

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Jocelyn Newman, Presiding Judge

Case No. 2016-CP-40-07662

Appellate Case No. 2018-001797

RECEIVED
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SC Court of Appeals

Nicholas L. Pettit, as Personal Representative of the Estate of Charles A. Pettit,
deceased,..... Appellant,

v.

Audrey E. Volonis and Ryan D. Volonis..... Respondents.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CASE NO. 2016-CP-40-07662

Nicholas L. Pettit, as Personal
Representative of the Estate of Charles A.
Pettit, deceased,

Plaintiff,

vs.

Audrey E. Volonis and Ryan D. Volonis

Defendants.

**ORDER DENYING PLAINTIFF'S
MOTION TO REFER TO MASTER IN
EQUITY**

On May 10, 2018, Plaintiff, Nicholas L. Pettit, as Personal Representative of the Estate of Charles A. Pettit, moved pursuant to Rules 53 and 71, South Carolina Rules of Civil Procedure, to seek this Court's Order referring the case to the Master in Equity. This motion was heard on July 12, 2018. Attorney Leonard R. Jordan, Jr. was present for the Plaintiff and Attorney Todd R. Lyle was present for the Defendants.

FACTS & PROCEDURAL HISTORY

On June 15, 2004, Defendant Audrey Volonis purchased the property located at 802 Huntington Avenue, situated in Richland County, South Carolina (hereinafter "Subject Property").¹ On April 1, 2008, Defendant Audrey Volonis deeded the property to both herself, and her son, Defendant Ryan D. Volonis.² On April 17, 2008, Defendants took out a mortgage in the amount of \$55,000 on the Subject Property, secured by a promissory note payable to the lender, Charles A. Pettit.³ This note was scheduled to mature on April 1, 2014.⁴ This property was and is the primary residence of Defendant Ryan D. Volonis.

¹ According to the deed filed in the Richland County Register of Deeds in Book 946 at Page 3103.

² *Id.* in Book 1422 at Page 3944.

³ *Id.* in Book 1422 at Page 3947; see also Plaintiff's Complaint, Para. 6—8.

⁴ See Plaintiff's Complaint, Para. 6—8.

On January 6, 2016, Charles A. Pettit died as a result of injuries he received from a motor vehicle accident in late 2015.⁵ Charles Pettit's brother, Nick Pettit, was appointed as the Personal Representative ("PR") of his brother's estate.⁶ On December 30, 2016, Plaintiff filed a Lis Pendens and Complaint alleging a mortgage foreclosure and demanding a deficiency judgment against Defendants Audrey E. Volonis and Ryan D. Volonis. According to the Complaint, Plaintiff alleges that no payments were made on the note.⁷ On February 21, 2017, Defendants filed an Answer and Counterclaim and demanded a jury trial. In their Answer, Defendants included the defenses of Payment, Setoff/Credit as well as Accord and Satisfaction.

Defendants also included a Counterclaim in their Answer. Defendants sought the counterclaim of a declaratory judgment, asking the court to hold that the Plaintiff should be compelled to satisfy the mortgage as the Defendants allege that the mortgage and note are extinguished as the debt was paid, cancelled or forgiven.⁸ On February 24, 2017, Plaintiff filed its reply to Defendants Counterclaim.

On April 30, 2018, Defendants filed an Amended Answer and Counterclaim and included the Counterclaims of Liability for Failure to File Mortgage Satisfaction and for Slander of Title.⁹ Defendants, again, demanded a jury trial. In total, the Defendants alleged three counterclaims: (1) Declaratory Judgment; (2) Liability for Failure to Satisfy the Mortgage; and (3) Slander of Title. On May 10, 2018, Plaintiff filed its Notice of Motion and Motion for Order of Reference seeking this Court to refer the matter to the Master in Equity.

⁵ Plaintiff's Complaint, Para. 10; see also Estate of Charles A. Pettit, 2016-ES-40-00037.

⁶ See Estate of Charles A. Pettit, 2016-ES-40-00037.

⁷ Plaintiff's Complaint, Para. 14.

⁸ See Defendants' First Answer, Para. 41.

⁹ On September 12, 2017, Defendants filed a Motion to Amend their Answer to include the Counterclaim of Liability for Failure to Satisfy Mortgage, pursuant to S.C. Code Ann. §29-3-320 (et seq). However, due to an administrative error, this Motion was never placed on the non-jury roster. Both parties consented to allow Defendants to file a Second Amended Answer and Counterclaim on April 24, 2018. The Chief Administrative Judge signed this consent Order on April 25, 2018.

LEGAL ANALYSIS

A mortgage foreclosure is an action in equity. *Collier v. Green*, 244 S.C. 367, 370, 137 S.E.2d 277, 279 (1964). However, “[w]hether a party is entitled to a jury trial is a question of law.” *Verenes v. Alvanos*, 387 S.C. 11, 15, 690 S.E.2d 771, 772 (2010). While a foreclosure is an action in equity, counterclaims—including those counterclaims raised in equitable actions—may be entitled to a jury trial. *Wachovia Bank Nat’l Ass’n v. Blackburn*, 407 S.C. 321, 329—30, 755 S.E.2d 437, 441—42 (2014). The proper analysis for determining the method of trial for legal and equitable issues in complaints and counterclaims was recently modified in 2014. *See id.*

- (1) If both the complaint and the counterclaims are in equity, then the matter is triable by the court.
- (2) If both [the complaint and the counterclaim] are at law, the issues are triable by a jury.
- (3) If the complaint is equitable and the counterclaim is legal and permissive, the defendant waives his right to a jury trial.
- (4) 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 unless a valid jury trial waiver exists that encompasses the counterclaim. If such a waiver does not exist, the proper procedure for handling the counterclaim 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, 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 the common factual issues shall be binding upon the court.

Id., 407 S.C. at 329—30, 755 S.E.2d at 441—42.

Therefore, the proper analysis in determining whether a foreclosure involving counterclaims may be tried in front of a jury or by the judge depends on whether the remedy sought is in law or in equity and also whether the counterclaims are permissive or compulsive. *See id.*

DISCUSSION

1. The Defendants Filed Counterclaims Seeking a Legal Remedy

Generally, equitable relief is only available when no adequate remedy at law exists. *Santee Cooper Resort, Inc., v. S.C. Pub. Serv. Comm'n*, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989). “An ‘adequate’ remedy at law is one which is as certain, practical, complete, and efficient to attain the ends of justice and its administration as the remedy in equity.” *Id.*

South Carolina law, through its incorporation of the common law of England, recognizes a cause of action for slander of title, thus, providing a remedy at law. *Huff. v. Jennings*, 319 S.C. 142, 148, 459 S.E.2d 886, 890 (Ct. App. 1995).¹⁰ Moreover, the creation of a statute will also provide a remedy at law. *See Key Corp. Capital, Inc. v. Cnty of Beaufort*, 373 S.C. 55, 61, 644 S.E.2d 675, 678 (2007) *citing S.C. Pub. Serv. Comm'n*, 298 S.C. at 185, 379 S.E.2d at 123 (1989) (holding that a court’s equitable powers must yield to an unambiguously worded statute providing relief). Indeed, a statute will provide a party with a legal remedy. *Id.*

Here, on February 21, 2017, Defendants filed their Answer and Counterclaim with respect to the foreclosure action. In this Answer, the Defendants demanded a jury trial. On April 30, 2018, Defendants filed their Second Amended Answer and Counterclaim and again demanded a jury trial. Contained in this Answer, the Defendants alleged the counterclaims of seeking a declaratory judgment, liability for failure to satisfy the mortgage as well as slander of title. The liability for

¹⁰ The *Jennings* Court further stated, “S.C. Code Ann. §14-1-50 (1976) provides ‘All, and every part, of the common law of England, where it is not altered by the Code or inconsistent with the Constitution or laws of this State, is hereby continued in full force and effect in the same manner as before the adoption of this section.’”

failure to satisfy the mortgage provides a legal remedy by statute. *See* S.C. Code Ann. §29-3-320; *see also Cnty of Beaufort*, 373 S.C. at 61, 644 S.E.2d at 678 (2007). The slander of title counterclaim also provides a legal remedy. *See Jennings*, 319 S.C. at 148, 459 S.E.2d at 890 (Ct. App. 1995).

