

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

The Villages and Manors of White Knoll  
Homeowners' Association, Inc.

Plaintiff,

vs.

Junohn Dewitt and Tracy Dewitt, Jr.

Defendant(s).

IN THE COURT OF COMMON PLEAS

2019-CP-32-02842

**JUDGMENT OF FORECLOSURE AND SALE  
(Deficiency Judgment Waived)  
(HOA)**

014358.00030

A hearing was held 1/8/2020. Evidence was presented, which is reported herewith, and from the evidence, I find and conclude as follows:

**FINDINGS OF FACT**

1. The Notice of Lien was filed on 03/30/2017 in Book 19102 at Page 257.
2. The Lis Pendens was filed on 7/16/2019.
3. The Summons and Complaint were filed on 7/16/2019.
4. Service was made upon all Defendant(s) as shown by the proof(s) of service filed herein.
5. The Defendant(s) are in default.
6. The Defendant(s) are not in the Military Service of the United States of America, as contemplated under The Servicemembers Civil Relief Act, 50 U.S.C. § 501 et. seq. as shown by affidavit, certificate or order filed herein.
7. Attorney for the Plaintiff has fully complied with the South Carolina Supreme Court Administrative Order 2011-05-02-01 dated May 2, 2011.
8. All Pro Se Defendant(s) and all attorneys of record were notified of the time, date, and place of the hearing by letter and certificate of mailing of record herein.
9. On 05/04/2006 the Defendant(s) took title to the subject property located at 137 Tea Olive Avenue. The Defendant(s), by taking title to the subject property agreed to the governing documents for Plaintiff, which are of record herein.
10. The titleholder(s) of record in and to the subject property as of the filing of the lis pendens in this action is/are Junohn Dewitt and Tracy Dewitt, Jr..
11. Payment of the assessment has not been made as provided for by the Declaration, and the Plaintiff has elected to require immediate payment of the entire amount due thereon.

Plaintiff has placed it in the hands of the attorney herein for collection by filing a Notice of Lien for unpaid assessments and initiating a foreclosure of that lien.

12. The sum of \$2,025.00 is a reasonable fee to allow as attorney fees for Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the within action, under the terms of the Declaration.

13. Specifically, the Plaintiff's attorney is entitled to \$375.00 for services performed in filing a Notice of Lien for delinquent assessments. This service required the Plaintiff's attorney to research public real property records to identify the subject property, research court records to determine if there are any pending actions against the subject property, prepare and coordinate filing and service of the Notice of Lien, coordinate any payoff requests or payment plans with the Defendant, and eventually satisfy the Notice of Lien upon payment by the Defendant.

14. Plaintiff's attorney is further entitled to the additional sum of \$1,650.00 for prosecuting the foreclosure action. This service required the Plaintiff's attorney to obtain and review a title abstract for the subject property, prepare and file a lis pendens, summons and complaint for foreclosure, arrange for personal service of the initial pleadings, review the file to determine whether service was properly achieved and whether the Defendant is in default, and prepare and file an Affidavit of Default when the Defendant failed to respond. The Plaintiff's attorney also had to prepare and file a proposed order of reference for this case. Once the court set a final hearing date, Plaintiff's attorney had to send notice to the Defendant at least ten days prior to the final hearing. Prior to this hearing, Plaintiff's attorney was responsible for drafting a proposed transcript of testimony, an affidavit of costs, an affidavit of attorney's fees, a certification that this case is not subject to Administrative Order 2011-5-02-01, a proposed order, and a proposed notice of sale. Upon execution of this Judgment, Plaintiff's attorney will be responsible for ensuring the foreclosure sale is properly advertised, bidding on her client's behalf at any foreclosure sale, and preparing post-sale documents if her client should be the highest bidder at the sale. If her client takes title to the property at the foreclosure sale, Plaintiff's attorney will also be responsible for prosecuting any eviction proceedings necessary to clear the property for Plaintiff's possession.

