

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Horry)
)
 GRAND STRAND RESORT III)
 HOMEOWNERS ASSOCIATION, INC.,)
)
 Plaintiff,)
)
 v.)
)
 PGP III, LLC, PHILIP "PHIL" G. PATE,)
 SOUTH ATLANTIC BANK, and UNITED)
 COMMUNITY BANK,)
)
 Defendants.)
 _____)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NO.: 2020-CP-26-06420

ORDER DENYING
 DEFENDANTS PGP III, LLC'S
 AND PHILIP "PHIL" G. PATE'S
 MOTION TO ALTER OR
 AMEND THE ORDER OF
 REFERENCE

RECEIVED
Jul 22 2022
SC Court of Appeals

THE COURT'S ORDER referring the within matter, a suit to foreclose a condominium expense lien filed by Plaintiff HOA, to the Master-in-Equity of Horry County with finality was filed on October 20, 2021. The Court has reviewed the issues raised in the Defendants PGP III, LLC and Philip "Phil" G. Pate's ("Property Owner Defendants") motion to alter or amend the ruling of this Court and, in doing so, reconsider the conclusions reached by the Court in that Order. The motion is denied based, *inter alia*, on the reasoning set forth herein.

The Property Owner Defendants assert that the Court's ruling referring the case to the Master-in-Equity of Horry County with finality was erroneous in the following respects:

- (1) **Alleged Erroneous Finding No. 1:** Rather than referring the within matter to the Master-in-Equity with finality, because the case should have been placed on the jury trial docket by the Clerk of Court, as a result of the Property Owner Defendants' demand for a jury trial, the Court should have designated this matter as a jury action

as the Property Owner Defendants claim a valid and substantial right to a trial of their counterclaims by jury.

- (2) **Alleged Erroneous Finding No. 2:** Rather than referring the within matter to the Master-in-Equity with finality, the Court should have first allowed the discovery process to be completed so as to ensure that the Property Owner Defendants would not be deprived of their claimed right for a jury determination as to an alleged breach of duty by a third party purporting to be an officer of the Plaintiff HOA.
- (3) **Alleged Erroneous Finding No. 3:** Rather than referring the within matter to the Master-in-Equity with finality, the Court should have determined that the Property Owner Defendants are entitled to a jury trial in this action because they allege their counterclaims are legal and compulsory.

The Court respectfully rejects the arguments of Property Owner Defendants and summarizes said rejection as follows:

1. As to Alleged Erroneous Finding No. 1: Property Owner Defendants' contention that the Court erred in referring the case to the Master-in-Equity as the Property Owner Defendants demanded a jury trial and, therefore, the case should have been placed on the jury trial docket by the Clerk of Court.

Section 27-31-210(a) of the South Carolina Code of Laws specifies that a condominium common expense lien may be foreclosed by suit in like manner as a mortgage on real property. The South Carolina Supreme Court has interpreted S.C. Code Ann. § 27-31-210(a) to necessitate treatment of condominium expense lien foreclosure as actions in equity. *Dockside Association, Inc v. Detyens*, 294 S.C. 86; 362 S.E. 2d 847; 1987 S.C. LEXIS 348 (1987). Because a foreclosure action is one sounding in equity, a party is not entitled, as a matter of right, to a jury

trial. *Wachovia Bank, Nat. Ass'n v. Blackburn*, 407 S.C. 321, 755 S.E. 2d 437 (2014). The power to render a deficiency judgment is included within the jurisdiction of courts of equity and does not alter the equitable character of the action. *Perpetual Bldg. & Loan Assn. v. Braun*, 270 S.C. 338, 242 S.E.2d 407 (1978). As the instant case has been brought by Plaintiff HOA for foreclosure of a condominium expense lien, an action in equity, the Property Owner Defendants are not entitled to a jury trial as a matter of right and therefore, said argument of Property Owner Defendants as to Alleged Erroneous Finding No. 1 is rejected.

