

STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

Fifth Third Bank, National Association  
  
PLAINTIFF,  
  
vs.  
  
Rachel M. Carmack; Robert Edward L. Holt,  
III, Individually and as Trustee of the Kitty  
Trask Holt Family Trust; Katherine Holt  
Hill; Robert Edward L. Holt, IV; Harold  
Trask Holt,  
  
DEFENDANT(S)

MASTER'S ORDER AND JUDGMENT OF  
FORECLOSURE AND SALE  
(NON-JURY MORTGAGE FORECLOSURE)

C/A NO: 2017-CP-07-01642

DEFICIENCY WAIVED

**RECEIVED**

MAY 26 2022

SC Court of Appeals

TO:  
Hutchens Law Firm LLP  
Attorney for Plaintiff

The Yates Law Firm, LLC  
Jarrunis L. Yates, Esq.  
Attorney for Rachel M. Carmack

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 the case. Pursuant to the said Order of Reference a hearing on the Plaintiff's motion for summary judgment and foreclosure was held on March 31, 2022, attended by the attorneys of record, the testimony was taken, which is reported herewith, and from the testimony and evidence, I find conclude and order as follows:

**PROCEDURAL HISTORY**

1. The Lis Pendens was filed on August 8, 2017 and an amended Lis Pendens was filed on September 28, 2017.
2. The Summons and Complaint were filed on August 8, 2017 and an Amended Summons and Complaint was filed on September 28, 2017.
3. Service was made upon the Defendants named in this Order as is shown by the Proof(s) of Service filed herein.

4. Defendant Rachel M. Carmack (“Borrower”) filed an Answer and Counterclaim on October 9, 2017 (“Answer”). The Answer included a specific denial of the allegations of the Amended Complaint and counterclaims for fraud and negligent misrepresentation. Plaintiff filed a Reply to the Answer on October 30, 2017.

5. The loan is not subject to the Supreme Court of South Carolina’s Administrative Order (Order No. 2011-05-02-01) because the subject property was *not* an owner-occupied dwelling as defined in Paragraph A.(3) of said Order as shown by that Certificate of Exemption filed November 14, 2018.

6. Robert Edward Holt, III, Individually and as Trustee of the Kitty Trask Holt Family Trust, Katherine Holt Hill, Robert Edward L. Holt, IV and Harold Trask Holt (collectively referenced herein as “Holt Defendants”) did not file responsive pleadings and are in default as shown by the Affidavit of Default on file herein.

7. That on January 24, 2019, attorney E. Merritt Farmer, Jr. was appointed as counsel for Defendant Rachel M. Carmack as a military defendant. An Order relieving E. Merritt Farmer, Sr., was issued by the Court on January 27, 2022. Jarrunis L. Yates, Esq. now represents Rachael M. Carmack and has filed a notice of appearance in the case.

8. Plaintiff filed its initial Motion for Summary Judgment on July 31, 2019 but a final hearing was never held. Thereafter, the case was stayed by virtue of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”).

9. The Certification of Compliance with the CARES Act was filed on September 22, 2021.

10. Plaintiff filed its Amended Motion for Summary Judgment on October 22, 2021 and a hearing was scheduled for December 15, 2021 and was continued to allow Rachel Carmack to obtain an attorney to represent her in the case.

11. The Defendant(s) and/or all attorneys of record were notified of the time, date, and place of the hearing in this matter.

12. According to the Affidavit filed herein, no Defendant in default is in the Military Service of the United States of America, as contemplated under the Service members Civil Relief Act, and any amendments thereto.

**FINDINGS OF FACT**  
**AS TO THE FIRST CAUSE OF ACTION**

**(MORTGAGE FORECLOSURE)**

1. For value received, Rachel M. Carmack made, executed and delivered a Note dated February 19, 2013, ("Note") promising thereby to pay to the order of Fifth Third Mortgage Company the sum of Two Hundred Thirty-Five Thousand Eight Hundred Forty-Three Dollars and No Cents (\$235,843.00) with interest at 3.50 percent per annum ("Loan"). Other terms and conditions are stated in the Note, which is of record herein.

