

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)
John Weible,)
Plaintiff,)
vs.)
Russell Self and Brandy Brunson,)
a/k/a Brandilyn Self,)
Defendants.)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

C/A #:2018-CP-43-02005

ORDER FOR JUDGMENT AND
DECREE OF FORECLOSURE

RECEIVED

MAY 04 2022

SC Court of Appeals

Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, and by Order of The Honorable James C. Campbell, Clerk of Court, this case was referred to the undersigned to make appropriate findings of fact and conclusions of law, with authority to enter a final judgment in the case, with any appeal from final judgment so entered to made to the South Carolina Court of Appeals.

Pursuant to the order of reference a hearing was held, and was attended by Plaintiff and his attorney and Defendants and their attorney. Appearances made, evidence offered and received are as shown in the Record of Hearing. Based on the evidence, I find and conclude as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Lis Pendens was filed on October 29, 2018.
2. The Summons and Complaint were filed on October 29, 2018.
3. Service was made upon Defendants Russell Self and Brandy Brunson as shown by the affidavits and certificates of service filed with the Court.

4. The Defendants are each in default as shown by affidavit of default filed with the Court on February 6, 2019. No Defendant in default is in the military service of the United States of America, as contemplated under the Servicemembers' Civil Relief Act, 50 U.S.C. App. '501, *et seq.* and any amendments thereto.

5. The Defendants acting pro se, jointly filed a document captioned Acceptance of Foreclosure Intervention with the Court on November 13, 2018. Thereafter, the Plaintiff served Defendants with an Affidavit of Non Eligibility under the Home Affordable Modification Program (HAMP) on February 5, 2019.

6. The Defendants acting pro se, jointly filed an Answer May 16, 2019. Thereafter on June 27, 2019 Defendant Brandilyn Self, acting through counsel filed an Amended Answer. No relief from the entry of default was obtained prior to these filings of responsive pleadings. The Defendants argue that they are not in default in this foreclosure action as the same is stayed by the requirements of Administrative Order 2011-05-02-01 until loan modification has been attempted. However, the Defendants do not contest that HAMP has expired and review for loan modification and loan modification is purely voluntarily by lenders at this time. In fact, in the Amended Answer no reference is made to loan modification as being an issue and the same appears to have been abandoned from the Answer filed pro se by Defendants. In any event I find that Plaintiff does not participate in loan modification, nor is he required to do so. Having decided that loan

modification is not available and not required, this issue is resolved in compliance with Administrative Order 2011-05-02-01 and Defendants remain in default and have failed to seek relief from same as provided in the Rules of Civil Procedure.

7. A hearing in this matter was convened on May 28, 2019. At that time counsel for Defendant Brandilyn Self requested that the matter be continued and not go forward alleging Plaintiff had not complied with the requirements of Administrative Order 2011-05-02-01. Plaintiff denied same but agreed the matter should be continued and rescheduled at a later date with a court reporter present. Accordingly, the matter was continued until the date of this hearing.

8. All parties were notified of the time, date, and place of the final hearing in this matter. Plaintiff and Defendant Russell Self were examined under oath. Defendant Brandilyn Self did not testify. Both parties submitted exhibits into the evidence.

9. On November 5, 2010 for value received, Defendants executed a Note payable to the Plaintiff in the amount of \$115,000.00 with no interest charged thereon. The term of the loan was seven (7) years. This Note (Note #1) was entered into evidence.

10. Also on November 5, 2010 Defendants executed a Mortgage in favor of the Plaintiff securing \$65,000.00 of the above loan to the Plaintiff with the herein described real property as collateral. This Mortgage (Mortgage #1) was duly recorded in Book 1146 at Page 3425 in the Sumter County ROD and same

was entered into evidence.

11. On May 25, 2011 Defendants executed an additional Note in favor of the Plaintiff in the amount of \$60,000.00 with 8% interest per annum and with a two year term. This Note (Note #2) was entered into evidence.

