

51840.F50332R

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

MidFirst Bank,

PLAINTIFF,

vs.

Donnell Johnson; Raigosa Properties, LLC; The United States of America acting by and through its agency, the Secretary of Housing and Urban Development; Discover Bank; and Midland Credit Management, Inc.,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

C/A NO: 2023CP2303575

ORDER AND JUDGMENT OF FORECLOSURE AND SALE (DEFICIENCY WAIVED)

TO: Thomas A. Shook
Meredith A. Hodges
FINKEL LAW FIRM LLC
Attorneys for the Plaintiff

ANSWERING DEFENDANTS:

Robert M. Sneed, Esq.
Attorney for Defendant
The United States of America acting by and through its agency, the Secretary of Housing and Urban Development

Wylie W. Clarkson, Esq.
Attorney for Defendant
Midland Credit Management, Inc.

Pursuant to Rule 53 SCRCF, the above-entitled matter was referred. Any appeal from any order or judgment issued by the master or special referee shall be to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

Pursuant to the said Order of Reference, a hearing was held on September 29, 2023 via Zoom and was attended by counsel. The testimony was taken, which is reported herewith. From the testimony and evidence, I find, conclude and order as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Based upon the documents previously filed, Plaintiff has complied with the provisions of South Carolina Supreme Court Administrative Order 2011-05-02-01.

2. Based on the Certification of Compliance filed herein, Plaintiff has complied with the requirements of South Carolina Supreme Court Administrative Orders 2020-04-30-02 and 2020-05-06-01 (as amended by Order 2020-05-12-01).

3. The Lis Pendens was filed on July 13, 2023.

4. The Summons and Complaint were filed on July 13, 2023.

5. Service was made upon the Defendants named in this Report as is shown by the proofs of service filed herein.

6. The Defendants Donnell Johnson, Raigosa Properties, LLC, and Discover Bank are in default as shown by Affidavits on file herein.

7. Robert M. Sneed, attorney for Defendant, The United States of America acting by and through its agency, the Secretary of Housing and Urban Development, served an Answer on the Plaintiff, which is on file herein.

8. Wylie W. Clarkson, attorney for Defendant, Midland Credit Management, Inc. served an Answer on the Plaintiff, which is on file herein.

9. All of the defendants herein and/or all attorneys of record were notified of the time, date and place of the hearing in this matter.

10. According to the Affidavit filed herein, the Defendant Donnell Johnson is not in the Military Service of the United States of America, as contemplated under the Servicemembers Civil Relief Act (2003), and any amendments thereto.

11. For value received, Donnell Johnson made, executed and delivered a Note dated May 14, 2010, promising thereby to pay to the order of Primelending, A Plainscapital Company, the sum of \$116,432.00, together with interest pursuant to the terms of the Note and any extensions, amendments, or modifications thereto. Other terms and conditions are stated in the Note, which is of record herein.

12. To better secure the payment of the Note described above, the said Donnell Johnson made, executed and delivered to Mortgage Electronic Registration Systems, Inc., as nominee for Primelending, A Plainscapital Company, a Mortgage in writing, dated May 14, 2010, covering real property in Greenville County, which is the same as that described in the Complaint. The

Mortgage was filed on May 21, 2010, and is of record in the Office of the Register of Deeds for Greenville County in Book 5079 at Page 3655.

13. This Mortgage constitutes a first mortgage lien on the subject property and is a Purchase Money Mortgage.

14. This mortgage was assigned to Plaintiff by instruments recorded:

- a. November 6, 2018, in Book 5457 at Page 5373; and,
- b. February 4, 2019, in Book 5466 at Page 4902.

15. The subject real property is sufficiently described on the more recent plat recorded May 21, 2010, in Plat Book 1103 at Page 81, and same should be referenced *in lieu of metes and bounds* as provided by S.C. Code Ann. § 30-5-250.

