

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Business Loan Center, LLC,

Plaintiff,
vs.

Lawrence O. Goldstein, Janice R.
Goldstein, and Regions Bank,

Defendants.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

C.A. No.: 2009-CP-42-5279

**ORDER GRANTING
MOTION FOR TRANSFER TO
NON-JURY ROSTER**

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SC Court of Appeals

This matter came before the Court upon Business Loan Center, LLC n/k/a Ciena Capital, LLC's, (*hereinafter* "Plaintiff" or "Ciena") Motion for Transfer to Non-Jury Roster filed on July 9, 2013. The Court held a hearing on Ciena's Motion on October 31, 2013, with counsel for both parties present. After consideration of Plaintiff's motion, documents submitted to the Court, memoranda, arguments of counsel and the applicable law, this Court finds that the Plaintiff's Motion should be and is therefore granted for the reasons set forth below.

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I. FACTUAL & PROCEDURAL BACKGROUND

The Court has reviewed Judge Allison Lee's April 25, 2013 Order Granting Plaintiff's Motion *in Limine*¹ which sets forth findings of fact and conclusions of law that are adopted and incorporated into this Order.

Ciena filed this foreclosure action on September 25, 2009 seeking to foreclose a note and mortgage. On January 29, 2013 Defendants filed an Amended Answer and Counterclaim in which they demanded a jury trial, admitted the agreements but otherwise denied the substantive

¹ Judge Lee's April 25, 2013 Order Granting Plaintiff's Motion *in Limine* was submitted as Exhibit C to Plaintiff's Motion to Transfer to Non-Jury.

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allegations of the Complaint, and set forth affirmative defenses entitled “Failure to Properly Decommission and Mitigate Damages” and “*Res Judicata* and Accord and Satisfaction.”² They also asserted what was labeled as a counterclaim for “Accounting” which demanded an accounting of the SBA Loan debt “including, but not limited to, a full accounting of all expenditures Plaintiff incurred as a result of its failure to properly decommission the Glo-Tex plant and a return of any excess proceeds paid by the Defendants or received by the Plaintiffs.” (Amend. Ans. at ¶ 34). These defenses and counterclaim attacked the reasonableness and propriety of the environmental decommission process and potentially raised factual issues appropriate for a jury.

This matter was set for a jury trial the week of February 11, 2013. Prior to the case being tried, Ciena filed a Motion *in Limine* requesting the Court prohibit Defendants and their counsel from introducing evidence, presenting any testimony, or arguments regarding the property or reasonableness of the process or costs incurred for the environmental remediation of the Glo-Tex facility, in part because such arguments are barred by *res judicata*. On February 15, the Court considered the parties’ respective *res judicata* arguments and took evidence, including witness

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² Defendants’ “Failure to Properly Decommission and Mitigate Damages” defense alleges:

[D]espite express notification by Defendants and others of the need to properly decommission the Glo-Tex plant and, as a result...Plaintiff and others have incurred excessive amounts of expenditures related to the decommissioning of the Glo-Tex plant. This has resulted in a greater amount allegedly owed by Defendants under the subject note that would have otherwise been experienced. Thus Plaintiff failed to properly mitigate its damages.

(Amended Ans. at 28). Defendants defense of “*Res Judicata* and Accord and Satisfaction” alleges:

[A]lthough Plaintiff asserts that it incurred significant charges in this case due to environmental restoration required for Glo-Tex’s plant, the trustee in Glo-Tex’s bankruptcy...was in charge of dealing with the restoration. After doing so, the trustee sued the Goldsteins for reimbursement of all restoration costs. That claim for reimbursement of restoration expenses was settled with payment of consideration by the Defendants. The Defendants are not and were not responsible for such restoration costs and denied any liability for such costs. However, to end the claims, the Defendants settled the action for the recovery of such restoration costs with prejudice. As such, the claims against the Defendants have been paid and satisfied.

(See Amended Ans. at Para. 29).

testimony, on the issue. On April 25, 2013 the Court granted Plaintiff's Motion *in Limine* prohibiting the Defendants "from introducing evidence or presenting arguments regarding the propriety or reasonableness of the remediation process or the costs incurred under the doctrine of *res judicata*." The Court's ruling thus precludes Defendants from pursuing their "Failure to Properly Decommission and Mitigate Damages" and "*Res Judicata* and Accord and Satisfaction" defenses. It also greatly curtails Defendants' accounting counterclaim by prohibiting them from attacking the reasonableness or propriety of the costs incurred by Ciena in funding the decommission process. In light of this ruling there are no remaining issues that are potentially appropriate for a jury and the matter should be heard by the Court.

II. APPLICABLE LAW & ANALYSIS

The South Carolina Constitution provides "[t]he right of trial by jury shall be preserved inviolate." S.C. Const. Art. I § 14. Rule 38(b) provides in pertinent part:

Any party may demand a trial by jury of any issue triable by a jury by serving upon other parties a demand therefor[e] in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue. Such demand may be endorsed upon a pleading of the party.

S.C. R. Civ. P. 38(b). Defendants demanded a jury trial in their Answer and Counterclaim when they denied the amounts due and set forth two affirmative defenses and a counterclaim for accounting.³

"Generally, the relevant question in determining the right to trial by jury is whether an action is legal or equitable." *Lester v. Dawson*, 327 S.C. 263, 267 (1997). There is no right to a jury trial for equitable actions. *Id.* If the complaint is equitable and the counterclaim legal and compulsory, the defendants have the right to a jury trial on the counterclaim. *C&S Real Estate*

³ A demand for an accounting may not be a proper "counterclaim" as Defendants have labeled it. Ultimately, whether or not a demand for an accounting is technically a counterclaim is inconsequential. Therefore the Court's analysis and Order treats Defendants' demand for an accounting as a counterclaim.

