

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2017 CP-10-4031

Churchill Park

Alan G. Nix and Estate of Norma J. Nix

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Master in Equity

Attorney for :  Plaintiff  Defendant  
or  
 Self-Represented Litigant

2017 NOV -9 PM 4:25  
FILED  
CLERK OF COURT

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), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  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.

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 :

RECEIVED

JAN 19 2021

SC Court of Appeals

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)
Churchill Park	Alan G. Nix	\$22,554.97
Churchill Park	Estate of Norma J. Nix	\$22,554.97
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: All that certain piece, parcel or lot of land, together with the improvements thereon, situate, lying and being in the Town of Mount Pleasant, County of Charleston, State of South Carolina, and being more particularly shown and delineated as Lot 22 on that certain plat by Southeastern Surveying, Inc., entitled "A FINAL SUBDIVISION PLAT OF CHURCHILL PARK, PHASE III, PARCEL 10, PARKWEST OWNED BY C. RICHARD DOBSON BUILDERS, INC., LOCATED IN THE TOWN OF MOUNT PLEASANT CHARLESTON COUNTY, SOUTH CAROLINA", dated December 31, 1999, and recorded in Plat Book ED at Page 904, in the RMC Office for Charleston County, South Carolina.

This being the same property to given to Alan G. Nix and Norma J. Nix by deed of C. Richard Dobson Builders, Inc. dated 07/13/2001 and recorded in the Charleston County Register of Deeds Office on 07/17/2001 in Book C377 at Page 591.

Property Address: 1401 Densmore Circle, Mt Pleasant, SC 29466

TMS: 5980300096

[Empty box]

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 [Signature] 3062 Judge Code Date 11/9/17

**For Clerk of Court Office Use Only**

This judgment was entered on the 9th day of November, 2017 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**ATTORNEY(S) FOR THE PLAINTIFF(S)**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**ATTORNEY(S) FOR THE DEFENDANT(S)**  
**CLERK OF COURT**

**Court Reporter:**

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON  
Churchill Park,

Plaintiff,

v.

Alan G. Nix and Estate of Norma J. Nix,  
Defendants.

IN THE COURT OF COMMON PLEAS  
THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2017-CP-10-04031

FINAL ORDER

**RECEIVED**

JAN 19 2021

SC Court of Appeals

FILED  
2017 NOV -9 PM 4:28  
JULIE A. COOPER  
CLERK OF COURT

This Matter came before the Court for hearing on September 26, 2017. All parties present and participated. After carefully considering the testimony and other evidence presented the Court makes the following mixed Findings of Fact and Conclusions of Law:

Alan Nix and the Estate of Norma Nix<sup>1</sup> are owners of property located at 1401 Densmore Court, Mt. Pleasant, South Carolina. The property is located in the Churchill Park neighborhood within the Park West subdivision, Mt. Pleasant, Charleston County, South Carolina. The defendants purchased their property subject to the Declaration of Protective Covenants for Churchill Park, which were filed with the Charleston County RMC office in 2000. The Covenants provide for annual, special and specific assessments that are the responsibility of each owner to pay. This matter arises on a foreclosure action brought by Churchill Park—a South Carolina nonprofit entity created to manage and operate, and actually managing and operating, the Churchill Park neighborhood within the Park West subdivision located in Mt. Pleasant, Charleston County, South Carolina (“Association”). The Association brought this lawsuit to enforce a lien the Association holds as to the Nix property. The last time the defendants paid any

<sup>1</sup>Norma Nix was served with the Complaint and having passed during the pendency of the lawsuit, the Estate of Norma Nix has been substituted as a party.



assessments for their Churchill Park property was in 2012.

The Lis Pendens, Summons and Complaint were all filed on September 4, 2014 and service was made upon all defendants. While both defendants were initially placed in default, the Court has ruled separately to allow each defendant to proceed. On March 12, 2015, defendant Alan Nix served his Answer, along with a Counterclaim seeking an accounting. The Association filed its Reply to the Counterclaim on March 30, 2015.