12. On July 2, 2010 Defendants executed a Mortgage in favor of the Plaintiff securing existing indebtedness due to the Plaintiff in the amount of \$50,000.00 with the herein described real property as collateral. This Mortgage (Mortgage #2) was duly recorded in Book 1141 at Page 2066 in the Sumter County ROD and same was entered into evidence. When combined with the Mortgage identified in paragraph 10 above, the Defendants secured the full principal (\$115,000.00) of the November 5, 2010 Note.

13. On July 3, 2014 Defendants executed a Mortgage in favor of the Plaintiff securing indebtedness in the amount of \$48,923.00 with the herein described real property as collateral. This Mortgage (Mortgage #3) was duly recorded in Book 1202 at Page 5171 in the Sumter County ROD and same was entered into evidence. This Mortgage secured the May 25, 2011 Note.

14. Payments due on Note #1 and Note #2 have not been made as provided in said notes, and Plaintiff has elected to require immediate payment of the entire amounts due thereon and has placed the notes and mortgages in the hands of the attorney of record herein for collection by foreclosure.

15. The sum of Three Thousand Five Hundred and 00/100 (\$3,500.00) Dollars is reasonable to allow as attorney fees and costs incurred for Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the within action, under the terms of the note and mortgage.

16. Plaintiff testified as to the outstanding balance of the debt due him from Defendants. Defendant Russell Self did not deny that the debt was owed, but rather contested the amount of same. He did not offer his own calculation as to the amount of the debt due but stated it was less than what the Plaintiff testified and offered. He (Defendant Russell Self) admitted that Defendants stopped paying on the Note in the amount of \$115,000.00 and he could not remember when they last paid on same. He stated that they did so (stopped making payments) because Plaintiff obstructed their (Defendants') efforts to obtain a refinance loan through Quicken Loans by not providing a payoff. He stated that they (Defendants) had made recent payments on the Note in the amount of \$60,000.00 and he disputed the balance due as calculated by Plaintiff. Mr. Self provided checks written to the Plaintiff in payment of this Note, however the checks were not delivered to the Plaintiff and had never been negotiated. In sum, Defendant Russell Self did not establish by a preponderance of the evidence a balance due on the Notes that contradicted Plaintiff's testimony and calculation.

17. The amount due and owing to Plaintiff for both Note #1 and Note #2, with interest applied only as provided in Note #2, 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 due as of September 19, 2019	\$174,449.39
(b) Pre judgment Interest	\$0.00
(c) Attorney's fee, costs of collection through hearing, publication, (service, filing, etc.)	\$3,500.00
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TOTAL debt secured by note and mortgage including no interest to September 19, 2019	\$177,949.39

18. Plaintiff is seeking the usual foreclosure of the Mortgages and has in the Complaint, or subsequent thereto in writing, expressly waived the right to a personal or deficiency judgment should the proceeds of sale not be sufficient to satisfy the judgment debt. In the event there is a surplus from the sale of the subject property, the validity, priority and amount of any lien claim will be determined at a hearing subsequent to the sale, in accordance with Rule 71(c) South Carolina Rules of Civil Procedure.

19. The Plaintiff should have judgment of foreclosure of the mortgage and the mortgaged property should be ordered sold at public auction after due advertisement.

20. The Mortgages held by the Plaintiff are reformed to include a 0.02 acre tract which was subsequently combined with the subject property of the Defendants as more fully depicted on the plat of William E. Lindler, Jr., PLS recorded at Plat Book 2010 at page 21, a copy of which was admitted into evidence. This property is part and parcel of the full tract, has no independent ingress and egress standing alone, and is necessary to include the full concrete deck of the swimming pool connected to the home.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. There is due to the Plaintiff on the obligation and mortgage set forth in the Complaint the sum of **\$177,949.39**, representing the total debt due Plaintiff as set out in Findings of Fact above, with no interest therein on the balance of principal from the date aforesaid to the date hereof.
2. The amount due in the preceding paragraph (the "Total Debt") shall constitute the total judgment debt due the Plaintiff and shall bear interest following judgment at the rate of **9.50%** per annum for 2019 and thereafter at the posted rate per Administrative Order of the South Carolina Supreme Court.
3. Defendants 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.

