THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BARNWELL COUNTY
Court of Common Pleas

Clifton Newman, Circuit Court Judge

Case No. 2018-CP-06-00383

United States of America.....Respondent,

v.

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,

Of Whom, Edgar Payton is ..... Appellant.

INITIAL BRIEF OF APPELLANT

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   B. THE SIBLINGS ARE ENTITLED TO A JURY TRIAL ON THEIR ADVERSE POSSESSION COUNTERCLAIM.

2. DID THE TRIAL COURT ERR IN DISCUSSING THE APPLICABILITY OF APPELLANT'S STATUTE OF LIMITATIONS DEFENSE, SINCE THIS ISSUE WAS NOT BEFORE THE COURT ON USA'S MOTION.

STATEMENT OF THE CASE

This foreclosure action was commenced by the Respondent, The United States of America, (USA) on October 30, 2018. It stems from 4 mortgages securing notes given by the Appellant, Edgar Payton, to The Farmers Home Administration, in 1979, 1981 and 1982.

These mortgages secure loans made by FHA to Appellant to operate his farm. Appellant's Mortgages to Respondent lists eight (8) separate tracts of land totaling four hundred eighty-five (485) acres. One of the tracts includes his family home. Appellant admits payments have not been made on the notes and mortgages since the early 1980's but has asserted defenses to the foreclosure for which he has asserted a right to trial by jury.

As part of his defense to the foreclosure, Appellant asserts he was treated differently than white farmers who obtained loans from FHA/SBA and were able to refinance the indebtedness, or whom USA allowed to at least keep their home/homestead in the foreclosure process. (Appellant's Answer & Counterclaim) For example, one of the notes given by Appellant carries interest at the rate of 16% interest. (Paragraph 6 (a) Complaint) According to the Complaint, as of September 18, 2018, Appellant owed $585,607.90 in Principle and $1,808,049.17 in interest. (Complaint para, 7.) Appellant asserts modification of the debt would have substantially reduced the total amount of interest owed and would have made the prospect of paying down the debt easier or created viable alternatives other than losing his home and property to foreclosure. Moreover, he asserts if a foreclosure did occur, reduced indebtedness could have allowed him to keep a portion of his property, since there may have been more than enough assets to satisfy the indebtedness to Respondent.

In addition, USA has joined Willie Payton, David Payton, and Hattie Payton, Appellant's siblings (siblings), to this action, since one of the parcels for which Appellant gave a mortgage was jointly owned by them. The siblings answered and asserted a 44-acre tract of land was devised to them and Appellant by will of their grandfather, Angus Payton. Siblings assert that Appellant had no authority to Mortgage their interest in the property. Siblings have also pleaded adverse possession and betterments. There has been no resolution of the siblings' claims. Siblings also asserted their right to trial by jury. (Siblings' Answer & Counterclaim)

USA filed its motion to strike Appellant's and his siblings demand for a jury trial. Appellant did not file any motions to strike any defense or counterclaim of the Appellant or the appellant's siblings. (Motion to Strike) The motion was heard on May 13, 2019, and as a result the Circuit Court requested for further briefing in the form of proposed orders. The Court issued its Order filed on August 16, 2019, (Order Granting Motion to Strike) and Appellant and Siblings filed a joint 59(e) motion for reconsideration. (59(e) Motion) This motion was denied by order filed September 9, 2019. (Order Denying 50(e) Motion) This appeal was filed on October 4, 2019. Prior to the motion being heard and decided discovery had not been completed and only limited discovery had been conducted.

STANDARD OF REVIEW

Whether a party is entitled to a jury trial is a question of law, which this Court reviews de novo, owing no deference to the lower court's decision. *Carolina First Bank v. BADD LLC, 414 S.C. 289, 778 S.E.2d 106 (2015), citing Wachovia Bank, Nat. Ass'n v. Blackburn,* 407 S.C. 321, 328, 755 S.E.2d 437, 441 (2014).