The defendants 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.* Attorneys for the Association have fully complied with the South Carolina Supreme Court Administrative Order 2011-05-02-01 dated May 2, 2011 and *pro se* defendant Alan Nix and counsel for the Estate of Norma Nix were notified of the time, date, and place of—and appeared and actively participated in—the hearing.

There are two primary issues in this action. The first is whether plaintiff Association is the correct entity to issue assessments and enforce liens for nonpayment of such assessments with respect to Churchill Park properties. The second is whether the defendants owe money for assessments, and if so how much. I address these issues, *seriatim*.

*I. Correct Entity to Assess and Enforce Covenants: Operation of the Community*

According to the governing documents, the Churchill Park Community in Park West was originally to have been operated by an entity named “Churchill Park Homeowners Association, Inc., \* \* \* its successors and assigns.” Covenants, at Article I, Section d. From at least the point of turnover from the developer to property owner control, no entity known as “Churchill Park Homeowners Association, Inc. (“CPHAI”) has ever exercised any operational or management authority or control over Charleston County’s Churchill Park community.

A CPHAI entity was created in South Carolina. However, the Articles of Incorporation for that CPHAI entity state that its members were all to be property owners in Greenville County.<sup>2</sup>

At the time control of Charleston County's Churchill Park community was turned over to the property owners, the CPHAI name was taken and the Association was created by the property owners to operate the community. As evidenced by the continuous financial records, the Association has continuously exercised the operational and management control over Charleston County's Churchill Park neighborhood. In addition, no CPHAI entity has any current legal existence. The CPHAI's corporate status has been forfeited and the entity dissolved.

During the 15 years that the Association has operated Charleston County's Churchill Park Community, all communications from the Board managing the community have come from the volunteer board members and fellow-owners and neighbors in Churchill Park. During those 15 years, Charleston County's Churchill Park owners have been assessed by and paid assessments to the Association so controlled and operated by their neighbor Board members. During those 15 years, the money paid for the assessments has been demonstrably used by the same neighbor Board members and the Association for landscaping, property management, and other items of benefit to Charleston County's Churchill Park community. All liens placed on property in the Charleston County's Churchill Park Neighborhood have accrued to the benefit of the Association and should have been filed in the name of Churchill Park. Likewise, All property located in Charleston County's Churchill Park Neighborhood and owned by the neighborhood should have been placed in the name of the Association. And even if such property was transferred to a

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<sup>2</sup>The CPHAI Articles of Incorporation were also filed by the same law firm that filed the Churchill Park Covenants.

different entity, CPHAI or otherwise, the Association has certainly had open and notorious possession of such property for the last 15 years.

Since the Association was created, it has consistently used professional management professionals to assist with the operation of the community. Most recently, for purposes of this lawsuit, the Association has utilized Gold Crown Management as the property manager pursuant to a contract with the Association. The public records of the South Carolina Secretary of State's website clearly show that Gold Crown Management is the current Registered Agent for the Association.

As with most neighborhood owners associations, the Board Members are simply volunteer neighbors and these volunteer neighbors on the Board rely on the professional property managers to properly address such matters as insurance, taxes, any permits or licenses and associated paperwork, and to meet all necessary corporate formalities for the Association. In this case some confusion has arisen because at times, the various property management companies have identified Charleston County's Churchill Park neighborhood by different geographically identifying labels, such as Churchill at Park West, Churchill @ Park West, Churchill Park at Park West, and Churchill Park @ Park West, and also because such property managers have mistakenly used different corporate labels in different communications and Association forms. A property manager's use of such labels cannot, however, be construed as an adoption of multiple corporate entities or names for the single Association.

