

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

PNC Bank, National Association,
Plaintiff,

v.

Andrea Patrick S. Burnett a/k/a Andrea
Burnett a/k/a Andrea P. Smith; PNC Bank,
National Association,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2023-CP-23-03749

**MASTER IN EQUITY’S ORDER AND JUDGMENT OF
FORECLOSURE AND SALE, DECLARATORY
JUDGMENT AND REFORMATION OF MORTGAGE**

DEFICIENCY WAIVED

Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure (hereinafter "SCRCP"), the above-entitled matter was referred to the undersigned Master in Equity to make appropriate findings of fact and conclusions of law, with authority to enter a final Judgment in the cause. Any appeal from the decision of the Master in Equity shall be directly to the South Carolina Court of Appeals.

Pursuant to the said reference, a hearing was held on October 24, 2023, a record was made which is reported herewith, and from the testimony and evidence I find and conclude as follows:

FINDINGS OF FACT:

1. The Lis Pendens was filed on July 24, 2023.
2. The Summons and Complaint were filed on July 24, 2023.
3. Service was made upon the Defendants as shown by the proofs of service filed herein.
4. The Defendant Andrea Patrick S. Burnett a/k/a Andrea Burnett a/k/a Andrea P. Smith is in default as shown by Affidavit filed herein.
5. According to an 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 fka Soldiers' and Sailors' Civil Relief Act of 1940, and any amendments thereto.

6. The Defendant PNC Bank, National Association answered in this action.
7. All Defendants were notified of the time, date and place of hearing in this matter.
8. According to testimony, due to inadvertent error and mistake, the legal description of the deed by which the Estate of L.B. Burnett conveyed its interest in the subject property to Andrea Patrick S. Burnett was incomplete as it omitted several of the lots intended to be conveyed. Said deed was recorded on April 30, 1996, in the Record for Greenville County in Book 1640 at Page 1295 and referenced the following:

ALL that piece, parcel or lot of land in Greenville County, State of South Carolina, City of Greer, and being located on McKissick Alley and further designated as lots Seven (7) and Eight (8) and a part of lot number Nine (9) of the Mose McKissick property, plat of which is recorded for City of Greer, Department of Community Development, with the following metes and bounds, to wit: 11(285) G 14-4-38

BEGINNING at iron pin on the Southeastern side of McKissick Street in the corner of Lot Nos. 6 & 7 along said street N. 19-49 E., 65 feet to an iron pin; thence along the center of Lot No. 9, S. 71-29 E., 137.2 feet to back of the center of Lot No. 9 to an iron pin; thence running S. 12-57 E., 66.65 feet to the back corner of Lots 6 and 7; thence running N. 70-59 W., 145.2 feet to the point of beginning.

Whereas the correct reference is:

ALL those pieces, parcels, or lots of land in Greenville County, State of South Carolina, City of Greer, and being located on McKissick Alley and further designated as Lots 7, 8, 9, 10, and 11 on a plat of the M.G. McKissick Estate prepared by Will D. Neves, dated August 13, 1914, and recorded in Plat Book L at Page 127, Office of the Register of Deeds for Greenville County. Said plat is incorporated herein by this reference for a more complete and accurate description thereof.

9. The Declaratory Judgment whereby the Court finds that the error referenced above in the legal description of the vesting deed is an inadvertent scrivener's error that does not affect the obvious intended conveyance of the subject property by said Deed, it does not constitute a cloud on title, and that the corrected legal description as cited herein is proper is hereby granted.

10. According to testimony, the legal description of the subject mortgage is incomplete as it fails to include all of the lots intended to be encumbered. The legal description on this instrument references:

ALL THAT PIECE, PARCEL OR LOT OF LAND IN GREENVILLE COUNTY, STATE OF SOUTH CAROLINA, CITY OF GREER, AND BEING LOCATED IN MCKISSICK ALLEY AND FURTHER DESIGNATED AS LOTS SEVEN (7) AND EIGHT (8) AND A PART OF LOT NUMBER NINE (9) OF THE MOSE MCKISSICK PROPERTY, PLAT OF WHICH IS RECORDED FOR CITY OF GREER, DEPARTMENT OF COMMUNITY DEVELOPMENT, WITH THE FOLLOWING METES AND BOUNDS, TO WIT: 11(285) G 14-4-38

BEGINNING AT AN IRON PIN ON THE SOUTHEASTERN SIDE OF MCKISSICK STREET IN THE CORNER OF LOT NOS. 6 & 7 ALONG SAID STREET N 19-49 E., 65 FEET TO AN IRON PIN; THENCE ALONG THE CENTER OF LOT NO. 9, S. 71-59 E., 137.2 FEET TO BACK OF THE CENTER OF LOT NO. 9 TO AN IRON PIN; THENCE RUNNING S. 12-57 E., 66.65 FEET TO THE BACK CORNER OF LOTS 6 AND 7; THENCE RUNNING N 70-59 W., 145.2 FEET TO THE POINT OF BEGINNING.

