THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

MIKELL R. SCARBOROUGH, MASTER IN EQUITY

Case No.: 2016-001201

Allen Livingston, Respondent,

v.

Harold Simmons, Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. THE MASTER IN EQUITY HEARD THE TESTIMONY AND EVIDENCE OF THE CASE, AND AS THE TRIER OF FACT, PROPERLY RULED IN FAVOR OF PLAINTIFF.

2. THE MASTER IN EQUITY DID NOT ERR IN NOT HOLDING A JURY TRIAL.

3. THE MASTER IN EQUITY DID NOT ERR IN UPHOLDING THE ORDER OF JUDGE NICHOLSON.

STATEMENT OF THE CASE

This Case is the foreclosure of an installment sales contract on property located in Charleston County, South Carolina.

For background purposes, Honorable J.C. Nicholson, Jr. entered an Order in a case involving the same parties (2010-CP-10-8027) in which he ruled that the Lease to Buy Agreement between Respondent and Appellant was to be considered an installment sales contract setting payments to be $500.00/month and establishing the balance due, giving credit for all payments made, at $37,460.00 (R. Exhibit A). That Order was appealed to the South Carolina Court of Appeals and that appeal was dismissed making Judge Nicholson's Order the law of the case and the trial court is not free to go behind Judge Nicholson's Order, which Order is res judicata.

The Respondent failed to make the monthly payments required under Judge Nicholson's Order and the Respondent brought an action to foreclose the Installment Sales Contract on March 11, 2014.

The Respondent did file an answer requesting a jury trial but the claims of Respondent entitling him to a jury trial were stricken and no appeal of that Order was filed (R. Form 4 filed August 12, 2014, Exhibit B). With all claims stricken, the only issue remaining was foreclosure, which is a matter in equity, not entitling Appellant to a jury trial.

The trial took place on December 17, 2014, and Judge Scarborough, Charleston County Master in Equity, issued an Order dated December 2, 2015, Nun Pro Tunc to December 31, 2014, and thereafter, a second hearing on April 25, 2016, issued on Order

of Foreclosure and Sale dated May 6, 2016 (R. Exhibit C).

The Respondent participated, with counsel, in all hearings before Judge Scarborough.

ARGUMENTS

I. ALL ISSUES BEFORE THE COURT ARE NOW MOOT.

Although the issue of mootness was denied by Judge Lockemy in a previously filed motion after the Initial Brief was filed but prior to the filing of this Final Brief, I raise this issue before the Court again as I believe it is still relevant.

The underlying action is a foreclosure of an Installment Sales Contract. Pursuant to Order of the Charleston County Master in Equity, and after numerous hearings, the Master in Equity ultimately concluded that Appellant could pay the total sum due and owing in the amount of $52,174.32 or post a bond in the amount of $50,000.00 to stop the foreclosure sale. On or about August 10, 2018, the Appellant paid all sums due and owing under the Installment Sales Contract and received a deed from Respondent. The Appellant refused to record the aforesaid deed in the Charleston County Register of Deeds Office. As a result of failure to record the deed, the Master in Equity issued an Order dated October 8, 2018, in which he ordered that Appellant record the deed or, alternatively, the Master would issue a deed (R. Exhibit D). The Appellant failed to record the deed and the Master in Equity issued a deed that was recorded in the Charleston County Magistrate of Deeds Office in Book 0756, Page 020. Thereafter, Appellant recorded the deed he received from Respondent on August 10, 2018, on the same day, said deed recorded in Book 0756, Page 049.

Based on the foregoing, the matter before this Honorable Court is moot. In

general, the court may only consider cases where a justiciable controversy exists. A justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination as distinguished from a contingent, hypothetical, or abstract dispute. Moot appeals differ from unripe appeals in that moot appeals result when intervening events render a case non-justiciable. This Court will not pass on moot and academic questions where there remains no actual controversy. A case becomes moot when judgment, if rendered, will have no practical legal effort upon the existing controversy. Sloan v. Greenville County, 356 S.C. 531, 590 S.E.2d 338 (SC App 2003). See also Byrd v. Irma High School, 321 S.C. 426, 468 S.E.2d 861 (1996); Pee Dee Electric Coop Inc. v. Carolina Power Light Co., 279 S.C. 64, 301 S.E.2d 761 (1983); Wallace v. City of York, 276 SC 693, 281 S.E.2d 482 (1981).