In sum, Defendants timely demanded a jury trial. Defendants also filed counterclaims seeking a declaratory judgment, liability for failure to satisfy the mortgage and slander of title. These counterclaims provide the Defendants a remedy at law.¹¹

2. The Counterclaims are Compulsive

A counterclaim is compulsory if it arises out of the same transaction or occurrence as the opposing party's claim. *See N.C. Fed. Sav. & Loan Ass'n. v. DAV Corp.*, 298 S.C. 514, 517, 381 S.E.2d 903, 905 (S.C. 1989) *citing* Rule 13(a), SCRPC. Claims that arise out of a separate transaction than the subject matter of the opposing party's claims are, instead, permissive. *See* Rule 13(b), SCRPC.

The purpose of the rule governing counterclaims is to prevent multiplicity of actions and to achieve resolution in one single lawsuit of all disputes arising out of common matters. *Beach Co. v. Twillman, Ltd.*, 351 S.C. 56, 62, 566 S.E.2d 863, 865 (S.C. App. 2002). Indeed, the rules of procedure "shall be construed to secure the just, speedy, and inexpensive determination of every action." *Id. citing* Rule 1, SCRPC. Simply put, a counterclaim is compulsive if there is a logical relationship between the claim and counterclaim. *See DAV Corp.*, 298 S.C. at 518, 381 S.E.2d at 905 (S.C. 1989).

¹¹ A Declaratory Judgment can seek a remedy in equity or in law and depends on the underlying issues of the matter. *See Auto-Owners Ins. Co. v. Rhodes*, 405 S.C. 584, 593, 748 S.E.2d 781, 785 (2013). However, this Court need not determine whether the remedy for the Defendants' Declaratory Judgment counterclaim is equitable or legal because the other two Counterclaims seek a legal remedy.

In a foreclosure action, when a defendant's answer includes a counterclaim that affects the enforceability of the promissory note, this counterclaim will satisfy this logical relationship such that the counterclaim is compulsive.¹² See *id.*; but see *Advance Intern., Inc. v. N.C. Nat'l Bank of S.C.*, 316 S.C. 266, 269—70, 449 S.E.2d 580, 582—83 (Ct. App. 1994)) (holding a counterclaim brought in a foreclosure action was permissive because the counterclaims did *not* affect the enforceability of the underlying note)¹³ (emphasis added). Simply put, a counterclaim to a foreclosure action is compulsory if there is a logical relationship between the counterclaim and the enforceability of the guaranty agreement.¹⁴ See *S.C. Cmty Bank v. Salon Prox, LLC* 420 S.C. 89, 97, 800 S.E.2d 488, 492 (Ct. App. 2017) citing *Carolina First Bank v. BADD, LLC*, 414 S.C. 289, 295, 778 S.E.2d 106, 109 (2015).

Here, Plaintiff filed a foreclosure action and the counterclaims are compulsive. The Defendants' counterclaims are compulsive because they most certainly have a logical relationship to the enforceability of the note and mortgage. Defendants allege that the debt has been paid, cancelled or otherwise forgiven and that the note and mortgage are not enforceable.¹⁵

¹² The *DAV Corp* Court, which adopted the logical relationship test, held that five of the defendants' six counterclaims were compulsive because they were logically related to the enforceability of a promissory note. In *DAV Corp*, the court held that the counterclaim regarding a subsequent oral agreement involving additional mortgage financing was logically related to the enforceability of the agreement. *Id.*, 298 at 518, 381 S.E.2d at 905. The *DAV Corp* Court's holding is very persuasive to this Court's decision.

¹³ In *Advance Intern., Inc. v. N.C. Nat'l Bank of S.C.*, 316 S.C. 266, 449 S.E.2d 580 (Ct. App. 1994), the court held that a counterclaim was permissive when the counterclaim did not dispute the lender's right to foreclose the mortgage when the counterclaim merely alleged unclean hands of a party involved in a separate transaction. *Id.* 316 S.C. at 270, 449 S.E.2d at 583. (*N.C. Nat'l Bank of S.C.*, 320 S.C. 532, 466 S.E.2d 367 vacated a portion of the original opinion on an issue unrelated to this matter).

¹⁴ In *S.C. Cmty Bank v. Salon Prox, LLC*, 420 S.C. 89, 800 S.E.2d 488 (Ct. App. 2017), the Mortgagor defendant asserted that its counterclaims met the logical relation to the foreclosure claim because the counterclaim arose out of the origination and administration of the subject mortgage. *Id.* at 420 S.C. at 96, 800 S.E.2d at 492. The *Salon Prox, LLC* Court agreed stating, "[t]he substance of [Mortgagor's] . . . claim alleges [Mortgagee] engaged in a pattern of reneging upon promises to modify or otherwise restructure loans . . . [w]here this allegation true, it could affect the loan's enforceability. *Id.* at 420 S.C. at 97, 800 S.E.2d at 492.

¹⁵ During argument for this motion hearing, Plaintiff erroneously relied upon *Carolina First Bank v. BADD, LLC*, 414 S.C. 289, 295, 778 S.E.2d 106, 109 (2015). The *BADD, LLC*, Court is easily distinguishable from the matter before this Court. In *BADD LLC*, the Defendant brought a Civil Conspiracy counterclaim based on the Defendants' changing of a corporate Board member, two years after the execution of the promissory notes at issue. "In other

Moreover, in the interest of avoiding a multiplicity of actions in this matter, it would further support this Court's determination that the counterclaims are compulsive. *See Beach Co. v. Twillman, Ltd.*, 351 S.C. 56, 62, 566 S.E.2d 863, 865 (S.C. App. 2002). Indeed, following the *Blackburn* analysis, if this Court were to determine the Counterclaims are permissive, this would result in a very confusing and inefficient result. *See Wachovia Bank Nat'l Ass'n v. Blackburn*, 407 S.C. 321, 329—30, 755 S.E.2d 437, 441—42 (2014). Following the *Blackburn* analysis, because the counterclaims seek a law at remedy, those issues must be tried first.¹⁶ *See id.* Moreover, the issues decided by a jury are binding on the court.¹⁷ Simply put, if the counterclaims were permissive, this Court would then first decide the merits of a slander of title action and liability under S.C. Code Ann. §29-3-320, **before** determining the merits of the foreclosure action. This result is illogical.¹⁸

CONCLUSION

Plaintiff filed a foreclosure action, which is an action in equity. However, Defendants have filed Counterclaims which are compulsive and seek a remedy at law. The counterclaims are logically related to the enforceability of the underlying note and mortgage which are the subject of this foreclosure action. Thus, the counterclaims arise out of the same transaction and occurrence and are therefore compulsive. Moreover, the counterclaims seek a remedy at law. Slander of title recognizes such a remedy at law as does the counterclaim seeking the Plaintiff's liability, under

words, the civil conspiracy claim presumes the enforceability of the guaranty agreements because the allegations, if true, would not render the guarantees unenforceable. *Id.* 414 S.C. at 295, 778 S.E.2d at 109.

¹⁶ "[A]bsent the most imperative circumstances, the law claim must be tried first." Rule (4)(b), under *Blackburn*.

¹⁷ "[T]he jury shall first determine the legal issues. The court may then determine the equitable claims, but the jury's determination of the common factual issues shall be binding upon the court." Rule (4)(c), under *Blackburn*.

¹⁸ The *Blackburn* Court provided the framework for this analysis, but ultimately ruled that the defendant waived their right to a jury trial because a valid jury waiver was contained in the contents of the mortgage agreement that was the source of the underlying foreclosure action. Here, Plaintiff failed to plead that the Defendants waived their right to a jury trial or has made no mention of it otherwise. As such, in following the *Blackburn* analysis, Defendants Audrey Volonis and Ryan Volonis did not waive their right to a jury trial.

S.C. Code Ann. §29-3-320, because the remedy is provided by statute. As such, this matter should be tried, in toto, before a jury.

Therefore, it is ORDERED that the Plaintiff's motion to refer this matter before the Master in Equity is DENIED.

IT IS SO ORDERED.

