

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

Farmers & Merchants Bank of South Carolina,

Plaintiff,

v.

Curits R. Tucker; Ashley Tucker; SC Housing Corp., acting through South Carolina State Housing Finance and Development Authority's South Carolina Homeownership and Employment Lending Program; and South Carolina Federal Credit Union,

Defendant.

(13653-00173 EAB)

Elizabeth A. Blackwell, Esquire
Attorney for the Plaintiff

A foreclosure hearing was held on Tuesday, October 29, 2019, at 11:00 am. Evidence was presented, which is reported herewith, and from the evidence, I find and conclude as follows:

FINDINGS OF FACT:

1. The original Lis Pendens was filed on February 13, 2019.
2. The Summons and Verified Complaint were filed on February 13, 2019.
3. Service was made upon the Defendant as shown by the proofs of service filed herein.
4. The Defendants have not raised any issues related to Plaintiff's standing to prosecute this action.
5. Ashley Tucker and South Carolina Federal Credit Union are in default and have not filed an Answer.

IN THE COURT OF COMMON PLEAS

DOCKET NO. 2019-CP-18-302

JUDGMENT OF FORECLOSURE
AND SALE

DEFICIENCY JUDGMENT DEMANDED
AGAINST CURTIS R. TUCKER

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NOV 26 2019

SC Court of Appeals

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6. A hearing was held on June 17, 2019 before The Honorable James E. Chellis, Master in Equity, where Defendant, Ashley Tucker, made an appearance stating that Defendant, Curtis Tucker, was incarcerated. Thereafter, the hearing was continued so as to perfect service on the incarcerated Defendant and appoint a Guardian ad Litem pursuant to Rule 17(d)(4), SCRCF and Rule 4(d)(2), SCRCF.

7. Plaintiff filed Notice of Order Appointing Guardian for Incarcerated Defendant, Curtis R. Tucker, on June 26, 2019.

8. Thereafter, Defendant, Curtis Tucker, made no attempt to appoint Guardian ad Litem. Plaintiff filed a Consent Motion for Appointment of Guardian ad Litem on August 16, 2019 and the Order for Appointment of Guardian ad Litem was entered on August 27, 2019.

9. An Answer and Consent to Reference for Incarcerated Defendant was filed August 30, 2019 through Kelley Y. Woody, Guardian ad Litem Nisi for Curtis Tucker.

10. The Defendants were notified of the time, date, and place of the hearing by Notice of Hearing and Certificate of Mailing of record herein.

11. Pursuant to the South Carolina Supreme Court Administrative Order 2009-05-22-01, dated May 22, 2009, the Plaintiff set forth its belief in its Complaint or by Affidavit, which is already of record in this case, that the Note and Mortgage, which are the subject of this action are not owned securitized, or guaranteed by Fannie Mae or Freddie Mac, and the loan is not subject to modification under the Home Affordable Modification Program ("HMP").

12. Attorney for the Plaintiff has fully complied with the South Carolina Supreme Court Administrative Order 2011-05-02-01, dated May 2, 2011.

13. Heretofore, for value received, on or about October 3, 2013, Curtis R. Tucker made, executed, and delivered unto Plaintiff a certain Promissory Note in the principal sum of \$89,275.00, together with interest therein from that date at the rate specified in the Promissory Note.

14. In order to secure the payment of the Note, according to the terms and conditions thereof, Curtis R. Tucker made, executed, and delivered unto Plaintiff a certain real estate Mortgage encumbering property located in Dorchester County, which is the same property as that described in the Complaint, and said Mortgage was signed, witnessed, and probated on October 3, 2013. Thereafter, the Mortgage was recorded in the Office of the RMC/ROD for

Dorchester County on October 9, 2013, in Book 9041 at Page 349. Other terms and conditions are stated in the Mortgage, of record herein.

15. The Mortgage constitutes a first priority lien on the Property, subject only to ad valorem taxes or other liens given priority by statute.

16. 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.

17. Payment due on the Note was not made as provided for therein, and Plaintiff elected to require immediate payment of the entire amount due thereon and placed the Note and Mortgage in the hands of the attorney herein for remedy by foreclosure.

18. The sum of \$6,039.00 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 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 final adjudication contemplate completion of this matter within a reasonable time and does not include exceptional circumstances delaying conclusion beyond the normal time.

