

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Carrington Mortgage Services, LLC,

RECEIVED

Plaintiff,

vs.

APR 22 2019

Paul R. Watson,

SC Court of Appeals

Defendant.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2017-CP-40-04539

**ORDER GRANTING
PLAINTIFF'S MOTION TO
STRIKE JURY TRIAL DEMAND**

(File No.: 4043.07917)

This matter came before the Court on March 14, 2019 for a hearing on Plaintiff's Motion to Strike Jury Trial Demand.

For the reasons set forth below, Plaintiff's Motion to Strike is GRANTED, and this civil action shall be placed on the nonjury docket.

FACTUAL AND PROCEDURAL BACKGROUND

This is a mortgage foreclosure action. Plaintiff filed a Summons and Complaint on July 31, 2017. Plaintiff alleges Defendant executed a note on August 27, 2009, secured by a mortgage covering real property. The mortgage was recorded on September 24, 2009. Plaintiff alleges Defendant defaulted on the note and mortgage as of March 1, 2017. Plaintiff seeks a judgment of foreclosure for the amount due upon the note and mortgage.

Defendant filed an Answer and asserted counterclaims for breach of contract, trespass, forcible entry and detainer, violation of the Unfair Trade Practices Act, and interference with contract. All of the counterclaims arise out of Plaintiff's alleged actions in entering and securing the property after default.

For example, the breach of contract counterclaim alleges Plaintiff breached the mortgage contract by entering and taking possession of the real property. Likewise, for trespass, Defendant alleges Plaintiff entered the real property in reckless disregard of Defendant's rights. For the

interference with contract cause of action, Defendant alleges Plaintiff interfered with Defendant's contract with a realtor by entering and taking possession of the real property.

STANDARD OF REVIEW

"Whether a party is entitled to a jury trial is a question of law." *Wachovia Bank, NA v. Blackburn*, 407 S.C. 321, 328, 755 S.E.2d 437, 441 (2014). "[T]here is no right to trial by jury for equitable actions." *Lester v. Dawson*, 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997). Mortgage foreclosure actions are equitable in nature. *See Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 248, 489 S.E.2d 472, 475 (1997) ("A mortgage foreclosure is an action in equity.") "If the complaint is equitable and the counterclaim is legal and permissive, the defendant waives his right to a jury trial." *Blackburn*, 407 S.C. at 330, 755 S.E.2d at 441.

CONCLUSIONS OF LAW

Defendant is entitled to a jury trial in this equitable action "only if the counterclaims are legal and compulsory." *Carolina First Bank v. BADD, L.L.C.*, 414 S.C. 289, 295, 778 S.E.2d 106, 109 (2015). Plaintiff concedes that all of the counterclaims are legal. Therefore, the only question is whether the counterclaims are permissive or compulsory.

A counterclaim is compulsory "if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim" Rule 13(a), SCRCF. South Carolina has adopted the "logical relationship" test to determine whether counterclaims arise out of the same transaction or occurrence as the opposing party's claim. *N.C. Fed. Sav. & Loan Ass'n v. DAV Corp.*, 298 S.C. 514, 519, 381 S.E.2d 903, 906 (1989).

"Under this test, 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." *Blackburn*, 407 S.C. at 330 n. 7, 755 S.E.2d at 442 n. 7 (internal quotations omitted). "If the

defendant's prevailing on his counterclaim would affect the bank's right to enforce the note and foreclose the mortgage, there is a logical relationship between the counterclaim and the underlying suit, and the counterclaim is therefore compulsory." *Id.*

Defendant is not entitled to a jury trial on his counterclaims because Plaintiff's ability to enforce the note and mortgage would not be affected by Defendant's success on the counterclaims. "Generally, the party seeking foreclosure has the burden of establishing the existence of the debt and the mortgagor's default on that debt." *U.S. Bank Trust Nat'l Ass'n v. Bell*, 385 S.C. 364, 374-75, 684 S.E.2d 199, 205 (Ct. App. 2009). Defendant's counterclaims pertain to alleged actions by Plaintiff in securing the property many years after the note and mortgage were executed. The resolution of the counterclaims would not affect the existence of a debt or Defendant's default on that debt. The counterclaims do not affect the enforceability of the note and mortgage.

CONCLUSION

For the reasons set forth above, Plaintiff's Motion to Strike is granted and this matter shall be transferred to the nonjury docket.

IT IS SO ORDERED.

SIGNATURE BLOCK APPEARS ON FOLLOWING PAGE



Richland Common Pleas

Case Caption: Carrington Mortgage Services LLC vs Paul R Watson
Case Number: 2017CP4004539
Type: Order/Other

So Ordered

s/ R.E. Hood #2164