

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Branch Banking and Trust Company,

Plaintiff,

v.

Wilton H. Cain; Cassandra M. Durrah-Cain;  
Liberty Hall Residential Property Owners  
Association, Inc.;

Defendants.

(504335-02111 HPW)

Harriet Pollitt Wallace, Esquire  
Attorney for the Plaintiff

Joseph E. DaPore, Esquire  
Attorney for Liberty Hall Residential Property Owners Association, Inc.

Wilton H. Cain  
Pro Se Defendant

Cassandra M. Durrah-Cain  
Pro Se Defendant

IN THE COURT OF COMMON PLEAS

DOCKET NO. 10-CP-08-3514

JUDGMENT OF FORECLOSURE AND SALE  
Deficiency Judgment Demanded against Wilton H.  
Cain and Cassandra M. Durrah-Cain

FILED  
2011 JUN 30 AM 9:53  
MARY R. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, SC

RECEIVED

FEB 13 2013

SC COURT REPORTERS

A hearing was held June 16, 2011 at 9:30 a.m. Evidence was presented, which is reported herewith, and from the evidence, I find and conclude as follows:

FINDINGS OF FACT:

1. The Lis Pendens was filed on October 4, 2010.
2. The Summons and Complaint were filed on October 4, 2010.
3. Service was made upon all Defendants as shown by the proofs of service filed herein.
4. The Defendants Wilton H. Cain, Cassandra M. Durrah-Cain are in default as shown by affidavit filed herein.
5. The Defendants Wilton H. Cain and Cassandra M. Durrah-Cain are not in the

Military Service of the United States of America, as contemplated under The Servicemembers Civil Relief Act, 50 U.S.C. § 501 et. seq. as shown by affidavit, certificate or order filed herein.

6. No Defendant raised any issues related to Plaintiff's standing to prosecute this action.

7. Pursuant to the South Carolina Supreme Court Administrative Order 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 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 South Carolina Supreme Court Administrative Order dated May 22, 2009, Plaintiff's attorney has not received a counter affidavit from any Defendant.

8. Liberty Hall Residential Property Owners Association, Inc. filed an answer through its attorney, Joseph E. DaPore.

9. All Pro Se Defendants and all attorneys of record were notified of the time, date, and place of the hearing by letter and certificate of mailing of record herein.

10. Wilton H. Cain and Cassandra M. Durrah-Cain for value received, made, executed and delivered a Fixed Rate Note dated September 19, 2007, promising thereby to pay to Plaintiff's predecessor the sum of \$174,988.00 with interest at a fixed rate of 6.25% per annum. Other terms and conditions are stated in the Fixed Rate Note, of record herein.

11. To better secure the payment of the Fixed Rate Note described above, Wilton H. Cain and Cassandra M. Durrah-Cain made, executed, and delivered to CTX Mortgage Company, LLC a certain real estate Mortgage in writing, dated September 19, 2007 covering real property in Berkeley County, which is the same as that described in the Complaint. This Mortgage was filed on September 20, 2007, and is of record in the Office of RMC/ROD in Book 6868 at Page 165. This Mortgage was subsequently assigned to Mortgage Electronic Registration Systems, Inc., its successors and assigns (MIN# 100159969913899368) by assignment dated September 19, 2007 and recorded on September 20, 2007 in Book 6868 at Page 186. Subsequently, it was assigned to Branch Banking and Trust Company by assignment dated June 13, 2011 and subsequently recorded.

12. This Mortgage constitutes a purchase money first priority lien on the subject property, subject only to ad valorem taxes or other liens given priority by statute.

13. 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.

14. Any notice required by the terms of the Mortgage or by state or federal statutes was given to the applicable Defendants prior to the commencement of this action.

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

16. The sum of ~~\$6,929.00~~ <sup>5629.00 REW</sup> 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 Fixed Rate 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 final adjudication contemplates completion of this matter within a reasonable time and does not include exceptional circumstances delaying conclusion beyond the normal time.

