

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

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

Plaintiff,

vs.

Richard Cionci, Mill Creek Owner's
Association, Inc.,

Defendant.

(File No. 4069.00221)

RILEY POPE & LANEY, LLC
Attorneys for Plaintiff

IN THE COURT OF COMMON PLEAS
C/A NO.: 2018-CP-07-02470

**MASTER IN EQUITY'S ORDER OF
JUDGMENT OF FORECLOSURE AND
SALE DECREE**

(Non-Jury)

(Deficiency Waived)

RECEIVED

JUL 29 2021

SC Court of Appeals

Richard Cionci
Pro Se

Meredith Bannon
Attorney for Mill Creek Owner's Association,
Inc.

Pursuant to Rule 53 SCRPC, the above entitled matter was referred to the undersigned to make appropriate findings of fact and conclusions of law with authority to enter a final judgment in this cause without further order of court. Any appeal from this Order shall be directly to the South Carolina Court of Appeals.

Pursuant to said Order of Reference a hearing was held on April 16, 2021 to address Plaintiff's Motion for Summary Judgment. The hearing was attended by attorneys for the Plaintiff and Defendant Mill Creek Owner's Association, Inc. Plaintiff, who is proceeding *pro se*, was also present.

STANDARD

Summary Judgment is warranted only if there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRPC. "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party." Bloom v. Ravoir, 339 S.C. 417, 529 S.E.2d 710 (2000). The moving party has the initial burden of demonstrating the absence of a genuine issue of material fact. However, once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary

support for the opponent's case, the opponent must come forward with specific facts showing there is a genuine issue for trial." *Garvin v. Bi-Lo, Inc.*, 337 S.C. 436, 523 S.E.2d 481 (Ct. App. 1999). The opponent cannot merely rely upon the pleadings, but must submit some additional evidence creating a genuine issue of material fact.

"Generally, the party seeking foreclosure has the burden of establishing the existence of the debt and the mortgagor's default on that debt. Once the debt and default have been established, the mortgagor has the burden of establishing a defense to foreclosure such as lack of consideration, payment, or accord and satisfaction." *U.S. Bank Trust Nat. Ass'n v. Bell*, 385 S.C. 364, 374-75, 684 S.E.2d 199, 205 (Ct.App.2009) (internal citations omitted).

ARGUMENTS AND EVIDENCE PRESENTED

On March 11, 2021, Plaintiff's counsel filed and served a Motion for Summary Judgment with a supporting affidavit and exhibits. The affidavit and exhibits allege Defendant Cionci entered into a loan agreement with DHI Mortgage Company, Ltd. on or about September 29, 2009. Defendant Cionci executed a Note in the amount of One Hundred Ninety-Nine Thousand Four Hundred Thirty and 00/100 (\$199,430.00) Dollars and he executed a Mortgage as additional security for the loan. The Note and Mortgage allegedly were assigned to Plaintiff.

The affidavit alleges Defendant Cionci defaulted on the terms of the Note on or about October 1, 2019, and Plaintiff has declared the entire balance of the loan due and payable.

In opposition to Plaintiff's motion, Defendant Cionci filed affidavits and opposition memoranda arguing a genuine issue of material fact exists and summary judgment should be denied. The main point of Defendant Cionci's argument is the loan was originally federally backed and he argues the prior servicer/lender failed to complete loss mitigation prior to filing the foreclosure action as required by federal law.

In response, Plaintiff filed and served a counter-affidavit stating that at all time relevant to the present action, the Note and Mortgage were no owned, securitized, guaranteed, or insured by the FHA as evidenced by a document confirming such provided by the U.S. Department of Housing and Urban Development.

The Court adjourned the April 16th hearing to allow the parties to review and reply with any additional arguments.

On April 23, 2021, Defendant Cionci filed a supplemental opposition memorandum arguing there were genuine facts of equitable estopped to prevent summary judgment. However,

the basis for the argument again relies on acts by prior servicers/lenders that took place *before* the present action was filed on behalf of Plaintiff.¹ Defendant Cionci did not present any evidence to show Plaintiff is not the current owner of the loan, that the loan is owned, securitized, guaranteed, or insured by the FHA or any other government backed lender, or any evidence contradicting Plaintiff's argument that Defendant Cionci entered into a loan modification with Plaintiff on June 21, 2019, and breached the terms of that agreement.

