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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas

DEC 02 2020
SC Court of Appeals

Kristi F. Curtis, Circuit Judge

Appellate Case No. 2020-001490
Common Pleas Case No. 2020-CP-14-00023

New Residential Mortgage, LLC,

Plaintiff,

v.

Todd S. Crawford, Tricia L. Crawford, William T. Geddings, Jr.,
Jane U. Geddings, and USAA Federal Savings Bank,

Defendants,

Of Whom William T. Geddings, Jr. and Jane U. Geddings are the

Appellants,

and

New Residential Mortgage LLC and USAA Federal Savings Bank are the

Respondents.

RESPONDENT-APPELLANT NEW RESIDENTIAL MORTGAGE, LLC'S
MOTION TO DISMISS

Respondent-Appellant New Residential Mortgage, LLC ("New Residential"), through undersigned counsel, hereby moves to dismiss Appellant-Respondent Williams T. Geddings, Jr. and Jane U. Geddings' (the "Geddings") appeal in its entirety and states as follows:

I. INTRODUCTION

The Geddings seek appellate review of an interlocutory order granting a motion for judgment on the pleadings *without prejudice*. Indeed, on the very same day the Geddings filed the underlying notice of appeal, they filed an amended pleading in the trial court, which is the operative pleading at the time of this filing. The Geddings also seek appellate review of an interlocutory order striking a jury demand as to an equitable claim and referring the matter to the master in equity.

As a threshold matter, this Court has no jurisdiction to issue an advisory opinion regarding the sufficiency of a pleading that has since been superseded by an amended pleading. Moreover, the order granting New Residential's Rule 12(c) motion without prejudice and striking the Geddings' jury demand on their equitable claim does not fit within the confines of this Court's narrow appellate jurisdiction over interlocutory orders set forth in S.C. Code Ann. § 14-3-330. For these reasons, this appeal should be dismissed.

II. PROCEDURAL BACKGROUND

This matter arises out of 2007 mortgage loan transaction between Todd S. Crawford and Tricia L. Crawford (the "Crawfords") on the one hand, and USAA Federal Saving Bank on the other hand. In 2013, the senior mortgage was assigned to Green Tree Servicing, LLC, now known as Ditech Financial LLC. In 2018, the Crawfords conveyed the underlying property to the Geddings subject to the existing mortgage. In December 2019, the senior mortgage was assigned to New Residential. New Residential initiated the underlying action in January 2020 seeking to foreclose on the property owned by the Geddings. The Geddings subsequently asserted the following three counterclaims (also characterized as cross-claims in the pleadings) in an amended responsive pleading (the "First Amended Answer & Counterclaims"): (1) negligence; (2) violation

of the South Carolina Unfair Trade Practices Act (“SCUTPA”), S.C. Code Ann. § 39-5-10, *et seq.*; and (3) unjust enrichment.¹

On September 3, 2020, the trial court granted New Residential’s motion for judgment on the pleadings under SCRCP 12(c) as to the Geddings’ counterclaims/cross-claims for negligence and violation of the SCUTPA, concluding that the Geddings did not have standing to maintain claims based on alleged harms occurring prior to their ownership of the property or based on the underlying loan transaction with the Crawfords to which the Geddings were not a party.² The trial court denied the motion as to the unjust enrichment claim. Because the sole remaining claim for unjust enrichment sounded in equity, the trial court also granted New Residential’s motion to strike the jury demand contained in the Complaint and referred the matter to the Clarendon County Master in Equity for further proceedings.

The trial court subsequently denied the Geddings’ motion for reconsideration, expressly clarifying that “the dismissal is WITHOUT PREJUDICE and the Geddings have thirty (30) days from the date of this order to amend their pleadings.”³

On November 6, 2020, the Geddings noticed an appeal from the interlocutory order granting, in part, New Residential’s motion for judgment on the pleadings, striking the jury demand as to the remaining equitable claim for unjust enrichment, and referring the matter to the master in equity. The very same day – November 6, 2020 – the Geddings filed a further amended Answer, Counterclaim, and Cross-Claim in the Clarendon County Court of Common Pleas, in

¹ The First Amended Answer & Counterclaims is attached hereto as Exhibit A.

² The September 3, 2020 Order granting New Residential’s motion for judgment on the pleadings and referring the matter to the master in equity is attached hereto as Exhibit B.

³ The October 9, 2020 Order denying the Geddings’ motion for reconsideration is attached hereto as Exhibit C.

which they reasserted all of the same counterclaims/cross-claims, added an additional counterclaim for alleged violation of the South Carolina Attorney Preference Statute, S.C. Code Ann. § 37-10-102, and once again demanded a jury trial (the “Second Amended Answer & Counterclaims”).⁴ On November 19, 2020, New Residential filed a motion to dismiss the further amended pleading pursuant to SCRCP 12(b)(6), which remains pending at the time of this filing.

III. SCOPE OF JURISDICTION OVER INTERLOCUTORY APPEALS

The jurisdiction of this Court to hear interlocutory appeals is limited by statute to certain circumstances. *See* S.C. Code Ann. § 14-3-330. Although § 14-3-330 sets out the jurisdiction of the Supreme Court, “[t]he court of appeals also exercises its appellate jurisdiction under this statute.” *Ashenfelder v. City of Georgetown*, 389 S.C. 568, 573, 698 S.E.2d 856, 859 (S.C. Ct. App. 2010); *see* S.C. Code Ann. § 14-8-200(a) (explaining that Court of Appeals “shall apply the same scope of review that the Supreme Court would apply in a similar case”).

As relevant here, under § 14-3-330, this Court has jurisdiction to hear appeals from “[a]ny intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions” and from “[a]n order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, . . . or (c) strikes out an answer or any part thereof or any pleading in any action.” S.C. Code Ann. § 14-3-330(1–2).⁵

“An interlocutory order is appealable under subsection (1) only if it involves the merits, that is, finally determines some substantial matter forming the whole or part of some cause of

⁴ The Second Amended Answer & Counterclaims is attached hereto as Exhibit D.

⁵ Section 14-3-330 also allows for appellate jurisdiction in certain circumstances following final orders in special proceedings and interlocutory orders involving injunctions. *See* S.C. Code Ann. § 14-3-330(3–4). These circumstances are inapplicable here.

action or defense.” *Jefferson by Johnson v. Gene’s Used Cars, Inc.*, 295 S.C. 317, 318, 368 S.E.2d 456, 456 (1988) (internal quotation marks omitted). “An appellate court has jurisdiction to review an order affecting a substantial right [under subsection (2)(a)] when the order has the effect of discontinuing the action or preventing an appealable judgment.” *Lakes v. State*, 333 S.C. 382, 384–85, 510 S.E.2d 228, 230 (S.C. Ct. App. 1998). Similarly, when an order “deprives a party of a mode of trial to which it is entitled as a matter of right, such order is immediately appealable” under subsection (2)(c). *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 72, 533 S.E.2d 331, 333 (2000).

