

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE CIRCUIT COURT

Joe Hand Promotions, Inc.,

Case No. 2019-CP-42-01210

Plaintiff,

vs.

Christopher Michael Ruegsegger a/k/a Chris
Ruegsegger, Founders Federal Credit Union
and Springleaf Financial Services,

Defendants.

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DEC 19 2019
SC Court of Appeals

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTION TO RECONSIDER, ALTER OR
AMEND**

THIS MATTER COMES BEFORE THE COURT upon *Plaintiff's Motion to Reconsider, Alter or Amend the Court's Order Granting Founders Federal Credit Union's Motion to Reconsider* filed on October 3, 2019 (the "Joe Hand Motion") whereby the Plaintiff seeks the Court's reversal of the *Order Granting Motion to Reconsider, Alter or Amend* in favor of Founders Federal Credit Union ("Founders") entered on September 24, 2019 (the "Order"). The Joe Hand Motion is filed pursuant to Rule 59(e), SCRCP, and asserts that the Court erred in failing to apply the doctrine of superior diligence to elevate Plaintiff Joe Hand Promotions, Inc.'s ("Joe Hand") judgment lien recorded on February 18, 2015, to first priority over Founders' judgment lien recorded on June 4, 2014, as to the subject real property (the "Subject Property"). The Court conducted a hearing on the Joe Hand Motion on November 12, 2019. Present at the hearing was Suzanne Taylor Graham Grigg, attorney for Founders, and Leonard R. Jordan, Jr., attorney for Joe Hand.

Based on the pleadings filed in this case, the arguments of counsel presented at the hearing, and applicable law, the Court hereby grants, in part, and denies, in part, the requested relief. The Order is hereby amended as follows:

In the initial Foreclosure Order entered on July 24, 2019, the Court elevated Joe Hand's

judgment lien on the Subject Property (as defined in the Foreclosure Order) to first priority due to the doctrine of superior diligence. The Court ordered that the doctrine of superior diligence allowed the third-in-line judgment lien to be elevated to a first priority lien due to the diligent efforts of Joe Hand in pursuing and protecting its lien. Based on the well-established case law, the Court erred in reprioritizing the judgment liens because those judgment liens are statutorily fixed as of the date of recording and attach to the Subject Property as of each respective date. SC Code Ann. § 15-35-810. In *FCX, Inc. v. Long Meadow Farms, Inc.*, the Supreme Court of South Carolina limited the application of superior diligence and noted:

If the [judgment debtor] had held legal title to the real estate, then, under established law, the judgments would constitute a lien upon the real estate in the order of their filing and there would be no question of priority.

269 S.C. 202, 206, 237 S.E.2d 50, 52 (1977). In reversing the trial court, the Supreme Court in *FCX* held:

While recognizing the equitable principle stated in *Ex Parte Roddey*, we are of the opinion that it should be sparingly applied. The case at bar does not involve the uncovering of an unknown asset. The trial judge states in his order that 'it can be clearly inferred that all parties in doing business with Long Meadow Farms were aware of the basic structure by which Long Meadow Farms had acquired the property of the Herlongs.' The record indicates that FCX expended considerable sums in making current payments to the Herlongs in order to prevent forfeiture of the sales contract, and the order of the trial court gives FCX full reimbursement, prior to payment of any judgment creditor, for all sums so expended.

While the action of FCX in preserving this asset is to be commended, we do not feel that it is sufficient justification for granting it a preference in the payment of its judgment not otherwise sanctioned by law.

Id. at 208-09, 237 S.E.2d at 53.

Furthermore, the actions and efforts of Joe Hand fail to warrant application of the

“Superior Diligence Doctrine” or the “Creditor Diligence Doctrine,” which appears to be used interchangeably. *See id.*; *see also Ex Parte Roddey*, 171 S.C. 489, 172 S.E. 866 (1934).

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Foreclosure Order is hereby amended to reflect the following judgment lien priorities, as were statutorily fixed as of the date of recording, and any net sale proceeds from a sale of the Subject Property should be disbursed in the following order:

- 1. First Priority: Springleaf Financial Services
- 2. Second Priority: Founders Federal Credit Union
- 3. Third Priority: Joe Hand Promotions, Inc

IT IS FURTHER ORDERED that the Subject Property is not an “undiscovered asset,” consists of real property that was known to the public upon search of public records, and thus the equitable doctrine of superior diligence cannot be used by Joe Hand to elevate its third-in-line judgment lien to first priority;

IT IS FURTHER ORDERED that the efforts and actions of Joe Hand do not warrant implication of the doctrine of superior diligence;

IT IS FURTHER ORDERED that any party advancing funds to redeem the Subject Property from the tax sale shall be reimbursed from sale proceeds prior to disbursement to judgment creditors;

IT IS FURTHER ORDERED that due to Joe Hand’s due diligence in prosecuting this case, it shall be reimbursed for its actual costs in filing this case, to wit:

filing fees	\$180.32
title work	\$45.00
service of process	\$130.00
referral fee	\$125.00

motion fee	\$31.74
motion fee	\$31.74
reference fee (supp)	\$125.00
publication costs	\$360.00

These costs shall be paid from sale proceeds, but only to the extent that a judicial sale occurs, prior to disbursement to judgment creditors;

IT IS FURTHER ORDERED that Joe Hand's attorney, Leonard R. Jordan, Jr., Esq. shall be awarded attorney's fees in the amount of Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00) and shall be paid from sale proceeds, but only to the extent that a judicial sale occurs, prior to disbursement to judgment creditors; and

IT IS FURTHER ORDERED that the foreclosure sale previously scheduled for September 4, 2019, is cancelled and that any party desiring to sell the Subject Property shall file a *Motion to Reset Sale* with the Court.

AND IT IS SO ORDERED.

[JUDGE'S SIGNATURE TO FOLLOW]



Spartanburg Common Pleas

Case Caption: Joe Hand Promotions, Inc. VS Christopher Michael Ruegsegger ,
defendant, et al
Case Number: 2019CP4201210
Type: Master/Order/Other

It is So Ordered

s/Judge Gordon G Cooper-3065