Thus, while there may have been some confusion caused by management companies using the incorrect name for the Association or providing an incorrect name to third-party vendors, none of this confusion changes the fact that the Association is the only corporate entity that operates Charleston County's Churchill Park Neighborhood. The mistaken use by a



property manager or third-party vendor engaged through such property manager of some other label to denote the Association does not alter the fact that the Association operates the community.

At least since the turnover of the Churchill Park neighborhood to property owner control, the Association is the only association that has ever been responsible for the management and operation of Charleston County's Churchill Park community. As it stands today, the Association is the only association that has a legal existence to carry out these functions.

*II. Correct Entity to Assess and Enforce Covenants: successor under the Covenants*

The term "successor" has been defined as a "person who succeeds to the office, rights, responsibilities, or place of another." Black's Law dictionary (9<sup>th</sup> ed. 2009). South Carolina courts have noted the term "successor" is construed broadly to recognize that the term is a matter of either function or authority and can equally "mean one who is entitled to succeed, or can mean one who has in fact succeeded." *Holly Woods Ass'n of Res. Owners v. Hiller*, 390 S.C. 172 (Ct. App. 2011) (citations omitted).

In *Holly Woods*, for example, an entity with the longer name "Holly Wood's Association of Residence Owners, Inc." had ceased to function as an entity operating the community. In response, the individual Owners formed the shorter named "Holly Wood Association of Residence Owners" (without the "Inc." in the name). The shorter named entity fulfilled the role of the owners association in terms of function and the court held that the new entity created by the property owners was, in fact, a successor to the former association. *Id.* In *Holly Woods*, the owners took the additional step of amending their governing documents to include the new entity. *Id.*, at 188. Our Supreme Court, however, has clearly held that merely serving the function of an owner's association without formally changing the governing documents or even



creating a formal corporate entity is more than sufficient for an entity to be a “successor.” See, *Battery Homeowners Ass’n v. Lincoln Fin. Res., Inc.*, 309 S.C. 247, 250, 422 S.E.2d 93, 95 (1992).

In *Battery Homeowners*, all property owners took their property under a declaration which provided that Battery Homeowners Association Inc. and its successors and assigns were to assess certain charges to the owners and had the authority to receive attorneys fees and penalties in collecting such amounts that became delinquent. *Battery*, at 309 S.C. at 249, 422 S.E.2d at 94. When the Battery Homeowners Association, Inc. entity ceased to function as the manager and operator of the community, the homeowners banded together and formed an unincorporated association of the property owners. This unincorporated association filed a complaint against a delinquent owner, much as with instant defendants. As with instant cause, the Battery defendant argued that the unincorporated association lacked the authority to assess fees or seek interest and attorney’s fees thereon. In approving the unincorporated group’s ability to make and enforce assessments under the applicable governing documents, the Battery Homeowners Court noted that the term “successor” is a term of art that “has a twofold meaning. It may be used in the sense of one entitled to succeed as well as in the sense of one who has in fact succeeded.” *Battery*, at 309 S.C. at 250, 422 S.E.2d at 95 (citations omitted).

The facts of this case are strikingly similar. According to the governing documents, the Churchill Park Community in Charleston County was to have been operated by an entity named “Churchill Park Homeowners Association, Inc., \* \* \* its successors and assigns.” Covenants, at Article 1, Section d. From at least the point of turnover from the developer to property owner control, no entity known as “Churchill Park Homeowners Association, Inc. has ever exercised any operational or management authority or control over Park West’s Churchill Park community.

Rather, the Association, which was created to operate and manage the Churchill Park community, has continuously exercised the operational and management control over the neighborhood. Moreover, no CPHAI entity even exists: the Secretary of State records reveal that the entity's corporate status has been forfeited and the entity dissolved. Under the standards set forth in Battery Homeowners and Holly Woods, the Association is the successor to, and for 15 years has in fact succeeded, CPHAI under the Churchill Park Community Covenants by virtue of the Association's actions and functions.