Based upon the proof made of the facts and circumstances alleged in the pleadings and through the affidavits in support of summary judgment, I find, conclude and order as follows:

FINDINGS OF FACT:

1) The Lis Pendens was filed on December 18, 2018.
2) The Summons and Complaint were filed on December 18, 2018.
3) Service was made upon the Defendant as shown by the proof of service filed herein.
4) The Defendant and all attorneys of record were notified of the time, date, and place of the hearing in this matter.

5) For value received, Richard Cionci made, executed and delivered a note ("Note") dated September 29, 2009, promising thereby to pay to the order of DHI Mortgage Company, Ltd. the sum of One Hundred Ninety Nine Thousand Four Hundred Thirty and 00/100 (\$199,430.00) Dollars, with interest at the rate of 5.125% per annum initially, with a current rate of 4.0000% per annum. Other terms and conditions are stated in the Note, which is of record herein.

6) To better secure the payment of the Note described above, Richard Cionci made, executed, and delivered to Mortgage Electronic Registration Systems, Inc. as nominee for DHI Mortgage Company, Ltd. a certain real estate mortgage ("Mortgage") in writing, dated September 29, 2009, covering real property in Beaufort County, which is the same as that described in the Complaint. The Mortgage was filed in the Office of the Register of Mesne Conveyances/Register of Deeds for Beaufort County on October 2, 2009, in Book 2894 at Page 1373. Thereafter, by assignment recorded on June 28, 2011 in Book 3068 at Page 604, the mortgage was assigned to Wells Fargo Bank, NA; thereafter, by assignment recorded on August 25, 2017 in Book 3602 at

¹ Defendant Cionci also submitted an opposition memorandum arguing Plaintiff's affidavit should not be considered because the affiant does not have any personal knowledge of the allegations that occurred prior to Plaintiff's ownership of the loan. While this argument may go to the weight of the evidence, the affidavit complies with the requirements of Rule 803(6), SCRE, and, therefore is admissible for the purposes of this motion.

Page 151, the mortgage was assigned to The Secretary of Housing and Urban Development; thereafter, by assignment recorded on August 25, 2017 in Book 3602 at Page 154, the mortgage was assigned to Wilmington Savings Fund Society, FSB, as Trustee of Stanwich Mortgage Loan Trust A; thereafter, by assignment recorded on May 10, 2019 in Book 3758 at Page 2718, the mortgage was assigned to Wilmington Savings Fund Society, FSB, as Owner Trustee of the Residential Credit Opportunities Trust V-C; thereafter, by assignment recorded on January 15, 2021 in Book 3959 at Page 1849, the mortgage was assigned to Wilmington Savings Fund Society, FSB, as Owner Trustee of the Residential Credit Opportunities Trust V-E.

7) The Mortgage evidences and secures the repayment of money advanced by the mortgagee to, or on behalf of, the mortgagor and constitutes a first mortgage lien on the mortgaged premises.

8) The Plaintiff is the real party in interest pursuant to SCRCP 17(a) and is entitled to enforce the terms of the subject Note and Mortgage.

9) The titleholder of record of the subject property as of the filing of the Lis Pendens in this action is Richard Cionci, who is the original mortgagor.

10) Any notice required by the terms of the Note and/or Mortgage or by state or federal statutes has been given to the applicable Defendant prior to the commencement of this action.

11) The loan evidenced by the Note and Mortgage is not owned, securitized or guaranteed by Fannie Mae or Freddie Mac, and is not serviced by a servicer participating in the Home Affordable Modification Program (HAMP). Therefore the Court finds that there are no HAMP or other issues concerning federal requirements for loss mitigation to be resolved before foreclosure is ordered or the sale is commenced.

12) An Attorney Certification having been filed in this matter pursuant to Administrative Order 2011-05-02-01, the Court finds that the foreclosure action may proceed to Judgment and Sale.

13) The Note payments which became due on October 1, 2019, and subsequent months, have not been made as provided for therein, and the Plaintiff, as the holder thereof, has elected to require immediate payment of the entire amount due thereon and has placed the Note and Mortgage in the hands of its attorney for collection by foreclosure.

14) The sum of \$2,738.00 is a reasonable fee to allow as attorney's fees for Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of this

action, under the terms of the Note and Mortgage. The inclusion of services anticipated to be performed until final adjudication contemplates completion of this matter within a reasonable time and does not include exceptional circumstances delaying conclusion beyond the normal time.

