

2020-601243

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Oct 15 2020

SC Court of Appeals

68000.E47991

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Wilmington Savings Fund Society, FSB, as
Owner Trustee of the Residential Credit
Opportunities Trust V-C,

PLAINTIFF,

vs.

Nehemiah Bryant,

DEFENDANT.

IN THE COURT OF COMMON PLEAS
C/A NO: 2016CP0802325

(NON-JURY MORTGAGE FORECLOSURE)

**ORDER FOR WRIT OF ASSISTANCE
AND WRIT OF ASSISTANCE**

This matter came before me upon Petition of the Plaintiff seeking a Writ of Assistance to be issued by this Court to the Sheriff of Berkeley County, South Carolina, ordering and directing him to remove, peaceably or forcibly, the Defendant, Nehemiah Bryant, together with any and all persons claiming under the said Defendant and all his personal property located within or on the subject premises described in the Petition.

All that certain piece, parcel or lot of land being a triangular shape, together with the buildings and improvements thereon, lying and being in St. John's Parish, County of Berkeley, State of South Carolina, measuring and containing One and Ninety-one Hundredths (1.91) acres, more or less, Butting and Bounding as follows, to-wit: North, a distance of 563.7 feet along lands of Orin S. Driggers, West, a distance of 282.5 feet along lands of St. John's Bethel Church; South, a distance of 710 feet along lands of the Cooper River Lumber Company. Which will more fully appear on a map prepared by E.A. Dennis, R.L.S., dated July 17, 1959 and recorded in Plat Book "L" at Page 175.

Property Address: 151 Saint Johns Bethel Street, Moncks Corner, South Carolina 29461

TMS Number: 196-02-00-044

This Court issued its Rule to Show Cause directing the Defendant, Nehemiah Bryant to appear before this Court on August 27, 2019 at 11:00 o'clock am to show cause why the relief sought by the Plaintiff should not be granted. Said Rule to Show Cause was served on the Defendant as shown by Affidavit of Service on file herein. Present at the hearing was Thomas A. Shook, attorney for the Plaintiff, and Nehemiah Bryant appearing *pro se*.

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It appears that the Plaintiff was the successful bidder at the public sale of the subject premises on June 5, 2019. This Court issued its deed to Plaintiff on June 17, 2019 and it was recorded June 26, 2019 in Book 3059 at Page 742.

At the hearing, Mr. Bryant argued 1) that he did not consent to this action; and, 2) that the undersigned as judge must recuse himself because he was a party to this suit. Mr. Bryant produced two documents to support these claims: one styled under the pending case caption titled "Bill of Pain and Penalty Number" bearing a filing stamp in the Berkeley County Court of Common Pleas of August 26, 2019; and a second document showing the same civil action number and titled as "Pendency as constructive notice SECTION 15-11-20." This second document also bears a filing stamp in the Berkeley County Court of Common Pleas of August 26, 2019, and appears to bear a filing stamp noting it was received by the Clerk of Court for the U.S. District Court in Charleston on August 23, 2019. This second document appears to show as an attempted caption reading "Nehemiah Bryant, Plaintiff Vs Dale Edward van Slambrook, Home Investment Fund III LP, Thomas A. Shook, Susan S. White, Elizabeth Shuffler Moore." The Berkeley County Clerk of Court's index available on-line shows these documents have been filed in the case records.

While these documents appear to have been filed in Berkeley County, the record does not show, nor did Mr. Bryant produce or aver, any document or order that would add any parties either by joinder, intervention, or amendment to this case. Moreover, he did not produce or aver any actual complaint or petition, or service of process of a complaint or petition, that would bring any of the additional parties listed in the second document under the jurisdiction of this Court or the U.S. District Court.

Therefore, as to Mr. Bryant's argument of lack of his consent to the proceeding, I find based on the foreclosure order previously entered and the sale held and deed issued pursuant thereto, that Plaintiff is entitled to possession of the property and consent from Mr. Bryant is not required and in fact, has been foreclosed.

As to his argument that the undersigned should recuse himself as judge because he is a party, I find there is no proper proceeding pending either in Berkeley County or the U.S. District Court that would require the undersigned to recuse himself or preclude a final adjudication by this Court.

NOW, THEREFORE, IT IS ORDERED that the Defendant, Nehemiah Bryant, together with any and all occupant(s) shall vacate the premises on or before **September 27, 2019**, and that the Plaintiff is entitled to recover possession of the premises on said date.

IT IS FURTHER ORDERED that should personal service not be effected by the Sheriff of Berkeley County, that copies of the Writ of Assistance be posted in a conspicuous place at or near the front entrance of the subject premises.

IT IS FURTHER ORDERED that if the premises is not vacant on said date, then upon receipt of a copy of this Order, the Sheriff of Berkeley County, South Carolina or his authorized deputies, be and hereby directed and authorized to enter upon the aforescribed premises, by force if the same be necessary, and seize the said premises and to remove therefrom any and all such persons who may be occupying the same, together with all possessions therein, including the Defendant, Nehemiah Bryant, and to put the Plaintiff in full, peaceful and quiet possession of the premises without delay, and thereafter, and within ten (10) days, make due return to the Clerk of Court for Berkeley County, South Carolina, showing how this Order has been executed.

IT IS FURTHER ORDERED that if the occupants have voluntarily vacated the premises or have been ejected from the premises leaving personal property, automobiles, boats, furnishings, fixtures, or other items, the Plaintiff is authorized to remove therefrom all personal property, automobiles, boats, furnishings, fixtures and items, which personal property, being deemed abandoned, shall be removed by the Plaintiff or its agents from the subject property by placing said personal property on the public street or highway or by any other means.

IT IS FURTHER ORDERED that this Order shall constitute a final judgment and Writ of Assistance pursuant to Rule 53(b), SCRPC; and,

AND IT IS SO ORDERED.

SIGNATURE PAGE TO FOLLOW

The South Carolina Court of Appeals

Jenny ABBOTT Kitchens
CLERK

Case # 2020-001243

ATTN: V. CLAIRES ALLEN

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SC Court of Appeals

From Nehemiah BRYANT
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Moncks Corner, S.C. 29461

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