

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
Carmen T. Mullen, Circuit Court Judge
Trial Court Case No. 2007-CP-07-03027

Appellate Case No. 2012-213629

RECEIVED
AUG 29 2013
SC Court of Appeals

Carolina First Bank, Appellant,

v.

Charles S. McCue, Builder Services Group, Inc., d/b/a Gale Contractor Services,
Pebblethorn Landscape & Design, LLC, Falco, Inc., Distinctive Granite & Marble, Inc.,
Gustavo Angeles, individually and d/b/a Empire Construction, and Rose Hill Plantation
Property Owners Association, Defendants,

of Whom Charles S. McCue is the Respondent.

**RESPONDENT'S MOTION TO DISMISS APPEAL AND REMAND TO LOWER
COURT
OR IN THE ALTERNATIVE
TO REMAND FOR LOWER COURT TO DETERMINE THE EFFECT OF
EVENTS SUBSEQUENT TO THE ISSUANCE OF THE APPEALED FROM
ORDER OF THE LOWER COURT AND THE COMMENCEMENT OF THIS
APPEAL ON RESPONDENT'S RIGHT TO JURY TRIAL**

Respondent, Charles S. McCue, by and through his undersigned attorney, hereby moves before this Court for an Order dismissing this appeal, or, in the alternative, remanding this action to the Lower Court to consider the effect of events occurring subsequent to the issuance of the appealed from Order of the Lower Court and the commencement of the appeal.

This Motion is based on the following:

1. Appellant Carolina First Bank (“CFB”) commenced this action to foreclose mortgages on a parcel of real property owned by Respondent Charles S. McCue. McCue has asserted affirmative defenses and counterclaims against CFB, including claims for breach of contract, breach of contract accompanied by fraudulent act, fraud and misrepresentation, negligence, negligent supervision, defamation, slander of title, intentional infliction of emotional distress, breach of fiduciary duty, conversion, and violation of the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681s-2(a).

2. McCue demanded trial by jury. CFB moved to strike the jury demand, asserting that its mortgage foreclosure action was equitable and McCue’s counterclaims were either equitable, or permissive, or both.

3. On July 2, 2012, CFB’s Motion to Strike Jury Demand was heard by the Honorable Carmen T. Mullen. By Order dated November 29, 2012, Judge Mullen ruled that McCue was entitled to a jury trial on his counterclaims for breach of contract, breach of contract accompanied by fraudulent act, negligence, negligent supervision, and fraud and misrepresentation, because those counterclaims were legal and compulsory, but that McCue waived any right to a jury trial on his counterclaims for violation of the FCRA, defamation, slander of title and intentional infliction of emotional distress, because they were permissive.

4. CFB filed Notice of Appeal on or about December 20, 2012.

5. Thereafter, on or about February 2, 2013, subsequent to the Order of the Lower Court and CFB’s commencement of this appeal, CFB and McCue entered into a Short Sale Agreement whereby they agreed to sell the real property that was the subject of

CFB's pending foreclosure action. The sale of the property was closed on or about March 15, 2013. CFB received the net proceeds of the sale and agreed to satisfy its mortgages on the property.

6. With the sale of the mortgaged property, the purpose of CFB's action ceased being the foreclosure of mortgages on real property. CFB now seeks a money judgment against McCue for amounts allegedly due on account of promissory notes. As a result, the action is no longer equitable, it is purely legal, and McCue is entitled to a jury trial on CFB's claims and his defenses and counterclaims.

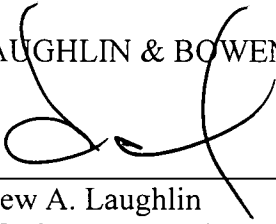
For the foregoing reasons, McCue respectfully prays that CFB's appeal of the Order of the Lower Court partially denying CFB's Motion to Strike McCue's Jury Demand is moot, that CFB's appeal be dismissed, and that the case be remanded to the Lower Court for trial by jury. In the alternative, McCue prays that the case be remanded for the Lower Court to determine, in the first instance, McCue's right to a jury trial in light of the changed character and purpose of the claims against him.

This Motion is supported by a Memorandum with citation of authorities and the Affidavit of Drew A. Laughlin, counsel for Charles S. McCue, dated August 16, 2013.

Respectfully submitted this 16th day of August, 2013.

LAUGHLIN & BOWEN, P.C.

By: _____


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Attorney for Respondent Charles S. McCue

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Property Owners Association, Defendants,

of Whom Charles S. McCue is the Respondent.

PROOF OF SERVICE

I, Drew A. Laughlin, counsel for Respondent, Charles S. McCue, certifies that on this 16th day August, 2013, served the attached Respondent's Motion to Dismiss Appeal and Remand to Lower Court or in the Alternative to Remand for Lower Court to Determine the Effect of Events Subsequent to the Issuance of the Appealed from Order of the Lower Court and the Commencement of this Appeal on Respondent's Right to Jury Trial, Memorandum in Support of Respondent's Motion to Dismiss Appeal and Remand to Lower Court or in the Alternative to Remand for Lower Court to Determine the Effect of Events Subsequent to the Issuance of the Appealed from Order of the Lower Court and the Commencement of this Appeal on Respondent's Right to Jury Trial, and Affidavit of Drew

Carolina First Bank v. McCue
Appellate Case No. 2012-213629
Proof of Service

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A. Laughlin on counsel of record via First Class Mail, postage prepaid as follows:

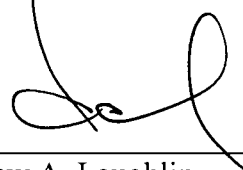
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August 16, 2013

Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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Re: Carolina First Bank v. Charles S. McCue
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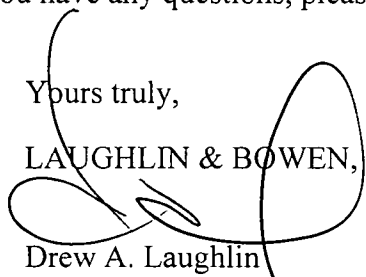
Dear Ms. Kitchings:

Enclosed please find an original and seven (7) copies of Respondent's Motion to Dismiss Appeal and Remand to Lower Court or in the Alternative to Remand for Lower Court to Determine the Effect of Events Subsequent to the Issuance of the Appealed from Order of the Lower Court and the Commencement of this Appeal on Respondent's Right to Jury Trial, Memorandum in Support of Respondent's Motion to Dismiss Appeal and Remand to Lower Court or in the Alternative to Remand for Lower Court to Determine the Effect of Events Subsequent to the Issuance of the Appealed from Order of the Lower Court and the Commencement of this Appeal on Respondent's Right to Jury Trial, Affidavit of Drew A. Laughlin, and Proof of Service. Please file the originals and return a filed copy to us in the enclosed self-addressed stamped envelope.

Also enclosed is our firm's check in the amount of \$25.00 for the applicable filing fee.

I understand and have confirmed with your office that the filing of the Motion stays all time limits for future filings pending disposition of the Motion.

Thank you for your courtesies. If you have any questions, please do not hesitate to call me.

Yours truly,
LAUGHLIN & BOWEN, P.C.

Drew A. Laughlin

DAL/nll
Enclosures

cc: Erik T. Norton, Esq./T. William McGee, III, Esq. (with enclosures)
Jonathan E. Halperin, Esq. (with enclosures)
Charles S. McCue (with enclosures)