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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

U.S. Bank, National Association, as trustee for the Holders of The Banc of America Funding Corporation, 2008-FT1 Trust, Mortgage Pass-Through Certificates, Series 2008-FT1,

PLAINTIFF,

vs.

Rhonda Lewis Meisner a/k/a Rhonda L. Meisner; Bank of America, N.A.; and SCBT,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

C/A NO: 2014-CP-40-2063

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

RECEIVED

JAN 16 2020

SC Court of Appeals

TO: Magalie A. Creech
FINKEL LAW FIRM LLC
Attorneys for the Plaintiff

ANSWERING DEFENDANTS
Edward L. Grimsley, Esquire
Attorney for Defendant SCBT

Jacob S. Barker, Esquire
*Attorney for Defendant Bank of
America, N.A.*

Rhonda L. Meisner
Defendant Pro Se

THIS MATTER having been opened to the Court upon the filing of the Motion for Summary Judgment by U.S. Bank, National Association, as trustee for the Holders of The Banc of America Funding Corporation, 2008-FT1 Trust, Mortgage Pass-Through Certificates, Series 2008-FT1 for the foreclosure of a residential mortgage on property owned by Rhonda Lewis Meisner; the Court having considered the facts and law cited in the Motion, Plaintiff's Affidavit in Support of Summary Judgment together with the supporting exhibits annexed thereto; the Court having conducted a hearing on the Motion on October 29, 2019 at which counsel for Plaintiff and Defendant Rhonda Lewis Meisner, *Pro Se*, were present; the Court having considered the oral argument of the parties; there being no material facts in dispute and good and sufficient cause having been shown.

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. 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 Non-Owner Occupancy, the property is not owner occupied and 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. Pursuant to the Administrative Order of the Chief Justice, 2009-05-22-01, the loan that is subject of this action is not subject to modification under the Home Affordable Modification Program (HMP), because the program terminated on December 31, 2016 pursuant to Section 709(b) of the Consolidated Appropriation Act, P.L. 114-113.
3. The Lis Pendens was filed on March 31, 2014.
4. A Second Lis Pendens was filed on March 18, 2019.
5. The Summons and Complaint were filed on March 31, 2014.
6. Service was made upon the Defendants named in this Report as is shown by the proof of service filed herein.
7. 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.
8. According to the Affidavit filed herein, the Defendant Rhonda L. Meisner 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.
9. Jacob S. Barker, Esquire, attorney for Defendant Bank of America, N.A. ("BANA"), served an Answer on Plaintiff which is on file herein. Defendant BANA admits that it has an interest in the subject property by virtue of that certain mortgage from Rhonda Lewis Meisner, dated September 19, 2005, and recorded September 23, 2005, in Book 1101 at Page 2609.
10. Edward L. Grimsley, Esquire, attorney for Defendant SCBT, served an Answer on the Plaintiff, which is on file herein. Defendant SCBT admits that it has an interest in the subject property by virtue of that certain mortgage from Rhonda Lewis Meisner, dated November 26, 2007, and recorded December 18, 2007, in Book 1384 at Page 3706. Defendant SCBT admits that it also has an interest in the subject property by virtue of a deficiency judgment against Rhonda Meisner, filed August 8, 2012, in case no. 2011-CP-40-6318, in the amount of \$34,165.22.

11. Rhonda L. Meisner, Defendant *Pro Se*, served an Answer and Counterclaim on the Plaintiff, which is on file herein. The Answer asserts counterclaims against Plaintiff for a declaratory judgment, breach of contract, breach of contract accompanied by fraudulent act, and abuse of process, in addition to affirmative defenses. *Pro Se* Defendant Meisner's counterclaims for declaratory judgment, breach of contract, and breach of contract accompanied by fraudulent act are also asserted as crossclaims against Defendant Bank of America, N.A ("BANA"). *Pro Se* Defendant Meisner further asserts crossclaims against Defendant BANA for violation of S.C. Code § 29-3-310, and against Defendant SCBT for slander of title.