15) The amount due and owing on the Note, with interest at the rate provided in the Note, and other costs and expenses of the within action, including an attorney's fee, secured by the Note and Mortgage, is as follows:

(a) Principal amount due as of October 1, 2019	\$239,366.98
(b) Interest from October 1, 2019 to February 18, 2021 at a current rate of 4.0000%	\$16,591.74
(c) Deferred Interest	\$53,669.17
(d) Additional Per Diem Interest from February 19, 2021 - April 26, 2021	\$2,196.93
(e) Advances	
Unpaid Loan Charges of Advances	\$8,242.56
Estimated Payoff Charges from Servicer	\$105.00
(f) Late charges	\$740.64
(g) Costs of collection prior to hearing (service of process, filing fees, etc.)	\$545.72
(h) Attorneys Fee	\$2,738.00
Total debt secured by Note and Mortgage, including interest to date shown	\$324,196.74

Interest for the period from the date shown in (b) above through the date of this judgment at above-stated rate to be added to the above stated "Total Debt" to comprise the amount of the judgment debt entered herein and interest after the date of judgment at the rate of 4.0000% per annum (pursuant to the terms of the Note and Mortgage) on the judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the Mortgage through the date to which such interest is computed.

16) The Plaintiff is seeking the usual foreclosure of the mortgage and although deficiency was demanded in the Complaint, Plaintiff now wishes to waive the right to a personal or deficiency judgment pursuant to Rule 71(b) SCRPC.

17) The following Defendant(s) claim(s) or may claim a lien upon or interest in the subject property or are otherwise involved in this matter. In the event there is a surplus from the sale of the subject property, the validity, priority and amount of such liens will be determined at a hearing subsequent to the sale, in accordance with Rule 71(c), SCRPC. The Clerk of

Court/Register of Deeds is hereby ordered to release said liens in so much as it pertains to the property which is the subject of this action:

Mill Creek Owner's Association, Inc. by virtue of any lien or enforceable assessments claimed as provided for in the Declaration of Covenants, Conditions, and Restrictions recorded herein, and any amendments thereto; including but not limited to a lien in the amount of \$1,325.32 recorded November 30, 2015 in Book 112 at Page 868; and a lien in the amount of \$2,490.85 recorded October 11, 2011 in Book 73 at Page 93. Any such interest or lien upon the subject property is junior and subordinate to Plaintiff's mortgage.

Mill Creek Owner's Association, Inc. by virtue of any lien or enforceable assessments claimed as provided for in the Declaration of Covenants, Conditions, and Restrictions recorded herein, and any amendments thereto; including but not limited to a lien in the amount of \$5,278.30 recorded November 5, 2018 in Book 135 at Page 1216 and re-recorded on November 9, 2018 in Book 135 at Page 1398. Any such interest or lien upon the subject property is junior and subordinate to Plaintiff's mortgage.

CONCLUSIONS OF LAW

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

- 1) The Plaintiff's Mortgage should be declared a first mortgage lien and Plaintiff should have judgment of foreclosure of the mortgage and the mortgaged property should be ordered sold at public auction after due advertisement.
- 2) The Court finds that there are no HAMP issues to be resolved before foreclosure is ordered or the sale is commenced.
- 3) The Court also finds the real property is not an "owner occupied dwelling" as defined in the May 2, 2011 Administrative Order, and is therefore exempt from said Order.
- 4) The Court also finds that Plaintiff filed a Certification of Compliance with the Coronavirus Aid, Relief, and Economic Security Act as required by the May 6, 2020 Administrative Order, and is therefore in compliance with said Order.
- 5) The Defendants named herein, and all persons whosoever claiming under Defendants, are forever barred and foreclosed of all right, title, interest, equity of redemption or lien in the said mortgaged premises so sold, or any part thereof.
- 6) Pursuant to Rule 53, SCRCP, this Order shall constitute a final judgment.

7) That, in addition to all notices to the titleholder of record which are required by the SCRCPP or other law, in a case involving the titleholder's SCRCPP 55 default, or in any other case or circumstance where the titleholder would not ordinarily receive a copy of the Order of Foreclosure and/or the Notice of Sale, the Plaintiff shall, within five (5) business days of the execution of this Order cause this Order and the Notice of Sale (if available) to be served by U.S. Mail upon said titleholder.

8) A Certification of such service shall be filed with the Clerk of Court expeditiously.

9) In cases where the Notice of Sale is executed later in time than the Order, service shall be accomplished separately, and shall be sent no later than five (5) business days from receipt by the Plaintiff.

