

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF KERSHAW

) C/A # 2015-CP-28-00383

)
)
) U.S. Bank National Association, as
) Trustee for the registered holders of
) Credit Suisse Seasoned Loan Trust
) 2006-1, Home Equity Pass-Through
) Certificates, Series 2006-1,

)
) Plaintiff,

)
) v.

)
) Anita Joy Bethea a/k/a Anita Joy; Jackson
) D. Joy, Jr. a/k/a Jackson Joy, Jr.,

)
) Defendants.

ORDER DENYING PLAINTIFF'S
MOTION TO RECONSIDER

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MAY 16 2016

SC Court of Appeals

FILED FOR RECORD
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JOYCE HERRING WARD
CLERK OF COURT
KERSHAW COUNTY, S.C.

THIS MATTER came to be heard, after proper notice, on April 14, 2016, before this court upon the Plaintiff's original Motion for Reference and to Strike Jury Demand of Defendant Anita Joy. This Court ordered the matter to be bifurcated, with the counterclaim against Plaintiff for violating the South Carolina Unfair Trade Practices Act ("SCUPTA") to remain on the active jury trial docket, while the remaining claims, including the foreclosure, be heard by Judge Tzerman, Special Referee for Kershaw County. Plaintiff filed its Motion to Reconsider in a timely manner.

After careful consideration of the arguments submitted and applicable law, this Court finds that the Motion to Reconsider should be denied for the following reasons.

First, Plaintiff has cited *Advance Int'l, Inc. v. N.C. Nat'l Bank of S.C.*, 316 S.C. 266, 449 S.E.2d 580 (Ct. App. 1994) in support of its assertion that the South Carolina Supreme Court has specifically ruled that a counterclaim for an alleged violation of SCUPTA is properly referred

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EXHIBIT
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to the Master-in-Equity. There is no language in this case that supports Plaintiff's assertion. *Advance Int'l* merely furthers the assertion that it is not improper to refer permissive, legal counterclaims in an equity action to the Master-in-Equity. In fact, this Court is aware that the South Carolina Supreme Court has previously held that an action for a violation of SCUPTA can be a compulsive counterclaim. *N. Carolina Fed. Sav. & Loan Ass'n v. DAV Corp.*, 298 S.C. 514, 518, 381 S.E.2d 903, 905 (1989). A SCUPTA claim in a foreclosure action is not automatically permissive, nor automatically referred to the Master-in-Equity.

This Court finds that Defendant's SCUPTA counterclaim against Plaintiff is compulsory and warrants a jury trial. "By definition, a counterclaim is compulsory only if it arises out of the same transaction or occurrence as the opposing party's claim." *First Citizens Bank & Trust Co. of S.C. v. Hucks*, 305 S.C. 296, 298, 408 S.E.2d 222, 223 (1991); *see also* Rule 13(a), SCRCP. To determine if a counterclaim is compulsory, the court analyzes "whether there is a 'logical relationship' between the claim and the counterclaim." *Mullinax v. Bates*, 317 S.C. 394, 396, 453 S.E.2d 894, 895 (1995).

Plaintiff's claim arises out of an alleged default in payment on the Note and Mortgage. Defendant's SCUPTA claim was brought as a result of Plaintiff's conduct in enforcing the original Note and Mortgage. These allegations of improper conduct, if true, would have considerably impaired Defendant's ability to make payments on the Note and Mortgage. Defendant could have avoided default on the loan if Plaintiff did not engage in the alleged conduct. Defendant is seeking monetary damages under the statute, as well as all relief that may be just and proper. Such relief could include relief from Plaintiff's ability to enforce the Mortgage.

Furthermore, monetary damages as to individuals are governed by S.C. Code Ann. § 39-5-140, which states individuals can obtain up to three times the amount of actual damages, as well as attorney's fees and costs. Plaintiff has improperly cited S.C. Code Ann. § 39-5-110, which is related only to amount per violation that the State can collect through the Attorney General.

Alternatively, if Defendant's claims were permissive, Rule 53(b) SCRPC provides that in an action for foreclosure, "some or all of the causes of action . . . **may** be referred to a master or special referee by order of a circuit court judge. . ." The referral of a legal counterclaim to a master or special referee is merely discretionary.

IT IS THEREFORE ORDERED that the Plaintiff's Motion to Reconsider pursuant to Rules 53, 59(e), and 71 of the South Carolina Rules of Civil Procedure is denied.

AND IT IS SO ORDERED.



Robert E. Hood, Judge, Fifth Judicial
Circuit

5/3, 2016
Columbia, South Carolina