17. According to Plaintiff's accounting, after all payments received by Plaintiff have been credited to the subject loan, the amount due and owing on the Fixed Rate Note, with interest at the rate provided in the Fixed Rate Note, advances made by Plaintiff, and other costs and expenses of the action, including a reasonable attorney fee, all secured by the Fixed Rate Note and Mortgage, is as follows:

- (a) Principal due November 1, 2009..... \$170,733.63
- (b) Interest from October 1, 2009 through  
June 16, 2011 at 6.25% per annum ..... \$18,223.33
- (c) Allowable Escrow Advances ..... \$3,348.18

Private Mortgage Insurance - \$1,856.30  
19 Payments of \$97.70

Property Tax - \$718.88  
11/13/09 - \$142.58  
11/01/10 - \$576.30

Hazard Insurance - \$773.00

(d)	Allowable Corporate Advances .....	\$3,327.00	
	Paid Attorney Fees - \$1,325.00		
	BPO/Photos - \$224.00		
	Property Preservation - \$1,778.00		
(e)	Costs of collection prior to hearing (service, filing, etc.).....	\$705.00	
	Service - \$405.00		
	Master Fee - \$125.00		
	Motion Fee - \$25.00		
	Filing Fee - \$150.00		
(f)	Abstract or Title Search .....	\$550.00	
	Title Search - \$425.00		
	Title Search - \$125.00		
(g)	Late Charges .....	\$269.35	
(h)	Private Mortgage Insurance Due but not yet advances .....	\$195.40	
(i)	Attorney fee (awarded herein, but unpaid, through 6-15-11) .....	\$4,304.00	
(j)	Anticipated attorney fee for hearing and post judgment work.....	<del>\$1,500.00</del>	REN
	TOTAL debt secured by Fixed Rate Note and Mortgage, including interest to date shown.....	\$202,960.89	REN
		<b>\$ 201,660.89</b>	

Interest shall accrue to the above stated "Total Debt" after the date of judgment at the rate of 6.25% per annum (pursuant to the terms of the Fixed Rate Note and purchase money first Mortgage). Accrued interest shall be added to the "Total Debt" and shall comprise the amount of the Plaintiff's debt secured by the purchase money first Mortgage through the date to which such interest is computed.

18. Plaintiff is seeking the usual foreclosure of the purchase money first mortgage and has expressly demanded the right to a personal or deficiency judgment pursuant to S.C. Code Ann. §29-3-660 demanded against Wilton H. Cain and Cassandra M. Durrah-Cain. 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.

19. The following Defendants 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 through any such lien or legal interest a claim to the surplus at a hearing subsequent to the sale, in accordance with Rule 71(c) South Carolina Rules of Civil Procedure.

The said Defendants and such liens or legal interests are as follows:

- a. Liberty Hall Residential Property Owners Association, Inc. by virtue of any lien enforceable assessments claimed as provided for in the Declaration of Covenants, Conditions, and Restrictions and any amendments thereto.

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IT IS THEREFORE ORDERED:

20. Plaintiff has fully complied with The South Carolina Supreme Court Administrative Order dated May 22, 2009, and the foreclosure action may proceed.

21. The property is not owner-occupied, and therefore, does not qualify for Foreclosure Intervention pursuant to the South Carolina Supreme Court Administrative Order dated May 11, 2011. A Certificate of Non-Owner Occupancy has been filed herein.

22. There is due on the Fixed Rate Note and purchase money first Mortgage set forth in the Complaint the principal sum of \$170,733.63 as set out 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 and other allowable advances.

23. Plaintiff shall have judgment demanded against Wilton H. Cain and Cassandra M. Durrah-Cain. 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.

24. The amount due in the preceding paragraph (the "Final Total Debt" as set out in the Findings of Fact *supra*) shall accrue interest at the rate of the respective note rate per annum and together with such 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. §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.

26. The Defendants liable for the aforesaid judgment debt of the Fixed Rate Note and Mortgage including interest at the rate of 6.25% 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 with 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 hereinafter shall be sold at public auction at the Berkeley County

Courthouse, in the City of Moncks Corner, 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 expense of the action and then to plaintiff's debt. Should the successful bidder at the regularly conducted sale fail or refuse either to 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. The sale shall be subject to taxes and assessments, existing easements 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.

d. Purchaser to pay for deed preparation, costs of recording the deed and the satisfaction of mortgage, 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. 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 Master in Equity 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 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.

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 Master in Equity only the amount of the costs and expenses crediting the balance of the bid on Plaintiff's indebtedness.