*III. Correct Entity to Assess and Enforce Covenants: Right to Enforce and Foreclose*

The Covenants provide that the Association has a lien covering the payment of the assessments associated with each property located in Charleston County's Churchill Park neighborhood. Covenants, at Article 5, Sections b and i. The Association is entitled to receive 18% interest on delinquent assessments, as well as late charges and costs, including attorneys fees on the unpaid amounts. *Id.*, at Article 5, Section c. The Association also has "the right to foreclose its lien through any method allowed by law." *Id.*, at Article 5, Section k.

In this instance, the Association has issued the assessments under the Covenants from the time the control of the community was turned over to the property owners. The defendants received those assessments and paid them to the Association at all times the defendants owned the property from turnover up through 2012. Beginning after 2012, the defendants received the same annual assessments from the same neighborhood-run Association as always, but for personal reasons not associated with the Association or its operation or control, the defendants failed to pay their assessments. As a result, the defendants faced the same collection process as all delinquent owners. However, instead of simply paying the Association the delinquent assessments along with the late fees interest and costs as set forth under the Covenants, the



defendants began attempting to circumvent and avoid responsibility for their obligations to their neighbors.

Meanwhile, as a benefit to property owners, the Association, along with 11 other subordinate associations and the Park West Master Association, entered into an agreement to share collections efforts. If Park West Master and a subordinate association each had a delinquency from the same property owner, rather than bringing two separate lawsuits with two separate sets of attorneys fees and collections costs charged to the property owners, the actions of master and subordinate associations could be joined in one action with savings to the debtor property owner. In this action, the defendants themselves benefitted from just such an arrangement. When liens were filed against the defendants' Churchill Park property by both Park West Master and by the Association, a single, reduced legal fee was split equally between the two associations resulting in a savings to the defendants. Thus, the intent of the Assignment was to vest Park West Master, at that time managed by the same property management company as each of the 12 subordinate associations, with the full panoply of rights and options to enforce liens placed by any of the 12 subordinate associations. The intent was not to vest sole and complete authority in the Master Association, which would strip the subordinate associations of their separate abilities to enforce their own respective covenants as to delinquencies.<sup>3</sup>

While the defendants argue that the Assignment document assigns away the sole and complete authority of the Association to enforce an Association's lien for nonpayment of assessments, the issue is irrelevant in light of the more recently executed Assignment of Foreclosure Rights between Park West Master and the Association that clarifies the co-extensive

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<sup>3</sup>While the issue does not need to be addressed in this action, it is certainly possible that an actual attempt to completely divest such full rights would not be a valid act of the Board, at least absent requisite approval of a supermajority of the Members/Owners with an amendment to the Covenants.

nature of the enforcement rights originally contemplated by the parties with the following language:

WHEREAS, by the execution of this Assignment, Assignor elects to assign back to Assignee a coextensive individual right of Assignee to enforce and, to the extent the Subordinate Assignment is construed as having assigned all of the Subordinate Association's rights to foreclose upon assessment liens for the collection of delinquent assessments as defined herein above, foreclosure upon its respective Assessment liens for the collection of delinquent Assessments (to include all associated fines, interest, costs and attorneys fees as authorized by the respective applicable Subordinate Declaration) *such that the Subordinate Association and the Master Association each have the coextensive equal and separate right and authority to enforce and foreclose upon such Subordinate Association's Assessment liens for the collection of delinquent Assessments (to include all associated fines, interest, costs and attorneys fees as authorized by the applicable Subordinate Declaration)[.]*

*Id.*, at p. 2 (Emphasis provided). Moreover, the coextensive enforcement right that was always intended and is expressly provided in the Assignment "applies to all existing and future Assessment liens held by [Churchill Park]." *Id.* The lien at issue in the cause *sub judice* is a lien of the Association. Consequently, the Association has the clear right to maintain this action to enforce the defendants' obligation to pay their delinquent assessments, along with other debts, now owed to the Association. Any other result would be an absurdity and only lead to additional costs and fees charged to the account of the defendants with duplicative litigation on the identical issues. Thus, I find that the Association, as the successor to CPHAI, is the proper entity to issue assessments to the defendant owners of property within Charleston County's Churchill Park and to enforce the nonpayment of such assessments, *inter alia*, in this foreclosure action.

