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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
The Honorable Bentley D. Price, Circuit Court Judge

Supreme Court Appellate Case No. 2023-001465
Court of Appeals Appellate Case No. 2021-000504
Circuit Court Case No. 2019-CP-07-02279

Wilmington Savings Fund Society FSB, not in its individual capacity, but solely as owner trustee for CSMC 2018-RPL6 Trust,

Respondent,

v.

Rex A. Field, Tracy L. Field, Dulamo Estates Homeowners' Association, Inc.,

Defendants,

Of whom Rex A. Field and Tracy Field are the

Appellants.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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COUNTERSTATEMENT OF QUESTION PRESENTED FOR REVIEW

1. Whether the Court of Appeals correctly affirmed the trial court's decision to strike the Fields' jury demand in a foreclosure action where the Fields' nine (9) counterclaims were not a defense to, and did not affect the enforceability of, Wilmington's action for foreclosure, rendering the counterclaims permissive.

STATEMENT OF THE CASE

A. The Promissory Note and the Mortgage.

On or about October 7, 2005, Rex A. Field and Tracy L. Field executed and delivered a promissory note ("Note") in the principal sum of $359,000 in favor of E*Trade Mortgage Corporation. (R. p. 38, ¶ 6). To secure payment of the Note, the Fields made, executed, and delivered a real estate mortgage ("Mortgage") encumbering real property located at 1 Dulamo Bluff Road, Saint Helena Island, South Carolina (the "Property"). (R. pp. 38–39, ¶ 7). Through various transfers, the Mortgage was ultimately assigned to Wilmington Savings Fund Society, FSB, not in its individual capacity, but solely as owner trustee for CSMC 2018-RPL6 Trust ("Wilmington"). (R. p. 39, ¶ 9).

B. Default and Initiation of Foreclosure Action.

The Note came into default for failure to make payments on January 1, 2019, and all subsequent payments. (R. p. 40, ¶ 15).[1] On October 11, 2019,[2] with the Note remaining in default, Wilmington initiated this foreclosure action against the Fields. (R. pp. 35–43).[3] On October 17, 2019, the matter was referred to Marvin H. Dukes, III, Master in Equity. (R. pp. 5–7). However, on September 29, 2020, the trial court vacated the Order of Reference without prejudice. (R. pp.

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[1] Wilmington's predecessor in interest, CitiMortgage, Inc., filed an initial foreclosure action against the Fields in 2012. Following the dismissal of the Fields' counterclaims and third-party claims in the 2012 foreclosure action—but while that foreclosure action was pending—Mr. Field filed Chapter 13 bankruptcy approximately one hour before the final hearing scheduled in the 2012 foreclosure action. After Mr. Field voluntarily dismissed that bankruptcy petition, the parties entered into a loan modification, and CitiMortgage, Inc. dismissed its claims in the initial foreclosure action without prejudice.

[2] For the sake of clarification, dates of filed documents referenced herein refer to the date of the file-stamp on the document (not the date of the signature of the parties or the Court).

[3] Dulamo Estates Homeowners' Association, Inc. ("Dulamo") was also initially named as a Defendant, but, upon determining Dulamo was not necessary to the action, Wilmington dismissed Dulamo from the lawsuit.

8–10). The Fields had argued in their November 20, 2019, Motion to Vacate Order of Reference that the Order of Reference was entered before they were served with process, thus depriving them of the opportunity to object. (R. pp. 53–58). However, Judge Dukes' reasoning for vacating the Order of Reference is not explained in his Form 4 Order. (R. pp. 8–10).

C. Issues Surrounding Jury Demand.

On October 22, 2019, prior to responding to the Complaint, the Fields—proceeding *pro se* at the time—filed a standalone Demand for Jury Trial, in which they "demand[ed] a trial by jury on all issues triable by a jury." (R. p. 44). On November 18, 2019, also prior to responding to the Complaint, the Fields filed a document styled "Motion for Case to be Heard by Jury Pursuant [sic] SCRCP 38(b)," in which they made reference to their standalone jury demand, reasserted their jury demand, and proclaimed a broad reservation of rights as it relates to a trial by jury. (R. pp. 47–52).

