

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Mountain Trace Townhomes Property Owners
Association

Plaintiff,

vs.

Linda S. Frazao, and

Wells Fargo Bank, National Association, and

The United States of America, acting by and
through its agent, the Secretary of Housing and
Urban Development,

Defendants.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CASE NO. 2023CP2301630

**MASTER IN EQUITY'S ORDER OF
JUDGMENT OF FORECLOSURE AND
SALE
(DEFICIENCY WAIVED)**

Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, the above entitled foreclosure action was referred to me for the purposes of conducting a hearing on the same, taking testimony, determining all issues of fact and law, and entering a final judgment thereon with any appeal to be to the South Carolina Supreme Court. Pursuant to the Order of Reference, the hearing was held before me and testimony taken on October 24, 2023. The Plaintiff was represented by Matthew McCord of The McCord Law Firm LLC. From the Affidavit of Default filed in this case it appears that Defendant Linda S. Frazao is in default. It further appears that the Defendants were properly notified of this hearing as evidenced by the Notice of Hearing filed with the Court by the Plaintiff's attorney. From the records and from the testimony and evidence produced, I make the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The Lis Pendens was filed on April 4, 2023 with the Summons and Complaint also being filed on April 4, 2023 in the Office of the Greenville County Clerk of Court. This is an action for the foreclosure of a homeowners' association lien for assessments in Greenville County, and this Court has proper jurisdiction.

2. Service was made upon the Defendants as shown by the Affidavits of Service filed herein.

3. The Defendant Linda S. Frazao is in default as shown by the Affidavit of Default filed herein, and the Defendant Frazao was properly notified of the date, time, and place of the hearing in this case; further, this lien is not subject to the terms and conditions of the Home Affordable Modification Program (HMP/HAMP) inasmuch as it involves a homeowners' association lien for assessments and is not securitized or guaranteed by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, all as set forth and addressed in the administrative orders issued by Chief Justice Jean Toal of the South Carolina Supreme Court on May 22, 2009 and May 2, 2011. Further and as set forth in the Certification of Exemption from Administrative Order 2011-05-02-01 filed with the pleadings, the subject property is not subject to the South Carolina Supreme Court Administrative Order No. 2011-05-02-01. Furthermore, this administrative order was rescinded by South Carolina Supreme Court Administrative Order No. 2023-05-17-01.

4. A stipulation of priority as to the mortgage held by Defendant Wells Fargo Bank, National Association was filed on June 15, 2023. Chad W. Burgess, attorney for Defendant Wells Fargo Bank, National Association did not appear at the hearing.

5. Defendant The United States of America, acting by and through its agent, the Secretary of Housing and Urban Development filed an Answer on June 15, 2023. Robert M. Sneed, attorney for Defendant The United States of America, acting by and through its agent, the Secretary of Housing and Urban Development, did not appear at the hearing.

6. 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 Servicemembers' Civil Relief Act, 50 U.S.C. App. §501, et seq. and any amendments thereto.

7. For value received the Defendant Linda S. Frazao was conveyed real property in Greenville County which is the same as that described in the Complaint, by deed dated July 23, 2007, and was subject to the governing documents for Mountain Trace Townhomes Property Owners Association.

6. Defendant Frazao took possession of the property and agreed to pay assessments and other charges allowed by the governing documents.

7. Pursuant to the governing documents a lien arises in favor of Plaintiff to secure payment of the unpaid charges. The governing documents were filed in the Office of the Register of Deeds for Greenville County initially on September 25, 1980 in Book 1134 at Page 164.

8. Plaintiff filed a Notice of Lien in connection with unpaid assessments on the herein referenced property owned by Defendant Frazao. The lien was filed in the Office of the Register of Deeds for Greenville County on February 26, 2020 in Book 5521 at Page 5064. I find that said lien constitutes a valid lien attached to the subject property.

9. The title holder of record in and to the subject property as of the filing of the Lis Pendens in this action is Linda S. Frazao.

