

51840.F51397R

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

MidFirst Bank,

PLAINTIFF,

vs.

Taylor A. Duncan; The United States of America acting by and through its agency, the Secretary of Housing and Urban Development; and Mariner Finance, LLC,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS
C/A NO: **2023CP2305218**

**ORDER AND JUDGMENT OF
FORECLOSURE AND SALE
(DEFICIENCY WAIVED)**

TO: Thomas A. Shook
Timothy L. Calderwood
FINKEL LAW FIRM LLC
Attorneys for the Plaintiff

ANSWERING DEFENDANTS:
Robert M. Sneed
Attorney for Defendant
The United States of America acting by and through its agency, the Secretary of Housing and Urban Development

Pursuant to Rule 53 SCRCPP, the above-entitled matter was referred. Any appeal from any order or judgment issued by the master or special referee shall be to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

Pursuant to the said Order of Reference, a hearing was held on January 22, 2024 via Zoom and was attended by counsel. The testimony was taken, which is reported herewith. From the testimony and evidence, I find, conclude and order as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Lis Pendens was filed on October 9, 2023.
2. The Summons and Complaint were filed on October 9, 2023.
3. An Order of Publication was issued by the Court and filed on October 31, 2023.

4. Service was made upon the Defendant(s) named in this Report as is shown by the proof(s) of service filed herein.

5. The Defendants Taylor A. Duncan is in default as shown by the Affidavits on file herein.

6. Robert M. Sneed, attorney for Defendant, The United States of America acting by and through its agency, the Secretary of Housing and Urban Development, served Answer(s) on the Plaintiff, which is on file herein.

7. All of the defendants herein and/or all attorneys of record were notified of the time, date and place of the hearing in this matter.

8. According to the Affidavit filed herein, the Defendants Taylor A. Duncan is not in the Military Service of the United States of America, as contemplated under the Servicemembers Civil Relief Act (2003), and any amendments thereto.

9. For value received, Taylor A. Duncan made, executed, and delivered a Note dated September 21, 2018, promising thereby to pay to the order of Atlantic Bay Mortgage Group LLC, the sum of \$83,460.00, together with interest at 4.625% pursuant to the terms of the Note and any extensions, amendments, or modifications thereto. Other terms and conditions are stated in the Note, which is of record herein.

10. To better secure the payment of the Note described above, the said Taylor A. Duncan made, executed, and delivered to Mortgage Electronic Registration Systems, Inc., as nominee for Atlantic Bay Mortgage Group LLC, a Mortgage in writing, dated September 21, 2018, covering real property in Greenville County, which is the same as that described in the Complaint. The Mortgage was filed on September 24, 2018, and is of record in the Office of the Register of Deeds for Greenville County in Book 5452 at Page 4605.

11. This Mortgage is a first mortgage lien on the subject property and is a Purchase Money Mortgage.

12. By Assignment of Mortgage recorded July 11, 2022, in Book 5699 at Page 5908, in the Office of the Register of Deeds for Greenville County, Atlantic Bay Mortgage Group LLC assigned the subject Note and Mortgage to MidFirst Bank, the present lienholder and Plaintiff herein.

13. The titleholder(s) of record in and to the subject property as of the filing of the Lis Pendens in this action is Taylor A. Duncan.

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

15. Counsel for Plaintiff filed an affidavit as to attorney's fees and costs in this case, which was not contested, and, therefore, I find as fact herein. Having considered the nature, extent and difficulty of the services rendered, the time involved in reviewing the various documents, performing the title search, preparing the pleadings, attending hearings and argument, the professional standing of counsel, the fee customarily charged for similar services, and the beneficial results obtained for Plaintiff, I find that the sum of \$3,300.00 is a reasonable fee to allow under the terms of the Note and Mortgage as attorney's fees for Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the action. The plaintiff has advanced \$2,355.00 to its counsel as partial payment of the attorney's fee, and this amount is included in the corporate advances.

16. 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 an attorney's fee, secured by Note and Mortgage, is as follows:

Principal balance	77,156.32
Interest to 1/22/24, at 4.625%	3,179.01
Late Charges	85.80
Incurred Fees	6,786.66
Incurred Taxes	587.22
Incurred Insurance	946.87
Costs of collection prior to hearing	166.03
Attorney Fees(awarded but unpaid)	<u>945.00</u>
TOTAL DEBT secured by Note and Mortgage, including interest to date shown	\$89,852.91

Interest for the period from January 22, 2024, as shown above at the rate of 4.625% shall be added to the Principal Balance shown above through the date this Judgment is filed. After the date of judgment, interest at the rate of 4.625% on the total judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the Mortgage.

17. Plaintiff does not demand a deficiency judgment in the event the sale of the real estate herein does not yield a sum sufficient to satisfy all indebtedness due unto Plaintiff, including costs and Attorney's fees.

