



The South Carolina Court of Appeals

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May 6, 2020

Mr. David Randolph Whitt, Esquire
344 Blossom View Ct.
West Columbia SC 29170

Mrs. Magalie Arcure Creech, Esquire
PO Box 41489
Charleston SC 29423

Re: Federal National Mortgage Association v. D. Randolph Whitt
Appellate Case No. 2017-002608

Dear Counsel:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

V. Claire Allen

CLERK

cc: Lisa Lee Smith, Esquire

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Federal National Mortgage Association ("Fannie Mae"),
a corporation organized and existing under the laws of
the United States of America, Respondent,

v.

D. Randolph Whitt; and Pearce W. Fleming, Defendants,

Of whom D. Randolph Whitt is the Appellant.

Appellate Case No. 2017-002608

Appeal From Lexington County
Lisa Lee Smith, Special Referee

Unpublished Opinion No. 2020-UP-132
Submitted March 1, 2020 – Filed May 6, 2020

APPEAL DISMISSED

David Randolph Whitt, of Fleming & Whitt, PA, of West
Columbia, for Appellant.

Magalie Arcure Creech, of Finkel Law Firm LLC, of
Charleston, for Respondent.

PER CURIAM: D. Randolph Whitt appeals the special referee's denial of his motion to transfer the foreclosure action brought against him by the Federal National Mortgage Association (Fannie Mae) to the jury trial roster. On appeal, Whitt argues (1) the special referee erred in finding the circuit court's order of reference was a final and appealable order, and (2) the special referee erred in finding Whitt did not have a right to a jury trial. We hold Whitt was not entitled to a trial by jury because his counterclaims raised in response to Fannie Mae's foreclosure action were legal and permissive. *See Johnson v. S.C. Nat'l Bank*, 292 S.C. 51, 55, 354 S.E.2d 895, 897 (1987) ("If [a] complaint is equitable and the counterclaim is legal and permissive, the defendant waives his right to a jury trial."). Because Whitt waived his right to a jury trial by asserting permissive legal counterclaims, a jury trial is not a mode of trial to which he was entitled. Accordingly, the order denying him a trial of his counterclaims by a jury is not immediately appealable to this court. *See C & S Real Estate Servs., Inc. v. Massengale*, 290 S.C. 299, 300, 350 S.E.2d 191, 192 (1986) ("An order denying a party a jury trial is not immediately appealable unless it deprives him of *a mode of trial to which he is entitled as a matter of right.*" (emphasis added)). Therefore, this court lacks jurisdiction to hear Whitt's appeal.

APPEAL DISMISSED.¹

LOCKEMY, C.J., and GEATHERS and HEWITT, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.