In the case at bar, the Appellant has paid all sums due and owing to Respondent and Respondent has issued a deed to Appellant which has been recorded. Based on the foregoing intervening events since the filing of the Master's various Orders and Appeal thereon (namely the payment of all sums due and owing under the Installment Sales Contract and the recording of the deeds), there is no real or substantial controversy which is ripe and appropriate for judicial determination and the appeal should be dismissed as moot.

II. THE MASTER IN EQUITY HEARD THE TESTIMONY AND EVIDENCE OF THE CASE, AND AS THE TRIER OF FACT, PROPERLY RULED IN FAVOR OF PLAINTIFF/RESPONDENT.

This case is an action in equity seeking foreclosure of an installment sales contract.

On appeal from an equitable action, an Appellate Court may find facts in accordance with its own view of the evidence. Townes Associates, Ltd. v. City of Greenville, 266 S.C. 81, 221 S.E.2d 773 (SC 1976). While this standard permits a broad scope of review, an Appellate Court will not disregard the findings of the trial court, which saw and heard the witnesses and was in a better position to evaluate their credibility. Tiger Inc. v. Fisher Agro Inc. 301 S.C. 229, 391 S.E.2d 538 (1989); Buffington v. TOE Enterprises 383 S.C. 388, 680 S.E.2d 289 (SC 2009).

In the case at bar, the court found that the Appellant/Defendant through his own testimony and admission made no payments on the installment sales contract since the dismissal of the appeal in the first case filed December 3, 2016 (R. April 2, 2015 Order, Paragraph 5, Exhibit E). The Court further found that no reimbursement for taxes were made either (R. April 2, 2015 Order, Paragraph 7, Exhibit E). Further, the Master in Equity gave the Appellant the opportunity to reinstate the contract in his August 2, 1015 Order but Appellant failed to reinstate resulting in the May 6, 2016 Order of Foreclosure and Sale.

III. DID THE MASTER IN EQUITY ERR IN NOT HOLDING A JURY TRIAL?

Appellant initially appeared pro se. His legal claims were dismissed by Order filed August 11, 2014, leaving only the equitable action of foreclosure, which is a non-jury claim (R. Form 4, August 12, 2014, Exhibit B).

The Appellant, with counsel, appeared at both hearings on December 17, 2014, and April 25, 2016, and fully participated having never requested a jury trial.

It is well settled that issues not raised in the lower court cannot be raised for the

first time at the appellate level.

IV. DID THE MASTER IN EQUITY ERR IN UPHOLDING THE ORDER OF JUDGE NICHOLSON?

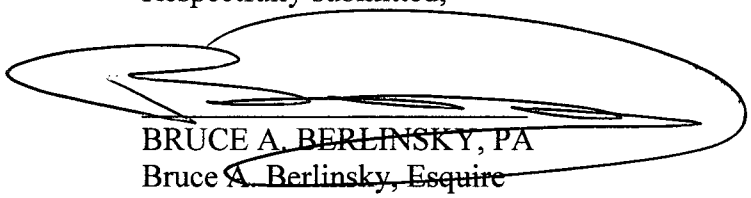
In the case at bar, Appellant contends that the Master in Equity did not take all payments into account. However, the Master had to adhere to the Final Order in the previous case (2010-CP-10-8027) by Judge Nicholson establishing the balance of the outstanding debt and the future monthly payments (R. Exhibit A, last paragraph).

Once the Order of Judge Nicholson became the final order and law of the case, the Master in Equity in the current case is not free to go behind Judge Nicholson's Order.

CONCLUSION

In an action in equity, an appellate court may find facts in accordance with its own view of the evidence Townes Associates, Ltd. v. City of Greenville, 266 S.C. 81, 221 S.E.2d 773 (1976). By Appellant's own testimony, he has not made any payments on the installment sales contract since Judge Nicholson's appeal was dismissed by Order filed December 3, 2013. Further, Appellant participated in two hearings before the Master in Equity effectively waiving his request for jury trial by not raising the issue at the trial level and by the fact that equitable matters are non-jury. Finally, all of Appellant's arguments at the lower level were seeking to go behind the final order of Judge Nicholson. For the aforementioned reasons stated, the Court should affirm the judgment and orders of the lower court and allow for such further relief deemed appropriate.

Respectfully submitted,



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May 7th, 2020

EXHIBIT A

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2010-CP-10-8027
ALLEN LIVINGSTON,)
)
Plaintiff,)
)
versus) PROPOSED ORDER
)
HAROLD SIMMONS,)
)
Defendant.)

