

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

CitiMortgage, Inc.,

Plaintiff,

v.

Kyra Tranae Kelly;

Defendant(s).

IN THE COURT OF COMMON PLEAS

DOCKET NO. 2019CP4005772

JUDGMENT OF FORECLOSURE AND SALE
Deficiency Judgment Waived

(006951-01335)

John J. Hearn, Esquire
Attorney for the Plaintiff

A hearing was held December 14, 2021, at 11:30 am. Evidence was presented, which is reported herewith, and from the evidence, I find and conclude as follows:

FINDINGS OF FACT:

1. The Lis Pendens was filed on October 11, 2019. The amended Lis Pendens was filed on January 30, 2020.
2. The Summons and Complaint were filed on October 11, 2019. The amended Summons and Complaint were filed on January 30, 2020.
3. Service was made upon all Defendant(s) as shown by the proof(s) of service filed herein.
4. The Defendant(s), Kyra Tranae Kelly, is in default.
5. The Defendant(s), Kyra Tranae Kelly, is not in the Military Service of the United States of America, as contemplated under The Servicemembers Civil Relief Act, 50 U.S.C. 3901 et. seq. as shown by affidavit, certificate or order filed herein.
6. No Defendant raised any issues related to Plaintiff's standing to prosecute this action.
7. Attorney for the Plaintiff has fully complied with the South Carolina Supreme Court Administrative Order 2011-05-02-01 dated May 2, 2011, and with the South Carolina Supreme Court Administrative Order 2020-04-30-02 and 2020-05-06-01.
8. All Pro Se Defendant(s) and all attorneys of record were notified of the time, date, and place of the hearing by letter and certificate of mailing of record herein.
9. Kyra Tranae Kelly for value received, made, executed and delivered a(n) Fixed

Rate Note dated December 1, 2008, promising thereby to pay to Plaintiff or its predecessor the sum of \$78,974.00 with interest at 6% per annum. Other terms and conditions are stated in the Fixed Rate Note, of record herein.

10. To better secure the payment of the Fixed Rate Note described above, Kyra Tranae Kelly made, executed, and delivered to Mortgage Electronic Registration Systems, Inc., as nominee for Synovus Mortgage Corp., a certain real estate Mortgage in writing, dated December 1, 2008, covering real property in Richland County, which is the same as that described in the Complaint. This Mortgage was filed on December 8, 2008, and is of record in the Office of RMC/ROD in Book 1480 at Page 42. Thereafter, said mortgage was assigned to CitiMortgage, Inc., by assignment dated May 19, 2016, and recorded on May 25, 2016, in Book 2115 at Page 338.

FOR A FIRST CAUSE OF ACTION
(Clarification of Public Record)

11. The legal description in the deed from Patrick M. Lacewell & Erica C. Lacewell to Kyra Tranae Kelly dated December 1, 2008, and recorded on December 8, 2008, in Book 1480 at Page 39 is potentially defective. In the sixth line of the legal description, it incorrectly has “said property bring” instead of stating “said property being”. Further, the name of the grantor Erica C. Lacewell is spelled incorrectly as Erica C. Lacewel on the first page.

12. Plaintiff is entitled to an order clarifying the public record that the deed recorded in Book 1480 at Page 39 is a valid conveyance of the real property known as 540 Pinefield Dr, Hopkins, SC 29061, TMS# 22014-01-06.

13. Plaintiff is entitled to an order clarifying the public record to modify the name of the grantor on the first page of the deed recorded in Book 1480 at Page 39 to Erica C. Lacewell and the sixth line of the legal description in the aforesaid deed is also modified to read “said property being”.

FOR A SECOND CAUSE OF ACTION
(Reformation of Mortgage)

14. I find that the legal description on said mortgage contains a scrivener’s error. The legal description says “bring” when it should state “being.”. Therefore, Plaintiff is entitled to reformation of the legal description on its Mortgage to read as follows:

All that certain piece, parcel or lot of land, with improvements thereon, lying being and situate in the County of Richland, State of South Carolina on the Western side of Pinefield Drive, the same being designated as Lot Number Twenty-Three (23) of Block "F", Quail Hills, Section I, by Belter & Smith, Inc., dated September 6, 1973 and recorded in the Office of the Register of Deeds for Richland County in Plat Book X at page 2547, said property being further shown on a plat prepared by Cox and Dinkins, Inc., for Patrick M. Lacewell and Erica C. Lacewell, dated September 17, 1997, recorded in the Office of the Register of Deeds in Plat Book 57 at page 863, reference being made to said plat for a more complete description. All measurements being a little more or less.

