THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master-in-Equity

Appellate Case No. 2024-001719

U.S. Bank Trust National Association, not in its Individual Capacity, but solely as owner Trustee for the Legacy Trust 2020-GSI, Rushmore Loan Servicing and Goldman Sach Mortgage Company, U.S. Bank and U.S. Bank National Association,…….....Respondent,

vs.

Jacob Fulks; Florene Fulks..,……Appellants.

APPELLANTS JACOB FULKS AND FLORENE FULKS INITIAL BRIEF

Respectfully submitted,

Jacob Fulks

Florene Fulks

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TABLE OF AUTHORITIES

Cases

Rules

Abbreviations

Record on Appeal – ROA	Motion - Mtn
Complaint – Compl	Transfer - Trans
Answer – Answ.	Master in Equity - MIE
Dismiss – Dism.	Counterclaims - CC

STATEMENT OF ISSUES ON APPEAL

I. Did the MIE err in failing to transfer case back to circuit court upon demand of a jury trial?

II. Did the MIE err as a matter in law in granting motion to dismiss counterclaims were one or more of the counterclaims were compulsory?

III. Did the MIE abused his discretion by failing to grant leave to amend?

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INTRODUCTION

This is a foreclosure case that involves a fraudulent mortgage loan created by a mortgagee and its predecessors in interest by attempting to collect mortgage payments and foreclose on a mortgage lien never signed or agreed to by Florene Fulks and to the best of his ability not agreed to nor signed by Jacob Fulks. Appellants discovered that for years they have been paying on a mortgage they never received any financial benefits or any other gain which ultimately resulted in appellants filing bankruptcy to save their home.

After the respondents moved to foreclose, appellants contested the foreclosure and filed counterclaims in order to obtain some sort of damages from the financial fallout they endured for paying on a fraudulent loan. The MIE dismissed the counterclaims under S.C. Rule 12(b)(6) for failure to state a claim.

Even assuming appellants did not state a plausible claim by failing to meet each element of their claim, the MIE should have granted leave to amend the counterclaims instead of dismissing them outright. The case was and still is in its early stages. Appellants are pro se litigants and are attempting to navigate court proceedings and learn rules of civil procedures. While appellants were not expecting any special favors from the MIE due to their lack of court knowledge, granting the appellants leave to amend would not have prejudice respondents at such an early stage, respondents did not oppose leave and given the seriousness and severity of appellants affirmative defenses, fraud and other counterclaims. Leave to amend is often granted to parties especially after discovery which had not even began at the time of dismissal. The rules of court and laws are generally designed to allow for cases to be brought such that litigants have an opportunity to fully and fairly litigate their claims. Here, this Court is not confronted with any novel issue because it is well established South Carolina law that leave to amend should be freely given.

CONCISE STATEMENT OF FACTS AND PROCUDURAL HISTORY

Respondents allege that Jacob Fulks and Florene Fulks ("the Fulks") executed a Promissory Note in favor of CMA Mortgage on July 7, 2007 (hereinafter "Fulks Note) (2024 Compl, ¶7,8). On the same day The Fulks allegedly executed a Mortgage in favor of Mortgage Electronic Registration Systems, Inc., as nominee for CMA Mortgage (hereinafter "Mortgage") (2024 Compl, ¶9). The Mortgage encumbers The Fulks primary residence. (Compl, ¶9)

Allegedly, the mortgage was assigned to various entities several times since July 6, 2007 cultivating in the mortgage being assigned to the current holder, U.S. Bank Trust National Association, not in its Individual Capacity, but solely as owner Trustee for the Legacy Trust 2020-GSI on December 15, 2020 (2024 Compl, Pg. 2-3, ¶9).

On January 17, 2024, the respondents initiated this foreclosure action seeking judicial foreclosure of the The Fulks allege Note and Mortgage by Rushmore Loan Services, on behalf of U.S. Bank Trust National Association, not in its Individual Capacity, but solely as owner Trustee for the Legacy Trust 2020-GSI claiming to be the present lien holder. (2024 Compl., ¶9). The case was given Civil Action No. 2024-CP-40-00292 (hereinafter "2024 Action")

In paragraph 11 of the Complaint the respondents elected to and did "declare the entire balance of said indebtedness due and payable…" (2024 Complaint, ¶16). On January 30, 2024, the Clerk of the Court for Richland County, Jeanette McBride, issued an order of reference to the Master of Equity (hereafter, "MIE"). On February 8, 2024, the Fulks filed an Answer and Counterclaims (2024 Answer). In their answer, the Fulks demanded a jury trial (2024 Answ, p. 1). On March 1, 2024, respondents filed a reply to the 2024 Answer (Reply, p.1-3). On March 4, 2024, respondents filed a motion to dismiss the Fulks counterclaims (1st Motion to Dism, p. 1-3).