16. By subsequent agreement recorded February 14, 2020, in Book 5520 at Page 2190, the parties modified the terms of the original note and mortgage.

17. The titleholder of record in and to the subject property as of the filing of the Lis Pendens in this action is Donnell Johnson.

18. Payment due on the Note has not been made as provided for therein, and 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 an attorney for collection.

19. Counsel for Plaintiff filed an affidavit as to attorney's fees and costs in this case, which was not contested, and, therefore, I find as fact herein. Having considered the nature, extent and difficulty of the services rendered, the time involved in reviewing the various documents, performing the title search, preparing the pleadings, attending hearings and argument, the professional standing of counsel, the fee customarily charged for similar services, and the beneficial results obtained for Plaintiff, I find that the sum of \$3,275.00 is a reasonable fee to allow under the terms of the Note and Mortgage as attorney's fees for Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the action. The plaintiff has advanced \$2,205.00 to its counsel as partial payment of the attorney's fee, and this amount is included in the corporate advances.

20. 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 an attorney's fee, secured by Note and Mortgage, is as follows:

Principal Balance	\$95,739.56
Interest to September 29,2023 at 3.875%	\$3,067.03
Late Charges	\$111.08
Less Unapplied Funds	(\$74.86)
Incurred Fees	\$3,474.09
Incurred Insurance	\$1,263.96
Costs of collection prior to hearing	\$249.24
Attorney Fees (awarded but unpaid)	<u>\$1,070.00</u>
TOTAL DEBT secured by Note and Mortgage, including interest to date shown	\$104,900.10

Interest for the period from September 29, 2023, as shown above at the rate of 3.875% shall be added to the Principal Balance shown above through the date this Judgment is filed. After the date of judgment, interest at the rate of 3.875% on the total judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the Mortgage.

21. Plaintiff does not demand a deficiency judgment in the event the sale of the real estate herein does not yield a sum sufficient to satisfy all indebtedness due unto Plaintiff, including costs and Attorney's fees.

22. These defendants may claim an interest in the property:

- a. Raigosa Properties, LLC, by virtue of a mortgage from Gustavo A. Gonzalez & Sonia Aristizabal in the amount of \$30,000.00, filed January 29, 2010, in Book 5069 at Page 3715.

This mortgage has been paid but not satisfied of record and no longer constitutes a lien on the subject property.

- b. The United States of America acting by and through its agency, the Secretary of Housing and Urban Development, by virtue of its mortgages from Donnell Johnson:
 - (i) in the amount of \$7,480.65, filed February 11, 2020, in Book 5519 at Page 4440; and,
 - (ii) in the amount of \$11,622.87, filed January 27, 2022, in Book 5672 at Page 4584;
- c. Discover Bank by virtue of its judgment against Donnell Johnson, in the amount of \$12,001.92, filed September 6, 2019, as judgment no. 2019CP2303863; and,

- d. Midland Credit Management, Inc., by virtue of its judgment against Donnell Johnson in the amount of \$11,167.61, filed March 11, 2022, as judgment no. 2021CP2304886.

The interests of these defendants are junior and subordinate to Plaintiff's first mortgage lien; however, pursuant to 12 U.S.C. § 1701k the United States does not have a right of redemption following the foreclosure sale of the subject property.

IT IS THEREFORE ORDERED:

1. There is due to Plaintiff on the obligation and Mortgage set forth in the Complaint the sum of \$104,900.10, representing the "Total Debt" due Plaintiff as set forth in the Findings of Fact, *supra*, together with interest at the rate provided therein from the date aforesaid to the date hereof.

2. The amount due in the preceding paragraph (the "Total Debt" as set forth in the Findings of Fact, *supra*, and later accrued interest) shall constitute the total judgment debt due the Plaintiff and shall bear interest hereafter at the rate of 3.875%.

