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.**	**GEDDINGS' MOTION TO RECONSIDER**

YOU WILL PLEASE TAKE NOTICE that Defendants William T. Geddings and Jane U. Geddings (hereinafter "the Geddings") move before this court pursuant to Rules 52 and 59, SCRCP, for an order reconsidering, altering, amending, and/or clarifying the order filed September 3, 2020[1], that granted the Plaintiff's motion to strike the Geddings' jury demand in the above-captioned action, referred this action to the master-in-equity, and granted in part the Plaintiff and Defendant USAA's motions for judgment on the pleadings.

The Geddings so move on the following grounds:

1. Except as to the denial of the motion for judgment on the pleadings as to the Geddings' claim for unjust enrichment, the court's decision in the subject order is wrong.

2. The court appears to have applied an incorrect standard. The order states that the standard on a motion for judgment on the pleadings does not "admit" inferences drawn in the non-movant's favor from the allegations of the pleadings. That is not

[1] Since September 13, 2020, was a Sunday, this motion is timely. Rule 6, SCRCP.

correct. The standard of whether a motion for judgment on the pleadings should be granted is the same as for a motion under Rule 12(b)(6), SCRCP. See Russell v. City of Columbia, 305 S.C. 86, 406 S.E.2d 338 (1991); Falk v. Sadler, 341 S.C. 281, 533 S.E.2d 350 (Ct. App. 2000); Fireman's Ins. Co. v. Cincinnati Ins. Co., 302 S.C. 234, 394 S.E.2d 855 (Ct. App. 1990). In deciding a motion for judgment on the pleadings, the court may not consider matters outside the content of the non-moving party's pleadings. See Falk, 341 S.C. at 281; Firemen's Ins. Co., 302 S.C. at 234. A judgment on the pleadings is proper only where there is no issue of fact raised by the non-moving party's pleadings that would entitle the non-moving party to judgment if those issues were resolved in his favor. Sapp v. Ford Motor Co., 386 S.C. 143, 687 S.E.2d 47, 49 (2009). The court must deny a motion for judgment on the pleadings if, when viewed in the light most favorable to the non-moving party, and with every doubt resolved in his favor, "the facts alleged [in the non-moving party's pleadings] *and inferences reasonably deducible therefrom* would entitle the [non-moving party] to any relief on any theory of the case." Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601 (1995) (emphasis added); accord Sapp, 687 S.E.2d at 49; Toussaint v. Ham, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987).

3. When the correct standard is applied and all reasonable inferences are drawn in favor of the Geddings, it becomes plain that the Plaintiff and Defendant USAA were not entitled to the judgment on the pleadings they received.

4. The Geddings have standing to maintain their claims with regard to damage done to the subject real property by the Plaintiff and/or Defendant USAA.

5. The court ruled that the Geddings could not maintain causes of action based on conduct of the Plaintiff (or a predecessor) or Defendant USAA that occurred before the Geddings became the owners of the subject property. The court's order appears to take the position that these claims are based totally on conduct that predates the Geddings' ownership of the subject property.

6. First, with regard to damage to the property done before the date of the deed to the Geddings, the Geddings stand in the shoes of the mortgagors, with whom they are in privity (as they also are with the Plaintiff and Defendant USAA) and from whom they have received their rights related the subject property. Indeed, the Plaintiff's complaint alleges that "[p]ursuant to a Title to Real Estate executed on or about August 25, 2018, Todd S. Crawford and Tricia L. Crawford conveyed to William T. Geddings Jr. and Jane U. Geddings all of the rights, title and interest in the real property at issue." This includes rights related to the property's mortgages and rights arising from damage to the property. "'Privity' denotes [a] mutual or successive relationship to the same rights of property. . . . South Carolina courts have equated privity with standing." Fabian v. Lindsay, 410 S.C. 475, 482, 765 S.E.2d 132, 136 (2014) (internal citations and quotation marks omitted). Further, it is foreseeable that tortiously damaged property will be conveyed to a new owner, who will thus bear damage proximately caused by the tort. See id. at 485 (foreseeability of harm to a person is factor in assessing whether a tortfeasor has duty to that person). In Skipper v. Perrone, the Court of Appeals of South Carolina decided an issue before it in such a way that can only rest on the truth of the proposition that a grantee of property that has been previously tortiously damaged

may maintain an action against the damaging party for the damage. 674 S.E.2d 510, 513 (Ct. App. 2009).

7. The movants, who bore the burden of showing the court why judgment on the pleadings should be granted, never presented the court with any authority to the effect that a grantee of property that has been previously tortiously damaged cannot maintain an action against the damaging party for the damage.

8. The Plaintiff and Defendant USAA (and all applicable predecessors) owed duties to the owners of the subject property with regard to taking possession of the subject property. 54A Am.Jur.2d Mortgages § 255; 59 C.J.S. Mortgages § 398; see Wright v. PRG Real Estate Mgmt., Inc., 426 S.C. 202, 212, 826 S.E.2d 285, 291 (2019); Vaughan v. Town of Lyman, 370 S.C. 436, 446, 635 S.E.2d 631, 637 (2006); Miller v. City of Camden, 329 S.C. 310, 314, 494 S.E.2d 813, 815 (1997); Hurst v. Sandy, 329 S.C. 471, 481, 494 S.E.2d 847 (Ct. App. 1997). They are not relieved of the consequences of their violation of such duties merely because that ownership status has been transferred to someone else. See Skipper, 674 S.E.2d at 513.