THE WITHIN MATTER came before this Court after restoration to the trial docket on a Motion to Restore filed on September 14, 2010 pursuant to a Rule 40(j) dismissal on January 13, 2010. The Court has heard testimony and argument for nearly two (2) days and has received numerous exhibits. This case presented major issues regarding the credibility of the parties and the conflicting recollections of the litigants and the witnesses.

Plaintiff appeared represented by counsel and presented witnesses (2) to support the waste allegations in his claim. Defendant appeared represented by counsel, calling one witness in support of his counterclaim and defense.

This case centers on the issue of whether the Defendant has substantially performed his agreement under the contract negotiated by the parties on June 15, 2000. This matter began as an ejectment action in the Summary Court. Plaintiff alleged that Defendant failed to pay rent when due and demanded for the period beginning 2005 through October 2007. Defendant denied fault and counterclaimed for damages and specific performance on the bases that the agreement executed by the parties was an installment land contract.

To determine the nature of their relationship, this Court considered documents submitted by each party that were alleged to set out the terms of their agreement. After careful consideration of those documents, which were two versions of the contract signed by the parties, this Court determined that the document offered by Mr. Simmons was the original agreement and the best evidence of their expectations since it contained original signatures from both parties and the original signatures of a witness. Real property is often sold under contracts that provide for the payment of the purchases in a series of installments. "These contracts, usually termed installment land contracts, are drafted in many ways. Typically, the vendor retains legal title to the property until all of the purchase price has been paid.". . . Lewis v. Premium Investment Corporation, 351 S.C. 167, 568 S. E. 2d 361 (2002). Basic contact law provides that when a contract is clear and unambiguous, the language alone determines the

contracts' force and effect. C.A.N Enterprises, Inc. v. South Carolina Health & Human Services Fin. Commissions, 296 S.C. 373, 373 S.E. 2d 584 (1988).

The Defendant contends that, in fact, he has paid against the principle in advance by making payments at a higher and faster rate than required under the contact. Mr. Simmons' primary proof for his position is the example where Plaintiff alleges a default in payments during the year of 2007 yet the evidence (Defendant's Ex.) indicates that Mr. Simmons paid $500.00 beyond what was required for the period alleged. Mr. Simmons testified that during the length of the contract he would pay at a higher or faster rate in order to protect himself from defaulting on the payments. Defendant tendered his entire collection of receipts for the contested period of payment. This record of payment totaled $87,540.00. A comparison of the chronological pay period utilizing the contract rate against Defendant's record of payment reveals that Mr. Simmons at the time of trial had paid $16,040.00 beyond what was required under the contract. Our Court of Appeals has specifically held that in an installment land contract, the vendee in possession of the land is considered the owner of an equitable interest in the property. Southern Pole Buildings, Inc. v. Williams, 289 S.C. 521, 347 S. E. 2d 121 (Ct. App. 1986), See also, Lewis v. Premium Investment Corporation, supra, footnote 4.

Actions to foreclose or cancel and instrument are actions in equity. Wilder Corporation v. Wilke, 324 S.C. 570, 576, 479 S.E. 2d 510, 513 (1996). The courts of South Carolina have long held that forfeitures or penalties are not favored in either law or equity. Cody Discount, Inc. v. Merritt, 368 S.C. 570, 629 S.E. 2d 697 (Ct. App. 2006) reh. den. (May 2006), citing Lewis v. Premium Investment Corporation, supra.

The theory of equitable conversion provides that under an executory contract for the sale of real estate, the equitable estate passes to the purchaser and the bare legal title for security purposes remains in the vendor. Brooks v. Council of Co-Owners of Stones Throw Horizontal Property Regime 1. 315 .S.C. 474, 476, 445 S. E. 2d 630, 632 (1994) citing 8A George W. Thompson, Commentaries on the Modern Law of Real Property § 4447 (1963). Despite Mr. Simmons' struggles, his efforts to successfully satisfy his obligations are impressive, fundamentally, and significant, legally. Earlier during argument of counsel, defense counsel objected to the treatment of the list of conditions on page four of the contract as applicable to the Defendant buyer. Counsel argues that once Defendant became a buyer, those conditions no longer applied to the Defendant. In light of the doctrine of equitable conversion and review of the content of those conditions, this Court is convinced that those conditions are inapplicable to an equitable owner and possessor of the property, excepting the requirement for insuring the property.

Defendant contends that plaintiff was aware of the Defendant's change from tenant to purchaser because practically every receipt and payment instrument is designated for 'mortgage'. Mr. Simmons has been very fastidious in recording the matter of payment and, but for his records, there would be no recollection. Plaintiff admitted that he kept no records of their transactions. Mr. Simmons demonstrates an approach that reflects the essence of this agreement: a substantial amount of money would be spent for a major property but the transaction involved a diminis scale, i.e. no major lender and $500.00 per month payments.

