

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Upstate Auto Auction of)
Spartanburg, LLC,)
)
Plaintiff,)
)
vs.)
)
Keith Fuller,)
South Carolina Department of)
Revenue, and)
U.S. Bank National Association,)
as Indenture Trustee for)
VCC 2020-MC1 Trust,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
NON-JURY FORECLOSURE

FORECLOSURE DECREE
DEFICIENCY JUDGMENT DEMANDED
AS TO KEITH FULLER
C.A. No.: 2023-CP-23-04296

Pursuant to Rules 53 (b) of the SCRCP, upon Motion of Alexander Hray, Jr., by Order of Reference of the Honorable Brice Garrett, Clerk of Court for Greenville County, South Carolina, dated December 6, 2023, the above captioned matter was referred to this Master in Equity for Greenville County, South Carolina, to take testimony, to make appropriate findings of fact and conclusions of law with the authority to enter final judgment in this case.

In accordance with the Order of Reference, a hearing was held on January 24, 2024, attended by the Alexander Hray, Jr., attorney for the Plaintiff and Charna Henson, as Trustee, the Plaintiff, at which the testimony was taken and pre-filed documents presented. A statement was introduced into the record, detailing the debt owed by the Defendant to the Plaintiff. From the testimony and other evidence and stipulations, I report, find, conclude, and order as follows.

FINDINGS OF FACT

1. The Notice of Pendency of Action was filed on August 22, 2023.
2. The record owner of the subject property at the time of the filing of the Lis Pendens was Keith Fuller.
3. The Summons and Complaint were filed on August 22, 2023.
4. Proper service of process was made upon the Defendants named in this action as is shown in the records by the filed Affidavits of Service, Acceptance of Service or appearance by the filing of responsive pleadings. The Defendant Keith Fuller (herein "Fuller") is in default as appears by Affidavit of Default previously filed with the court. The Defendants South Carolina Department of Revenue and U.S. Bank National Association as Indenture Trustee of VCC 2020-MC1 Trust appeared in this case, filed timely responsive pleadings setting up their respective lien positions and consented to the case being litigated before the Master in Equity.
5. The Defendants were timely notified of the time, date and place of the hearing in this matter.
6. According to Affidavit of Alexander Hray, Jr. the Defendant Fuller is not on active duty service in any branch of military service for the United States of America therefore, The Soldiers' and Sailors' Relief Act of 1940, as amended, is not applicable to this matter.
7. On or about August 17, 2017, for value received, Defendant, executed and delivered to the Plaintiff, his certain Promissory Note (the "Note") in writing, by which, according to the terms and conditions set out herein, Defendant promised to pay to Plaintiff, the sum of Seventy-six Thousand and No/100 (\$76,000.00) Dollars, together

with interest thereon from said date at the rate of Ten Percent (10%) per annum, payable in 180 monthly installments of Eight Hundred Sixteen and 74/100 Dollars (\$816.74), beginning on September 17, 2017 and the same payment on the same day of each month thereafter until paid in full.. Other terms and conditions are stated in the Note, which is a part of the record.

8. To better secure the payment of the Note above, Defendant Fuller made, executed and delivered to Plaintiff, a mortgage in writing dated on or about August 17, 2017 covering real property in Greenville County (the "Mortgage") which is the same property as that is described in the Complaint and this Order (the "Mortgaged Property"). The Mortgage was recorded on August 21, 2017, in Mortgage Book 5402, at Page 3894, in the Office of the Register of Deeds for Greenville County, South Carolina. Other terms and conditions are stated in the Mortgage which is a part of this court record.

9. The Mortgage constitutes a first lien on the Mortgaged Property. Plaintiff is the present owner and holders of the aforesaid Note and first priority Mortgage.

10. Payment due on the Note has not been made as provided for in the Note. Any required notice of the Defendant Fuller was timely given and any time for opportunity to cure has passed. Plaintiff as 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 herein for collection.