On April 1, 2024, the Fulks filed their amended answer counterclaims (Amend. Answ. & CC, p. 1-15) and on April 2, 2024 the Fulks filed their Motion to Transfer back to the Circuit Court (Mtn. to Trans., p. 1-6) due to their demand for a jury trial in both their original answer and CC and amended answer and CC.

On May 5, 2024, respondents filed a second motion to dismiss CC/Memorandum of Law and on June 10, 2024 a Notice of Hearing was issued. After a delay, On September, 16, 2024 a hearing was held on respondents motion to dismiss counterclaims and motion to transfer back to the circuit court. At the hearing, the MIE denied the Fulks motion to transfer and granted respondents motion to dismiss CC.

On September 18, 2024, the order (Order of Dismissal) dismissing the CC was issued and this interlocutory appeal follow.

STANDARD OF REVIEW

The Orders subject to review here has two different applicable standards of review. The dismissal ruling and the abuse of discretion ruling are reviewed under the respective standards.

Rule 12(b)(6) Standard of Review.

Motions to Dismiss Counterclaims are review under the same standard as regular complaint claims. In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint. *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is improper. *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d

601 (1995). "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." *Gentry v. Yonce*, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999). The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action. *Toussaint v. Ham*, 292 S.C. 415, 357 S.E.2d 8 (1987).

Proper Considerations under Rule 15(a)

A trial court has discretion to deny a motion to amend if the party opposing the amendment can show a valid reason for denying the motion. *See* Rule 15(a) (stating "leave shall be freely given when justice so requires and does not prejudice any other party");

ARGUMENT

1. THE MASTER OF EQUITY (MIE) ERROR IN FAILING TO TRANSFER THE CASE BACK TO CIRCUIT COURT UPON FILING OF JURY DEMAND

Rule 53(b)

At the September 16, 2024, Motions hearing the court denied the Fulks motion to transfer back to circuit court for a jury trial (Hearing Trans. p. 16, ¶18; p. 17, ¶10 – 19).

Respondents initiated this action on January 17, 2024. On January 30, 2024, before the Fulks could submit their answer, the Clerk of the Court issued an order of reference (Order of Refer.), referring the case to the MIE. On February 8, 2024, The Fulks filed their original answer and counterclaims where they demanded a jury trial (Answ. And CC, pg. 1). While Rule 53(b) grants the Clerk of Court the authority to refer a case to the MIE, the Rule also states:

> "Any party may request a jury pursuant to Rule 38 on any or *all issues* triable of right by a jury and, upon the filing of a jury demand, the matter shall be returned to the circuit court."

On February 8, 2024, upon the Fulks filing of their jury demand pursuant to Rule 38, the Clerk of the Court was required to returned the case back to the circuit court. The order of reference was not issued by the circuit court judge which have the legal knowledge to determine triable issues. Rather the order of reference was issued by the Clerk of Court who does not possess the legal knowledge to determine whether the Fulks counterclaims were triable under Rule 38, and thus the Clerk of Court only duly on February 8, 2024 or soon thereafter was to return the case to the circuit court.

In *S. Carolina Community Bank v. Salon Proz., 800 S.E. 2d.488, 95,96, S.C. Court of Appeals 2017* this court stated, *" Because Salon demanded a jury trial in its initial answer, the clerk should not have referred the case," Id at 96*). This court ruling show that the determination of whether Salon had triable counterclaims under Rule 38 resided with the circuit court judge and not the clerk of court who does not possess such expertise. Similar, in this case when the Fulks filed their original counterclaims and demanded a jury trial, under Rule 53(b), the case *"shall"* be returned the case to circuit court to make the determination if the claims were triable.

Rule 38(b) does not limit triable issues to only claims and counterclaims. Triable issues can consist of affirmative defenses. The Fulks affirmative defenses and counterclaims are issues triable by jury such as, forgery, violation of RESPRA and negligence misrepresentation are issues seeking money damages only. "Issues of fact in an action for the recovery of money only or of specific real or personal property ***must be tried by a jury***, unless a jury trial be waived." *Rule 38 - Jury Trial of Right*, S.C. R. Civ. P. 38. If triable issues exist, those issues must go to the jury. ***Rothrock v. Copeland***, 305 S.C. 402, 409 S.E.2d 366 (1991); *Young, supra*.