15. The sum of \$2,025.00 is reasonable based on the time necessarily devoted to representation of the Plaintiff during the several-month course of these proceedings. The services of counsel performed for the Plaintiff, including the number and types of pleadings and documents prepared, the incumbent liabilities, and the difficulties involved in this particular case, also support the amount awarded. The fees are also reasonable given the professional standing of the Plaintiff's counsel and her experience in handling assessment lien foreclosure matters. The fees awarded herein are also reasonable since they are less than the fees customarily awarded by this court for similar services in this county.

Moreover, the efforts of Plaintiff's counsel have had the beneficial result of a prompt foreclosure. Services anticipated to be performed until final adjudication contemplate completion of this matter within a reasonable time and do not include exceptional circumstances delaying conclusion beyond the normal time.

16. After all payments received by the Plaintiff have been credited, the amount due and owing with interest at the rate provided in the Declaration, and other costs and expenses of the within action, including an attorney's fee, secured by the Declaration, is as follows:

(a)	Assessments	\$600.00
(b)	Costs of collection prior to hearing (service, filing, etc.)	\$576.06
(c)	Attorney's fee	\$2,025.00
(d)	Payments	(\$0.00)
	+	
	TOTAL debt secured by the Declaration, including interest to date shown	\$3,201.06

Interest for the period from the date shown in (b) above through the date of this judgment at above stated rate to be added to the above stated "Total Debt" to comprise the amount of the judgment debt entered herein and interest after the date of judgment at the rate of 16.00% per annum (pursuant to the terms of the Declaration) on the judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the Declaration through the date to which such interest is computed.

17. Plaintiff is seeking the usual foreclosure of the property and has expressly waived the right to a personal or deficiency judgment.

18. The court is particularly concerned with the fact the debt evidence indicates that the homeowner nearly paid the entire amount off, but did not attend the hearing, despite after having been provided notice.

### **LEGAL DISCUSSION**

19. The longstanding concept that a family's home is their castle, subject only to their rights and usage, has undergone dramatic change over time. While most are aware of governmental matters that affect use and enjoyment of property such as taxes, zoning, etc., many do not realize that when buying into many subdivisions, they, and the rest of their new neighbors, have, by private contract, further encumbered the rights and usages of their home to the extent that if the owner fails to comply, then the neighborhood association can sell their home at public auction.

20. At closing, the parties go through a very detailed process of signing deeds, note, mortgages, various loan-closing documents and having all this mass of paperwork explained to them in some fashion or form. Within the closing documents there is generally a title certificate or title insurance

document that references the various Restrictions, Covenants and Bylaws that are of public record (mostly) that contain another set of multi-page documents detailing in precise detail how the new owner is to function in the subdivision and the various penalties for failure to do so, which can include foreclosure.

21. The above two paragraphs are not meant to be construed as a criticism of subdivision restriction, etc.; they are just to explain the background so that the proposed solution can more readily understood.

22. On the positive side, one could suppose that the very reason most buyers enquire and move into a neighborhood with an HOA is because of the well-maintain yards, common areas, club houses, pools, tennis courts, etc. and other items that contribute to a sense of neighborhood wellbeing and security.

23. The Court does note, however, after many such HOA foreclosure disputes that the homeowners are completely bewildered by that fact that (1) their house can be sold for failure to comply and (2) their house has been sold for an amount of money that is very often, as our Supreme Court has recently held, unconscionable.

24. How did the HOA and the homeowner get in this situation?

- i. First, with a traditional mortgage or Contract for Deed, the logic of “I don’t pay then I don’t stay” resonates more since the buyer readily recognizes that the Bank loaned them the money to purchase their home. If they don’t pay the money, then they don’t keep the home.
- ii. Second and similarly, in a contract for deed, there is a contract that says, “Buyer makes series of payments, when all payments made, then buyer gets a deed.” Again, a situation readily and easily understandable.
- iii. The HOA documentation requires payment of funds to maintain common areas and provide services, not buy the home.
- iv. The penalty, then, is not loss of use of common areas or termination of services, like a utility or cable bill, but the sale of the home, which has the possibly of shocking the conscience as in Winrose v. Hale, 2019 WL 6885212 (2019).