2. To better secure the payment of the Note described above, the said Rachel M. Carmack made, executed and delivered to Fifth Third Mortgage Company a mortgage ("Mortgage") in writing, dated February 19, 2013, covering real property in Beaufort County, which is the same as that described in the Complaint ("Property"). The Mortgage was recorded on March 14, 2013 in the Office of the Register of Deeds for Beaufort County in Mortgage Book 3222 at page 3196.

3. The Mortgage constitutes a first priority lien on the Property.

4. Effective January 1, 2019, the original mortgagee, Fifth Third Mortgage Company, merged with Fifth Third Bank. Thereafter, by virtue of a corporate name change, Fifth Third Bank changed its name to Fifth Third Bank, National Association. making Fifth Third Bank, National Association the present lien holder and Plaintiff herein.

5. Payment due on the Note has 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 the attorney herein for collection.

6. I find that since the inception of this action, plaintiff's attorney has assumed responsibility for the institution of this action and has searched and updated the title on the subject property from the date the current owner received the property or the date the Mortgage was executed to the date of the filing of the Lis Pendens.

The Firm has been responsible for the preparation of the following pleadings.

1. Notice of Foreclosure Intervention
2. Lis Pendens
3. Summons and Complaint
4. Reply to Answer and Counterclaim
5. Affidavit of Default

6. Order of Reference
7. Motion to Appoint Guardian ad Litem/Attorney for Military Defendant
8. Motion for Summary Judgment and Amended Motion for Summary Judgment with Supporting Memorandum
9. Notice of Hearing
10. Proposed Master's Order and Judgment of Foreclosure and Sale
11. Notice of Sale
12. Other documents as applicable pertaining to service, foreclosure intervention and prosecution of the action.

Additionally, the Firm has arranged for service of process on the Defendant(s), and has scheduled and attended the hearing in the matter, has provided reinstatement/payoff figures to the primary Defendant(s), if requested, and has had telephone conversations with the Defendant(s), if requested. Future duties include forwarding copies of the Master's Order and Judgment of Foreclosure and Sale to the Defendant(s), advising the Defendant(s) of the date that the property will be sold, arranging and coordinating the amount to be bid by Plaintiff, representation of Plaintiff at sale and preparation of after sale documentation as required. In light of the potential liabilities inherent in a foreclosure matter, the attendant responsibilities and the outcome obtained for the Plaintiff, I find that the contractual attorneys' fees in the amount of Eight Thousand Three Hundred Twenty-Three Dollars and Twenty-Five Cents (\$8,323.25) are reasonable.

7. The amount due and owing on the Note, with interest at the rate provided in the Note, and other costs and expenses of collection, including attorneys' fees, secured by the Note and Mortgage, is as follows:

(a)	Total Principal due as of March 1, 2017	\$	217,062.63
(b)	Interest from February 1, 2017 through March 31, 2022 @ current interest rate of 3.500%	\$	39,243.53
(c)	Escrow Adjustments (debits or credits)	\$	31,799.70
	Insurance	\$	13,881.66
	County Taxes	\$	17,918.04
(d)	Late Charges	\$	42.36
(e)	Property Inspections	\$	1,255.00

(f)	Foreclosure Costs	\$	4,201.04
(g)	Attorney Fees	\$	8,323.25
<b>TOTAL DEBT</b>		<b>\$</b>	<b>301,927.51</b>

Interest for the period from the date shown above, through the date of this Judgment at the 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 current rate of 3.50% 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.

8. That the Plaintiff specifically waives its rights to a deficiency judgment in the event the sale of the real estate herein does not yield a sum sufficient to satisfy all indebtedness due to the Plaintiff, including costs and attorney fees.

9. Since a personal or deficiency judgment is being waived, the bidding will not remain open but compliance with the bid may be made immediately.

10. The loan is not applicable for the Home Affordable Modification Program as that program sunset on December 31, 2016.

**AS TO THE SECOND CAUSE OF ACTION**  
**(DECLARATORY JUDGMENT)**

11. Plaintiff filed this cause of action is brought pursuant to the South Carolina Uniform Declaratory Judgments Act, S.C. Code §15-53-10, *et. seq.*, and involves an actual, justiciable controversy between the parties as described herein.