Compulsory Counterclaims

Respondents foreclosure action is an action in equity. *Hayne Fed. Credit Union,* 327 S.C. at 248, 489 S.E.2d at 475. Generally, "In equity the parties are not entitled, as a matter of right, to a trial by jury. However, counterclaims, including those raised in equitable actions—may, at times, be entitled to a jury trial.

If the complaint is equitable and the counterclaim is legal and compulsory, the plaintiff or the defendant has a right to a jury trial on the counterclaim. In that case, the proper procedure is as follows:

> (a) The trial judge may, pursuant to Rule 42(b), order separate trials of the legal and equitable claims, or may order the claims tried in a single proceeding. *Wachovia Bank, Nat. Ass'n v. Blackburn,* 407 S.C. 755 S.E.2d, 329 (2014)

A counterclaim is compulsory only if it arises out of the same transaction or occurrence as the opposing party's claim.'" *Wells Fargo Bank, N.A. v. Smith,* 398 S.C. 487, 495, 730 S.E.2d 328, 332-33 (Ct.App.2012) (quoting *First-Citizens Bank & Trust Co. of S.C. v. Hucks,* 305 S.C. 296, 298, 408 S.E.2d 222, 223 (1991)); *see also* Rule 13(a), SCRCP.

It is undisputed that one or more of appellants' counterclaim are legal in nature. Thus the only question is whether the counterclaims are compulsory. In *North Carolina Federal S L v. DAV Corp., supra,* the Court held that the test for determining if counterclaims are permissive or compulsory is whether there is a logical relationship between the claim and the counterclaim. In the instant case, the Fulks had a counterclaim for negligence misrepresentation and incorporated statements from their affirmative defenses including no. 13 of their amended answer and counterclaim (Amend. Anws & CC, pg. 3, ¶13) that the mortgage and note was a forgery or fraud. This counterclaim alleged that the note and mortgage which respondents base its foreclosure claim was obtained by fraud or forgery and arise out of the same transaction or occurrence as the respondent claim.

The Fulks other counterclaims for violation of South Carolina trade act, NEID and fraudulent concealment are all legal and compulsory in nature because they arise from the respondents

foreclosure claim based on a illegal note and mortgage. Pro se litigants the Fulks acknowledge that given this is their first attempt at maneuvering the court system unpresented, their claims may have fell short in articulating its compulsory nature. However, the MIE errored in denying leave to amend the complaint at such an early stage of the litigation as discussed below.

2. THE MIE ERROR AND ABUSED ITS DISCRECTION IN DISMISSING THE COUNTERCLAIMS WITHOUT GRANTING LEAVE TO AMEND

2.A. The MIE refusal to grant leave to amend was error when Respondents provided no evidence of prejudice by granting leave to amend.

On May 2, 2024, respondents filed a Rule 12(b)(6) motion to dismiss counterclaims. The lower court erred by granting respondent motion to dismiss counterclaim without granting leave to amend. At the motion to dismiss hearing, the MIE allowed respondents to address their motion to dismiss first. Upon respondent completing their argument in support of their motion, the MIE only allowed appellants to addressed their motion to transfer and stated;

THE COURT: Okay. All right. Let me hear the defendants' motion. (Hearing Trans. p. 11, ¶ 9)

MS. FULKS: Okay.

After the Fulks addressed their motion and after an unnecessary turn to the merits of the case initiated by the MIE, the MIE stated;

> **THE COURT**; Okay. Okay. The plaintiffs' motion is granted. The defendants motion is denied. (Hearing Trans, p. 16, ¶ 17) We need to have a hearing now on the merits of the case. So are y'all prepared to move forward today, or you want to come back.
> **MS. FULKS**: No. I'm getting ready to file something. I don't want to do nothing else today. (Hearing Trans, p. 16, ¶ 22)
> No. I'm getting ready to file something. I don't want to do nothing else today. (Hearing Trans, p. 16, ¶ 22)

Appellant Ms. Fulks later asked the MIE for leave to amend. While Ms. Fulk may not have perfectly articulated her request for leave to amend, the MIE knew exactly what Ms. Fulks was requesting. Ordinarily, the time for requesting leave to amend to correct a Rule 12(b)(6) pleading defect is after the trial court has determined the original pleading was deficient. *Skydive Myrtle Beach v. Horry County, 826 SE 2d 585 - SC: Supreme Court 2019*

> **MS. FULKS**: Can I get a stay or extra time to amend the counteraction based on what he read that needs to be included. Can I ger a stay of extra time for that. (Hearing Trans, p. 17, ¶ 25, p. 18, ¶1)
> **THE COURT**: Your motion's denied. We're going to set a hearing on the merits.