18. Based upon the Chief Justice's Administrative Order 2009-05-22-01, and the affidavits presented pursuant thereto, I find the HMP requirements have been satisfied without resulting in modification and the within captioned action is not or is no longer stayed by the above-referenced order.

19. These defendants may claim an interest in the property:

- a. The United States of America acting by and through its agency, the Secretary of Housing and Urban Development, by virtue of its mortgage from Taylor A. Duncan in the amount of \$17,628.21, filed April 4, 2023, in Book 5729 at Page 4793; and,
- b. Mariner Finance, LLC, by virtue of its judgement against Taylor Duncan, in the amount of \$4,278.69, filed July 2, 2021, judgement no. 2021CP2303178.

IT IS THEREFORE ORDERED:

1. There is due to Plaintiff on the obligation and Mortgage set forth in the Complaint the sum of \$89,852.91, representing the "Total Debt" due Plaintiff as set forth in the Findings of Fact, *supra*, together with interest at the rate provided therein from the date aforesaid to the date hereof.

2. The amount due in the preceding paragraph (the "Total Debt" as set forth in the Findings of Fact, *supra*, and later accrued interest) shall constitute the total judgment debt due the Plaintiff and shall bear interest hereafter at the rate of 4.625%.

3. The Defendant(s) liable for the aforesaid Mortgage debt shall, on or before the date of sale of the property hereinafter described, pay to Plaintiff, or Plaintiff's attorney, the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action. If such debt is paid in full, then the foreclosure sale shall be cancelled.

4. On default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, shall be sold by the Master in Equity or his/her agent, under the direction of the Master in Equity, at public auction, at the Greenville County Courthouse, Greenville, South Carolina, 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:

- A. **FOR CASH:** The Master in Equity will require a deposit of 5% on the amount of the bid (in cash or equivalent), same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within 20 days, the deposit may be forfeited without further hearing 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 4.625%.
- C. The sale shall be subject to taxes and assessments, existing easements and easements and restrictions of record, and the Right of Redemption of the United States of America to redeem the subject property one year following the date of the Foreclosure Sale.
- D. This Mortgage is a first priority lien on the subject property and is a Purchase Money Mortgage.
- E. Purchaser to pay for deed preparation and costs of recording the Deed, and transfer taxes.

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

6. The Master in Equity will, by advertisement according to law, give notice of the time, date, place of sale, and the terms thereof, which Notice of Sale is incorporated herein by reference; and 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 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.

7. Should Plaintiff, Plaintiff's attorney, or Plaintiff's agent fail to appear on the day of sale, the property shall not be sold, and in that event any such sale shall be null and void and of

no force and effect. The property shall be re-advertised and sold at some convenient sales day thereafter when Plaintiff, Plaintiff's attorney, or Plaintiff's agent is present.

8. That the Master in Equity will apply the proceeds of the sale as follows:

FIRST: To 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 of 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 funds will be held pending further order of the Court.

9. **IT IS FURTHER ORDERED** that in the event the successful bidder is other than the Defendant(s) in possession herein, upon full compliance with the bid, and upon issuance of a Writ of Assistance by this Court, the Sheriff of Greenville County is ordered and directed to eject and remove from the premises the occupant(s) of the property sold, together with all personal property located thereon, 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.

10. **IT IS FURTHER ORDERED** that, in the event the successful bidder is other than the Defendant(s) in possession herein and the occupant(s) have voluntarily vacated the premises or have been ejected from the premises leaving furnishings, fixtures and items not subject to Plaintiff's Mortgage in said premises, upon full compliance with the bid, Purchaser is authorized to remove therefrom all furnishings, fixtures and items not subject to the lien of Plaintiff's mortgage, which personal property, being deemed abandoned, shall be removed by Purchaser or its agents from the subject property by placing said personal property on the public street or highway or by any other means.

11. **IT IS FURTHER ORDERED** that, in addition to all parties deemed by law to have received constructive notice of the action herein, the Defendant(s) named herein and all persons whomsoever claiming under said defendant(s), 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, except as to the right of redemption afforded the United States of America, as set out herein.

12. **IT IS FURTHER ORDERED** that the Deed of conveyances made pursuant to said sale shall contain the names of only the first named Plaintiff and the first named Defendant

and the Defendant(s) who was/were the titleholder(s) 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 Register of Deeds is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said Deed.

13. **IT IS FURTHER ORDERED** that the Master in Equity will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, issuing a Writ of Assistance and hearing any issues involving appraisal proceedings under Section 29-3-680 *et seq.*, South Carolina Code of Laws (1976), as amended.

14. The Master in Equity shall direct the Register of Deeds to release of record the Mortgage lien being foreclosed, all subordinate liens and all prior liens ordered satisfied herein, after the Order Confirming Sale and Disbursements has been executed and filed. Plaintiff's Mortgage lien is described as follows:

That certain Mortgage given by Taylor A. Duncan to Mortgage Electronic Registration Systems, Inc., as nominee for Atlantic Bay Mortgage Group LLC dated September 21, 2018, and recorded in the Office of the Register of Deeds for Greenville County on September 24, 2018, in Book 5452 at Page 4605.

