

The South Carolina Court of Appeals

FV-I, Inc., in trust of Morgan Stanley Mortgage Capital Holdings, LLC, Respondent,

v.

Bryon J. Dolan, Lisa S. Dolan, First Citizens Bank and Trust Company, Inc., Wells Fargo Bank, N.A., and Branch Banking and Trust Company, Defendants,

Of whom Byron and Lisa S. Dolan are the Appellants.

Appellate Case No. 2014-001384

ORDER

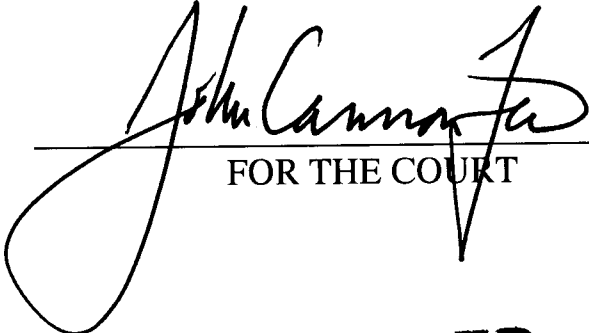
Respondent filed an action in circuit court seeking foreclosure of a mortgage on Appellants' real estate. Appellants filed an answer, asserting two legal counterclaims and one equitable counterclaim against Respondent. The legal counterclaims were for breach of contract and unfair trade practices; the equitable counterclaim was for an accounting. Appellants and Respondent agreed to bifurcate the action pursuant to Rule 42(c), SCRPC, and sever the legal counterclaims from the foreclosure claim and the equitable counterclaim. Thus, the circuit judge held a jury trial on the two legal counterclaims, and referred the foreclosure claim and equitable counterclaim for an accounting to a master-in-equity.

After the jury trial on the legal counterclaims, the circuit judge directed a verdict for Respondent on the unfair trade practices counterclaim, and the jury returned a verdict for Respondent on the breach of contract counterclaim. The circuit judge issued two orders, one denying Appellants' motion for a new trial and one denying Appellants' motion for reconsideration. Appellants appealed both those orders.¹

¹ The foreclosure claim and the equitable counterclaim for an accounting are still pending before the master-in-equity.

Respondent has now filed a motion to dismiss, arguing the two orders are not immediately appealable because the foreclosure claim and the equitable counterclaim for an accounting are still pending before the master-in-equity. Appellants have filed a return, contending the two orders are immediately appealable despite the fact the master-in-equity has not yet rendered a final judgment.

Having carefully considered the motion and return, this court denies Respondent's motion to dismiss. However, the parties may address appealability in their briefs.


FOR THE COURT

Columbia, South Carolina

cc: Andrew Sims Radeker, Esquire
Charles Stuart Gwynne, Jr., Esquire
Jason David Wyman, Esquire

FILED

8-25-14