25. In that sense, a community governed by a homeowners' association operates much like the seventh man in the Chinese barge pullers discussed by Steven E. Landsburg in his book

Armchair Economist: Economics & Everyday Life<sup>1</sup>:

In early twentieth-century China, goods were transported by barges pulled by teams of six men who were rewarded heavily if they arrived at their destination on time. Because each man calculated that success depended largely on the efforts of the other five, teams were plagued by chronic shirking. If everyone else is pulling hard, the team will make it anyway, so why pull hard? If nobody else is pulling hard, the team won't make it anyway, so why pull hard? Everyone makes the same rational calculation, everyone shirks, the goods arrive late, and nobody gets paid. Barge teams quickly evolved a mechanism for averting such unfortunate outcomes. The six team members collectively hired a seventh man to whip them.

Steven E. Landsburg, Armchair Economist: Economics & Everyday Life (Free Press 1995) (1993).

26. Much like the seventh man, the homeowners' association serves as the mechanism by which the rest of the members are discouraged from shirking their responsibilities, like paying their assessments. While one result is that a whip used to get the various members attention, so that the members are rewarded with a functioning community that is able to fund its amenities and protect the members' property values, is good, the whip used to sell the home under current methods is, and can be, unconscionable.

### **PUBLIC POLICY CONCERNS.**

27. In any foreclosure case, but perhaps more so in homeowners' association cases, the court is faced with balancing three different policies: (1) protecting the property owner's equity in the property; (2) protecting the lienholders right to collect its debt; and (3) protecting the integrity and finality of judicial sales.

28. The Court takes note of the many HOA cases, as here, where there appears to be an HOA debt, some form of partial payment, acceleration with lawsuit files, and no answer after being served or appearance at the hearing by the homeowner after being served notice.

29. The Court further takes notice of the very human reaction to simply throw away or ignore the seemingly overwhelming onslaught of junk mail requests, robo- phone calls, and e-mail phishing that pervades modern society.

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<sup>1</sup> This court first heard this story at the 2019 South Carolina Annual Judicial Conference during a presentation by Dean Henry N. Butler of the Antonin Scalia Law School George Mason University.

30. Thereafter, at the status conference or Motion to Vacate (a) default (b) Order or (c) Sale, there occurs a very troubling discussion from homeowner and law firm illustrating the difficulties and problems between strict adherence to the various rules of types of service and the misunderstanding by the homeowner that they can simply ignore the services and notices since they've made a partial payment or talked to someone at HOA office, much like deciding to pay a little or none at all on a credit card, because the only risk is increased interest, not as here, the loss of their home.

31. Much of this confusion can be traced to the failure of communication between the lawyer, homeowner and HOA because the homeowner often claims to have been told one thing by the HOA and another by the HOA's attorney. (See DCA Homeowners Association Complaint Reports filed pursuant to 2018 change to S.C. Code Ann. Sec 27-30-340 for more data about this topic. Thanks to Spartanburg Master-in-Equity Gordon G. Cooper for sharing this information with the Equity Bench.)

32. A situation very much the same faced the courts during the mortgage crisis beginning in 2007 that led to the 2011 South Carolina Supreme Court's Administrative Order requiring that all contact would be between the owner, the mortgage company, and lawyer.

#### **A. Protecting Homeowners' Equity**

33. South Carolina courts have a long-standing public policy of protecting a property owner's equity in his property. See Kennedy v. Columbia Lumber and Mfg. Co., Inc., 299 S.C. 335, 384 S.E.2d 730 (1989):

- i. For example, as of January 2019, \$60,975.00 of an owner's home equity is protected from judgment creditors during a statutory supplemental proceeding action. S.C. Code Ann. § 15-41-30 (1990).
- ii. The South Carolina Court of Appeals recognized this policy when it held that an installment sales contract vendor may not enforce the strict foreclosure provision where the vendee has equity in the property. Lewis v. Premium Investment Corp., 341 S.C. 539, 542-45, 535 S.E.2d 139, 140-142 (Ct. App. 2000). Instead, the purchaser in an installment sales contract has a right of redemption just like that of a mortgagor in a legal mortgage. Id.
- iii. Statutory Tax sale action where the defaulting taxpayer has one year to redeem from the tax sale AND the right to maintain possession during the year.