Without disputing the Fields' assertion of a jury demand, Wilmington, on January 30, 2020, filed a Motion to Strike Defendants' Demand for Jury Trial (hereinafter, "Motion"), acknowledging the Fields' demand for a jury trial but arguing that the Fields were not entitled to have a jury decide a foreclosure action. (R. pp. 65–66). On February 14, 2020, the Fields filed an opposition to Wilmington's Motion, arguing primarily that the Motion was void because the matter should be stayed pending foreclosure intervention. (R. pp. 67–69).

Following a multitude of other motions and filings that were not at issue before the Court of Appeals,[4] the Fields, on February 19, 2021, filed an Answer, Counterclaims and Third-Party Complaint ("Answer") (R. pp. 70–231), which they subsequently amended on March 25, 2021 ("First Amended Answer"). (R. pp. 456–604). Both the Answer and the First Amended Answer contain a jury demand. (R. p. 70; R. p. 456). The First Amended Answer is 149 pages, spans 924 numbered paragraphs, and includes 9 counterclaims/third-party claims, including (1) violation of South Carolina's Unfair Trade Practices Act ("SCUTPA"), S.C. Code Ann. § 39-5-10; (2) civil conspiracy; (3) fraud and misrepresentation; (4) slander of title by disparagement of title; (5) libel and slander; (6) violation of the Fair Debt Collections Practices Act, 15 U.S.C. § 1692, *et seq.*; (7) unjust enrichment; (8) quiet title to property; and (9) abuse of process. (R. pp. 573–602, ¶¶ 801–924). The Fields assert all of these claims against Wilmington and against all of the third-party defendants, which include the following: Federal National Mortgage Association (Fannie Mae); Wilmington Savings Fund Society, FSB (in its individual capacity); Christiana Trust Company of Delaware; DLJ Mortgage Capital Inc.; and Unknown Defendants 1–10. (R. pp. 573–602, ¶¶ 801–924).

[4] For instance, between February 14, 2020, and February 19, 2021, the Fields made the following filings: "Notice of Motion and Motion for Relief from Order of Reference Pursuant to SCRCP Rule 60; Affidavit" (filed March 16, 2020); "Motion for Continuance of Trial; Objections; Affidavit" (filed September 11, 2020); "Memorandum in Support of Motion to Vacate Order of Reference" (filed September 27, 2020); "Motion to Dismiss and for Sanctions" (filed October 26, 2020); "Affidavit in Support of Motion to Dismiss and Sanctions" (filed December 7, 2020); "Affidavit for Motion to Dismiss and Sanctions" (filed January 8, 2021); "Memorandum in Support of Motion to Dismiss and for Sanctions" (filed January 11, 2021); "Termination by Field Defendants of Andrew S. Radeker as Counsel" (filed January 21, 2021); "Notice of Mediation Pursuant to ADR Rule 6" (filed January 25, 2021); "Defendants' Notice of Motion and Motion to Compel Mediation" (filed February 4, 2021); and "Memorandum in Support of Motion to Compel Mediation" (filed February 12, 2021). For the avoidance of confusion, none of these filings or motions were at issue on appeal before the Court of Appeals.

D. Hearing and Subsequent Ruling on Motion to Strike Jury Demand.

Following the Fields' Supplemental Memorandum in Opposition to [sic] Strike Jury Demand filed on April 13, 2021, which merely quotes from and attaches the Court of Appeals' decision in *South Carolina Community Bank v. Salon Proz, LLC, et al.* (Case No. 2014-002627) (R. pp. 627–637), the trial court held a hearing on April 15, 2021. (R. pp. 1602–1629). The Honorable Bentley D. Price presided over the hearing, which was attended by counsel for Wilmington as well as the Fields, who appeared *pro se* after they terminated their lawyer in January 2021. The Court heard oral argument on Wilmington's Motion (*see* R. p. 1608, line 13 to R. p. 1612, line 24) as well as other pending motions that were not at issue on appeal.

