

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

CA# 2023-CP-23-01842

First Reliance Bank,

Plaintiff,

vs.

ORDER OF FORECLOSURE AND SALE
DEFICIENCY WAIVED

Kevin S. Murdock a/k/a Kevin Scott Murdock,
individually and as Trustee of the Kevin Scott Murdock
IPS Irrevocable Trust, Woodruff Corporate Association, Inc.,
Regency Finance, LLC and First Carolina Holdings, LLC, The
South Carolina Department of Revenue and Paul M. Bailey
d/b/a Bailey Group Wealth Management,

Defendants.

Pursuant to Circuit Court Rule 53(b) of the South Carolina Rules of Civil Procedure, the above-entitled foreclosure action was referred to the undersigned by Order filed on October 10, 2023 to make appropriate findings of facts and conclusions of law with authority to enter a final judgment in the cause. A hearing was conducted by this Court on December 20, 2023, and evidence was presented and from the documents and records received into evidence, I find, conclude and order as follows:

FINDINGS

1. The Summons, Complaint and Lis Pendens in this action was filed on April 14, 2023. An Amended Summons and Complaint and Amended Lis Pendens was filed on August 10, 2023; this Court has jurisdiction over the subject matter of this action and the parties, and it is the proper forum for the adjudication of this matter. The Kevin Scott Murdock IPS Irrevocable Trust owned the property at the time the Amended Lis Pendens was filed.

2. Affidavits for service of all of the Defendants have been filed with the Clerk of Court for this county.

3. Kevin S. Murdock a/k/a Kevin Scott Murdock, individually and as Trustee of the Kevin Scott Murdock IPS Irrevocable Trust, Regency Finance, LLC and First Carolina Holdings, LLC, and The South Carolina Department of Revenue filed Answers to the Amended Complaint. Paul M. Bailley d/b/a Bailley Group Wealth Management and Woodruff Corporate Association, Inc. did not respond and are in default. Kevin S. Murdock, individually and as Trustee filed a Counterclaim for an Accounting of the debt. First Reliance Bank filed a Reply to the Counterclaim.

4. All Defendants were notified of the time, date, and place of the hearing of this matter.

5. According to the affidavit and certification filed herein on September 25, 2023, any Defendant who is in default has been reviewed for his/her eligibility under The Servicemembers' Civil Relief Act of 2003 ("SCRA") and any amendments thereto and this review does not indicate any Defendant is eligible for protections.

6. No Defendant raised any credible issues related to Plaintiff's standing to prosecute this action, and Plaintiff is the real party in interest as contemplated by Rule 17(a), SCRPC. The Court finds that any issues related to Plaintiff's standing or ability to prosecute this action are waived.

7. For value received, on December 18, 2007, Kevin S. Murdock made, executed and delivered a note promising to pay to the order of Independence National Bank the sum of \$202,500.00 along with interest in favor of Independence National Bank. On January 13, 2013 Kevin S. Murdock executed a renewal note for the principal sum of \$175,571.83 along with

interest in favor of Independence National Bank. On June 26, 2018, Kevin S. Murdock executed a renewal note for the principal sum of \$130,998.43 in favor of First Reliance Bank. Other terms and conditions are stated in the note which is a part of the record.

8. To secure the payment of the loan, and to secure future obligations to the holder of the note, Kevin S. Murdock, made, executed and delivered to Independence National Bank a mortgage in writing dated December 18, 2007 encumbering real property in Greenville County, which is the same as that described in the Complaint. The mortgage was recorded in the office of the RMC for Greenville County, South Carolina on December 19, 2007 in Mortgage Book 4897 at page 452 and constitutes a first lien encumbering the property.

9. The mortgage contains an assignment of rents. A Declaration of Covenants is on file for record in Book 21332 at page 521 in the RMC for Greenville County states that the lien imposed by the covenants is subordinate to a first mortgage lien, and a sale by foreclosure automatically extinguishes any lien which becomes due prior to the sale. Plaintiff believes that Paul M. Bailey d/b/a Bailey Group Wealth Management, is renting the building to operate a business and asked that the Court order Bailey to pay the rents over to Plaintiff pending a sale and conveyance of the property. I find that Plaintiff is entitled to payment of the rents and will direct that all rents be paid over to Plaintiff until the sale is complete.