12. That William Davis Trask, James Heide Trask, John Donald Trask, Harold E. Trask, Jr., Margaret Scheper Trask and Kitty Trask Holt conveyed the subject property to Centex Homes by virtue of a Deed filed July 7, 2006 in Book 2403 at Page 269 in the Office of the Register of Deeds for Beaufort County, South Carolina, (hereinafter, the "Holt Deed"); however, the signature page for Kitty Trask Holt in the Holt Deed was not properly executed as the acknowledgment of the signature of Kitty Trask Holt failed to include a date of execution.

13. That it was the intent of Kitty Trask Holt to convey all of her interest in the subject property to Centex Homes.

14. Thereafter, Kitty Trask Holt died testate June 15, 2008 as evidenced in the Charleston County Probate Court's Office, Estate # 2008-ES-10-00908.

15. That the Holt Defendants are made parties to this action as a result of the defect in title described in the within cause of action and for any interest they may claim to have in subject property as heirs to the Estate of Kitty Trask Holt.

16. Thereafter, Centex Homes conveyed subject property unto Rachel M. Carmack by virtue of a Deed dated June 29, 2009 and recorded July 1, 2009 in Book 2864 at Page 1309 in the Office of the Register of Deeds for Beaufort County, South Carolina.

17. Plaintiff has requested that the Court declare the Holt Deed to be valid and of full force and effect to convey the ownership interest of the Property to Centex Homes at the time the Holt Deed was recorded.

18. Plaintiff has shown that irreparable harm and prejudice will be suffered by Plaintiff if the Holt Deed is not found to be valid.

19. The Plaintiff has sought a declaratory judgment extinguishing any right, title, or interest of the Holt Defendants may claim to have in the Property and declaring that Borrower has the sole ownership in the Property.

**STANDARD OF REVIEW**

“The purpose of summary judgment is to expedite dispositions of cases which do not require the services of a fact finder.” *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). A motion for summary judgment must be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *Standard Fire v. Marine Contracting*, 301 S.C. 418, 421, 392 S.E.2d 460, 462; Rule 56(c), SCRPC. If the non-moving party has not shown a genuine issue of material fact, “summary judgment, if appropriate, shall be entered against him.” Rule 56(e), SCRPC.

“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 cannot simply rest on mere allegations or denials contained in the pleadings.” *Regions Bank v. Schmauch*, 354 S.C. 648, 660, 582 S.E.2d 432, 438, (Ct. App. 2003) (citing Rule 56(c), SCRPC; *SSI Med. Servs., Inc. v. Cox*, 301 S.C. 493, 497, 392 S.E.2d 789, 792 (1990); *Peterson v. W. Am. Ins. Co.*, 336 S.C. 89, 94, 518 S.E.2d 608, 610 (Ct. App. 1999)). “Rather, the nonmoving party must come forward

with specific facts showing there is a genuine issue for trial.” *Id.* To avoid the granting of a Motion for Summary Judgment by Plaintiff, “[i]t is not sufficient that one create an inference which is not reasonable. Similarly, it is not sufficient that one create an issue of fact that is not genuine.” *Main v. Corley*, 281 S.C. 525, 527, 316 S.E.2d 406, 407, (1984). “The trial court should grant summary judgment against a party who has failed to make a showing sufficient to establish the existence of an essential element of that party's case.” *Harris v. Rose's Stores*, 315 S.C. 344, 346, 433 S.E.2d 905, 906, (Ct. App. 1993) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)).

### CONCLUSIONS OF LAW

#### **I. Plaintiff has established that it is entitled to the relief sought in First Cause of Action for Foreclosure of its Mortgage.**

Plaintiff has established that it is entitled to relief through the provision of accurate and indisputable facts necessary to prove its right to foreclose on the Property. Plaintiff is entitled to foreclose the property because Borrower has breached the terms of the Note and Mortgage. An action for foreclosure of a mortgage is, in essence, that of breach of contract. “The elements for a breach of contract are the existence of the contract, its breach, and the damages caused by such breach.” *South Glass & Plastics Co. v. Kemper*, 399 S.C. 483, 491-92, 732 S.E.2d 205, 209 (Ct. App. 2012) (citing *Fuller v. Eastern Fire & Casualty Ins. Co.*, 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962)).