IV. ARGUMENT

A. As a threshold matter, the Geddings’ claims as to a non-operative pleading are moot and should be dismissed.

As noted, the Geddings have filed a Second Amended Answer & Counterclaims. The First Amended Answer & Counterclaims is no longer the operative pleading. The Geddings’ appeal from a ruling on the sufficiency of the non-operative First Amended Answer & Counterclaims is therefore moot and should be dismissed. *See Schein v. Lamar*, 284 S.C. 252, 255, 325 S.E.2d 573, 574 (1985) (dismissing appeal from ruling on demurrers to first amended complaint “[s]ince the First Amended Complaint has been superseded by the Second Amended Complaint,” meaning the first amended complaint “is no longer the operative pleading in the case” and “any questions as to the sufficiency of the First Amended Complaint are now moot”); *see generally Wallace v. City of York*, 276 S.C. 693, 694, 281 S.E.2d 487, 488 (1981) (per curiam) (“The function of appellate courts is not to give opinions on merely abstract or theoretical matters, but only to decide actual controversies injuriously affecting the rights of some party to the litigation. Accordingly, cases or issues which have become moot or academic in nature are not a proper subject of review.”).

B. Even if the Geddings' appeal were not moot, the Court would lack jurisdiction and the appeal should be dismissed.

1. The trial court's interlocutory order granting New Residential's motion for judgment on the pleadings is not immediately appealable.

In granting New Residential's Rule 12(c) motion – and, more specifically, in denying the motion for reconsideration – the trial court clarified its ruling was without prejudice. Indeed, the Geddings already filed an amended pleading. Because the trial court's dismissal without prejudice of the Geddings' claims for negligence and violation of the SCUTPA did not “finally determine[]” anything, *Gene's Used Cars, Inc.*, 295 S.C. at 318, 368 S.E.2d at 456, the ruling does not “involve[e] the merits” under § 14-3-330(1). Similarly, the order, as to these claims, does not “affect[] a substantial right” under § 14-3-330(2) because the order does not “prevent[] an appealable judgment.” *Lakes*, 333 S.C. at 385, 510 S.E.2d at 230.

This court in *Tillman v. Tillman*, 420 S.C. 246, 801 S.E.2d 757 (S.C. Ct. App. 2017), explained the impact of an aggrieved party's ability to amend on the immediate appealability of an interlocutory order under Rule 12. In that case, a trial court granted a motion to dismiss certain counterclaims in the context of an ejectment action but expressly permitted the defendant to seek leave to amend his counterclaims. *Id.* at 248, 801 S.E.2d at 758–59.⁶ The defendant appealed from the order dismissing his counterclaims and, ten days later, sought leave in the trial court to amend his pleadings. *Id.* at 248, 801 S.E.2d at 759. After evaluating subsections (1) and (2) of § 14-3-330, this Court concluded the underlying trial court order was not immediately appealable and dismissed the appeal. As to subsection (1), this Court concluded the trial court order did not “involve[e] the merits” because “[t]he fate of the Appellant's counterclaims has not been finally

⁶ The motion in *Tillman* was brought pursuant to Rule 12(b)(6) as opposed to Rule 12(c), but that distinction is immaterial to the import of *Tillman* on this matter.

determined as long as his motion to amend hangs in the balance.” *Id.* at 249, 801 S.E.2d at 759. As to subsection (2), the *Tillman* court explained: “In the unlikely event the motion to amend is denied, then Appellant retains the right, after the lawsuit ends, to appeal the denial along with the dismissal of his counterclaims.” *Id.* at 250, 801 S.E.2d at 760. Because the appellant in *Tillman* “ha[d] not reached the end of the road,” and “[t]o avoid circuitous litigation and needless appeals,” this Court “construe[d] section 14-3-330 narrowly” and dismissed the appeal. *Id.* at 250-51, 801 S.E.2d at 760.

The Court’s reasoning in *Tillman* applies even more so here because the Geddings actually filed an amended pleading (rather than merely seeking leave to do so). The viability of that amended pleading “hangs in the balance.” The Geddings retain the right to appeal the dismissal of their counterclaims following entry of a final determination on the merits. Accordingly, the Geddings have not “reached the end of the road.” This Court should likewise narrowly construe § 14-3-330 and dismiss the Geddings’ current appeal from the order dismissing two of their claims without prejudice.

2. The trial court’s order striking a mode of trial to which the Geddings are not entitled is not immediately appealable.

Although the effect of the order dismissing the Geddings’ counterclaims was also to strike their jury demand, that consequence does not render the order appealable on an interlocutory basis. “Ordinarily the granting or refusal of an order of reference is not appealable unless the granting of the reference deprives a party of a mode of trial to which he is entitled by law” *Williford v. Downs*, 265 S.C. 319, 321, 218 S.E.2d 242, 243 (1975). Therefore, as in *Williford*, “the issue before the Court is whether the appellant[s] [are] entitled to a jury trial as a matter of right.” *Id.* If the Geddings are not entitled to a jury trial by law, “the appeal should be dismissed.” *Id.*

Because the Geddings – following the dismissal of their legal claims for negligence and violation of the SCUTPA – were not entitled to a jury trial on their lone equitable claim remaining in the case, the underlying order is not immediately appealable. In other words, though the order deprives the Geddings of a mode of trial (namely a jury trial), the Geddings were not entitled to have a jury decide their equitable claim for unjust enrichment. *See Wachovia Bank, Nat'l Ass'n v. Blackburn*, 407 S.C. 321, 328, 755 S.E.2d 437, 441 (2014) (“In equity the parties are not entitled, as a matter of right, to a trial by jury.” (internal quotation marks omitted)); *Dema v. Tenet Physician Serv.-Hilton Head, Inc.*, 383 S.C. 115, 123, 678 S.E.2d 430, 434 (2009) (“Unjust enrichment is an equitable doctrine . . .”).

Importantly, the Geddings’ jury demand was not stricken as to their legal claims. Rather, the legal claims were dismissed on standing grounds, leaving only the Geddings’ equitable claim remaining. The trial court made clear that it was striking the jury demand for this specific reason and not any other reason:

The Geddings’ sole remaining counterclaim and crossclaim for Unjust Enrichment is an equitable cause of action. The Geddings are therefore not entitled to trial by jury as of right, and the Court finds that it is appropriate to strike the jury demand and refer this matter to the Clarendon County Master in Equity.

(Exhibit B at 3).

The Geddings, in response, will likely direct the Court to cases standing for the proposition that orders depriving a party of a mode of trial affect substantial rights as defined in § 14-3-330(2) and must be immediately appealed or otherwise waived. *See, e.g., Frampton v. S.C. Dept. of Transp.*, 406 S.C. 377, 385–86, 752 S.E.2d 269, 274 (S.C. Ct. App. 2013). But that rule applies only if the threshold requirement is satisfied, namely that the party is entitled – by law and right – to the preferred mode of trial. *See, e.g., Cobb v. S.C. Dep't of Transp.*, 365 S.C. 360, 363, 618

S.E.2d 299, 300 (2005) (“If an order deprives a party of a mode of trial *to which that party is entitled as a matter of right*, the order is immediately appealable and failure to do so forever bars appellate review.” (emphasis added)); *Flagstar Corp.*, 341 S.C. at 72, 533 S.E.2d at 333 (same); *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)).

Where, as here, an order deprives a party of a preferred mode of trial to which he or she is *not entitled*, the order is not immediately appealable. See *Brown v. Greenwood Sch. Dist. 50 Bd. of Trustees*, 344 S.C. 522, 525, 544 S.E.2d 642, 643 (S.C. Ct. App. 2001) (dismissing appeal from order transferring case to non-jury docket because “[t]here is no right to a jury trial for equitable remedies such as rescission and restitution”); *Massengale*, 290 S.C. at 301, 350 S.E.2d at 193 (“The order under appeal did not deprive appellant of a mode of trial to which she was entitled as a matter of right. Accordingly, the motion to dismiss this appeal is granted.”); *Williford*, 265 S.C. at 323, 218 S.E.2d at 244 (dismissing appeal from order of reference because aggrieved party not entitled to jury trial on equitable action for partition).