ARGUMENTS

I. THE COURT ERRED IN STRIKING THE DEMAND FOR A JURY TRIAL

"The South Carolina Constitution provides that the right to a jury trial shall be preserved inviolate.... Whether a party is entitled to a trial by jury depends on whether the right to a jury was secured at the time of the adoption of our state constitution.... Generally, the relevant question in determining the right to a trial by jury is whether the action is legal or equitable." *Carolina First Bank V. BADD, LLC.*, 414 S.C. 289, 293, 779 S.E. 2d 106, 108 (2014). (int. cit. omitted)

Since a foreclosure action sounds in equity, a party is not automatically entitled to a jury trial. *South Carolina Community Bank v. Salon Proz, LLC.*, 420 S.E.2d 488 (Ct. App. 2015) (int. cit. omitted) The Appellant and Siblings in this case are only entitled to a jury trial if the counterclaims are legal and compulsory. Id at 420 S.C. 96, A counterclaim is compulsory if it arises out of the same transaction or occurrence as the party's claim. *Id.* "In a foreclosure action, a claim arises out of the same transaction or occurrence when there is a 'logical relationship' between the counterclaim and the enforceability of the guaranty agreement." *Id.* at 420 S.C. 97. Citing Carolina First Bank, id.

A. APPELLANT IS ENTITLED TO A JURY TRIAL ON HIS COUNTERCLAIM SINCE IT ARISES OUT OF THE SAME TRANSACTION AND BEARS A LOGICAL RELATIONSHIP TO THE FORECLOSURE.

USA asserts appellant's counterclaims do not affect the enforceability of the mortgage and are not logically related to the foreclosure action. However, the claims are logically related since the counterclaims, if successful, will affect the amount owed under the notes secured by the mortgage. Moreover, if a foreclosure did occur, reduced

indebtedness could have allowed him to keep a portion of his property, since the court could marshal the assets and sell only those lands necessary to satisfy any remaining indebtedness.

This is not to say that the actual issue of foreclosure would be submitted to the jury, since it is an equitable remedy. When the claim is equitable and the counterclaim is legal and compulsory, the court may order separate trials or try them together as long as it can be assured that a joint trial will not deprive a party of his right to a full jury trial of all legal issues under S.C.R.C. P. 42 (b). *Johnson v. South Carolina Nat. Bank*, 292 S.C. 51, 354 S.E.2d 895 (1987).

B. THE SIBLINGS ARE ENTITLED TO A JURY TRIAL ON THEIR ADVERSE POSSESSION COUNTERCLAIM.

Appellant's siblings, Willie, Hattie, and David Payton have asserted counterclaims/crossclaims of adverse possession. Adverse possession is an action at law and triable by a jury as a matter of right. *Brock v. Kirkpatrick*, 69 S.C.231,48 S.E.72 (1904). See also *Jones v. Leagan*, 384 S.C. 1,681 S.E.2d. 6 (Ct. App. 2009). The siblings must challenge this proceeding now ot avoid losing their interest in land they inherited from Angus Payton. These claims are logically related to USA's foreclosure, and the possible sale of the property as listed in the complaint would have a direct impact upon Siblings' interest. It would be illogical to have these claims brought in a separate action. While each Sibling was devised 8 acres from the 44 acres, the will did not specify where each devisee's interest lies. In other words, the will did not subdivide each devisees interest in the 44 acres and left them to do so. While the siblings among themselves have determined where their interest in the 44-acre tract lies, the exact

location of each sibling's 8-acre interest in the 44'acre tract remains to be determined of record. USA has not agreed to where the sibling's interest lies.

If the Siblings prevail, USA would be barred from enforcing its equitable lien and/or judgement against the Siblings' interest. The siblings, as of the submission of this brief, have not resolved their claim with the USA. (Tr. p.6, l.15 – p.9, l.23)

II. THE COURT ERRED IN REACHING THE CONCLUSION THAT APPELLANT COULD NOT AVAIL HIMSELF OF A STATUTE OF LIMITATIONS DEFENSE, SINCE THIS ISSUE WAS NOT BEFORE THE COURT ON USA'S MOTION.

In its August 16, 2019, Order granting USA's, motion to strike the case from the Jury Roster, the Court also held that Appellant was not entitled to a Statute of Limitations defense (August 16, 2019 Order, Page 2), even though USA's motion did not raise any issue regarding the availability of the defense. Appellant and his siblings in their Joint 59(e) motion (Appellant's 59(e) motion dated August 26, 2019, para. 2) raised this issue to the Court, but the motion was denied (September 6, 2019, Order denying the 59(e) motion)

Appellant does not assert the availability of a statute of limitations defense to a foreclosure action would entitle him to the right of trial by jury. Therefore, discussion of the Statute of Limitation was not necessary to the court's order. Moreover, USA did not move to strike this defense and only moved to strike the case from the jury roster.

While the language regarding the statute of limitations is unnecessary and may be viewed as dicta in the future, it also might be viewed as a finding of the Court. As such, Appellant will be prejudiced if the language remains in the order and believes the order should be modified to delete reference to the statute of limitations.