- iv. Homestead County Tax exemption where tax on principal residence as a lower rate once tax payer reaches requisite age.
- v. The 2011 Administrative Order requiring protecting rights in owner occupied homes.
- vi. Finally, our Supreme Court recently vacated a foreclosure sale in a homeowners' association case because the bid was so grossly inadequate when compared with the owners' equity in the property that it shocked the conscious of the court. Winrose, 2019 WL 6885212 (2019).

**B. Fiscal Security of HOA**

34. First, the HOA and owner are bound by contractual obligations set forth in the various documents filed and of record. The prudent owner/buyer should obtain a title search and question her closing lawyer until she fully understands the Restrictions and By Laws.

35. Second, our state law recognizes an HOA's need to maintain fiscal stability through the collection of assessments. "[A]n association has no income other than member assessments and is not in a position to absorb debt on its own." Willis, *supra*, at 791. "The financial viability of any community association ultimately depends on its ability to collect assessments to meet continuing expenses." Effective Collection of Community Association Assessments, Community Association Institute, <http://www.caionline.org/advocacy/publicpolicies/pages/effective-collection-of-community-association-assessments.aspx> (last visited Feb. 5, 2020). When an owner defaults on his or her assessments, the homeowners' association loses part of the anticipated revenue stream needed to maintain common areas, lighting systems, security systems, trash pick-up, amenities, etc. See Foreclosure as a Last Resort, Cmty. Ass'n Inst., [http://www.caionline.org/about/press/MediaStatements/statement\\_foreclosure2.doc](http://www.caionline.org/about/press/MediaStatements/statement_foreclosure2.doc) (last visited Jan. 22, 2020). A major function of homeowners' association is to "protect the property values in the development and to establish structure and continuity for association members." Ansley H. Willis, Lien on Me: Should South Carolina's Homestead Exemption Protect Homeowners from Community Association Foreclosure?, 5 Charleston L. Rev. 783, 787 (2011).

**C. Integrity of Foreclosure Sale**

36. Winrose has provided careful guidance to buyers and sellers in HOA foreclosures. This Order will not discuss third party purchaser issues since it is not an issue in this case. Given, these various concerns, what is best remedy for all concerned?

## POSSIBLE REMEDIES

### **Money Judgement instead of Foreclosure**

37. A homeowners' association attempting to collect delinquent assessments often has the option of obtaining a personal money judgment against the non-paying owner in addition to or in lieu of foreclosure. After obtaining the judgment, the HOA would be in the same position of any other creditor who has obtained judgment and would have ten (10) years to initiate a statutory Supplemental Proceeding Action to collect on the homeowner's assets, according to the current statutory exemption dollar amount for each specific asset, including the debtor personal home.

38. One major unanswered question under this option would be the portion of the debtor's interests in his primary residence is typically exempt from attachment, levy or sale. S.C. Code § 15-41-30. If the debtor doesn't not have sufficient equity in the property, the creditor is effectively barred from collecting on the debt. Finally, the judgment becomes unenforceable ten years after it is entered. S.C. Code § 15-35-810.

39. Conversely, a homeowners' association can foreclose its lien and collect the delinquent assessments through a foreclosure without overcoming the homestead exemption. Courts are instructed to construe the Homestead Act liberally to prevent debtors from relying on the State for support, however, that is not to say that the Homestead Act is unassailable. See In re Sims, 421 B.R. 745, 751 (Bankr. D.S.C. 2010).