19. According to the accounting of Plaintiff, after all payments received by Plaintiff have been credited to the subject loan, the amount due and owing on the Note, with interest as provided in said Note, advances made by Plaintiff, and other costs and expenses of the action, including attorney's fees, all secured by the Loan Documents, are as follows:

A.	Principal	\$66,807.34
B.	Accrued and unpaid interest through October 29, 2019, at 7.25%	\$14,780.34
C.	Late Charges	\$400.78
D.	Escrow Balance (homeowners insurance, property taxes)	\$3,136.95
E.	Costs.....	\$1,861.79

F. Attorney's fees\$6,039.00

TOTAL AMOUNT DUE:.....\$93,026.20

Interest Per Day.....\$14.69

Interest shall accrue on the above-stated debt after the date of judgment at the rate of 7.25% per annum. Accrued interest shall be added to the total amount of debt and shall compromise the amount of Plaintiff's debt secured by the Loan Document through the date to which such interest is computed.

20. Plaintiff is seeking the foreclosure of the first mortgage and has expressly demanded the right to a deficiency judgment against Curtis R. Tucker pursuant to S.C. Code Ann. Section 29-3-660. The Plaintiff may waive any of its rights, including its right to a personal or deficiency judgment, at any time prior to the foreclosure sale.

21. The hereinafter named Defendants may have some interest in, or lien upon, the Property, or some part thereof, but such interests or liens are junior in priority and/or subsequent to the lien of Plaintiff's Mortgage or, if specified below, have been paid in full, and either should be satisfied of record or the lien should be released from the Property, or the interests should be extinguished; said liens or interests are described as follows:

- a. SC Housing Corp., acting through South Carolina State Housing Finance and Development Authority's South Carolina Homeownership and Employment Lending Program, by virtue of that certain Mortgage in the amount of \$36,000.00 dated December 13, 2016 and recorded on January 12, 2017 in the Dorchester County Register of Deeds in Book 10613 and Page 285;
- b. South Carolina Federal Credit Union, by virtue of that certain Judgment against Patricia Brown a/k/a Patricia D. Brown a/k/a Patricia Diane Brown, filed March 10, 2010 under Judgment Roll No. 2009-18-03415, in the amount of \$10,124.25;

IT IS THEREFORE ORDERED:

22. There is due on the Note the sum of **\$93,026.20**, as set out in the Complaint and Findings of Fact, *supra*, together with interest at the rate provided therein on the balance of the principal from the date aforesaid to the date hereof.

23. Plaintiff shall have judgment against Curtis R. Tucker in the amount set forth above. Such judgment shall be entered and docketed in the Clerk's office immediately and in the same manner as other judgments pursuant to §29-3-650 SC Code of Laws (1976 as amended). Upon sale of the subject property, the judgment shall be credited in the amount paid to Plaintiff from the proceeds of the sale. The Plaintiff may waive any rights, including its right to a personal or deficiency judgment, at any time prior to the foreclosure sale. §29-3-650 SC Code of Laws (1976 amended).

24. The amount due in the preceding paragraph shall accrue at the rate of 7.25% per annum (\$14.69 per diem), and that amount, together with interest, shall constitute the total judgment debt due Plaintiff.

25. The amount of the judgment shall be subject to increase to permit Plaintiff to recover additional costs, commissions, and expenses not included in the minimum deposit previously made in compliance with S.C. Code Ann. Section 14-11-310. It may also increase to include supplemental compensation for attorney's 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.

26. The Borrower is liable for the aforesaid judgment debt of the Loan Documents, including interest at the rate of 7.25% per annum, and shall pay on or before the date of the sale of the Property hereinafter described, to Plaintiff or its attorney, the amount of the 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 below described hereinafter shall be sold at public auction at the Dorchester County Courthouse, in the City of St. George, and State of South Carolina on a sales day determined by the Honorable James E. Chellis, Dorchester County Clerk of Court, 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 the costs and expense of the

action and then to the Plaintiff's debt. Should the successful bidder at the regularly conducted sale fail or refuse either make the required deposit at time of bid or to comply with the other 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 and at the risk of the defaulting bidder.