This being the same property conveyed to Kyra Tranae Kelly by deed of Patrick M. Lacewell and Erica C. Lacewel a/k/a Erica C. Lacewell by deed dated December 1, 2008, and recorded on December 8, 2008, in Book 1480 at Page 39 in the Richland County Register of Deeds' Office.

Property Address: 540 Pinefield Dr
Hopkins, SC 29061

TMS# 22014-01-06

FOR A THIRD CAUSE OF ACTION
(Foreclosure of the Mortgage)

15. This Mortgage constitutes a purchase money first Priority lien on the subject property, subject only to ad valorem taxes or other liens/taxes given priority by statute.

16. Plaintiff has the legal right to enforce the negotiable instrument secured by the Mortgage and is the real party in interest as defined by Rule 17(a) of the South Carolina Rules of Civil Procedure.

17. The titleholder(s) of record in and to the subject property as of the filing of the lis pendens in this action is Kyra Tranae Kelly, who is the original mortgagor(s).

18. Payment due on the Fixed Rate Note has not been made as provided for therein, and the Plaintiff, as the holder or nominee for the holder, thereof, has elected to require immediate payment of the entire amount due thereon and has placed the Fixed Rate Note and purchase money first Mortgage in the hands of the attorney herein for collection by foreclosure.

19. The sum of \$3,960.00 is a reasonable fee to allow Plaintiff's counsel for services performed and anticipated to be performed until final adjudication of this action, under the terms of the Fixed Rate Note and Mortgage. This fee is likewise reasonable based on the time necessarily devoted to representation of Plaintiff during the several month course of these proceedings. The services of counsel performed for Plaintiff, which include the number and types of pleadings and documents prepared, the incumbent liabilities, and the difficulties involved in this particular case also support the fee awarded. The fee is also reasonable given the professional standing of Plaintiff's counsel and their experience in handling foreclosure matters. The fee awarded herein is also reasonable in light of the fees customarily awarded by this court for similar services in this locality. Moreover, the efforts of Plaintiff's counsel have had the beneficial result of a prompt foreclosure of the Mortgage. Services anticipated to be performed until final adjudication contemplate completion of this matter within a reasonable time and does not include exceptional circumstances delaying conclusion beyond the normal time. Plaintiff has advanced \$3,015.00 to its counsel as partial payment of the attorney fee and this amount appears in Plaintiff's advances.

20. According to Plaintiff's accounting, after all payments received by Plaintiff have been credited to the subject loan, the amount due and owing on the Fixed Rate Note, with interest at the rate provided in the Fixed Rate Note, advances made by Plaintiff, and other costs and expenses of the

action, including a reasonable attorney fee, all secured by the Fixed Rate Note and Mortgage, is as follows:

(a)	Principal due May 1, 2019	\$65,391.06
(b)	Interest from April 1, 2019 through November 1, 2021 at 6% per annum	\$10,135.76
	Interest from November 2, 2021 through December 14, 2021 at 6% per annum	\$462.25
(c)	Allowable Advances (Escrow advances, corporate charges, paid attorney fees, paid costs and expenses from the foreclosure action, and/or other charges).....	\$7,789.02
(d)	Outstanding Costs of collection prior to hearing (service, filing, etc.)	\$31.74
(e)	Allowable Late Charges.....	\$731.72
(f)	Attorney Fee (awarded herein, but unpaid)	\$945.00
	TOTAL debt secured by Fixed Rate Note and Mortgage, including interest to date shown	\$85,486.55

Interest shall accrue to the above stated "Total Debt" after the date of judgment at the rate of 6% per annum (pursuant to the terms of the Fixed Rate Note and purchase money first Mortgage). Accrued interest shall be added to the "Total Debt" and shall comprise the amount of the Plaintiff's debt secured by the purchase money first Mortgage through the date to which such interest is computed.

21. Plaintiff is seeking the usual foreclosure of the purchase money first mortgage and has in the Complaint (or subsequently thereto in writing) expressly waived the right to a personal or deficiency judgment.

22. The following Defendant(s) may claim a subordinate lien upon or subordinate legal interest in the subject property and in the event there is a surplus from the sale of the subject property, these Defendant(s) may present through any such lien or legal interest a claim to the surplus at a hearing subsequent to the sale, in accordance with Rule 71(c) South Carolina Rules of Civil Procedure. The said Defendant(s) and such liens or legal interests are as follows:

a. None.