Although Wilmington filed the Motion before the Fields filed their First Amended Answer (which contains nine (9) counterclaims and third-party claims), both parties argued the merits of Wilmington's Motion in light of the subsequently filed First Amended Answer. (R. p. 1609, lines 1–6 (Wilmington arguing that counterclaims must be legal and compulsory to be entitled to jury trial); R. p. 1612, lines 17–18 (Fields arguing: "We have at least nine counterclaims. Most of them are legal, or at law.")). Wilmington argued that the counterclaims were not compulsory "because if proven they would not affect the enforceability of the loan." (R. p. 1610, lines 9–10). The Fields focused primarily on this Court's decision in *Salon Proz* that the SCUTPA claim in the context of that case was legal and compulsory. (R. p. 1612, lines 9–24). Otherwise, the Fields—without identifying any specific counterclaim—argued that they "have at least nine counterclaims" (R. p. 1612, lines 17–18); that "[m]ost of them are legal, or at law" (R. p. 1612, line 18); and that they "believe that [their] claims are legal and compulsory" (R. p. 1612, line 24).

On April 20, 2021, Judge Price entered a Form 4 Order, granting Wilmington's Motion. (R. pp. 14–16). The Form 4 Order also denied or deferred other motions that were not at issue on appeal.

E. Notice of Appeal.

On May 13, 2021, the Fields filed a notice of appeal, indicating their intent to appeal from Judge Price's April 20, 2021 Order "granting Motion to Strike Jury Demand to Respondent." (R. p. 911). Therefore, the only Order on appeal before the Court of Appeals was the portion of Judge Price's interlocutory Order granting Wilmington's Motion and striking the Fields' jury demand.[5]

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[5] Confusingly, on May 11, 2021—*after* Judge Price struck their jury demand and two days *before* they noticed their appeal to the Court of Appeals—the Fields filed another standalone "Demand for Jury Trial." And during proceedings before the Court of Appeals, the Fields continued to make numerous filings in the trial court, such as the following: "Motion for Continuance to Obtain New Counsel; Affidavit" (filed May 25, 2021); "Notice of Motion and Motion for Continuance of Motion for Summary Judgment Pursuant to SCRCP Rule 56(f) and to Deem Requests for Admissions Admitted for Failure to Comply with SCRCP Rule 36; Affidavit" (filed June 17, 2021); "Motion to Recuse the Honorable Bently [sic] D. Price; Affidavit" (filed June 21, 2021); "Motion to Reconsider Order Dated June 22, 2021 on Motion to Recuse the Honorable Bentley D. Price; Affidavit" (filed June 29, 2021); "Defendants' Affidavit of Documents in Opposition to Plaintiff's Motion for Summary Judgment" (filed June 30, 2021; spanning 195 pages and including 33 exhibits); "Defendants' Memorandum in Opposition to Plaintiff's Motion for Summary Judgment; Objections to Plaintiff's Affidavit/Exhibits" (filed June 30, 2021; spanning 64 pages of argument); Memorandum in Support of Motion to Recuse the Honorable Bentley D. Price; Affidavit" (filed July 2, 2021); "Motion for Rule to Show Cause as to Why Sanctions Should Not be Issued for Violation of Court Order; Affidavit" (filed July 7, 2021); "Notice: Plaintiff's Failure to Make or Cooperate in Discovery Pursuant to SCRCP Rule 37; Affidavit" (filed July 16, 2021); "Motion to Reconsider Order Filed July 12, 2021 on Motion to Recuse the Honorable Bentley D. Price; Affidavit" (filed July 22, 2021); "Notice of Motion and Motion to Dismiss for Lack of Personal Jurisdiction Pursuant to SCRCP 12(b)(2)" (filed July 30, 2021); "Notice: Third Partys' [sic] Failure to Make or Cooperate in Discovery Pursuant to SCRCP Rule 37; Affidavit" (filed August 6, 2021); "Memorandum in Support of Motion for Rule to Show Cause as to Why Sanctions Should Not be Issued for Violation of Court Order; Affidavit" (filed August 11, 2021); "Objection to Motion to Extend Time for Responses to Defendants' Interrogatories and for Request for Production of Documents" (filed October 28, 2021); and "Objection to Amended Motion to Extend Time for Responses to Defendants' Interrogatories and for Request for Production of Documents" (filed November 29, 2021). Wilmington's reason for providing this list to the Court is twofold: to emphasize that none of these filings were at issue in this narrow appeal, and to elucidate the tone and tenor of the Fields' approach to this litigation.