- b. Interest on the balance of the bid after the deposit shall be paid through the day of compliance at the Note rate of 7.25%.
- c. The sale shall be subject to taxes and assessments, existing easements and restrictions, any other senior encumbrances, and also all other matters of record except for the liens and interests extinguished through this action.
- d. Purchaser shall pay for any statutory commission on sale from the proceeds of the final bid amount.
- e. Purchaser to pay for deed preparation, costs of recording the deed and the satisfaction of mortgage, and transfer taxes on the deed.
- f. 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 Honorable James E. Chellis, Dorchester County Clerk of Court.

28. Personal or deficiency Judgment having been demanded, the sale will remain open for thirty (30) days pursuant to S.C. Code Ann. Sec. 15-39-720 (1976).

29. Plaintiff may waive any of its rights, including its right to a deficiency judgment, in accordance with Rule 71 of the South Carolina Rules of Civil Procedure prior to sale.

30. The Dorchester County Clerk of Court 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 20 days after the date of sale, then the Dorchester County Clerk of Court may advertise the said Property for sale on the next or some other subsequent sales day at the risk of the highest bidder and so forth from time to time thereafter until a full compliance shall be secured.

31. 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 Clerk of Court only the amount of the costs and expenses crediting the balance of the bid on Plaintiff's indebtedness.

32. The Clerk of Court will apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of the costs and expenses of this sale and to any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court;

NEXT: To the payment to Plaintiff or Plaintiff's attorney of the amount of Plaintiff's debt and interest accrued thereon (including attorney's fees and costs) or so much thereof as the purchase money will pay on the same.

NEXT: Any surplus should be held pending further Order of this Court.

33. If a deficiency exists after the sale, an Order of Deficiency Judgment may be entered without further notice or hearing.

34. In the event the successful bidder is someone other than the Defendant(s) in possession of the Property, the Sheriff of this 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 someone other than the Defendant in possession of the Property, and the occupants have voluntarily vacated the Property or have been ejected from the Property leaving furniture, fixtures or other items not subject to Plaintiff's Mortgage, the Purchaser is authorized to remove from the Property all furnishing, fixtures and other items not subject to Plaintiff's Mortgage. The personal property, being deemed abandoned, shall be removed by the Purchaser or its agents from the Property by placing said personal property on the public street or highway or by any other means.

36. The Defendant named herein, and all persons whosoever claiming under Defendant, are forever barred and foreclosed or 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) S.C.R.C.P., the Clerk of Court shall serve a notice of entry of this Judgment of Foreclosure and Sale 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 the first-named Defendant(s), 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 this 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.

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

40. The following is a description of the Property herein ordered to be sold:

ALL that certain piece, parcel or lot of land, together with the buildings and improvements thereon, situate, lying and being in the County of Dorchester, State of South Carolina, and being shown and designated as Tract 5, 0.848 Acres, more or less, to include that certain Champion Modular Home containing 2,400 sq. ft., more or less, as shown on that certain Plat of Tract 5 by James GH. Pennington, PLS, dated June 10, 2003, recorded August 28, 2003 in Plat Book K, Page 73, and having such metes and boundings as reference to said plat will show, all measurements being a little more or less.

ALSO: 2003 Champion Modular Home, 2,400 Sq. Ft., more or less

BEING the same property conveyed to Curtis R. Tucker by deed of N.M. Enterprise, LLC dated October 3, 2013 and recorded October 9, 2013 in the RMC Office for Dorchester County, Book 9041 at Page 344. Thereafter, the property was conveyed to Curtis Tucker and Ashley Tucker by virtue of a Quit Claim Deed recorded in Book 10314 at Page 117 on July 7, 2016 and re-recorded in Book 10422 at Page 78.