Plaintiff and Borrower entered a binding contract and Borrower signed the Note and the Mortgage. Borrower admitted the same in her Answer. Moreover, the Affidavit in Support confirms that Borrower failed to make the monthly payments on the Loan as agreed, that the Loan is in default, and that Borrower has failed to cure the default. The Affidavit in Support also confirms the amount owed to Plaintiff by Borrower on the Loan, which satisfies the third and final element of the breach of contract. Accordingly, based on the evidence submitted by Plaintiff in this matter, Plaintiff has proven “the existence of the contract, its breach, and the damages caused by such breach.” *Kemper*, 399 S.C. at 491-92, 732 S.E.2d at 209. Therefore, Plaintiff is entitled to the relief sought in cause of action for foreclosure.

#### **II. Plaintiff has established that it is entitled to the relief sought in its Second Cause of Action for a Declaratory Judgment.**

By virtue of this action for declaratory judgment, Plaintiff is attempting to quiet title in the name of the Borrower and extinguish any interests the Holt Defendants may claim to have in the Property. “In an action to quiet title, the plaintiff must recover on the strength of his own title, not on the alleged weakness of the defendant's title.” *Hoogenboom v. City of Beaufort*, 315 S.C. 306, 313, 433 S.E.2d 875 (Ct. App. 1992) (citing *Haithcock v. Haithcock*, 123 S.C. 61, 115 S.E. 727 (1923); *Hammond v. Halsey*, 287 S.C. 46, 336 S.E.2d 495 (Ct. App. 1985).) There is no dispute as to the validity of the deed conveying the property from Centex Homes to Borrower or of Plaintiff's Mortgage. The defect in title simply arises from the mutual mistake in the Holt Deed by virtue of the failure to include a date of execution in the acknowledgment clause for Kitty Trask Holt. “A mistake is mutual where both parties intended a certain thing and by mistake in the drafting did not obtain what was intended.” *Independence Nat'l Bank v. Buncombe Prof'l Park, LLC*, 402 S.C. 514, 521, 741 S.E.2d 572, 576 (Ct. App. 2013) (quoting *George v. Empire Fire & Marine Ins. Co.*, 344 S.C. 582, 590, 545 S.E.2d 500, 504 (2001) (quoting *Crosby v. Protective Life Ins. Co.*, 293 S.C. 203, 206, 359 S.E.2d 298, 300 (Ct. App. 1987)).

The Holt Defendants have failed to file a responsive pleading and are now in default. Borrower denied the allegations related to the action for declaratory judgment based on the lack of sufficient knowledge; however, she has failed to provide any evidence contradicting the Plaintiff's allegations as to the error in title. Furthermore, Borrower admitted that the Property was conveyed to her and she signed the Note and Mortgage, evidencing her claim to title of the Property. Plaintiff would show it would incur irreparable harm and prejudice if title is not quieted in the name of the Borrower with any interest the Holt Defendants may claim to have extinguished. Failure to clear title in this fashion would materially affect the ability to successfully sell the Property at public auction. Therefore, Plaintiff is entitled to summary judgment as a matter of law as to its cause of action for a declaratory judgment.

**III. Borrower has failed to meet the burden of establishing a defense to Plaintiff's causes of action.**

Borrower failed to provide evidence showing that Plaintiff's allegations are inaccurate. “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 National Association v. Bell*, 385 S.C. 364, 684 S.E.2d 199, 205 (S.C. Ct. App. 2009)

(quoting *Bandy v. Bandy*, 187 S.C. 410, 413, 197 S.E. 396, 397 (1938)). Borrower sets forth no facts controverting the existence of the Note and Mortgage or Plaintiff being the holder of the Note. As a result, there is no dispute as to the fact that the Borrower entered into a binding contract. Borrower has failed to offer facts refuting Plaintiff's allegations that it has incurred damages as a result of said breach.

