

The South Carolina Court of Appeals

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, Appellant,

v.

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

Appellate Case No. 2016-001025

ORDER

Appellant brings this appeal challenging the circuit court's order bifurcating Appellant's foreclosure action and Respondent's counterclaim under the South Carolina Unfair Trade Practices Act (SCUTPA)¹. The circuit court's order of reference referred Appellant's foreclosure action and Respondent's actions for accounting and violation of the Real Estate Settlement Procedures Act² to a master-in-equity. Additionally, the circuit court's order granted Respondent's request for a jury trial on the counterclaim of violations of the SCUTPA. Appellant filed a motion to reconsider, which the circuit court denied finding Respondent's SCUTPA counterclaim to be compulsory and warranting a jury trial. After careful consideration, we find the circuit court's grant of Respondent's trial by jury request not to be an error of law. *See North Carolina Fed. Sav. & Loan Ass'n v. DAV Corp.*, 298 S.C. 514, 381 S.E.2d 903 (1989) (finding a counterclaim under the South Carolina Unfair Trade Practices Act can be legal and compulsory when there is a logical relationship between the enforceability of a mortgage note which is the subject of a foreclosure action and circumstances between the parties which could affect default); *Johnson v. S.C. Nat'l Bank*, 292 S.C. 51, 56, 354 S.E.2d 895, 897 (1987) (holding when the complaint is equitable and the counterclaim is legal and

¹ S.C. Code Ann. §§ 39-5-10 to -560 (1976 & Supp. 2012).

² 12 U.S.C. §§ 2601-2617 (2012).

compulsory, the plaintiff or defendant has right to trial by jury on the counterclaim and the trial court may, under Rule 42, SCRPC, order separate trials of the legal and equitable claims). Therefore, we find the circuit court's order bifurcating the actions to be one which does not affect the mode of trial and is not immediately appealable. See *Fulmer v. Cain*, 380 S.C. 466, 470, 670 S.E.2d 652, 654 (2008) (noting "the 'mode of trial' exception to the general rule that only final orders are appealable is confined to orders abridge a party's constitutional right to trial by jury" (quoting *Salmonsens v. CGD, Inc.*, 377 S.C. 442, 461, 661 S.E.2d 81, 91 (2008) (Pleicones, J., dissenting))); *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 533 S.E.2d 725 (2000) (stating an order granting bifurcating issues for trial is generally not immediately appealable). Accordingly, the appeal is dismissed. The remittitur will be sent as required by Rule 221(b), SCACR.


FOR THE COURT

Columbia, South Carolina

cc:
William Price Stork, Esquire
Brian L. Boger, Esquire

FILED
7/14/16 