The Honorable Jocelyn Newman
Fifth Judicial Circuit

Columbia, South Carolina
August 6, 2018



Richland Common Pleas

Case Caption: Nicholas L Pettit , plaintiff, et al vs Audrey E Volonis , defendant, et al
Case Number: 2016CP4007662
Type: Order/Other

So Ordered

Jocelyn Newman

Electronically signed on 2018-09-06 12:12:48 page 9 of 9

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2016-CP-40-07662

Nicholas L. Pettit, as Personal
Representative of the Estate of Charles A.
Pettit, deceased,

Plaintiff,

-vs-

Audrey E. Volonis and Ryan D. Volonis,

Defendants.

**NOTICE OF MOTION AND MOTION
FOR ORDER OF REFERENCE**

TO: TODD R. LYLE, ATTORNEY FOR DEFENDANTS

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, through its undersigned attorney, Leonard R. Jordan, Jr., will, on the tenth (10th) day following service hereof, or as soon as thereafter as counsel may be heard, move before the Presiding Judge, pursuant to Rules 53 and 71, South Carolina Rules of Civil Procedure, for an Order of Reference referring this case to the Honorable Joseph M. Strickland, Master in Equity for Richland County, to make findings of fact and conclusions of law; dispose of any and all issues and enter a final judgment in the case, with any appeal from the decision of the Master in Equity being directly to the South Carolina Court of Appeals.

This motion is made on the grounds that this case has as its main purpose the foreclosure of a mortgage, which action is equitable in nature and is the type of case routinely heard by the Master in Equity, and for which there is no right to a trial by jury.

The undersigned affirms that he, prior to filing this Motion, communicated orally with the Defendants' counsel in a good faith attempt to resolve this request for a reference, but that this matter could not be resolved.

Columbia, South Carolina
May 10, 2018

s/Leonard R. Jordan, Jr
Leonard R. Jordan, Jr., ID #3221
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STATE OF SOUTH CAROLINA)

County of Richland)

COURT OF COMMON PLEAS
2016-CP-40-07662

NICHOLAS L. PETTIT, AS)
PERSONAL REPRESENTATIVE OF)
CHARLES A. PETTIT, DECEASED,)

PLAINTIFF,)

vs.)

TRANSCRIPT OF RECORD

AUDREY E. VOLONIS AND)
RYAN VOLONIS,)

DEFENDANTS,)

July 12, 2018
Columbia, South Carolina

BEFORE:

THE HONORABLE JOCELYN NEWMAN, JUDGE.

APPEARANCES:

LEONARD R. JORDAN, JR., ESQ.
Attorney for the Plaintiff

TODD R. LYLE, ESQ.
Attorney for the Defendants

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T S

INDEX OF EXHIBITS:

(There were no exhibits introduced.)

INDEX OF WITNESSES:

(There were no witnesses called.)

1 THE COURT: All right. This is Nicholas Pettit vs.
2 Audrey Volonis. I'm ready for argument, but if you've
3 agreed to something.

4 MR. JORDAN: Unfortunately not, Your Honor.

5 THE COURT: All right. This is motion to refer to
6 the master.

7 MR. JORDAN: Actually, Judge, there are two motions
8 pending, only one on the roster meeting even though they
9 were filed together, so I would like to have both of them
10 to be argued today if that's possible.

11 THE COURT: Okay. Let me see if I have both of them.
12 Is the other motion to --

13 MR. JORDAN: We have a motion to determine --

14 THE COURT: To make more definite statement?

15 MR. JORDAN: Make more definite and certain.

16 THE COURT: All right. If you're all prepared for
17 both to be heard.

18 MR. LYLE: I'm not prepared for the second one, Your
19 Honor. I didn't see the motion.

20 MR. JORDAN: Well --

21 THE COURT: Okay. Then we'll just talk about
22 referring to the master.

23 Yes, sir.

24 MR. JORDAN: That would be my motion, Judge. I'm
25 Leonard Jordan. I'm attorney for the plaintiff. We have

1 a mortgage foreclosure case here.

2 My client is the holder of a note and mortgage from
3 2008, and we would like to have the case referred to the
4 master in equity. Of course, the defendant has moved for
5 a jury trial -- or has requested a jury trial.

6 And, Your Honor, it's the position of the plaintiff
7 that this is completely an equitable matter, but even if
8 it was not all equitable, there are minor claims that have
9 been submitted by defendant amount to legal claims -- I'm
10 not saying they do or they don't.

11 They're clearly not compulsory claims, and in order
12 to be entitled to a nonjury trial and an equitable action,
13 which this clearly is, the counterclaims must be both
14 legal and compulsory. In this particular case, as I say,
15 the defendants -- the defendants' counterclaims are not
16 compulsory.

17 There are three -- actually, three counterclaims.
18 One of them is a declaratory judgment claim and, as Your
19 Honor, I'm sure, knows, the primary type of action that
20 that's filed in is what is the designation for a
21 declaratory judgment action, as well, so that's really --
22 I don't think the subject of any conversation.

23 But the other two have to do with -- in both cases,
24 the second and the third counterclaims have to do with the
25 requirement or request by the defendants that the mortgage

1 that my client is foreclosing be satisfied on the record,
2 and there's an argument under statutory law claiming
3 damages for failure to satisfy a mortgage.

4 Both of these are premised, Your Honor, on payment of
5 a mortgage debt. The mortgage debt hasn't been paid and
6 my client is foreclosing the mortgage. So, logically,
7 these two counterclaims are not something that are
8 compulsory.

9 I would also point out that this is a set of 2008
10 mortgage loan. The defendant raised these arguments in
11 2017, so clearly, the matter at hand did not occur
12 simultaneously with the execution of the documents.

13 The note and mortgage were given in 2008. These
14 issues did not arise, if they're even appropriate at this
15 stage because we've got a pending foreclosure suit to try
16 to collect on a debt that is secured by the mortgage.

17 It's kind of illogical to make the claim that there
18 is a requirement that the plaintiff be somehow possibly
19 liable for damages by virtue of the fact that he failed to
20 pay the mortgage.

21 So, Your Honor, this is just solely an equitable
22 matter, typical matter that the master in equity handles.
23 In this particular case, I think it would be appropriate
24 to have the case referred to Judge Strickland to handle
25 the matter as a nonjury equitable matter.

1 THE COURT: Okay.

2 MR. LYLE: Thank you, Your Honor. If I may approach,
3 I've prepared a memorandum and also have a couple of cases
4 I believe to be controlling on the issue.

5 THE COURT: Yes, sir.

6 MR. LYLE: Again, Your Honor, Todd Lyle for the
7 defendants, Ryan Volonis and Audrey Volonis.

8 Mr. Leonard told you what he thought and also told
9 you what was this typical and then said this was
10 illogical, but the controlling case, Your Honor, we're
11 talking about, the test for whether or not -- he's
12 accurate in saying that there are counterclaims.

13 He's also accurate in stating that the claims must
14 seek a legal remedy. They must also be compulsory in
15 order to be tied into the same issue.

16 The Blackburn case provides the framework in 2014
17 that describes the analysis that we're going to look at.
18 In this particular case, foreclosure is, in fact, an
19 admirable action.

20 The counterclaims that we've sought are -- at least,
21 two of the three are seeking legal remedy, one by statute.
22 That's cited in my memorandum, the case that provides that
23 the statutory -- I'm sorry.

24 Your Honor, also, I'd like to point out that the
25 legal analysis requires us also to look at what is, in

1 fact, compulsive versus what is permissive, and in this
2 particular case, there's several cases that cite what is
3 compulsive in this certain situation.

4 The question is in North Carolina Federal Savings &
5 Loan Association v. DAV Corp, that's 298 S.C. 514 on Page
6 518, that's Supreme Court 1989, discusses about a
7 counterclaim is compulsive if there's a logical
8 relationship between the claim and the counterclaim. That
9 is the test that we've adopted.

10 There are numerous other tests, but in 1989 South
11 Carolina adopted that fourth prong of the prior test other
12 than the jurisdiction prong. So the real question is does
13 it, in fact, have a logical relationship between the claim
14 and the counterclaim.

15 In 2015, Carolina First Bank v. BADD, LLC, that is a
16 case that I've also provided for you that arises out of an
17 organization of the administration of a loan. In that
18 particular case, they held that there was a logical
19 connection between the enforceability of the underlying
20 note and mortgage, and that's what makes it compulsory,
21 Your Honor, is the fact that it is legally connected to
22 the enforceability of this note and mortgage.