Plaintiff offered no evidence or testimony of making demand for payment. The 'mortgage' can be clearly seen on the money orders Mr. Simmons used for payment. The "mortgagee" notation can be seen on the Defendant's exhibit showing deposits into Plaintiff's Wells Fargo/Wachovia account as early as 2005 and Mr. Simmons' receipts show this notation as early as 2002. Plaintiff's behavior in accepting these payments under the circumstances evidenced convinced Mr. Simmons that the building at North Carolina Avenue would one day be his. "The principal that the vendee becomes the equitable owner of real property while the contract is still executory was established for the purpose of enabling him to resort to a court of equity for the protection of his rights, on the ground that a mere action for damages arising from a breach of the contract by the vendor would not afford him equitable relief." Good v. Jarrard, 93 S.C. 229, 236, 76 S.E. 2d 698, 701 (1912). In this instance the vendor's breach is the ejectment action taken without due cause.

Plaintiff initiated this action alleging default in payment and some opinion regarding the building; subsequently, he amended his complaint to include alleged other failure. After reviewing the exhibits, this Court is not convinced that Mr. Simmons has done anything to depreciate the value of the property. According to the County Tax Assessor, the property's value has increased appreciably. All testimony describes the building as a once vacant structure with very sparse amenities. Mr. Simmons added a room for an office so there was some improvement. There has been no claim for insurance payment so that item is not material to this action, nor the contractual relationship. Plaintiff claims a loss in relation to his payment of property taxes. At no time did he complain to Mr. Simmons about the property taxes or seek clarification as to who was responsible for these tax payments. In light of Mr. Simmons' constant use of the "mortgage" term, it would seem that a discussion regarding taxes and insurance would have occurred. Plaintiff is an experienced and well-established business man who knows the relative value of "allowed business deductions" and probably appreciated the availalibility of these expenses. So the behavior of seeking an ejectment appears like "eating your cake and having it too."

Therefore, credibility remains a big issue in this case; from the considerations involving which version of the contract to the Plaintiff's selective memory on many issues of fact. This Court has been troubled with his version of the facts. His original allegations regarding non-payment between both 2005 and 2007 being revealed to be substantially incorrect and as to the year of 2007 as being entirely inaccurate, and then a crucial factor in looking at the version of the contract is how the front page of Plaintiff's contract contains the wrong address for the subject property and on subsequent pages involving the term for Mr. Simmons' period to make payments being left completely out of the version put forward by the Plaintiff. This tells this Court that there is a proper place for equity in its considerations.

Mr. Simmons has requested relief under the theory of specific performance and that is proper in a matter of equity. He has also requested relief under the theory of unjust enrichment and that is also proper in an equitable action. Under the facts shown the most appropriate relief is specific performance. It is my confirmed opinion that the Defendant should be allowed the relief that he has requested. Hence I am ordering that the transaction be carried out as agreed upon to include Mr. Simmons assuming all of the responsibilities of the purchaser under their agreement as stated in Defendant's contract (Ex.) including the payment of property taxes and the arrangements for insurance. Further, I order that any property taxes paid by the Plaintiff be compensated from Mr. Simmons' overpayment of the purchase price. He will have sixty (60) days to arrange for insuring the building in a commercially reasonable manner.

I further find that the defendant is given credit for $87, 540.00 towards the purchase price of $125,000 with a balance of $37,460.00 to be paid on the installment contract at the rate of $500 a month until the balance is paid. The defendant will obtain an amortization schedule and supply a copy to the plaintiff. The defendant will either pay by money order or check with a notion of payment and marked from the amortization schedule by both parties.

AND IT IS SO ORDERED.

2/20/13, 2013
Charleston, S.C.

J. C. NICHOLSON. JR.
Presiding

EXHIBIT B

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP- 10 - 1635

Livingston
PLAINTIFF(S)

Simmons
DEFENDANT(S)

Submitted by:	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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ 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.

FILED
2014 AUG 12 PM 12:45
JULIE J. ARMSTRONG
CLERK OF COURT
BY

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: Plaintiff's motion to strike is granted as to Additional Defendants and Negligence of Others. Defendant's motion for continuance is respectfully denied.

INFORMATION FOR THE PUBLIC 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)
		$
		$
		$

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

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

3062
Judge Code

8/11/2014
Date

EXHIBIT C

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2014-CP-10-01635
ALLEN LIVINGSTON,)
)
PLAINTIFF,)
)
versus)
)
HAROLD SIMMONS,)
)
DEFENDANT.)

