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Dec 16 2020

SC Court of Appeals

**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**

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/Respondents,

and

New Residential Mortgage LLC is the

Respondent/Appellant,

and

USAA Federal Savings Bank is the

Respondent.

**REPLY IN SUPPORT OF
RESPONDENT-APPELLANT NEW RESIDENTIAL MORTGAGE, LLC'S
MOTION TO DISMISS**

Respondent-Appellant New Residential Mortgage, LLC ("New Residential"), through

undersigned counsel, submits this reply in support of its motion to dismiss Appellant-Respondent Williams T. Geddings, Jr. and Jane U. Geddings' (the "Geddings") appeal in its entirety.

New Residential argued in its motion to dismiss that the Geddings' filing of a Second Amended Answer and Counterclaims rendered the lower court's ruling on the non-operative First Amended Answer and Counterclaims moot; that the trial court's interlocutory order granting New Residential's motion for judgment on the pleadings without prejudice is not immediately appealable; and that the order striking the Geddings' jury demand on an equitable claim is not immediately appealable under S.C. Code Ann. § 14-3-330 because the Geddings were not entitled to a jury trial on an equitable claim.

Apart from acknowledging that the operative Second Amended Answer and Counterclaims superseded the non-operative First Amended Answer and Counterclaims (Response at 1), the Geddings do not even attempt to respond to New Residential's arguments. To the contrary, the Geddings do exactly what New Residential predicted by directing the Court to cases standing for the proposition that orders depriving a party of a mode of trial *to which he or she is entitled* affects substantial rights under § 14-3-330(2) and must be immediately appealed or otherwise waived. (Response at 2). As New Residential explained in the underlying motion, however, the Geddings' legal counterclaims were dismissed on standing grounds, there is no jurisdiction in this Court to entertain an appeal from that interlocutory ruling, and the Geddings were not entitled to a jury trial on their remaining claim because it was equitable in nature, meaning "[t]he order under appeal did not deprive appellant[s] of a mode of trial to which [they are] entitled as a matter of right." *C & S Real Estate Servs., Inc. v. Massengale*, 290 S.C. 299, 301, 350 S.E.2d 191, 193 (1986).

The Geddings do not contend they are entitled to a jury trial on their equitable claim for

unjust enrichment. Instead, the Geddings contend they will be forced to have the master-in-equity (as opposed to a jury) decide the legal counterclaims asserted in their Second Amended Answer and Counterclaims. (Response at 1 (“[T]his case, at the circuit court level, is referred to the master-in-equity with the Geddings’ jury demand stricken, even though the Geddings plead at-law claims with a jury demand made on them.”); *id.* at 2 (“The Geddings have been denied their right to a jury trial on their now-amended law claims, since, under the lower court’s order, they must now be tried before the master-in-equity.”)). This argument is legally and factually incorrect.

The trial court struck the jury demand in the Geddings’ non-operative First Amended Answer and Counterclaims. The Geddings’ current, operative pleading – the Second Amended Answer and Counterclaims – *contains a jury demand*. (See Motion to Dismiss Exhibit D). There is a mechanism under South Carolina law to return matters to the circuit court where a party makes a jury demand. See S.C.R. Civ. P. 53(b) (“Any party may request a jury pursuant to Rule 38 on any or all issues triable of right by a jury and, upon filing a jury demand, *the matter shall be returned to the circuit court.*” (emphasis added)); see also *id.* Note to 2002 Amendment (“The 2002 amendment permits referral of foreclosure cases to the master-in-equity by order of the clerk of court. If there are counterclaims requiring a jury trial, any party may file a demand for a jury under Rule 38 *and the case will be returned to the circuit court.*” (emphasis added)). Because the trial court has not yet passed judgment on the viability of the Geddings’ legal counterclaims set forth in the operative Second Amended Answer and Counterclaims (which contains a jury demand), the Geddings have not irrevocably lost their right to have a jury decide those claims.

In any event, the Geddings’ ability or entitlement to have their legal counterclaims decided by a jury (rather than the master-in-equity) is unaffected by the fact that this case is now “referred

to the master-in-equity.” (Response at 1). Without expressly raising the issue, the Geddings – by citing to *Wachovia Bank Nat’l Ass’n v. Blackburn*, 407 S.C. 321, 328, 755 S.E.2d 437, 441 (2014) – draw reference to the compulsory-versus-permissive distinction to conclude that their legal counterclaims “must now be tried before the master-in-equity.” (Response at 2-3).¹ But the legal counterclaims in the superseded First Amended Answer and Counterclaims are largely identical to those in the operative Second Amended Answer and Counterclaims. Therefore, if the Geddings’ current legal counterclaims are determined to be permissive, then the Geddings never had a right or entitlement to have a jury decide them. Contrariwise, if the Geddings’ current legal counterclaims are determined to be compulsory, they have not lost any right to have those claims decided by a jury. Either way, the Geddings have not been “deprive[d] . . . of a mode of trial to which [they are] entitled as a matter of right,” *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 72, 533 S.E.2d 331, 333 (2000), meaning that the underlying order is not immediately appealable.

The relief sought by the Geddings with respect to a since-superseded pleading is moot. Any ruling by this Court on this interlocutory appeal would be purely advisory. Indeed, it is unclear from a procedural standpoint how the trial court (which has before it the Geddings’ *Second* Amended Answer and Counterclaims) would deal with a ruling favorable to the Geddings from this Court (which has before it the Geddings’ *First* Amended Answer and Counterclaims).

For the foregoing reasons and those set forth in Respondent-Appellant’s motion to dismiss, the Court should dismiss this appeal as moot or, alternatively, dismiss the appeal because the

¹ *Blackburn* provides that “[i]f the complaint is equitable and the counterclaim is legal and *permissive*, the defendant waives his right to a jury trial,” but “[i]f the complaint is equitable and the counterclaim is legal and *compulsory*, the plaintiff or the defendant has a right to a jury trial on the counterclaim.” 407 S.C. at 328-29, 755 S.E.2d at 441 (emphasis added).

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.

This the 16th day of December 2020.

/s/ Jonathan E. Schulz

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PROOF OF SERVICE

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

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This the 16th day of December 2020.

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