CONCLUSION

For the reason set forth in this Brief, Appellant asserts this Court's August 16, 2019, and September 9, 2019, orders be reversed.

February 26, 2020

Respectfully submitted,

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Of Whom, Edgar Payton is ..... Appellant.

PROOF OF SERVICE

I certify that I have served the Initial Brief of Appellant and Designation of Matter to be Included in the Record on Appeal by depositing a copy of each in the United States Mail, postage prepaid, on February 26, 2020, addressed to the following:

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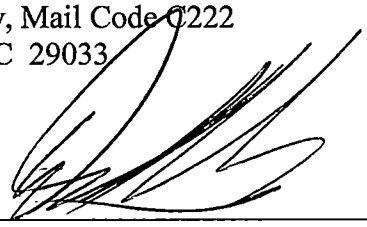

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Civil Action Number: 2018-CP-06-00383

Dear Ms. Kitchings:

Please find enclosed the originals and one (1) copy each of the Initial Brief of Appellant and the Designation of Matter to be Included in the Record on Appeal with Proof of Service prepared in this matter. Please file the originals and return the copy of each, clocked-in, to me in the stamped reply envelope provided.

By copy of this letter to all counsel of record, I am hereby serving a copy of the Initial Brief of Appellant and the Designation of Matter to be Included in the Record on Appeal upon them as required. Thank you for your courtesies in this matter.

Sincerely,

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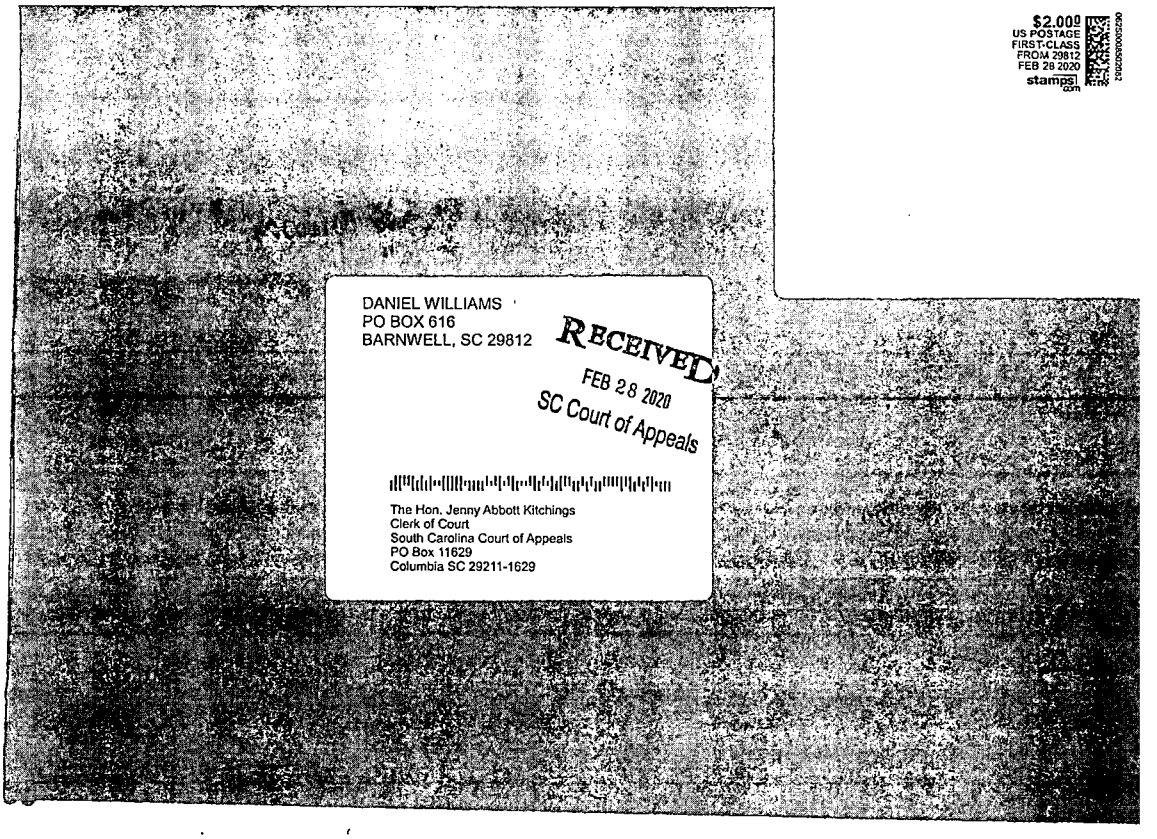

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