

The South Carolina Court of Appeals

Carolina First Bank, Respondent,

v.

Braxton R. Young, Heather M. Young, and First Citizens
Bank and Trust Company,

Of Whom, Braxton R. Young and Heather M. Young are
Appellants.

Appellate Case No. 2012-212761

ORDER

Appellants appeal from an order referring this foreclosure action to a master-in-equity. This court asked both parties to file memoranda addressing the issue of appealability. Appellants filed a memorandum, arguing the order of reference was immediately appealable because it affected the mode of trial. Specifically, Appellants contend that the order of reference deprived them of their right to a jury trial. Respondent filed a motion to dismiss and a memorandum of law in support of its motion to dismiss, arguing the order of reference was not immediately appealable.

After careful consideration of the parties' memoranda, the circuit court's order, and case law, we find the underlying order is not immediately appealable because the order of reference does not deprive Appellants of a mode of trial to which they are entitled as a matter of right. *See C & S Real Estate Servs., Inc. v. Massengale*, 290 S.C. 299, 300, 350 S.E.2d 191, 192 (1986), *modified by Johnson v. S.C. Nat'l Bank*, 292 S.C. 51, 354 S.E.2d 895 (1987) ("An order denying a party a jury trial is not immediately appealable unless it deprives him of a mode of trial to which he is entitled as a matter of right.").

"Generally, the relevant question in determining the right to trial by jury is whether an action is legal or equitable; there is no right to trial by jury for equitable

actions." *Wells Fargo Bank, NA v. Smith*, 398 S.C. 487, 494, 730 S.E.2d 328, 332 (Ct. App. 2012) (citation and internal quotation marks omitted). "If a complaint is equitable and the counterclaim legal and compulsory, the defendant has the right to a jury trial on the counterclaim." *Id.* "A mortgage foreclosure is an action in equity." *Id.* (citation and internal quotation marks omitted). Because Respondent's foreclosure action is equitable in nature, Appellants only have a right to a jury trial if their counterclaim is both legal and compulsory. *See id.*

In this case, Appellants' counterclaim against Respondent is failure to ascertain attorney preference under section 37-10-102(a) of the South Carolina Code (2002). Appellants have no right to a jury trial on the basis of this counterclaim because it is a permissive counterclaim. *See Wells Fargo Bank, NA v. Smith*, 398 S.C. at 498-99, 730 S.E.2d at 334-35 (providing in a foreclosure action, a counterclaim based on a violation of the attorney preference statute is permissive because it bears no "logical relationship" to the enforcement and satisfaction of the underlying note and mortgage). Therefore, the order of reference did not deprive Appellants of a mode of trial to which they were entitled to as a matter of right. Accordingly, this appeal is dismissed.



FOR THE COURT

Columbia, South Carolina

cc: Shawn M. French, Sr.
Dean Anthony Hayes

FILED

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