40. South Carolina has not specifically addressed the issue of whether homestead exemption should apply in community association lien foreclosure, but every other jurisdiction that has addressed this issue has determined that the homestead exemption does not apply. E.g., Boyle v. Lake Forest Prop. Owners Ass'n, 538 F. Supp. 765, 769 (S.D. Ala. 1982); MTDS, Inc., v. Cooney-Ames, 2006 Cal. App. Unpub. LEXIS 529, at \*10 (2006), Whispering Pines W. Condo Ass'n v. Treantos, 780 P.2d 26, 27 (Colo. App. 1989); Inwood N. Homeowners' Ass'n v. Harris, 736 S.W.2d 632, 637 (Tex. 1987); Bessemer v. Gersten, 381 So.2d 1344, 1348 (Fla. 1980); Kell v. Bella Vista Vill. Prop. Owners Ass'n, 528 S.W.2d 651, 653 (Ark. 1975). These courts based their reasoning on two independent bases: the manifestation of the homeowner's intent to subject the property as collateral for the obligation to pay assessments and the priority of the pre-existing association's lien over the homeowner's claim of homestead.

41. Because the homestead exemption often prevents creditors from ever collecting their debts, homeowners' associations most often choose to enforce the foreclosure provision of their contractual restrictive covenants than by pursuing a personal judgment.

## **Foreclosure of Judgment instead of foreclosing the HOA Lien**

42. “A judgment may be foreclosed in the same manner and by the same procedure as a mortgage lien in South Carolina.” Rose Duggan Manos, So You Have a Judgment, Now What? 23 (The South Carolina Bar Continuing Legal Education Division, 2011). However, collection of the lien would still be subject to the homestead exemption. *Id.* at 6. Additionally, it is unclear whether property owner would be entitled to the various protections found in the South Carolina mortgage statutes such as the right to appraisal. See S.C. Code § 29-3-680.

43. Ultimately, requiring an association to obtain a money judgment first before seeking foreclosure of the real estate may merely require the association to expend legal fees and costs for two separate legal proceedings. Because most restrictive covenants entitle the association to recoup their legal fees and costs from the delinquent owner, such a policy would merely increase the cost to the property owner. It would also greatly extend the time an association would spend in attempting to collect its delinquent assessments. The increased cost of such a dual-mode system is contrary to this state’s stated policies of protecting both the property owner and protecting the fiscal security of the homeowners’ association.

## **Modified Foreclosure Process for Owner Occupied HOA Foreclosures**

44. Article X, Section 1 of the case applicable Restrictions recorded and filed of record specifically state that the HOA can “...foreclose the lien created herein against the Lot in the same manner as prescribed by the laws of the State of South Carolina for the...foreclosure of mortgages by judicial proceedings...”

45. While recognizing this remedy, South Carolina appellate courts have repeatedly exercised judicial discretion to ensure a more equitable process is employed. Most recently, our Supreme Court ruled that homeowners’ associations should use foreclosure as a “last resort.” Winrose, 2019 WL 6885212 at \*5 (2019).

46. This trial court realizes that not all HOA foreclosures are homeowner occupied cases or cases where the owner is current on a first or prior mortgage and is aware that a majority of foreclosure actions are default actions wherein the owner has vacated or abandoned the property, is being foreclosed on by the first mortgage lender, and thereafter has abandoned the property and does not appear in the actions.

47. Nonetheless, this court recognizes the need for a system whereby the owner occupied property is protected from an HOA sale that is disproportionate. The courts in the installment

sale contract cases established process and procedures to protect the various parties' interest. "Courts have the inherent power to all things reasonably necessary to insure that just results are reached to the fullest extent possible." Ex parte Dibble, 279 S.C. 592, 595, 310 S.E.2d 440, 442 (Ct. App. 1983).

48. Ideally, the defendant in the foreclosure action would appear in the foreclosure action and take steps to protect himself. However, as noted above, the defendants do not always take timely action to protect their homes. Accordingly, this court elects to implement additional requirements in homeowners' association foreclosure cases in order to afford owner occupied defendants an additional opportunity to protect their interests while also allowing homeowners' associations the ability to enforce their restrictive covenants and collect delinquent assessments timely and efficiently.

49. There would seem to be three times when court intervention could occur that would alleviate these issues:

- i. **Early Intervention** pursuant to a modification the South Carolina Supreme Court Administrative Order 2011-05-02-01 that would remove the current HOA exemptions and require those conditions that that Supreme Courts establishes. This option is not currently available to trial courts.
- ii. **Post Foreclosure Hearing/Pre-Sale RTSC** as described in the attached RTSC that occurs after foreclosure hearing but prior to public sale.
- iii. **Post Foreclosure Sale RTSC.** The court is not persuaded that the Post sale RTSC as argued by Plaintiff is the best option for all concerned. Under this plan, the property would go to sale, either to Plaintiff HOA or a third party bidder. Both situation increase costs, fees and factual and legal complexities that could be avoid by Post Hearing/Pre-Sale RTC hearing.