When a trial court finds a complaint fails "to state facts sufficient to constitute a cause of action" under Rule 12(b)(6), the court should give the plaintiff an opportunity to amend the complaint pursuant to Rule 15(a) before filing the final order of dismissal. *See* Foman v. Davis, 371 U.S. 178, 179, 182, 83 S.Ct. 227, 228, 230, 9 L.Ed.2d 222, 224, 226 (1962) (where a complaint is dismissed "for failure to state a claim upon which relief might be granted," leave to amend the complaint "should, as the rules require, be `freely given'" (quoting Rule 15(a), Fed. R. Civ. P.)); *Dockside Ass'n, Inc. v. Detyens*, 180*180 *Simmons & Carlisle*, 297 S.C. 91, 95, 374 S.E.2d 907, 909 (Ct. App. 1988) (holding "Dockside should have been given leave to amend its complaint" before it was finally dismissed pursuant to Rule 12(b), SCRCP (citing *Foman*, 371 U.S. at 182, 83 S.Ct. at 230, 9 L.Ed.2d at 226)).

Proper Considerations under Rule 15(a)

Rule 15(a) "strongly favors amendments and the court is encouraged to freely grant leave to amend." *Patton v. Miller*, 420 S.C. 471, 489-90, 804 S.E.2d 252, 261 (2017) (quoting *Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276, 286, 607 S.E.2d 711, 717 (Ct. App. 2005)).

A trial court has discretion to deny a motion to amend if the party opposing the amendment can show a valid reason for denying the motion. *See* Rule 15(a) (stating "leave shall be freely given when justice so requires and does not prejudice any other party"); *Foman*, 371 U.S. at 182, 83 S.Ct. at 230, 9 L.Ed.2d at 226 (listing valid reasons for denying a motion to amend); *Patton*, 420 S.C. at 490, 804 S.E.2d at 262 (stating "the circuit court should have considered whether the defendants were prejudiced by the amendment, or whether there was some other substantial reason to deny it"); 420 S.C. at 491 n.9, 804 S.E.2d at 262 n.9 (stating the burden of establishing a reason for denying the motion is on the party opposing the amendment).

At the September 16, 2024, hearing, respondents never opposed Ms. Fulks request for leave to amend nor did they demonstrate that they would be prejudice by an amendment. The case in its infant stages. No discovery or scheduling orders had begun at the time. The MIE provided *no* reason for the denial of leave to amend either at the hearing or in the court's order. Considering the respondents did not oppose the leave request nor demonstrated they would be prejudice by an amendment, there was no reason for MIE to deny leave to amend. See *Forrester v. Smith & Steele Builders, Inc.*, 295 S.C. 504, 507, 369 S.E.2d 156, 158 (Ct. App. 1988) (stating "a proper reason" to deny a motion to amend could be "bad faith, undue delay, or prejudice"); *Id.* (**"In the absence of a proper reason, . . . a denial of leave to amend is an abuse of discretion."**).

Actually, the MIE appeared "Hell bent" on moving to the merits of the case the same day when either party was ready to proceed (Hearing Trans, p. 16, ¶ 17).

> **THE COURT:** We need to have a hearing now on the merits of the case.
> So are y'all prepared to move forward today, or you want to come back.

Here, the MIE erred by failing even to even consider allowing the Fulks to amend their counterclaims. *See* *Patton*, 420 S.C. at 490, 804 S.E.2d at 262 (holding the trial court's failure to exercise its discretion under Rule 15(a) is itself an abuse of discretion).

CONCLUSION

Therefore, for the forgoing reasons, Appellants Jacob Fulks and Florene Fulks, respectfully ask this Court to reverse the lower court's ruling dismissing the Fulks counterclaims without leave to amend and reverse the MIE denial of their motion to transfer the case back to the circuit court.

Respectfully submitted,

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PROOF OF SERVICE

We certify that on February 7, 2025 we have served the Designation of Matters of Appellants Jacob Fulks and Florene Fulks by email and U.S. Postal Service on Respondents attorney of record Brian P. Yoho S.C., brian.yoho@rogerstownsend.com, Robert Brooks Wright, robert.wright@rogerstownsend.com, John Hearn, john.hearn@rogerstownsend.com at Roger Townsend, LLC 1221 Main Street, 14th Floor, Columbia, SC 29201 and by hand delivery to the Clerk of the Court of Appeals and the Clerk of Richland County.

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Signature: Jacob Fulks and Florene Fulks

February 7, 2025