11. After review of the Affidavit by Plaintiff's attorney, the terms of the Note and Mortgage, I find the sum of Two thousand Nine Hundred and No/100 Dollars (\$2,900.00) is a reasonable fee to allow for Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the within action under the Note

and Mortgage and until final sale of the Mortgaged Property.

12. The amount due and owing on the Note, and other costs and expenses of collection, including a reasonable attorney's fee, secured by the Mortgage, is as follows:

(a)	Principal balance as of August 4, 2023	\$44,125.72
(b)	Accrued Interest to January 24, 2024	27,617.93
(c)	Accrued Late Fees	1,306.88
(d)	Attorney's Fees	2,900.00
(e)	Costs	<u>475.54</u>
	TOTAL DEBT SECURED BY NOTE AND MORTGAGE, INCLUDING INTEREST TO DATE SHOWN	\$76,426.07

The current rate of interest on the debt due Plaintiff is Ten percent (10%) per annum at the per diem judgment rate of Twelve and 09/100 Dollars (\$12.09) on the judgment debt should be added to the above stated "total" debt to comprise the amount of Plaintiff's debt secured by the Mortgage.

13. Plaintiff is seeking foreclosure of the Mortgage and has retained its right for deficiency judgment as to the Defendant Fuller.

CONCLUSIONS

I, THEREFORE, CONCLUDE, ORDER, ADJUDGE AND DECREE AS FOLLOWS:

1. Plaintiff whose Mortgage is a valid first mortgage lien on the Mortgaged Property described in this Order is granted a Judgment of Foreclosure of the Mortgage.

2. That there is due to Plaintiff as set forth in my findings on the obligation of the Note and Mortgage the sum of Seventy-Six Thousand Four Hundred Twenty-Six and 07/100 Dollars (\$76,426.07) as of the 24th day of January 2024, together with interest on said amount at the per diem judgment rate in the amount of Twelve and

09/100 Dollars (\$12.09) from the date of this Order to the sale of the Mortgaged Property; and the Plaintiff shall have judgment therefore against the Defendant Fuller; and that the Clerk of Court for Greenville County is directed to forthwith enter and docket such judgment in the Clerk's office pursuant to Section 29-3-650, SC Code (1976), as amended.

3. That the Defendant Fuller before the date of sale of the Mortgaged Property hereinafter described, pay to Plaintiff or her attorney the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

4. That on default of the payment at or before the time herein indicated, the Mortgaged Property described in the Complaint and hereinafter set forth, be sold by the Master, at public auction, at the County Courthouse, in the City of Greenville, County and State aforesaid, 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 for cash; the Master will require a deposit of five percent (5%) of the amount of the bid in (in cash or equivalent), interest on the balance of the bid shall be paid to the day of compliance at the current rate of ten percent (10%) per annum the same to be applied on the purchase price only upon compliance with the bid, but in the case of noncompliance within twenty (20) days, same to be forfeited and applied to the costs and Plaintiff's debt. If Plaintiff is the successful bidder at said sale, for a sum not exceeding the amount of costs and the indebtedness of Plaintiff in full, Plaintiff may pay into the Master only the amount of the costs, crediting the balance of the bid on the Plaintiffs' indebtedness.

5. Since a Deficiency Judgment is demanded and not waived, the bidding

will not be final on the sale but shall remain open for thirty (30) days after the sale.

6. That, upon Motion of Plaintiff's attorney at the merits hearing, I order the pleadings to be amended to conform to the evidence presented.

7. That this Master give notice by advertisement according to law of the time and place of such sale, and the terms thereof; that this Master, do execute to the Purchaser, or Purchasers, a deed to the Mortgaged Property sold; as 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 twenty (20) days, this Master may advertise the said Mortgaged Property for sale on the next, or some other subsequent sales day, at the risk of the former higher bidder, and so from time to time thereafter until compliance shall be secured. In the event that Plaintiff is the successful bidder, at Plaintiff's option, or option of Plaintiff's assignee, the deed may be taken subject to the payment by grantee of any taxes or any assessments constituting a lien against the Mortgaged Property sold under this Order and hereinafter more fully described.