23 So also in 2017, just last year, South Carolina
24 Community Bank v. Salon Proz, LLC, there were six
25 counterclaims, of which one of them was also slander of

1 title and the court held there.

2 In that state, they mentioned that reneging on the
3 promise to modify a loan was compulsive because at its
4 underlying source had an effect on whether or not there
5 was enforceability of the note.

6 So, Your Honor, the cases are fairly controlling on
7 this, that there is an allegation of a failure to pay.
8 There's also an allegation on our side, which we've
9 claimed multiple defenses, to include payment as a
10 defense, and therefore, it's an issue of fact that a jury
11 should determine because my client through their
12 counterclaims seek a legal remedy.

13 Again, it's compulsive because it's paramount to
14 whether or not there is enforceability of the note, and if
15 we just step back and think logically, kind of forgetting
16 the case law, it would make absolutely no sense to be able
17 to have a foreclosure which stipulates to the fact that
18 payment was demanded and was not made and then later have
19 a separate bifurcated trial and discuss whether or not
20 there was a slander of title.

21 So, Your Honor, we respectfully ask that you deny Mr.
22 Jordan's motion to defer to the master, and moreover, we
23 would like to mention -- as I put in my memorandum, we'd
24 like to have this trial in the next 30 days, Your Honor.
25 This is a 2016 case. This is Mr. Volonis' primary

1 residence.

2 He's been trying to move on and he's had this
3 lingering. There's been several issues with both parties
4 as to why discovery has taken a while to go, but at this
5 point, we're ready to proceed and we'd like this thing put
6 on the roster as quickly as possible.

7 THE COURT: All right. Yes, sir.

8 MR. JORDAN: Your Honor, counsel for the defendant
9 has really got it backwards. He thinks that somehow it's
10 most important to have the court decide whether or not a
11 satisfaction should be entered on a mortgage before a
12 court decides whether or not the mortgage is valid and
13 enforceable and should be the result of the judgment and
14 foreclosure on sale of the property. We're asking to get
15 the horse in front of the cart here and not go the other
16 way around.

17 The cases cited by counsel clearly are cases that are
18 on point for this particular issue, but the more recent
19 case, the 2015 Supreme Court of Carolina First Bank v.
20 BADD, LLC makes it absolutely clear that we're talking
21 about in order to be close enough to have a logical
22 relationship to the note and mortgage, it has to be
23 executed and enforceable against the note and mortgage.

24 It has to be executed with -- like in the case -- in
25 this BADD case, it was a guarantee. The Court ruled,

1 fortunately, the guarantee wasn't executed with the note
2 and mortgage, that would be logical, but the Court went on
3 to say the transaction or occurrence for the purpose of
4 determining the compulsory character of McKown's
5 counterclaim is the execution of the character agreements.

6 McKown's breach of covenant of good faith and fair
7 dealing claim depend on a purported conspiracy that took
8 place, if at all, two years after the guarantees had been
9 executed.

10 So this claim does not arise out of the underlying
11 transaction or occurrence because it does not affect the
12 execution or enforceability of the guarantee agreement.
13 We therefore hold McKown waived his right to a jury trial
14 by asserting a permissive counterclaim in the foreclosure
15 action.

16 And, Judge, we're not talking about two years
17 separated between the document and the claim. We're
18 talking, in this particular case, about -- above 10 years
19 separating the execution of the note and mortgage.

20 We didn't have a guarantee in this particular case,
21 but the execution of the note and mortgage in 2008 and the
22 claim in 2017 that my client should have satisfied the
23 mortgage.

24 And I would point out that the defendants really
25 haven't presented in their pleadings any kind of

1 evidentiary information or ultimate facts to show that
2 what they're claiming should be granted.

3 So from that perspective, Judge, this motion is
4 pretty routine, I think. They do not have a compulsory
5 counterclaim. In fact, the counterclaim is premised on
6 the fact that the mortgage has been satisfied, and by
7 satisfied, the statute is paid. And my client clearly has
8 not been paid or we wouldn't be bringing this foreclosure
9 action.

10 There's no allegation by the defendants with
11 supporting information that it, in fact, has been paid.
12 They used all these cute words that they think means the
13 same thing as forgave, but the bottom line is their
14 defense is based on the fact that they claim the mortgagee
15 forgave the debt.

16 We've gone through this over and over with regard to
17 what payments they made on the account, and they were few
18 and far between. There's really no evidence whatsoever
19 even approaching full payment on this account to the
20 contrary and probably in the case not even interest that
21 accrued on this debt.

22 Their whole case rises and falls on nothing but the
23 fact that they claim my client -- it's actually not my
24 client. My client, the mortgagee, is deceased and they're
25 claiming now that he forgave the debt, and so from that

1 perspective, his personal representative is bringing a
2 foreclosure action to the effect that the debt is still
3 due to the tune of approximately the same principle
4 balance that was loaned on the debt in 2008.

5 So again, their premise is -- their requirement is
6 under statute if they're seeking damages, which they are,
7 of failure to satisfy mortgage, the premise is that the
8 mortgage debt was paid, not that it was forgiven or some
9 other thing, but it was paid. And they have presented
10 nothing to that effect.

11 So, Judge, this is just a cute maneuver by the
12 defendants to get this case out of the master in equity's
13 hands and before a jury.

14 In this particular case, it's nothing but an
15 equitable matter with permissive counterclaims, and
16 really, one thing to consider I think is important here,
17 Judge, is if the -- if res judicata might apply here if
18 they did not raise these defenses.

19 Clearly, res judicata would not apply if they didn't
20 raise any defenses because the defenses have to do with
21 slander of title and an existence that's in the future,
22 okay.

23 I mean, right now, they've only -- they, basically,
24 presented, I think, a sparsity of evidence to the effect
25 that they have any defense in this case. At the end of

1 the day, they still have to defend, I guess, a mortgage
2 foreclosure action in this case that represents a debt,
3 and that's an equitable action.

4 These two counterclaims are completely unrelated to
5 the original transaction. The execution of the documents
6 have nothing to do with the enforcement of the documents.
7 They clearly are related to something subsequent to the
8 enforcement of the documents or subsequent to the
9 attempted enforcement of the documents. They have to do
10 with the failure of a -- of a party to satisfy of record a
11 mortgage.

12 THE COURT: But there is also a contention that the
13 plaintiff holds no note or mortgage on the subject
14 property. If the Court determines that there is a
15 mortgage, it's unenforceable. I mean, that all has to
16 deal with foreclosure.

17 MR. JORDAN: It has to do with foreclosure which is
18 with the bank --

19 THE COURT: Sure.

20 MR. JORDAN: The note has been provided to the other
21 side. The mortgage, of course, is recorded in the
22 courthouse. All of those things are in existence and
23 that's the purpose of this foreclosure suit, to determine
24 the enforceability of the mortgage. These claims have
25 nothing do with the enforceability of the mortgage. They

1 have to do with whether or not the mortgage should be
2 marked satisfied.

3 Before that -- we get to that particular argument,
4 the Court has to reach the argument as to whether or not
5 the plaintiff's relief should be granted or denied.

6 THE COURT: Okay. I've had the opportunity to read
7 through both the complaint and the amended answer.

8 There's a second amended answer?

9 MR. LYLE: That's correct, Your Honor. There is a
10 little bit of an administrative error. If you like, I
11 would like to respond briefly.

12 THE COURT: That's not necessary. The motion to
13 refer to the master is respectfully denied.

14 MR. LYLE: Thank you, Your Honor. If I may, could we
15 ask to have you rule that it be placed on the trial roster
16 as quickly as possible?

17 THE COURT: You'll have to talk to Judge Hood about
18 that.

19 MR. LYLE: Yes, ma'am.

20 THE COURT: As chief administrative judge. I don't
21 know what else is on the roster, and I don't like to mess
22 with his scheduling.

23 MR. LYLE: Thank you, Your Honor.

24 MR. JORDAN: Thank you.

25 (Whereupon, the proceedings were concluded.)

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Karen Ambroziak, Official Court Reporter for the
5th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of Common Pleas for
Richland County, South Carolina, on the 12th day of July,
2018.