10. I find that the said governing documents, specifically Section 11 of Exhibit A attached to the Complaint, provided that unpaid assessments could be subject to the Plaintiff bringing an action at law against the Owner personally obligated to pay the same or foreclose its lien against such Owner. I find that the said lien provided for unpaid assessments together with all accruing assessments both regular and special, any and all allowable interest, delinquent charges, as applicable, attorney's fees and costs until the date of payment.

11. Payment due on the assessments have not been made as provided for therein, and the Plaintiff, as the holder of the lien thereof, has elected to require immediate payment of the

entire amount due thereon and has placed the lien in the hands of his attorney herein for collection.

12. The amount due and owing on this lien, with interest at the rate provided in the lien, and other costs and expenses of collection, is as follows:

- a) Unpaid assessments and late fees owed as of October 24, 2023: \$10,230.00;
- b) Costs of collection prior to hearing: \$824.56;
- c) Total amount due under the lien for collection as of the hearing date: \$11,054.56

exclusive of attorney's fees.

13. I find that the Plaintiff has placed the lien in the hands of The McCord Law Firm LLC for foreclosure and that based upon the express terms contained in the lien providing for ..."attorney's fees and costs until the date of payment", the additional sum of \$4,170.00 is reasonable and is supported by the Affidavit of Attorney's Fees filed in this matter for his services performed and anticipated to be performed until final adjudication of the within foreclosure action so that the Total Debt secured by the terms of the lien is \$15,224.56.

14. I find the monthly HOA fee of \$135 per month with a monthly late fee of \$25 shall continue to apply to the Total Debt and shall continue to accrue through the anticipated sales date of December 4, 2023.

15. The Plaintiff is seeking the usual foreclosure of his lien and has in his Complaint requested any surplus from the sale be distributed pursuant to Rule 71(b) of the South Carolina Rules of Civil Procedure as concerns all Defendants.

16. I find that the parties, by stipulation filed on June 15, 2023, have stipulated that the mortgage held by Defendant Wells Fargo Bank, National Association, recorded on May 1, 2015 in the Office of the Register of Deeds for Greenville County in Book MO 5293 at Page 288, is senior in priority to the Plaintiff's lien.

17. I find that the other named Defendant, The United States of America, acting by and through its agent, the Secretary of Housing and Urban Development has an interest in the subject property by virtue of a partial claims mortgage recorded on November 9, 2021 in the Office of the Register of Deeds for Greenville County in Book MO 5657 at Page 5502, said interest being junior and subordinate to the lien of the Plaintiff.

CONCLUSIONS OF LAW

18. I find that the Plaintiff should have judgment of foreclosure as to his lien for unpaid assessments as set forth above and the mortgaged property should be ordered sold at public auction after due advertisement.

19. I further find that the Plaintiff is entitled to the Total Debt as described above as well as the continued accrual of monthly assessment and late fees until such time as the sale of the subject property has been successfully completed.

NOW, THEREFORE, IT IS ORDERED:

- 1) That as of the hearing date there is due and owing to the Plaintiff on the lien the sum of \$11,054.56, plus a reasonable attorney's fee of \$4,170.00 for a Total Debt of \$15,224.56;
- 2) That the monthly HOA fee of \$135 per month with late fees of \$25 per month shall continue to apply to the Total Debt and shall continue to accrue through the sales date;
- 3) That the Plaintiff's lien for unpaid assessments shall be foreclosed and;
- 4) That the mortgaged premises as described in this Order and in the Complaint be sold at public auction on the anticipated sales date of December 4, 2023 or at some subsequent date set by the Court on the following terms:
 - a) For cash; the Master in Equity shall require a deposit of 5% on the amount of the bid (cash or equivalent) from each successful purchaser other than the Plaintiff, the same to be

applied to the purchase price only upon compliance with the bid, but in case of non-compliance within twenty (20) days of the close of bidding, the 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 date of compliance at the rate of 0%;

c) The sale shall be subject to taxes and assessments, existing easements, and easements and restrictions of record, and any other senior encumbrances herein; Specifically, this sale shall be subject to a senior mortgage held by Wells Fargo Bank, National Association and recorded in Book MO 5293 at Page 288.