Whereas the correct reference is:

ALL those pieces, parcels, or lots of land in Greenville County, State of South Carolina, City of Greer, and being located on McKissick Alley and further designated as **Lots 7, 8, 9, 10, and 11 on a plat of the M.G. McKissick Estate prepared by Will D. Neves, dated August 13, 1914, and recorded in Plat Book L at Page 127, Office of the Register of Deeds for Greenville County. Said plat is incorporated herein by this reference for a more complete and accurate description thereof.**

11. According to testimony, the parties to the loan origination intended the Mortgage to encumber the property described in the Plaintiff's Lis Pendens filed herein. Such intent being evidenced by the inclusion of the property address of said parcel in the subject Mortgage and the fact that all the lots have been combined for tax purposes.

12. The legal description contained in the Mortgage is hereby ordered reformed to recite the correct reference, which comports with public record, and this reformation hereby relates back to the date of its recording.

13. For value received, Andrea Burnett made, executed and delivered a note, dated November 5, 2004, promising thereby to pay to the order of Nations Home Mortgage Corporation the sum of \$62,500.00 with interest at the rate of 6.375% per annum (hereinafter "Note"). Other terms and conditions are stated in the note, which is of record herein.

14. To better secure the payment of the Note described above, the said Andrea Patrick S. Burnett made, executed and delivered a mortgage to Mortgage Electronic Registration Systems, Inc., as mortgagee, as nominee for Nations Home Mortgage Corporation, in writing, dated November 5, 2004, covering real property in Greenville County, which is the same as that described in the Complaint. The Mortgage was recorded on November 15, 2004, and is of record in the Greenville County Registry in Book 4271 at page 116.

15. This mortgage constitutes a valid first lien lien on the subject property.

16. Thereafter, the Mortgage was assigned to PNC Bank, National Association by assignment recorded on December 30, 2022 in Book 5720 at Page 2308.

17. The titleholder(s) of record of the Property as of the filing of the Lis Pendens in this action was Andrea Patrick S. Burnett.

18. Payment due on the Note has not been made as provided for therein, and the Plaintiff, as the holder thereof, has elected to accelerate payment of the entire indebtedness and has placed the Note and Mortgage in the hands of its attorney of record herein for collection.

19. Having considered the nature, extent and difficulty of the services rendered (the field of mortgage foreclosures being a specialized area of practice); the time involved in reviewing the various loan documents, performing the title search, preparing the pleadings and preparing for and attending hearings; the professional standing of the Plaintiff's attorney; the fee customarily charged in this jurisdiction for similar services; and the beneficial results obtained for the Plaintiff,

I find that the sum of \$2,187.50 is a reasonable attorney's fee for the Plaintiff's attorney for services performed up to this point in time under the terms of the note and mortgage. Performance of additional services may result in a determination by this court that additional reasonable attorney's fees are due.

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

Principal Due as of Today's Date:	10/24/2023		\$37,794.30
Accrued Interest From:	09/01/2022	to: 09/29/2023	\$2,594.19
Per diem Interest From:	09/30/2023	to: 10/24/2023	\$158.40
Accruing at:	6.375% per annum		
Late Charges:			\$ 117.00
Hazard/Property Insurance:			\$ 1,850.33
NSF Charge:			\$ 30.00
Other Charges:			\$ 120.00
Costs of Collection Prior to Hearing:			\$ 1,045.40
Attorney's Fees:			\$ 2,187.50

21. Total Debt secured by Note and Mortgage, is \$45,897.12. Interest shall be added to the total debt at the rate stated above until the date a judicial sale is conducted herein. Additional interest accrual after the date of such judicial sale will be governed by terms set forth herein below.

22. The Plaintiff is seeking foreclosure of its mortgage and has, in the Complaint or subsequently thereto in writing, expressly Waived the right to a personal or deficiency Judgment pursuant to Rule 71(b), SCRCF.

23. The Defendant(s), below listed, claim or may claim liens upon or interests in the subject property; and in the event there is a surplus from the sale of the subject property, the validity, priority and amount of any such lien claims will be determined at a hearing subsequent to the sale,

in accordance with Rule 71(c), SCRCP. The said Defendants and such claims or liens are as follows:

A. The Defendant, PNC Bank, National Association, has or may claim to have some interest in the Property by virtue of a mortgage given by Andrea Patrick S. Burnett in the maximum principal amount of \$25,000.00, which mortgage was recorded in the Greenville County Records on 05/03/2022 in Book 5689 at Page 3994. Said lien is junior and subordinate to Plaintiff's mortgage and is hereby ordered removed from the title to the Property upon the completion of a properly held foreclosure sale.