ORDER OF FORECLOSURE AND SALE

This matter was brought before me pursuant to a Rule to Show Cause pursuant to alleged noncompliance with the order of this court filed April 8, 2015.

While there was some question as to whether there was proper service, the Defendant, along with his attorney, appeared at the scheduled time and fully participated in the hearing before me, which essentially waived any deficiency in the service.

On April 25, 2016, a hearing was held at which testimony was taken and evidence offered. Attending were Bruce A. Berlinsky, Esquire, Attorney for Plaintiff; the Plaintiff; the Defendant; and J. Seth Whipper, Esquire, Attorney for Defendant.

All of the parties were given due notice of today's hearing.

After consideration of the testimony and the evidence, this Court makes the following Findings of Fact and Conclusions of Law:

1. This is an action for the foreclosure of an Installment Sales Contract on property located in Charleston County, SC, which is more fully described as Lot 17, Blk I, Chicora Place, Charleston County, SC, TMS No. 469-16-00-329 and is within the jurisdiction of this Honorable Court.

2. ~~That~~ That on or about February 27, 2014, the Honorable J.C. Nicholson, Jr. entered an Order in a case involving the same parties hereto (2010-CP-10-8027) in which he ruled that the Lease to Buy Agreement between Plaintiff and Defendant referenced hereinabove was to be considered an Installment Sales Contract and that the Defendant was to make payment of $500/month under the Installment Sales Contract until the balance of $37,460.00 was paid in full. Further, the aforesaid Order of Judge Nicholson was appealed and the appeal was dismissed thereby rendering the February 27, 2013, Order referenced hereinabove the Final Order in this case, as evidenced by Order of the Court of Appeals filed December 3, 2013. As such, Judge Nicholson's February 23, 2013, Order became the ~~Final Order~~ law of the case and this Court is not free to go behind Judge Nicholson's Order, which Order is res judicata and which found Defendant, Simmons was entitled to a credit of $87,540.00 in payments on the Installment Sales Contract.

3. I further find that my Order filed April 8, 2015, in this case reset the debt due under the Installment Sales Contract giving Defendant Simmons credit for nine payments of $500.00 each leaving a balance of $32,960.00 due on the Installment Sales Contract (see Order for details) and that the said Order was Nunc Pro Tunc to December 3, 2013.

4. I find that Simmons again argued that he has prepaid; the same argument put forth in the trial before Judge Nicholson and in the December 17, 2014 hearing before me. While he may have prepaid prior to Judge Nicholson's Order, the Installment Sales Contract, as well as Judge Nicholson's Order, require Simmons to make monthly payments. The fact that Simmons may have prepaid towards the total purchase price prior to Judge Nicholson's Order does not relieve Simmons from his monthly obligation.

5. That pursuant to Mr. Simmons testimony, not only has he made no payments since the appeal was dismissed on December 3, 2013, but he has made no payments since my April, 2015 Order. Further, Mr. Simmons testified that he has made no payments towards taxes either under the April, 2015 order or for tax year 2015 as required under the April, 2015 Order.

6. I find that the total outstanding debt due and owing to the Plaintiff is as follows:

Outstanding balance	$32,960.00
2001-2014 Charleston County Property Taxes	$16,540.54
2015 Charleston County Property Taxes	$1,448.78
TOTAL DEBT	$50,949.32

7. I find that the Defendant was required to provide an amortization schedule based on the outstanding indebtedness established by Judge Nicholson's Order and by my April, 2015 Order and failed to do so instead of providing an amortization schedule that went back prior to the establishment of the debt by Judge Nicholson's Order nor has Defendant made any monthly payments and, therefore, did not comply with either Judge Nicholson's Order nor my April, 2015 Order.

8. That Defendant's actions in failing to comply with either Judge Nicholson's Order or my April, 2015 Order is in direct violation of those aforesaid Orders resulting in Plaintiff having to bring this Rule to Show Cause and, as a result thereof, Plaintiff is entitled to recovery of his costs for this rule in the amount of $1,225.00. fees and

9. I conclude that since the Defendant did not reinstate the Installment Sales Contract pursuant to my April, 2015 Order nor has he made any payments on the Installment Sales Contract since December, 2013 the property will be sold at the July 5, 2016 sales date if he has not paid all indebtedness more fully set forth in paragraph 6 hereinabove and reimbursed Plaintiff's attorney the sum of $1,225.00 for Rule to Show Cause prior to the July 5, 2016, sale.