TMS: 153-10-00-014

The Honorable James E. Chellis
Master in Equity for Dorchester County

October _____, 2019
St. George, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF DORCHESTER
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019-CP-18-302

Farmers & Merchants Bank of South Carolina
 PLAINTIFF(S)

Curtis R. Tucker, et. al.
 DEFENDANT(S)

Submitted by: <u>Elizabeth A. Blackwell, Esq.</u>	Attorney for: <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self Represented Litigant
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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. See Page 2/3 for additional information.
- 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 _____
- 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 :

As required by statute, a foreclosure sale has been or will be scheduled which will officially end this case. If a deficiency judgment remains demanded, a separate Order for Deficiency Judgment will be entered after completion of the foreclosure sale.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if 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)
Farmers & Merchants Bank of South Carolina	Curtis R. Tucker	TO BE DETERMINED

If applicable, describe the property, including tax map information and address, referenced in the order:

ALL that certain piece, parcel or lot of land, together with the buildings and improvements thereon, situate, lying and being in the County of Dorchester, State of South Carolina, and being shown and designated as Tract 5, 0.848 Acres, more or less, to include that certain Champion Modular Home containing 2,400 sq. ft., more or less, as shown on that certain Plat of Tract 5 by James GH. Pennington, PLS, dated June 10, 2003, recorded August 28, 2003 in Plat Book K, Page 73, and having such metes and boundings as reference to said plat will show, all measurements being a little more or less.

ALSO: 2003 Champion Modular Home, 2,400 Sq. Ft., more or less

BEING the same property conveyed to N.M. Enterprise, LLC herein by deed of Gary A. Brown August 8, 2013 and recorded in the ROD Office for Dorchester County on August 13, 2013 in Book 8962, at Page 10.

ALSO BEING the same property conveyed to Curtis R. Tucker herein by deed of N.M. Enterprise, LLC dated October 3, 2013 and recorded October 9, 2013 in the RMC Office for Dorchester County, Book 9041 at Page 344.

TMS: 153-10-00-014

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/Master in Equity/Special Referee Judge Code Date
For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Elizabeth A. Blackwell (SC Bar #78756)
 Turner Padgett Graham & Laney P.A.
 40 Calhoun Street, Suite 200 (29401)
 PO Box 22129
 Charleston, SC 29413

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Ashley Tucker
 155 Shady Lane
 Summerville, SC 29485
Power of Attorney for Curtis R. Tucker

Kelly Woody, Esquire
 Post Office Box 6432
 Columbia, SC 29260
Guardian Ad Litem for Curtis R. Tucker

Current Resident
 155 Shady Lane
 Summerville, SC
 29485

SC Housing Corp.
 c/o Sarah Volk Martinez, Esq.
 300-C Outlet Pointe Blvd.
 Columbia, SC 29210
Attorney for SC Housing Corp., acting through South Carolina State Housing Finance and Development Authority's South Carolina Homeownership Program

South Carolina Federal Credit Union
 6256 Rivers Ave.
 North Charleston, SC 29406

Curtis R. Tucker
 PA DOC No. NF2592
 SCI Fayette
 50 Overlook Drive
 Labelle, PA 15401

Curtis R. Tucker
 PA DOC No. NF2592
 Smart Communication
 Post Office Box 33028
 St. Petersburg, FL 33733



Dorchester Common Pleas

Case Caption: Farmers & Merchants Bank Of South Carolina VS Curtis R. Tucker ,
defendant, et al
Case Number: 2019CP1800302
Type: Master/Order/Foreclosure & Sale and Form 4

So Ordered

s/James E. Chellis, Master in Equity, SCJD#3078

Electronically signed on 2019-10-29 12:11:11 page 11 of 11

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SC Court of Appeals

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Farmers & Merchants Bank Of South Carolina
PLAINTIFF(S)

Curtis R. Tucker et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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 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:

A copy of the Master's Order of Foreclosure and Notice of Sale that was entered on the 29th day of October, 2019, was mailed by first class mail on the 29th day of October, 2019, to any non e-filing attorneys of record or to pro se' parties (as listed on the NEF for that Master's Order) to the addresses listed on the Form 4 that was filed along with said Master's Order.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/30/2019 .

South Carolina State Housing Finance
Development Authoritys South Carolina Homeownership
Employment Lending Program
South Carolina Federal Credit Union
Ashley Tucker for Ashley Tucker
Ashley Tucker for Ashley Tucker
Curtis R. Tucker for Kelley Woody

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.



Dorchester Common Pleas

Case Caption: Farmers & Merchants Bank Of South Carolina VS Curtis R. Tucker ,
defendant, et al
Case Number: 2019CP1800302
Type: Order/Electronic Form 4

So Ordered

s/Cheryl Graham, Clerk of Court