

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

David Buvinghausen,

Plaintiffs,

v.

AllBetterHomes, LLC and Charles E.  
Coleman,

Defendants.

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

C.A. No. 2023-CP-23-01209

**CONSENT ORDER OF JUDGMENT  
AND FORECLOSURE SALE**

DEFICIENCY DEMANDED AS TO  
ALLBETTERHOMES, LLC AND  
CHARLES E. COLEMAN

Pursuant to Rule 53 SCRPC, the above-entitled matter was referred to the undersigned to make appropriate findings of fact and conclusions of law with authority to enter a final judgment in the case. Plaintiff filed his Motion for Summary Judgment on May 31, 2023 (“Motion”). In lieu of a hearing, the parties agreed to this consent Order of Judgment and Foreclosure, which constitutes the agreement of the parties in accordance with SCRPC Rule 43(k).

PROCEDURAL HISTORY

1. The Lis Pendens, Summons, and Complaint were filed on March 10, 2023.
2. Service was had on Defendant pursuant to the Acceptance of Service filed herein.
3. The loan that is the subject of this case is not subject to the Supreme Court of South Carolina’s Administrative Order (Order No. 2011-05-02-01) because the subject property is not an owner-occupied dwelling as defined in Paragraph A.(3) of said Order.
4. At the time of the filing of the Lis Pendens and Complaint, AllBetterHomes, LLC was the current owner of record for the subject property.
5. Plaintiff filed his Motion as previously stated and a hearing was set for August 2, 2023 before Judge Kinlaw. Prior to the hearing of Plaintiff’s Motion, the Parties notified the Court in writing of their agreement to enter into this consent Order.

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

“The purpose of summary judgment is to expedite dispositions of cases which do not require the services of a fact finder.” *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). A motion for summary judgment must be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *Standard Fire v. Marine Contracting*, 301 S.C. 418, 421, 392 S.E.2d 460, 462; Rule 56(c), SCRPC. If the non-moving party has not shown a genuine issue of material fact, “summary judgment, if appropriate, shall be entered against him.” Rule 56(e), SCRPC.

Plaintiff has alleged he loaned Defendant Coleman Ninety Thousand and No/100 (\$90,000.00) Dollars pursuant to a promissory note dated December 31, 2021, requiring the balance to be repaid by February 28, 2022 (“Note”). Plaintiff further alleges the Note was secured by a mortgage against certain real property, as defined herein, recorded in the Office of the Register of Deeds for Greenville County on January 21, 2022, in Book MO 5671, Page 4314 (“Mortgage”). Plaintiff further alleges Defendants breach the terms of the Note and are in default under the terms of the Mortgage.

Defendants by way of consent to this Order of Foreclosure have acknowledged that they are unable to provide evidence showing that Plaintiff’s allegations are inaccurate. Defendants set forth no facts controverting the existence of the Note and Mortgage or Plaintiff being the holder of the Note. As a result, there is no dispute as to the fact that the Defendants entered into a binding contract. The failure to make payments as they come due is a breach of the contract. Therefore, Plaintiff is granted summary judgment on its cause of action in its complaint for foreclosure of the Note and Mortgage.

### FINDINGS OF FACT

1. For value received, Charles E. Coleman made, executed and delivered a Note dated December 31, 2021, promising thereby to pay to the order of Plaintiff the sum of Ninety Thousand and No/100 (\$90,000.00) Dollars with interest at six (6) percent per annum. Other terms and conditions are stated in the Note, which is of record herein.

2. To better secure the payment of the Note described above, the said AllBetterHomes, LLC made, executed and delivered to Plaintiff a Mortgage, dated December 31, 2021, covering certain real property, as defined herein, which is the same as that described in the Complaint. The Mortgage was recorded in the Office of the Register of Deeds for Greenville County on January 21, 2022, in Book MO 5671, Page 4314.

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

4. I find that since the inception of this action, Plaintiff's attorney has assumed responsibility for the institution of this action and has searched and updated the title on the subject property from the date the current owner received the property or the date the mortgage was executed to the date of the filing of the Lis Pendens. Plaintiff's attorney has been responsible for the preparation of the Notice of Foreclosure Intervention, Lis Pendens, Summons and Complaint, Order of Reference, Motion for Summary Judgment, and other documents pertaining to service, foreclosure intervention and prosecution of the action.

