



The South Carolina Court of Appeals

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June 25, 2015

The Honorable M. Hope Blackley
PO Box 3483
Spartanburg SC 29304-3483

REMITTITUR

Re: Provident v. Delbert Tangeman
Lower Court Case No. 2012CP4200665
Appellate Case No. 2015-000650

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Delbert R. Tangeman
Walter Keith Martens, Esquire

The South Carolina Court of Appeals

Provident Community Bank, Respondent,

v.

Delbert R. Tangeman, T&T Investments of Spartanburg, LLC, Barry D. Mallek, Alice R. Mallek, Bureaus Investment Group #8, LLC and Donald C. Coggins, Jr., Defendants,

Of whom Delbert R. Tangeman is the Appellant.

Appellate Case No. 2015-000650

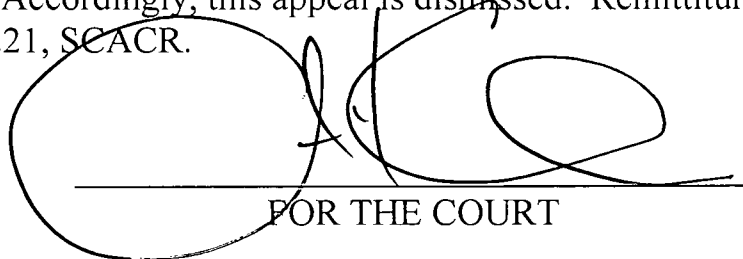
ORDER

Appellant appeals from an order denying reconsideration of an order referring this foreclosure action to a master-in-equity. This court asked both parties to file memoranda addressing the issue of appealability. Appellant filed a memorandum, arguing he was entitled to a jury trial because he raised compulsory counterclaims. Respondent filed a motion to dismiss and a memorandum of law in support of its motion, arguing Appellant's answer contained affirmative defenses, not counterclaims.

After careful consideration of the parties' memoranda, the circuit court's order, and case law, we find the underlying order is not immediately appealable because the order of reference does not deprive Appellant of a mode of trial to which he is entitled as a matter of right. *See C & S Real Estate Servs., Inc. v. Massengale*, 290 S.C. 299, 300, 350 S.E.2d 191, 192 (1986), *modified by Johnson v. S.C. Nat'l Bank*, 292 S.C. 51, 354 S.E.2d 895 (1987) ("An order denying a party a jury trial is not immediately appealable unless it deprives him of a mode of trial to which he is entitled as a matter of right.").

"Because a foreclosure action is an action in equity, a party has no right to a jury trial of the issues raised in a foreclosure action." *Gardner v. Travis*, 316 S.C. 315, 317, 450 S.E.2d 54, 56 (Ct. App. 1994). However, "[w]here a defendant in an equitable action asserts a compulsory counterclaim that alleges actions at law, both the plaintiff and the defendant have a right to have a jury trial on the issues raised by the compulsory legal counterclaim." *Id.* at 318, 450 S.E.2d at 56. Because Respondent's foreclosure action is equitable in nature, Appellant only has a right to a jury trial if his counterclaims are both legal and compulsory. *See id.*

In this case, the circuit court found Appellant raised four affirmative defenses but mislabeled them as counterclaims. We have reviewed the circuit court's order of reference, the court's order denying reconsideration, and Appellant's motion for reconsideration. We find Appellant has no right to a jury trial on the basis of his "counterclaims," because they are actually affirmative defenses. Therefore, the order of reference did not deprive Appellant of a mode of trial to which he was entitled as a matter of right. Accordingly, this appeal is dismissed. Remittitur will be sent as provided in Rule 221, SCACR.



FOR THE COURT

Columbia, South Carolina

cc: Delbert R. Tangeman
Walter Keith Martens, Esquire

FILED
6/4/15