10. I order that Defendant's prior Motion to Alter or Amend my April, 2015 Order is denied.

11. I confirm that Plaintiff's Motion to Amend the pleadings to conform to the evidence was granted at the December 17, 2014, hearing entitling Plaintiff to recover taxes paid and evidence of the amount of taxes paid was presented and introduced into evidence at that hearing.

The Court being satisfied with its findings of fact and conclusions of law, it is the opinion that judgment should be entered thereon.

NOW, THEREFORE, IT IS HEREBY

ORDERED, ADJUDGED AND DECREED, there is due to the Plaintiff on the Installment Sales Contract the sum of $50,949.32; and, it is further

ORDERED, ADJUDGED AND DECREED, that the Defendant is in breach of the Installment Sales Contract and has failed to comply with the terms and conditions of Order filed in this case, April 8, 2015 and that the Plaintiff is entitled to foreclosure of the Installment Sales Contract pursuant to South Carolina Law and the customs and practices of this Honorable Court with regard to sales of foreclosed properties; and, it is further

ORDERED, ADJUDGED AND DECREED, that on default of payment, the 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 Charleston County Courthouse, Charleston, South Carolina, on the July 5, 2011 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 shall require a deposit of five (5%) percent on the amount of the bid (in cash or equivalent) the same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within thirty (30) days the deposit may be forfeited without further hearing and applied to the costs and Plaintiff's debt.

b. The sale shall be subject to taxes and assessments, existing easements and easements and restrictions of record.

c. This Installment Sales Contract constitutes a first priority lien on the subject property.

d. Purchaser to pay for deed preparation and costs of recording the Deed, and transfer taxes; and, it is further

ORDERED, ADJUDGED AND DECREED, if Plaintiff is the successful bidder at the said sale, for a sum not exceeding the amount of costs, disbursements and expenses and the indebtedness of the 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; and, it is further

ORDERED, ADJUDGED AND DECREED, that 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, or any other person 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 thirty (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; and, it is further

ORDERED, ADJUDGED AND DECREED, that the undersigned Master in Equity shall apply the proceeds of the sale as follows:

FIRST: To payment of the amount of the costs and expenses if 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 Attorneys, of the amount of the 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 this Court; and, it is further

ORDERED, ADJUDGED AND DECREED, 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; and, it is further

ORDERED, ADJUDGED AND DECREED, that the Master in Equity shall 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; and, it is further

ORDERED, ADJUDGED AND DECREED, that Plaintiff does not warrant its title search to purchasers at foreclosure sale or other third parties, who should have their own title search performed on the subject property; and, it is further

ORDERED, ADJUDGED AND DECREED, that out of the proceeds of the said sale, after payment of all Court costs involved in this action, that the net proceeds be disbursed to those persons whom this Honorable Court declares to have an interest in the subject property and that they be paid according to their interest and proportionate share in the subject property; and it is further

ORDERED, ADJUDGED AND DECREED, that Bruce A. Berlinsky is awarded an attorney=s fee in the amount of $1,225.00 which includes costs and expenses incurred in bringing the Rule to Show Cause; and it is further

ORDERED, ADJUDGED AND DECREED, that the Defendant has the option to avoid the foreclosure sale by payment to the Plaintiff the sum of $52,174.32 prior to the sale; and it is further

ORDERED, ADJUDGED AND DECREED, that the Sheriff of Charleston County put the Plaintiff or the successful bidder in possession of the said premises and that the Defendant, or anyone claiming by, through, or under him be forever barred and foreclosed of any equity of redemption of said property

AND IT IS SO ORDERED

Charleston, South Carolina
May 6 2016.

Honorable Mikell R. Scarborough
Charleston County Master-~~in Equity~~

EXHIBIT D

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2014-CP-10-01635
	)	
ALLEN LIVINGSTON,	)	
	)	
PLAINTIFF,	)	
	)	**ORDER**
versus	)	
	)	
HAROLD SIMMONS,	)	
	)	
DEFENDANT.	)	
	)	

This matter was brought before me pursuant to the filing by Plaintiff of a Notice of Motion and Motion to Enforce Judgment regarding recording of a deed from Plaintiff to Defendant.

This matter was originally scheduled for September 17, 2018, at 2:00 p.m. Notice of the hearing was duly given to Defendant. On September 17, 2018, Laura Dukes Beck of the Master in Equity's Office received a telephone call from someone identifying themselves as Mr. Simmons's secretary advising that Mr. Simmons was still evacuated for Hurricane Florence. Based on the foregoing, the matter was continued until October 4, 2018, and notice was given to Plaintiff's Attorney and Defendant, pro se, by a letter sent with Mr. Simmons's correspondence going to the address he put on file with the Master in Equity's office.