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

All that piece, parcel or lot of land in Bates Township, County of Greenville, State of South Carolina, situate, lying and being on the East-Northeast side of Circle Drive in Marietta, SC and being described as follows:

Beginning on a small dogwood on Jarrard Circle; thence running N. 73 E. 50 feet to a bend in street; thence N. 26 1/2 E. 50 feet to an i.p. on street; thence N. 13 W. 137 feet to an i.p.; thence S. 80 1/2 W. 85 feet to a persimmon tree X3 hacks; thence S.13 E. 185 feet to the beginning corner and containing 3/10 acres more or less, according to survey of W.A. Hester, October 1939, joining lands of P.D. Jarrard.

ALSO: Beginning on an iron pin on the E/NE side of Circle Drive and running thence N. 26-30 E. 50 feet to iron pin; thence N. 13-00 W. 137 feet to an iron pin; thence N. 80-30 E. 63 feet to iron pin on right of r-o-w of new road; thence with new road r-o-w S. 13-00 E. 105.7 feet to iron pin; thence curving with road r-o-w S. 4-35 W. 60 feet to iron pin; thence still curving with road r-o-w S. 47-45 W. 50 feet to iron pin; thence with r-o-w of Circle Drive N. 79-38 W. 37

feet, more or less, to the beginning corner. Plat and survey made by T.T. Dill, Reg. C.E. & L.S. No. 104, dated May 1963. These two pieces of property join to make one complete piece.

TMS Number: 0514.01-01-025.00

PROPERTY ADDRESS: 128 E. Circle Drive, Marietta, SC 29661

This being the same property conveyed to Taylor A. Duncan by deed of Bobby Joe Moody, Jr., as Personal Representative of the Estate of Jennie Joann Moody a/k/a Jean Campagna Moody recorded in the ROD Office for Greenville County, South Carolina on September 24, 2018 in Book 2548, Page1967.

JUDGE'S ELECTRONIC SIGNATURE PAGE TO FOLLOW

51840.F51397R
 STATE OF SOUTH CAROLINA
 COUNTY OF GREENVILLE
 IN THE COURT OF COMMON PLEAS
 MidFirst Bank,
 PLAINTIFF

FORM 4
 JUDGMENT IN A CIVIL CASE
 C/A NO: 2023CP2305218
 Taylor A. Duncan, *et al.*,
 DEFENDANT(S)

Submitted by: FINKEL LAW FIRM LLC Thomas A. Shook/Timothy L. Calderwood	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.
- 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: _____

SCRPC Form 4C (2/2017)

Page 1 of 2

INFORMATION FOR THE PUBLIC INDEX		
Complete this section below when the judgment affects title to real or personal property or in 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)
MidFirst Bank		
<p>If applicable, describe the property, including tax map information and address referenced in the order: All that piece, parcel or lot of land in Bates Township, County of Greenville, State of South Carolina, situate, lying and being on the East Northeast side of Circle Drive in Marietta, SC and being described as follows:</p> <p>Beginning on a small dogwood on Jarrard Circle; thence running N. 73 E. 50 feet to a bend in street; thence N. 26 1/2 E. 50 feet to an i.p. on street; thence N. 13 W. 137 feet to an i.p.; thence S. 80 1/2 W. 85 feet to a persimmon tree X3 hacks; thence S.13 E. 185 feet to the beginning corner and containing 3/10 acres more or less, according to survey of W.A. Hester, October 1939, joining lands of P.D. Jarrard.</p> <p>ALSO: Beginning on an iron pin on the E/NE side of Circle Drive and running thence N. 26-30 E. 50 feet to iron pin; thence N. 13-00 W. 137 feet to an iron pin; thence N. 80-30 E. 63 feet to iron pin on right of r-o-w of new road; thence with new road r-o-w S. 13-00 E. 105.7 feet to iron pin; thence curving with road r-o-w S. 4-35 W. 60 feet to iron pin; thence still curving with road r-o-w S. 47-45 W. 50 feet to iron pin; thence with r-o-w of Circle Drive N. 79-38 W. 37 feet, more or less, to the beginning corner. Plat and survey made by T.T. Dill, Reg. C.E. & L.S. No. 104, dated May 1963. These two pieces of property join to make one complete piece.</p> <p>TMS Number: 0514.01-01-025.00 PROPERTY ADDRESS: 128 E. Circle Drive, Marietta, SC 29661</p>		



Greenville Common Pleas

Case Caption: MidFirst Bank vs. Taylor A Duncan , defendant, et al

Case Number: 2023CP2305218

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

And It Is So Ordered!

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