

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)
)
SouthState Bank, National Association,)
)
Plaintiff,)
)
vs.)
)
Wendy J. McCutcheon,)
)
Defendant.)
)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTHTEENTH CIRCUIT

C.A. No.: 2025-CP-22-00508

ORDER
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SC Court of Appeals

This matter came before the Court on November 20, 2025, for a hearing on (1) Plaintiff SouthState Bank, National Association's ("SouthState") Motion to Strike Jury Demand and to Refer to Foreclosure Action to Master-In-Equity and (2) non-party Gordon McCutcheon's Amended Motion to Intervene. Lawrence Hershon, Esq. appeared on behalf of SouthState and Nate Fata appeared on behalf of Defendant Wendy McCutcheon and non-party Gordon McCutcheon.

MOTION TO STRIKE JURY DEMAND AND REFER

As set forth in the Complaint, SouthState is seeking the foreclosure of a judgment lien on a one-half interest in certain real property owned by Defendant Wendy McCutcheon in Georgetown County. Pursuant to Rule 71(a) and Rule 53, SCRCF, this case requires reference to the Master-in-Equity. *See, e.g., U.S. Bank Trust Nat'l Ass'n v. Bell*, 385 S.C. 364, 373, 684 S.E.2d 199, 204 (Ct. App. 2009) (explaining that a foreclosure action is an action in equity). Defendant Wendy McCutcheon filed an Answer and Counterclaim, with a counterclaim seeking declaratory judgment concerning items such as the date of expiration of the judgment, the enforceability of the judgment, and the applicability of certain homestead exemptions.

Because this foreclosure action is one sounding in equity, Defendant is not entitled, as a matter of right, to a jury trial. *South Carolina Community Bank v. Salon Proz, LLC*, 420 S.C. 89,

96, 800 S.E.2d 488, 491-92 (Ct. App. 2017) (citing *Wachovia Bank, Nat'l Ass'n v. Blackburn*, 407 S.C. 321, 328, 755 S.E.2d 437, 441 (2014)). “A suit for declaratory judgment is neither legal nor equitable, but is determined by the nature of the underlying issue.” *Felts v. Richland County*, 303 S.C. 354, 356, 400 S.E.2d 781, 782 (1991). “Generally, the relevant question in determining the right to trial by jury is whether an action is legal or equitable; there is no right to trial by jury for equitable actions.” *Lester v. Dawson*, 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997). “The character of an action as legal or equitable depends on the relief sought.” *Cedar Cove Homeowners Ass'n v. DiPietro*, 368 S.C. 254, 258, 628 S.E.2d 284, 286 (Ct. App. 2006).

By way of example, “Where, in actions of foreclosure, [the] defendant sets up a defense and/or a counterclaim affecting the consideration, and arising out of the transaction in which the mortgage or lien was created, the authorities hold that the issues thus raised are equitable and are to be tried by the court upon its equity side.” *Collier v. Green*, 244 S.C. 367, 371, 137 S.E.2d 277, 280 (1964).

Defendant argued that because issues of statutory interpretation are matters of law (as to the applicability and meaning of the homestead exemption), Defendant is therefore entitled to a jury trial. This position is legally incorrect. While matters of statutory interpretation are matters of law, this means that the issue is for the judge to decide, not a jury. *See, e.g., Bessinger v. R-N-M- Builders & Assocs., LLC*, 421 S.C. 349, 806 S.E.2d 731 (Ct. App. 2017).

The facts and circumstances surrounding the declaratory judgment counterclaim asserted by Defendant clearly involve matters related to the judgment and to the right of SouthState to foreclose on its judgment lien. The nature of the underlying action is equitable; therefore, Defendant is not entitled to a jury trial.

Thus, the Court holds that the Motion to Strike Jury Demand and Refer to the Master-in-Equity is granted, the jury demand filed by Defendant is stricken, and that this matter is appropriate for reference to the Master-in-Equity.

MOTION TO INTERVENE

The real property at issue in the foreclosure action is owned by Wendy McCutcheon and Gordon McCutcheon, who are husband and wife. The foreclosure action only seeks the foreclosure and sale of Wendy McCutcheon's one half interest in the property, as the judgment is only against her and not against Gordon McCutcheon.

