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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Judge

Appellate Case No. 2024-000372

Wilmington Savings Fund Society FSB as Trustee of Stanwich Mortgage Loan Trust I ……..……..…..Respondent,

v.

Ebonee D. Brown; Georgia M. Brown; South Carolina Department of Motor Vehicles, ……...……..……..……Defendants,

of whom Ebonee D. Brown and Georgia M. Brown are the ……Appellants.

RESPONDENT'S FINAL BRIEF

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I. Did the circuit court err in finding that the parties intended for the mobile home to be deemed a permanent improvement on the real property and subject to being sold with the real property at any foreclosure sale?

II. Did the circuit court err in granting summary judgment on the Browns' Fair Debt Collection Practices Act claim?

III. Did the circuit court err in striking the Browns' jury demand and referring this case to a special referee?

STATEMENT OF THE CASE

This is an appeal of an order granting summary judgment in a declaratory judgment and mortgage foreclosure case. On September 2, 2022, Wilmington Savings Fund Society, FSB, as Trustee of Stanwich Mortgage Loan Trust I ("Wilmington Savings"), filed a lis pendens, summons and complaint in this case against the defendants, Ebonee D. Brown, Georgia M. Brown, and the South Carolina Department of Motor Vehicles. (R. pp. 11-19). The complaint alleged that, on or about August 31, 2006, the defendants, Ebonee D. Brown and Georgia M. Brown ("Browns") executed a promissory note ("Note"), payable in monthly installments to Primary Residential Mortgage, Inc., or its assigns, for the principal amount of $103,377.00, plus interest at the rate of six and one-half (6.5%) percent per annum. (R. pp. 13-14). The complaint further alleged that the Note was secured by a mortgage ("Mortgage") also executed by the Browns on or about August 31, 2006, that the Mortgage secured real property located at 1167 Goldmine Road, Chester, SC 29706 ("Real Property"), plus a mobile/manufactured home, and that, through a series of assignments, Wilmington Savings was the holder of the Note and Mortgage. (R. pp. 14-15). The complaint set forth three causes of action: (1) a declaratory judgment cause of action pursuant to S.C. Code Ann. § 15-53-20 *et seq.* that a 2006 Clayton Oxford mobile/manufactured home having serial number OHCO17718NCAB ("Mobile Home") was intended to be an improvement on the Real Property and was subject to the lien of the Mortgage; (2) a cause of action for possession of the Mobile Home; and (3) a cause of action for foreclosure of the real property and Mobile Home. (R. pp. 15-18). The South Carolina Department of Motor Vehicles ("SCDMV") was named as a defendant because Wilmington Savings was requesting that the SCDMV be ordered to issue a new certificate of title to the Mobile Home. (R. p. 18). The defendants, Georgia M. Brown and Ebonee D. Brown (the "Browns"), were served with the lis pendens, summons and complaint on

September 12, 2022. (R. pp. 70-71). On October 12, 2022, the Browns filed an answer and counterclaim that demanded a trial by jury. (R. pp. 20-28). In addition to a general denial, the answer and counterclaim set forth the following defenses: (1) res jusdicata/waiver; (2) dismissal pursuant to SCRCP Rule 12(b)(4) and 12(b)(6); and (3) unclean hands. (R. pp. 20-25). The answer and counterclaim also set forth three counterclaims: (1) conversion; (2) violation of the Fair Debt Collection Practices Act; and (3) violation of the Unfair Trade Practices Act. (R. pp. 25-27). Wilmington Savings filed its reply to the answer and counterclaim on November 10, 2022. (R. pp. 28-32).

On August 22, 2023, Wilmington Savings filed a motion for summary judgment. (R. pp. 33-116). Wilmington Savings filed a motion to strike the Browns' jury demand on October 18, 2023. (R. pp. 117-119). On November 14, 2023, the Browns filed a memorandum in opposition to Wilmington Savings' motions to strike the jury demand and for summary judgment. (R. pp. 141-48). After a hearing on November 15, 2023, Circuit Court Judge J. Mark Hayes, II, issued an order on January 11, 2024 ("Summary Judgment Order") that granted Wilmington Savings' motion for summary judgment, struck the Browns' jury trial demand, and referred the case, pursuant to Rule 53(b), SCRCP, to W.L.D. Marion, as special referee for Chester County. (R. pp. 1-6). On January 22, 2024, the Browns filed a Rule 59(e) motion to reconsider, alter or amend the Summary Judgment Order. (R. pp. 120-22). Wilmington Savings filed a memorandum in opposition to the Browns' motion to reconsider on February 6, 2024. (R. pp. 149-53). On March 1, 2024, Judge J. Mark Hayes, II, issued an order denying the Browns' motion to reconsider, alter or amend the Summary Judgment Order. (R. pp. 7-10). The Browns filed their notice of appeal on March 11, 2024.

