

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Independence National Bank,

Plaintiff,

vs.

Buncombe Professional Park, LLC and David  
DeCarlis s/a David D. DeCarlis,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2010-CP-23-03860

**ORDER**

**RECEIVED**

**Jul 02 2021**

**SC Court of Appeals**

This matter came before the Court on May 27, 2021 upon the Motion to Establish Sales Procedures for Sales of Property (the “Sales Motion”). The Sales Motion was filed by the Receiver on April 23, 2021 and duly noticed to all parties along with notice of the hearing on the Sales Motion. DeCarlis filed a Memorandum in Opposition to Motion Determine Sale Procedures on May 27, 2021 (the “Objection”). Because the Objection was filed on the day of the hearing and alleged that the judgment at issue in this matter had expired, the Court solicited post-hearing briefing by Receiver on the issue of the expiration of the judgment. Receiver submitted a Brief to this Court on June 1, 2021 by electronic mail (the “Brief”). The Brief was then attached to Receiver’s Forty-First Report filed with this Court on June 2, 2021. The matter is now ripe for decision. Upon consideration of the Sales Motion, the Objection, the Brief, and the arguments of counsel at the hearing, the Court finds and concludes as follows:

1. Receiver was appointed by this Court pursuant to an order entered on November 12, 2019.

2. Receiver has been appointed in this matter in connection with efforts to enforce a judgment obtained by Independence National Bank (“Independence”) against DeCarlis. See, 2010-CP-23-03860.
3. The judgment stems from a foreclosure proceeding commenced on May 14, 2010 by Independence against DeCarlis and other defendants. The foreclosure proceeding sought a deficiency judgment against DeCarlis.
4. On May 13, 2011, this Court entered a Decree of Foreclosure. The Decree of Foreclosure stated that “after the proceeds of [the foreclosure] sale is applied to the indebtedness due as outlined above, said deficiency shall be assessed against all Defendants and Plaintiff shall have personal judgment against said Defendants for the amount of said deficiency.”
5. The Decree of Foreclosure further stated that “[p]laintiff has reserved the right to waive deficiency until the date and time of sale.”<sup>1</sup>
6. The Decree of Foreclosure further stated that “this action shall remain open for any other proper purpose.”
7. On August 2, 2011, this Court entered an Order for Deficiency Judgment (the “Deficiency Judgment”). The Deficiency Judgment stated that “Plaintiff, Independence National Bank, have judgment against the Defendants, Buncombe Professional Park, LLC; and David DeCarlis, s/a David D. DeCarlis; in the amount of \$491,978.13, with interest thereon from July 13, 2011 until paid in full at the legal rate of judgments, as changed from time to time.”

---

<sup>1</sup> In the Decree of Foreclosure, “Plaintiff” refers to Independence and “Defendants” includes DeCarlis.

8. Pursuant to the Sales Motion, Receiver seeks authority from the Court to set and establish the procedures by which Receiver may sell or otherwise dispose of properties of DeCarlis (or his wholly owned limited liability company). The properties include DeCarlis' primary residence located in Greenville County, South Carolina and which is owned with DeCarlis' wife, Tiffany DeCarlis and a beach house located in Charleston County, South Carolina and owned by 3009 Palm Blvd. LLC.<sup>2</sup>

### **The Judgment**

9. While the Sales Motion seeks authority for the disposition of certain properties owned by DeCarlis or his wholly-owned limited liability company, DeCarlis raises the expiration of the "judgment" as a complete defense to the Sales Motion. Therefore, the Court will address the issue of the "judgment."
10. First, the Law of the Case Doctrine requires a conclusion that the judgment would not expire until at least August 2, 2021. On October 8, 2019, this Court entered its Order for Repatriation of Assets (the "Repatriation Order"). The Repatriation Order found that the "judgment" was recorded on August 2, 2011. DeCarlis was a party to the Repatriation Order. This finding by the Court was not appealed and, therefore, is now law of the case precluding some other date. Thus, under the Law of the Case Doctrine, the date of the "judgment" is, in fact, the date of the Deficiency Judgment. See generally Atl. Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 329, 730 S.E.2d 282, 285("[A]n unappealed ruling, right or wrong, is the law of the case.").
11. Second, while the Foreclosure Decree was entered on May 13, 2011, it did not establish a money judgment until the date of the Deficiency Judgment. The Foreclosure Decree

---

<sup>2</sup> DeCarlis is the sole member of 3009 Palm Blvd., LLC.

