THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC 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,

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

On October 30, 2018, the United States of America ("Plaintiff"), acting through the United States Department of Agriculture, Farmers Home Administration, commenced this foreclosure action concerning the amounts due and owing under the terms of four promissory notes made, executed and delivered to Plaintiff by Borrower Edgar Payton ("Payton"). The indebtedness due and owing under the subject loans is secured by three real estate mortgages for real property situated in Barnwell County, South Carolina.

On January 4, 2019, Payton submitted his Answer and Counterclaim, which included allegations that Plaintiff treated him differently than white farmers. In his Answer and Counterclaim, Edgar Payton specifically requested a jury trial. On January 10, 2019, Willie Payton, Hattie Payton, and David Payton submitted their Answer and Counterclaim, 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.

On January 14, 2019, Plaintiff filed its Reply to Payton's Counterclaim, and on January 29, 2019, Plaintiff filed its Reply to Defendant Willie Payton, Hattie Payton, and David Payton's Counterclaims. On March 28, 2019, Plaintiff filed its motion to strike Defendant Edgar Payton, Willie Payton, Hattie Payton, and David Payton's demand for a jury trial and to refer the case to a Special Referee and filed its memorandum in support on May 10, 2019. This pleading requested the Court to strike the demand for a jury trial and refer the action to a Special Referee because Defendants waived their right to a jury trial by asserting permissive counterclaims in an equitable action.

On May 13, 2019, the Honorable Clifton Newman, Circuit Court Judge for the Second

Judicial Circuit, Barnwell County ("Trial Court") heard the motion. On August 9, 2019, the Trial Court signed an Order granting the motion to strike the demand for a jury trial and referring the action to a Special Referee in Barnwell County. The Order was filed on August 16, 2019.

On August 26, 2019, Defendants Eddie Payton, Willie Payton, Hattie Payton, and David Payton filed a joint motion to alter or amend pursuant to Rule 59(e), SCRCP. The Trial Court denied the motion on September 6, 2019. Payton served a Notice of Appeal on October 4, 2019.

STATEMENT OF THE FACTS

Edgar Payton made, executed and delivered four promissory notes to Plaintiff. (R. p. 10). The indebtedness due and owing under the subject loans is secured by three real estate mortgages on eight tracts of land. (R. pp. 11-12). Said notes and mortgages are in default. (R. p. 12). As of October 12, 2018, there is due upon the notes and security instruments the total sum of $2,424,119.52 with interest accruing thereafter at the total daily rate of $143.2611. (R. p. 11). On October 30, 2018, Plaintiff commenced this action to foreclose the three mortgages. (R. pp. 7-50).

Willie Payton and Hattie Payton were made parties to this action due to their interests as tenant in common by virtue of the Last Will and Testament of Angus Payton, Sr. in the property described in Plaintiff's mortgage on one of the eight tracts with TMS No. 056-00-00-016. (R. pp. 12-13). This particular tract contains 44 acres and there is no plat of record indicating formal allotment of the tract among the devisees. (Id.) However, the devisees divided the land among themselves. (R. p. 52). Willie Payton and Hattie Payton each have an interest in 8 acres of this 44 acre tract. (R. pp. 12-13). David Payton has an interest in a life estate in the remaining 28 acres of the 44 acres, which interest was deeded to him by Eddie Payton on December 10, 2009. (R. p. 15; p. 72, lines 19-20). Plaintiff does not seek to foreclose on Willie Payton and Hattie Payton's interests in 16 acres of the 44 acre parcel. (R. p. 72 lines 14 – 16; p. 82, lines 3-18). Plaintiff only seeks to foreclose on 16 of the 28 acres in which David Payton has a life estate interest. (Id.)

Edgar Payton submitted his Answer and Counterclaim on January 4, 2019 in which he admits that he did not make payments on the notes and mortgages. (R. p. 52, ¶ 11). Payton included allegations that Plaintiff treated him differently from white farmers. (R. p. 54). In his Answer and Counterclaim, Payton specifically requested a jury trial. (R. p. 51). 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. (R. pp. 56-61). In their Answer and Counterclaim, Willie Payton, Hattie Payton, and David Payton specifically requested a jury trial. (Id.) Plaintiff then filed its Reply and motion to strike their jury trial demand and refer the case to a Special Referee.

On May 13, 2019, the Trial Court heard Plaintiff's motion to strike Defendant Edgar Payton, Willie Payton, Hattie Payton, and David Payton's demand for a jury trial and to refer the case to a Special Referee. (R. pp. 69-89). The Trial Court applied the logical relationship test between Plaintiff's claim and Defendants' counterclaims including discrimination, adverse possession, and their defense of statute of limitations, and determined that they do not arise out of the same transaction or occurrence because they do not affect the enforceability of the notes and mortgages. (R. pp. 1-4). The Trial Court held that Defendants therefore waived their rights to a jury trial by asserting permissive counterclaims in a foreclosure action. (Id.) The Trial Court granted the motion to strike the demand for a jury trial and referred the action to a Special Referee in Barnwell County Court through an Order signed on August 9, 2019. (Id.) This appeal followed.

