

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTER)

IN THE COURT OF COMMON PLEAS
IN THE SIXTH JUDICIAL CIRCUIT

Civil Action No.: 2014-CP-12-0272

TD Bank, N.A., Successor by merger)
with Carolina First Bank,)
)
Plaintiff,)

vs.)

Joseph L. Huckabee, Jr., a/k/a Joseph)
Laverne Huckabee, Jr.,)
)
Defendant.)

FILED
2015 APR -8 A 9:02
CLERK OF COURT
CHESTER CO S.C.

ORDER GRANTING PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S JURY DEMAND AND FOR ENTRY OF AN ORDER OF REFERENCE AND DENYING PLAINTIFF'S MOTION TO DISMISS AMENDED COUNTERCLAIM.

This matter came before the Court on March 25, 2015, for a hearing on Plaintiff's Motions to Dismiss Amended Counterclaim, and to Strike Jury Demand and for Entry of an Order of Reference. Counsel for both parties were in attendance at the hearing.

Facts and Procedural Background

Plaintiff commenced this foreclosure action on May 16, 2014, for Defendant's alleged default under the terms of his note and mortgage with Plaintiff. Plaintiff alleges the principal amount of the note is \$36,894.09, which is secured by a mortgage on rental property located at 173 York Street, Chester, South Carolina.

Defendant filed an Answer on August 8, 2014, which was amended on February 11, 2015. Defendant's Answer denies Plaintiff is entitled to the requested relief, asserts a counterclaim against Plaintiff for violation of the South Carolina Unfair Trade Practices Act (SCUTPA), and demands a jury trial. Defendant's SCUTPA claim alleges that Plaintiff is

GR

RECEIVED
APR 09 2015
By _____

attempting to collect on a debt not owed. Defendant alleged he is current in his payments on the note and mortgage.

Plaintiff filed a Motion to Dismiss Amended Counterclaim on February 25, 2015, and a Motion to Strike Jury Demand and for Entry of an Order of Reference on February 27, 2015, both of which are now before the Court. At the hearing, Plaintiff acknowledged that Defendant's SCUPTA claim is a legal counterclaim.

Motion to Dismiss

"In deciding a motion to dismiss pursuant to 12(b)(6), SCRCP, the trial court should consider only the allegations set forth on the face of the plaintiff's complaint." *Tyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007) (citing *Stiles v. Onorato*, 318 S.C. 297, 300 (1995)). "A 12(b)(6) motion should not be granted if 'facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case.'" *Id.* question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." *Id.* (citing *Toussaint v. Ham*, 292 S.C. 415, 416 (1987)).

FILED
2015 APR 8 4 40 PM
CLERK OF COURT
CHESLER ST.

After careful consideration of the record and arguments of counsel, the Court finds that Defendant's Amended Counterclaim, when taken in the light most favorable to him, properly states a claim for relief under South Carolina law. It is therefore **ORDERED** that the Defendants' Motion to Dismiss is hereby **DENIED**.

Motion to Strike Jury Demand and for Entry of an Order of Reference

A foreclosure action is an action in equity. *Wachovia Bank, N.A. v. Blackburn*, 407 S.C. 321, 328, 755 S.E.2d 437, 441 (2014). In equity, parties are not entitled to a trial by jury. *Id.* However, where the "complaint is equitable and the counterclaim is legal and compulsory, the

AC 2

plaintiff or the defendant has a right to a jury trial on the counterclaim.” *Id.* at 329, 755 S.E.2d at 441. A compulsory counterclaim is a counterclaim that “arises out of the same transaction or occurrence as the opposing party’s claim.” *Id.* at 330, 755 S.E.2d at 442. Where the action is a foreclosure action, a counterclaim arises out of the same transaction or occurrence when there is a “‘logical relationship’ between the counterclaim and the enforceability [of the note].” *Carolina First Bank v. BADD, LLC.*, 2015 WL 340791 at *3.

At the hearing, Plaintiff argued the Court should grant its motion to strike Defendant’s jury demand because there is no right to a jury trial in an equitable foreclosure action, and the Defendant has not asserted any legal and compulsory counterclaims that would entitle him to a jury trial. Specifically, Plaintiff argued Defendant’s Counterclaim for violation of the SCUTPA was not a compulsory counterclaim. Plaintiff conceded at the hearing, however, that Defendant’s SCUTPA counterclaim is a legal counterclaim. Accordingly, the only issue before the Court is whether Defendant’s counterclaim was compulsory.

Defendant’s SCUTPA claim alleges that Plaintiff is attempting to collect on a debt owed because Defendant was current on his payments under the terms of the note. Defendant’s allegations do affect the validity or enforceability of the underlying note or mortgage. Accordingly, this Court finds that Defendant’s counterclaim under the SCUTPA was not a compulsory counterclaim because it does not bear a logical relationship to the enforceability of the underlying note.


This Court hereby **GRANTS** Plaintiff’s Motion to Strike Defendant’s Jury Demand and for Entry of an Order of Reference and **DENIES** Plaintiff’s Motion to Dismiss.

FILED
2015 APR - 28 A 10 02
CLERK OF COURT
CHESTER CO. PA.

This case is hereby **REFERRED** for equitable proceedings in this foreclosure action.

AND IT IS SO ORDERED.

Columbia, South Carolina
April 1st, 2015



G. Thomas Cooper, Jr., Judge
Fifth Judicial Circuit

FILED
2015 APR - 8 A 9 02
CLERK OF COURT
CHESTER CO S.C.