F. The Court of Appeals' Order.

On June 14, 2023, without oral argument, the Court of Appeals affirmed the trial court in a per curiam opinion. *Wilmington Savings Fund Soc'y FSB v. Field*, Unpublished Opinion No. 2023-UP-239 (S.C. Ct. App. June 14, 2023). The Court of Appeals concluded "the circuit court did not err by striking the Fields' demand for a jury trial because it correctly determined the Fields' counterclaims were permissive rather than compulsory." (*Id.* at 1). The Court of Appeals further concluded that any additional or different arguments were not preserved for appellate review. (*Id.* at 1 n.1).

The Fields subsequently filed a petition for rehearing, which the Court of Appeals denied. This petition for writ of certiorari followed.

STANDARD FOR WRIT OF CERTIORARI

"A writ of certiorari is not a matter of right." SCACR 242(b). Rather, it is subject to the Court's "judicial discretion" and limited to "special and important reasons." *Id.* A purported reason does not rise to the level of "special and important" and warrant the Court's exercise of discretion where it fails to match the "character of reasons" enumerated in SCACR 242(b), including: "novel questions or law"; the existence of a "dissent in the decision of the Court of Appeals"; a "conflict with a prior decision of the Supreme Court" and that of the Court of Appeals; the direct involvement of "substantial constitutional issues"; and a "conflict[ ] with a decision of the United States Supreme Court" and the inclusion of a federal question. SCACR 242(b)(1–5).

ARGUMENT

I. THE TRIAL COURT DID NOT ERR IN STRIKING THE FIELDS' JURY DEMAND.

Although the Fields couch their appellate argument in three different ways, their sole argument is that the trial court erred in striking their jury demand. The Court of Appeals correctly concluded that the trial court committed no such error. The Fields' arguments do not come close to the "character of reasons" warranting issuance of a writ of certiorari under SCACR 242(b). The Fields' petition should be denied.

A. Standard of Review.

Normally, "[t]he matter of striking from a pleading . . . is largely within the discretion of the trial judge" such that "[t]he granting . . . of a Motion to Strike . . . will not be reversed except for an abuse of discretion or unless the action of the trial judge was controlled by an error of law." *Brown v. Coastal States Life Ins. Co.*, 264 S.C. 190, 194, 213 S.E.2d 726, 728 (1975). However, "[w]hether a party is entitled to a jury trial is a question of law," and "[a]n appellate court may decide questions of law with no particular deference to the trial court." *Verenes v. Alvanos*, 387 S.C. 11, 15, 690 S.E.2d 771, 772–73 (2010).

B. As a threshold matter, this Court's recent decision in *Deutsche Bank v. Houck* does not apply to this appeal.

In August of this year, this Court abolished the "logical relationship test" in favor of the "plain language of Rule 13(a)," when determining whether a counterclaim is compulsory or permissive. *See Deutsche Bank Nat'l Trust Co. v. Estate of Houck*, No. 2021-001292, -- S.E.2d --, 2023 WL 5075037, at *1 (S.C. 2023). In doing so, however, this Court made explicitly clear that its holding applies only to "cases commenced *on or after the effective date of this opinion*." *Id.* (emphasis added). Because the instant case was "commenced" on October 11, 2019 (*see* R. pp. 35–43), and because this Court did not decide *Houck* until August 9, 2023 (*almost four years*

later), the holding of *Houck* does not apply to this appeal. Stated differently, the logical relationship test—as set forth in *N.C. Fed. Sav. & Loan Ass'n v. DAV Corp.*, 298 S.C. 514, 518, 381 S.E.2d 903, 905 (1989), and its progeny—applies in this case in determining whether the Fields' counterclaims are compulsory or permissive, and thus whether the trial court erred in striking the Fields' jury demand.[6]

While making arguments premised on the logical relationship test, the Fields simultaneously seem to also be arguing for "prospective application" of *Houck* to this case. (*See* Petition at 3). Any such argument by the Fields is erroneous. And to the extent the Fields are attempting to manufacture a conflict—between this Court's Opinion in *Houck*, and the Court of Appeals' decision in the instant case—such arguments are similarly misplaced. Indeed, this Court in *Houck* had the foresight to anticipate the very argument the Fields seem to be making, and to reject any such argument by limiting the holding in *Houck* to "cases commenced on or after" August 9, 2023. *See* 2023 WL 5075037, at *1. There is no conflict. And the Court of Appeals—just as this Court should do—properly evaluated the Fields' arguments under the logical relationship test.

