

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 E*Trade Bank,)
)
 Plaintiff,)
 vs.)
)
 Elizabeth S. Kalman, *et al.*,)
)
 Defendants.)
 _____)

IN THE COURT OF COMMON PLEAS

Case No. 2010-CP-10-6666

ORDER OF REFERENCE

FILED
 2013 MAY 24 PM 1:00
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY _____

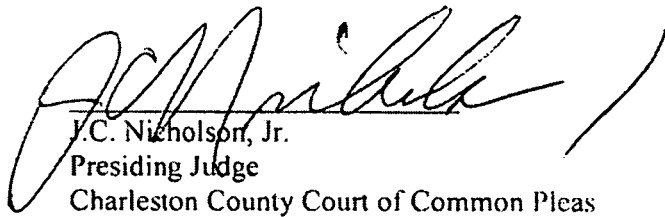
This matter came before the Court upon Plaintiff's motion requesting an Order referring this matter to Mikell R. Scarborough, Master-in-Equity for Charleston County. Having reviewed the pleadings and other filings by the parties, it appears that this is a mortgage foreclosure action. Defendants Elizabeth Kalman and Kevin Kalman filed an Answer and Counterclaim in which they requested a jury trial. Other defendants in the case do not object to the matter being referred to the Master in Equity.

An action to foreclosure a mortgage is an equitable proceeding in which there is no right to a jury trial. *Wells Fargo Bank v. Smith*, Opinion No. 4988 (Ct. App. 8/8/12). The only counterclaim alleged in the Answer and Counterclaim is for violation of the attorney preference statute, Section 37-10-102(a) of the South Carolina Code. In *Wells Fargo Bank v. Smith, supra*, the South Carolina Court of Appeals held that a counterclaim for violation of the attorney preference action, when asserted in a mortgage foreclosure action, is a permissive counterclaim. Therefore, a defendant is not entitled to a jury trial on an attorney preference counterclaim, and Plaintiff's Motion for Order of Reference should be granted.

Accordingly, based on the foregoing and pursuant to Rule 53(b) of the South Carolina Rules of Civil Procedure,

IT IS ORDERED that the above-captioned case be and the same hereby is referred to Mikell R. Scarborough, Master-in-Equity for Charleston County, to take the testimony and other evidence offered and to direct entry of judgment in this action, without further order of this Court. Any appeal from the final judgment entered by the Master-in-Equity should be made directly to the South Carolina Court of Appeals.

AND IT IS SO ORDERED.


J.C. Nicholson, Jr.
Presiding Judge
Charleston County Court of Common Pleas

Charleston, South Carolina

May 15, 2013



ATTORNEYS AT LAW

Reply To
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COLUMBIA

May 22, 2013

Hon. Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, #106
Charleston, SC 29401

Re: ***E*Trade Bank v. Kalman***
Civil Action No. 2010-CP-10-6666

Dear Ms. Armstrong:

Enclosed please find the original and one copy of an Order of Reference signed by Judge Nicholson at last week's motion hearing. I would appreciate it if you would file the original Order and return a clocked-in copy to me in the envelope provided.

Thank you for your assistance.

Sincerely,

Thomas E. Lydon

Encl.

cc: Mr. and Mrs. Kevin G. Kalman
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Charleston, SC 29407

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701 Venture Place
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