STANDARD OF REVIEW

"The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder." *S. Glass & Plastics Co., Inc. v. Kemper,* 399 S.C. 483, 490, 732 S.E.2d 205, 208 (Ct. App. 2012) (citing *George v. Fabri,* 355 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)). "Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law." *Fleming v. Rose,* 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). In determining whether genuine issues of fact exist, the evidence and all reasonable inferences drawn from it must be viewed in the light most favorable to the nonmoving party. *Sauner v. Pub. Serv. Auth. of S.C.,* 354 S.C. 397, 404, 581 S.E.2d 161, 165 (2003). "Once the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is a genuine issue of fact remaining for trial." *Sides v. Greenville Hosp. Sys.,* 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct. App. 2004). "[I]t is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine." *Kitchen Planners, LLC v. Friedman,* 440 S.C. 456, 463, 892 S.E.2d 297, 301 (2023) (quoting *Town of Hollywood v. Floyd,* 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013)). When reviewing the grant of a summary judgment motion, the appellate court applies the same standard applied by the circuit court pursuant to Rule 56(c), SCRCP. *Fleming* at 493-94, 567 S.E.2d at 860.

ARGUMENT

1. The circuit court did not err in finding that the parties intended for the mobile home to be deemed a permanent improvement on the real property and subject to being sold with the real property at any foreclosure sale.

In order to fully understand this case, it is important to know that the Note and Mortgage at issue in this case were previously at issue in a prior foreclosure case brought against the Browns by a summons and complaint filed on April 14, 2009, by GMAC Mortgage, LLC, the previous holder of the Note and Mortgage. (R. pp. 54-67). In that prior foreclosure case, South Carolina

civil action number 2009-CP-12-00237, a non-jury trial was held that resulted in an order being issued on December 31, 2019 ("2019 Order"). (R. p. 54). By the time of the 2019 Order, the Note and Mortgage had been assigned several times, and WVMF Funding, LLC, a subsequent holder of the Note and Mortgage, was plaintiff. (R. pp. 56-57). The 2019 Order set forth the lengthy procedural history of that case, determined the debt owed on the Note, and determined the Mortgage recorded on September 14, 2006, in the Office of the Register of Deeds for Chester County in Book 1310 at page 119 secured the Note. (R. pp. 56-67). However, the 2019 Order did not grant foreclosure to the Note holder at that time, as the court found that in October 2009, after the action was filed, GMAC Mortgage, LLC had entered into a foreclosure repayment agreement ("Agreement") with the Browns. (R. pp. 60-67). The court found that the Browns had made the payments pursuant to the Agreement until a subsequent holder of the Note repudiated the Agreement. (R. pp. 60-67). The 2019 Order therefore determined the Agreement to be "in full force and effect" with certain modifications. (R. pp. 65-67). The modifications ordered by the 2019 Order were the following:

a) The total outstanding debt under the Note secured by the Mortgage is the sum of $134,817.61 ("the Debt"), consisting of $101,190.30 in principal, plus $33,627.22 in past escrow advances;
b) Interest on the Debt shall accrue at the rate set forth in the Note commencing on the date of this Order;
c) Payments under the Agreement in the amount of $815.80 shall be made by the [Browns] beginning on February 1, 2020, and shall continue on the 1st day of March, April, May, June, and July, 2020, provided [the Browns] have made and shall be given credit by the Plaintiff as payments made and applied against the Debt for the payments of February 1, March 1, and April 1, 2020. [The Browns] shall make a payment of $15,631.40 on or before August 1, 2020, after which [the Browns] shall be considered in default in the payment of principal and interest and for the term as set forth in the Note and Mortgage, as the same may have been previously modified;
d) Escrow items accruing after the date of this Order shall be paid by the [Browns] as required by and under the terms of the Note and Mortgage, as the same may have been previously modified.

(R. pp. 65-67). Thus, the 2019 Order set forth the payments the Browns were required to make pursuant to the Agreement and determined the total principal, interest, and escrow advances due on the Note and Mortgage. The 2019 Order was not modified or appealed, so the parties were required to follow it. *See Lindsay v. Lindsay,* 328 S.C. 329, 339, 491 S.E.2d 583, 588 (Ct. App. 1997) ("The unchallenged ruling, 'right or wrong, is the law of the case and requires affirmance.'") (quoting *Buckner v. Preferred Mut. Ins. Co.,* 255 S.C. 159, 161, 177 S.E.2d 544, 544 (1970)).