Despite affecting a mode of trial, the trial court order striking the Geddings’ jury demand and referring the matter to the master inequity did not deprive the Geddings of a mode of trial to which they are entitled. For this additional reason, the appeal should be dismissed.

V. CONCLUSION

For the foregoing reasons, the Court should dismiss this appeal as moot or, alternatively, dismiss the appeal because the underlying order – including the dismissal without prejudice under Rule 12(c), the decision to strike the Geddings’ jury demand for an equitable claim, and the

reference to the master in equity – are not immediately appealable.

WHEREFORE, for the reasons stated above, Respondent-Appellant requests as follows:

- a. That the Court dismiss this appeal in its entirety; and
- b. That the Court issue such other and further relief as it deems appropriate.

This the 1st day of December 2020.

/s/ Jonathan E. Schulz

Jonathan E. Schulz (SC Bar No. 79850)
G. Benjamin Milam (SC Bar No. 80311)
BRADLEY ARANT BOULT CUMMINGS LLP
214 North Tryon Street, Suite 3700
Charlotte, North Carolina 28202
Telephone: (704) 388-6000
Facsimile: (704) 332-8858
jschulz@bradley.com
bmilam@bradley.com

*Attorneys for Respondent-Appellant New
Residential Mortgage, LLC*

Exhibit A

3. The Defendants are without sufficient information to form a belief as to the truth or falsity of the allegations of paragraph 1 of the Plaintiff's Complaint but do not contest such allegation.

4. The Defendants deny the allegations of paragraphs 2 and 3 of the Plaintiff's Complaint and demand strict proof thereof. Further details are provided in later Defenses below.

5. The Defendants admit the allegations of paragraphs 4, 5, 6, 7, 8 and 9 of the Plaintiff's Complaint.

6. The Defendants admit the allegations of paragraph 10 of the Plaintiff's Complaint to the extent it is alleged that a document assigning the mortgage to the Plaintiff is recorded in the Office of the Register of Deeds for Clarendon County but denies any implication of the validity of that mortgage or the validity of a lien as a result of that mortgage and demands strict proof thereof.

7. The Defendants deny the allegations of paragraph 11 of the Plaintiff's Complaint and demand strict proof thereof.

8. The Defendants admit the allegations of paragraph 12 of the Plaintiff's Complaint.

9. The Defendants are informed and believe no further response is necessary to paragraph 13 of the Plaintiff's Complaint.

10. The Defendants are without sufficient information to form a belief as to the truth or falsity of the allegations of paragraphs 14, 15, 16, 17, 18 and 19 of the Plaintiff's Complaint and therefore must deny same and demand strict proof thereof.

11. The Defendants admit the allegations of paragraph 20 of the Plaintiff's Complaint except as to any implication or allegation that the Defendants' ownership rights are junior or subordinate to the interests of the Plaintiff or any other Defendant.

12. The Defendants are without sufficient information to form a belief as to the truth or falsity of the allegations of paragraph 21 of the Plaintiff's Complaint and therefore must deny same and demand strict proof thereof. The Defendants are informed and believe that Defendants Todd S. Crawford and Tricia L. Crawford filed a bankruptcy action in the State of Georgia on March 21, 2014 and the Plaintiff's debt was among the debts included in that bankruptcy. The effect of that bankruptcy on the debt or lien claimed by the Plaintiff are unknown to the Defendants as the Defendants were not a party to that action. The Defendants do note that no reference to the Bankruptcy action was filed in the Office of the Register of Deeds for Clarendon County.

FOR A SECOND DEFENSE

13. The Defendants repeat the allegations of the First Defense as fully as if set forth herein verbatim.

14. The Defendants are informed and believe that Todd S. Crawford and Tricia L. Crawford did not acquire full legal ownership of the subject property until the deed was recorded in the Office of the Clarendon County Register of Deeds on July 18, 2007 regardless of the deed being dated prior to that time.

15. The Defendants are informed and believe that when Todd S. Crawford and Tricia L. Crawford executed the mortgages referenced in the Plaintiff's Complaint, both the mortgage which the Plaintiff now seeks to foreclose and the mortgage purported to be held by USAA Federal Savings Bank, on June 21, 2007, neither Crawford actually owned the subject property.

16. Since Todd S. Crawford and Tricia L. Crawford did not own the property on June 21, 2007, they could not execute a valid mortgage on the property.

17. The Defendants are therefore informed and believe that the Plaintiff and Defendant USAA Federal Savings Bank do not hold a valid, enforceable mortgage on the subject property.

In the alternative, the delay in the Plaintiff, or its predecessors, in recording the mortgage should operate to bar any attempt to enforce said mortgage.

FOR A THIRD DEFENSE

18. The Defendants repeat the allegations of the First and Second Defenses as fully as if set forth herein verbatim.

19. When Todd S. Crawford and Tricia L. Crawford (hereinafter referred to as Crawfords) failed to make timely payment on any obligation to the original creditors USAA Federal Savings Bank or Green Tree Servicing LLC, it was prior to March 21, 2014. The exact date is unknown to the Defendants and will need to be determined through the discovery process.

20. Crawfords filed for bankruptcy protection in the State of Georgia in case 14-10632-WHD and listed both mortgage debts in their filing.

21. Defendant Green Tree Servicing, LLC appeared in that bankruptcy and requested, and received, permission from the Bankruptcy Court to proceed with an action under state law to foreclose the mortgage. This was done in a Consent Order dated June 13, 2014.

22. Defendant USAA Federal Savings Bank, LLC never sought nor received any relief from the Bankruptcy Court.

23. On July 14, 2014 the Bankruptcy Court issued a discharge to the Crawfords.

24. On August 1, 2014, the Trustee executed a "Notice of Proposed Abandonment or Disposition of Property" which included the subject property.

25. The Defendants are informed and believe that any attempt by the Plaintiff or by Defendant USAA Federal Savings Bank or by Green Tree Servicing, LLC should be barred by the equitable doctrine of laches.

26. The Defendants are informed and believe that any obligation or debt owned by the Crawfords, whether secured by any lien or not, to the Plaintiff or its predecessors in interest or to USAA Federal Savings Bank or Green Tree Servicing, LLC should be deemed discharged as a result of the bankruptcy action.

**FOR A THIRD DEFENSE AND BY WAY OF COUNTERCLAIM AND CROSS-CLAIM
AND THIRD PARTY COMPLAINT**

27. The Defendants repeat the allegations of the First and Second Defenses as fully as if set forth herein verbatim.

28. The Defendants are informed and believe that Green Tree Servicing LLC now known as Ditech Financial LLC is a duly organized Limited Liability Company organized in the state of Delaware, authorized to transact business in South Carolina and regularly engaging in business transactions in South Carolina and Clarendon County.

29. The Defendants are informed and believe that subsequent to the purchase of the mortgage lien and note by Green Tree Servicing, LLC, said entity changed its name to Ditech Financial LLC and is currently known by that name. The Defendants are informed and believe that Green Tree Servicing LLC and Ditech Financial LLC are the same entity so all references to Green Tree Servicing LLC should also be read to include Ditech Financial LLC. Because the Assignment of Mortgage was to Green Tree Servicing LLC, that name will be used in this document.