4. On default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint shall be sold by the undersigned Special Referee at public auction, at the location, and upon the date and time set forth in the Notice of Sale, and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales day shall be on Tuesday next succeeding such holiday, on the following terms, that is to say:

a. For cash: The Special Referee will require a deposit of 5% on the amount of the bid in cash or equivalent (unless Plaintiff is the successful bidder) the same to be applied to the purchase price upon compliance with the bid. In case of non-compliance within the time specified in the Notice of Sale, the deposit will be forfeited and applied to the costs and Plaintiff's debt.

b. No interest shall accrue on the balance of the bid to the day of compliance.

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.

d. The Purchaser shall pay for the deed preparation and costs of recording the Deed and Deed Stamps.

5. If Plaintiff is the successful bidder at the sale for a sum not exceeding the amount of costs, expenses and the indebtedness due Plaintiff, Plaintiff may pay to the Special Referee only the amount of the costs and expenses, crediting

the balance of the bid on Plaintiff's indebtedness.

6. A personal or deficiency judgment having been waived, the bidding will not remain open after the date of sale, but compliance with the bid shall be made immediately.

7. The Special Referee will, by advertisement according to law, give notice of the date, 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. If the purchaser or purchasers at the sale should fail to comply with the terms thereof, then the Special Referee may advertise the said premises for resale 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.

8. The Special Referee 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, or so much thereof as the purchase money will pay on the same;

NEXT: Any surplus shall be held pending further Order of this Court.

9. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that in the event the successful bidder is other than the Defendant in possession herein, the Sheriff, upon receipt of a Writ of Assistance or other order of ejectment, is authorized 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 or his assigns in such peaceable possession.

10. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendant named herein, and all persons whosoever claiming under Defendant, be forever barred and foreclosed of all right, title, interest, and equity of redemption in the said mortgaged premises so sold, or any part thereof.

11. IT IS FURTHER ORDERED that the deed of conveyance made pursuant to said sale shall contain the names of only the first-named Plaintiff and the first-named Defendant, and the Defendant who was the titleholder 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; 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.

12. 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.

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

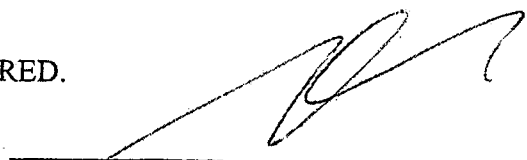
ALL that certain piece, parcel or lot of land with the improvements thereon, if any, situate, lying and being in the Privateer Township, County of Sumter, State of South Carolina, being shown and delineated as Lot No. 196, Phase I, "Lakewood Links" Subdivision, as shown on that certain Plat of Carl J. Croft, R.L.S., dated September 28, 1988 and recorded in the Office of the Register of Deeds for Sumter County in Plat Book 88 at Page 1292, more particularly showed on that certain plat of Joseph R. Edwards, P.L.S., dated October 7, 2009 and recorded in the Office of the Register of Deeds for Sumter County in Plat Book 2009 at Page 262, and having such boundaries, metes, courses and distances as are shown on said plat, reference to which is hereby made pursuant to authority contained in 30-5-250 of the Code of Laws of South Carolina, 1976, as amended.

AND ALSO: ALL that certain piece, parcel or lot of land with improvements thereon, if any, situate and lying and being in the Privateer Township, County of Sumter, State of South Carolina, being shown and delineated as 0.02 acres, as shown on that certain Plat of William E. Lindler, P.L.S.. Dated October 27, 2009 and recorded in the Office of the Register of Deeds for Sumter County in Plat Book 2010 at Page 21, and having such boundaries, metes, courses and distances as are shown on said plat, reference to which is hereby made pursuant to authority contained in 30-5-250 of the Coder of Laws of South Carolina, 1976, as amended.

This property is known as 790 Torrey Pines Drive, Sumter, SC and is shown on the Maps in the Auditor's Office as Tax Map No. 222-02-01-014.

14. The Court notes that the Plaintiff has complied with the requirements of the Supreme Court's Administrative Order regarding the Home Affordable Modification Program and this property is not subject to Modification. Plaintiff has also given Defendants a Notice of Right Cure as required by the Consumer protection Code.

AND IT IS SO ORDERED.



Thomas E. Player, Jr.
Special Referee

Dated: March 16, 2020
Sumter, South Carolina