2. As to Alleged Erroneous Finding No. 2: Property Owner Defendants' contention that discovery issues necessitate that the case not be referred to the Master-in-Equity as discovery may lead to a claim of breach of duty by a third party.

Rule 53(b)(3) SCRCP provides for referral by the Circuit Court of matters to the Master-in-Equity when there is an action for foreclosure. Under Rule 53(c) SCRCP, the Master has all the powers that a circuit judge would have in hearing a non-jury matter. The Master-in-Equity may grant or deny any motion or request that is necessary to adjudicate the case, rule on discovery issues or discovery disputes, enter a final judgment, and rule on post-judgment motions in accordance with the South Carolina Rules of Civil Procedure. As such, the Master-in-Equity has the authority to address any of the discovery issues raised by the Property Owner Defendants in support of their argument as to Alleged Erroneous Finding No. 2. Therefore, the Court rejects the discovery concerns of Property Owner Defendants as a basis for their opposition to the foreclosure action being referred to the Master-in-Equity.

Also, as to Alleged Erroneous Finding No. 2, there are no allegations in the pleadings of the Property Owner Defendants that the Plaintiff's accounting records had been wrongfully confiscated or hidden by an unknown individual purporting to be an officer of the Plaintiff. Said

allegation appears to first be raised in the Property Owners Defendants' motion, filed November 1, 2021, to alter or amend the Order of Reference and then was subsequently expanded in Defendant Property Owners' motion to amend Answer and Counterclaims to include defenses and third-party claims against Renee M. Paige, filed on January 27, 2022, the date of the hearing before this Court on Property Owner Defendants' motion to alter or amend. The case law in this state is clear that the motion to alter or amend cannot be used to raise an issue not previously before the Court. James F. Flanagan et. al., South Carolina Civil Procedure, 4th Ed., Vol. II, SC Bar Association (2020) at 704, citing *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 762 S.E.2d 693 (2014); *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992), *cert. denied*, 113 S. Ct. 1302 (1993); *Smith v. Fedor*, 422 S.C. 118, 809 S.E.2d 612 (Ct. App. 2017); *Lewin v. Lewin*, 396 S.C. 349, 721 S.E.2d 1 (Ct. App. 2012), *cert. denied*, March 6, 2013. Therefore, said argument of Property Owner Defendants as to defenses and claims against a possible future third-party defendant as a basis for their opposition to the foreclosure action being referred to the Master-in-Equity is rejected.

3. As to Alleged Erroneous Finding No. 3: Property Owner Defendants' contention that the Court erred in referring the case to the Master-in-Equity as the Property Owner Defendants' counterclaims are legal and compulsory.

In their motion to alter and amend, the Property Owner Defendants allege that they are entitled to a jury trial in this action because they allege their counterclaims are legal and compulsory. The right to a jury trial is subject to the law/equity distinction which is the starting point for any analysis of when the right to a jury is accorded. The characterization of an action as legal or equitable is determined by the Plaintiff's "main purpose" in bringing the action. The main purpose may be determined in the body of the Complaint, the prayer for relief, and other facts and

circumstances that throw light on the main purpose of the action. James F. Flanagan et. al., South Carolina Civil Procedure, 4th Ed., Vol. II, SC Bar Association (2020) at 461, citing, *Verenes v. Alvanos*, 387 S.C. 11, 690 S.E.2d 771 (2010), citing *Insurance Fin. Serv., Inc. v. South Carolina Ins. Co.*, 271 S.C. 289, 247 S.E.2d 315 (1978). In the case at bar, the main purpose of Plaintiff bringing the action is the foreclosure of a condominium common expense lien, clearly equitable under the statutory and case law of the state of South Carolina. To obtain a jury trial on one or more of the Property Owner Defendants' counterclaims, same must not only be legal in nature but also compulsory. The Court finds that any such counterclaims, if legal, were permissive rather than compulsory.