10. Independence National Bank subsequently merged into First Reliance Bank which is the owner and holder of the note and mortgage.

11. This Court finds that Plaintiff's mortgage constitutes a first lien on the mortgaged property.

12. The Court finds that Plaintiff and its counsel have fully complied with all of their

obligation(s) as required under the specific terms of the note and mortgage being foreclosed, and all applicable Federal or State statutes or regulations, including, but not limited to, the furnishing of any notices, where applicable; and moreover, prior to the filing of this judicial proceeding, the Defendant(s) had not raised any compliance defenses or objections as to the servicing of any applicable banking laws by Plaintiff and/or its counsel.

13. According to the records of Plaintiff and its counsel, neither Plaintiff nor its counsel is aware of any party to this action currently being on active military duty or recently discharged.

14. Payments due on the note have not been made as provided for in the note and Plaintiff elected to require immediate payment of the entire amount due and placed the note and mortgage in the hands of the attorney herein for collection.

15. With respect to attorney fees and in view of the potential financial liabilities and likely continuing professional obligations inherent in judicially prosecuting a real property mortgage credit matter, the attendant professional duties and responsibilities, and the size of the mortgage debt and consistent with similar case proceedings before this court, I find that based upon the affidavit of Plaintiff's attorney, the reasonable attorney's fee in this matter is \$10,229.00. This award is consistent with the laws of this state in the awarding of attorney fees. I have considered the six (6) factors (none of these factors is controlling in the singular) as follows: (1) the nature, extent and difficulty of the legal service rendered; (2) the time and labor necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the fee customarily charged in the locality for similar legal services; and (6) the beneficial results obtained. Dedes v. Strickland, 414 S.E. 2d 134 (S.C. 1992). Pursuant to the language in the note, mortgage and guaranties, this Court has specifically reviewed and satisfied

itself with all six (6) factors, as well as the disclosed client billing by Plaintiff's counsel considered in awarding reasonable attorneys' fees and costs/expenses/charges in this matter as set forth herein in this paragraph as well as Paragraph 18.

16. I find the itemized fees and costs/expenses/charges set forth in the Affidavit of Costs to be reasonable.

17. Although I have heretofore given consideration to all six (6) factors in the awarding of attorney fees and costs herein, jurisdiction over the fee award shall be reserved as granted in the Order of Reference with the right to re-visit the question of attorney fees should the action proceed in an unexpected way and/or to facilitate the assessment and payment of any such current or additional professional compensation.

18. The amount due and owing on the note, with interest at the rate provided in the note, including attorney's fee and allowable costs and charges allowable under and secured by the note and mortgage is:

(a) Principal Due	\$ 81,937.17
(b) Interest Due to December 20, 2023	\$ 4,723.15
(c) Late Charges	\$ 288.72
(d) Costs, charges, or expenses of collection prior to Hearing	\$ 1,306.29
(e) Attorney's fees	\$ 10,229.00
TOTAL DEBT secured by Note and Mortgage including interest to date shown	\$ 98,484.33

Interest shall continue to accrue on the unpaid principal balance shown in (a) above, at the rate of 5.75% from the date of hearing until entry of judgment, and such interest shall be added to the above stated "Total Debt": to comprise the amount of the judgment debt entered herein. Interest after the date of entry of judgment at the rate of 10% shall accrue on the judgment debt, as provided for in the note for the post-default interest rate, and shall be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the Mortgage through

the date of compliance with the terms of judicial sale. (Items (e) through (f) are subject to supplemental revision by Plaintiff's counsel and/or modification by the Court.)

19. Based upon a search of the public records of the aforesaid county pursuant to the South Carolina Lis Pendens statute, all persons or entities having an interest or lien or possible claim in or upon the mortgaged premises subordinate to the lien of Plaintiff as of the date and time of the filing of the Lis Pendens herein have been made defendants.