12. Plaintiff filed a Motion for Summary Judgment on April 22, 2016, to which Defendant BANA filed a Notice of Joinder on May 5, 2016. Plaintiff refiled its Motion for Summary Judgment on April 15, 2019.

13. In the interim, *Pro Se* Defendant Meisner filed an appeal of the Order Striking her Jury Demand and for Mandatory Reference on May 12, 2016. The Court of Appeals dismissed the appeal by Order filed on February 13, 2019. *Pro Se* Defendant Meisner petitioned the Court of Appeals for a rehearing on February 28, 2019. The Court of Appeals denied the Petition for Rehearing on March 21, 2019. *Pro Se* Defendant Meisner then filed a Petition for Certiorari with the Supreme Court on April 20, 2019, which was denied by Order filed on June 28, 2019. On July 3, 2019, the Remittitur from the Court of the Appeals was filed.

14. First, the Court notes that it possesses jurisdiction to finally determine all matters in the case pursuant to the Order Striking Defendant's Jury Demand and for Mandatory Reference to which *Pro Se* Defendant Meisner filed an appeal. At hearing, *Pro Se* Defendant Meisner argued that this Court lacked subject matter jurisdiction to hear the Motion for Summary Judgment because it was filed before the remittitur from the Court of the Appeals was issued. This argument is without merit.

As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision. This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court. The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal. Rule 241(a), SCACR.

"The jurisdiction of the circuit court to *hear* matters after issuance of the remittitur is well established. For instance, once the remittitur is issued from an appellate court, the circuit court acquires jurisdiction to enforce the judgment and take any action consistent with the appellate court's ruling." *Martin v. Paradise Cove Marina, Inc.*, 348 S.C. 379, 385, 559 S.E.2d 348, 351-52 (emphasis added); see

also *Muller v. Myrtle Beach Golf & Yacht Club*, 313 S.C. 412, 438 S.E.2d 248 (1993). In *Moore v. North American Van Lines*, 319 S.C. 446, 462 S.E.2d 275 (1995), the South Carolina Supreme Court held that despite the issuance of the remittitur and the fact that the case was not expressly “remanded” to the circuit court, the circuit court was still vested with jurisdiction to hear the appellant’s motion for restitution. *Moore*, 319 S.C. at 448, 462 S.E.2d at 276.

Here, the appealed Order Striking Defendant’s Jury Demand and for Mandatory Reference conferred this Court with “all power and authority which a Circuit Judge sitting without a jury would have, including but not limited to, making findings of fact and conclusion of law; directing entry of final judgment; [and] hearing any issues, including motions. . . .” The appeal was dismissed on February 13, 2019, and petitions for rehearing to the Court of Appeals and for certiorari to the Supreme Court were denied. The propriety of this forum to hear the case is made clear by both superior courts. It is irrelevant that Plaintiff refiled its Summary Judgment Motion between the time the appeal was dismissed and the remittitur was issued; the Motion was heard after the remittitur, and this Court has been vested with authority to dispose of all matters not affected by the appeal since the appealed Order was entered. The issue on appeal was whether *Pro Se* Defendant Meisner’s counterclaims were compulsory or permissive in nature and, concomitantly, whether she was entitled to a trial by jury. The authority cited by the Court of Appeals stands for the proposition that a party is only entitled to a jury trial in an equitable action if the counterclaim is logically related to the underlying suit. The dismissal of the Appeal establishes that *Pro Se* Defendant Meisner is not entitled to a jury trial.

15. “Once the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is a genuine issue of fact remaining for trial.” *Sides v. Greenville Hosp. Sys.*, 362 S.C. 250,255,607 S.E.2d 362, 364 (Ct. App. 2004). “[A] ssertions as to liability must be more than mere bald allegations made by the non-moving party in order to create a genuine issue of material fact.” *Jackson v. Bermuda Sands, Inc.*, 383 S.C. 11, 17, 677 S.E.2d 612, 616 (Ct. App. 2009). “The evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party.” *Fleming v. Rose*, 350 S.C. 488, 493-94, 567 S.E.2d 857, 860 (2002).