In its complaint in the present case, Wilmington Savings alleged, among other things, that it was the current holder of the Note and Mortgage and that the Browns had failed to make the payment due on August 1, 2020, which as set forth above, was the payment of $15,631.40 that the 2019 Order required to be paid by the Browns. (R. pp. 13-16, 18). Wilmington Savings' allegations regarding the Mortgage and its recording are set forth in paragraphs 9 and 10. (R. p. 14). Paragraph 9 sets forth that the Mortgage was executed by the Browns and that the Mortgage was given in security for the Note. (R. p. 14). Paragraph 9 also provides the legal description of the Real Property, and immediately underneath this legal description is the statement: "Also a 2006 Clayton Oxford Mobile Home Serial Number OHCO17718NCAB." (R. p. 14). Paragraph 10 of the complaint states that "[o]n September 14, 2006, the Mortgage was recorded in the Office of the Register of Deeds for Chester County in Book 01310, Page 00119." (R. p. 14).

The Browns' responses to these allegations regarding the Mortgage and its recording are set forth in paragraphs 9 and 10 of their answer and counterclaim, in which they state that "[the Browns] admit the same to the extent the alleged facts were found in the order filed on December 31, 2019, in WVMF FUNDING, LLC v. Ebonee D. Brown, at al., Case No.: 2009-CP-12-0237." (R. p. 21). In paragraph 9, the Browns add "Brown denies that the subject mobile home is subject

to the mortgage involved in this case." (R. p. 21). However, other than this general statement, the Browns add nothing to support the allegation. (R. pp. 20-28).

On August 22, 2023, almost a year after the present foreclosure action was filed, Wilmington Savings moved for summary judgment. (R. pp. 33-116). As the party moving for summary judgment, the initial burden was on Wilmington Savings to prove the absence of a genuine issue of material fact. *See Peterson v. W. Am. Ins. Co.*, 336 S.C. 89, 94, 518 S.E.2d 608, 610 (Ct. App. 1999) ("Under Rule 56(c), SCRCP, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact."). In support of its motion for summary judgment, Wilmington Savings submitted copies of the original Note and Mortgage, a copy of the 2019 Order establishing the payments required by the Browns, a copy of the notice to the Browns of their default, and the affidavit ("Affidavit") of Chris Lechtanski, Vice President of Collateral Operations for Carrington Mortgage Services, LLC ("Carrington") and Attorney in Fact for Wilmington Savings. (R. pp. 33-116). The Affidavit indicated that Carrington was the mortgage servicer and attorney-in-fact for Wilmington Savings and that Carrington was in possession of the original Note, Mortgage, and allonges. (R. p. 72-116). The Affidavit also stated that the Browns had failed to make the payment due on August 1, 2020, and that the current outstanding balance due on the Note and Mortgage through August 1, 2023 was the amount of $182,621.98, which was comprised of the following: unpaid principal of $100,549.98; interest through August 1, 2023 in the amount of $19,607.40, plus $18.155 in per diem interest thereafter at 6.5% per annum; an escrow balance of $43,065.56; a suspense balance of ($0.80); the deferred balance for the August 2020 payment of $13,184.00; and attorney's fees and costs in the amount of $6,215.84. (R. pp. 73, 77-78). Through these documents, Wilmington Savings met its burden

of showing it was the holder of the Note and Mortgage, the default by the Browns, that the Browns were provided with the pre-acceleration notice and the security for the Note.

Although the Browns filed a memorandum in opposition to Wilmington Savings' motion for summary judgment the day before the motion was heard, the Browns' memorandum was unsupported by any affidavits. (R. pp. 141-48). The Browns' memorandum made general allegations without providing any factual support. (R. pp. 141-48). Therefore, Wilmington Savings was entitled to summary judgment. *See Humana Hospital-Bayside v. Lightle,* 305 SA.C. 214, 216, 407 S.E.2d 637, 638 (1991) ("Where the opposing party relies solely upon the pleadings, files no counter-affidavits, and makes no factual showing in opposition to a motion for summary judgment, the lower court is *required* under Rule 56(c) to grant summary judgment if, under the facts presented by the moving party, they are entitled to judgment as a matter of law.") (emphasis added); *Fowler v. Hunter,* 380 S.C. 121, 125, 668 S.E.2d 803, 805 (Ct. App. 2008) ("[W]hen a party has moved for summary judgment, the opposing party may not rest upon the mere allegations or denials of his pleadings to defeat it.").