8. That the proceeds of the sale will be applied as follow:

FIRST, to the payment of the amount of the costs and expenses of this action and the recommended attorney's fee for Plaintiff's attorney and any taxable disbursements by the attorney in the action.

NEXT, to the amount due to Plaintiff for Plaintiff's debt and interest or so much thereof as the purchase money will pay on the same;

NEXT, any surplus be held pending further Order of this Court.

9. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that

upon making of the sale of said Mortgaged Property, as hereby ordered, and execution and delivery to the Purchaser of a deed to the Mortgaged Property, the said Purchaser, or Purchasers, be let into possession of the Mortgaged Property on the production of the deed; and the Sheriff of Greenville County shall put the holder of the deed into possession of the Mortgaged Property and shall eject and remove from the Mortgaged Property any occupant or occupants of the property sold, together with all personal property thereon.

10. AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants named herein and all persons whosoever claiming under the Defendants, be forever barred and foreclosed of all right, title, interest and equity of redemption in the said Mortgaged Property so sold, or any part thereof.

11. AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the deed of conveyance made pursuant to this sale shall be indexed in the grantor index by the Register of Deeds in the name of the owner(s) of record of Mortgaged Property immediately prior to the execution of the deed, as well as in the name of the undersigned Master in Equity, who executed such deed as grantor.

12. The undersigned 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 and disposing of any surplus funds pursuant to Rule 71(c), SCRCP.

13. If a representative of Plaintiff is not present at the sale of the property, the sale shall be withdrawn and re-advertised for a sale on a subsequent sales date.

IT IS SO ORDERED by virtue of the powers granted me by the Order of Reference described herein and the laws of South Carolina.

The following is a description of the Mortgaged Property herein ordered to be sold:

All that certain piece, parcel or lot of land, situate lying and being in the County of Greenville, State of South Carolina, on the northeastern side of Sumter Street, being shown and designated as Lot 2 on plat of Sumter Estates, Phase One dated August 31, 2000, prepared by Freeland & Associates, Inc., and recorded in the Office of the Register of Deeds for Greenville County, South Carolina in Plat Book 42-L, at Page 73, on June 15, 2000 and revised on plat of Sumter Estates, Phase Two dated August 22, 2001 prepared by Freeland & Associates, Inc., recorded in the Office of the Register of Deeds for Greenville County, South Carolina in Plat Book 44-B, at Page 99, on August 22, 2001. Reference to which plat is incorporated herein.

This being the same property conveyed to Keith Fuller by deed of Deutsche Bank National Trust Company, as Trustee for Agent Securities Inc., Asset-Backed Pass-Through Certificates, Series 2004-W11, by Ocwen Loan Servicing, LLC as Attorney-in-fact dated April 5, 2017 in Record Book 2510 at Page 4935, in the Office of the Register of Deeds for Greenville County, South Carolina.

Tax Map Number B011.01-01-002.00

Property Address: 1 Symbolic Ct., Sumter Estates, Greenville, SC 29617

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-23-04296

Upstate Auto Auction of Spartanburg, LLC

Keith Fuller, et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Alexander Hray, Jr.	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. 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)
Upstate Auto Auction of Spartanburg, LLC	Keith Fuller	\$76,426.07

South Carolina Department of Revenue	0	\$0
U.S. Bank National Association	0	\$0
If applicable, describe the property, including tax map information and address, referenced in the order: Tax Map Number B011.01-01-002.00 Property Address: 1 Symbolic Ct., Sumter Estates, Greenville, SC 29617		

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
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For Clerk of Court Office Use Only

This judgment was entered on the 24th day of January, 2024 and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Alexander Hray, Jr.
 389 E. Henry St.
 Spartanburg, SC 29302

See Exhibit A

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(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 judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRPC.

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: Upstate Auto Auction Of Spartanburg LLC vs. Keith Fuller ,
defendant, et al
Case Number: 2023CP2304296
Type: Master/Order/Foreclosure & Sale and Form 4

And It Is So Ordered!

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