On October 4, 2018, a hearing was held at which testimony was taken and evidence offered. Attending were Bruce A. Berlinsky, Esquire, Attorney for Plaintiff and no other parties or witnesses.

All of the parties were given due notice of today's hearing.

After consideration of the testimony and the evidence, this Court makes the following Findings of Fact and Conclusions of Law:

1. Pursuant to all previous Orders of court in furtherance of this matter, the Defendant Harold Simmons paid all sums due and owing under the Installment Sales Contract between Defendant and Plaintiff to Plaintiff's attorney on or about August 10, 2018.

2. On or about August 10, 2018, Plaintiff delivered to Defendant, in furtherance of full compliance with the Installment Sales Contract which is the subject matter of this action, a deed conveying the subject property from Plaintiff to Defendant. Delivery of the aforesaid deed is evidence by a receipt whereby Defendant signed acknowledging receipt of the original deed for the subject property from Bruce A. Berlinsky, Esquire.

3. That since August 10, 2018, Defendant has refused and continues to refuse to record said deed.

4. I find that Plaintiff is entitled to the relief requested in this motion and hereby require the Defendant to record the original deed within 15 days of the date of today's hearing or, alternatively, the undersigned Master in Equity shall issue a Masters Deed conveying the property to Defendant.

The Court being satisfied with its findings of fact and conclusions of law, it is the opinion that judgment should be entered thereon.

NOW, THEREFORE, IT IS HEREBY

ORDERED, that Defendant, Harold Simmons, Jr., shall record the original deed to the property which is the subject matter of this action within fifteen (15) days of the date of this hearing; namely, October 19, 2018; and, it is further

ORDERED, that should Defendant, Harold Simmons, Jr., not record the deed in his possession for the property which is the subject matter of this action, the undersigned Master in Equity shall issue a Masters Deed conveying the same to the Defendant Harold Simmons for recording at the Charleston County ROD Office.

AND IT IS SO ORDERED!

Charleston, South Carolina
10/18 2018.

Honorable Mikell R. Scarborough
Charleston County Master-in-Equity

EXHIBIT E

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
ALLEN LIVINGSTON,)
Plaintiff,)
versus)
HAROLD SIMMONS,)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2014-CP-10-01635

ORDER

THIS SUIT was brought as a result of a breach of an installment Sales Contract and foreclosure of said Installment Sales Contract.

This action was commenced by the filing of a Lis Pendens, Summons and Complaint in the office of the Clerk of Court for Charleston County on March 11, 2014.

The Defendant was personally served as evidenced by the Affidavit of Service filed herein.

Thereafter, on June 2, 2014, by Order of the Honorable R. Markley Dennis, Jr., this matter was referred to me to take testimony, make findings of fact and conclusion on law, and enter a final order with all appeals to the Supreme Court of South Carolina.

On December 17, 2014, a hearing was held at which testimony was taken and evidence offered. Attending were Bruce A. Berlinsky, Esquire, attorney for the Plaintiff; the Plaintiff; the Defendant; and J. Seth Whipper, Esquire, attorney for the Defendant. All of the parties were give due notice of today's hearing.

After consideration of the testimony and the evidence, the Court makes the following Findings of Fact and Conclusions of Law:

1. This is an action for the foreclosure of an Installment Sales Contract on property located on Charleston County, South Carolina, which is more fully described as

Lot 17, Blk I, Chicora Place, Charleston County, SC, TMS No.: 469-16-00-329 and is within the jurisdiction of this Honorable Court.

2. That on or about June 15, 2000, Plaintiff entered into a Lease to Buy Agreement with Defendant for the aforesaid property.

3. That on or about February 7, 2013, the Honorable J.C. Nicholson, Jr. entered an Order in a case involving the same parties hereto (2010-CP-10-8027) in which he ruled that the Lease to Buy Agreement between Plaintiff and Defendant referenced hereinabove was to be considered an Installment Sales Contract and that the Defendant was to make payment of $500/month under the Installment Sales Contract until the balance of $37,460.00 was paid in full. Further, the aforesaid Order of Judge Nicholson was appealed and the appeal was dismissed thereby rendering the February 7, 2013, Order referenced hereinabove the Final Order in this case, as evidenced by Order of the Court of Appeals filed December 3, 2013. As such, Judge Nicholson's February 27, 2013, Order became the Final Order and this Court is not free to go behind Judge Nicholson's Order which found Δ Simmons entitled to a credit of $7,540.00 in payments on the contract.