The circuit court did not err in finding that the parties intended for the Mobile Home to be deemed a permanent improvement on the Real Property and subject to being sold with the Real Property at any foreclosure sale. In the January 11, 2024 order granting summary judgment and for reference ("Order Granting Summary Judgment") from which the Browns are appealing, the circuit court found the following:

> The mortgage included reference to a 2006 Clayton Oxford Mobile Home Serial Number OHCO17718NCAB which mobile home is located and situate on the Property. A Manufactured Home Rider to Security Instrument affixed to and part of the Mortgage specifically identified said mobile home. *I find that the parties intended for the mobile home to be deemed a permanent improvement on the property and subject to the lien of the Mortgage. I further find that Plaintiff is entitled to proceeds from the sale of the mobile home together with the real property by the special referee.*

. . .

> I therefore find that Plaintiff is entitled to judgment of foreclosure of the aforesaid Mortgage as a matter of law, in an amount to be determined by hearing of the special referee. I further find that the mobile home identified as 2006 Clayton Oxford Mobile Home Serial Number OHCO17718NCAB, which mobile home is located and situate on the Property, is a permanent improvement to the Property, to be sold at foreclosure sale.

(R. pp. 3-4).

Wilmington Savings concedes that the record does not reveal whether the Mobile Home is actually a "fixture" to the Real Property. However, such a "fixture" finding was not necessary, as the record is clear that the parties intended for the Mobile Home to be an improvement and to be included within the definition of the property that the Note holder could sell in the event the Browns defaulted on the payments required under the terms of the Note and Mortgage. The first two pages of the Mortgage and the first page of the Manufactured Home Rider make it clear that the definition of "Property" includes the following:

> MANUFACTURERS NAME: CLAYTON HOMES
> MODEL: OXFORD
> MODEL YEAR: 2006
> MODEL NUMBER: OXFORD
> SERIAL NUMBER: OHCO17718NCAB
> LENGTH AND WIDTH: 76 X 32

(R. pp. 79-80, 90-92). Paragraph 22 of the Mortgage also makes it clear that the Manufactured Home Rider, which is recorded with the Mortgage, is incorporated into and amends and supplements the covenants and agreements in the Mortgage. (R. pp. 85-86).

In the first cause of action of its complaint, Wilmington Savings, requests that, pursuant to S.C. Code Ann. § 15-53-10, *et seq*., the court enter a declaratory judgment that the Mobile Home was intended by the parties to be an improvement to the Real Property, that the Mobile Home is subject to the lien of the Mortgage, and that the Mobile Home is therefore subject to being sold at

foreclosure sale. (R. pp. 13-16). Wilmington Savings also made this argument at the hearing on its motion for summary judgment. (R. p. 130, line 1-p. 132, line 19). The Order Granting Summary Judgment found that the parties intended for the mobile home to be deemed a permanent improvement on the property and subject to the lien of the Mortgage and also found that that Wilmington Savings was entitled to the proceeds from the sale of the Mobile Home together with the Real Property. (R. p. 3). The record clearly supports this finding by the circuit court.

The Browns may allege that there is a genuine issue of material fact that the recorded Mortgage, which has the attached Manufactured Home Rider, actually secures the Note. However, the Browns are barred by collateral estoppel from making that argument. The issue of the Note and Mortgage were actually litigated in the 2009 action, determined in the 2009 action and necessary to support the 2019 judgment in the 2009 action. (R. pp. 54-67). Therefore, collateral estoppel bars the Brown from raising this issue again. *See Carolina Renewal, Inc. v. S.C. Dep't of Transp.,* 385 S.C. 550, 554-55, 684 S.E.2d 779, 782 (Ct. App. 2009) (Collateral estoppel applies if an issue "(1) was actually litigated in the prior action; (2) directly determined in the prior action; (3) necessary to support the prior judgment") (citing *Beall v. Doe*, 281 S.C. 363, 369 n.1, 315 S.E.2d 186, 189-90 n.1 (Ct. App. 1984)).