[6] Wilmington acknowledges that this Court in *Houck* abrogated, in relevant part, a line of cases applying the logical relationship test. *See* 2023 WL 5075037. These cases include the following: *Carolina First Bank v. BADD, L.L.C.*, 414 S.C. 289, 778 S.E.2d 106 (2015); *Wachovia Bank, Nat'l Ass'n v. Blackburn*, 407 S.C. 321, 755 S.E.2d 437 (2014); *Mullinax v. Bates*, 317 S.C. 394, 453 S.E.2d 894 (1995); *First-Citizens Bank & Tr. Co. of S.C. v. Hucks*, 305 S.C. 296, 408 S.E.2d 222 (1991); *DAV Corp.*, 298 S.C. 514, 381 S.E.2d 903; *S.C. Cmty. Bank v. Salon Proz, LLC*, 420 S.C. 89, 800 S.E.2d 488 (Ct. App. 2017); *Beach Co. v. Twillman, Ltd.*, 351 S.C. 56, 566 S.E.2d 863 (Ct. App. 2002). However, as noted above, *Houck* does not apply to this case, meaning that the logical relationship test—and its application in the above-referenced cases and others—applies to the instant case. Rather than indicating this abrogation following citation to each of the above cases throughout this Return, Wilmington expressly flags the issue for the Court in this footnote.

C. <u>Under South Carolina Law as applicable to this case, a Counterclaim is Compulsory in the Mortgage Lending Context if it Affects the Ability to Pursue, or Otherwise Serves as a Defense to, an Underlying Claim.</u>

Because foreclosure sounds in equity, a party to a foreclosure action is not entitled to a jury trial as a matter of right. *Blackburn*, 407 S.C. at 328, 755 S.E.2d at 441. Rather, a party to a foreclosure action is entitled to a jury trial only where he or she asserts a counterclaim that is both legal and compulsory. *BADD*, 414 S.C. at 295, 778 S.E.2d at 109; *Salon Proz*, 420 S.C. at 96, 800 S.E.2d at 492; *cf. DAV Corp.*, 298 S.C. at 517, 381 S.E.2d at 905 ("A party does not waive its right to a jury trial on a counterclaim asserted in an equity action if the counterclaim is legal and compulsory in nature.").

A counterclaim is either legal or equitable depending on the "'main purpose' in bringing the action," which can be gleaned from both "the body of the [pleading]" as well as "the prayer for relief and any other facts and circumstances which throw light upon the main purpose of the action." *Verenes*, 387 S.C. at 16, 690 S.E.2d at 773 (internal quotation marks omitted).

A counterclaim is compulsory under SCRCP 13(a) only "if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim." SCRCP 13(a). Counterclaims not arising out of the same transaction or occurrence of the leading claims are merely permissive. *See* SCRCP 13(b). As applicable to this case, *see supra* Section I(B), South Carolina applies the logical relationship test in determining whether a counterclaim is compulsory. *See DAV Corp.*, 298 S.C. at 518, 381 S.E.2d at 905. Under this test, the logical relationship determination is made by asking whether the counterclaim would affect the plaintiff's right to enforce its claims. *See Blackburn*, 407 S.C. at 330 n.7, 755 S.E.2d at 442 n.7.

