

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., Branch Banking and Trust Company, Defendants,

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

Appellate Case No. 2014-001384

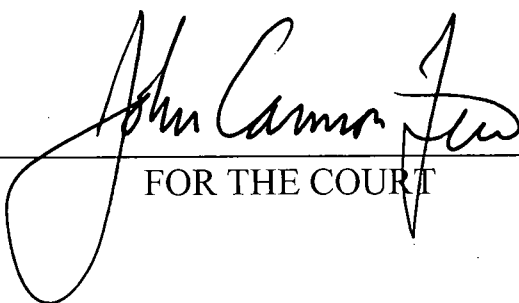
ORDER

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), SCRCP, and sever the legal counterclaims from the foreclosure claim and the equitable counterclaim. Thus, the circuit court judge held a jury trial on the two legal counterclaims and referred the foreclosure claim and equitable counterclaim for an accounting to the master-in-equity.

After the jury trial, 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. Respondent filed a motion to dismiss this appeal, arguing the orders are not immediately appealable. On August 25, 2014, this Court denied the motion to dismiss.

Respondent then filed a motion with the master-in-equity requesting the proceedings regarding the foreclosure claim and equitable counterclaim for an accounting proceed while this appeal is pending. In an order dated October 31, 2014, the master denied that motion. Respondent filed a separate notice of appeal from that October 31, 2014 order.¹ Respondent then filed a motion in this appeal requesting this Court to lift the stay imposed by the master-in-equity.

Respondent contends the jury verdict form, which lists monetary damages as the only form of damages, is evidence Appellants only sought monetary damages for their breach of contract claim at trial. In Appellants' Answer and Counterclaim, Appellants allege the terms of the mortgage were modified by an agreement and listed the specific enforcement of the modification agreement as a prayer for relief. Accordingly, if the jury had found the modification of the mortgage agreement to be valid, then Appellants would have the right to seek post-trial relief to specifically enforce the modification and avoid foreclosure of the mortgage. Accordingly, because it appears to this Court that the matters before the master are matters affected by this appeal, Respondent's motion to lift the master's stay is denied. *Tillman v. Oakes*, 398 S.C. 245, 255, 728 S.E.2d 45, 51 (Ct. App. 2012) ("[T]he lower court's power to proceed is determined by whether the issue sought to be litigated in the lower court during the appeal is a 'matter[] affected by the appeal' under Rules 205 and 241(a) [of the South Carolina Appellate Court Rules].").


FOR THE COURT

Columbia, South Carolina

cc:

Andrew Sims Radeker, Esquire
Charles Stuart Gwynne, Jr., Esquire
Jason David Wyman, Esquire
The Honorable James O. Spence

FILED
2/13/15

¹ The appellate case number for that appeal is 2014-002710.