50. In Option 2, the Post Foreclosure hearing/ Pre-Sale RTSC, the court would after notice of hearing to homeowner and all parties, hold a hearing to determine if it is appropriate to proceed to sale.

51. Plaintiff shall also file and personally serve Defendant Owner a Rule to Show Cause which will direct the Defendant Homeowner to appear and show cause to the Court why the property should not be sold pursuant to public sale.

52. Plaintiff will serve by Personal Service the accompanying Rule to Show Cause on the Defendant Homeowner. Since the Court already has personal jurisdiction over the Defendant Homeowner, the Notice shall be posted on the property if personal service not perfected.

53. The Rule to Show Cause will command those named to appear at a subsequent hearing to explain the status and balance of any outstanding debt and lien as well as whether the property is owner-occupied, vacant, or rented.

54. Based on the outcome of that hearing, the court will issue a subsequent order that including findings, such as, but not limited to, (i) if property is owner occupied as principal resident (ii) any previous communications and tenders of payments (iii) status of mortgage if property subject to mortgage (iv) determine if sale to proceed as scheduled (v) post hearing communication standard.

55. While the Court recognizes that Plaintiff does not have to name the senior mortgage pursuant to existing South Carolina, Plaintiff has this information readily available from its earlier title search. A **senior** mortgagee is a proper but not a necessary **party** to a junior mortgagee's **foreclosure action**. Watson v. Fowler, 165 S.C. 288, 294, 163 S.E. 640, 642 (1932). However, if a junior mortgagee forecloses, the premises are sold subject to the **senior** mortgagee's interests. See Evans v. McLucas, 12 S.C. 56, 59 (1879) (stating a “mortgagee may make a prior encumbrancer a **party** to the **action**, for the purpose of having the amount of each **encumbrance** litigated; or he may, at his option, have the premises sold, subject to such prior **encumbrance**”); 27 S.C. Jur. Mortgages § 108, at 245 (1996) (“A creditor having a lien superior to the mortgage of the plaintiff/mortgagee is a proper **party**, but it is not a necessary **party**, as the land may be sold subject to its lien.”).

56. The senior Mortgagee Company may choose to appear to evaluate the possibility of the Defendant Homeowner either (1) drawing funds to satisfy the HOA lien and avoid public sale by use of the mortgage’s FUTURE ADVANCE clause or (2) the mortgage company advancing the funds to satisfy under the standard mortgage contract language that allows advance of costs to protect the mortgage company collateral.

57. This process allows: (1) The homeowner to pay the debt prior to sale (2) the court to learn if the property is owner occupied (3) the status of the any mortgage on the property (4) attempt to determine what equity, if any, remains in the property that should be protected. (5) Mandate that all future communication be between the owner/and attorney and HOA/and its attorney.

**IT IS THEREFORE ORDERED THAT:**

58. The Plaintiff shall serve the Rule to Show Cause as described herein. There is due the sum of \$3,201.06, as set out in the Findings of Fact supra, together with interest at the rate provided herein on the balance of principal from the date aforesaid to the date hereof.

59. The amount due in the preceding paragraph (the "Final Total Debt" as set out in the Findings of Fact supra) shall accrue interest at the rate of the respective Declaration rate per annum and together with such interest shall constitute the total judgment debt due the Plaintiff.

60. The amount of the judgment shall be subject to increase to permit the Plaintiff to recover additional costs, commissions and expenses not included in the minimum deposit previously made in compliance with S.C. Code Ann. §14-11-310 (1976). It may also increase to include supplemental compensation for attorney's services not contemplated by the initial fee award. Jurisdiction over the fee award and total debt is reserved to facilitate the assessment and payment of any such costs and/or supplemental compensation. Such additional costs, commissions and expenses may be established by affidavit.

