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This judgment was entered on **April 9, 2015**, and a copy mailed first class or placed in the appropriate attorney's box on **April 9, 2015**, to attorneys of record or to parties (when appearing pro se) as follows:

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David Hamilton

David Hamilton - Clerk of Court

Court Reporter

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

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

Civil Action No. 2014-CP-46-1638

Plaintiff,)

vs.)

Joseph L. Huckabee, Jr. a/k/a Joseph)
Levern Huckabee, Jr.; Pat Huckabee;)
The Huckabee, LLC and The United)
States of America, by and through its)
agency, The Internal Revenue Service;)

Defendants.)

**ORDER GRANTING TD BANK,
N.A., SUCCESSOR BY MERGER
WITH CAROLINA FIRST BANK'S
MOTION TO STRIKE JURY
DEMAND AND ENTRY OF AN
ORDER OF REFERENCE FOR
BENCH TRIAL**

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DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

This matter came before the Court on March 25, 2015, for a hearing on Plaintiff TD Bank, N.A., Successor by merger with Carolina First Bank's ("TD Bank") Motion to Strike Jury Demand and for Entry of an Order of Reference ("Motion") of Defendant Joseph L. Huckabee, Jr. a/k/a Joseph Levern Huckabee, Jr. ("Defendant"). B. Keith Poston, Esq. appeared on behalf of TD Bank and John Martin Foster, Esq. appeared on behalf of the Defendant. Based on the pleadings filed by the parties and the arguments of the parties at the hearing held on this matter, this Court hereby **GRANTS** Plaintiff's Motion and finds and concludes as follows:

FINDINGS OF FACT

1. TD Bank initiated this foreclosure action by filing its Complaint on May 16, 2014.
2. The foreclosure action is based on the Defendant's alleged default under the terms of two notes and mortgages with TD Bank, with such instruments being identified in the Complaint as Note A, Note B, Mortgage A, and Mortgage B¹.

¹ On September 25, 2014, the parties executed a Stipulation of Dismissal with Prejudice as to the Fifth, Sixth, and Seventh Causes of Action of the Complaint. Therefore, Pat Huckabee and The Huckabee, LLC are no longer

3. As to Note A, TD Bank originally made the loan to Defendant on February 18, 2004, as later renewed on May 10, 2009, in the principal amount of \$81,000.86. Note A is secured by a mortgage on rental property located at 315 Park Avenue, Rock Hill, South Carolina.

4. As to Note B, TD Bank originally made the loan to Defendant on June 25, 2008, in the principal amount of \$306,000.00. Note B is secured by a mortgage on rental property located at 520 Sumter Avenue, Rock Hill, South Carolina.

5. Defendant filed his Answer on August 8, 2014, as thereafter amended on November 6, 2014, whereby Defendant denied that Plaintiff is entitled to the requested relief, asserted a counterclaim against TD Bank based on TD Bank's alleged violation of the South Carolina Unfair Trade Practices Act ("SCUTPA"), and demanded a jury trial.

6. To support his SCUTPA counterclaim, Defendant alleges that TD Bank is attempting to collect interest and/or expenses other than those authorized by Note A, Note B, Mortgage A, and Mortgage B.

7. Defendant does not seek to undo the transaction or have Note A, Note B, Mortgage A, or Mortgage B voided or declared unenforceable.

8. Defendant seeks an unspecified amount of actual damages (to also be trebled), exemplary damages, and punitive damages for the alleged SCUTPA violation.

CONCLUSIONS OF LAW

1. "A mortgage foreclosure is an action in equity" and as such, "the parties are not entitled, as a matter of right to a trial by jury." Wachovia Bank, N.A. v. Blackburn, 755 S.E.2d 437, 440-441 (S.C. 2014). "However, counterclaims—including those raised in equitable actions—may, at times, be entitled to a jury trial." Id.

defendants in this action, and the only remaining notes and mortgages are Note A, Mortgage A, Note B, and Mortgage B. Defendant is the only borrower on Note A and Note B and is the only mortgagor on Mortgage A and Mortgage B.

