

RECEIVED

MAR 22 2018

SC Court of Appeals

ELECTRONICALLY FILED - 2017 Sep 13 12:02 PM - JASPER - COMMON PLEAS - CASE#2017CPC2700147

STATE OF SOUTH CAROLINA  
COUNTY OF JASPER

IN THE COURT OF COMMON PLEAS  
C/A NO.: 2017-CP-27-00147

LPP Mortgage Ltd.,

Plaintiff,

vs.

**ORDER DENYING DEFENDANT'S  
MOTION FOR LEAVE TO FILE A  
THIRD-PARTY COMPLAINT**

Jenice J. Jefferson,

Defendant.

THIS MATTER COMES BEFORE THE COURT pursuant to the Motion for Leave to File Third-Party Complaint ("Motion") filed by the Defendant. A hearing was held on Defendant's Motion on July 21, 2017. Present and participating were Genevieve S. Johnson for the Plaintiff and John J. Pickney for the Defendant.

Based upon review of the Court's file and arguments of counsel, the court denies Defendant's Motion.

Defendant filed her initial Answer on June 12, 2017 and an amended answer and counterclaims on July 12, 2017. The amended Answer included counterclaims for fraud and RESPA violations. Rule 15(a) of the South Carolina Rules of Civil Procedure governs the issue at hand and states in relevant part that 30 days after serve of the responsive pleading, "a party may amend his pleading only by leave of court or by written consent of the adverse party..." Although leave to amend should generally be "freely given," the South Carolina Court of Appeals has held that it may be denied where the proposed amendment would be futile. *Jennings v. Jennings* 389 S.C. 190, 209 697 S.E.2d 671, 681 (2010) (reversed on other grounds).

\*CID586838\*

\*DID200222\*

This court upholds the above-stated, well established standard. In the present case, Defendant has already filed an amended answer and counterclaim and now seeks to amend the pleadings again to add a Third-Party Complaint, so as to bring claims against the mortgage servicer. "Mortgage servicing is "[t]he administration of a mortgage loan, including the collection of payments, release of liens, and payment of property insurance and taxes." *Bank of America v. Draper*, 405 S.C. 214, 221 746 S.E.2d 478, 481 (Ct. App. 2013) (citing Black's Law Dictionary 1105 (9<sup>th</sup> ed. 2009)). The loan servicer is the agent acting on behalf of the mortgage holder. *Id.*

As the agent of the Plaintiff, the actions of the mortgage servicer are imputable to the Plaintiff. Under general rules of agency law, when an agent acts with apparent authority of the principal, the acts are attributable to the principal. *American Soc. Of Mechanical Engineers, Inc. v. Hydrolevel Corp.*, 456 U.S. 556, 565-66 (1982). All issues surrounding the subject note and mortgage can be resolved between the two parties already involved in the action. Amending to add a third-party complaint would be futile.

NOW, THEREFORE, IT IS HEREBY ORDERED that Defendant's Motion for Leave to File a Third-Party Complaint is denied.

IT IS SO ORDERED.



---

Benjamin C.P. Sapp  
Special Referee for Jasper County

Jasper, South Carolina

Date: 9 / 13 / 2017