Additionally, Plaintiff's attorney has provided reinstatement/payoff figures to the Defendants, at Defendants' request, has entered into negotiations with Defendants' attorney as well as attorneys for third-party lien holders, and has attended or participated in hearings in

related litigation. Future duties include preparing the Notice and Publication of Sale, advising Defendants of the date the property will be sold, coordinating the amount to be bid by Plaintiff, representation of Plaintiff at sale and preparation of after sale documentation as required. In light of the potential liabilities inherent in a foreclosure matter, the attendant responsibilities and the outcome obtained for the Plaintiff, I find that the contractual attorneys' fees in the amount of Eight Thousand Two Hundred Eighty and 49/100 (\$8,280.49) Dollars are reasonable.

5. 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 attorneys' fees, secured by the Note and Mortgage, is as follows:

|                   |                                                                                                                   |           |                   |
|-------------------|-------------------------------------------------------------------------------------------------------------------|-----------|-------------------|
| a)                | Principal Balance                                                                                                 | \$        | 90,000.00         |
| b)                | Interest                                                                                                          | \$        | 11,761.64         |
|                   | • Interest to be calculated at 6% per annum from December 31, 2021 until the date of compliance of March 5, 2024. |           |                   |
| c)                | Attorneys Fees and Foreclosure Costs                                                                              | \$        | 8,280.49          |
| d)                | Per Diem interest after 03/05/24                                                                                  | \$        | 14.79             |
| <b>TOTAL DEBT</b> |                                                                                                                   | <b>\$</b> | <b>110,056.92</b> |

Interest after the date of this Judgment shall accrued in the amount of the "Per Diem" as stated above, which together with the "Total Debt" as stated above, shall comprise the amount of Plaintiff's debt secured by the Mortgage through the date to which such interest is computed.

6. That the Plaintiff does not waive but specifically demands judgment against the Defendant(s), for the full amount found to be due to Plaintiff on the Note and Mortgage held by Plaintiff, with the right to enter personal judgment against the Defendants for any deficiency in this action remaining after sale of the mortgaged premises.

7. As a personal or deficiency judgment is demanded, the bidding will remain open

for a period of thirty (30) days pursuant to S.C. Code Ann. Section 15-39-720 (1976).

8. The loan is not applicable for the Home Affordable Modification Program as that program sunset on December 31, 2016.

#### CONCLUSION OF LAW

I, therefore, conclude Plaintiff should have judgment of foreclosure of the mortgage and the mortgaged property should be ordered sold at public auction after due advertisement.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. There is due to the Plaintiff, on the Note and Mortgage set forth in the Complaint, the sum of One Hundred Ten Thousand Fifty-Six and 92/100 (**\$110,056.92**) Dollars representing the "Total Debt" due Plaintiff as set forth supra, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date date of sale and compliance.

2. The amount due in the preceding paragraph (the "Total Debt" as set forth supra and later accrued interest on the principal) shall constitute the total judgment debt due the Plaintiff and shall bear interest at a rate of six percent (6%) (at the per diem amount of \$14.79).

3. That the Defendants liable for the aforesaid mortgage debt shall, on or before the date of sale of the property hereinafter described, pay to the Plaintiff, or Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

4. That on default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, be sold by the Master-in-Equity at public auction on some convenient sales day no sooner than March 4, 2023, on the following terms, that is to say:

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

purchase price only upon compliance with the bid, but in case of non-compliance within Twenty (20) 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 a rate of six percent (6%) on the balance due and owed.

C. The sale shall be subject to taxes and assessments, existing easements and easements and restrictions of record.

D. The above referenced instrument constitutes a second mortgage lien.

E. The successful bidder or its assignee is to pay for the deed preparation, for Deed Stamps and costs of recording the Deed.

F. If the successful bidder is a third party other than Plaintiff, interest on the balance of the bid shall be paid to the date of compliance at the rate listed in the figures above.

5. If Plaintiff be 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, Plaintiff may pay to the undersigned Master-in-Equity only the amount of the costs and expenses crediting the balance of the bid on Plaintiff's indebtedness.

6. The Plaintiff has judgment against the Defendants for the full amount found to be due the Plaintiff on the Note and Mortgage, with right to enter a personal judgment against the Defendants for any deficiency in this action remaining after sale of the mortgaged premises.

7. As a personal or deficiency judgment is demanded, the bidding will remain open for a period of thirty (30) days pursuant to S.C. Code Ann. Section 15-39-720 (1976).

8. That the Master-in-Equity will, by advertisement according to law, give notice of the time, and place of sale, and the terms thereof, which shall not be set prior to March 4, 2023; 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 that if, upon such sale being made, the Purchaser, or Purchasers, should fail to comply with the terms thereof within Twenty (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.