IT IS THEREFORE ORDERED:

23. The South Carolina Supreme Court Administrative Order 2009-5-22-1 dated May 22, 2009, is not applicable because the Home Affordable Modification Program expired before commencement of this action. Plaintiff has fully complied with the South Carolina Supreme Court Administrative Order 2011-05-02-01 dated May 2, 2011, and with the South Carolina Supreme Court Administrative Orders 2020-04-30-02 and 2020-05-06-01, and the foreclosure action may proceed.

24. Plaintiff is entitled to an order clarifying the public record that the deed recorded in Book 1480 at Page 39 is a valid conveyance of the real property known as 540 Pinefield Dr, Hopkins, SC 29061, TMS# 22014-01-06.

25. Plaintiff is entitled to an order clarifying the public record to modify the name of one of the grantors on the first page of the deed recorded in Book 1480 at Page 39 to Erica C. Lacewell and the sixth line of the legal description in the aforesaid deed is also modified to reflect "said property being".

26. The subject Mortgage is hereby ordered reformed to correct the legal description on the Mortgage to read as described in Paragraph 14 of this Judgment of Foreclosure and Sale, and the RMC/ROD is hereby directed to annotate the indices accordingly so as to give notice in the public records.

27. There is due on the Fixed Rate Note and purchase money first Mortgage set forth in the Complaint the sum of \$85,486.55, as set out in the Findings of Fact *supra*, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.

28. The amount due in the preceding paragraph (the "Final Total Debt" as set out in the Findings of Fact *supra*) shall accrue interest at the rate of the respective note rate(s) per annum and together with such interest shall constitute the total judgment debt due Plaintiff.

29. The amount of the judgment shall be subject to increase to permit 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 attorneys' 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 or supplemental compensation.

30. The Defendant(s) liable for the aforesaid judgment debt of the Fixed Rate Note and Mortgage including interest at the rate of 6% per annum shall pay on or before the date of sale of the property hereinafter described, to Plaintiff or Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, including with the costs and disbursements of this action.

31. On default of payment at or before the time of the sale of the property, the mortgaged property described hereinafter shall be sold by the below signed Master in Equity or Special Referee or other court-appointed or designated agent or auctioneer at public auction at the Richland County Courthouse, in the City of Columbia, and State of South Carolina on a sales day determined by the below signed Master in Equity or Special Referee, on the following terms:

- a. For cash or its equivalent: An immediate deposit of 5% is required on the amount of the bid. The deposit will be applied to the purchase price when total compliance is

made. In the event compliance is not made, the deposit shall be forfeited without further hearing and applied first to costs and expense of the action and then to plaintiff's debt. Should the successful bidder at the regularly conducted sale fail or refuse either to make the required deposit at time of bid or to 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 and at the risk of the defaulting bidder.

b. Interest on the balance of the bid after the deposit is applied shall be paid through the day of compliance at the Note rate of 6%.

c. The sale shall be subject to taxes and assessments, existing easements and restrictions, and any other senior encumbrances.

d. Purchaser shall 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.

f. Purchaser shall be entitled to possession of the premises only after Purchaser fully complies with the bid amount and a deed is issued by the Master in Equity or Special Referee.

32. 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.

33. Plaintiff may waive any of its rights, in accordance with Rule 71, of the South Carolina Rules of Civil Procedure, prior to sale.

34. The Master in Equity will give notice of the time and place of the sale by advertisement according to law and the terms thereof by advertisement according to law and will execute to the Purchaser a deed to the property sold. Plaintiff or any other party to this action may become a purchaser at such sale. If, upon such sale being made, the Purchaser 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.

35. In the event an agent of Plaintiff does not appear at the time of sale, the within property shall be withdrawn from sale and sold at the next available sales date upon the same 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.

36. If Plaintiff is the successful bidder at the said sale for a sum not exceeding the amount of costs and expenses of the sale, plus 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.

37. The Master in Equity will apply the proceeds of the sale as follows:

FIRST: To the payment of the permitted costs, charges, and expenses of this action, including any Guardian ad Litem fee, Servicemember Civil Relief Act attorney fee, or any other attorney's fees awarded under this or any other Order of this Court;

NEXT: To the payment to Plaintiff or Plaintiff's attorney of the amount of Plaintiff's debt and interest or so much thereof as the purchase money will pay on the same; and the Plaintiff's attorney shall receive and disburse such funds only in absolute compliance with Plaintiff's principal, interest allowable advances, and related calculations of this Court, including the Court's award for attorney fees, court permitted charges and taxable costs pursuant to Rules 54 and 71 of the South Carolina Rules of Civil Procedure and the terms of the Note and Mortgage;

NEXT: Any surplus will be held pending further Order of the Court as provided for in the South Carolina Rules of Civil Procedure, particularly Rule 71(c) of the South Carolina Rules of Civil Procedure.