30. The Defendants are informed and believe that upon the Crawfords vacating the subject property, USAA Federal Savings Bank and/or Green Tree Servicing, LLC took possession of the property.

31. The Defendants are informed and believe that this attempt to secure the property occurred between August 1, 2013 and March 21, 2014.

32. While USAA Federal Savings Bank and/or Green Tree Servicing LLC had possession of the property and were responsible for the security of the property, as well as the upkeep or maintenance of the property, the property suffered several damage and deterioration. Said damage and deterioration includes, but is not limited to the following:

- a. One of the HVAC units was stolen;
- b. The other HVAC unit was ruined when the line leaked and allowed air and moisture into the system
- c. Water and moisture accumulated under the house severely damaging the underside of the home, the flooring and other wood beneath the house;
- d. The roof was damaged in a storm. USAA Federal Savings Bank or Green Tree Servicing LLC received payment for the damages but failed to properly or completely repair the roof;
- e. Carpets in the home were ruined;
- f. Vandals broke into the home and wrote on the walls and other surfaces;
- g. Pipes developed leaks such that when water was turned back on, water poured out of several walls;
- h. The pond on the property grew stagnant and was infested with duckweed and watermill;
- i. A deck built outside the home rotted and created a nuisance and hazard;
- j. An above ground pool rotted and deteriorated creating a breeding ground for vermin as well as a nuisance and hazard;

- k. Appliances were stolen or ruined;
- l. Insects and other vermin built nests in the home;
- m. Hardwood flooring was damaged or destroyed;
- n. Lawn and grounds were unkempt and overgrown although neighbors would sometimes mow the lawn to avoid the unsightly neglected appearance that was hampering the value of surrounding homes.

33. The Defendants are informed and believe that USAA Federal Savings Bank and/or Green Tree Servicing LLC contracted with third parties to provide security, repairs and supervision of the subject property but that such services were performed negligently, if they were performed at all.

34. The Defendants are informed and believe that USAA Federal Savings Bank and/or Green Tree Servicing LLC acted in a willful and reckless manner which caused the property to become uninhabitable and greatly diminish any value of the property.

35. The Defendants purchased the subject property from the Crawfords by deed recorded in the Office of the Register of Deeds for Clarendon County on September 7, 2018 in Deed Book 1003 at Page 2652.

36. The Defendants began making repairs to the property and have spent in excess of Seventy-Five Thousand (\$75,000.00) Dollars improving the property and returning it to good and habitable condition.

37. The Defendants attempted to communicate with the purported mortgage holders several times and received no response.

38. The Defendants note that the Plaintiff recorded its assignment on December 20, 2019 and filed this action less than a month later so the Defendants had no opportunity to become

aware of the Plaintiff's existence or attempt to contact the Plaintiff. Prior to filing this action, the Plaintiff did not attempt to contact the Defendants although Plaintiff was obviously aware of Defendants' ownership interest in the subject property.

39. The Defendants are informed and believe that they are entitled to an offset or credit for their costs and expenses in improving the property and preserving it as well as for damages caused by the negligence of the Plaintiff and/or USAA Federal Savings Bank or Green Tree Servicing, LLC, their agents and employees.

40. The Defendants are informed and believe that they are entitled to, and hereby do, request a jury trial to determine the appropriate amount of damages owed by the Plaintiff or USAA Federal Savings Bank or Green Tree Servicing, LLC to the Defendants. Said damages to include actual damages and punitive damages.

**FOR A FOURTH DEFENSE AND BY WAY OF COUNTERCLAIM AND CROSS-CLAIM
AND THIRD PARTY COMPLAINT**

41. The Defendants repeat the allegations of the First, Second and Third Defenses as fully as if set forth herein verbatim.

42. The Defendants are informed and believe that even if the Court should determine that the Plaintiff or USAA Federal Savings Bank or Green Tree Servicing, LLC have a valid lien against the subject property and grant a request to foreclose that lien, the Defendants are entitled to judgment against one or both of these parties under the doctrine of *quantum meruit* and/or unjust enrichment.

43. The Defendants are informed and believe that they are entitled a jury trial and hereby demand same. .

FOR A FIFTH DEFENSE AND BY WAY OF COUNTERCLAIM AND CROSS-CLAIM
AND THIRD PARTY COMPLAINT

44. The Defendants repeat the allegations of the First, Second, Third, and Fourth Defenses as fully as if set forth herein verbatim.

45. The Defendants are informed and believe that the Plaintiff or its predecessors, as well as Defendant USAA Federal Savings Bank or Green Tree Servicing LLC are in violation of Section 39-5-10, *et seq*, of *The Code of Laws of South Carolina, 1976*, as amended, also known as the “Unfair Trade Practices Act” by engaging in unfair trade acts or practices or by engaging in deceptive trade acts or practices while in the conduct of trade or commerce.

46. The Defendants are informed and believe that the Plaintiff, or its predecessors, and/or Defendant USAA Federal Savings Bank and/or Green Tree Servicing LLC engaged in one or more of the following unfair or deceptive trade acts or practices:

- a. Conducting a loan and seeking a mortgage on real property in South Carolina without allowing the borrower to choose a South Carolina attorney as required by Section 37-10-102 of *The Code of Laws of South Carolina, 1976*, as amended;
- b. Aiding, assisting or engaging in the unauthorized practice of law by allowing, encouraging or requiring the placement of a mortgage on South Carolina real property without the borrowers being represented by a South Carolina attorney;
- c. Failing to take proper action to protect real property left in their care or purportedly pledged as security for a loan;
- d. Failing to properly communicate with the owners of real property attempting to resolve a purported lien on real property;

- e. Failing to begin legal action in a timely manner in order to preserve the asset pledged, or purported to be pledged, as security;
- f. Attempting to foreclose a lien which the lender knew, or should have known, was invalid;
- g. Improperly transferring a purported debt and purported security interest from Green Tree Servicing LLC to the Plaintiff after notice from the Defendants of the Defendants' desire to resolve any lien without providing notice to the Defendants;
- h. Such other and further misconduct, false, unfair or deceptive acts or violations of RESPA (Real Estate Settlement Procedures Act) as may be identified through the litigation discovery process.

47. The Defendants are informed and believe that the conduct engaged in by the Plaintiff, or its predecessors, and/or USAA Federal Savings Bank and/or Green Tree Servicing LLC has occurred in the past, may occur in the future and poses a risk to the public.

48. The Defendants are informed and believe that they are entitled to request, and hereby do request, a jury trial on these issues.

49. The Defendants are informed and believe that for the violation of the Unfair Trade Practices Act, the Defendants are entitled to judgment against the Plaintiff and/or USAA Federal Savings Bank and/or Green Tree Servicing LLC for actual damage, treble damages, punitive damages and their costs and attorney's fees.

50. The Defendants are informed and believe that regardless of whether or not the claim for violation of the Unfair Trade Practices Act succeeds, the Defendants are entitled to an Order of the Court declaring the purported liens of the Plaintiff and/or USAA Federal Savings Bank and/or Green Tree Servicing LLC to be invalid and void as a result of their violation of proper real

estate mortgage closing procedures, including but not limited to, allowing the borrower choice of attorney and having the closing handled by a licensed South Carolina attorney.

