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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Honorable G. Thomas Cooper, Jr.

Appellate Case No: 2016-000505

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

v.

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,

Of Which Charles T. Brooks, III and Irma R. Brooks, Appellants.

INITIAL BRIEF

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January 11, 2017

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STATEMENT OF ISSUE ON APPEAL

DID THE TRIAL COURT ERR BY STRIKING THE APPELLANTS'/DEFENDANTS' JURY TRIAL DEMAND AND REFERRING THE CASE TO THE MASTER-IN-EQUITY FOR MANDATORY ORDER OF REFERENCE WHEN THE APPELLANTS'/DEFENDANTS' HAVE ALLEGED COMPULSORY LEGAL COUNTERCLAIMS IN THIS FORECLOSURE ACTION ENTITLING THEM TO A JURY TRIAL?

STATEMENT OF THE CASE

This matter came before the Circuit Court on Respondent's/Plaintiff's Motion to Strike Jury Trial Demand and for Mandatory Order of Reference. (Respondent's/Plaintiff's Motion). The Appellants/Defendants objected to the Motion and a hearing was held before the Honorable G. Thomas Cooper, Jr. Judge Cooper ruled in favor the Motion and struck the jury trial demand and referred the case to the master-in-equity for disposition. (Order). The Appellants/Defendants file a Motion for Reconsideration, which was denied by Judge Cooper. (Order).

The underlining case in this matter is a foreclosure in which the Appellants/Defendants have contested the foreclosure action and alleged certain legal counterclaims. (Summons and Complaint; Answer and Counterclaim).

This appeal follows.

ARGUMENT

THE TRIAL COURT ERRED BY STRIKING THE APPELLANTS'/DEFENDANTS' JURY TRIAL DEMAND AND REFERRING THE CASE TO THE MASTER-IN-EQUITY FOR MANDATORY ORDER OF REFERENCE WHEN THE APPELLANTS'/DEFENDANTS' HAVE ALLEGED COMPULSORY LEGAL COUNTERCLAIMS IN THIS FORECLOSURE ACTION ENTITLING THEM TO A JURY TRIAL.

The issue herein is whether any or all of the counterclaims are permissive or compulsory. Except for the accounting, the Defendants have argued that the counterclaims are compulsory, entitling them to a jury trial on those issues. The Plaintiff, relying on *Wachovia Bank, N.A. v. Blackburn*, 407 S.C. 321, 755 S.E.2d 437 (S.C., 2014), has argued that the counterclaims are permissive in nature, therefore the Defendants have waived the right to a jury trial.

The South Carolina Supreme Court in *Johnson v. S.C. Natl. Bank*, set out “the proper analysis for determining the trial of legal and equitable issues in complaints and counterclaims” as follows:

- (1) If both the complaint and the counterclaim are in equity, the entire matter is triable by the court.
- (2) If both are at law, the issues are triable by a jury.
- (3) If the complaint is equitable and the counterclaim legal and compulsory, the plaintiff or the defendant has a right to a jury trial on the counterclaims. In that case, the proper procedure is as follows:
 - (a) The trial judge may, pursuant to Rule 42(b), order separate trials of the legal and equitable claims, or may order the claims tried in a single proceeding.
 - (b) If separate trials are ordered, the judge must determine which issues are to be tried first. If there are factual issues common to both claims, absent the “most imperative circumstances,” *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 79 S. Ct. 948, 3 L.Ed.2d 988 (1959), the “at law” claim must be tried first. If there are no common factual issues, it is within the trial judge’s discretion which claim will be tried first.

(c) If the claims are to be tried in a single proceeding and there are factual issues common to both claims, the jury shall first determine the legal issues. The court may then determine the equitable claims, but the jury's determination of common factual issues shall be binding upon the court.

292 S.C. 51, 55-56, 354 S.E.2d 895, 897 (1987).

The next important inquiry herein is whether the counterclaims alleged by the Defendants are compulsory counterclaims in a mortgage foreclosure action. The South Carolina Court of Appeals in *Wells Fargo Bank, N.A. v. Smith*, discussed the test for determining whether a counterclaim is compulsory as follows:

“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), SCRC. The test for determining if a counterclaim is compulsory is 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). In *N.C. Fed. Dav. & Loan Ass'n v. DAV Corp.*, 298 S.C. 514, 518, 381 S.E.2d 903, 905 (1989), our supreme court adopted the “logical relationship” test and held DAV's counterclaim was compulsory because “there [was] a logical relationship between the enforceability of the note which [was] the subject of the foreclosure action and the validity of the purported oral agreement which, if performed, would have avoided the default on the note by the joint venture.” In essence, the “logical relationship” determination is made by asking whether the counterclaim would affect the lender's right to enforce the note and foreclose the mortgage. *Advance Intern., Inc. v. N.C. Nat'l Bank of S.C.*, 316 S.C. 266, 269-70, 449 S.E.2d 580, 582 (Ct. App. 1994), *aff'd in part, vacated in part*, 320 S.C. 532, 466 S.E.2d 367 (1996). Here, there is a “logical relationship” between the enforceability of the Note, which is the subject of the foreclosure action, and the allegation that the Mortgage between Wells Fargo and Smith is unconscionable. If Smith prevails on his unconscionability claim, it will affect Wells Fargo's right to enforce the Note and foreclose the Mortgage. Therefore, Smith's common law unconscionability counterclaim is compulsory under the “logical relationship” test.

