

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
C/A NO.: 2021-CP-10-03055

Wilmington Savings Fund Society, FSB,
solely as trustee for Invictus Residential
Pooler Trust 2A, and not in its individual
capacity,

Plaintiff,

vs.

Alice Swope Thompson,

Defendant.

**ORDER ON PLAINTIFF'S MOTION TO
STRIKE DEFENDANT'S JURY TRIAL
DEMAND**

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JUL 26 2022

SC Court of Appeals

(File No. 4035.01121)

This matter came before the Court on January 27, 2022, for a hearing on Plaintiff's Motion to Strike Defendant's Jury Trial Demand.

For the reasons set forth below, Plaintiff's Motion to Strike is GRANTED, and this civil action shall be placed on the nonjury docket.

FACTUAL AND PROCEDURAL BACKGROUND

This is a mortgage foreclosure action. Plaintiff filed a Summons and Complaint on July 6, 2021. Plaintiff alleges Defendant executed a note on January 25, 2019, secured by a mortgage covering real property in Charleston County. The mortgage was recorded on January 30, 2019. Plaintiff alleges Defendant defaulted on the note and mortgage as of April 1, 2020. Plaintiff seeks a judgment of foreclosure for the amount due upon the note and mortgage.

Defendant filed an Answer and asserted a counterclaim for trespass. The counterclaim alleges Plaintiff intentionally entered the property and proximately caused damages to Plaintiff by changing the locks and turning off the utilities. Defendant alleges these actions were taken while a forbearance was in place and interfered with Defendant's ability to lease the property. Defendant demanded a jury trial.

Plaintiff filed a motion to strike Defendant's jury trial demand.

CONCLUSIONS OF LAW

“Whether a party is entitled to a jury trial is a question of law.” *Wachovia Bank, NA v. Blackburn*, 407 S.C. 321, 328, 755 S.E.2d 437, 441 (2014). “[T]here is no right to trial by jury for equitable actions.” *Lester v. Dawson*, 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997). Mortgage foreclosure actions are equitable in nature. *See Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 248, 489 S.E.2d 472, 475 (1997) (“A mortgage foreclosure is an action in equity.”) “If the complaint is equitable and the counterclaim is legal and permissive, the defendant waives his right to a jury trial.” *Blackburn*, 407 S.C. at 330, 755 S.E.2d at 441.

Defendant is entitled to a jury trial in this equitable action “only if the counterclaims are legal and compulsory.” *Carolina First Bank v. BADD, L.L.C.*, 414 S.C. 289, 295, 778 S.E.2d 106, 109 (2015). Plaintiff concedes that Defendant’s counterclaim is at law. Therefore, the only question is whether the counterclaim is permissive or compulsory.

A counterclaim is compulsory “if it arises out of the transaction or occurrence that is the subject matter of the opposing party’s claim” Rule 13(a), SCRPC. South Carolina has adopted the “logical relationship” test to determine whether counterclaims arise out of the same transaction or occurrence as the opposing party’s claim. *N.C. Fed. Sav. & Loan Ass’n v. DAV Corp.*, 298 S.C. 514, 519, 381 S.E.2d 903, 906 (1989).

“Under this test, the logical relationship determination is made by asking whether the counterclaim would affect the lender’s right to enforce the note and foreclose the mortgage.” *Blackburn*, 407 S.C. at 330 n. 7, 755 S.E.2d at 442 n. 7 (internal quotations omitted). “If the defendant’s prevailing on his counterclaim would affect the bank’s right to enforce the note and foreclose the mortgage, there is a logical relationship between the counterclaim and the underlying suit, and the counterclaim is therefore compulsory.” *Id.*

Defendant is not entitled to a jury trial on her counterclaim because Plaintiff's ability to enforce the note and mortgage would not be affected by Defendant's success on the counterclaim. Defendant's counterclaim pertains to alleged actions by Plaintiff in securing and winterizing the property long after the note and mortgage were executed. The resolution of the counterclaim would not affect the existence of the debt or the enforceability of the note and mortgage. *See BADD*, 414 S.C. at 295, 778 S.E.2d at 109 (finding the execution of a guaranty agreement was the applicable transaction or occurrence and the civil conspiracy counterclaim did not have any logical relationship to the execution of enforceability of the agreement).¹

CONCLUSION

For the reasons set forth above, Plaintiff's Motion to Strike is granted and this matter shall be transferred to the nonjury docket.

IT IS SO ORDERED.

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¹ Our courts have found counterclaims in mortgage foreclosure actions to be compulsory where it is alleged that the lender made and broke oral promises to modify loans. *See, e.g., N.C. Fed. Sav. & Loan Ass'n v. DAV Corp.*, 298 S.C. 514, 381 S.E.2d 903 (1989); *S.C. Community Bank v. Salon Proz, LLC*, 420 S.C. 89, 800 S.E.2d 488 (Ct. App. 2017). This situation is not alleged in the counterclaim.



Charleston Common Pleas

Case Caption: Wilmington Savings Fund Society Fsb , plaintiff, et al VS Alice Swope
Thompson
Case Number: 2021CP1003055
Type: Order/Other

So Ordered

s/ Clifton B. Newman, 2127

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
C/A No.: 2021-CP-10-03055

WILMINGTON SAVINGS FUND)
SOCIETY, FSB, solely trustee for)
Invictus Residential Pooler Trust 2A,)
and not in its individual capacity,)

PLAINTIFF,)

VERSUS)

MOTION TO RECONSIDER

ALICE SWOPE THOMPSON,)

DEFENDANT.)

TO: PETER M. BALTHAZOUR, ESQUIRE, of Riley, Pope & Laney, LLC, Attorneys for Plaintiff

YOU WILL PLEASE TAKE NOTICE that the Defendant, by and through undersigned counsel, will move before the Hon. Clifton B. Newman, Presiding Judge of the Ninth Judicial Circuit for an order to reconsider his Order on Plaintiff's Motion to Strike Defendant's Jury Trial Demand issued February 2, 2022 pursuant to SCRPC Rule 59. The basis for this motion is contained in a Memorandum to be filed contemporaneously herewith. At issue is the Defendant's right to a jury trial pursuant to SCRPC Rule 38, which is a fundamental constitutional right.

Respectfully submitted,

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February 14, 2022