November 30, 2018

Karen Ambroziak

Karen Ambroziak, RPR
Circuit Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Nicholas L. Pettit, as Personal
Representative of the Estate of Charles A.
Pettit, deceased,

Plaintiff,

-vs-

Audrey E. Volonis and Ryan D. Volonis,

Defendants.

COMPLAINT
(Mortgage Foreclosure)
(Non-Jury)

RICHLAND COUNTY
FILED
2016 DEC 30 PM 12:08
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

The Plaintiff, complaining of the Defendants above-named, would respectfully show unto this Honorable Court:

1. That the Plaintiff is the court-appointed Personal Representative of the Estate of Charles A. Pettit, deceased, which is filed in the Office of the Probate Judge for Richland County.

2. That the Defendants are, upon information and belief, citizens and residents of Richland County, South Carolina.

3. That the real property, hereinafter described, which is the subject of this action, is situated and located in Richland County, South Carolina.

4. That some interest in such real property is held or may be claimed by the Defendants herein.

5. That the subject mortgage loan is not one guaranteed by Federal National Mortgage Association or Federal Home Loan Mortgage Corporation; that the Plaintiff is not participating in the Home Affordable Modification Program ("HMP"); that the mortgaged real property is not, upon information and belief, the primary residence of either of the Defendants; and that the subject mortgage loan is not subject to modification under the HMP.

6. That on or about April 17, 2008, for value received, Ryan D. Volonis executed and delivered a Balloon Note to Charles A. Pettit, in accordance with the terms and conditions set out therein, by which said maker promised to pay to Charles A. Pettit the sum of \$55,000.00, together with interest thereon from date at the rate of 6.5000% per annum.

7. That in order to better secure the payment of the said note and debt, in accordance with the terms and conditions thereof, the said Audrey E. Volonis and Ryan D. Volonis executed and delivered on April 17, 2008, a mortgage of real estate to Charles A. Pettit, his heirs and assigns, covering the following described real property:

SEE LEGAL DESCRIPTION ATTACHED HERETO AS EXHIBIT "A"

8. That on April 24, 2008, said mortgage was recorded in the Office of the Register of Deeds for Richland County in Book 1422 at page 3947.

9. That said mortgage evidences and secures the repayment of money advanced by the mortgagee to, or on behalf of, the mortgagors and constitutes a second mortgage lien on the mortgaged property.

10. That the said Charles A. Pettit died on or about January 6, 2016; and that his Estate is filed in the Office of the Probate Judge for Richland County in Case No. 2016-ES-40-00037.

11. That the assets of the Estate, including the subject Balloon Note and mortgage, are held and controlled by the Plaintiff, in his capacity as Personal Representative of the Estate of Charles A. Pettit, deceased.

12. That as of the filing of the Lis Pendens in this matter, Audrey E. Volonis and Ryan D. Volonis were the owners of the mortgaged property.

13. That according to the terms and conditions of the Balloon Note, it is provided that, the loan matured on April 1, 2014, at which time the entire principal and all accrued interest was

due and payable. That the amount due upon maturity, in the stipulated amount of \$55,297.92 (Balloon Payment), presumed payment, when due, of the interest-only monthly payments on the Balloon Note from May 2008 through March 2014; that such amount fails to include accrued but unpaid interest; and that therefore the said stipulated amount fails to reflect the actual amount due on the Balloon Note at maturity.

14. That as no payments have been made on the Balloon Note, the principal balance remains \$55,000.00; that also owing is interest on the said balance from and after April 17, 2008, at the rate 6.5000% per annum, as provided in the Balloon Note; that said interest should be compounded annually; and that also due are late charges and the costs and disbursements of this action as provided by the Balloon Note.

 15. That it has become and is necessary for the Plaintiff to employ legal counsel to prosecute this action; and that a reasonable fee for the services of the Plaintiff's counsel should, according to the terms of the Balloon Note and the mortgage, be added to the amount of the mortgage debt.

16. That as a result of the default by the Defendants on the Plaintiff's mortgage loan, the Plaintiff is informed and believes that he is entitled to have the mortgage foreclosed, the equity of redemption barred, and the mortgaged property sold at a public sale, with the proceeds therefrom to be applied, first, to the costs of this action and, next, to the Plaintiff's debt.

17. That the Plaintiff is also informed and believes that he is entitled to a money judgment against the maker of the Balloon Note; and that he therefore demands a deficiency judgment against the Defendant, Ryan D. Volonis, should the proceeds of the sale of the mortgaged property fail to pay in full the debt evidenced by the Balloon Note, including principal, interest, late charges, advancements and costs of collection, including attorney's fees.

18. That the Plaintiff's mortgage loan, which is secured by a second mortgage lien on real estate, may be, a "consumer loan" under the South Carolina Consumer Protection Code, but it is not subject to the statutory requirement that a notice of consumer's right to cure be mailed to the borrower, as the loan has matured and no partial payments (other than a final, lump sum payment of the entire indebtedness) are due.

19. That the Plaintiff is informed and believes that the mortgaged property is also subject to a mortgage from Audrey E. Volonis to Washington Mutual Bank, FA, a federal association, dated June 15, 2004, and recorded in the Office of the Register of Deeds for Richland County on June 16, 2004, in Book 946 at page 3106; that the Plaintiff is further informed and believes that said mortgage is a first-priority lien on the subject real property; and that this suit is expressly subject to the lien of said first mortgage.

WHEREFORE, having fully set forth its Complaint, the Plaintiff prays that this Honorable Court inquire into the matters set forth herein; and

That the amount due upon Balloon Note and the mortgage held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorney's fees and costs of this action; and

That the Plaintiff's mortgage be declared a second mortgage lien; and that the Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes, insurance premiums and/or inspection or securing expenses, which may have been paid by the Plaintiff, a reasonable sum as attorney's fees and the costs of this action; and

That the mortgaged premises be sold under the direction of this Court, subject to the above-described first mortgage, that the equity of redemption be barred, and that the proceeds of sale be applied as follows:

First, to the costs and expenses of the within action and sale, and

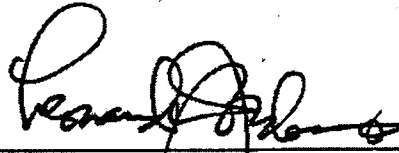
Second, to the payment and discharge of the amount due on the Plaintiff's Balloon Note and mortgage, together with attorney's fees and costs as aforesaid, and

Third, the surplus, if any, be distributed pursuant to Rule 71 of the South Carolina Rules of Civil Procedure; and

That the Plaintiff be awarded a deficiency judgment against the Defendant, Ryan E. Volonis, in the event that the proceeds of the sale of the mortgaged property are insufficient to pay in full the indebtedness evidenced by the Plaintiff's Balloon Note and mortgage; and

That the Court issue an Order directing the Sheriff for Richland County to place the successful purchaser at the foreclosure sale in possession of the subject real property, if necessary; and

For such other and further relief as may be just and proper.



Leonard R. Jordan, Jr.
JORDAN LAW FIRM
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Columbia, South Carolina 29209
(803) 726-1950 Tel.
(803) 726-1951 Fax
ljordan@ljordanlaw.com

Columbia, South Carolina
December 29, 2016

Attorney for Plaintiff

EXHIBIT "A"

All that certain piece, parcel or lot of land, with improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, and being shown and designated as Lot Number Two (2), Block "N" on a plat of replat of Blocks N and F of South End, prepared by W. H. Miller, dated October 4, 1938, and recorded in the Office of the Richland County Register of Deeds in Plat Book H at page 134; and being more particularly shown on a plat prepared for Virginia R. Shuler by Belter & Associates, Inc. dated May 14, 1996, and recorded in the Office of the Richland County Register of Deeds in Plat Book 56 at page 3041. Reference being made to aforesaid plats for a more accurate and complete description thereof.

This being the same property conveyed to Audrey E. Volonis by deed of Robert E. Hood dated June 15, 2004, and recorded in the Office of the Register of Deeds for Richland County on June 16, 2004, in Book 946 at page 3103; and thereafter conveyed to Audrey E. Volonis and Ryan D. Volonis by deed of Audrey E. Volonis, dated April 1, 2008, and recorded in said Office on April 24, 2008, in Deed Book 1422 at page 3944.