3. Based on the allegations in the Complaint, the default of the defendant Raigosa Properties, LLC, and the evidence presented, I hereby order the Mortgage recorded January 29, 2010, in Book 5069 at Page 3715 from Gustavo A. Gonzalez & Sonia Aristizabal, no longer constitutes a lien against the subject property.

4. The Defendant liable for the aforesaid Mortgage debt shall, on or before the date of sale of the property hereinafter described, pay to Plaintiff, or Plaintiff's attorney, the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action. If such debt is paid in full, then the foreclosure sale shall be cancelled.

5. 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 or his/her agent, under the direction of the Master in Equity, at public auction, at the Greenville County Courthouse, Greenville, 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 Tuesday next succeeding such holiday), on the following terms, that is to say:

- A. **FOR CASH:** The Master in Equity will require a deposit of 5% on the amount of the bid (in cash or equivalent), same to be applied on the purchase

price only upon compliance with the bid, but in case of non-compliance within 20 days, the deposit may be forfeited without further hearing 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 rate of 3.875%.
- C. The sale shall be subject to taxes and assessments, existing easements and easements and restrictions of record, and the United States of America does not have a right of redemption following the foreclosure sale of the subject property.
- D. This Mortgage constitutes a first priority lien on the subject property and is a Purchase Money Mortgage.
- E. Purchaser to pay for deed preparation and costs of recording the Deed, and transfer taxes.

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

7. The Master in Equity will, by advertisement according to law, give notice of the time, date, place of sale, and the terms thereof, which Notice of Sale is incorporated herein by reference; and will execute to the Purchaser, or Purchasers, a deed to the premises sold. 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 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.

8. Should Plaintiff, Plaintiff's attorney, or Plaintiff's agent fail to appear on the day of sale, the property shall not be sold, and in that event any such sale shall be null and void and of no force and effect. The property shall be re-advertised and sold at some convenient sales day thereafter when Plaintiff, Plaintiff's attorney, or Plaintiff's agent is present.

- 9. 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.

NEXT: To the payment of 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 funds will be held pending further order of the Court.

10. **IT IS FURTHER ORDERED** that in the event the successful bidder is other than the Defendant(s) in possession herein, upon full compliance with the bid, and upon issuance of a Writ of Assistance by this Court, the Sheriff of Greenville 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 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.

11. **IT IS FURTHER ORDERED** that, in the event the successful bidder is other than the Defendant(s) in possession herein and the occupant(s) have voluntarily vacated the premises or have been ejected from the premises leaving furnishings, fixtures and items not subject to Plaintiff's Mortgage in said premises, upon full compliance with the bid, Purchaser is authorized to remove therefrom all furnishings, fixtures and items not subject to the lien of Plaintiff's mortgage, which personal property, being deemed abandoned, shall be removed by Purchaser or its agents from the subject property by placing said personal property on the public street or highway or by any other means.

12. **IT IS FURTHER ORDERED** that, in addition to all parties deemed by law to have received constructive notice of the action herein, the Defendant(s) named herein and all persons whomsoever claiming under said defendant(s), 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.

13. **IT IS FURTHER ORDERED** that the Deed of conveyances made pursuant to said sale shall contain the names of only the first named Plaintiff and the first named Defendant and the Defendant(s) who was/were the titleholder(s) 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 Register of Deeds is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said Deed.

14. **IT IS FURTHER ORDERED** that the Master in Equity will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, issuing a Writ of Assistance and hearing any issues involving appraisal proceedings under Section 29-3-680 *et seq.*, South Carolina Code of Laws (1976), as amended.

15. Any sale pursuant to this order is ***without*** warranty of any kind. Neither Plaintiff nor Court warrant title to any third-party purchaser. See Ex parte Keller, 185 S.C. 283, 194 S.E. 15 (1937); Wells Fargo Bank, NA v. Turner, 378 S.C. 147, 662 S.E.2d 424 (Ct. App. 2008).