Prior to this Court's decision in *Houck*, South Carolina courts in the mortgage foreclosure context applied the logical relationship test by evaluating whether a successfully asserted counterclaim constitutes a defense to a plaintiff's cause(s) of action, which is typically a lender's

action for foreclosure. For instance, in *DAV Corp.*, a lender commenced an action to foreclose on a note and mortgage given to a joint venture, and one of the parties comprising the joint venture ("DAV") asserted six counterclaims against the lender, including breach of a subsequent oral contract to provide additional funding and breach of a subsequent oral contract to purchase DAV's interest in the joint venture. *See* 298 S.C. at 516–17, 381 S.E.2d at 904. Because DAV demanded a jury trial on its counterclaims, this Court was forced to determine whether DAV's counterclaims were compulsory. *See id.* at 517, S.E.2d at 904. As to the breach of funding counterclaim, this Court found it to be compulsory because "if performed," the oral agreement "*would have avoided* default on the note by the joint venture." *Id.* at 518, 381 S.E.2d at 905 (emphasis added). As to the breach of purchase counterclaim, however, this Court deemed it merely permissive because if performed, the oral agreement would "not [have] affect[ed] the enforceability of the note." *Id.*

Similarly, in *Salon Proz*, a bank filed a foreclosure complaint, the mortgagor asserted various counterclaims, and—following an order of reference to a master in equity—the mortgagor sought to transfer the matter back to the general docket, arguing it was entitled to a jury trial because its counterclaims were legal and compulsory. 420 S.C. at 92, 800 S.E.2d at 489–90. Finding that at least one of the counterclaims—a SCUTPA claim alleging a pattern of reneging on promises to modify the loans—was compulsory, the Court of Appeals explained: "Were this allegation true, it could affect the loan's enforceability." *Id.* at 97, 800 S.E.2d at 492.

On the other hand, where a counterclaim is not a defense to an underlying claim, South Carolina courts find it to be merely permissive. In *BADD*, a bank brought a foreclosure action against a mortgagor and a guarantor, and the guarantor asserted counterclaims for civil conspiracy and breach of contract, both based on an alleged conspiracy with a third party. 414 S.C. at 291–92, 778 S.E.2d at 107. This Court found these counterclaims to be merely permissive because "the

allegations, if true, would not render the guarantees unenforceable." *Id.* at 296, 778 S.E.2d at 109; *see id.* 296, 778 S.E.2d at 110 ("does not affect the execution or enforceability of the guaranty agreements").

And in the reverse context in *Houck*—where this Court evaluated whether an action for foreclosure was a permissive or compulsory counterclaim in the context of an action initiated by mortgagors alleging violations of South Carolina's Attorney Preference Statute, S.C. Code Ann. § 37-10-102, and SCUTPA—this Court "affirm[ed] the result reached by the court of appeals under the logical relationship test." 2023 WL 5075037, at *1. The Court of Appeals had concluded that foreclosure was not a compulsory counterclaim because "[the lender's] foreclosure claim was not a defense to Mortgagors' allegations . . ., and had [the lender] raised the foreclosure claim . . ., it would not have affected Mortgagors' allegations pertaining to the violation of the Attorney Preference Statute." *Deutsche Bank Nat'l Trust Co. v. Estate of Houck*, 434 S.C. 500, 508, 863 S.E.2d 829, 833 (Ct. App. 2021).

DAV Corp., *Salon Proz*, *BADD,* and *Houck* (at least in its application to the instant case) make clear that—in the mortgage lending context—a counterclaim has a logical relationship to an underlying claim, and is therefore compulsory, if it would operate as a defense to the underlying claim. Where the counterclaim would not affect the viability of the underlying claim, it is not compulsory.

D. Because the Fields' counterclaims would not affect the enforceability of Wilmington's foreclosure, the trial court properly struck the Fields' jury demand.

The occurrence that gave rise to Wilmington's foreclosure action was the Fields' default on the Note. "[T]he party seeking foreclosure has the burden of establishing the existence of the debt and the mortgagor's default on that debt." *U.S. Bank Trust Nat'l Assn'n v. Bell*, 385 S.C. 364, 374–75, 684 S.E.2d 199, 205 (Ct. App. 2009). "Once the debt and default have been established,

the mortgagor has the burden of establishing a defense to foreclosure such as lack of consideration, payment, or accord and satisfaction." *Id.*