16. The Court has thoroughly considered the Affidavits submitted in support of the Motion and in opposition thereto, together with the discovery responses and deposition transcript of *Pro Se* Defendant Meisner in the record, and the arguments of the parties at hearing. In the light most favorable to *Pro Se* Defendant Meisner, this Court finds that there is no genuine issue of material fact in dispute and as such the matter is appropriate for disposition under Rule 56, SCRPC.

17. Specifically, there is no dispute that the monthly payments are in default as of July 12, 2013, and that *Pro Se* Defendant Meisner is required to make payments pursuant to the terms of the Note. Plaintiff is the holder of the original Note, which is endorsed in blank, and is the assignee of the original

mortgagee. Further, *Pro Se* Defendant Meisner admits that she never set up an auto-payment upon the transfer of serving to Nationstar Mortgage, LLC, and that the default in payments occurred because the prior servicer Bank of America was no longer drafting payments from her account. These are material, undisputed facts which show that Plaintiff is entitled to the foreclosure of its mortgage. Moreover, these facts are dispositive of *Pro Se* Defendant Meisner's counterclaims, which are entirely unsubstantiated by any evidence in the record. Indeed, her misunderstanding of the loan instruments does not create a triable issue of fact. For these reasons and as further set forth below, summary judgment is granted in Plaintiff's favor on its cause of action for foreclosure and as to the counterclaims asserted by *Pro Se* Defendant Meisner.

18. The Court also concludes that based on Defendant BANA's Joinder to Plaintiff's Motion for Summary Judgment and the commonality of facts underlying those claims, Defendant BANA is entitled to summary judgment in its favor on the crossclaims asserted by *Pro Se* Defendant Meisner.

19. The crossclaims asserted by *Pro Se* Defendant Meisner against Defendant SCBT have no effect upon the disposition of Plaintiff's foreclosure herein, and shall be adjudicated by separate order. Such relief shall be junior and subordinate to Plaintiff's first mortgage lien.

20. For value received, Rhonda L. Meisner made, executed and delivered a Note dated August 13, 2003, promising thereby to pay to the order of Bank of America, N.A., the sum of \$61,516.00, 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.

21. To better secure the payment of the Note described above, the said made, executed and delivered to Bank of America, N.A., a Mortgage in writing, dated August 13, 2003, covering real property in Richland County, which is the same as that described in the Complaint. The Mortgage was filed on August 18, 2003, and is of record in the Office of the Register of Deeds for Richland County in Book 838 at Page 2632.

22. This Mortgage constitutes a first mortgage lien on the subject property and is a Purchase Money Mortgage.

23. By Assignment of Mortgage dated April 3, 2014, and recorded May 2, 2014, in Book 1943 at Page 1234, in the Office of the Register of Deeds for Richland County, Bank of America, N.A. assigned the subject Mortgage to U.S. Bank, National Association, as trustee for the Holders of The Banc of America Funding Corporation, 2008-FT1 Trust, Mortgage Pass-Through Certificates, Series 2008-FT1, the present lienholder and Plaintiff herein.

24. Due solely to inadvertence and scrivener's error, the legal description in Plaintiff's mortgage and the vesting deed recorded August 18, 2003 in Book 838 at Page 2627 incorrectly reference the plat of the subject property as being dated May 9, 1979 instead of the correct date of March 20, 1979.

25. The titleholder of record in and to the subject property as of the filing of the Lis Pendens in this action is Rhonda Lewis Meisner.

26. 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.

27. 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 \$22,492.84 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. Plaintiff has advanced \$16,184.99 to its counsel as partial payment of the attorney's fee, and this amount is included in the Legal Fees and Costs. Plaintiff has advanced \$2,429.85 to its counsel as partial payment of its costs of collection, and this amount is included in the Legal Fees and Costs.