CONCLUSIONS OF LAW: I, therefore, conclude as follows:

1. The Plaintiff is entitled to judgment as to all causes of action, including foreclosure of its Mortgage.
2. The Property should be ordered sold at public auction after due advertisement.
3. That there is due to the Plaintiff on its Note and Mortgage the sum of \$45,897.12, representing the Total Debt due to the Plaintiff as outlined above.
4. That the amount due in the preceding paragraph (the "Total Debt") and later accrued interest and costs shall constitute the total judgment debt due to the Plaintiff and shall bear interest as previously set forth at the rate of 6.375% per annum.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. That the Defendant(s) liable for the aforesaid Mortgage debt shall, prior to the date and time of the sale of the Property, hereinafter described, pay to the Plaintiff, or the Plaintiff's attorney, the amount of the Plaintiff's debt to include continuing accruing interest as aforesaid, together with the costs and disbursements of this action.
2. That on default of payment prior to the date and time of the sale, the Property, hereinafter described, shall be sold by the undersigned Master in Equity at public auction, at the Greenville County Courthouse, City of Greenville, County and State aforesaid, on some convenient sales day hereafter, on the following terms, that is to say:

- A. FOR CASH: The undersigned Master in Equity shall require a deposit of 5% on the amount of the bid (in cash or equivalent) the same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within thirty (30) days the same to be forfeited and first applied to the costs incurred by the Plaintiff related to the sale and the balance then applied to the Plaintiff's debt in a manner suitable to the Plaintiff.
- B. Interest on the balance of the bid shall be paid to the day of compliance at the rate of 6.375% per annum.
- C. The sale shall be subject to taxes and assessments, existing easements and restrictions of record, and any other senior encumbrances.
- D. Purchaser to pay for the deed and the cost of recording the deed.
3. If the Plaintiff is 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, the Plaintiff may pay to the undersigned Master in Equity only the amount of the costs and expenses, crediting the balance of the bid on the Plaintiffs indebtedness.
4. No personal or deficiency judgment being demanded, the bidding shall not remain open after the date of sale and shall be final on that date, and compliance with the bid may be made immediately.
5. That the undersigned Master in Equity will, by advertisement according to law, give notice of the time and place of sale and the terms thereof; and that he/she will execute to the purchaser, or purchasers, a deed to the Property sold. The Plaintiff, or any other party to this action, or any other person may become a purchaser at such sale. If such sale is made to anyone other than the Plaintiff or its assignee, should the successful bidder, or his/her assignee, fail to comply with the terms thereof within thirty (30) days after the date of sale, then the undersigned Master in Equity or the Plaintiff

may re-advertise the Property for sale on the next, or some other subsequent, sales day, according to the same terms set forth herein, and so on from time to time thereafter until a full compliance shall be secured.

6. In the event an agent of the Plaintiff does not appear at the time of sale, the within property shall be withdrawn from sale and sold at the next available sales date upon the terms and conditions as set forth in the Judgment of Foreclosure and Sale or such terms as may be set forth in a supplemental order.

7. That the undersigned Master in Equity shall apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of the costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court; and

NEXT: To the payment of the amount to the Plaintiff, or the Plaintiff's Attorney, of the amount of the Plaintiff's debt and interest (including attorney fees) or so much thereof as the purchase money will pay on the same; and

NEXT: Any surplus will be held pending further Order of this Court pursuant to Rule 71(c), SCRPC.

8. That it is further ORDERED, ADJUDGED AND DECREED that each Defendant named herein, and all persons whomsoever claiming under him, them or it, be forever barred and foreclosed of all right, title, interest, lien, and equity of redemption in the said mortgaged premises so sold, or any part thereof.

9. That it is further ORDERED ADJUDGED AND DECREED that the deed of conveyance made pursuant to this judgment and said sale shall contain the names of only the Plaintiff, the first-named Defendant, who was the title holder of the mortgaged property at the time of the filing of the Lis Pendens, and the Grantee; and that the Greenville County Register of Deeds is

hereby authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

10. 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 Greenville County may be 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.
11. That it is further ORDERED ADJUDGED AND DECREED that after the Order Confirming Sale and Disbursements has been issued and filed, the undersigned Master in Equity shall direct the Register of Deeds to release of record the lien(s) being foreclosed, which lien(s) are described in the Findings of Fact herein above.
12. That it is further ORDERED ADJUDGED AND DECREED that the Mortgage is reformed as described in the Findings of Fact herein above.
13. That it is further ORDERED ADJUDGED AND DECREED that the Plaintiff's request for a Declaratory Judgment is granted, whereby the Court finds that the omission referenced above in the legal description is an inadvertent error which does not affect the obvious intended conveyance of the subject property by said Deed, it does not constitute a cloud on title, and that the corrected legal description as cited herein is proper.
14. That it is further ORDERED ADJUDGED AND DECREED that the following is a description of the Property herein ordered to be sold:

ALL THOSE PIECES, PARCELS, OR LOTS OF LAND IN GREENVILLE COUNTY, STATE OF SOUTH CAROLINA, CITY OF GREER, AND BEING LOCATED ON MCKISSICK ALLEY AND FURTHER DESIGNATED AS LOTS 7, 8, 9, 10, AND 11 ON A PLAT OF THE M.G. MCKISSICK ESTATE PREPARED BY WILL D. NEVES, DATED AUGUST 13, 1914, AND RECORDED IN PLAT BOOK L AT PAGE 127, OFFICE OF THE REGISTER OF DEEDS FOR GREENVILLE COUNTY. SAID PLAT IS INCORPORATED HEREIN BY THIS REFERENCE FOR A MORE COMPLETE AND ACCURATE DESCRIPTION THEREOF.

THIS BEING THE SAME PROPERTY CONVEYED TO L.B. BURNETT AND ANDREA P. SMITH BY DEEDS OF MCLIMON & HILL, INC., DATED JANUARY 31, 1983, AND RECORDED FEBRUARY 7, 1983, IN BOOK 1182 AT PAGE 201, AND DATED FEBRUARY 24, 1984, AND RECORDED FEBRUARY 27, 1984, BOTH IN THE OFFICE OF THE REGISTER OF DEEDS FOR GREENVILLE COUNTY, SOUTH CAROLINA. THEREAFTER, L.B. BURNETT DIED ON JUNE 27, 1993, LEAVING HIS INTEREST IN THE SUBJECT PROPERTY TO HIS DEVISEE, ANDREA PATRICK S. BURNETT, AS IS MORE FULLY PRESERVED IN PROBATE FILE 1993-ES-23-01207 AND IN THE DEED OF DISTRIBUTION DATED APRIL 29, 1996, AND RECORDED APRIL 30, 1996, IN BOOK 1640 AT PAGE 1295 IN SAID RECORDS.

CURRENT ADDRESS OF PROPERTY: 108 McKissick Street, Greer, SC 29650

TMS: G014.00-04-038.00

AND IT IS SO ORDERED.

JUDGE'S ELECTRONIC SIGNATURE PAGE TO FOLLOW

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2023-CP-23-03749

PNC Bank, National Association
 PLAINTIFF(S)

Andrea Patrick S. Burnett a/k/a Andrea Burnett
a/k/a Andrea P. Smith; PNC Bank, National
Association
 DEFENDANT(S)

<p>Submitted by: <u>Brock & Scott, PLLC</u> <u>Westpark Center</u> <u>3800 Fernandina Road, Suite 110</u> <u>Columbia, SC 29210</u></p>	<p>Attorney for : <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant</p>
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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 :

<p>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.</p>
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Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		N/A

If applicable, describe the property, including tax map information and address, referenced in the order:

ALL those pieces, parcels, or lots of land in Greenville County, State of South Carolina, City of Greer, and being located on McKissick Alley and further designated as Lots 7, 8, 9, 10, and 11 on a plat of the M.G. McKissick Estate prepared by Will D. Neves, dated August 13, 1914, and recorded in Plat Book L at Page 127, Office of the Register of Deeds for Greenville County. Said plat is incorporated herein by this reference for a more complete and accurate description thereof.

This being the same property conveyed to L.B. Burnett and Andrea P. Smith by deeds of McLimon & Hill, Inc., dated January 31, 1983, and recorded February 7, 1983, in Book 1182 at Page 201, and dated February 24, 1984, and recorded February 27, 1984, both in the Office of the Register of Deeds for Greenville County, South Carolina. Thereafter, L.B. Burnett died on June 27, 1993, leaving his interest in the subject property to his devisee, Andrea Patrick S. Burnett, as is more fully preserved in Probate File 1993-ES-23-01207 and in the Deed of Distribution dated April 29, 1996, and recorded April 30, 1996, in Book 1640 at Page 1295 in said Records.

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. E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.**

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:

**PNC Bank, National Association c/o
Registered Agent 222 Delaware Avenue
Wilmington, DE 19899**

**John S. Kay , Attorney for PNC Bank,
National Association, P.O. Box 8237,
Columbia, SC 29202**

Brock & Scott, PLLC
Westpark Center
3800 Fernandina Road, Suite 110
Columbia, SC 29210

**ATTORNEY(S) FOR THE
DEFENDANT(S)**

**ATTORNEY(S) FOR THE
PLAINTIFF(S)**

CLERK OF COURT

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 judgment to parties who are not E-Filers 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: Pnc Bank National Association vs. Andrea Patrick S Burnett ,
defendant, et al
Case Number: 2023CP2303749
Type: Master/Order/Foreclosure & Sale and Form 4

And It Is So Ordered!

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