4. That pursuant to Judge Nicholson's Order and South Carolina Code Section 29-3-630 (1976, as amended) the debt secured by the aforesaid Installment Sales Contract was established at $37,460.00.

5. That pursuant to Mr. Simmons testimony, he has made no payments since the appeal was dismissed on December 3, 2013. However, I do find that prior to the dismissal of the appeal; Mr. Simmons made nine (9) payments of $500.00 each for total payments of $4,500.00 leaving a balance of $32,960.00.

6. I find that notwithstanding the aforesaid payments, that Mr. Simmons is $9,500.00 in arrears for payments due and owing as of the date of today's hearing.

7. That the Installment Sales Contract further provides that Defendant, Harold Simmons, is responsible for all taxes on the property beginning June 15, 2000,

and that pursuant to Mr. Simmons's testimony, he has made no payment or reimbursement towards these taxes. I further find that the Plaintiff has paid all of these taxes on Mr. Simmons behalf.

8. South Carolina Code Section 29-3-30 (1976, as amended) provides the Mortgagee is entitled to pay property taxes and have a lien on the property for reimbursement of said taxes.

9. I find that Plaintiff has paid on behalf of Defendant, Charleston County Property Taxes, for the years 2001-2014 in the amount of $16,540.54.

10. I find that the appeal did not stay the Defendants obligation of making payments under the Installment Sales Contract and that there were no prepayments on the debt prior to Judge Nicholson's Order.

11. I find that the Lease Agreement does not provide for recovery of attorneys' fees. Therefore, each party shall be responsible for payment of their respective attorneys' fees.

12. I conclude that the Defendant is in default and the Plaintiff is entitled to foreclosure of the Installment Sales Contract. However, notwithstanding this conclusion, Defendant has the option to reinstate the Installment Sales Contract by payment to the Plaintiff of $9,500.00 by December 31, 2014, or payment of $10,000.00, which includes the January payment, so long as the said $10,000.00 payment is made within thirty (30) days of the date of this hearing. See Lewis v. Premium Investment 351 SC 167, 568 SE2d 361 (2002)

13. I further conclude that the Defendant shall reimburse Plaintiff the total sum of $16,540.54 for 2001-2014 Charleston County property taxes paid and that said reimbursement shall be made at the rate of $275.00/month beginning January 1, 2015, for a period of sixty (60) months, with taxes for the year 2015 until the Installment Sales Contract is paid in full to be paid by the Defendant.

14. I conclude that should the Defendant not reinstate the Installment Sales Contract as morefully described hereinabove, the property will be sold at the first available sales date as established by this Court.

The Court being satisfied with its findings of fact and conclusions of law, it is the opinion that judgment should be entered thereon.

NOW, THEREFORE, IT IS HEREBY

ORDERED, ADJUDGED AND DECREED, that the Defendant is in breach of the Installment Sales Contract and that the Plaintiff is entitle to foreclosure of the Installment Sales Contract pursuant to South Carolina Law and the customs and practices of this Honorable Court with regard to sale of foreclosed properties; and it is further

ORDERED, ADJUDGED AND DECREED, Defendant has the option to reinstate the Installment Sales Contract by payment to the Plaintiff of $9,500.00 by December 31, 2014, or payment of $10,000.00, which includes the January payment, so long as the said $10,000.00 payment is made within thirty (30) days of the date of this hearing; and it is further

ORDERED, ADJUDGED AND DECREED, that Defendant shall reimburse Plaintiff the total sum of $16,540.54 for 2001-2014 Charleston County property taxes paid and that said reimbursement shall be made at the rate of $275.00/month beginning January 1, 2015, for a period of sixty (60) months, with taxes for the year 2015 until the Installment Sales Contract is paid in full to be paid by the Defendant; and it is further

ORDERED, ADJUDGED AND DECREED, that should the Defendant not reinstate the Installment Sales Contract as morefully described hereinabove, the property will be sold at the first available sales date as established by this Court; and it is further

60 days following entry of this Order.

ORDERED, ADJUDGED AND DECREED, that the Sherriff of Charleston County put the Plaintiff or the successful bidder in possession of the said premises and that the

Defendant, or anyone claiming by, through, or under him be forever barred and foreclosed of any equity of redemption of said property.

AND IT IS SO ORDERED

Charleston, South Carolina
4/2 2015.

Honorable Mikell R. Scarborough
Charleston County Master-in-Equity

Nunc pro tunc
to Dec 31, 2014