

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

DEUTSCHE BANK NATIONAL TRUST)
COMPANY, AS TRUSTEE FOR HSI)
ASSET SECURITIZATION)
CORPORATION TRUST 2006-OPT3,)
MORTGAGE PASS-THROUGH)
CERTIFICATES,)

Plaintiff,)

v.)

MINNIE L. WILLIAMS, MILDRED W.)
GLOVER, UNIFUND CCR PARTNERS,)
OPTION ONE MORTGAGE)
CORPORATION,)

Defendants,)

IN THE COURT OF COMMON PLEAS)
CASE NO.: 2010-CP-40-7917)

2014 OCT 27 AM 9:25
KARINETTE W. HODSON
C.C.P. & G.S.

RICHLAND COUNTY
FILED

**ORDER DENYING DEFENDANTS'
MOTION TO QUASH
ORDER OF REFERENCE**

This matter comes before the court on a Motion to Quash Order of Reference filed by Defendants Minnie L. Williams and Mildred W. Glover ("Defendants"). A hearing was held on August 5, 2014. Attorney Sean A. O'Connor appeared on behalf of Plaintiff. Attorney Shawn M. French, Sr. appeared on behalf of Defendants Minnie L. Williams and Mildred W. Glover. The court, having reviewed the file and being otherwise fully advised of the issues and circumstances, makes the following findings of fact and conclusions of law:

1. Plaintiff Deutsche Bank National Trust Company, as Trustee for HSI Asset Securitization Corporation Trust 2006-OPT3, Mortgage Pass-Through Certificates ("Plaintiff") filed a complaint for foreclosure in the instant case on November 12, 2010.

2. Defendants filed an Answer and Counterclaims on December 16, 2010. Defendants asserted the following counterclaims: (a) breach of contract, (b) violation of the attorney preference statute, (c) violation of RESPA, and (d) negligence.
3. An Order of Reference referring the case to the Master-in-Equity was entered by the Clerk of Court on January 5, 2011.
4. The determination of whether a party is entitled to a jury trial on a counterclaim is governed by the following standards:

"(1) If both a complaint and the counterclaim are in equity, the entire matter is triable by the court. (2) If both are at law, the issues are triable by a jury. (3) If the complaint is equitable and the counterclaim is legal and permissive, the defendant waives his right to a jury trial. (4) If the complaint is equitable and the counterclaim legal and compulsory, the plaintiff or the defendant has a right to a jury trial on the counterclaim."

Johnson v. S.C. Nat'l Bank, 292 S.C. 51, 55-56 (1987).

5. An action for foreclosure is in equity. *Lewis v. Premium Inv. Corp.*, 341 S.C. 539, 542 (Ct. App. 2000). Therefore, Defendants are only entitled to a jury trial if their counterclaims are both legal and compulsory. *Johnson* at 55-56; *see also Wachovia Bank, N.A. v. Blackburn*, 407 S.C. 321, 329 (2014) ("If a complaint is equitable and a counterclaim is legal and permissive, the defendant waives his right to a jury trial."). The South Carolina Supreme Court has adopted the "logical relationship test" to determine whether a counterclaim is compulsory. *See N.C. Fed. Sav. & Loan Ass'n v. DAV Corp.*, 298 S.C. 514, 517 (1989). Specifically within the context of an action for foreclosure, the determination of whether a counterclaim is compulsory is made by asking whether the

counterclaim would affect the lender's right to enforce the note and foreclose the mortgage. *Id.* at 518-19.

6. Defendants' first counterclaim is for breach of contract in which they allege that (1) Plaintiff has failed to meet all conditions precedent to the foreclosure action and (2) Defendants are not in default on the underlying note and mortgage. Because the primary relief sought is merely to disprove Plaintiff's claims for Defendants' liability under the mortgage, this claim is equitable in nature and therefore affords Defendants no right to a jury trial. *See Mortg. Elec. Sys., Inc. v. White*, 384 S.C. 606, 682 S.E.2d 498 (Ct. App. 2009).
7. Defendants' second counterclaim is that Plaintiff violated S.C. Code Ann. § 37-10-102(a) by failing to ascertain the attorney preference of the Defendants when the loan that is the subject of Plaintiff's foreclosure action was closed. Alleged violations of the attorney preference statute are limited to monetary damages and have no effect on the enforceability of the note and mortgage in a foreclosure action. *See S.C. Code Ann. § 37-10-105* (damages for violations of attorney preference statute are limited to actual damages and monetary damages up to \$7,500). Therefore, a counterclaim under the attorney-preference statute is not compulsory. *See DAV Corp.*, 298 S.C. at 517.
8. Defendants' third counterclaim is that Plaintiff allegedly violated 12 U.S.C. § 2605(c) by failing to notify them of a transfer in servicing of Plaintiff's loan. Any violation of Section 2605(c) by the Plaintiff would not entitle Defendants to rescind the note and mortgage, nor would it bar the enforcement of the note or mortgage's terms. *See* 12 U.S.C. § 2605(f) (damages for violations of Section 2605(c) are limited to monetary

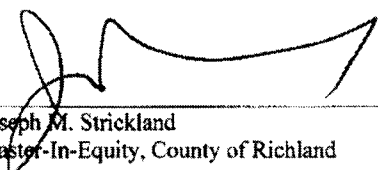
damages). Because this counterclaim has no effect on the enforceability of the note and mortgage, it is also not compulsory.

9. Defendants fourth counterclaim is that Plaintiff is allegedly negligent by failing to properly service Defendants' loan and failing to properly apply payments. However, Defendants are only disputing the application of payments made under the mortgage and asking for a determination that they are not in default.¹ This claim is identical to the previously-discussed breach of contract claim and, as concluded above, is equitable in nature.

10. None of Defendants' counterclaims are compulsory, legal counterclaims. Therefore, Defendants are not entitled to a jury trial on any of their claims and the case was properly referred to the master-in-equity for resolution.

Therefore, it is hereby **ORDERED** that Defendants' Motion to Quash the Order of Reference is **DENIED**.

AND IT IS SO ORDERED.



Joseph M. Strickland
Master-In-Equity, County of Richland

Oct. 22, 2014

¹ Although the counterclaim includes a prayer for actual and punitive damages, no specific damages have been alleged. Because the primary relief sought is to disprove liability under the mortgage, this claim is equitable in nature and therefore affords Defendants no right to a jury trial. See *White*, 384 S.C. 606.