WHEREFORE, having fully responded to the Plaintiff's Complaint and set forth their own Counterclaims and Cross-Claims, the Defendants hereby pray that the Court enquire into the matters alleged and issue its Order dismissing the Plaintiff's Complaint and granting the Defendants the relief requested above.

GEDDINGS LAW FIRM, PA

S/ W. T. Geddings, Jr.

W. T. Geddings, Jr.

Attorney for the W. T. Geddings, Jr.

Attorney for Jane U. Geddings

20 South Brooks Street

Manning, South Carolina 29102

(803) 435-4770

SC Bar # 11300

GA Bar # 288584

21st day of April, 2020

Exhibit B

STATE OF SOUTH CAROLINA
COUNTY OF CLARENDON

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT
CASE NO. 2020-CP-14-00023

New Residential Mortgage, LLC,
Plaintiff,

v.

Todd S. Crawford; Tricia L. Crawford;
William T. Geddings, Jr.; Jane U. Geddings;
and USAA Federal Savings Bank;

Defendant.

ORDER

This matter is before the Court pursuant to Plaintiff, New Residential Mortgage, Inc.'s ("New Residential") Motion for Judgment on the Pleadings as to Defendants, William T. Geddings, Jr. and Jane U. Geddings' ("Geddings") Counterclaims; Defendant, USAA Federal Savings Bank's ("USAA FSB") Motion for Judgment on the Pleadings as to the Geddings' Cross-claims; and New Residential's Motion to Strike Jury Demand and for Order of Reference. The motions were heard on August 19, 2020 with counsel for the parties in attendance via Webex videoconferencing. Having reviewed the pleadings as well as the briefs and other materials submitted by the parties, having heard the arguments of counsel, and being otherwise fully informed and advised, the Court finds as follows:

A party is entitled to judgment on the pleadings if the plaintiff "fail[s] to state facts sufficient to constitute a cause of action in the pleadings filed with the court." *Hambrick v. GMAC Mortg. Corp.*, 370 S.C. 118, 121, 634 S.E.2d 5, 7 (Ct. App. 2006). The motion must be denied, however, if the facts alleged in the complaint and inferences reasonably deducible therefrom would entitle plaintiff to any relief on any theory of the case. *Id.* A motion under Rule 12(c) admits the

well pleaded facts in the complaint, but it does not admit the inferences drawn by the plaintiff from such facts, nor does it admit conclusions of law. *Firemen's Ins. Co. of Newark, New Jersey v. Cincinnati Ins. Co.*, 302 S.C. 234, 236, 394 S.E.2d 855, 856 (Ct. App. 1990).

This matter arises out of a 2007 mortgage loan transaction between Todd S. Crawford and Tricia L. Crawford (the "Crawfords") and USAA FSB. In 2013, the senior mortgage was assigned to Green Tree Servicing, LLC, now known as Ditech Financial LLC. In 2018, the Crawfords conveyed the property to the Geddings subject to the existing mortgage. In December 2019, the senior mortgage was assigned to New Residential, which brought the instant action seeking foreclosure on January 15, 2020. The Geddings filed their Answer, Counterclaim, and Crossclaim on January 27, 2020, and filed an Amended Answer, Counterclaim, and Crossclaim on April 27, 2020.

The Court finds the Geddings have failed to state a claim for negligence. The Geddings allege that prior to their ownership of the subject real property, the mortgagee took steps to secure the property but then allowed it to deteriorate. However, the Geddings lack standing to maintain a negligence claim based on alleged harms that occurred prior to them gaining ownership of the property in 2018. Furthermore, the Geddings cannot show that New Residential or USAA FSB owed them a duty to maintain the property, where they did not own the property at the time the alleged negligence occurred.

Next, the Court finds that the Geddings fail to state a claim for violation of the South Carolina Unfair Trade Practices Act ("SCUTPA"). The Geddings assert this claim based on allegations of misconduct in the course of the mortgage loan transaction. Although the Geddings' ownership of the property is subject to the 2007 mortgage, the Geddings are not parties to the loan, nor have they assumed the obligation to pay the loan debt since taking ownership of the property

in 2018. The absence of an agreement to assume the mortgage debt refutes the Geddings' argument that they have "stepped into the shoes" of the Crawfords and can assert claims for unfair trade practices allegedly arising from the Crawfords' loan transaction. Because they are not the obligors for the mortgage loan, the Geddings lack standing to bring their claims under SCUTPA.

The Court finds that the Geddings have stated a valid claim for relief as to their counterclaim for Unjust Enrichment, and will deny New Residential and USAA FSB's motions for judgment on the pleadings as to this claim.

The Geddings' sole remaining counterclaim and crossclaim for Unjust Enrichment is an equitable cause of action. The Geddings are therefore not entitled to trial by jury as of right, and the Court finds that it is appropriate to strike the jury demand and refer this matter to the Clarendon County Master in Equity.

IT IS THEREFORE ORDERED:

A. The motions for judgment on the pleadings are GRANTED as to the Geddings' counterclaims against New Residential and cross-claims against USAA FSB for negligence and violation of the South Carolina Unfair Trade Practices Act, and these claims are hereby dismissed.

B. The motions for judgment on the pleadings are DENIED as to the Geddings' counterclaim against New Residential and cross-claim against USAA FSB for unjust enrichment.

C. The motion to strike the Geddings' jury demand is GRANTED. This case shall be referred to the Honorable Joseph K. Coffey, Clarendon County Master in Equity, for further proceedings and for entry of final judgment pursuant to Rule 53 of the South Carolina Rules of Civil Procedure.

IT IS SO ORDERED.

[JUDGE'S SIGNATURE PAGE TO FOLLOW]



Clarendon Common Pleas

Case Caption: New Residential Mortgage Llc VS Todd S Crawford , defendant, et al
Case Number: 2020CP1400023
Type: Order/Other

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

Exhibit C

| | | |
|---|---|--|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | THE THIRD JUDICIAL CIRCUIT |
| COUNTY OF CLARENDON |) | CASE NO.: 2020-CP-43-00023 |
| |) | |
| New Residential Mortgage, LLC, |) | |
| |) | |
| Plaintiff, |) | |
| vs. |) | ORDER DENYING DEFENDANTS |
| |) | WILLIAM T. GEDDINGS AND JANE U. |
| Todd S. Crawford, Tricia L. Crawford, |) | GEDDINGS MOTION TO RECONSIDER |
| William T. Geddings, Jr., Jane U. Geddings, |) | |
| and USAA Federal Savings Bank, |) | |
| |) | |
| Defendants. |) | |

Defendants’ motion to reconsider is DENIED. This case arises out of a 2007 mortgage loan transaction on property located at 1051 Doral Drive, Manning, S.C. The Complaint alleges that the Defendant Todd Crawford executed and delivered to USAA Federal Savings Bank a promissory note and Defendants Todd and Tricia Crawford executed a mortgage on the property to secure the note. The mortgage was recorded on July 18, 2007. The mortgage was then assigned to Ditch Financial (formerly Green Tree Servicing, LLC), then to Plaintiff New Residential Mortgage, LLC. The Crawfords conveyed the property to Defendants William T. Geddings, Jr., and Jane U. Geddings by Quitclaim Deed executed August 25, 2018 and recorded at Book 1003, Page 2652 in the Office of the Clarendon County Register of Deeds.