In her Answer, Borrower asserts no affirmative defenses. Borrower claims that Plaintiff improperly refused her attempts to pay on the Loan and consider her for a Loan Modification in support of her counterclaims. Plaintiff has proven Borrower's allegations to be incorrect as shown in its Affidavit in Support. Other than Borrower's assertions regarding the failure to modify the Loan, Borrower either simply denies the allegations of the Complaint or state that they are unable to determine the validity of them. "When nonmoving party has the burden of proof, the moving party may point out the absence of evidence to support the nonmoving party's case, and the nonmoving party must come forward with specific facts showing that there is a genuine issue for trial." *Hedgepath v. AT&T Co.*, 348 S.C. 340, 354, 559 S.E.2d 327, 335 (Ct. App. 2001.) Borrower has not set forth any evidence showing why Plaintiff should not be awarded a Judgment of Foreclosure and Order granting its action for Declaratory Judgment.

**IV. Borrower has failed to meet the elements to sustain her counterclaim for fraud.**

Borrower bases her causes of action for fraud and negligent misrepresentation on a failed attempt to modify the Loan subsequent to the entry of a forbearance plan in 2017. However, as shown by Plaintiff's Affidavit in Support of Summary Judgment, Plaintiff sent a letter dated May 18, 2017 to Borrower pursuant to her complaint made to the Consumer Financial Protection Bureau, ("5/18/17 Letter"), setting forth the particular details of the communications regarding the forbearance agreement and attempts to modify the Loan. On December 8, 2016, Borrower was offered an oral agreement for a three-month disaster forbearance ending in March 2017 which was accepted by Borrower. Borrower was not required to make payments on the Loan during such time; however, once the period of the forbearance plan expired, Borrower was required to be entered into a loss mitigation plan or reinstate the Loan in full. Borrower submitted a completed loss mitigation application. Plaintiff determined that she did not qualify for loss mitigation after a review of her application. Borrower failed to reinstate to her Loan thereafter.

Borrower's counterclaim for fraud should be dismissed because Borrower has failed to properly allege all nine elements of fraud pursuant to S.C. R. Civ. P. 9. "Fraud is not presumed, but must be shown by clear, cogent, and convincing evidence. In order to prove fraud, the following elements must be shown: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury." *King v. Oxford*, 282 S.C. 307, 318 S.E.2d 125 (Ct. App. 1984). "A complaint is fatally defective if it fails to allege all nine elements of fraud." *Inman v. Ken Hyatt Chrysler Plymouth, Inc.*, 294 S.C. 240, 363 S.E.2d 691 (1988). Further, Rule 9(b), SCRPC provides: In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with *particularity*. (emphasis added) Rule 9(b), SCRPC.

Borrower's claim of fraud is based on the alleged representations made regarding the forbearance agreement and promise of a subsequent modification. Borrower does not specify if her fraud claim is one of actual or constructive fraud. "To establish constructive fraud, all elements of actual fraud except the element of intent must be established." *Ardis v. Cox*, 314 S.C. 512, 515, 431 S.E.2d 267, 269 (Ct. App. 1993). Whether it is actual or constructive fraud, Borrower relies on insufficient evidence to support this claim.

Borrower alleges that Plaintiff represented to her that "after the forbearance period of three months had ended, her mortgage note would be modified. As shown by the 5/18/17 Letter, after the forbearance payments were made, the Borrower needed to apply for loss mitigation or reinstate the loan in full. Borrower applied for a loan modification and was denied for the reasons set forth 5/18/17 Letter. Borrower does not make any factual allegations in her Answer to contradict the content of the 5/18/17 Letter. Therefore, Borrower has failed to establish that the representations made by Plaintiff were false or that it either had knowledge of its falsity or a reckless disregard of its truth or falsity. Borrower also fails to plead that she was ignorant of the alleged false representations or that she had a right to rely on them. "Moreover, there is no right to rely . . . when there is no confidential or fiduciary relationship and there is an arm's length transaction between mature, educated people." *Regions Bank v. Schmauch*, 354 S.C. 648, 672, 582 S.E.2d 432, 445 (Ct. App. 2003). Finally, Borrower failed to specify what, if any damages, she suffered as a result of these alleged misrepresentations.