The Fields' counterclaims present no such defense. As a threshold matter, the Fields' Petition does not even identify which of their counterclaims they believe are compulsory. And the Fields provided no better guidance to the Court of Appeals, arguing only that "at least four (4) [of the counterclaims] seek recovery of monetary damages" and "four (4) would implicate enforceability of the note and mortgage," without specifying which ones. (Appellants' Brief at 9). On another occasion, the Fields contended only that "[a]t least three (3) of defendant's at-law counterclaims" are allegedly compulsory. (*Id.* at 10–11). But in both scenarios, the Fields left both Wilmington and the Court of Appeals to guess the counterclaims to which they refer. The Fields similarly leave this Court without any understanding of the counterclaim (or counterclaims) on which their arguments hinge. Even assuming *arguendo* that some of the Fields' counterclaims are legal, none of the counterclaims is compulsory.

The counterclaims (and third-party claims) in the Fields' First Amended Answer—spanning 286 numbered paragraphs—generally allege a broad conspiracy between Wilmington, Fannie Mae, and the other third-party defendants,[7] to defraud the Fields, other homeowners in South Carolina, and other homeowners across the country,[8] with a particular focus on the

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[7] The Fields' third-party claims—regardless of their nature—do not entitle them to a jury trial because third-party claims are permissive. *See Dav. Corp.*, 298 S.C. at 519, 381 S.E.2d at 906.

[8] Despite the fact that the Fields plead their counterclaims as if they are asserted on behalf of a large group of allegedly aggrieved homeowners (akin to class action claims), the Fields are the only defendants at the trial court level (following Dulamo's dismissal, *see supra* n.3), and they were the only Appellants on appeal.

securitization and subsequent assignments of the Note. As it relates to the Fields' specific counterclaims, they generally allege as follows:

- **SCUTPA**: "elaborate scheme to defraud unsuspecting homeowners of their homes in South Carolina and nationally" (R. p. 574, ¶ 804); "notary fraud and regular pattern and practice of filing false and perjured documents in the public records" (R. p. 575–576, ¶ 813);

- **Civil Conspiracy**: "fraud upon Homeowners through fraudulent threats of foreclosure and fraudulent foreclosure filings" (R. p. 583, ¶ 841);

- **Fraud and Misrepresentation**: "statements as to alleged 'ownership' of the purported note and/or mortgage and the legal entitlement to demand monies from Homeowners and institute foreclosure proceedings were false statements of material fact" (R. p. 587, ¶ 856);[9]

- **Slander of Title by Disparagement of Title**: "an improper foreclosure lawsuit and Lis Pendens which were false, done with malice, [and] published in the public records of the courts and property records of Beaufort County, SC which disparaged their property" (R. pp. 592–593, ¶ 883);

- **Libel and Slander**: "published statements and spoken statements concerning the Homeowners" including "statements to the effect that the Homeowners is [sic] currently delinquent in its payments," which statements "tended to impeach the honesty, integrity, virtue, creditworthiness, business soundness, and/or reputation of the Homeowners" (R. p. 595, ¶¶ 891–93);

- **Fair Debt Collections Practices Act**: "wrongfully, improperly, and illegally reported negative information as to the Homeowners to one or more Credit Reporting Agencies" (R. p. 596–597, ¶ 900);

- **Unjust Enrichment**: "wrongfully collected and/or attempted to collect payments from Defendants" (R. pp. 598–599, ¶ 913);

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[9] To the extent the Fields contend that their counterclaims challenge Wilmington's standing to enforce the Note, any such claim is permissive because "it does not affect the execution or enforceability of the [Note]," *BADD*, 414 S.C. at 296, 778 S.E.2d at 110. That is because Wilmington will appear at trial with the Note endorsed to bearer. *Compare* S.C. Code Ann. § 36-3-301 (providing that holder of an instrument is entitled to enforce it), *with id.* § 36-1-201(b)(21)(A) (providing that holder of an instrument includes "the person in possession of a negotiable instrument that is payable . . . to bearer"). Thus, regardless of the evidence the Fields might marshal or the arguments they might make, Wilmington will be able to establish its standing to enforce the Note by virtue of its possession of the Note. The Fields' counterclaims do not—and cannot—change that.