20. Mr. Paul Bailey appeared for the hearing. He produced a written lease purporting to be an agreement between him as Lessee and Kevin Murdock as Lessor. Plaintiff's mortgage contains no provision subordinating itself to the lease agreement, and I am not aware of any authority to give priority to this lease and will not order a sale subject to the lease. Plaintiff also claims to be entitled to the rents. Mr. Bailey testified that Mr. Murdoch had not cashed several rent checks sent to him by Mr. Bailey. I find that Mr. Bailey should make three of the non-negotiated checks for past regular lease payments to Plaintiff and to be applied to the loan (\$1,443.53 per month) to First Reliance Bank. Mr. Bailey should also pay the sum of \$1443,53 to First Reliance Bank each month until the property is sold starting January 1, 2024. The sale will terminate the lease. Issues regarding Mr. Bailey vacating the premises, to the extent this becomes an issue, will be addressed in the future by way of motion.

21. Plaintiff demanded a deficiency judgment against Kevin S. Murdock, but filed a written Waiver of Deficiency Judgment with the court on December 21, 2023.

22. All persons and/or entities who may be or may have been entitled to claim through or under the title or interest of the named Defendant(s) claiming any other interest in the subject property shall be absolutely barred and forever foreclosed of any rights, titles, or interests.

23. Issues relative to priority of junior lienholders will be addressed in a subsequent order to be issued by the court.

CONCLUSIONS OF LAW

I, therefore, conclude as follows:

1. The conditions of the Note and Mortgage have been breached, and the Plaintiff elects to and does declare the entire balance of said indebtedness due and payable.

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

3. All persons or entities who may be entitled to claim through or under the title or interest of the named Defendant(s) in the subject property shall likewise be absolutely barred and forever foreclosed.

4. Plaintiff waived deficiency judgment against Kevin S. Murdock.

5. Plaintiff should be granted possession of \$1,443.53 from the rents generated by the property until the sale is complete.

Now, on motion of Plaintiff's attorney,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. The conditions of the Note and Mortgage have been breached, and the entire balance of said indebtedness due and payable.

2. That Paul Bailley pay three past accrued and non-negotiated lease payment installments of \$1,443.53 of his rental payment in one lump sum to First Reliance Bank within 10 days of execution of this order, and the further sum of \$1,443.53 each month when rent is payable until the sale of the property is complete.

3. That there is due to Plaintiff on the obligation and mortgage as set forth in the Complaint the sum of \$98,484.33, representing the total debt due Plaintiff as set forth supra, together with interest at the rate of 5.75% on the balance of principal from the date aforesaid to the date hereof.

4. The amount due in the preceding paragraph (the "total debt" as set forth in Paragraph hereinabove, and later accrued interest on the principal) shall constitute the total judgment debt due the Plaintiff (may be supplemented as permitted by the Court) and shall bear interest hereafter at the rate of 10%.

5. That on default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, shall be sold by this Court at public auction, after giving Notice of the time and place of such sale by advertisement according to law. Any sales date is tentative and may be rescheduled at any time prior to the sale without further order of this Court or written notice to the parties of the notice of sale, provided notice of the new sales date is duly advertised as required by law. The sale shall be according to 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), said 5% deposit being due and payable immediately upon the closing of the bidding, same to be applied to the purchase price only upon compliance with the bid, but in case of non-compliance within 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 rate of 10%.

(c) The sale shall be subject to taxes and assessments, existing easements and restrictions of record and prior liens of record.

(d) Purchaser to pay for deed preparation (be it this Court or Counsel for Plaintiff), deed tamps/transfer taxes and cost of recording the deed.

6. Plaintiff's Mortgage constitutes a first lien encumbering the real estate and improvements therein described.

7. If Plaintiff is the successful bidder at said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of Plaintiff in full, Plaintiff may pay to the Court only the amount of the outstanding costs and expenses crediting the balance of the bid on Plaintiff's indebtedness.

8. Personal or deficiency judgment being waived, the bidding will note remain open for a period of thirty (30) days after the sale date, and the sale will be final.

9. This Court will by advertisement according to law, give notice of the time and place of such sale, and the terms thereof. Any sales date is tentative and may be rescheduled at any time prior to the sale without further order of this court or written notice to the parties of the notice of sale, provided notice of the new sales date is duly advertised as required by law. This Court 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 30 days after the date of sale, then this Court 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. All bidders are hereby and herein noticed that if the successful bidder is a third party, neither Plaintiff nor Plaintiff's counsel make any warranties or representations of any kind as to the subject property, including but not limited to its title or

habitability on behalf of the third-party bidder or any subsequent purchasers. All personal property is sold “AS IS” and “WHERE IS”.

