

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

U.S. Bank National Association, as)
Trustee for Citigroup Mortgage Loan)
Trust, Inc., Mortgage Pass-Through)
Certificates, Series 2006-WF2,)

Plaintiff,)

vs.)

Charles T. Brooks, III; Irma R. Brooks;)
Woodcreek Farms Homeowners)
Association; Community Resource Bank)
N.A.; Robinson Equipment Company,)
A Limited Partnership; South Carolina)
Department of Revenue; and the United)
States of America acting by and through)
its agency the Internal Revenue Service,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
C/A No.: 2015-CP-40-05098

**ORDER DENYING DEFENDANTS'
MOTION FOR RECONSIDERATION**

RECEIVED
SEP 30 2016
SC Court of Appeals

RICHLAND COUNTY
FILED
2016 SEP 19 AM 9:19
JEANETTE W. McBRIDE
C.C.P. & G.S.


This matter comes before the Court by way of Defendants' Motion For Reconsideration of Order Striking Defendants' Jury Trial Demand and For Mandatory Reference pursuant to Rule 59(e), SCRCF dated and filed August 31, 2016. Specifically, Defendants ask this Court to reconsider its Order Striking Defendants' Jury Trial Demand and For Mandatory Reference filed August 16, 2016.

After careful consideration of the record in this case and the submissions of the parties, this Court is unable to discover any material fact or principle of law that has either been overlooked or disregarded and further finds no error of law or facts not appropriately considered.

Accordingly, this Court hereby **DENIES** Defendant's Motion under Rule 59(e), SCRPC, to reconsider this Court's Order that was filed August 16, 2016. Furthermore, pursuant to Rule 59(f), SCRPC, the Court is of the opinion that oral argument is not necessary.

IT IS SO ORDERED.

Columbia, South Carolina
September 16, 2016



G. Thomas Cooper, Jr., Judge
Fifth Judicial Circuit

SCANNED

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

U.S. Bank National Association, as Trustee for
Citigroup Mortgage Loan Trust, Inc., Mortgage
Pass-Through Certificates, Series 2006-WF2,

PLAINTIFF,

vs.

Charles T. Brooks, III; Irma R. Brooks; Woodcreek
Farms Homeowners Association; Community
Resource Bank N.A.; Robinson Equipment
Company, A Limited Partnership; South Carolina
Department of Revenue; and the United States of
America acting by and through its agency the
Internal Revenue Service,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2015-CP-40-05098

**ORDER STRIKING DEFENDANTS'
JURY TRIAL DEMAND
AND FOR
MANDATORY REFERENCE**

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SEP 30 2016

SC Court of Appeals

This matter came before the Court on the Plaintiff's motion for an order striking Defendants' 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 defendant mortgagor Charles T. Brooks, III and Irma R. Brooks ("Defendants") served an answer on September 21, 2015 which contains a demand for a jury trial. The answer raises counterclaims for violation of the South Carolina Unfair Trade Practices Act, violation of the South Carolina Consumer Protection Code, breach of contract, breach of contract accompanied by fraudulent act, and libel, in addition to affirmative defenses.

The alleged factual basis for Defendants' counterclaims is that Plaintiff improperly handled Defendant Charles T. Brooks, III's loan modification reviews and made alleged misrepresentations to Defendants regarding the loss mitigation process. Specifically, the alleged conduct which Defendants contend gives rise to their claims occurred after the Defendant Charles T. Brooks, III's default under the terms of the note and mortgage; since Plaintiff's foreclosure action is centered entirely on the obligations created by the note and mortgage and Defendant Charles T. Brooks, III's default thereunder, Defendants' legal counterclaims do not arise from the same transaction or occurrence as Plaintiff's foreclosure action and are necessarily permissive.


By asserting said permissive claims in the instant foreclosure action, Defendants have 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 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.



The Honorable G. Thomas Cooper, Jr.

Columbia, South Carolina

August 16, 2016