Gordon McCutcheon seeks to intervene in the action under Rules 19, 20, and 24, SCRPC. Gordon McCutcheon's concerns primarily deal with what will happen to his one half interest in the property if the foreclosure proceeds. Based on the pleadings and South Carolina law, nothing will happen to his one half interest as a result of this lawsuit. Gordon McCutcheon's interest is protected – he will maintain his one-half ownership regardless of result of the litigation; his ownership interest is not being attacked through this litigation. That he may have a new co-tenant does not change this fact.

Rule 19, SCRPC, concerns joinder of a person needed for adjudication. Under this rule, a party may intervene if the action in his absence may impair or impede his ability to protect his interest. A party is indispensable if an action will not afford complete relief among those already parties, will impair or impede an absent party's ability to protect his interest, or will leave parties already in the suit subject to substantial risk of incurring multiple or inconsistent obligations because the absent party was not joined. *Goddard v. Fairways Dev. Gen. P'ship.*, 310 S.C. 408, 426 S.E.2d 828 (Ct. App. 1993). Simply put, the elements required under this Rule are not met – Gordon McCutcheon's one-half interest is not impaired or impeded by this action; he will remain an owner regardless of the results of the litigation. If title in the one-half interest of Wendy McCutcheon does change hands, Gordon McCutcheon's ownership interest will remain intact.

Rule 20, SCRPC, concerns permissive joinder. For a defendant, under Rule 20(a), SCRPC, “[a]ll persons *may* be joined in one action as defendants if there is asserted against them jointly ... any right to relief ... out of the same transaction [or] occurrence ... and if any question of law or

fact common to all defendants will arise in the action.” Again, there is no claim to assert by SouthState against Gordon McCutcheon, as there is no judgment lien held against him. Therefore, this rule is inapplicable, as there are no claims to assert against Gordon McCutcheon.

Rule 24, SCRCF, allows for intervention as a matter of right. To intervene, not only must an individual have the right under Rule 24(a) SCRCF, but also standing which requires that the individual have a “personal stake in the subject matter of a lawsuit and is a real party in interest.” *Bailey v. Bailey*, 312 S.C. 454, 458 (1994). For this rule to apply, the applicant (a) claims an interest in the property in the action and (b) the disposition of the action may impede his ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties. Again, as a foreclosure action on a fractional interest that is not his, the action will not impede the ability to protect that interest, and he is not a real party in interest. His fractional interest will remain his after the lawsuit. That he may have a new co-owner may impact his use of his interest, but it does not impact the interest itself. Further, the co-owner now is his wife, who is represented by the same attorney as Gordon McCutcheon, will allow for adequate representation.

CONCLUSION

It appearing to the Court that the above-entitled action for foreclosure of an interest in real property located in Georgetown County, South Carolina is a proper matter to refer to the Master-in-Equity for said County, in accordance with Rules 53 and 71, SCRCF:

IT IS HEREBY ORDERED that the above-entitled action be, and the same hereby is, referred to the Honorable Joe Crosby, Master-in-Equity for Georgetown County, to make findings of fact and conclusions of law; to hear all matters arising from or reasonably related to this action; dispose of any and all issues and enter a final judgment in the case; order a judicial sale, and hear any issues after judgment, including but not limited to the issuance of a Writ of Assistance and the hearing of any issues involving appraisal proceedings under S.C. CODE ANN. §29-3-680 *et seq.* Any appeal from the decision of the Master-in-Equity shall be directly to the South Carolina

Supreme Court or Court of Appeals pursuant to S.C. CODE ANN. §14-11-85.

IT IS FURTHER ORDERED that non-party Gordon McCutcheon's Motion to Intervene is denied.

AND IT IS SO ORDERED.



Georgetown Common Pleas

Case Caption: Southstate Bank National Association VS Wendy J Mccutcheon

Case Number: 2025CP2200508

Type: Order/Referred to Master or Special Referee

It is so ordered

Eugene C. Griffith, Jr. 2154

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