ARGUMENT AND CITATION OF AUTHORITY

STANDARD OF REVIEW

Whether a party is entitled to a jury trial is a question of law. Wachovia Bank, Nat. Ass'n v. Blackburn. 407 S.C. 321, 328, 755 S.E.2d 437, 440-441 (2014), *citing* Verenes v. Alvanos, 387 S.C. 11, 15, 690 S.E.2d 771, 772-73 (2010). Appellate courts may decide questions of law with no particular deference to the circuit court's findings. Id.

I. THE TRIAL COURT CORRECTLY STRUCK THE DEMAND FOR A JURY TRIAL.

Actions to foreclose liens on real property shall be tried by the court and shall ordinarily be referred to a master pursuant to Rule 53. Rule 71(a), SCRCP. This rule follows well established law that a mortgage foreclosure is an action in equity, and a party is not entitled to a jury trial in the proceeding. Carolina First Bank v. BADD, LLC, 414 S.C. 289, 778 S.E.2d 106 (2015). The Court determines as a matter of law whether a party is entitled to a jury trial. Id.

Defendants are entitled to a jury trial on their counterclaims in an equitable action only if the counterclaims are legal and compulsory. Id.; *see also* Rule 13(a), SCRCP. 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.

A. Appellant is not entitled to a jury trial on his counterclaim because it is permissive.

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 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.

In this case, Edgar Payton asserts that his counterclaim that Plaintiff allegedly treated him differently from white farmers provides a basis for his jury trial request. Here, the execution of the notes and mortgages is the "transaction or occurrence" for the purpose of determining the compulsory character of Defendants' counterclaims. Eddie Payton admits that he did not make payments on the notes and mortgages. (R. p. 52, ¶ 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.[1] Even if Defendant Eddie Payton prevailed on this counterclaim, the result would not affect Plaintiff's right to enforce the notes and mortgages. While Eddie Payton asserts that if his counterclaim were successful it would affect the amount

[1] Edgar Payton's discrimination claim in the Pigford, et al. v. Veneman class action lawsuit was denied on November 1, 2000. Edgar Payton appealed the denial of his claim which was also denied on April 8, 2002.

owed under the notes secured by the mortgages, it would still not avoid default of the notes and consequently would not affect the enforceability of the notes and mortgages.

Eddie Payton further contends that if foreclosure occurred, reduced indebtedness might have allowed him to keep a portion of his property. Again, any reduced indebtedness would not affect the enforceability of the notes and mortgages. Applying the logical relationship test, Eddie Payton's discrimination counterclaim is permissive and he has therefore waived his right to a jury trial by asserting the permissive counterclaim in an equitable foreclosure action.

B. The Siblings are not entitled to a jury trial on their adverse possession counterclaim because it is permissive.

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. Even if valid, this counterclaim would not avoid default on the notes and mortgages and therefore fails the logical relationship test.

Respondent does not seek to foreclose on Willie Payton and Hattie Payton's interests 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.

While the siblings contend that if they prevailed on their adverse possession claim, Respondent would be barred from enforcing its equitable lien and/or judgment against the siblings interest, the result still would not avoid Edgar Payton's default on the notes and mortgages and therefore fails the logical relationship test. As such, the siblings' adverse possession counterclaim is permissive and they waived their rights to a jury trial by asserting permissive counterclaims in a foreclosure action.

II. THE TRIAL COURT CORRECTLY CONCLUDED THAT APPELLANT COULD NOT AVAIL HIMSELF OF A STATUTE OF LIMITATIONS DEFENSE.

Plaintiff did in fact raise the issue regarding whether Appellant was entitled to a Statute of Limitations defense to the Court. Respondent's motion to strike the case from the Jury Roster raised the issue regarding the availability of the Statute of Limitations defense as to Willie Payton, Hattie Payton, and David Payton by denying it's validity and stating it would not avoid default on the notes and mortgage. (R. p. 95).

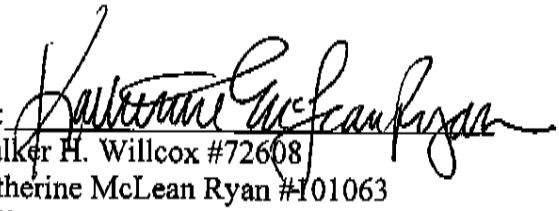
Moreover, on May 13, 2019, the Trial Court heard Plaintiff's motion to strike Defendant Edgar Payton, Willie Payton, Hattie Payton, and David Payton's demand for a jury trial and to refer the case to a Special Referee. (R. pp. 69-89). At the hearing, the statute of limitations defense was addressed and the Trial Court properly dismissed the defense in its Order. (R. pp. 69-89; pp. 2-3). Plaintiff presented evidence that a statute of limitations defense does not apply to the government as there is no federal limitations period applicable to a mortgage foreclosure action brought by the government, citing UMLIC VP LLC v. Matthias, 364 F.3d 125 (3d Cir. 2004). (R. pp. 82-83). In addition, it is well settled that the United 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, the Trial Court was correct to conclude that Appellant could not avail himself of a statute of limitations defense.

CONCLUSION

The Trial Court properly exercised its discretion in striking Defendants' demand for a jury trial. Additionally, the Trial Court correctly concluded that Appellant could not avail himself of a statute of limitations defense. Consequently, Respondent requests that the Court of Appeals deny

the appeal and affirm the Trial Court's decision.

July 13, 2020

By: 

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

CERTIFICATE OF COUNSEL

I do also certify that the Respondent's Final Brief complies with Rule 211(b) SCACR.

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