TMS # 11216-10-12

Property Address: 802 Huntington Avenue, Columbia, South Carolina 29205

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

**Nicholas L. Pettit, as Personal
Representative of the Estate of Charles A.
Pettit, deceased,**

Plaintiff,

vs.

Audrey E. Volonis and Ryan D. Volonis

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO. 2016-CP-40-07662

ANSWER AND COUNTERCLAIM

(JURY TRIAL DEMANDED)

FILED
2017 FEB 21 PM 12:05
CLERK OF COURT
C.C.P. & G.S.

Defendants Audrey E. Volonis and Ryand D. Volonis (hereinafter "the Defendants") in answer to the Plaintiff's Complaint and as counterclaim, answer and allege as follows:

FOR A FIRST DEFENSE

1. Any allegation of the Complaint not herein admitted, qualified, or explained is denied. Any allegations of the Complaint subject of qualified admissions made herein are denied insofar as the allegations are not qualifiedly admitted, and any allegations of the Complaint subject of any other qualifications or explanations herein are denied insofar as they are not otherwise qualified or explained.

2. Answering the allegations of paragraph 1 of the Complaint, Defendants do not have sufficient knowledge or information to form a belief as to the truth of the allegations of the paragraph.

3. Answering the allegations of paragraphs 2 and 3 of the Complaint, the Defendants admit the same.

4. Answering the allegations of paragraph 4 of the Complaint, the Defendants deny the same.

5. Answering the allegations of paragraphs 5 Defendants admits that that they are not participating in the HMP; as to any further allegation of this paragraph, Defendants do not have sufficient knowledge or information to form a belief as to the truth of the allegations of the paragraph.

6. Answering the allegations of paragraph 6 of the Complaint, the Defendants admit the same.

7. Answering the allegations of paragraph 7 of the Complaint, the Defendants admit a mortgage was executed on the subject property; however, said mortgage must be satisfied immediately. Defendants do not have sufficient knowledge or information to form a belief as to the motivations for securing payments.

8. Answering the allegations of paragraph 8 of the Complaint, the Defendants admit the same.

9. Answering the allegations of paragraph 9 of the Complaint, the Defendants admit the mortgage exists, but upon information and belief the mortgage is required to be satisfied as the underlying promissory note has been paid, cancelled or forgiven.

10. Paragraph 10 of the Complaint does not require a response.

11. Answering the allegations of paragraph 11 of the Complaint, the Defendants deny the note and mortgage are held and controlled by the Plaintiff as the note has been paid, cancelled or forgiven and the mortgage requires satisfaction based on the payment, cancellation or forgiveness of said promissory note.

12. Answering the allegations of paragraph 12 of the Complaint, the Defendants admit the same.

13. Answering the allegations of paragraph 13 of the Complaint, the Defendants expressly deny the same upon information and belief.

14. Answering the allegations of paragraph 14 of the Complaint, the Defendants expressly deny the same.

15. Answering the allegations of paragraph 15 of the Complaint, the Defendants lack sufficient knowledge to form a belief as to the necessity for Plaintiff to employ legal counsel. As to remaining allegations of this paragraph, Defendants deny the same.

16. Answering the allegations of paragraph 16 of the Complaint, the Defendants deny the same.

17. Answering the allegations of paragraph 17 of the Complaint, the Defendants deny the same as written.

18. Answering the allegations of paragraph 18 of the Complaint, the Defendants object to this question as the response requires a legal conclusion. As to the remaining allegations of this paragraph, Defendants deny the same.

19. Answering the allegations of paragraph 19 of the Complaint, the Defendants do not have sufficient knowledge or information to form a belief as to the results of a title abstract on the subject property.

FOR A SECOND DEFENSE
(Laches)

20. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

21. The Plaintiff has delayed in bringing this action.

22. That delay was unreasonable and unreasonable in its length.

23. The delay has caused prejudice to the Defendants.

24. Laches bars the Plaintiff's claims.

FOR A THIRD DEFENSE
(Waiver)

25. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

26. By failing to assert the claims the Plaintiff now brings and by the previous conduct of the parties, the Plaintiff has waived those claims.

FOR A FOURTH DEFENSE
(Promissory Estoppel)

27. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

28. The Defendants reasonably relied upon the payee's promise that the debt was paid, cancelled or forgiven to their detriment.

29. The Defendants reasonably relied upon the payee's assertion that the mortgage was satisfied and this reliance cause the Defendant's detriment.

FOR A FIFTH DEFENSE
(Accord and Satisfaction)

30. Each assertion set forth in this pleading is consistent with the following is incorporated herein by reference as if here set forth verbatim.

31. The Defendants are entitled to the appropriate satisfaction of the underlying mortgage based on the agreement and conduct of the parties.

FOR A SIXTH DEFENSE
(Payment)

32. Each assertion set forth in this pleading is consistent with the following is incorporated herein by reference as if here set forth verbatim.

33. The Defendants are entitled to the requisite satisfaction of the underlying mortgage based on the payments made by the Defendants.

FOR A SEVENTH DEFENSE
(Failure to State a Claim)

34. Each assertion set forth in this pleading is consistent with the following is incorporated herein by reference as if here set forth verbatim

35. Plaintiff fails to state a claim for which relief can be granted.

FOR A SEVENTH DEFENSE
(Setoff/Credit & Incorporation of Counterclaims)

36. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

37. The Defendants are entitled to all appropriate offsets or credits as may be just and applicable.

38. The Defendants assert by way of defense all applicable matter subject of their counterclaims.

FOR A FIRST COUNTERCLAIM
(Declaratory Judgment)

39. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

40. The Plaintiff holds no note or mortgage on the subject property.

41. If the court determines that the Plaintiff holds a mortgage on the subject property, it is unenforceable and must be satisfied as the underlying promissory note has been paid, cancelled, or forgiven.

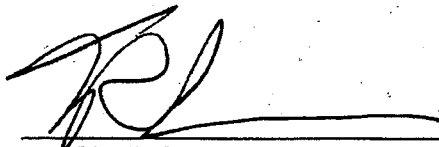
42. There is a justiciable controversy about these matters.

43. The Defendants are entitled to declaratory judgment in their favor concerning the same.

WHEREFORE, the Defendants pray for the Court to:

- (a) Issue an order dismissing the Complaint with prejudice;
- (b) Deny the Plaintiff the relief it seeks in this action;
- (c) Render declaratory judgment in favor of the Defendants as sought above;
- (d) Award all damages, actual, consequential, special, and punitive, available to the Defendants;
- (e) Award the Defendants all available statutory penalties;
- (f) Award the Defendants reasonable attorneys' fees if available per applicable statute;
- (g) Award the Defendants the costs and expenses of this action, if available per statute; and
- (h) Grant the Defendants such other and further relief as the court deems just and proper.

Respectfully submitted,



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(803) 929-0927 (facsimile)
Todd@ReevesAndLyle.com (email)
ATTORNEY FOR DEFENDANTS
AUDREY VOLONIS and RYAN VOLONIS

Columbia, South Carolina
February 15, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2016-CP-40-07662

Nicholas L. Pettit, as Personal
Representative of the Estate of Charles A.
Pettit, deceased,

Plaintiff,

-vs-

Audrey E. Volonis and Ryan D. Volonis,
Defendants.

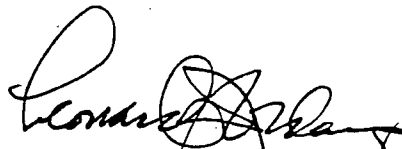
REPLY

RICHLAND COUNTY
FILED
2017 FEB 24 PM 12:55
JEANNETTE W. McBRIDE
C.C.P. & G.S.

The Plaintiff, Nicholas L. Pettit, as Personal Representative of the Estate of Charles A. Pettit, deceased, hereby responds to the Defendants' Answer and Counterclaim, and would show this Honorable Court as follows:

1. The Plaintiff denies the allegations of Paragraphs 38, 39, 40 and 41 of the Answer and Counterclaim and demands strict proof thereof.

WHEREFORE, having fully replied to Defendants' Counterclaim, the Plaintiff prays that the Court dismiss the Counterclaim, with costs charged to the Defendants, and to grant to the Plaintiff the relief requested in his Complaint.