In its appellate brief as to this issue, the Browns focus on two factors: (1) whether the record revealed the Mobile Home was a fixture; and (2) if the Mobile Home was not a fixture, Wilmington Savings was required to file a claim and delivery action as set forth S.C. Code Ann. §§ 15-69-30 & 50. (Browns' Appellate Brief, pp. 5-9). Under the Browns' argument, in order to foreclose on a mobile home, a foreclosing mortgagee must either prove the mobile home is a fixture, or the mortgagee must file a claim and delivery action and comply with the affidavit

requirements set forth in S.C. Code Ann. §§ 15-69-30 & 50. Under the facts in this case, these arguments fail.

As stated above, whether the record revealed the Mobile Home to actually be a fixture is not important. The question under Wilmington Savings' declaratory judgment cause of action is whether the Mobile Home was intended by the parties to be situated on the Real Property and subject to being sold with the Real Property at any foreclosure sale. The Mobile Home is clearly identified in the Mortgage and the Manufactured Home Rider, which is recorded with and incorporated into the Mortgage. (R. pp. 79-80, 85-86, 90-93). The Browns never allege the Mobile Home identified is not located on the Real Property; they only allege it was not intended to be secured by the Mortgage. (R. p. 21). However, the Browns' allegation regarding the parties not intending for the Mobile Home to be security is clearly unsupported by the record. (R. pp. 79-80, 85-86, 90-93).

The Brown's argument that, if the Mobile Home is personal property, Wilmington Savings is required to comply with the affidavit requirements of S.C. Code Ann. §§ 15-69-30 & 50 in order to gain possession, is misplaced. The affidavit requirements of Chapter 69 of Title 15 concerns actions where a plaintiff is trying to gain *immediate* possession of personal property. *See* S.C. Code Ann. 15-69-10 ("The plaintiff, in an action to recover the possession of personal property, may, at the time of issuing the summons, or at any time before answer, *claim the immediate delivery of such property as, provided in this chapter*") (emphasis added); *see also John Deere Constr. & Forestry Co. v. N. Edisto Logging, Inc.*, ___ S.C. ___, 904 S.E.2d 889, 891-95 (Ct. App. 2024) (Case where plaintiff requested immediate delivery of personal property).

In the present case, Wilmington Savings is not requesting immediate possession of the Mobile Home. Instead, Wilmington Savings is requesting that the court issue a declaratory

judgment that the Mobile Home is secured by the Mortgage and can be sold with the Real Property at any foreclosure sale. This cause of action does not even require Wilmington Savings to actually take possession of the Mobile Home.

For the reasons set forth above, the circuit court did not err in finding that the parties intended for the Mobile Home to be a permanent improvement on the real property and subject to being sold with the Real Property at any foreclosure sale.

2. The circuit court did not err in granting summary judgment on the Browns' Fair Debt Collection Practices Act claim.

For reasons similar to the above argument concerning summary judgment on the issue of the Mobile Home, the circuit court did not err in granting summary judgment to Wilmington Savings on the Browns' Fair Debt Collections Act ("FDCPA") claim. The Browns concede that the circuit court was proper in granting summary judgment as to the Browns' conversion and unfair trade practices counterclaims. (Browns' Appellate Brief, p. 9). However, the Browns argue that the circuit court erred in granting Wilmington Savings summary judgment on the Browns' FDCPA claim. (Browns' Appellate Brief, pp. 9-13).

The Browns appellate brief goes to great length to quote the law regarding the FDCPA. (Browns' Appellant Brief, pp. 9-13). However, in the Browns' appellate brief, the only factual allegation on this issue regarding Wilmington Savings is the following: "Here, Wilmington Savings represented the debt components barred by res judicata are a recoverable part of the debt at issue, thus misrepresenting the debt and violating the Fair Debt Collection Practices Act." (Browns' Appellate Brief, p. 12). The Browns are alleging that Wilmington Savings is trying to collect debt that is barred by the 2019 Order. (Browns' Appellate Brief, p. 12). The problem is that the Browns make this general allegation and never specify the debt that Wilmington Savings is trying to collect that is barred by the 2019 Order. (Brown's Appellate Brief, p. 9-12).