*IV. Unpaid Assessments: Defendant's Obligations to Pay.*

Article 2, Section a of the Covenants provides that ~~by~~ by accepting an interest in any portion of the Churchill Park community, every property owner is subject to the Covenants and the assessments obligations and lien rights as stated therein. Moreover, every Owner agrees to



*timely pay* all assessments relative to any lot in Churchill Park as well as appropriate fines imposed. *Id.*, at Article 2, Section b. All assessments accrue late charges, interest of 18%, costs, including, without limitation, reasonable attorneys fees, and result in a lien upon the owners' property and personal liability of the owners for all amounts due. *Id.*, at Article 2, Sections c and i. The lien attaches at the point any assessment remains unpaid after 30 days and "shall cover all assessments then due or that become due until the lien is cancelled of record. *Id.*, Article 5, Section k. Any other amounts due under the Covenants are also included as part of the lien and the Association "shall have the right to foreclose its lien through any method allowed by law."

*Id.* The Covenants also control how all payments from owners are to be allocated:

first to costs, then to late charges, then to interest and then to delinquent assessments.

Covenants Article 5, Section m.

After failing to pay annual assessments that came due on January 1, 2013, the Nix's were served with a Notice of Lien dated May 16, 2013 and filed on May 23, 2013 in Book 0333 at Page 083. The Nix's received a breakdown of the costs associated with the obligation to the Association with the lien that included amounts for assessments, interest, late fees/charges attorneys fees, and any credits for payments made. The lien notice package transmitted to the Nix's also included a form that could be used to authorize credit card payments through the Association's legal counsel. Because the matter had been turned over to legal counsel for collection, the client—the Association, as well as the Association's staff—would not speak directly with the debtors and all payments were required to be made through legal counsel as well. This helps to insure that there are less miscommunications and reduces the risk of a "he said-she said" from a debtor claiming some type of resolution occurred directly with the client. This also helps to insure that any payments received are properly allocated as required by the



Covenants governing Churchill Park and all of its property owners.

The first thing the defendants attempted, however, was to make a partial payment in violation of the allocation required by the Covenants. The defendants' submitted a credit/debit card authorization form which includes handwritten notes in which defendant Alan Nix sought to completely ignore the Association's costs while seeking to misallocate a partial payment first to assessments, then to interest and finally to late fees. In case the stated misallocation was not clear enough, the defendant also added a handwritten paragraph to the authorization stating that above misallocation as what Mr. Nix authorized. The cover page for the credit/debit authorization also included Mr. Nix's handwritten acknowledgment that communications were required to run through the Association's legal counsel and that the Association would not communicate with Mr. Nix while he was in collection and his obligations were outstanding.

Had plaintiff accepted this demanded misallocation from the defendants, the plaintiff would have been in violation of the Covenants. At the same time, the federal law prohibits the Association from applying payments on an account in collections differently than what is provided by any limitations of the debtor. Thus, plaintiff's only option when faced with an attempted misallocation payment was to refuse the payment and return any check associated with that misallocated payment. This is exactly what happened repeatedly.

A year later, on April 30, 2014, defendant Alan Nix again sought to misallocate a payment. In a letter of that date, defendant Alan Nix sought to control the allocation, outside of the mandates of the Covenants, with a partial payment of \$1137.03, from a debt of \$1396.01 to both master and subordinate associations, as well as amenity association assessments and interest and late fees in amounts the defendant acknowledges he invented for himself. However, no one ever received the April 30, 2104 letter with defendants' misallocation partial payment. As Alan Nix's



own US Postal Service tracking document shows, the letter was neither “refused” nor was it “not accepted.” Rather, when the postal carrier attempted delivery and no one was present to sign for the letter when delivery was attempted.

