

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

Joyce McDonald, Clerk of Court

Case No. 2013-CP-28-0601

Business Loan Center, LLC

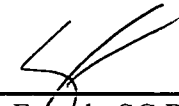
Respondent,

v.

Subham Hospitality, Inc. d/b/a
Knights Inn a/k/a Deluxe Inn,
Sudhir T. Mehta and Bhariben
Mehta;

Appellant

Initial Brief of Appellants



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SC Court of Appeals

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STATEMENT OF ISSUE ON APPEAL

DID THE CLERK OF COURT ERR IN REFERRING A CASE TO THE MASTER IN EQUITY WHEN THERE WERE LEGAL AND EQUITABLE CAUSES OF ACTION IN THE COMPLAINT AND A DEMAND FOR JURY TRIAL HAD BEEN MADE BY APPELLANTS?

STATEMENT OF THE CASE

This is an appeal from the Clerk of Court's Order for Reference to Master in Equity.

On July 25, 2013, Respondent, Business Loan Center, LLC, filed an Amended Complaint in Kershaw County, SC seeking foreclosure of real property and a deficiency judgment against the mortgagor and the guarantors, and enforcement of assignment of rents and leases. (Complaint paragraph 36). An Answer was served November 11, 2013 by Subham Hospitality, Inc, Sudhir T. Mehta and Bhartiben Mehta. This answer demanded a jury trial.

On or about December 26, 2013 Business Loan Center, LLC sent to the court a Motion for Order of Reference and a proposed Order of Reference. (Motion for Order of Reference) The Motion stated that this case was "an action commenced by the Plaintiff to foreclose a note and mortgage." The motion made no mention of the Plaintiff's causes of action against Mr. and Mrs. Mehta for collection on the guaranties, which were separate documents and separate causes of action. This order was signed by the Clerk of Court for Kershaw County on January 2, 2014 without a hearing.

The Notice of Appeal appealing this Order was filed by the Appellants This appeal was filed February 18, 2014.

ARGUMENTS

I. THE ORDER OF REFERENCE TO MASTER IN EQUITY DEPRIVES THE APPELLANTS OF THE RIGHT TO A JURY TRIAL.

a. The Appellants have a right to a jury trial under the South Carolina Rules of Civil Procedure.

Rule 38 SCRPC says,

“(a) Right Preserved. The right of trial by jury as declared by the Constitution or as given by a statute of South Carolina shall be preserved inviolate. 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.”

A suit on a guarantee is an action to collect money and an action at law. see Crafton v. Brown, 346 S.C. 347, 550 S.E. 2d 904 (S.C.App. 2001); see Southern Bank & Trust Co. v. Harley, 295 S.C. 423, 368 S.E.2d 908 (1988). Actions at law give rise to the right to have that action heard by a jury. The appellants asserted this right with their answer in the caption and in the plea in compliance with Rule 38 SCRPC.

b. When a case involves both legal and equitable issues, there exists the right to a jury trial on the legal issues.

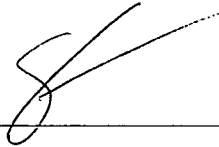
When a case involves legal and equitable issues, there exists a right to a jury trial on the legal issues. *see* Time Warner Cable v. Condo Services, Inc 381 S.C. 275, 672 S.E.2d 816 (2009); *see* Johnson v. SC National Bank, 354 S.E.2d. 895, 292 SC 51, 53 (1987), *citing* C & S Real Estate Services v. Massengale, 290 S.C. 299, 302, 350 S.E.2d 191, 193 (1986). This case has the equitable issue of the foreclosure but a legal issue regarding the suit on the guarantee. A judge has two options when confronted with a case with multiple issues that are legal and equitable. “He may either order separate trials pursuant to rule 42(b) or may order the claims tried in a single proceeding.” Johnson at 55. However, the judge must ensure that, “a joint trial will not deprive a party of his right to a full jury trial of legal issues.” Id. In Johnson, the trial judge ordered the actions to be tried by the Master in Equity, who sits without a jury. Ordering a case tried by the Master in Equity deprived the Appellants of the right to a full jury trial of legal issues.

The Respondent chose to file a case with multiple causes of action; the case contains actions for foreclosure against Subham Hospitality, Inc. and actions to collect on guaranties against Sudhir T. Mehta and Bhartiben Mehta. (Amended Foreclosure Complaint paragraph 36). Despite this, the Respondents have repeatedly labeled this case as a “foreclosure.” They even mis-characterized this action in their motion for Order of Reference. It is not. It is a case where the Plaintiff is seeking to foreclose on its mortgage, obtain a deficiency judgment against the obligor under the Note, and to obtain a money judgment against

guarantors. (Complaint Paragraphs 36 and 37) Because the Respondant chose to sue on a guaranty, there exists an action at law. see Crafton at 351.

II. CONCLUSION

Referring an action with pending claims that should be heard by a jury is a denial of the Appellants' right to a jury trial. The Clerk of Court abused its discretion in granting the Motion for Order of Reference and denying the appellants the right a jury trial. This Court should reverse the order of the Clerk of Court and order the Suit for Collection on the Guaranty be returned to the jury docket. The foreclosure should be either tried with the suit on the guaranty or stayed pending the outcome.



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CERTIFICATE OF SERVICE OF INITIAL BRIEF

I certify that I have served the Initial Brief and Designation of Matter on Counsel of Record by depositing a copy of it in the United States Mail, postage prepaid, on March 20, 2014 addressed as follows:

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