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STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Federal National Mortgage Association,

Plaintiff,

v.

John D. Dalen, Julie A. Dalen and Wawtockace
Hills Property Owners Association,

Defendants,

John D. Dalen and Julie A. Dalen

Counterclaim Plaintiffs,

v.

Bank of America, N.A., successor by merger to
BAC Home Loans Servicing, L.P. f/k/a
Countrywide Home Loans Servicing, L.P.,

Counterclaim Defendant.

IN THE COURT OF COMMON PLEAS

TENTH JUDICIAL CIRCUIT

CASE NO.: 2011-CP-37-01056

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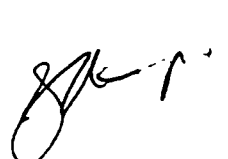
SC Court of Appeals

2016 OCT 13 P 12: 21

FILED OCONEE COUNTY, SC
BEVERLY N. WHITEFIELD
CLERK OF COURT

ORDER DENYING MOTION TO DISMISS

This matter comes before the court upon a Motion to Dismiss filed by John D. Dalen and Julie A. Dalen ("Defendants"). Defendants' Motion to Dismiss asks the court to dismiss this action for lack of subject matter jurisdiction. The court conducted a hearing for Defendants' Motion to Dismiss on September 8, 2016. The Defendants, who are proceeding pro se; Plaintiff Federal National Mortgage Association ("Fannie Mae"); and Counterclaim-Defendant Bank of America, N.A. ("BANA") appeared at the hearing to present their respective positions on the motion. After considering the Defendants' submissions to the court and all of the parties' oral



arguments, the court denies Defendants' Motion to Dismiss pursuant to the following findings of fact and conclusions of law:

STANDARD FOR DECISION

“Subject matter jurisdiction refers to the court’s power to hear and determine cases of the general class to which the proceedings in question belong.” *Watson v. Watson*, 319 S.C. 92, 93, 460 S.E.2d 394, 395 (1995). “Actions for foreclosure or the cancellation of instruments are actions in equity.” *Wilder Corp. v. Wilke*, 324 S.C. 570, 479 S.E.2d. 510 (Ct. App. 1996). Under section 14-11-15 of the South Carolina Code, “[t]he equity court is considered a division of the circuit court, and the master-in-equity, as judge of the equity court, is entitled to all the benefits and subject to all the requirements of the South Carolina Bar and the rules of the Supreme Court in the same respect as circuit court and family court judges.” S.C. Code Ann. § 14-11-15. “The Master-in-Equity is considered a division of the circuit court and obtains jurisdiction through an order of reference from the circuit court.” *See id.*; S.C. R. Civ. P. 53. Accordingly, a master has subject matter jurisdiction over any properly referred foreclosure action. *See Wachovia Bank of South Carolina, N.A. v. Player*, 341 S.C. 424, 427, 535 S.E.2d 128, 129 (2000). Moreover, in South Carolina, a foreclosure action must be filed and litigated in the county where the real property subject to foreclosure is located. S.C. Code Ann. § 15-7-10(3).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

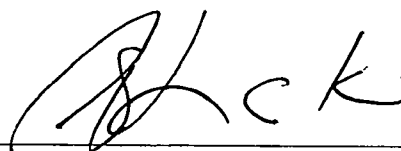
Defendants argue that the court lacks subject matter jurisdiction in this case by arguing that contact between the parties is unlawful. Defendants’ position is untenable and unsupported by South Carolina law, where foreclosure actions are actions subject to the equitable jurisdiction of this court. S.C. Code Ann. § 14-11-15. Defendants’ real property, which is the subject of



this foreclosure action, is located in Oconee County, South Carolina. Moreover, the complaint initiating this action alleges the elements of a foreclosure claim by alleging the existence of a mortgage loan encumbering Defendants' real property in Oconee County, and Defendants' default on the repayment terms of the mortgage loan. To this end, this foreclosure action was properly filed with this court on October 31, 2011 pursuant to S.C. Code Ann. §§ 14-11-15 & 15-7-10(3). Because this foreclosure action is subject to this court's equity jurisdiction, the court entered an order of reference on February 25, 2015, that referred this foreclosure action to the jurisdiction of the Master-in-Equity for Oconee County for final non-jury adjudication. Nothing provided in Defendants' Motion to Dismiss or their oral arguments compels a different result, and their motion to dismiss must be denied.

CONCLUSION

Based on the foregoing findings of fact and conclusions of law, **IT IS THEREFORE ORDERED** that Defendants' Motion to Dismiss for lack of subject matter jurisdiction is **DENIED**.



The Hon. Steven C. Kirven
Master-in-Equity for Oconee County

Oconee, South Carolina

10/10, 2016

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