The defendant apparently followed-up with a May 2 email directly to the property management company at that time servicing both Park West Master and the subordinate Churchill Park Association, notifying the property manager, but not the Association’s legal counsel, that a check in an amount based on Mr. Nix’s own calculations was mailed. This email, however, was not even sent to the office where Mr. Nix claims to have mailed his certified letter, but rather was sent to an entirely different office in a different part of the state. The important information in the May 2, 2014, email is that once again Mr. Nix acknowledged that he was seeking to pick and choose how to direct a partial payment toward his debt, completely ignoring the clear language of the Covenants and ignoring prior instructions to address communications to the Association’s legal counsel.

Finally, after receiving no acceptable payments from the defendants for more than a year, notice was sent on July 28, 2014 that if payment was not forthcoming, a lawsuit would be filed. When no such payment was made, this suit was filed on September 4, 2014. The Complaint sought to recover the amounts the defendants owed as a result of their delinquent assessments.

The time following the lawsuit was much like the time prior to filing. Mr. Nix repeatedly tried to misallocate partial payments to avoid addressing the full extent of his obligations. The whole time these attempts were occurring, the defendants’ obligations were increasing. Each of these attempts by Mr. Nix, generally seeking to avoid paying legal fees and other costs of collection and attempting to impose other conditions on the payment, were rebuffed and Mr. Nix’s checks returned. Such attempts were, at a minimum made with communications dated

October 21, 2014, October 30, 2014, November 17, 2014, November 18, 2014, December 5, 2014 and March 31, 2015. This same pattern was again repeated in May 2016, and even as late as August and September 2017.

Regardless of the attempts to pay in some manner and in some amount in contravention of the Covenants, there is no question but that the defendants, as owners of property within Charleston County's Churchill Park neighborhood, were responsible to pay annual assessments of the Association, timely, in full, and according to the allocation set forth in the Covenants.

*V. Unpaid Assessments: Debt owed.*

Jerry Watson, a representative of the Association's property management company testified concerning the monies owed by the defendants and evidence was admitted concerning attorneys fees and costs. The evidence demonstrates, that the principal amount of assessments the defendants are responsible to pay over the nearly five (5) years since the 2013 assessment came due is \$1447.18. The total late fees incurred on the unpaid assessments during this time period are \$863.15. The Association imposed various fines against the defendants for numerous violations of the Covenants totaling \$2725.00, which, after a downward adjustment of \$325 forgiving certain fines where the defendants corrected the underlying violation, results in fines of \$2400.00 owed by defendants. Although entitled by the Covenants, the Association elected not to pursue interest charges on the amounts owed up through trial. The total debt before calculating enforcement costs is \$4710.33.

The sum of \$17,844.64 is a reasonable fee to allow as attorney fees and costs for plaintiff's attorney for services performed until final adjudication of the within action, under the terms of the Declaration. Specifically, the plaintiff's attorney incurred actual costs of \$681.74 in this matter, including filing fees, fee for referral to the Master, various service attempts,



background title work relative to defendants' property, and filing fees for a Motion to Compel.

Attorneys fees include \$1900 from the initial attempt to obtain the defendants' compliance with their assessment obligations up through the time the defendants filed an Answer and contested the foreclosure. These costs included \$250 for the lien, \$150 flat rate for a pre-foreclosure demand letter, and \$1500 flat fee attributable to the point the foreclosure was contested. These fees covered services which required the plaintiff's attorney to research public real property records to identify the subject property, research court records to determine if there were any pending actions against the subject property, prepare and coordinate filing and service of the Notice of Lien, coordinate any payoff requests or payment plans and other communications with the defendants, to obtain and review a title abstract for the subject property, prepare and file a lis pendens, summons and complaint for foreclosure, arrange for personal service of the initial pleadings, review the file to determine whether service was properly achieved and whether the defendants were in default, and prepare and file an Affidavit of Default when the both defendants failed to respond. The plaintiff's attorney also had to investigate and respond to defendant Alan Nix's attempt to be relieved of his default, and review and analyze defendant Alan Nix's Answer and Counterclaims and reply to the defendant's counterclaim and attend at least one status conference concerning the case.