398 S.C. 487, 495, 730 S.E.2d 328, 332-33 (Ct. App. 2012).

Therefore, the *Wells Fargo v. Smith* test is that if success on the counterclaim would mean

that the plaintiff cannot prevail on its foreclosure claim, then the counterclaim is compulsory. A jury trial would then be appropriate under such a test.

Nine of the ten counterclaims alleged by the Defendants fall under the “logical relationship” test relating to the note and the foreclosure of the Mortgage: (1) violating foreclosure intervention by denying Defendants participation in the Home Affordable Modification Program; (2) unclean hands as it relates both the loan modification process and for refusing to accept monthly payments to prevent the foreclosure action in the first place; (3) violation of the Home Affordable Modification Program, specifically as it relates to proceeding with a foreclosure action in the first place; (4) violation of the South Carolina Consumer Protection Code both for the loan modification process and the debt collection practices leading to the foreclosure action in the first place; (5) violation of the South Carolina Unfair Trade Practices Act as it relates to the foreclosure action and the debt collection practices; (6) breach of contract concerning the loan, the mortgage, and the loan modification; (7) breach of contract with fraudulent intent concerning the loan, the mortgage, and the loan modification; (8) libel per se regarding the payments involving the loan and mortgage; and (9) conversion of payments under the loan and the mortgage.

All of the counterclaims allege facts dealing with the debt and the foreclosure action, specifically the note and the mortgage. While it is true the counterclaims also allege facts concerning the loan modification process, those allegations are not exclusive to disregarding facts relating to the debt and the Mortgage, which are the subjects of the foreclosure action and fall under the “logical relationship” test. All of the Defendants’ counterclaims are compulsory in that they do affect the Plaintiff’s right to enforce the note and foreclose the mortgage.

More specifically, the counterclaims asserting unclean hands (2), breach of contract (6), breach of contract with fraudulent intent (7), libel per se (8), and conversion (9) all deal with the

debt and the foreclosure action and do not only allege facts occurring after the alleged default. As such, those counterclaims are legal and compulsory and entitle the Defendants herein to a jury trial on those matters.

In *Plantation Fed. Bank v. Gray*, Op. No. 5075 (S.C. Ct. of App., 2013), the Court of Appeals reversed a case in which the master-in-equity allowed the bank to proceed with its foreclosure action before the compulsory legal counterclaims were adjudicated. Gray alleged unclean hands as a part of her defense to the foreclosure action. The court noted that Gray's counterclaims were compulsory in nature and involved questions of facts that will arise in the foreclosure action.

Here, the Defendants have raised through their compulsory counterclaims alleged questions of fact regarding the note and mortgage, which are the central issues of the foreclosure case. The Defendants are entitled to a jury trial as a matter of right and the trial court's ruling referring this matter to the master-in-equity should be reversed.

The Respondent/Plaintiff argued in support of their Motion to strike the jury demand and refer the case to the master-in-equity that the Appellants/Defendants served an answer on September 21, 2015, demanded a jury trial, and raised several counterclaims, specifically for the 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. (Answer and Counterclaim). The Respondent/Plaintiff argued that the basis for the Appellants'/Defendants' counterclaim is that the loan modification process was improperly handled, as well as misrepresentations made regarding the loss mitigation process. The Respondent/Plaintiff argued that even if the Appellants/Defendants could prevail on the claims regarding the post-foreclosure loss mitigation

efforts, it would not impact the Respondent's/Plaintiff's right to enforce the note and foreclose the mortgage.

The Respondent/Plaintiff also argued that the post-foreclosure loss mitigation efforts occurred after the Appellants'/Defendants' default, which according to their position, the legal counterclaims then do not arise from the same transaction or occurrence as the foreclosure action and are necessarily permissive. If the counterclaims are considered permissive, then the Respondent/Plaintiff argues that the Appellants/Defendants have waived their right to a jury trial.

