject property as follows:

IT IS THEREFORE ORDERED:

1. There is due to Plaintiff on the obligation and Mortgage set forth in the Complaint the sum of \$148,731.88, representing the "Total Debt" due Plaintiff as set forth in the Findings of Fact, *supra*, together with interest at the rate provided therein from the date aforesaid to the date hereof.

2. The amount due in the preceding paragraph (the "Total Debt" as set forth in the Findings of Fact, *supra*, and later accrued interest) shall constitute the total judgment debt due the Plaintiff and shall bear interest hereafter at the rate of 6.0%.

3. The Defendant(s) liable for the aforesaid Mortgage debt shall, on or before the date of sale of the property hereinafter described, pay to Plaintiff, or Plaintiff's attorney, the

amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action. If such debt is paid in full, then the foreclosure sale shall be cancelled.

4. On default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, shall be sold by the Master in Equity, or his agent under the direction of the Master in Equity, at public auction, at the Berkeley County Courthouse, Moncks Corner, South Carolina, on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales day shall be on Tuesday next succeeding such holiday), on the following terms, that is to say:

- A. **FOR CASH:** The Master in Equity will require a deposit of 5% on the amount of the bid (in cash or equivalent), same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within 30 days, the deposit may be forfeited without further hearing 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 6.0%.
- C. The sale shall be subject to taxes and assessments, existing easements and easements and restrictions of record
- D. This Mortgage constitutes a first priority lien on the subject property and is a Purchase Money Mortgage.
- E. Purchaser to pay for deed preparation and costs of recording the Deed, and transfer taxes.

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

6. The Master in Equity will, by advertisement according to law, give notice of the time, date, place of sale, and the terms thereof, which Notice of Sale is incorporated herein by reference; and 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 date of sale, then the Master in Equity 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.

7. Should Plaintiff, Plaintiff's attorney, or Plaintiff's agent fail to appear on the day of sale, the property shall not be sold, and in that event any such sale shall be null and void and of no force and effect. The property shall be re-advertised and sold at some convenient sales day thereafter when Plaintiff, Plaintiff's attorney, or Plaintiff's agent is present.

8. That the Master in Equity will apply the proceeds of the sale as follows:

FIRST: To 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.

NEXT: To the payment of Plaintiff, or Plaintiff's attorney, of the amount of Plaintiff's debt and interest, so much thereof as the purchase money will pay on the same.

NEXT: Any surplus funds will be held pending further order of the Court.

9. **IT IS FURTHER ORDERED** that in the event the successful bidder is other than the Defendant(s) in possession herein, upon full compliance with the bid, and upon issuance of a Writ of Assistance by this Court, the Sheriff of Berkeley County is ordered and directed to eject and remove from the premises 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 premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.

10. **IT IS FURTHER ORDERED** that, in the event the successful bidder is other than the Defendant(s) in possession herein and the occupant(s) have voluntarily vacated the premises or have been ejected from the premises leaving furnishings, fixtures and items not subject to Plaintiff's Mortgage in said premises, upon full compliance with the bid, Purchaser is authorized to remove therefrom all furnishings, fixtures and items not subject to the lien of Plaintiff's mortgage, which personal property, being deemed abandoned, shall be removed by Purchaser or its agents from the subject property by placing said personal property on the public street or highway or by any other means.

11. **IT IS FURTHER ORDERED** that, in addition to all parties deemed by law to have received constructive notice of the action herein, the Defendant(s) named herein and all

persons whomsoever claiming under said defendant(s), 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.

12. **IT IS FURTHER ORDERED** that the Deed of conveyances made pursuant to said sale shall contain the names of only the first named Plaintiff and the first named Defendant and the Defendant(s) who was/were the titleholder(s) of the mortgaged property at the time of filing of the notice of pendency of the within action, and the name of the grantee, and the Register of Deeds is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said Deed.

13. **IT IS FURTHER ORDERED** that the Master in Equity will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, issuing a Writ of Assistance and hearing any issues involving appraisal proceedings under Section 29-3-680 *et seq.*, South Carolina Code of Laws (1976), as amended.

14. Any sale pursuant to this order is *without* warranty of any kind. Neither Plaintiff nor Court warrant title to any third-party purchaser. All third-party purchasers are made parties to this action and are deemed to have notice of all matters disclosed by the public record, *including* the status of title. See Ex parte Keller, 185 S.C. 283, 194 S.E. 15 (1937); Wells Fargo Bank, NA v. Turner, 378 S.C. 147, 662 S.E.2d 424 (Ct. App. 2008).

