

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

James Bennett Schwiers,
Plaintiff,

CASE NO.: 2019-CP-23-00049

vs.

Gene Baxley Schwiers,
Defendant.

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ORDER

SC Court of Appeals

This matter comes before the Court upon Plaintiff's Motion to Compel Reference in a foreclosure action. The motion was heard on November 18, 2019. James Cassidy was present and appeared on behalf of the Plaintiff. Burl Williams was present and appeared on behalf of the Defendant. After hearing both arguments and carefully reviewing the relevant law, I find that the matter should be referred to the Master in Equity per the Supreme Court ruling in *Carolina First Bank v. BADD, LLC* 414 S. C. 289, 778 S.E. 2d 106 (2015) and *Wachovia Bank, Nat. Ass'n v. Blackburn*, 407 S.C 321, 328, 755 S.E. 2d. 437 (2014). I find that the counterclaims asserted by the Defendant are legal but permissive in that Defendant alleges breach of a 2006 agreement as opposed to the underlying 2005 Note and Mortgage. The remaining Counterclaims stem from Plaintiff's alleged conduct after 2006. Thus, the Defendant has no right to a jury trial on these permissive counterclaims. I make no finding as to whether the counterclaims violate the Statute of Frauds or are otherwise justiciable.

Therefore, for the reasons stated above,

IT IS ORDERED that the above-entitled action be and the same is hereby referred to the Honorable Charles B. Simmons, Jr., as Master-in-Equity for Greenville County, pursuant to Rule

53 of the South Carolina Rules of Civil Procedure, for the purpose of conducting a full hearing on this matter and entering a final judgment thereon, as well as conducting hearings or entering orders after final judgment, with any appeal being directly to the Supreme Court.

IT IS FURTHER ORDERED that, in the event the Master-in-Equity should find that a judicial sale of the subject real property is warranted, the Master-in-Equity, pursuant to Section 15-39-680 of the Code of Laws of South Carolina, 1976, as amended, may designate that said sale be conducted on the regular day of judicial sales or at such other time as the Master-in-Equity may deem just and proper.

IT IS SO ORDERED.

(JUDGE'S SIGNATURE PAGE TO FOLLOW)



Greenville Common Pleas

Case Caption: James Bennett Schwiers vs. Gene Baxley Schwiers

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Type: Order/Other

So Ordered

s/ Robin B. Stilwell 2158