The 2019 Order was very specific as to the payments to be made by the Browns, the amount of principal owed on the Note, the interest rate, the date from which the interest rate was to be calculated, the amount of escrow advances, and the Browns' responsibility for the escrow items going forward. (R. pp. 65-67). Wilmington Savings' complaint sets forth the default date of August 1, 2020, the principal debt owed of $100,549.98, and the interest rate. (R. p. 18). Wilmington Savings' motion for summary judgment and memorandum in support of the motion were filed on August 22, 2023. (R. p. 33). As set forth above, the memorandum contained the Affidavit that set forth the specific items of debt that Wilmington Savings alleged were due. (R. pp. 72-74). Despite having this information, the Browns' attorney, at the motion for summary judgment hearing on November 15, 2023, was still not able to specify exactly what part of the debt Wilmington Savings was trying to collect that was barred by the 2019 Order. At the summary judgment motion hearing on November 15, 2023, Browns' attorney made the following statement regarding the debt allegation:

> But more to the point your Honor, there's this issue. We have also alleged that what is occurring here is them compounding the amount of interest beyond what is established in that prior foreclosure order. To now increase that amount of interest at play here in violation *perhaps of that order. Now that's an allegation at this point your Honor because we haven't gotten to the point of being able prove this.*

(R. p. 129, line 19-p. 130, line 1). Thus, at the motion hearing, the Browns admitted that, almost fourteen months after this case was filed, the allegation that Wilmington Savings may be trying to collect debt barred by the 2019 Order was still only an allegation- something the Browns could not prove.

The Browns may argue that summary judgment was premature because they should have been able to conduct further discovery. The burden is on the Browns to show they should be given more time. *See Guinan v. Tenet Healthsystems of Hilton Head, Inc.,* 383 S.C. 48, 54-55, 677 S.E.2d 32, 36 (Ct. App. 2009) ("A party claiming summary judgment is premature because they have not

been provided a full and fair opportunity to conduct discovery must advance a good reason why the time was insufficient under the facts of the case, and why further discovery would uncover additional relevant evidence and create a genuine issue of material fact."). The problem is that calculation of interest or any of the other components of the debt is generally merely a mathematical calculation, and this case had been pending for almost fourteen months at the time of the summary judgment hearing. The Browns have had plenty of time to substantiate their general allegation that the debt amount is incorrect and that Wilmington Savings is therefore violating the FDCPA by trying to collect a debt barred by the 2019 Order.

A party opposing a properly supported summary judgment "may not rest on the mere allegations or denials of his pleading, but must set forth or point to specific facts showing there is a genuine issue of material fact." *Bravis v. Dunbar,* 316 S.E.2d 263, 265, 449 S.E.2d 495, 496 (Ct. App. 1994). Wilmington Savings properly supported its motion for summary judgment. The Browns have only offered mere allegations regarding the alleged debt that Wilmington Savings is trying to collect that is barred by the 2019 Order. Therefore, the circuit court did not err in granting Wilmington Savings' motion for summary judgment on this issue.

3. The circuit court did not err in striking the Browns' jury demand and referring this case to a special referee.

Th circuit court did not err in striking the Browns' jury demand and referring this case to a special referee. "A mortgage foreclosure is an action in equity." *U.S. Bank Trust Nat'l Ass'n v. Bell,* 385 S.C. 364, 373, 684 S.E.2d 199, 204 (Ct. App. 2009). In an equitable action, the Browns are entitled to a jury trial only if they assert a legal and compulsory counterclaim. *See C & S Real Estate Servs., Inc. v. Massengale*, 290 S.C. 299, 302, 350 S.E.2d 191, 193 (1986). Since the circuit court granted summary judgment on the Browns's counterclaims, the Browns are not entitled to a jury trial on the basis of any counterclaims.

The Browns argue that they are entitled to a jury trial on Wilmington Savings "claim and delivery" action regarding the Mobile Home. (Brown's Appellate Brief, pp. 13-14). However, as set forth above, Wilmington Savings did not set forth a claim and delivery cause of action in this case. Instead, Wilmington Savings set forth a declaratory judgment cause of action asking for the court to declare that the parties intended for the mobile home to be an improvement on the Real Property and subject to being sold at foreclosure sale. The evidence in this case was clear that Wilmington Savings was entitled to summary judgment on this issue, and the circuit court properly granted it. Therefore, the issue of whether the Mobile Home was an improvement and may be sold at any foreclosure sale has already been decided.

For the reasons set forth above, the circuit court did not err in striking the Browns' jury demand and referring the case to the special referee.

CONCLUSION

For the reasons set forth above, the circuit court order granting Wilmington Savings' motion for summary judgment and granting Wilmington Savings' motion to strike the Browns' jury demand should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Respondent's attorneys certify that this brief complies with the requirements of Rule 211(b) of the South Carolina Appellate Court Rules.

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PROOF OF SERVICE

I hereby certify that on March 17, 2025, I served Respondent's Final Brief upon counsel for the Appellants by delivering a copy of same by electronic service to the primary email address listed in the Attorney Information Service as follows:

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