38. In the event the successful bidder is someone other than the Defendant(s) in possession of the subject property, the Sheriff of Richland County is ordered and directed to eject and remove from the property 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 property without delay, and to keep said successful bidder or his assigns in such peaceable possession.

39. In the event the successful bidder is 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 in said property, 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 personal property on the public street or highway or by any other means.

40. The Defendant(s) named herein, and all persons whosoever claiming under Defendant(s), is forever barred and foreclosed of all right, title, interest, equity of redemption or lien in the said mortgaged property so sold, or any part thereof.

41. In accordance with Rule 77(d), of the South Carolina Rules of Civil Procedure, 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 in this action.

42. The deed of conveyance made pursuant to the foreclosure 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 mortgaged property at the time of the filing of the notice of pendency of the within action, and the name of the grantee. 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.

43. 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.

44. The following is a description of the property herein ordered to be sold:

All that certain piece, parcel or lot of land, with improvements thereon, lying being and situate in the County of Richland, State of South Carolina on the Western side of Pinefield Drive, the same being designated as Lot Number Twenty-Three (23) of Block "F", Quail Hills, Section I, by Belter & Smith, Inc., dated September 6, 1973 and recorded in the Office of the Register of Deeds for Richland County in Plat Book X at page 2547, said property being further shown on a plat prepared by Cox and Dinkins, Inc., for Patrick M. Lacewell and Erica C. Lacewell, dated September 17, 1997, recorded in the Office of the Register of Deeds in Plat Book 57 at page 863, reference being made to said plat for a more complete description. All measurements being a little more or less.

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Property Address: 540 Pinefield Dr
Hopkins, SC 29061

TMS# 22014-01-06

Joseph M. Strickland
Master in Equity

Columbia, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP4005772

CitiMortgage, Inc.

Kyra Tranae Kelly;

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: John J. Hearn (SC Bar # 6635);
Clark Dawson (SC Bar# 101714); Brian P. Yoho (SC Bar #73516)
Attorneys for the Plaintiff
Rogers Townsend, LLC
1221 Main Street, 14th Floor
Post Office Box 100200
Columbia, SC 29202
(803) 744-4444
(803) 343-7013 - Fax
info@rogerstownsend.com

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. 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

This order ends does not end the case.

Additional Information for the Clerk: _____ As required by statute, a foreclosure sale has been or will be scheduled, which will officially end the case.

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)
N/A		
		\$

		\$
<p>If applicable, describe the property, including tax map information and address, referenced in the order:</p> <p>All that certain piece, parcel or lot of land, with improvements thereon, lying being and situate in the County of Richland, State of South Carolina on the Western side of Pinefield Drive, the same being designated as Lot Number Twenty-Three (23) of Block "F", Quail Hills, Section I, by Belter & Smith, Inc., dated September 6, 1973 and recorded in the Office of the Register of Deeds for Richland County in Plat Book X at page 2547, said property being further shown on a plat prepared by Cox and Dinkins, Inc., for Patrick M. Lacewell and Erica C. Lacewell, dated September 17, 1997, recorded in the Office of the Register of Deeds in Plat Book 57 at page 863, reference being made to said plat for a more complete description. All measurements being a little more or less.</p> <p>TMS#: 22014-01-06</p> <p>540 Pinefield Dr Hopkins, SC, 29061</p>		

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.

Circuit Court Judge/Master in Equity/Special Referee	Judge Code	Date
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For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ 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:

Rogers Townsend, LLC	
P.O. Box 100200	
Columbia, SC 29202-3400	
ATTORNEY(S) FOR THE PLAINTIFF(S)	ATTORNEY(S) FOR THE DEFENDANT(S)
006951-01335	CLERK OF COURT

Kyra Tranae Kelly
540 Pinefield Drive
Hopkins, SC 29061

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), SCRPC.



Richland Common Pleas

Case Caption: Citimortgage Inc vs Kyra Tranae Kelly

Case Number: 2019CP4005772

Type: Master/Order/Foreclosure & Sale and Form 4

It is so Ordered

s/Joseph M. Strickland, 3055