15. The Master in Equity shall direct the Register of Deeds to release of record the Mortgage lien being foreclosed, all subordinate liens and all prior liens ordered satisfied herein, after the Order Confirming Sale and Disbursements has been executed and filed. Plaintiff's Mortgage lien is described as follows:

That certain Mortgage given by Nehemiah Bryant to Mortgage Electronic Registration Systems, Inc., as nominee for MortgageIT, Inc. dated October 1, 2007 and recorded in the Office of the Register of Deeds for Berkeley County on October 5, 2007 in Book 6907 at Page 169.

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

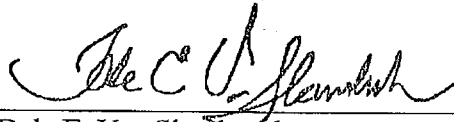
All that certain piece, parcel or lot of land being a triangular shape, together with the buildings and improvements thereon, lying and being in St. John's Parish, County of Berkeley, State of South Carolina, measuring and containing One and Ninety-one Hundredths (1.91) acres, more or less, Butting and Bounding as

follows, to-wit: North, a distance of 563.7 feet along lands of Orin S. Driggers, West, a distance of 282.5 feet along lands of St. John's Bethel Church; South, a distance of 710 feet along lands of the Cooper River Lumber Company. Which will more fully appear on a map prepared by E.A. Dennis, R.L.S., dated July 17, 1959 and recorded in Plat Book "L" at Page 175.

TMS Number: 196-02-00-044

PROPERTY ADDRESS: 151 Saint Johns Bethel Street, Moncks Corner, SC 29461

This being the same property conveyed to Nehemiah Bryant by deed of Judith D. Walton, dated October 1, 2007 and recorded in the Office of the Register of Deeds for Berkeley County on October 5, 2007 in Deed Book 6907 at Page 164.



Dale E. Van Slambrook
Master in Equity for Berkeley County

Moncks Corner, South Carolina

5/24, 2018

54320F47991

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS

Home Investment Fund III, LP,

PLAINTIFF

FORM 4
JUDGMENT IN A CIVIL CASE

C/A NO: 2016CP0802325

Nehemiah Bryant,

DEFENDANT(S)

FILED
2018 MAY 30 AM 9:56
MARY P. CLERY
CLERK OF COURT
BERKELEY COUNTY, SC

Submitted by: FINKEL LAW FIRM LLC
Thomas A. Shook/Susan S. White/
Elizabeth S. Moore/Teresa Van Vlake
Carl D. Hiller/Anthony J. Charles

Attorney for: Plaintiff; Defendant;
or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
 - DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
 - ACTION DISMISSED. (CHECK REASON)** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43 (k), SCRPC (Settled); Other _____
 - ACTION STRICKEN. (CHECK REASON)** Rule 40(j), SCRPC; Bankruptcy; Binding Arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
 - STAYED DUE TO BANKRUPTCY**
 - DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (Check applicable box): Affirmed; Reversed; Remanded; Other _____
- NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow). Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk: _____

SCRPC Form 4C (2/2017)

Page 1 of 2

INFORMATION FOR THE PUBLIC INDEX
Complete this section below when the judgment affects title to real or personal property or in any amount should be enrolled. If there is no judgment information, indicate 'N/A' in one of the boxes below.

Judgment in Favor of (List Name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To Be Enrolled (List amount(s) below)
Home Investment Fund III, LP	NA	NA

If applicable, describe the property, including tax map information and address referenced in the order:
All that certain piece, parcel or lot of land being a triangular shape, together with the buildings and improvements thereon, lying and being in St. John's Parish, County of Berkeley, State of South Carolina, measuring and containing One and Ninety-one Hundredths (1.91) acres, more or less, Butting and Bounding as follows, to-wit: North, a distance of 563.7 feet along lands of Orin S. Driggers, West, a distance of 282.5 feet along lands of St. John's Bethel Church; South, a distance of 710 feet along lands of the Cooper River Lumber Company. Which will more fully appear on a map prepared by E.A. Dennis, R.L.S., dated July 17, 1959 and recorded in Plat Book "L" at Page 175.

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The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

3079
Judge Code

5/24/18
Date

Master in Equity

Nehemiah Bryant
151 st Johns Bethel st
Moncks corner, S.C. 29461



RECEIVED

OCT 02 2019

SC Court of Appeals

Jenny ABBott Kitchings clerk
South Carolina Court of Appeals
1220 senate street
Columbia, South Carolina 29201