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Attorney for Plaintiff

Columbia, South Carolina
February 21, 2017

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CASE NO. 2016-CP-40-07662

Nicholas L. Pettit, as Personal
Representative of the Estate of Charles A.
Pettit, deceased,

Plaintiff,

vs.

Audrey E. Volonis and Ryan D. Volonis

Defendants.

SECOND
AMENDED ANSWER AND
COUNTERCLAIM

(JURY TRIAL DEMANDED)

Defendants Audrey E. Volonis and Ryan D. Volonis (hereinafter "the Defendants") withdraw their first amended counterclaim to their previously filed Answer and Counterclaim and hereby move, to amend the same to include the counterclaims of liability under S.C. Code Ann. § 29-3-320, as well as slander of title as follows:

FOR A FIRST DEFENSE

1. Any allegation of the Complaint not herein admitted, qualified, or explained is denied. Any allegations of the Complaint subject of qualified admissions made herein are denied insofar as the allegations are not qualifiedly admitted, and any allegations of the Complaint subject of any other qualifications or explanations herein are denied insofar as they are not otherwise qualified or explained.

2. Answering the allegations of paragraph 1 of the Complaint, Defendants do not have sufficient knowledge or information to form a belief as to the truth of the allegations of the paragraph.

3. Answering the allegations of paragraphs 2 and 3 of the Complaint, the Defendants admit the same.

4. Answering the allegations of paragraph 4 of the Complaint, the Defendants deny the same.

5. Answering the allegations of paragraphs 5 Defendants admits that that they are not participating in the HMP; as to any further allegation of this paragraph, Defendants do not have sufficient knowledge or information to form a belief as to the truth of the allegations of the paragraph.

6. Answering the allegations of paragraph 6 of the Complaint, the Defendants admit the same.

7. Answering the allegations of paragraph 7 of the Complaint, the Defendants admit a mortgage was executed on the subject property; however, said mortgage must be satisfied immediately. Defendants do not have sufficient knowledge or information to form a belief as to the motivations for securing payments.

8. Answering the allegations of paragraph 8 of the Complaint, the Defendants admit the same.

9. Answering the allegations of paragraph 9 of the Complaint, the Defendants admit the mortgage exists, but upon information and belief the mortgage is required to be satisfied as the underlying promissory note has been paid, cancelled or forgiven.

10. Paragraph 10 of the Complaint does not require a response.

11. Answering the allegations of paragraph 11 of the Complaint, the Defendants deny the note and mortgage are held and controlled by the Plaintiff as the note has been paid, cancelled or forgiven and the mortgage requires satisfaction based on the payment, cancellation or forgiveness of said promissory note.

12. Answering the allegations of paragraph 12 of the Complaint, the Defendants admit the same.

13. Answering the allegations of paragraph 13 of the Complaint, the Defendants expressly deny the same upon information and belief.

14. Answering the allegations of paragraph 14 of the Complaint, the Defendants expressly deny the same.

15. Answering the allegations of paragraph 15 of the Complaint, the Defendants lack sufficient knowledge to form a belief as to the necessity for Plaintiff to employ legal counsel. As to remaining allegations of this paragraph, Defendants deny the same.

16. Answering the allegations of paragraph 16 of the Complaint, the Defendants deny the same.

17. Answering the allegations of paragraph 17 of the Complaint, the Defendants deny the same as written.

18. Answering the allegations of paragraph 18 of the Complaint, the Defendants object to this question as the response requires a legal conclusion. As to the remaining allegations of this paragraph, Defendants deny the same.

19. Answering the allegations of paragraph 19 of the Complaint, the Defendants do not have sufficient knowledge or information to form a belief as to the results of a title abstract on the subject property.

FOR A SECOND DEFENSE
(Laches)

20. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

21. The Plaintiff has delayed in bringing this action.

22. That delay was unreasonable and unreasonable in its length.

23. The delay has caused prejudice to the Defendants.

24. Laches bars the Plaintiff's claims.

FOR A THIRD DEFENSE
(Waiver)

25. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

26. By failing to assert the claims the Plaintiff now brings and by the previous conduct of the parties, the Plaintiff has waived those claims.

FOR A FOURTH DEFENSE
(Promissory Estoppel)

27. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

28. The Defendants reasonably relied upon the payee's promise that the debt was paid, cancelled or forgiven to their detriment.

29. The Defendants reasonably relied upon the payee's assertion that the mortgage was satisfied and this reliance cause the Defendant's detriment.

FOR A FIFTH DEFENSE
(Accord and Satisfaction)

30. Each assertion set forth in this pleading is consistent with the following is incorporated herein by reference as if here set forth verbatim.

31. The Defendants are entitled to the appropriate satisfaction of the underlying mortgage based on the agreement and conduct of the parties.

FOR A SIXTH DEFENSE
(Payment)

32. Each assertion set forth in this pleading is consistent with the following is incorporated herein by reference as if here set forth verbatim.

33. The Defendants are entitled to the requisite satisfaction of the underlying mortgage based on the payments made by the Defendants.

FOR A SEVENTH DEFENSE
(Failure to State a Claim)

34. Each assertion set forth in this pleading is consistent with the following is incorporated herein by reference as if here set forth verbatim

35. Plaintiff fails to state a claim for which relief can be granted.

FOR A SEVENTH DEFENSE
(Setoff/Credit & Incorporation of Counterclaims)

36. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

37. The Defendants are entitled to all appropriate offsets or credits as may be just and applicable.

38. The Defendants assert by way of defense all applicable matter subject of their counterclaims.

FOR A FIRST COUNTERCLAIM
(Declaratory Judgment)

39. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

40. The Plaintiff holds no note or mortgage on the subject property.

41. If the court determines that the Plaintiff holds a mortgage on the subject property, it is unenforceable and must be satisfied as the underlying promissory note has been paid, cancelled, or forgiven.

42. There is a justiciable controversy about these matters.

43. The Defendants are entitled to declaratory judgment in their favor concerning the same.

44. Except as otherwise stated below, Defendants reassert each and every defense and answer contained in the previously filed Answer and Counterclaim.

45. Except as otherwise stated below, each assertion set forth in the counterclaim is incorporated herein by reference as if here set forth verbatim

FOR A SECOND COUNTERCLAIM
(Liability for Failure to Enter Satisfaction)

46. It has been more than three months since the Plaintiff received the letter that is shown as Exhibit A to this pleading.

47. The Plaintiff has not repaired to the proper office (the Richland County Register of Deeds) to enter satisfaction of the mortgage subject of this case.

48. The Plaintiff is liable for all damages, penalties, attorneys' fees, and relief available under S.C. Code Ann. § 29-3-320 et. seq. (see exhibits A, B and C).

FOR A THIRD COUNTERCLAIM
(Slander of Title)

49. The Defendants would re-allege their previous allegations as if fully set forth herein.

50. As referenced above, the Defendants have demanded that Plaintiff satisfy the mortgage with the public records of the Richland County Register of Deeds based on the mortgage and note being cancelled, satisfied or otherwise, forgiven by the lender.

51. At all times relevant, this lien was a false statement as the note and mortgage were cancelled, satisfied or otherwise forgiven.

52. The unsatisfied mortgage was and is derogatory to the Defendants' title to real property, that being Defendant Ryan Volonis' personal dwelling.

53. As a result of the filed lien, Defendants did incur damages rendered the title unmarketable. The amount Plaintiff claims it is owed is above and beyond what is actually owed. Because of this lien, Defendants personal dwelling did diminish in value in the eyes of third parties. Defendants have suffered damages in an amount to be determined by a jury.

WHEREFORE, the Defendants pray for the Court to:

- (a) Issue an order dismissing the Complaint with prejudice;
- (b) Deny the Plaintiff the relief it seeks in this action;
- (c) Render declaratory judgment in favor of the Defendants as sought above;
- (d) Award all damages, actual, consequential, special, and punitive, available to the Defendants;
- (e) Award the Defendants all available statutory penalties;
- (f) Award the Defendants reasonable attorneys' fees if available per applicable statute;
- (g) Award the Defendants the costs and expenses of this action, if available per statute; and
- (h) Grant the Defendants such other and further relief as the court deems just and proper.