The Geddings filed an Answer, Counterclaim, and Crossclaim against New Residential and USAA Federal Savings Bank.

In the Geddings’ claim for damages under the South Carolina Unfair Trade Practices Act, they allege misconduct in the mortgage loan transaction between USAA and the Crawfords, including: attorney preference violations, engaging in the unauthorized practice of law by allowing the closing without the Crawfords being represented by a South Carolina attorney,

failing to timely bring a foreclosure action, attempting to foreclose an invalid lien, and failing to protect and preserve the property. The question before the court is therefore whether a subsequent purchaser who takes the property by quitclaim deed subject to a recorded mortgage, but does not assume the mortgage, can assert the borrower's defenses against the lender. This court holds they cannot.

When a grantee takes property subject to a mortgage, but does not assume the mortgage, he is not personally obligated to the mortgagee. The mortgagee cannot hold the grantee liable for payments on the debt, nor can he seek a deficiency judgment against the grantee if the property sells at foreclosure for less than the mortgage balance. See generally 101 ALR 281; 111 ALR 1114. In fact, in this case Plaintiff initially sought a deficiency judgment against Defendant Todd Crawford only (which Plaintiff later waived) and did not seek a deficiency against the Geddings.

Absent an assumption of the mortgage, personal liability on the debt remains with the Crawfords, and the Geddings cannot assert the Crawfords' defenses for them. As to the allegations of unfair trade practices pertaining to alleged irregularities in the mortgage loan transaction between USAA and the Crawfords, the Geddings lack standing to assert those defenses.

The Geddings also allege USAA and New Residential violated the UTPA by failing to communicate with them to resolve the lien on the property, and by improperly assigning the note and mortgage to Green Tree without notifying them. The court finds that the Geddings were not parties to the note and mortgage, and the mortgage companies therefore had no duty whatsoever to communicate with them regarding the Crawfords' debt.

As to the Geddings' claim for negligence, whether the alleged negligence occurred before or after the Crawfords quitclaimed the property to the Geddings, the mortgage companies owed no duty to preserve the property for the Geddings at any time. The provision in the mortgage which allows the mortgage company to protect and preserve the property is for the protection of the mortgagee's interest, and does not create a duty for them to safeguard the property for the borrower. Even if such a duty existed, the court finds the Geddings have no standing to assert any alleged negligence that occurred prior to their purchase of the property. Moreover, the court fails to see how the Geddings could have suffered any damages for deterioration of the property that occurred prior to their purchase of the property. If the property was in a state of neglect at the time the Geddings purchased the property, then the condition of the property would be readily apparent to any buyer and would be reflected in the purchase price. After the Geddings purchased the property, the mortgage company had no obligation to maintain the property for the Geddings' benefit.

This court's previous order dismissing the Geddings' causes of action for negligence and unfair trade practices is silent as to whether the dismissal was with prejudice. Pursuant to Skydive Myrtle Beach, Inc. v. Horry County, 426 S.C. 175, 826 S.E.2d 585 (2019), the dismissal is WITHOUT PREJUDICE and the Geddings have thirty (30) days from the date of this order to amend their pleadings.

IT IS SO ORDERED.

Kristi F. Curtis, Circuit Court Judge

This ____ day of _____, 2020.

_____, South Carolina



Clarendon Common Pleas

Case Caption: New Residential Mortgage Llc VS Todd S Crawford , defendant, et al

Case Number: 2020CP1400023

Type: Order/Amend

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

Electronically signed on 2020-10-09 12:32:10 page 4 of 4

Exhibit D

STATE OF SOUTH CAROLINA
COUNTY OF CLARENDON

IN THE COURT OF COMMON PLEAS
CASE NO. 2020-CP-14-00023

New Residential Mortgage, LLC,

Plaintiff,

vs.

Todd S. Crawford; Tricia L. Crawford;
William T. Geddings, Jr.; Jane U.
Geddings; and USAA Federal Savings
Bank,

Defendants.

SECOND AMENDED ANSWER,
COUNTERCLAIM, AND CROSS-CLAIM
(JURY TRIAL DEMANDED)

Defendants William T. Geddings and Jane U. Geddings (hereinafter “the Defendants”), in answer to the Plaintiff’s complaint, as counterclaim, and as cross-claim against Defendant USAA Federal Savings Bank, answer and allege as follows:

FOR A FIRST DEFENSE

1. Any allegation of the complaint not herein admitted, qualified, or explained is denied. Any allegations of the complaint subject of qualified admissions made herein are denied insofar as the allegations are not qualifiedly admitted, and any allegations of the complaint subject of any other qualifications or explanations herein are denied insofar as they are not otherwise qualified or explained.

2. Answering the allegations of paragraph 1 of the complaint, the Defendants do not have sufficient knowledge or information to form a belief as to the same.

3. Answering the allegations of paragraphs 2 and 3 of the complaint, the Defendants deny the same.

4. Answering the allegations of paragraph 4 of the complaint, the Defendants deny the same.

5. Answering the allegations of paragraph 5 of the complaint, the Defendants deny the same.

6. Answering the allegations of paragraph 6 of the complaint, the Defendants deny the same.

7. Answering the allegations of paragraph 7 of the complaint, the Defendants deny the same.

8. Answering the allegations of paragraph 8 of the complaint, the Defendants deny the same.

9. Answering the allegations of paragraph 9 of the complaint, the Defendants deny the same.

10. Answering the allegations of paragraph 10 of the complaint, the Defendants do not have sufficient knowledge or information to form a belief as to the same.

11. Answering the allegations of paragraph 11 of the complaint, the Defendants deny the same.

12. Answering the allegations of paragraph 9 of the complaint, the Defendants admit the same.

13. No separate answer is needed to paragraph 13 of the complaint.

14. Answering the allegations of paragraph 14 of the complaint, the Defendants do not have sufficient knowledge or information to form a belief as to the same.

15. Answering the allegations of paragraph 15 of the complaint, the Defendants do not have sufficient knowledge or information to form a belief as to the same.

16. Answering the allegations of paragraph 16 of the complaint, the Defendants do not have sufficient knowledge or information to form a belief as to the same.

17. Answering the allegations of paragraph 17 of the complaint, the Defendants do not have sufficient knowledge or information to form a belief as to the same.

18. Answering the allegations of paragraph 18 of the complaint, the Defendants do not have sufficient knowledge or information to form a belief as to the same.

19. Answering the allegations of paragraph 19 of the complaint, the Defendants do not have sufficient knowledge or information to form a belief as to the same.

20. Answering the allegations of paragraph 20 of the complaint, the Defendants admit that they own the subject property as a result of the conveyance from the Crawfords alleged in the paragraph, and the Defendants do not have sufficient knowledge or information to form a belief as to the remaining allegations of the paragraph.

21. Answering the allegations of paragraph 21 of the complaint, the Defendants deny the same.

22. All counterclaims asserted in this action are also asserted as defenses to the extent permitted by law, and vice-versa.

FOR A SECOND DEFENSE
(Dismissal – 12(b)(6), SCRCP)

23. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

24. The complaint fails to state facts sufficient to constitute a cause of action.

25. The complaint fails to allege that conditions precedent to foreclosure of the subject mortgage have been met.

26. The complaint should be dismissed.

FOR A THIRD DEFENSE
(Abandonment)

27. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

28. When Todd S. Crawford and Tricia L. Crawford failed to make timely payment on any obligation to the original creditors USAA Federal Savings Bank or Green Tree Servicing LLC, that would have been before March 21, 2014. The exact date is unknown to the Defendants and will need to be determined through the discovery process.