28. 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 12, 2013	\$26,945.74
Interest from June 12, 2013 through October 29, 2019 @ 5.40%	9,284.69
Suspense	(850.94)
Property Inspection Costs	783.00
BPO Costs	95.00
Legal Fees and Costs (awarded and paid)	18,614.84
Hazard Insurance Advances	3,264.00
Tax Advances	22,006.21
Costs of collection prior to hearing	200.00
Attorney Fees (awarded but unpaid)	3,878.00
TOTAL DEBT secured by Note and Mortgage, including interest to date shown	\$84,220.54

Interest for the period from October 29, 2019 as shown above at the rate of 5.40% 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 5.40% on the total judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the Mortgage.

29. 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.

30. The following Defendants claim, or may claim a lien upon or interest in the subject property as follows:

- a. Bank of America, N.A., by virtue of a Mortgage from Rhonda Lewis Meisner, dated September 19, 2005, and recorded September 23, 2005, in Book 1101 at Page 2609, in the amount of \$30,364.00.
- b. SCBT, by virtue of:
 - i. a Mortgage from Rhonda Lewis Meisner, dated November 26, 2007, and recorded December 18, 2007, in Book 1384 at Page 3706, in the amount of \$50,000.00.
 - ii. a deficiency judgment against Rhonda Meisner, filed August 8, 2012, in case no. 2011-CP-40-6318, in the amount of \$34,165.22.

The interest or liens of the above Defendants, if any, are junior and subordinate to the Plaintiff's Mortgage.

IT IS THEREFORE ORDERED:

1. Plaintiff's Motion for Summary Judgment against Defendant Rhonda L. Meisner.
2. Judgment is granted in favor of Plaintiff on all counterclaims and defenses asserted by Defendant Rhonda L. Meisner.
3. Judgment is granted in favor of Defendant BANA on all crossclaims asserted by Defendant Rhonda L. Meisner.
4. The legal description in Plaintiff's mortgage and the vesting deed recorded August 18, 2003 in Book 838 at Page 2627 are hereby reformed to reference the plat of the subject property as being dated March 20, 1979.
5. There is due to Plaintiff on the obligation and Mortgage set forth in the Complaint the sum of **\$84,220.54**, 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.
6. 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 5.40%.
7. 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

aforsaid, together with the costs and disbursements of this action. If such debt is paid in full, then the foreclosure sale shall be cancelled.

8. 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 Richland County Courthouse, Columbia, 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 20 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 5.40%.

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.

9. 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.

10. 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 20 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.

11. 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.

12. 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.

13. **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 Richland 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.

14. **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.

15. **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.

16. **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.

17. **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.

18. 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).

19. 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 Rhonda L. Meisner to Bank of America, N.A. dated August 13, 2003 and recorded in the Office of the Register of Deeds for Richland County on August 18, 2003 in Book 838 at Page 2632.

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

All that certain piece, parcel or lot of land, situate, lying and being on the southern side of Koon Store Road (S-40-61), North of the City of Columbia, in the County of Richland, State of South Carolina, being shown and delineated as Lot No. 9, containing one acre, on a plat prepared for Eberdease Thomas by Douglas E. Platt, Sr., Reg. Land Surveyor, dated March 20, 1979 and recorded in Plat Book Y at page 4038; said lot being bounded and measuring as follows: On the North by Koon Store Road measuring thereon 100 feet; on the East by Lot 10 measuring thereon 435.6 feet; on the South by property of Denny Hills North measuring thereon 100 feet; and on the West by Lot 8, property of Eberdease Thomas, measuring thereon 435.6 feet; be all measurements a little more or less; subject to easements and restrictions of record.

TMS Number: 12100-04-23

PROPERTY ADDRESS: 406 Koon Store Rd, Columbia, SC 29203

This being the same property conveyed to Rhonda Lewis Meisner by deed of Federal Home Loan Mortgage Corporation, dated August 11, 2003 and recorded in the Office of the Register of Deeds for Richland County on August 18, 2003 in Deed, Book 838 at Page 2627.

ELECTRONIC SIGNATURE FOLLOWS

Joseph M. Strickland

Master in Equity for Richland County

Columbia, South Carolina

_____, 2019