17. The Master in Equity shall direct the Register of Deeds to release of record the Mortgage lien being foreclosed, all subordinate liens and all prior liens ordered satisfied herein, after the Order Confirming Sale and Disbursements has been executed and filed. Plaintiff's Mortgage lien is described as follows:

That certain Mortgage given by Donnell Johnson to Mortgage Electronic Registration Systems, Inc., as nominee for Primelending, A Plainscapital Company dated May 14, 2010, and recorded in the Office of the Register of Deeds for Greenville County on May 21, 2010, in Book 5079 at Page 3655.

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

Being all of that certain piece, parcel or tract of land, with any improvements thereon lying, being and situate in the County of Greenville, State of South Carolina, being shown and designated as Lot 10 on plat prepared for Donnell Johnson by 3D Land Surveying, Inc. and recorded in the Office of the ROD for Greenville County on May 21, 2010, in Plat Book 1103 at Page 81. Reference is hereby made to said plat for a more complete and accurate metes and bounds description thereof.

TMS No.: B013.04-01-088.01

Property Address: 445 Crane Avenue, Greenville, SC 29617

This being the same property conveyed to Donnell Johnson by deed of Gustavo A. Gonzalez and Sonia Aristizabal, dated May 14, 2010, and recorded in the Office of the Register of Deeds for Greenville County on May 21, 2010, in Deed Book 2372 at Page 4280.

JUDGE'S ELECTRONIC SIGNATURE PAGE TO FOLLOW

51840.F50332R
STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

MidFirst Bank,
PLAINTIFF

FORM 4
JUDGMENT IN A CIVIL CASE

C/A NO: 2023CP2303575

Donnell Johnson, *et al.*,
DEFENDANT(S)

Submitted by: FINKEL LAW FIRM LLC Thomas A. Shook/Meredith A Hodges	Attorney for: <input checked="" type="checkbox"/> Plaintiff; <input type="checkbox"/> Defendant; or <input type="checkbox"/> Self-Represented Litigant
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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.
- 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: _____

INFORMATION FOR THE PUBLIC INDEX		
Complete this section below when the judgment affects title to real or personal property or in 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)
MidFirst Bank		
If applicable, describe the property, including tax map information and address referenced in the order: Being all of that certain piece, parcel or tract of land, with any improvements thereon lying, being and situate in the County of Greenville, State of South Carolina, being shown and designated as Lot 10 on plat prepared for Donnell Johnson by 3D Land Surveying, Inc. and recorded in the Office of the ROD for Greenville County on May 21, 2010, in Plat Book 1103 at Page 81. Reference is hereby made to said plat for a more complete and accurate metes and bounds description thereof. TMS No.: B013.04-01-088.01 Property Address: 445 Crane Avenue, Greenville, SC 29617		

SCRPC Form 4C (2/2017)

Page 1 of 2

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.**

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 2023 and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 2023 to attorneys of record or to parties (when appearing pro se) as follows:

FINKEL LAW FIRM LLC

SEE ATTACHED LIST

Post Office Box 71727

North Charleston, SC 29415

Attorney(s) for Plaintiffs

Attorney(s) for the Defendant(s)

SCRCP Form 4C (2/2017)

CLERK OF COURT

Court Reporter:

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

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

SCRCP Form 4C (02/2017)

DEFENDANTS

Donnell Johnson
445 Crane Ave.
Greenville, SC 29617

Raigosa Properties, LLC
c/o: Claudia Lisette Raigosa
701 Braeswood Street
Greenville, SC 29617

Robert M. Sneed
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U.S. Attorney's Office
55 Beattie Place, Suite 700
Greenville, SC 29601

Discover Bank
Smith Debnam Narron Drake Saintsing &
Myers LLP
4601 Six Forks Rd., #400
Raleigh, NC 27609



Greenville Common Pleas

Case Caption: MidFirst Bank vs. Donnell Johnson , defendant, et al

Case Number: 2023CP2303575

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

And It Is So Ordered!

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