29. Crawfords filed for bankruptcy protection in the State of Georgia in case 14-10632-WHD and listed both mortgage debts in their filing.

30. Defendant Green Tree Servicing, LLC appeared in that bankruptcy and requested, and received, permission from the Bankruptcy Court to proceed with an action under state law to foreclose the mortgage. This was done in a Consent Order dated June 13, 2014.

31. Defendant USAA Federal Savings Bank, LLC never sought nor received any relief from the Bankruptcy Court.

32. On July 14, 2014 the Bankruptcy Court issued a discharge to the Crawfords.

33. On August 1, 2014, the Trustee executed a "Notice of Proposed Abandonment or Disposition of Property" which included the subject property.

34. Despite this, no one took any action to attempt to foreclose the subject mortgage until the filing of the summons and complaint in this case.

35. These circumstances evince an intention by the owner of the mortgage subject of this action to abandon the mortgage.

36. The mortgage subject of this action has been abandoned.

FOR A FOURTH DEFENSE
(Unclean Hands)

37. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

38. The Plaintiff has engaged in such conduct with respect to the matters subject of his claims as to make its hands unclean with regard to its claims.

39. This conduct includes, but is not necessarily limited to, taking possession of the subject property and then damaging it and failing to maintain it, as well as acting as though the subject mortgage had been abandoned and then attempting to foreclose it.

40. This conduct by the Plaintiff relates directly to the subject matter of this action.

41. The Plaintiff's said conduct has proximately caused the Defendants prejudice and injury, including, not necessarily limited to, loss of use of the subject property and diminishment in value of the subject property.

42. Unclean hands bars the Plaintiff's claim.

FOR A FIFTH DEFENSE
(Laches)

43. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

44. The Plaintiff (and/or, as applicable, its predecessor(s) in interest) delayed in the bringing of this foreclosure action.

45. This delay was unreasonable in length.

46. The unreasonable length of this delay prejudiced the Defendants, who took action (including, but not limited to, in improving the subject property).

47. Laches bars the Plaintiff's claim.

FOR A SIXTH DEFENSE
(Failure to Mitigate Damages)

48. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

49. The Plaintiff has failed to take reasonable steps to mitigate its damages in this case.

FOR A FIRST COUNTERCLAIM AND CROSSCLAIM
(Negligence/Recklessness)

50. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

51. The Defendants are informed and believe that Green Tree Servicing LLC now known as Ditech Financial LLC is a duly organized Limited Liability Company organized in the state of Delaware, authorized to transact business in South Carolina and regularly engaging in business transactions in South Carolina and Clarendon County.

52. The Defendants are informed and believe that subsequent to the purchase of the mortgage lien and note by Green Tree Servicing, LLC, said entity changed its name to Ditech Financial LLC and is currently known by that name. The Defendants are informed and believe that Green Tree Servicing LLC and Ditech Financial LLC are the same entity so all references to Green Tree Servicing LLC should also be read to include Ditech Financial LLC. Because the Assignment of Mortgage was to Green Tree Servicing LLC, that name will be used in this document.

53. The Defendants are informed and believe that upon the Crawfords vacating the subject property, USAA Federal Savings Bank and/or Green Tree Servicing, LLC took possession of the property.

54. These attempts to take possession and acts of taking possession continued past the time that the Defendants became the owners of the subject property.

55. While USAA Federal Savings Bank and/or Green Tree Servicing LLC had possession of the property and were responsible for the security of the property, as well as the upkeep or maintenance of the property, the property suffered several damage and deterioration. Said damage and deterioration includes, but is not limited to the following:

- a. One of the HVAC units was stolen;
- b. The other HVAC unit was ruined when the line leaked and allowed air and moisture into the system
- c. Water and moisture accumulated under the house severely damaging the underside of the home, the flooring and other wood beneath the house;
- d. The roof was damaged in a storm. USAA Federal Savings Bank or Green Tree Servicing LLC received payment for the damages but failed to properly or completely repair the roof;
- e. Carpets in the home were ruined;
- f. Vandals broke into the home and wrote on the walls and other surfaces;
- g. Pipes developed leaks such that when water was turned back on, water poured out of several walls;
- h. The pond on the property grew stagnant and was infested with duckweed and watermill;
- i. A deck built outside the home rotted and created a nuisance and hazard;
- j. An above ground pool rotted and deteriorated creating a breeding ground for vermin as well as a nuisance and hazard;
- k. Appliances were stolen or ruined;
- l. Insects and other vermin built nests in the home;

m. Hardwood flooring was damaged or destroyed;

n. Lawn and grounds were unkempt and overgrown although neighbors would sometimes mow the lawn to avoid the unsightly neglected appearance that was hampering the value of surrounding homes.

56. USAA Federal Savings Bank and/or Green Tree Servicing LLC failed to use reasonable care in securing and maintaining the property.

57. This failure proximately caused the Defendants to sustain damages.

58. The Defendants are informed and believe that USAA Federal Savings Bank and/or Green Tree Servicing LLC contracted with third parties to provide security, repairs and supervision of the subject property but that such services were performed negligently, if they were performed at all.

59. The Defendants are informed and believe that USAA Federal Savings Bank and/or Green Tree Servicing LLC acted in a willful and reckless manner which caused the property to become uninhabitable and greatly diminish any value of the property.

60. The Defendants purchased the subject property from the Crawfords by deed recorded in the Office of the Register of Deeds for Clarendon County on September 7, 2018 in Deed Book 1003 at Page 2652.

61. The Defendants began making repairs to the property and have spent in excess of Seventy-Five Thousand (\$75,000.00) Dollars improving the property and returning it to good and habitable condition.

62. The Defendants attempted to communicate with the purported mortgage holders several times and received no response.

63. The Defendants are informed and believe that they are entitled to an offset or credit for their costs and expenses in improving the property and preserving it as well as for damages caused by the negligence of the Plaintiff and/or USAA Federal Savings Bank or Green Tree Servicing, LLC, their agents and employees.

64. The Defendants are informed and believe that they are entitled to, and hereby do, request a jury trial to determine the appropriate amount of damages owed by the Plaintiff or USAA Federal Savings Bank or Green Tree Servicing, LLC to the Defendants. Said damages to include actual damages and punitive damages.

FOR A SECOND COUNTERCLAIM AND CROSSCLAIM
(Unjust Enrichment)

65. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

66. The Defendants conferred upon the Plaintiff and USAA the benefit of the improvements and repairs they made to the subject property, which increased the value of the Plaintiff and USAA's collateral.

67. Plaintiff and USAA realized this benefit.

68. This benefit was conferred under circumstances that make it unjust for the Plaintiff and USAA to retain the value of the benefit without paying the value of it. The circumstances include those under which a reasonable person would have believed that the Plaintiff and USAA had abandoned their mortgages on the subject property.