Appellants/Defendants contend and argue that all of the counterclaims allege facts dealing with the debt and the foreclosure action, specifically involving the note and mortgage. While the counterclaims also allege some facts concerning the loan modification process, the counterclaims also allege facts concerning the debt and the mortgage, which are the subjects of the foreclosure action and fall under the "logical relationship" test. The Appellants'/Defendants' counterclaims are compulsory in that they do affect the Respondent's/Plaintiff's right to enforce the note and foreclose the mortgage entitling the Appellants/Defendants to a jury trial on those matters. Specifically, the counterclaims asserting unclean hands, breach of contract, breach of contract with fraudulent intent, libel per se, and conversion all deal with the debt and the foreclosure action and are matters triable by a jury since they involve questions of fact arising from the foreclosure action. "If the complaint is equitable and the counterclaim is legal and compulsory, the plaintiff or the defendant has a right to a jury trial on the counterclaim..." See *Wachovia Bank, Nat'l Ass'n v. Blackburn*, 407 S.C. 321,330, 755 S.E.2d 437, 441 (2014).

In order to determine whether the trial court properly struck the Appellants'/Defendants' jury trial demand and referred the case to the master-in-equity, it is important to determine if this action is legal or equitable, as reflected by the nature of the pleadings, evidence, and character of

the relief sought. *See Townes Associates, Ltd. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (S.C. 1976).


Here, as alleged by the Appellants/Defendants, if a defendant asserts a compulsory counterclaim that alleges actions in law in an equitable action, such as foreclosure, both the plaintiff and the defendant have a right to a jury trial on the issues raised by the compulsory legal counterclaim. *Johnson v. South Carolina Nat'l Bank*, 292 S.C. 51, 354 S.E.2d 895 (1987). *See also Gardner v. Travis*, 316 S.C. 315, 450 S.E.2d 54 (S.C. App., 1994). *See also First-Citizens Bank & Trust Co. of S.C. v. Hucks*, 305 S.C. 296, 298, 408 S.E.2d 222, 223 (1991) (“By definition, a counterclaim is compulsory only if it arises out of the same transaction or occurrence as the opposing party’s claim.” (citing Rule 13(a), SCRPC)); *Mullinax v. Bates*, 317 S.C. 394, 396, 453 S.E.2d 894, 895 (1995) (indicating the test for determining if a counterclaim is compulsory is whether there is a “logical relationship” between the claim and the counterclaim); and *N.C. Fed. Sav. & Loan Ass’n v. DAV Corp.*, 298 S.C. 514, 381 S.E.2d 903 (1989).

CONCLUSION

The Appellants/Defendants have alleged compulsory counterclaims and as such, are entitled to a jury trial on those matters. Therefore, the Circuit Court erred in striking the jury trial demand and referring the case to the master-in-equity. The Circuit Court’s ruling should be reversed and the matter set for a jury trial.

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RESPECTFULLY SUBMITTED,


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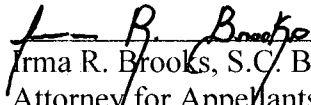
v.

Charles T. Brooks, III; Irma R. Brooks; Woodcreek Farms Homeowners Association;
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Partnership; South Carolina Department of Revenue; and the United States of America
acting by and through its agency the Internal Revenue Service, Defendants,

Of Which Charles T. Brooks, III and Irma R. Brooks, Appellants.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Initial Brief and Designation complies with
Rule 208 and Rule 228, SCACR.



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v.

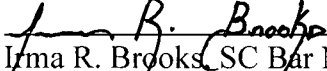
Charles T. Brooks, III; Irma R. Brooks; Woodcreek Farms Homeowners Association;
Community Resource Bank N.A.; Robinson Equipment Company, A Limited Partnership;
South Carolina Department of Revenue; and the United States of America acting by and
through its agency the Internal Revenue Service, Defendants,

Of Which Charles T. Brooks, III and Irma R. Brooks, Appellants.

PROOF OF SERVICE

I do hereby certify that I have this 11th day of January 2017, served a copy of the **INITIAL BRIEF, DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL, CERTIFICATE OF COUNSEL**, and a **PROOF OF SERVICE**, by depositing a copy of the same in the United States mail, with first class postage affixed thereto, addressed as follows:

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January 11, 2017

The Honorable Jenny Abbott Kitchings
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RE: U.S. Bank National Association, *et al.* v. Charles T. Brooks, III, *et al.*
C/A No.: 2015-CP-40-05098
Appellate Case No.: 2016-002041


Dear Ms. Kitchings:

Enclosed, please find for filing the **Initial Brief, Designation of Matter to be Included in the Record on Appeal**, and a **Certificate of Counsel**, along with the appropriate copies, as well as the related **Proof of Service**.

If you need any additional information, please do not hesitate to contact me.

Thank you for your attention to this matter.

Sincerely,



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Enclosures as stated above

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