

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BARNWELL )  
 )  
United States of America, )  
Plaintiff, )  
 )  
vs. )  
 )  
Edgar Payton, Willie Payton, )  
Hattie Payton, F. Hamilton Dicks, III, )  
the United States of America, acting )  
through the Small Business )  
Administration, successors in interest )  
to Still & Williams, Inc., SC Electric )  
& Gas Co., and David Payton, )  
 )  
Defendants. )  
 )

IN THE COURT OF COMMON PLEAS  
FOR THE SECOND JUDICIAL CIRCUIT  
C/A NO. 2018-CP-0600383

ORDER GRANTING PLAINTIFF'S  
MOTION TO STRIKE REQUEST FOR  
JURY TRIAL AND TO REFER

**RECEIVED**  
OCT 07 2019  
SC Court of Appeals

Plaintiff United States of America ("Plaintiff") filed a motion to strike Defendant Edgar Payton, Willie Payton, Hattie Payton, and David Payton's request for a jury trial and to refer this matter to a Special Referee for Barnwell County pursuant to Rule 53, SCRPC. Plaintiff brought this action to foreclose three mortgages in its Amended Complaint filed on October 30, 2018.

Edgar Payton submitted his Answer and Counterclaim on January 4, 2019, which included allegations that Plaintiff treated him differently from white farmers. In his Answer and Counterclaim, Edgar Payton specifically requested a jury trial. Plaintiff then filed its Reply and motion to strike Edgar Payton's jury trial demand and refer the case to a Special Referee.

Willie Payton, Hattie Payton, and David Payton submitted their Answer and Counterclaim on January 10, 2019, which included defenses and counterclaims to quiet title, adverse possession, reimbursement for betterments, and statute of limitations. In their Answer and Counterclaim, Willie Payton, Hattie Payton, and David Payton specifically requested a jury trial. Plaintiff then filed its Reply and motion to strike their jury trial demand and refer the case

to a Special Referee.

Defendants' counterclaims are permissive and do not warrant a jury trial. Defendants are entitled to a jury trial on their counterclaims in an equitable action only if the counterclaims are legal and compulsory. *Carolina First Bank v. BADD, LLC*, 414 S.C. 289, 778 S.E.2d 106 (S.C. 2015); *see also* Rule 13(a), SCRPC. A counterclaim is compulsory if it arises out of the same transaction or occurrence that is the subject matter of the opposing party's claim. *Id.* To determine if a counterclaim is compulsory, the court analyzes "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 a mortgage foreclosure, the "logical relationship" test asks whether the counterclaim would affect the lender's right to enforce the note. *See Carolina First Bank*, 414 S.C. at 295, 778 S.E.2d at 109.

Here, the execution of the notes and mortgages is the "transaction or occurrence" for the purpose of determining the compulsory character of Defendants' counterclaims. Defendant Eddie Payton admits that he did not make payments on the notes and mortgages. Answer, ¶ 11. His discrimination counterclaim relates to his subsequent requests for additional financing and other loans and does not affect the execution or enforceability of the notes and mortgages.<sup>1</sup> Even if Defendant Eddie Payton prevailed on this counterclaim, the result would not affect Plaintiff's right to enforce the notes and mortgages. Applying the logical relationship test, I find this counterclaim is permissive.

In regards to Defendants' statute of limitations defense, there is no federal limitations period applicable to a mortgage foreclosure action brought by the United States. *UMLIC VP LLC v. Matthias*, 364 F.3d 125 (3d Cir. 2004). In addition, it is well settled that the United

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<sup>1</sup> Eddie Payton's discrimination claim in the *Pigford, et al. v. Veneman* class action lawsuit was denied on November 1, 2000.

States is not bound by state statutes of limitations or subject to the defense of laches in enforcing its rights. *United States v. Summerlin*, 310 U.S. 414, 416 (1940). As such, Defendants' statute of limitations defense does not bar Plaintiff's foreclosure action and does not entitle Defendants to a jury trial.

Willie Payton, Hattie Payton, and David Payton's adverse possession claim is permissive as it did not arise out of the same transaction or occurrence as the notes secured by the mortgages which are the subject of the foreclosure complaint<sup>2</sup>. Even if valid, this counterclaim would not avoid default on the notes and mortgages and therefore fails the logical relationship test. Defendants have presented other defenses and counterclaims including quiet title, reimbursement for betterments, laches, and unclean hands which seek equitable relief for which they are not entitled to a jury trial.

A party is deemed to have waived his constitutional right to a jury trial on a counterclaim asserted in an equitable action when the counterclaim is permissive. *Carolina First Bank*, 414 S.C. at 297, 778 S.E.2d at 110, *see also Johnson v. S.C. Nat'l Bank*, 292 S.C. 51, 55, 354 S.E.2d 895, 897 (1987) (stating a defendant waives his right to a jury trial by asserting a permissive counterclaim in an equitable action). In *Carolina First Bank*, the South Carolina Supreme Court determined that a guarantor, who was joined in a foreclosure action pursuant to a statutory right of a lender to join a guarantor when a deficiency is sought, had permissive counterclaims, rather than compulsory counterclaims. The guarantor asserted civil conspiracy and breach of contract counterclaims which the Court found to be permissive claims as they did not arise out of the same transaction or occurrence because they bore no logical relationship to either the execution

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<sup>2</sup> Plaintiff does not seek to foreclose on Willie Payton and Hattie Payton's interest in the 44 acre parcel (TMS 056-00-00-016). David Payton has an interest in a life estate in 28 acres of the 44 acres, which interest was deeded to him by Eddie Payton on December 10, 2009. Plaintiff seeks to foreclose on 16 of the 28 acres in which David Payton has a life estate interest.

or enforceability of the guaranty agreements. As a result, the guarantor was deemed to have waived his right to a jury trial because he asserted permissive counterclaims in an equitable action.

*Carolina First Bank* clearly applies to the case before this Court because Defendants' counterclaims including discrimination, adverse possession, and their defense of statute of limitations do not arise out of the same transaction or occurrence because they do not affect the enforceability of the notes and mortgages. Accordingly, Defendants waived their rights to a jury trial by asserting permissive counterclaims in this foreclosure action.

**IT IS ORDERED** that Plaintiff's Motion to Strike Request for Jury Trial and to Refer is granted, and this action is referred to a Special Referee in Barnwell County.

**IT IS SO ORDERED.**



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The Honorable Clifton Newman, Second Judicial Circuit

~~May~~ Aug 9, 2019

Barnwell, South Carolina