9. Second, it is by no means clear from the pleadings that all property-damaging acts subject of the Geddings' claims for negligence and violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, *et seq.*, occurred before the Geddings became the owners of the property. The Geddings' pleadings do not so state, and if the Geddings are allowed to make an evidentiary record at trial, that record will contain factual evidence of such acts occurring *after* the conveyance to the Geddings. In deciding that the Geddings' claims in this regard are wholly based on conduct occurring before the Geddings owned the property, the court drew an

inference in favor of the parties that had moved for judgment on the pleadings. Under the applicable standard, that was an impermissible inference. Sapp, 687 S.E.2d at 49; Stiles, 318 S.C. at 300; Toussaint, 292 S.C. at 416.

10. The court's order seems to treat the Geddings' Unfair Trade Practices claim as though it is wholly based on the way that the mortgage was originated and closed, but that is not the sole basis for this claim. This claim is also based what the Plaintiff and/or Defendant USAA did and did not do in taking possession of the property at issue.

11. In addition, whether the Plaintiff and/or Defendant USAA owed the Geddings a duty is is immaterial to whether the Geddings pled a claim for violation of the Unfair Trade Practices Act. Duty is not an element of an Unfair Trade Practices claim. Wright v. Craft, 372 S.C. 1, 23, 640 S.E.2d 486, 498 (Ct. App. 2006).

12. "[T]he [Unfair Trade Practices Act] 'should be given a liberal construction.'" McTeer v. Provident Life and Accident Ins., 712 F. Supp. 512, 515 (D.S.C. 1989) (quoting Connolly v. People's Life Ins. Co., 294 S.C. 355, 359, 364 S.E.2d 475, 477 (Ct. App. 1988)). Mortgage servicing and foreclosure-related acts fall within this broad construction. See id.

13. The South Carolina Supreme Court has stated that demonstrating the potential for an unfair trade practice's repetition is a demonstration of the requisite "adverse effect on the public interest" but also that this is not the only way to demonstrate an adverse impact on the public interest. Crary v. Djebelli, 329 S.C. 385, 388, 496 S.E.2d 21 (1998). Indeed, the state Supreme Court has "specifically declined" to

hold that such potential for repetition must be demonstrated by any particular means and has stated that "each case must be evaluated on its own merits." Id.

14. Just as the improper mortgage account charges at issue in Beneficial Financial I, Inc. v. Windham, Op. No. 5753 (S.C. Ct. App. filed Aug. 5, 2020) (Shearouse Adv. Sh. No. 30 at 32, 39-41), violated the Unfair Trade Practices Act and demonstrated impact on the public interest, even without evidence that Beneficial had repeated the conduct, so, too, does the badly botched maintenance of the property at issue here show the requisite "adverse effect on the public interest." Crary, 329 S.C. at 388.

15. The court's order does not address the claim for violation of S.C. Code Ann. § 37-10-102, commonly referred to as the attorney preference statute. The Geddings were right about their argument on that claim, and the court should have recognized that they pled a claim for violation of the attorney preference statute coupled with inducement by unconscionable conduct. This was not pled under a separate heading, but that is not a reason for the court's order not to have recognized the allegations supporting this claim. A motion for judgment on the pleadings cannot be properly granted where the non-moving party's allegations and the facts reasonable inferable therefrom would entitle the non-movant "to any relief on any theory of the case." Stiles, 318 S.C. at 300.

16. Rather than dismissing the Geddings' claims, the court should have permitted the Geddings to amend their pleading in order to cure any defects. Our Supreme Court recently noted that "[u]nder Rules 12(b)(6) and 15(a), the circuit court may not dismiss a claim with prejudice unless the plaintiff is given a meaningful chance to

amend the complaint, and after considering the amended pleading, the court is certain there is no set of facts upon which relief can be granted." Skydive Myrtle Beach, Inc. v. Horry Cnty., 426 S.C. 175, 189, 826 S.E.2d 585, 592 (2019). This applies to counterclaims. See Charleston County School Dist. v. Laidlaw Transit Inc., 348 S.C. 420, 424, 559 S.E.2d 362 (Ct. App. 2001) (motion to dismiss standard applies equally to counterclaims and complaints). Given that the standards for a motion for judgment on the pleadings and a motion to dismiss under Rule 12(b)(6), SCRCP, are the same, this principle applies to motions for judgment on the pleadings, as well.

17. Because the court dismissed the Geddings' at-law claims, the court granted the motion to strike the Geddings' jury demand and refer this action to the master-in-equity without analysis of whether the Geddings pled compulsory at-law claims entitling them to a jury trial. The Geddings did so, and the court should reconsider and change its decision to strike the jury demand and refer this action.

18. This motion is also based upon all applicable statutory law, case law, common law, and the record in this action. Further, the Geddings specifically incorporate into this motion by reference all arguments they made at the hearing on the motions that produced the aforesaid order and their previous memoranda in this case.

Pursuant to Rule 11, SCRCP, the undersigned certifies that there would have been no useful purpose in consultation with opposing counsel in an attempt to resolve the matter subject of this motion.

Respectfully submitted,

/s/ Andrew S. Radeker
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