9. That the Master-in-Equity will 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.

NEXT: To the payment to the 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 will be paid to the Defendants or Defendants' attorney in accordance with all applicable statutory or common law and the South Carolina Rules of Civil Procedure, pursuant to a further order of this Court.

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 is 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. And it is further ORDERED, ADJUDGED AND DECREED that each Defendant and all persons whomsoever claiming under him, her or them, 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.

12. And it is further ORDERED, ADJUDGED AND DECREED that any prior lien that has been paid in full is hereby satisfied and canceled of record.

13. IT IS FURTHER ORDERED that the Deed of conveyance made pursuant to said sale shall contain the names of only the first named Plaintiff and the first named Defendant and the Defendant who was the titleholder 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 Master-in-Equity is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said Deed.

14. The 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.

15. Upon issuance of a Master-in-Equity Report on Sale and Disbursements, the Plaintiff is directed to release of record the mortgage lien originally given to Plaintiff by AllBetterHomes, LLC, dated December 31, 2021 and recorded in the Office of the Register of Deeds for Greenville County on January 21, 2022, in Book MO 5671, Page 4314.

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

ALL THAT CERTAIN piece, parcel or lot of land lying and being situate in the State of South Carolina, County of Greenville, being shown and designated as Lot 108, Cliffs at Glassy, containing 2.11 acres, more or less, according to plat recorded in the ROD Office for Greenville County, SC in Plat Book 20-T at Page 14. Reference is hereby made to said plat for a more detailed metes and bounds description hereof.

TMS# 0646.05-01-008.00

17. IT IS FURTHER ORDERED that if the Plaintiff or the Plaintiff's representative does not appear at the scheduled sale of the above-described property, then the sale of the property will be null, void and of no force and effect. In such event, the sale will be rescheduled for the next available sales day.

**CONSENTS AND JUDGE'S ELECTRONIC SIGNATURE PAGE FOLLOWS  
WE HEREBY MOVE/CONSENT:**

**KENISON, DUDLEY & CRAWFORD, LLC**

*s/Mark A. Bible, Jr.*

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Mark A. Bible, Jr. (SC Bar # 101624)

704 E. McBee Avenue

Greenville, South Carolina 29601

T: (864) 242-4899

F: (864) 242-4844

E: [bible@conlaw.com](mailto:bible@conlaw.com)

*Counsel for Plaintiff*

**WE HEREBY MOVE/CONSENT:**

**CULBERTSON ANDRIGHETTI, LLC**

*s/J. J. Andrighetti*

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J. J. Andrighetti (SC Bar # 72741)

10 Williams Street

Greenville, SC 29601

T: 864-370-8222

F: 864-370-8227

E: [jj@palmettolawfirm.com](mailto:jj@palmettolawfirm.com)

*Attorney for Defendants AllBetterHomes, LLC  
and Charles Coleman*

**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-23-01209

David Buvinghausen

AllBetterHomes, LLC and Charles E.  
Coleman

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Mark A. Bible, Jr.

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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ 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 : Foreclosure sale to follow

## 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<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|----------------------------------------------------------|
| David Buvinghausen                           | AllBetterHomes, LLC                      | \$110,056.92                                             |
| David Buvinghausen                           | Charles E. Coleman                       | \$110,056.92                                             |
|                                              |                                          | \$                                                       |

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

ALL THAT CERTAIN piece, parcel or lot of land lying and being situate in the State of South Carolina, County of Greenville, being shown and designated as Lot 108, Cliffs at Glassy, containing 2.11 acres, more or less, according to plat recorded in the ROD Office for Greenville County, SC in Plat Book 20-T at Page 14. Reference is hereby made to said plat for a more detailed metes and bounds description hereof.

TMS# 0646.05-01-008.00

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 \_\_\_\_\_, 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:

\_\_\_\_\_  
Mark A. Bible, Jr., Esq.

\_\_\_\_\_  
704 E. McBee Ave

\_\_\_\_\_  
Greenville, SC 29601

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

\_\_\_\_\_  
J.J. Andrighetti, Esq.

\_\_\_\_\_  
10 Williams Street

\_\_\_\_\_  
Greenville, SC 29601

\_\_\_\_\_  
**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-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.

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## Greenville Common Pleas

**Case Caption:** David Buvinghausen vs. AllBetterHomes LLC , defendant, et al

**Case Number:** 2023CP2301209

**Type:** Order/Consent Order

And It Is So Ordered!

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