**V. Borrower's claim regarding negligent misrepresentation should be dismissed for failure to establish the elements of this cause of action and because no duty of care exists between Plaintiff and Borrower.**

"In a claim for negligent misrepresentation, a plaintiff must prove that:

(1) the defendant made a false representation to the plaintiff; (2) the defendant had a pecuniary interest in making the statement; (3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff; (4) the defendant breached that duty by failing to exercise due care; (5) the plaintiff justifiably relied on the representation; and (6) the plaintiff suffered a pecuniary loss as the proximate result of his reliance upon the representation."

*Ben. Fin. I, Inc. v. Windham*, 431 S.C. 256, 273, 847 S.E.2d 793, 702-803 (citing *Robertson*, 350 S.C. at 349, 565 S.E.2d at 314) (quoting *deBondt v. Carlton Motorcars, Inc.*, 342 S.C. 254, 266-67, 536 S.E.2d 399, 405 (Ct. App. 2000)). Without citing any specific facts, Borrower conclusively alleges that Plaintiff was negligent as to the falsity of their representations, without alleging a duty exists or the nature of said duty. As set forth previously herein, Borrower has failed to prove that Plaintiff made a false representation or that she suffered a pecuniary loss.

The counterclaim for negligent misrepresentation should also be dismissed because Borrower has failed to properly allege a duty of care exists between the Plaintiff and the Borrower. "South Carolina holds the normal relationship between a bank and its customer is one of creditor-debtor and not fiduciary in nature." *Schmauch* 354 S.C. at 671, 582 S.E.2d at 444. This claim must fail because "[t]he bank owe[s] [Defendant] no special duty of care." *Schmauch*, 354 S.C. at 670, 582 S.E.2d at 444 (finding that no duty of care exists between lenders and their customers). In addition, our Supreme Court has found that the relationship to a contract will not support a negligence action, since the terms of the contract should control any dispute. *Tadlock Painting Co. v. Maryland Cas. Co.*, 322 S.C. 498, 503 (1996). As Borrower has failed to provide sufficient evidence to support her allegations and the relationship between Plaintiff and Borrower is solely a contractual one, Borrower's counterclaim for negligent misrepresentation must be dismissed.

I, therefore, conclude as follows:

1. The Plaintiff's Motion for Summary Judgment should be granted as to its cause of action for foreclosure and as to the Counterclaims filed by the Defendant, Rachel Carmack. title.

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

3. The Plaintiff is entitled to a declaratory judgment extinguishing any right, title, or interest of the Holt Defendants may claim to have in the Property and find that Borrower has the sole ownership in the Property.

4. Defendants' counterclaims should be dismissed with prejudice.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. The Plaintiff's Motion for Summary Judgment is hereby granted as to its causes of action.

2. Any right, title, or interest of the Holt Defendants may claim to have in the Property are hereby extinguished and Borrower has the sole ownership interest in the Property.

3. Defendants' counterclaims are hereby dismissed with prejudice.

4. There is due to the Plaintiff on the obligation and mortgage set forth in the Complaint the sum of Three Hundred One Thousand Nine Hundred Twenty-Seven and 51/100 Dollars (\$301,927.51) representing the "Total Debt" due Plaintiff as set forth supra, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.

5. The amount due in the preceding paragraph (the "Total Debt" as set forth supra and later accrued interest on the principal) shall constitute the total judgment debt due the Plaintiff and shall bear interest hereafter at the current rate of 3.50% percent per annum.

6. That the Defendants liable for the aforesaid mortgage debt 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.

7. That on default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, be sold by the Master in Equity at public auction at the County Court House in Beaufort County, South Carolina, on some convenient sales day hereafter, on the following terms, that is to say:

A. FOR CASH: The Master in Equity will require a deposit of Five percent (5%) on the amount of the bid (in cash or equivalent) at the time of the sale, same to be applied on the purchase price only upon compliance with the bid, but in case of non-

compliance within Thirty (30) days same to be forfeited and applied to the costs and Plaintiff's debt.

B. Interest on the balance of the bid shall be paid to the day of compliance at the current rate of 3.50% percent.

C. The sale shall be subject to taxes and assessments, existing easements and easements and restrictions of record.

D. The above referenced instrument constitutes a first lien priority mortgage on the subject property.

E. The Purchaser is to pay for the deed preparation, for Deed Stamps and costs of recording the Deed.

F. If the successful bidder is a third party other than the Plaintiff, interest on the balance of the bid shall be paid to the date of compliance at the rate listed in the figures above.

