

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2012-CP-1021844

FILED 2014 AUG 14 AM 10:28
CLERK OF COURT
BY _____

Deutsche Bank National Trust Company, as
Trustee of the IndyMac IMJA Mortgage
Trust 2007-A2, Mortgage Pass-Through
Certificates, Series 2007-A2 under the
Pooling and Servicing Agreement dated
August 1, 2007,

Plaintiff,

vs.

Thomas C. Stevenson III, Irven M.
Stevenson, National Bank of South Carolina
nka Synovus Bank and South Carolina
Department of Revenue, and OneWest Bank
FSB, including its division known as Indy
Mac Mortgage Services,

Defendants.

ORDER GRANTING MOTION TO
TRANSFER LEGAL COUNTERCLAIMS TO
JURY ROSTER

Thomas C. Stevenson III and Irven M. Stevenson ("Stevenson Defendants") filed a Motion to Transfer their counterclaims in this action to the jury roster. This matter came before the Court on July 30, 2014, and the Court heard oral arguments and considered all memoranda of law filed. The Stevenson Defendants were represented by J. Rutledge Young, Jr. and Julie Moore Rode of Duffy & Young, LLC. The Plaintiff was represented by Sean A. O'Conner of The Finkel Law Firm, LLC.

A mortgage foreclosure is an action in equity. See U.S. Bank Trust Nat'l. Ass'n v. Bell, 385 S.C. 364, 373, 684 S.E.2d 199, 204 (Ct. App. 2009). When a complaint is equitable and a counterclaim is legal and compulsory, the defendant has the right to a jury trial on the counterclaim. C & S Real Estate Servs., Inc. v. Massengale, 290 S.C. 299, 302, 350 S.E.2d 191, 193 (1986), modified by Johnson v. S.C. Nat'l Bank, 292 S.C. 51, 354 S.E.2d 895 (1987).

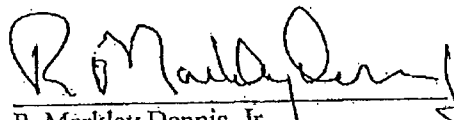
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In North Carolina Federal Savings and Loan Ass'n v Dav Corp, et al, 298 S.C. 514, 381S.E. 2d 903 (1989), our Supreme Court set forth the test to be followed to determine a counterclaiming defendants right to jury trial, to wit: Is the counterclaim legal in nature and is the counterclaim compulsory under Rule 13 (a) , SCRCVP. The parties agree and the Court finds that the Stevenson Defendants' counterclaims for unfair trade practices act, breach of duty of good faith, negligence, and conspiracy are legal in nature.

Using the logical relation test set forth in North Carolina Federal, *supra*, and for the reasons expressed on the record at the hearing on July 30, 2014, the Court finds that the counterclaims are compulsory and the Defendants have a right to a jury trial on their counterclaims. See Lester v. Dawson, 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997); Johnson v. S.C. Nat'l Bank, 292 S.C. 51, 354 S.E.2d 895 (1987). The Court further holds that the legal counterclaims are to be tried first. See Plantation Fed. Bank v. Gray, 401 S.C. 507, 510, 737 S.E.2d 515, 517 (Ct. App. 2013) (reversing the master's decision to allow a foreclosure action to proceed prior to a jury trial on legal counterclaims) and Wachovia Bank National Association v Blackburn, et.al., 407 S.C. 321, 755 S.E. 2d 437 (2014).

The Court hereby GRANTS Defendants' motion and orders that Defendants' counterclaims be transferred to the jury roster and tried before the foreclosure action is scheduled for trial.

AND IT IS SO ORDERED.


R. Markley Dennis, Jr.
Presiding Judge, Ninth Judicial Circuit

Charleston, SC
August 14, 2014

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