32. The Master in Equity 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 (including a reasonable attorney fee) or so much thereof as the purchase money will pay on the same; After crediting the proceeds of sale, net of any commission on sale, an Order for Deficiency Judgment shall be entered without further notice or hearing.

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

33. In the event the successful bidder is someone other than the Defendants in possession of the subject property, the Sheriff of Berkeley County, upon receipt of a Writ of Assistance or other order of ejection, is authorized 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 such peaceable possession.

34. In the event the successful bidder is other than the Defendants in possession of the subject property and the occupants have voluntarily vacated the property or have been ejected from the property leaving furnishings, 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 any other means.

35. The Defendants named herein, and all persons whosoever claiming under Defendants, is 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.

36. 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.

37. The deed of conveyance made pursuant to the foreclosure sale shall contain the names of only the first-named Plaintiff and the first-named Defendants, and the Defendants 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.

38. 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.

39. The following is a description of the property herein ordered to be sold:

All that certain piece, parcel or lot of land, situate, lying and being in County of Berkeley, State of South Carolina, shown and designated as Lot 704, on a plat entitled "SUBDIVISION PLAT SHOWING PHASE 10A, (39.298 AC), MULBERRY PARK, A PORTION OF TRACT E1 OF THE LIBERTY HALL TRACT, PROPERTY OF CENTEX HOMES, A NEVADA GENERAL PARTNERSHIP, LOCATED IN THE CITY OF GOOSE CREEK, BERKELEY COUNTY, SOUTH CAROLINA" made by Trico Engineering Consultants, Inc., dated June 9, 2006, and recorded January 3, 2007, in Plat Cabinet R, Pages 243-A and 243-B, in the RMC Office for Berkeley County, South Carolina. Said lot having such size, shape, dimensions, buttings, boundings and location as will by reference to said plat more fully appear.

Said property is subject to all applicable covenants, conditions, restrictions, limitations, obligations and easements of record.

This being the same property conveyed to Wilton H. Cain and Cassandra M. Durrah-Cain by deed of Centex Homes dated September 19, 2007 and recorded on September 20, 2007 in Book 6868 at Page 155 in the Office of the ROD for Berkeley County, South Carolina.

Property Address: 259 Clayburne Drive  
Goose Creek, SC 29445

TMS# 244-03-04-016

Robert E. Watson

Robert E. Watson  
Master in Equity for Berkeley County

<sup>28</sup>  
6/28, 2011  
Moncks Corner, South Carolina

NOTICE OF SALE

BY VIRTUE of a decree heretofore granted in the case of: Branch Banking and Trust Company vs. Wilton H. Cain; Cassandra M. Durrah-Cain; Liberty Hall Residential Property Owners Association, Inc.; C/A No. 10-CP-08-3514, The following property will be sold on August 3, 2011, at 11:00 AM at the Berkeley County Courthouse to the highest bidder:

All that certain piece, parcel or lot of land, situate, lying and being in County of Berkeley, State of South Carolina, shown and designated as Lot 704, on a plat entitled "SUBDIVISION PLAT SHOWING PHASE 10A, (39.298 AC), MULBERRY PARK, A PORTION OF TRACT E1 OF THE LIBERTY HALL TRACT, PROPERTY OF CENTEX HOMES, A NEVADA GENERAL PARTNERSHIP, LOCATED IN THE CITY OF GOOSE CREEK, BERKELEY COUNTY, SOUTH CAROLINA" made by Trico Engineering Consultants, Inc., dated June 9, 2006, and recorded January 3, 2007, in Plat Cabinet R, Pages 243-A and 243-B, in the RMC Office for Berkeley County, South Carolina. Said lot having such size, shape, dimensions, buttings, boundings and location as will by reference to said plat more fully appear.

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Property Address: 259 Clayburne Drive  
Goose Creek, SC 29445

TMS# 244-03-04-016

SUBJECT TO ASSESSMENTS, BERKELEY AD VALOREM TAXES, EASEMENTS AND/OR RESTRICTIONS OF RECORD, AND OTHER SENIOR ENCUMBRANCES.

