

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

U.S. Bank, National Association, as trustee for the Holders of The Banc of America Funding Corporation, 2008-FT1 Trust, Mortgage Pass-Through Certificates, Series 2008-FT1,

PLAINTIFF,

vs.

Rhonda Lewis Meisner a/k/a Rhonda L. Meisner; Bank of America, N.A.; and SCBT,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2014-CP-40-2063

ORDER STRIKING DEFENDANT'S  
JURY TRIAL DEMAND  
AND FOR  
MANDATORY REFERENCE

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SC Court of Appeals

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JAMES R. W. HORNDE  
JAMES R. W. HORNDE  
& ASSOCIATES, P.A.  
SOUTH CAROLINA

RICHLAND COUNTY  
FILED

This matter came before the Honorable DeAndrea Gist Benjamin on Plaintiff's Motion for an Order striking Defendant's jury demand and referring this matter to the Honorable Joseph M. Strickland, Master in Equity for Richland County, pursuant to Rule 53(b), SCRPC. The Court conducted a hearing on the Motion on December 16, 2015. Based upon the parties' oral arguments and respective memoranda, this Court finds as follows:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Defendant mortgagor Rhonda Lewis Meisner a/k/a Rhonda L. Meisner ("Defendant Meisner") filed an Amended Answer on August 10, 2015, which contains a demand for a jury trial. The Answer raises counterclaims for a declaratory judgment, breach of contract, breach of contract accompanied by fraudulent act, and abuse of process, in addition to affirmative defenses. Defendant Meisner's counterclaims for declaratory judgment, breach of contract, and breach of contract accompanied by fraudulent act are also asserted as crossclaims against Defendant Bank of America, N.A ("BANA"). Defendant Meisner further asserts crossclaims

against Defendant BANA for violation of S.C. Code 29-3-310, and against Defendant SCBT for slander of title.

In order to determine whether a counterclaim is compulsory in South Carolina, the courts use the "logical relationship" test. *N.C. Federal Savings and Loan Assoc. v. DAV Corp.*, 298 S.C. 514, 518, 381 S.E.2d 903, 905 (1989). "A counterclaim is compulsory only if a 'logical relationship' exists between the claim and counterclaim." *Advance International, Inc. v. NC National Bank of SC*, 316 S.C. 266, 269, 449 S.E.2d 580, 582 (1994). If a counterclaim arises out of the same transaction or occurrence as the opposing party's claim, it is compulsory. *DAV* at 517. In a foreclosure action, a counterclaim is compulsory when there is a "logical relationship" between the counterclaim and the enforceability of the Note and Mortgage. *Carolina First Bank v. BADD, LLC, et al.*, 2015 S.C. LEXIS 45, 7 (2015) (finding guarantor's claims for breach of contract and civil conspiracy did not arise from the same transaction or occurrence as execution of guaranty agreements because they did not affect the execution or enforceability of the guaranty agreements). The test of a "logical relationship" is whether the counterclaim would affect the lender's right to enforce the note and foreclose the mortgage. *Wells Fargo Bank, NA v. Michael Smith, et al.*, 398 S.C. 487, 493, 730 S.E.2d 328, 332 (2012).

The alleged factual basis for Defendant Meisner's counterclaims is that the Plaintiff's predecessor, BANA, erroneously ceased making monthly automatic payments on the loan. See Amended Ans. ¶134. This is the sole contention that gives rise to the counterclaims asserted against Plaintiff. However, even if Defendant's allegations are proven true, they do not have any impact upon the terms of the subject note and mortgage, her obligations thereunder, and their enforceability against Defendant. Specifically, Defendant Meisner's counterclaims for

declaratory judgment<sup>1</sup>, breach of contract, breach of contract accompanied by fraudulent act, and abuse of process bear no logical relationship to either the execution of the note and mortgage or their enforceability. It is undisputed that Defendant Meisner signed the note and mortgage, and that the terms of the note and mortgage have not been modified. Instead, Defendant Meisner asserts claims based solely upon the prior servicer's alleged failure to continue drafting automatic monthly payments on the loan which, if proven, may at best entitle Defendant to an offset from the Plaintiff's total debt amount for her damages on these permissive claims. Accordingly, Defendant's counterclaims are permissive and she has waived her right to a jury trial by asserting them in Plaintiff's equitable foreclosure action.

It is further evidence of the permissive nature of Defendant's counterclaims for declaratory judgment, breach of contract, and breach of contract accompanied by fraudulent act that Defendant Meisner seeks to assert *identical crossclaims* against the other Defendants based upon the same facts, i.e., BANA's alleged failure to continue drafting monthly automatic payments on the loan. *See DAV* at 519 (cross-claims are permissive); Rule 13(g), SCRCP (party may assert cross-claim against co-party). These claims, whether asserted against Plaintiff and/or the other Defendants, would merely entitle Plaintiff to monetary damages. None of the proposed claims, if successful, would have any effect upon the enforceability of the note and mortgage.

By asserting said permissive claims in this foreclosure action, Defendant Meisner has waived the right to a jury trial. *See Wachovia Bank, National Association v. Blackburn*, No. 27359, 2014 WL 766311 at \*4 (February 26, 2014) (finding that where the complaint is equitable and the counterclaim is legal and permissive, the defendant waives his right to a jury

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<sup>1</sup> Defendant Meisner's declaratory judgment claim also seeks a determination that she is entitled to assert appraisal rights; however, Plaintiff has waived a deficiency and appraisal rights are only applicable in actions where a deficiency is sought. See S.C. Code 29-3-680 ("In any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked... may within thirty days after the sale of the mortgaged property apply by verified petition to the clerk of court in which the decree or order of sale was taken for an order of appraisal.")

trial). Furthermore, affirmative defenses raised in response to an equitable cause of action are inherently equitable in nature, and not triable by a jury. See *Farley v. Matthews*, 186 S.C. 294, 167 S.E. 502 (1933). This being an action for foreclosure of a mortgage and, as such, an action in equity, it is an appropriate matter to be referred to the Master in Equity. See *Collier v. Green*, 244 S.C. 346, 137 S.E.2d 277 (1964).

It is, therefore, hereby

**ORDERED** that this case be referred to Honorable Joseph M. Strickland, Master in Equity for Richland County, who 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; directing entry of final judgment; hearing any issues, including motions, after sale or judgment; issuing any and all orders, supplemental orders, and writs of assistance, and hearing any issues involving possession and/or removal of property and appraisal proceedings under Section 29-3-360, *et seq.* of the South Carolina Code, with any appeal from the final judgment being to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules. Any judicial sale of the property subject of this action may be held on a day other than the regular judicial sale day.

**IT IS SO ORDERED.**



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The Honorable DeAndrea Gist Benjamin

Columbia, South Carolina

4-12, 2016