- **Quiet Title**: "Homeowners are entitled to quiet title" because "[t]he security was a 'securitized' bond deriving its value from the underlying mortgages of which the purported mortgage is no longer one" (R. pp. 599–600, ¶ 918); and

- **Abuse of Process**: "improper use of process by filing the Lis Pendens and Complaint" (R. p. 601, ¶ 922).[10]

None of these counterclaims is a defense to Wilmington's foreclosure action, nor do they affect the enforceability of Wilmington's foreclosure. That is because the allegations in the counterclaims, if proven, would not impact the existence of the debt or the Fields' default on their debt. Having failed to dispute or counter any of the elements Wilmington must prove to establish its foreclosure action, the Fields cannot show that any of their counterclaims affect the enforceability of the Note. As a result, the Fields are not entitled to a jury trial, meaning the trial court properly struck their jury demand. As such, there are no "special" or "important reasons"

[10] Because the nature of these counterclaims—*i.e.*, legal or equitable, compulsory or permissive—would be the only legal issue for this Court to decide if it were to grant the Fields' Petition for Certiorari, Wilmington would have expected the Fields to focus on which counterclaims allegedly support their argument, and why those counterclaims are purportedly legal and compulsory. That is especially the case because Wilmington flagged this omission before the Court of Appeals. But the Fields continue to fail to clarify their arguments in any way that might entitle them to the relief they seek.

that would support this Court's exercise of "judicial discretion" in granting certiorari under SCACR 242(b).[11]

II. REGARDLESS OF WHETHER THE FIELDS' COUNTERCLAIMS ARE PERMISSIVE UNDER THE LOGICAL RELATIONSHIP TEST, THERE ARE NO SPECIAL AND IMPORTANT REASONS WARRANTING ISSUANCE OF A WRIT OF CERTIORARI.

On the merits, it is Wilmington's position—as set forth above—that the trial court properly applied the logical relationship test and the cases interpreting it, and properly struck the Fields' jury demand upon concluding the Fields' counterclaims were permissive. However, before this Court adjudicates that legal issue, it must first decide whether to exercise its discretion in granting a writ of certiorari. Regardless of the Court's view of the propriety of the trial court's decision to strike the Fields' jury demand, there are no "special and important" reasons warranting issuance of a writ of certiorari in the first place. SCACR 242(b).

This Court in *Houck* was recently faced with the exact same arguments raised here by the Fields regarding the meaning of the logical relationship test and the manner in which the test has been applied in relevant jurisprudence. This Court's decision in *Houck* to prospectively abolish the logical relationship test and to abrogate, in part, case law applying that test, *see* 2023 WL 5075037, at *1, undercuts the Fields' ability to argue for, or establish, "special and important

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[11] To the extent the Fields are arguing that the trial court failed to apply the logical relationship test (when it should have) (*see* Petition 4), that argument likewise fails. The trial court heard arguments from both sides about whether the Fields' counterclaims were legal and compulsory, including references to *Salon Proz* and *BADD*—cases which follow *DAV Corp*—and references to the logical relationship test. (*See* R. p. 1608, line 13 to R. p. 1612, line 24). And the Fields briefed the issue at length. (*See* R. pp. 628–629 (block quoting portions of *Salon Proz* outlining logical relationship test)). After reviewing this briefing and hearing oral argument, the trial court indicated it would grant the Motion (R. p. 1626, lines 14–15), and it did so in a Form 4 Order (R. pp. 14–16). To the extent the Fields are arguing that the trial court's application of the logical relationship test is not apparent from the Court's Form 4 Order, that argument likewise fails because "[f]indings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b)," SCRCP 52(a), and Rule 41 is inapplicable here.

reasons," SCACR 242(b), because the issue at the heart of this appeal is no longer a "live" issue under South Carolina law. Stated differently, because trial courts and litigants going forward will no longer be arguing for and applying the logical relationship test, a decision issued by this Court concerning that abolished test would provide little to no guidance to litigants and judges alike. For this reason, this Petition should be denied because it fails to match the "character of reasons" enumerated in SCACR 242(b).

CONCLUSION

For the foregoing reasons, Wilmington respectfully requests that this Court deny the Petition for Writ of Certiorari.

This 18th day of October 2023.

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