69. It is unjust for Plaintiff and USAA to retain the value of the benefit without paying the value of it.

70. The Defendants are entitled to recover the value of the benefit from Plaintiff and USAA.

FOR A THIRD COUNTERCLAIM AND CROSSCLAIM
(Unfair Trade Practices)

71. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

72. Actions of the Plaintiff and USAA, including, but not necessarily limited to, those stated in this pleading, constitute violations of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, et seq. These acts offended public policy, which favors and encourages honesty and fair dealing in commerce, and which discourages deception and misrepresentation, and discourages mortgage institutions from taking possession of mortgaged property without consent and without taking reasonable efforts to maintain such property.

73. These acts were immoral, oppressive, unscrupulous, and substantially injured the Defendants.

74. The Plaintiff and USAA knew or should have known that these actions were violations of the Unfair Trade Practices Act and constituted unfair and deceptive acts in trade or commerce.

75. These actions have an impact upon the public interest and are capable of repetition, including, but not necessarily limited to, in that the Plaintiff and USAA hold many mortgages and, further, the Plaintiff and USAA have repeated with many other customers what they have done in this case.

76. The Plaintiff and USAA followed their policies and procedures with regard to their actions in this case.

77. The Defendants have suffered damages as a direct, consequent, and proximate result of these actions of the Plaintiff and USAA.

78. The Defendants are entitled to a judgment against the Plaintiff and USAA for treble damages, reasonable attorney's fees, and costs.

FOR A FOURTH COUNTERCLAIM
(Violation of Attorney Preference Statute)

79. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

80. With respect to the closing of the mortgage loan subject of this case, the original creditor did not comply with the attorney preference or insurance preference provisions of S.C. Code Ann. § 37-10-102.

81. The original creditor did not ascertain the borrowers' preference as to the attorney to represent them in the closing of the mortgage loan.

82. Further, the terms of the subject loan were and are unconscionable, including its extremely high interest rate.

83. The subject loan was induced by unconscionable conduct.

84. For each violation of S.C. Code Ann. § 37-10-102, the Plaintiff is liable for all relief available under S.C. Code Ann. § 37-10-105, including that provided under S.C. Code Ann. § 37-10-105(C), damages, attorney's fees, and penalties as provided in the South Carolina Consumer Protection Code.

WHEREFORE, the Defendants pray for the court to:

- (a) Issue an order dismissing the Complaint with prejudice;
- (b) Deny the Plaintiff the relief it seeks in this action;
- (c) Enter judgment for the Defendants for actual damages, punitive damages, and all applicable statutory penalties;
- (d) Enter judgment in favor of the Defendants for reasonable attorney's fees, if and as applicable;

- (e) Enter judgment for the Defendants for the costs and expenses of this action; and
- (f) Grant the Defendants such other and further relief as the court deems just and proper.

Respectfully submitted,

/s/ Andrew S. Radeker
Andrew S. Radeker
S.C. Bar No. 73743
HARRISON, RADEKER & SMITH, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
(803) 779-6700 (facsimile)
drew@harrisonfirm.com (email)
ATTORNEY FOR GEDDINGS DEFENDANTS

Columbia, South Carolina
November 6, 2020

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas

Kristi F. Curtis, Circuit Judge

Appellate Case No. 2020-001490
Common Pleas Case No. 2020-CP-14-00023

RECEIVED

DEC 02 2020

SC Court of Appeals

New Residential Mortgage, LLC,

Plaintiff,

v.

Todd S. Crawford, Tricia L. Crawford, William T. Geddings, Jr., Jane U. Geddings, and
USAA Federal Savings Bank,

Defendants,

Of Whom William T. Geddings, Jr. and Jane U. Geddings are the

Appellants,

and

New Residential Mortgage LLC and USAA Federal Savings Bank are the

Respondents.

PROOF OF SERVICE

I hereby certify that a copy of the foregoing RESPONDENT-APPELLANT NEW RESIDENTIAL MORTGAGE, LLC'S MOTION TO DISMISS was sent via first-class U.S. Mail, postage prepaid, and addressed as follows:

Andrew S. Radeker
Harrison, Radeker & Smith, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
drew@harrisonfirm.com
Attorney for Appellants-Respondents

W.T. Geddings, Jr.
20 South Brooks Street
Manning, South Carolina 29102
(803) 435-4770
wtg@geddingslawfirm.com
Attorney for Appellants-Respondents

Lindsay B. Crawford III
Theodore Von Keller
Sara C. Hutchins
B. Lindsay Crawford, IV
Crawford & von Keller, LLC
PO Box 4216
Columbia, SC 29240
(803) 790-2626
court@crawfordvk.com
Attorney for Respondent-Appellant

W. Shawn Bingham, Esq.
Freeman Mathis & Gary
100 Galleria Parkway, Suite 1600
Atlanta, Georgia 30339
sbingham@fmglaw.com
*Attorney for Respondent USAA Federal
Savings Bank*

Kelley Yarborough Woody
P.O. Box 6432
Columbia, South Carolina 29260
kwoody@kelleywoody.com
Attorney for Defendant Todd S. Crawford

This the 1st day of December 2020.

/s/ Jonathan E. Schulz _____
Jonathan E. Schulz

Reigan Yoder
Legal Assistant
ryoder@bradley.com

Bradley

December 1, 2020

Via Federal Express, Overnight Delivery

Ms. Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RECEIVED

DEC 02 2020

SC Court of Appeals


Re: *William T. Geddings, Jr. and Jane U. Geddings v. New Residential Mortgage LLC and USAA Federal Savings Bank* (Appellate Case No. 2020-001490)

Dear Ms. Kitchings:

Enclosed please find a check in the amount of \$50.00 to cover the filing fee of Respondent-Appellant New Residential Mortgage LLC's Motion to Dismiss, which was filed today via e-mail. Also enclosed is a courtesy copy of the Motion to Dismiss. Thank you for your assistance.

Should you have any questions, please do not hesitate to contact our office.

Sincerely,


Reigan Yoder
Legal Assistant

/rcy
Enclosures

ORIGIN ID: QWGA (704) 338-6141
REIGAN YODER
BRADLEY ARANT BOULT CUMMINGS LLP
214 N. TRYON STREET
STE 3700
CHARLOTTE, NC 28202
UNITED STATES US

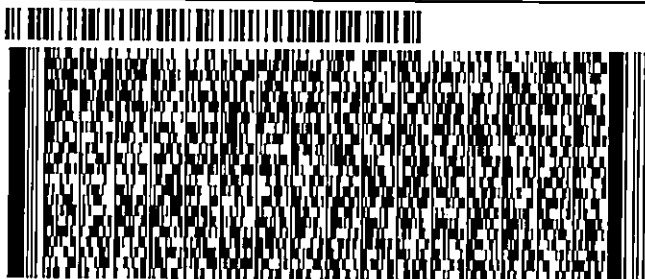
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TO **MS. JENNY ABBOTT KITCHINGS**
SOUTH CAROLINA COURT OF APPEALS
CLERK OF COURT
1220 SENATE STREET
COLUMBIA SC 29201

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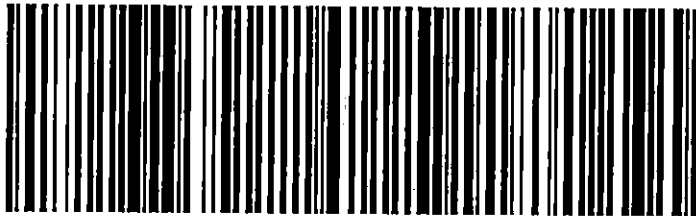
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DEC 02 2020

SC Court of Appeals