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Servs., Inc. v. Massengale, 290 S.C. 299, 302 (1986). “A mortgage foreclosure is an action in equity.” *U.S. Bank Trust Nat’l Ass’n v. Bell*, 385 S.C. 364, 373 (Ct. App. 2009). Given that Ciena’s foreclosure action is equitable, the Goldsteins have the right to a jury trial only if their counterclaim is both legal and compulsory. *Wells Fargo Bank, N.A. v. Smith*, 398 S.C. 487, 494 (Ct. App. 2012).

The Court finds that Defendants counterclaim for accounting may be compulsory but it does not entitle them to a jury trial because it is an equitable, rather than legal, claim.

“By definition, a counterclaim is compulsory only if it arises out of the same transaction or occurrence as the opposing party’s claim.” *First-Citizens Bank & Trust Co. of S.C. v. Hucks*, 305 S.C. 296, 298 (1991); *See also* S.C. R. Civ. P. 13(a). The test for determining if a counterclaim is compulsory is whether there is a “logical relationship” between the Plaintiff’s claim and the counterclaim. *Mullinax v. Bates*, 317 S.C. 394, 396 (1995). “In essence, the ‘logical relationship’ determination is made by asking whether the counterclaim would affect the lender’s right to enforce the note and foreclose the mortgage.” *Wells Fargo Bank, N.A. v. Smith*, 398 S.C. 487, 496 (Ct. App. 2012).

In this case there exists a “logical relationship” between the enforceability of the SBA Loan note and mortgage, which are the subject of this action, and the Defendants’ counterclaim for an accounting. If Defendants can show that the SBA Loan debt is satisfied, it will affect Ciena’s right to enforce the note and foreclose the mortgage. Therefore, it is a compulsory counterclaim. It is not however a *legal* compulsory counterclaim.

Rather the demand for accounting is equitable and therefore does not afford Defendants any right to trial by jury. *Collier v. Green*, 244 S.C. 367, 371 (1964) (“Where, in actions of foreclosure, defendant sets up a defense and/or counterclaim affecting the consideration, and

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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.”). Defendants’ counterclaim merely raises the issue of what is owed on the SBA Loan note and therefore does not afford them any right to trial by jury. *Collier v. Green*, 244 S.C. 367 (1964)(Defendant is not entitled, as a right, to a trial by jury on the amount owed under the Promissory Note in a foreclosure action.). Furthermore, Ciena as the Plaintiff in a foreclosure action already bears the burden of establishing the debt, and therefore Defendants’ demand for an accounting ultimately becomes redundant. *U.S. Bank Trust Nat’l Ass’n v. Bell*, 385 S.C. 364, 374-75 (Ct. App. 2009)(“Generally, the party seeking foreclosure has the burden of establishing the existence of the debt and the mortgagor’s default on that debt.”). Defendants’ prayer for relief asks the Court to dismiss the action, refuse to foreclose their home and for a full and complete accounting of all amounts Plaintiff claims it is owed by Defendants. *Mortgage Electronic Sys. v. White*, 384 S.C. 606 (Ct. App. 2009)(Mortgagors were not entitled to a jury trial on a compulsory counterclaim for fraud that they filed against the assignee of the mortgage in a foreclosure action, as the primary relief sought was to have the mortgage declared void and such relief was equitable.). Because the only remedies sought or available for Defendants’ counterclaim are equitable there is no right to a jury trial on it. *See Brown v. Greenwood Sch. Dist. Bd. of Trs.*, 344 S.C. 522, 525 (Ct. App. 2001)(“There is no right to a jury trial for equitable remedies such as recession and restitution.”).

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The Court finds that under the circumstances, no claims or issues remain that afford Defendants the right to have this matter tried before a jury and therefore it should be tried by the Court.

III. CONCLUSION

The current foreclosure action is equitable in nature and absent any legal compulsory counterclaims Defendants do not have a right to trial by jury. Defendants' demand for an accounting is the sole pleading labeled as a counterclaim, and while compulsory, it is not legal in nature. Therefore, Defendants have no right to trial by jury under the circumstances and this case shall properly proceed to be heard by the Court.


Based on the foregoing, the Court **GRANTS** Plaintiff's Motion to Transfer to Non-Jury Roster.

IT IS **ORDERED** that this action be and the same is hereby referred to the Honorable Gordon Cooper, as the Master in Equity for Spartanburg County, pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, for the purpose of conducting a full hearing on this matter and entering a final judgment thereon, as well as conducting hearings or entering orders after final judgment, with any appeal being directly to the Supreme Court.

IT IS FURTHER **ORDERED** that , in the event the Master should find that a judicial sale of the subject real property is warranted, the Master, pursuant to S.C. Code Ann. § 15-680, as amended, may designate that said sale be conducted on the regular day of judicial sale or at such other time as the Master may deem just and proper.

IT IS FURTHER **ORDERED** that in the event that the property which is the subject matter of this foreclosure is sold, the commission of the Master in Equity and/or Clerk of Court shall be the same as that provided for Masters in Equity in S.C. Code Ann. §14-11-310.

It is so **ORDERED**.


The Honorable J. Durham Cole
Circuit Court Judge, Seventh Judicial Circuit

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