After the case was stricken from the active docket pursuant to Rule 40(j), SCRCP, plaintiff's attorney had to monitor the deadline for having the case restored and prepare and file a Motion to Restore and attend a hearing on same. Moreover, Mr. Nix has litigated this lawsuit *pro se* and has filed numerous motions and otherwise litigated this case in a manner that has required extensive response by plaintiff's counsel and the attendance at various hearings. The evidence indicates that plaintiff's counsel has spent 52.55 hours at \$275.00 per hour on this

A handwritten signature or set of initials, possibly "RHS", written in dark ink in the bottom right corner of the page.

matter up through the final pretrial preparations, with an additional 5.3 hours at \$125.00 per hour of paralegal time and 1.5 hours of associate attorney time at \$175 per hour. This does not include other attorney time expended by various members of plaintiff's counsel's law firm who had to review numerous letters and other communications sent directly to them by defendant Alan Nix despite Mr. Nix being repeatedly informed that all matters were being handled by a single plaintiff's attorney. Nor does this amount include costs for such attorneys to respond to and address such items as Mr. Nix's lodging a criminal complaint, ultimately abandoned by the Town of Mount Pleasant, against a member of plaintiff's counsel's law firm concerning a notarized document.

The sum of \$17,162.90 for attorney's fees is reasonable, and conservative, based on the time necessarily devoted to representation of the plaintiff during the several-month course of these proceedings. The services of counsel performed for the plaintiff, including the number and types of pleadings and documents prepared, the incumbent liabilities, and the difficulties involved in this particular case, also support the amount awarded. The defendant, acting *pro se* also litigated this case in a manner that added substantially to the time necessary to address the legal matters herein. The fees are also reasonable given the professional standing of the plaintiff's counsel and his experience in handling community association matters, including assessment lien foreclosure matters. See *Brown v. Lister*.

After all payments received by the plaintiff have been credited, the amount due and owing, and other costs and expenses of the within action, including an attorney's fee, secured by the Declaration, are as follows:

- (a) Principal due \$1447.18
- (b) Late Fees \$863.15



(c)	Violations	\$2400.00
(d)	Costs of collection prior to Hearing (service, filing, etc.)	\$681.74
(e)	Attorney's fee	\$17162.90
(f)	Payments	(\$0.00)
	+	
	<hr/>	
	TOTAL debt secured by the Declaration	\$22554.97

Interest after the date of judgment at the rate of 18.0000% per annum (pursuant to the terms of the Declaration) on the judgment debt should be added to such judgment debt to comprise the amount of plaintiff's debt secured by the Declaration through the date to which such interest is computed.

**IT IS THEREFORE ORDERED THAT:**

1. There is due the sum of \$22,554.97, as set out *supra*.
2. The amount due in the preceding paragraph (the "Final Total Debt") shall accrue interest at the rate of the respective Declaration rate per annum and together with such interest shall constitute the total judgment debt due the plaintiff.
3. The amount of the judgment shall be subject to increase to permit the 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 attorney's 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 and/or supplemental compensation. Such additional costs, commissions and expenses may be established by affidavit.
4. The defendants are jointly and severally liable for the aforesaid judgment debt including interest at the rate of 18.0000% per annum shall on or before the date of sale of the property hereinafter described, pay to the plaintiff, or plaintiff's attorney the amount of plaintiff's debt as aforesaid, together with the costs and disbursements of this action.
5. On default of payment at or before the time herein indicated, the premises described in the Complaint, as hereinafter set forth, shall be sold by the Master in Equity at

public auction, at the Charleston County Courthouse, in the City of Charleston, County and State aforesaid 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 the next business day 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 to purchase price if compliance is made, but in the event compliance is not made, the deposit may be forfeited without further hearing and applied first to costs of the action and then to plaintiff's debt. Should the successful bidder at the regularly conducted sale fail or refuse to either make the required deposit at time of bid or comply with the other terms of the bid within 20 days, then the property may be re-sold on the same terms and conditions on the same or some subsequent Sales Day, but at the risk of the defaulting bidder(s).