2. To be entitled to a jury trial based on a counterclaim, the counterclaim must be both legal and compulsory. Carolina First Bank v. BADD, L.L.C., 2015 S.C. LEXIS 45 at *3 (S.C. Jan. 28, 2015) citing S.C. R. Civ. P. 13(a). "A counterclaim is compulsory if it arises out of the same transaction or occurrence as the party's claim." Id. In a foreclosure action, a counterclaim arises out of the same transaction or occurrence as the party's claim only when there is a "logical relationship" between the counterclaim and either the execution or enforceability of the [underlying loan documents]." Id. In BADD, the South Carolina Supreme Court addressed the logical relationship test, holding as follows:

Here, the execution of the guaranty agreements was the 'transaction or occurrence' that gave rise to [Defendant's] inclusion in the Bank's foreclosure complaint. [Defendant's] civil conspiracy counterclaim does not arise out of that transaction or occurrence because it bears no logical relationship to either the execution or enforceability of the guaranty agreements (internal citations omitted)...

Again, the "transaction or occurrence" for the purpose of determining the compulsory character of [Defendant's] counterclaim is the execution of the guaranty agreements. [Defendant's] 'breach of covenant of good faith and fair dealing' claim depends on a purported conspiracy that took place, if at all, two years after the guarantees had been executed. This claim does not arise out of the underlying transaction or occurrence because it does not affect the execution or enforceability of the guaranty agreements. We therefore hold [Defendant] waived his right to a jury trial by asserting a permissive counterclaim in the foreclosure action.

3. Following the South Carolina Supreme Court's analysis as established in BADD, Defendant is not entitled to a jury trial based on his SCUTPA counterclaim.

4. Here, the execution of Note A, Note B, Mortgage A, and Mortgage B was the "transaction or occurrence" that gave rise to Defendant's inclusion in TD Bank's foreclosure action. Defendant's SCUTPA counterclaim does not arise out of that transaction or occurrence because it bears no logical relationship to either the execution or enforceability of those loan documents. First, the Defendant's complained-of conduct by TD Bank (*i.e.* attempting to collect

interest and/or expenses other than those authorized by the parties' loan documents), occurred years after Defendant's execution of the loan documents. Second, in his counterclaim, the Defendant references specific paragraphs of the loan documents to support his allegations on how late charges should be calculated. By doing so, the Defendant expressly relies upon the enforceability of the loan documents and the terms therein, yet merely disputes Plaintiff's calculations of the amounts due and owing under the applicable provisions of the loan documents.

5. Accordingly, Defendant has waived his right to a jury trial by asserting his SCUTPA counterclaim in this foreclosure action. Defendant's counterclaim is permissive, as it bears no logical relationship to either the execution or enforceability of Note A, Note B, Mortgage A, or Mortgage B. Further, Defendant's counterclaim does not seek to undo the loan transaction; Defendant only seeks damages and penalties.

Accordingly, this Court grants Plaintiff's Motion and finds that Defendant is not entitled to a jury trial, and Defendant's request for a jury trial should be stricken.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

ORDERED that Plaintiff's Motion is hereby granted; and

ORDERED that Defendant is not entitled to a jury trial in this action, and his request for a jury trial is hereby stricken; and

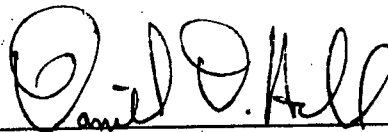
ORDERED, that Plaintiff is lawfully entitled to a bench trial on all matters in this foreclosure action; and

ORDERED that this case is referred to the Honorable S. Jackson Kimball, III, Master-in-Equity for York County, who, pursuant to Rule 53(b) of the South Carolina Rules of Civil Procedure, shall exercise all power and authority which a circuit judge sitting without a jury

would have, including but not limited to, making findings of fact and conclusions of law, direct entry of final judgment in this action under Rule 53(b) of the South Carolina Rules of Civil Procedure, hear any issues, including motions, after sale or judgment, issue any and all orders and supplemental orders, and writs of assistance, and hear any issues involving possession and/or removal of property and appraisal proceedings under Section 29-3-360, et seq. of the South Carolina Code; and

ORDERED that pursuant to Rule 53(b) of the South Carolina Rules of Civil Procedure, any appeal from the final judgment entered by the Master-in-Equity shall be to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

AND IT IS SO ORDERED.



The Honorable Daniel Dewitt Hall
Presiding Judge
Sixteenth Judicial Circuit

4-7, 2015
York, South Carolina