10) There is due to the Plaintiff on the Note and Mortgage set forth in the Complaint the sum of \$324,196.74, as set out in the Findings of Fact *supra*.

11) The amount due in the preceding paragraph (the "Total Debt" as set out in the Findings of Fact *supra*, and later accrued interest on the principal), shall constitute the total judgment debt due Plaintiff and shall bear interest hereafter at the rate of 4.0000% per annum. 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 judgment figures set forth herein. It may also increase to include supplemental compensation for attorney's services not contemplated by the initial fee awarded. 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 statement and shall be adjudicated by the Court without further finding.

12) The Defendant liable for the aforesaid judgment debt including interest at the rate of 4.0000% 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.

13) On default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, shall be sold by the Master in Equity, at public auction, at 11:00 a.m. at the County Courthouse in Beaufort, South Carolina, 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 some other day appointed by the Court), on the following terms, that is to say:

14) For cash: The Master in Equity, will require, at the time of the bid, a deposit of 5% of the amount of the bid (in cash or equivalent) same to be applied to purchase price if compliance is made, but in the event of non-compliance, the deposit may be forfeited without further hearing and applied first to the costs of the action and then to plaintiff's debt. Should the successful bidder at the regularly conducted sale fail or refuse to make the required deposit at time of bid or comply with the other terms of the bid within thirty (30) days, then the property may be re-sold on the same terms and conditions on some subsequent Sales Day, but at the risk of the defaulting bidder(s).

15) Interest on the balance of the bid shall be paid through the day of compliance at the rate of 4.0000%.

16) Purchaser shall pay for any statutory commission on sale from the proceeds of sale, deed preparation, costs of recording the deed, and deed stamps.

17) A personal or deficiency judgment having been waived, the bidding will not remain open after the date of sale and compliance with the bid may be made immediately.

18) The sale is subject to assessments, county taxes, existing easements, easements and restrictions of record, and other senior encumbrances.

19) 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 thirty (30) days after the conclusion of the bidding, 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.

20) In the event an agent of the Plaintiff does not appear at the time of sale, the within property shall be withdrawn from sale and sold at the next available sales day upon the terms and conditions as set forth in this Judgment of Foreclosure and Sale or such terms as may be set forth in a supplemental order.

21) If Plaintiff is the successful bidder at the 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.

22) 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.

23) In the event the successful bidder is other than the Defendant(s) in possession of the subject property, upon full compliance and title by deed from the Court vested into such purchaser, and upon issuance of a Writ of Assistance by the Court, the Sheriff of Beaufort 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 purchaser or his assigns in full, quiet, and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession. All valid tenant rights shall be protected pursuant to the Protecting Tenants at Foreclosure Act of 2009.

24) In the event the successful purchaser is someone other than the Defendant(s) in possession of the subject property, and the occupants have voluntarily vacated the property or have been ejected from the property leaving furnishings, fixtures and items not subject to Plaintiff's Mortgage is said property, and title by deed from the Court is vested into such purchaser, the Purchaser is authorized to remove from the property all furnishings, fixtures and items not subject to the lien of Plaintiff's Mortgage. The personal property, being deemed abandoned, shall be removed by the Purchaser or its agents from the subject property by placing said property on the public street or highway or by any other means.

25) In accordance with S.C. Code Ann. §30-9-31, the deed of conveyance made pursuant to said sale shall be indexed by the R.M. C. in the name of the owner of record of subject property immediately prior to execution of the deed, as well as in the name of the Master in Equity, who executes such deed as grantor.

26) 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.

27) The following is a description of the premises herein ordered to be sold:

All that certain piece, parcel or lot of land, situate, lying and being in Bluffton Township, Beaufort County, South Carolina, designated as Lot 7 on a plat entitled "Cypress Ridge Phase I", prepared by Boyce L. Young, SCRLS No. 11079, Thomas & Hutton Engineering Co. dated September 20, 2005, revised and recorded in Plat Book 124 at Page 42-47. For a more particular description of the courses, metes, bounds and distances of said lots, reference is hereby made to said plat of record.

Being the same property conveyed unto Richard Cionci by deed from D.R. Horton, Inc., dated September 10, 2009 and recorded October 2, 2009 in Deed Book 2894 at Page 1370 in the ROD Office for Beaufort County, South Carolina.

TMS No. R614 028 000 2663 0000

Property Address: 2116 Blakers Boulevard, Bluffton, SC 29909

AND IT IS SO ORDERED.