61. The Defendant is liable for the aforesaid judgment debt including interest at the rate of 16.00% per annum 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.

62. Thereafter, on default of payment at or before the time herein indicated, the premises described in the Complaint, as hereinafter set forth, shall be sold by the Master in Equity at public auction, at the Lexington County Courthouse, in the City of Lexington, 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 the next business day succeeding such holiday), on the following terms, that is to say:

- i. 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 to purchase price if compliance is made, but in the event compliance is not made, the deposit may be forfeited without further hearing and applied first to costs of the action and then to plaintiff's debt. Should the successful bidder at the regularly conducted sale fail or refuse to either make the required deposit at time of bid or comply with the other terms of the bid within 20 days, then the property may be re-sold on the same terms and conditions on the same or some subsequent Sales Day, but at the risk of the defaulting bidder(s).
- ii. Interest on the balance of the bid shall be paid through the day of compliance at the rate of 16.00%.
- iii. The sale shall be subject to taxes and assessments, existing easements and restrictions and easements and restrictions of record, and any other senior encumbrances. Specifically, this sale is subject to a senior mortgage held by Saxon Mortgage, Inc. recorded in Book 11041 at Page 291.

iv. Purchaser to pay for any statutory commission on sale from the proceeds of the final bid amount.

v. Purchaser to pay for deed preparation, costs of recording the deed, and transfer taxes on the deed.

63. The bidding will not remain open after the date of sale and compliance with the bid may be made immediately.

64. Plaintiff may waive any of its rights, including its right to a deficiency judgment in accordance with Rule 71, South Carolina Rules of Civil Procedure, prior to sale.

65. The Master in Equity will, by advertisement according to law, give notice of the time and place of such sale and the terms thereof 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 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.

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

67. 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 (including attorney fees) or so much thereof as the purchase money will pay on the same;  
NEXT: Any surplus should be held pending further Order of this court.

68. The Defendant named herein, and all persons whosoever claiming under Defendant, are forever barred and foreclosed of all right, title, interest, equity of redemption or lien in the said premises so sold, or any part thereof.

69. In accordance with Rule 77(d), SCRCP, the Clerk of Court shall serve a notice of entry of this Judgment of Foreclosure upon all parties not in default for failure to appear herein.

70. The deed of conveyance made pursuant to said sale shall contain the names of only the first-named Plaintiff and the first-named Defendant(s), and the Defendant(s) who was/were the titleholder(s) of the property at the time of the filing of the notice of pendency of the within action, and the name of the grantee; and the Register of Deeds/Clerk of Court is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

71. The undersigned will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance.

72. If the named defendant(s) continues in possession of the property after a deed has been issued to the purchaser, then the Sheriff of Lexington County is directed to eject and remove named defendant(s) from 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.

73. If the person(s) occupying the property after the deed has been issued to the purchaser is other than the named defendant(s), the purchaser shall serve the occupants with a Summons and Rule to Show Cause to determine why the occupant(s) should not be removed from the property.

74. The following is a description of the premises herein ordered to be sold:  
All that certain piece, parcel, or lot of land, together with any improvements thereon, situate, lying and being in the County of Lexington, State of South Carolina, and being shown and designated as LOT 66 on a bonded plat of THE VILLAGES OF WHITEKNOLL, Phase One-A prepared by Belter & Associates, Inc. dated July 6, 2004, last revised August 25, 2004 and recorded in the Office of the R/D for Lexington County on September 3, 2004 in Plat Oversized Book 9545 at Page 239 and in Slide 781 at Page 6; reference is hereby made to said plat for a more complete and accurate description of said lot of land, be all measurements a little more or less.

This being the same property conveyed to Junohn DeWitt and Tracy DeWitt, Jr. by deed of Firststar Homes, Inc. dated May 4, 2006 and recorded May 9, 2006 in Book 11041, Page 290 in the Office of the Register of Deeds for Lexington County, South Carolina.

Property Address: 137 Tea Olive Avenue

TMS: 007642-01-049

***JUDGE'S SIGNATURE PAGE TO FOLLOW***