TERMS OF SALE: A 5% deposit in certified funds is required. The deposit will be applied towards the purchase price unless the bidder defaults, in which case the deposit will be forfeited. If the successful bidder fails, or refuses, to make the required deposit on the day of sale or fails or refuses to comply with the bid within 30 days, then the property will be resold at the bidder's risk. Personal or deficiency judgment having been demanded or reserved, the sale will remain open for thirty (30) days pursuant to S.C. Code Ann. §15-39-720 (1976). 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. The successful bidder will be required to pay interest on the amount of the bid from date of sale to date of compliance with the bid at the rate of 6.25% per annum. For complete terms of sale, see Judgment of Foreclosure and Sale filed with the Berkeley County Clerk of Court at C/A #10-CP-08-3514.

**NOTICE: The foreclosure deed is not a warranty deed. Interested bidders should satisfy themselves as to the quality of title to be conveyed by obtaining an independent title search prior to the foreclosure sale date.**

Samuel C. Waters, Esq.  
Attorney for Plaintiff  
P.O. Box 100200  
Columbia, SC 29202-3200  
(803) 744-4444  
504335-02111

*Robert E. Watson*

Robert E. Watson  
Master in Equity for  
Berkeley County

Website: [www.rtt-law.com](http://www.rtt-law.com) (see link to Resources/Foreclosure Sales)

FILED  
2011 JUN 30 AM 9:53  
MARY P. BROWN  
CLERK OF COURT,  
BERKELEY COUNTY, SC

**NOTICE TO PRINTER:** Please insert:

\_\_\_\_\_ Once during week commencing \_\_\_\_\_

\_\_\_\_\_ Once during week commencing \_\_\_\_\_

\_\_\_\_\_ Once during week commencing \_\_\_\_\_

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Branch Banking and Trust Company,

Plaintiff,

v.

Wilton H. Cain; Cassandra M. Durrah-Cain;  
Liberty Hall Residential Property Owners  
Association, Inc.;

Defendant(s).

IN THE COURT OF COMMON PLEAS

DOCKET NO. 10-CP-08-3514

ORDER FOR DEFICIENCY JUDGMENT  
AGAINST

Wilton H. Cain and Cassandra M. Durrah-  
Cain

in favor of  
Federal Home Loan Mortgage  
Corporation  
for  
\$83,893.82

2011 SEP 19 PM 1:14  
HARRY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, SC

**COPY**

(004335-02111)

1. Pursuant to Order of Court and after due notice and advertisement, the undersigned sold the subject property to the Plaintiff for the sum of \$121,500.00, that amount being the highest bid made on Sales Day August 3, 2011, which according to statute became final on September 2, 2011; subsequently the Plaintiff assigned its bid as well as all of its rights in and to the Deficiency Judgment unto Federal Home Loan Mortgage Corporation.

2. Pursuant to the Judgment of Foreclosure and Sale filed in this action, Plaintiff was awarded a judgment against Wilton H. Cain and Cassandra M. Durrah-Cain in the amount of \$201,660.89, together with interest thereon at the rate of 6.25% per annum; subject, to Plaintiff's right to a deficiency judgment pursuant to S.C. Code Ann. § 29-3-660.

3. The Plaintiff has submitted its Affidavit of Additional Costs in the amount of \$3,732.93, which I find to constitute proper expenses to be added to the aforesaid judgment amount.

4. I find that, as of September 2, 2011, the sum of Plaintiff's additional costs \$3,732.93 and the judgment amount \$201,660.89 total \$205,393.82. After crediting the proceeds of sale (\$121,500.00), I find that there is a difference due Plaintiff in the amount of \$83,893.82, which amount constitutes the deficiency as provided by the Judgment of Foreclosure and Sale and S.C. Code Ann. § 29-3-660.

NOW THEREFORE, IT IS ORDERED that the total deficiency judgment in the amount of \$83,893.82 shall be entered against the Defendant(s) Wilton H. Cain and Cassandra M. Durrah-Cain, with interest accruing from September 2, 2011 at the rate of 6.25%, in favor of Federal Home Loan Mortgage Corporation.

Judgment of Foreclosure	\$201,660.89
Additional Costs After Judgment	<u>\$3,732.93</u>
Total Judgment	\$205,393.82
Less Proceeds of Sale	<u>\$121,500.00</u>
Total Deficiency Judgment	\$83,893.82

*Robert E. Watson*

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Robert E. Watson  
Master in Equity for Berkeley County

9/11/11, 2011.  
Moncks Corner, South Carolina