b. Interest on the balance of the bid shall be paid through the day of compliance at the rate of 18.0000%.

c. The sale shall be subject to taxes and assessments, existing easements and restrictions and easements and restrictions of record, and any other senior encumbrances. Specifically, this sale is subject to a senior mortgage held by First Federal Savings and Loan Association of Charleston recorded in Book E377 at Page 82 and a senior mortgage held by Navy Federal Credit Union and recorded in Book 98 at page 819.

d. Purchaser to pay for any statutory commission on sale from the proceeds of the final bid amount.

e. Purchaser to pay for deed preparation, costs of recording the deed, and transfer taxes on the deed.

6. The bidding will not remain open after the date of sale and compliance with the bid may be made immediately.

7. Plaintiff may waive any of its rights, including its right to a deficiency judgment in accordance with Rule 71, South Carolina Rules of Civil Procedure, prior to sale.

8. The Master in Equity will, by advertisement according to law, give notice of the time and place of such sale and the terms thereof and will execute to the purchaser, or purchasers, a deed to the premises sold. The plaintiff, or any other party to this action, may become a purchaser at such sale, and 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.

9. If plaintiff be the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses and 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.

10. 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 action, including any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court.

NEXT: To the payment to the plaintiff or plaintiff's attorney of the amount of plaintiff's debt and interest (including attorney fees) or so much thereof as the purchase money will pay on the same;

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

11. In the event the successful bidder is other than the defendant(s) in possession herein, the Sheriff of Charleston 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 of his assigns in such peaceable possession.

12. In accordance with Rule 77(d), SCRPC, 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 herein.

13. The deed of conveyance made pursuant to said sale shall contain the names of only the first-named plaintiff and the first-named defendant(s), and the defendant(s) who was/were the titleholder(s) of the property at the time of the filing of the notice of pendency of the within action, and the name of the grantee; and 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.



14. 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.

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

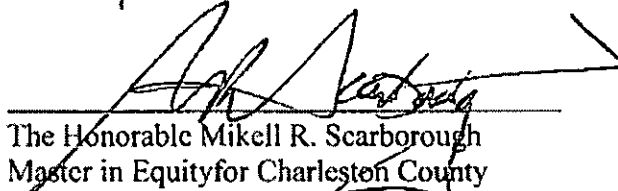
All that certain piece, parcel or lot of land, together with the improvements thereon, situate, lying and being in the Town of Mount Pleasant, County of Charleston, State of South Carolina, and being more particularly shown and delineated as Lot 22 on that certain plat by Southeastern Surveying, Inc., entitled "A FINAL SUBDIVISION PLAT OF CHURCHILL PARK, PHASE III, PARCEL 10, PARKWEST OWNED BY C. RICHARD DOBSON BUILDERS, INC., LOCATED IN THE TOWN OF MOUNT PLEASANT CHARLESTON COUNTY, SOUTH CAROLINA", dated December 31, 1999, and recorded in Plat Book ED at Page 904, in the RMC Office for Charleston County, South Carolina.

This being the same property to given to Alan G. Nix and Norma J. Nix by deed of C. Richard Dobson Builders, Inc. dated 07/13/2001 and recorded in the Charleston County Register of Deeds Office on 07/17/2001 in Book C377 at Page 591.

Property Address: 1401 Densmore Circle

*1401 Densmore Circle SC 29466*

TMS: 5980300096

  
The Honorable Mikell R. Scarborough  
Master in Equity for Charleston County

*6/19*, 2017  
Charleston, South Carolina