10. The sale will not be held unless either Plaintiff's attorney or Plaintiff's bidding agent is present at the sale and either Plaintiff's attorney or Plaintiff's bidding agent enters the authorized bid of Plaintiff for this individually captioned matter. In the alternative, Plaintiff's counsel, if permitted by the Court, may advise this Court directly of its authorized bidding instructions. In the event a sale is inadvertently held without Plaintiff's Counsel or Counsel's bidding agent entering the authorized bid of Plaintiff for this specifically captioned matter, the sale shall be null and void and the property shall be re-advertised for sale on the next available sale date.

11. In the event of a third-party bidder wherein the successful third-party bidder fails to comply with their bid in certified (immediately collectible) funds, this Court will re-sell the subject property at the most convenient time thereafter upon request by counsel for Plaintiff.

12. This Court shall apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of the permitted costs, charges, and expenses of this action;

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 Plaintiff's attorney shall receive and disburse such funds only in total and absolute compliance with the debt, interest, escrow, 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, South Carolina Rules of Civil Procedure;

NEXT: Any surplus will be held pending further order of the Court as provided for

in the South Carolina Rules of Civil Procedure and particularly Rule 71(c) of the South Carolina Rules of Civil Procedure.

13. It is further ORDERED, that if the successful bidder is other than the person(s) or entity in possession herein, the Sheriff of Greenville County is ordered and directed to evict and remove from the premises the occupants of the property sold 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.

14. And it is further ORDERED, ADJUDGED AND DECREED that none of the named Defendants have established any claims or defenses, legal or equitable, for relief against Plaintiff, and therefore, no relief, be it legal or equitable, shall be granted to any of the named Defendants. In addition, all persons and/or entities who may be or may have been entitled to claim through or under the title or interest of the named Defendants in the subject property shall likewise be absolutely barred and forever foreclosed of any rights, titles, or interests.

15. Pursuant to the Order of Reference, this Court retains exclusive jurisdiction to do all necessary acts incident to this foreclosure.

16. Upon issuance of this Court's Report on Sale and Disbursements, the Clerks of Court/Registers of Deeds are directed to release of record the Plaintiff's mortgage lien being foreclosed.

17. This sale is specifically subject to all title matters of record, and any interested party should consider performing an independent title examination of the subject property as no warranty is given at all by the Court, Plaintiff, or its Counsel.

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

All that certain piece, parcel or lot of land lying, being and situate in the County of Greenville, State of South Carolina being shown and designated as "Lot 63" on a survey entitled "Group

Development Plat Woodruff Corporate Center, Phase II" dated May 31, 2005 and recorded in Plat Book 49-Z at Page 6 in the Office of the Register of Deeds for Greenville County, South Carolina. Reference is hereby made to said survey for a complete mete and bounds description.

This is the same property conveyed to the Mortgagor by deed from Alverson Unlimited, Inc., dated December 18, 2007 and recorded December 19, 2007 in the ROD Office for Greenville County in Deed Book 2305 at page 1045.

Tax Map No. 0547.10-01-027.00

TID- Lot 63, Woodruff Corporate Center

Address: 218 Adley Way, Greenville, SC

AND 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 01842

First Reliance Bank

Kevin S. Murdock a/k/a Kevin Scott Murdock, individually and as Trustee of the Kevin Scott Murdock IPS Irrevocable Trust, Woodruff Corporate Association, Inc., Regency Finance, LLC and First Carolina Holdings, LLC, The South Carolina Department of Revenue and Paul M. Bailey d/b/a Bailey Group Wealth Management,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Coit Yarborough

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: See attached order

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : Judgment against Kevin S. Murdock for foreclosure and sale

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	Judgment Against	Judgment Amount To be Enrolled
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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-Fileers or who are appearing pro se. See Rule 77(d), SCRCP.

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.



Greenville Common Pleas

Case Caption: First Reliance Bank vs. Kevin S Murdock , defendant, et al

Case Number: 2023CP2301842

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

And It Is So Ordered!

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