Respectfully submitted,

s/Todd R Lyle

Todd R. Lyle (SC Bar# 102308)
 REEVE & LYLE, LLC
 Post Office Box 11126
 Columbia, South Carolina 29211
 (803) 929-0001
 (803) 929-0927 (facsimile)
 Todd@ReevesAndLyle.com (email)
 ATTORNEY FOR DEFENDANTS
 AUDREY VOLONIS and RYAN VOLONIS

Columbia, South Carolina
 April 24, 2018

Exhibit A

Reeves & Lyle

ATTORNEYS AT LAW

February 15, 2017

Jordan Law Firm

Attn: Personal Representative to the Estate of Charles Pettit via Leonard R. Jordan, Jr.

211 Veterans Road, Suite D

Columbia, SC 29209

Re: Mortgage in Book 946 Page 3106 in register of deeds records for
Richland County, SC

Property Address: 802 Huntington Avenue
Columbia SC 29205

Via Certified U.S. Mail and Electronic Mail

Dear Mr. Pettit,

I have enclosed with this letter a check to you and the estate of Mr. Charles Pettit to cover the fee for recording a satisfaction document for the mortgage referenced above and any processing fee of the estate management. As you know, Mr. Ryan Volonis and Ms. Audrey Volonis own the property covered by this mortgage. Mr. Charles Pettit, or the estate of Mr. Charles Pettit is the holder of record of this mortgage, and as of this writing, there has been no recording of a document to show the satisfaction of this mortgage. This is a request for you to record a document showing satisfaction of this mortgage in the Richland County land records.

Please record the satisfaction document.

Sincerely,



Todd R. Lyle, Esq.

Cc: Nicholas L Pettit, as Personal Representative of the Estate of Charles A. Pettit

1527 Blanding Street

Columbia SC 29201

ReevesAndLyle.com

P .803.929.0001

F .803.929.0927

Toll Free 877.664.0001

Exhibit B

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark
Here

Sent To Jordan Law Firm (Leonard Jordan)
 Street, Apt. No.,
 or PO Box No. 24 Veterans Rd, Suite A
 City, State, ZIP+4 Columbia SC 29209

PS Form 3800, August 2006

See Reverse for Instructions

USPS Tracking® Results

FAQs > (<http://faq.usps.com/?articleId=220900>)

Track Another Package +

Remove X

Tracking Number: 70110470000087382907

Delivered

Updated Delivery Day: Friday, February 17, 2017 ⓘ
Product & Tracking Information

See Available Actions

Postal Product:

Features:
Certified Mail™

DATE & TIME	STATUS OF ITEM	LOCATION
February 17, 2017, 10:11 am	Delivered, Left with Individual	COLUMBIA, SC 29209
Your item was delivered to an individual at the address at 10:11 am on February 17, 2017 in COLUMBIA, SC 29209.		
February 17, 2017, 8:36 am	Out for Delivery	COLUMBIA, SC 29209
February 17, 2017, 8:26 am	Sorting Complete	COLUMBIA, SC 29209
February 17, 2017, 6:40 am	Arrived at Unit	COLUMBIA, SC 29209

See More V

Available Actions

See Less ^

Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

FAQs (<http://faq.usps.com/?articleId=220900>)

ELECTRONICALLY FILED - 2018 Apr 30 3:17 PM - RICHLAND - COMMON PLEAS - CASE#2016CP4007662

Exhibit C

REEVES & LYLE LLC

OPERATING ACCOUNT

1054

Leonard Jordan and Estate of Charles Pettit
Client Expense

2/15/2017

25.00

Volonis

Operating Account FP

25.00

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
 CASE NO.: 2016-CP-40-07662

Nicholas L. Pettit, as Personal)
 Representative of the Estate of Charles A.)
 Pettit, deceased,)

Plaintiff,)

-vs-)

Audrey E. Volonis and Ryan D. Volonis,)

Defendants.)

**REPLY TO SECOND AMENDED
 ANSWER AND COUNTERCLAIM**

Plaintiff, Nicholas L. Pettit, as Personal Representative of the Estate of Charles A. Pettit, deceased, hereby responds to the Defendants' Second Amended Answer and Counterclaim, dated March 27, 2018, and would show this Honorable Court as follows:

1. Any allegation of the Second Amended Answer and Counterclaim not herein admitted, qualified or explained is denied.
2. Plaintiff specifically denies the affirmative defenses set forth in the Second Amended Answer and Counterclaim.
3. Plaintiff denies the allegations of Paragraphs 40, 41, 42, 43, 44 and 45 of the Second Amended Answer and Counterclaim and demands strict proof thereof.
4. Plaintiff admits the allegations of Paragraph 47 of the Second Amended Answer and Counterclaim in that he would certainly not have entered a satisfaction of a mortgage on which he is affirmatively seeking foreclosure.
5. Plaintiff denies the allegations of Paragraph 48 of the Second Amended Answer and Counterclaim and demands strict proof thereof.

6. Further answering Paragraph 48, Plaintiff would show that the premise of S.C. Code Ann. §29-3-320 is that the mortgage holder has “*received* such payment [i.e. “full payment” – see §29-3-310], satisfaction, or tender” (emphasis added) of the debts secured by the mortgage and that the Second Amended Answer and Counterclaim has not alleged that the mortgage debt was retired as a consequence of full payment received by the mortgage holder or of any satisfaction or tender “received” by the mortgage holder.

7. Plaintiff admits so much of the allegations of Paragraph 50 of the Second Amended Answer and Counterclaim which state that Defendants have demanded that Plaintiff satisfy the subject mortgage.

8. Plaintiff denies the allegations of Paragraphs 51, 52 and 53 of the Second Amended Answer and Counterclaim and demands strict proof thereof, and he would show that Plaintiff’s mortgage is a lien in which Defendants voluntarily participated in placing against the title to their real property and that it was not a false statement at any relevant time.

WHEREFORE, having fully replied to Defendants’ Second Amended Answer and Counterclaim, Plaintiff prays that the Court dismiss the counterclaims, with costs charged to Defendants, and grant to Plaintiff the relief requested in his Complaint.

Columbia, South Carolina
December 18, 2018

s/Leonard R. Jordan, Jr.
Leonard R. Jordan, Jr. #3221
JORDAN LAW FIRM
211 Veterans Road, Suite D
Columbia, South Carolina 29209
(803) 726-1950 Tel
(803) 726-1951 Fax
ljordan@ljordanlaw.com
Attorney for Plaintiff

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Jocelyn Newman, Presiding Judge

Case No. 2016-CP-40-07662

RECEIVED
OCT 05 2018
SC Court of Appeals

Nicholas L. Pettit, as Personal Representative of the Estate of Charles A. Pettit,
deceased,..... Appellant,

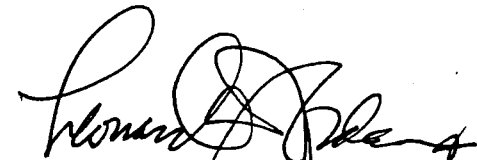
v.

Audrey E. Volonis and Ryan D. Volonis..... Respondents.

NOTICE OF APPEAL

Appellant appeals the Order Denying Plaintiff's Motion to Refer to Master in Equity,
issued by the Honorable Jocelyn Newman, which was filed on September 6, 2018. A copy of the
said Order is attached hereto.

October 4, 2018



Leonard R. Jordan, Jr.
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(803) 726-1950 Tel
(803) 726-1951 Fax
ljordan@ljordanlaw.com
Attorney for Appellant, Nicholas L. Pettit, as
Personal Representative of the Estate of
Charles A. Pettit, deceased

Other Counsel of Record:

Todd R. Lyle, Esquire
Reeves & Lyle
1527 Blanding Street
Columbia, SC 29201

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Jocelyn Newman, Presiding Judge

Case No. 2016-CP-40-07662

Appellate Case No. 2018-001797

Nicholas L. Pettit, as Personal Representative of the Estate of Charles A. Pettit,
deceased,..... Appellant,

v.

Audrey E. Volonis and Ryan D. Volonis..... Respondents.

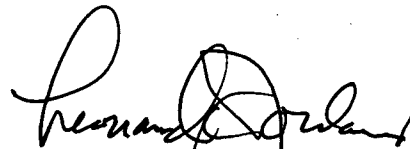
CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed
to be included by any of the parties and not any other material.

RECEIVED

JUN 27 2019

SC Court of Appeals



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Attorney for Appellant

June 27, 2019