The Property Owner Defendants assert a counterclaim for accounting. An accounting is an equitable process of creating a detailed statement of the debits and credits between parties arising out of a contract or fiduciary relationship. Primarily, an accounting is in equity to allow for the adjudication of detailed and complicated accounts which would not be practical for determination by a jury. *Rogers v. Salisbury Brick Corp.*, 299 S.C. 141, 382 S.E. 2d 915 (1989). As such, said counterclaim is not one at law for which a jury trial would be required.

The liability of property owners of individual apartments in a horizontal property regime for common expenses arises pursuant to § 27-31-190 of the South Carolina Code of Laws which requires that all co-owners contribute *pro rata* in the percentage representing the value of the individual apartment with relation to the value of the whole property to the administration, maintenance and repair of the common elements. The agreement on the part of the Property Owner Defendants, at the time of the acceptance of their deeds of conveyance, to pay their pro rata share of the common expenses was the transaction or occurrence that gave rise to the Property Owner Defendants' inclusion in the HOA's foreclosure complaint. The Property Owner Defendants'

counterclaims or defenses alleging failure to provide notice and failure to file formal requirements of corporations in South Carolina allege failure on the part of the HOA arising subsequent to the Property Owner Defendants' incurring the obligation to pay their *pro rata* share of the administration, maintenance and repair of the common elements by acceptance of their deeds of conveyance. The allegations in the counterclaims, if true, would not render unenforceable the statutory liability of the Property Owner Defendants for their *pro rata* share of the administration, maintenance and repair of the common elements. Therefore, said counterclaims, if legal, would be permissive rather than compulsory and thus would not pass the logical relationship test established under *Carolina First Bank v. BADD, LLC*, 414 S.C. 289, 778 S.E.2d 106 (2015) (citing *N.C. Fed. Sav. & Loan Ass'n*, 298 S.C. at 518, 381 S.E.2d at 905; *Advance Int'l, Inc. v. N.C. Nat'l Bank of S.C.*, 316 S.C. 266, 449 S.E. 2d 580 (Ct. App. 1994)). The allegations in the Property Owner Defendants' motion to amend the pleadings to bring an action against a third party is not properly before the Court as same was not raised prior to the Property Owner Defendants' motion to alter or amend with the case law in this state being clear that the motion to alter or amend cannot be used to raise an issue not previously before the Court.

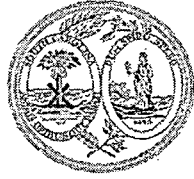
CONCLUSION

For the foregoing reasons, the motion is denied.

AND SO IT IS ORDERED.

Honorable Michael G. Nettles

_____, South Carolina
June ____, 2022



Horry Common Pleas

Case Caption: Grand Strand Resort III Homeowners Association Inc VS PGP III
LLC , defendant, et al
Case Number: 2020CP2606420
Type: Order/Other

So Ordered

s/ The Honorable Michael G. Nettles #2140

Certificate of Electronic Notification

Recipients

George Redman - Notification transmitted on 07-15-2022 05:35:11 PM.

W. DesChamps - Notification transmitted on 07-15-2022 05:35:12 PM.

Kristen Nichols - Notification transmitted on 07-15-2022 05:35:11 PM.

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A filing has been submitted to the court RE: 2020CP2606420

Official File Stamp: 07-15-2022 05:35:03 PM

Court: CIRCUIT COURT

Common Pleas

Horry

Case Caption: Grand Strand Resort III Homeowners Association
Inc VS PGP III LLC , defendant, et al

Document(s) Submitted: Appeal/Notice of Appeal to Court of Appeals

Filed by or on behalf of: George W. Redman, III

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

George W. Redman, III for PGP III LLC, Phil G
Pate

Kristen Nicole Nichols for United Community
Bank

W. W. DesChamps, Jr. for Grand Strand Resort
III Homeowners Association Inc

**The following people have not been served electronically by the Court. Therefore, they must
be served by traditional means:**

South Atlantic Bank