d) The purchaser shall pay for deed stamps and the cost of recording the deed;

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

f) 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 if upon such sale being made the purchaser or purchasers should fail to comply with the terms of the sale within twenty (20) days after the close of bidding, then the Master may re-advertise the premises for sale on the next or some other subsequent sales date at the risk of the highest bidder and so from time to time thereafter until compliance shall be secured;

g) That the Master in Equity shall apply the proceeds of the sale as follows:

i) First, to payment of the amount of costs and expenses of this action, including an attorney's fee and any Guardian ad Litem fees or fees of attorneys appointed under any Order of the Court;

ii) Next, to the payment of the Plaintiff or Plaintiff's attorney of the amount of Plaintiff's debt;

iii) Next, any surplus to be held pending further Order of the Court.

5) It is further ordered that in the event the successful bidder is other than the Defendant in possession herein, the Sheriff of Greenville County is then ordered and directed to eject and remove from the premises the occupants of the property sold together with all personal property located thereon and to put the successful bidder or his assigns in full, quiet and peaceable possession of said premises without delay and to keep the successful bidder or his assigns in such peaceable possession.

6) It is further ordered that the Defendant Frazao and all persons whomsoever claiming under the Defendant Frazao be forever barred and foreclosed of all right of title and interest and equity of redemption in the said mortgaged premises so sold or any part thereof.

7) It is further ordered that the deed of conveyance made pursuant to said sale shall contain the names of the Plaintiff and the Defendant who was the title holder of the mortgaged property at the time of the filing of the Lis Pendens in this 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 any parties not contained in said deed.

8) That the Master-in-Equity shall retain jurisdiction to do all necessary acts incident to this foreclosure including but not limited to the issuance of a writ of assistance and hearing any issues involving appraisal proceedings under Section 29-3-680 et seq of the 1976 South Carolina Code of Laws, as amended.

9) That the Master-in-Equity shall direct the Register of Deeds to release of record the lien being foreclosed after the Order confirming the sale and disbursements has been executed and filed.

10) That the property shall be withdrawn from sale in the event Plaintiff or an agent of Plaintiff does not appear at the sale;

11) That the following is a described of the premises herein ordered to be sold:

All that certain piece, parcel or unit, situate, lying and being in the State of South Carolina, County of Greenville, being known and designated as Unit No. 81 of Mountain Trace Townhomes Horizontal Property Regime as is more fully described in Declaration (Master Deed) recorded in the Office of the Register of Deeds for Greenville County on September 25, 1980 in Deed Book 1134 at Page 164 and all Amendments thereto, and upon a plat entitled "Boundary Survey for Gato Carolina, LLC", dated February 23, 2001, of record in the Office of the Register of Deeds for Greenville County, SC in Plat Book 44-D at Page 49; reference to said plat being hereby made for a more complete metes and bounds description.

TMS# P013.01-01-062.00

This being the same property conveyed to Linda S. Frazao by deed of Wendy Song by Tao Yan, her Attorney-in-fact and Tao Yan, dated July 23, 2007 and recorded at the Greenville County Register of Deeds Office in Book 2281 at Page 107 on July 27, 2007.

IT IS SO ORDERED.

JUDGE'S ELECTRONIC SIGNATURE PAGE TO FOLLOW

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2023- CP-23-01630

Mountain Trace Townhomes Property Owners
Association

Linda S. Frazao, et al

PLAINTIFF(S)

DEFENDANT(S)

<p>Submitted by: Matthew McCord</p>	<p style="text-align: center;">Attorney for : <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant</p>
--	---

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

:

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)
		\$
		\$
		\$
<p>If applicable, describe the property, including tax map information and address, referenced in the order:</p>		



Greenville Common Pleas

Case Caption: Mountain Trace Townhomes Property Owners Association vs. Linda S Frazao , defendant, et al
Case Number: 2023CP2301630
Type: Master/Order/Foreclosure & Sale and Form 4

And It Is So Ordered!

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