- clearly states at paragraph 16 that the amount due is “anticipated.” Thus, the amount due would not and could not be established until after the sale of the property and a determination as to whether a deficiency existed. Put another way, there was no debt to attempt execution upon until a sum certain or defined dollar amount was entered as a judgment.
12. Moreover, S.C. Code Ann. 29-3-660 specifically addresses deficiency judgments. This statute provides the court may adjudge and direct the payment by the mortgagor of any residue of the mortgage debt that remains unsatisfied after a sale of the mortgaged premises. Section 29-3-660 further provides that if the debt at issue is secured by the obligation of any other party other than the mortgagor the plaintiff may make that person a party to the action and the court may adjudge payment of the residue of such debt remaining unsatisfied after the sale of the mortgaged premises against that other party and may enforce such judgment as in other cases.
13. Section 29-3-660 is an independent statute that does not relate back to S.C. Code Ann. 29-3-650. Specifically, section 29-3-660 does not provide that the deficiency amount established following a sale be then credited against the amount determined in section 29-3-650. To the contrary, section 29-3-660 provides that deficiency judgments are themselves judgments that may be enforced as in other cases.
14. If DeCarlis’ construction of section 29-3-650 were correct, i.e., that the amount due following a sale of property at foreclosure is a “credit”, then there would be no need for section 29-3-660 and the statute – which itself is captioned “Deficiency judgment” – would be a nullity. See generally Federal Land Bank v. Davant, 292 S.C. 172, 355 S.E.2d 293 (1987).

15. Third, the unique facts of the instant case illustrates what would be the harshness of a strict application of Gordon v. Lancaster, 425 S.C. 386, 823 S.E.2d 173 (2018). In the instant case, the initial appeals by DeCarlis first to the South Carolina Court of Appeals and then to the South Carolina Supreme Court exhausted almost five years of the ten-year judgment lifespan. Then, once execution of the judgment herein was sought (admittedly with some early delays by Independence), DeCarlis has filed multiple appeals (some pursued while others dismissed for failure to prosecute).
16. The various orders entered in the instant case over the years provide clear evidence of the efforts that have been undertaken (both pre-judgment and post-judgment) to avoid payment of the judgment debt. If this case were not to fall within the Linda Mc (398 S.C. 542, 703 S.E.2d 499 (2010)), exception discussed in Gordon, there will likely be an outcome that rewards the machinations and delays orchestrated by a judgment debtor. This Court believes strong policy considerations and practical reasons exist for a Linda Mc analysis or a hybrid approach whereby appeals by a judgment debtor arising out of an order that is not reversed or modified would toll the collection period.

### **The Sales Procedures**

17. Returning to the merits of the Sales Motion, this Court finds that the Sales Motion should be granted as follows: Based on the exigent circumstances relating to the possibility that the judgment lien will be expiring on August 2, 2021, the properties shall be sold 'as is' by private auction with a reputable auctioneering firm chosen by the Receiver. Upon execution of a contract by the Receiver with the auctioneer, the properties shall be sold within twenty-one (21) days with a buyer's premium, where the auctioneer is paid by purchaser a commission, not exceeding 10%.

18. The properties shall be sold by auction as discussed above and shall be subject to any and all prior liens (if any).

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

1. Receiver's Sales Motion is granted as set forth herein; and
2. Upon Receiver's entry into a contract with an auctioneer to be chosen by Receiver, the properties shall be sold by auction within twenty-one days of Receiver's contract with auctioneer; and
3. The auction shall be "buyer's premium" with the properties being sold subject to any and all prior liens (if any); and
4. DeCarlis' Objection is denied and overruled.

AND IT IS SO ORDERED.

JUDGE'S SIGNATURE PAGE TO FOLLOW



Greenville Common Pleas

**Case Caption:** Independence National Bank vs. Buncombe Professional Park Llc ,  
defendant, et al  
**Case Number:** 2010CP2303860  
**Type:** Master/Order/Other

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)

FORM 4

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

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2010CP2303860

Independence National Bank		Buncombe Professional Park Llc David D Decarlis	David Decarlis
----------------------------	--	--	----------------

PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> 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.  See Page 2 for additional information.
- 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: \_\_\_\_\_
- STAYED DUE TO BANKRUPTCY**
- 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**

In considering the record in its entirety, the Motion To Reconsider filed 6-21-2021 is denied.

**It is so Ordered.**

This order  ends  does not end the case.  
Additional Information for the Clerk: \_\_\_\_\_

INFORMATION FOR THE JUDGMENT 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.**

**E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.**

ELECTRONICALLY FILED - 2024 Jun 23 2:21 PM - GREENVILLE - COMMON PLEAS - CASE#2010CP2303860

Circuit Court Judge

Judge Code

Date

**For Clerk of Court Office Use Only**

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

**Christopher L. Jones** 650 E. Washington St Greenville, SC  
29601

**Mary Leigh Arnold** 749 Johnnie Dodds Blvd, Ste B Mt.  
Pleasant, SC 29464  
**Shawn French Sr**

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

\_\_\_\_\_  
ATTORNEY(S) FOR THE DEFENDANT(S)

\_\_\_\_\_  
Court Reporter

\_\_\_\_\_  
- Clerk of Court

**Court Reporter:**

**E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.**

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



Greenville Common Pleas

**Case Caption:** Independence National Bank vs. Buncombe Professional Park Llc ,  
defendant, et al  
**Case Number:** 2010CP2303860  
**Type:** Master/Order/Form 4

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)