8. If Plaintiff be the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of the Plaintiff in full, Plaintiff may pay to the undersigned Master in Equity only the amount of the costs and expenses crediting the balance of the bid on Plaintiff's indebtedness.

9. 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.

10. That the Master in Equity will, by advertisement according to law, give notice of the time, and place of 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 that if, upon such sale being made, the Purchaser, or Purchasers, should fail to comply with the terms thereof within Thirty (30) 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.

11. That the Master in Equity will apply the proceeds of the sale as follows:

FIRST: To 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.

E. Merritt Farmer, Jr., Esquire, a member of the South Carolina Bar, was appointed Guardian ad

Litem to represent the interest of heirs' who are unknown or heirs' that may be in the Military Service of the United States of America, as contemplated under the Soldiers' and Sailors' Civil Relief Act of 1940, and any amendments thereto and in that capacity, has filed an Answer and made an appearance. The sum of Two Thousand and 00/100 Dollars (\$2,000.00) is a reasonable fee for services rendered and to be rendered in this matter. As of January 27, 2022 Merritt, Farmer was relived as Guardian Ad Litem.

NEXT: To the payment to the Plaintiff or Plaintiff's attorney, of the amount of Plaintiff's debt and interest, so much thereof as the purchase money will pay on the same.

NEXT: Any surplus will be held pending further order of the court.

12. It is further ORDERED, ADJUDGED AND DECREED that in the event the successful bidder to whom the deed of conveyance has been issued subsequent to the sale is other than the Defendants in possession herein, the Sheriff of Beaufort County is ordered and directed to eject and remove from the premises the occupants of the property sold, together with all personal property located thereon, and put the successful bidder to whom the deed of conveyance has been issued 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.

13. And it is further ORDERED, ADJUDGED AND DECREED that each Defendant and all persons whomsoever claiming under him, her or them, 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.

14. And it is further ORDERED, ADJUDGED AND DECREED that any prior lien that has been paid in full is hereby satisfied and canceled of record.

15. 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 filing of the Notice of Pendency of the within action, and the name of the Grantee, and the Master in Equity is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said Deed.

16. The Master in Equity will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance.

17. Upon issuance of a Master in Equity's Report on Sale and Disbursements, the Register of Deeds is directed to release of record the mortgage lien being foreclosed, which mortgage lien is described as follows:

That Mortgage originally given to Fifth Third Mortgage Company by Rachel M. Carmack, dated February 19, 2013 and recorded March 14, 2013, in Mortgage Book 3222 at page 3196.

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

ALL THAT CERTAIN piece, parcel or lot of land lying and being in the Town of Port Royal, Shadow Moss Subdivision, Beaufort County, South Carolina, being shown and described as Lot 139, Shadow Moss, as shown and described on the plat entitled "A Plat of Shadow Moss, Phase 2, Town of Port Royal, Beaufort County, South Carolina," dated February 5, 2007, last revised March 29, 2007, prepared by Thomas & Hutton Engineering Co., certified by Boyce L. Young, R.L.S. (S.C. No. 11079), and recorded in the Beaufort County Records in Plat Book 119 at Page 112. For a more detailed description as to the courses, metes and bounds of the above mentioned lot, reference is had to said plat of record.

THIS BEING the same property conveyed unto Rachel M. Carmack by virtue of a Deed from Centex Homes dated June 29, 2009 and recorded July 1, 2009 in Book 2864 at Page 1309 in the Office of the Register of Deeds for Beaufort County, South Carolina.

19 Pennyroyal Way  
Beaufort, SC 29906  
TMS# R112-028-000-0619-000

19. IT IS FURTHER ORDERED that if the Plaintiff or the Plaintiff's representative does not appear at the scheduled sale of the above-described property, then the sale of the property will be null, void and of no force and effect. In such event, the sale will be rescheduled for the next available sales day.

JUDGE'S SIGNATURE PAGE TO FOLLOW