

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

**APPEAL FROM CLARENDON COUNTY
Court of Common Pleas
Kristie F. Curtis, Circuit Judge**

**Appellate Case No. 2020-001490
Common Please 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.

INITIAL APPELLANT'S BRIEF OF RESPONDENT/APPELLANT

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STATEMENT OF THE ISSUES ON APPEAL

Did the trial court err in denying New Residential's motion for judgment on the pleadings on the Geddings' counterclaim for unjust enrichment where the Geddings' pleading, which alleges New Residential and the Geddings had no communication, establishes definitively that any benefit conferred was gratuitous?

STATEMENT OF THE CASE

A. New Residential's Foreclosure Claim and the Geddings' Counterclaims.

For the purposes of this appeal, the allegations in the Geddings' counterclaims must be accepted as true. On or about June 21, 2007, Todd S. Crawford executed a promissory note ("Note") in favor of USAA Federal Savings Bank ("USAA") in the amount of \$224,000. (Complaint ¶ 6). The Note was secured by a mortgage ("Mortgage") on property located at 1051 Doral Drive, Manning, South Carolina 29102 (the "Property"). (Complaint ¶ 7). The Mortgage was recorded on or around July 18, 2007 in Mortgage Book 756 at page 160, in the Clarendon County Office of the Register of Deeds. (Complaint ¶ 8). USAA subsequently assigned the Mortgage to Green Tree Servicing LLC on or around October 8, 2013. (Complaint ¶ 9). This assignment was recorded on October 18, 2013 in Mortgage Book 999 at page 39, in the Clarendon County Office of the Register of Deeds. (Complaint ¶ 9).

On or around August 25, 2018, pursuant to a Title to Real Estate, Mr. Crawford and Tricia L. Crawford (together, the "Crawfords") conveyed to William T. Geddings Jr. and Jane U. Geddings (together, the "Geddings") all right, title, and interest in the Property. (Complaint ¶ 12). This Title to Real Estate was recorded on September 7, 2018 in Mortgage Book 1003 at page 2652, in the Clarendon County Office of the Register of Deeds. (Complaint ¶ 12).

Thereafter, the Mortgage was further assigned to New Residential Mortgage LLC on or around December 19, 2019. (Complaint ¶ 10). This assignment was recorded on December 20, 2019 in Mortgage Book 1136 at page 1500, in the Clarendon County Office of the Register of Deeds. (Complaint ¶ 10).

New Residential initiated this foreclosure action against the Crawfords, the Geddings, and USAA on January 15, 2020. (Complaint).¹ The Complaint alleges, in relevant part, that the loan was in default and due on August 1, 2013, and that New Residential, as the holder of the Note and Mortgage, was declaring the entire balance of the principal and interest due and payable at once. (Complaint ¶ 15).

After filing an initial answer, the Geddings, on April 27, 2020, filed a document styled Amended Answer, Counterclaim and Cross-Claim of William T. Geddings Jr. and Jane U. Geddings and Third Party Complaint (“Amended Answer and Counterclaims”).² (Amended Answer and Counterclaims). The Geddings allege three separate counterclaims in the Amended Answer and Counterclaims (each of which they refer to as a “Counterclaim and Cross-Claim and Third Party Complaint”): (1) negligence, (2) quantum meruit and/or unjust enrichment, and (3) violation of the South Carolina Unfair Trade Practices Act (“SCUTPA”), S.C. Code Ann. § 39-5-10, *et seq.* (Amended Answer and Counterclaims ¶¶ 27–50). The Geddings’ negligence claim alleges that New Residential was responsible for the care, upkeep, and maintenance of the Property after the Crawfords vacated the Property and that New Residential breached this alleged duty. (Amended Answer and Counterclaims ¶¶ 27–40). The Geddings’ unjust enrichment claim seeks to recover from New Residential monies the Geddings’ purportedly spent repairing the Property. (Amended Answer and Counterclaims ¶¶ 36, 39, 41–43). And the Geddings’ SCUTPA claim asserts a litany of alleged infractions ranging from violation of South Carolina’s Attorney

¹ New Residential named USAA as a defendant in the foreclosure action because USAA may have or claim an interest in the Property by virtue of the Mortgage given to the Crawfords by USAA. (Complaint ¶ 19). New Residential named the Geddings as a defendant because the Geddings may have or claim an interest in the Property by virtue of the aforementioned Title to Real Estate. (Complaint ¶ 20).

² The Geddings name Green Tree Servicing LLC as a third-party defendant.

Preference Statute (S.C. Code Ann. § 37-10-102), to failure to properly communicate with the Geddings and maintain the Property, to foreclosing on an allegedly invalid lien, to alleged improprieties inherent in the assignment of the Mortgage. (Amended Answer and Counterclaims ¶¶ 44–50). The Answer and Counterclaims contained a jury demand. (Amended Answer and Counterclaims p.1). On May 12, 2020, New Residential filed a reply, together with affirmative defenses, to the Geddings’ three counterclaims set forth in the Answer and Counterclaims (“New Residential’s Reply”). (New Residential’s Reply).

B. New Residential’s Motion for Judgment on the Pleadings and to Strike the Geddings’ Jury Demand, and the Trial Court’s Subsequent Orders.

On the same day – May 12, 2020 – New Residential also filed a motion for judgment on the pleadings as to the Geddings three counterclaims (“Rule 12(c) Motion”) (Rule 12(c) Motion), as well as a motion to strike the Geddings’ jury demand and for an order of reference to the Master in Equity (“Motion to Strike”) (Motion to Strike). The trial court held a hearing on the Rule 12(c) Motion and the Motion to Strike on August 19, 2020. (Transcript of August 19 Hearing).

On September 3, 2020, the trial court issued a ruling on the Rule 12(c) Motion and the Motion to Strike (“Rule 12(c) Order”). (Rule 12(c) Order). The trial court granted New Residential’s Rule 12(c) Motion with regard to the Geddings’ counterclaims for negligence and violation of the SCUTPA; denied New Residential’s Rule 12(c) Motion with regard to the Geddings’ counterclaim for unjust enrichment; and granted the Motion to Strike. In granting the Motion to Strike, the trial court concluded as follows:

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 the matter to the Clarendon County Master in Equity.

(Rule 12(c) Order at p.3). The trial court did not explain the basis for its denial of New Residential's motion for judgment on the pleadings on the unjust enrichment counterclaim.

On September 14, 2020, the Geddings' filed a motion to reconsider the Order (*see* Motion to Reconsider), which the trial court denied on October 9, 2020 ("Reconsideration Order") (Reconsideration Order). In denying the motion for reconsideration, the trial court clarified "the dismissal is WITHOUT PREJUDICE and the Geddings have thirty (30) days from the date of this order to amend their pleadings." (Reconsideration Order at p.3). Consistent with that directive from the trial court, the Geddings – on November 6, 2020 – filed a further amended pleading styled "Second Amended Answer, Counterclaim, and Cross-Claim (Jury Trial Demanded)." (Second Amended Answer and Counterclaims).

C. The Parties' Appeals to this Court and the Geddings' Simultaneous Filing of a Further Amended Answer in the Trial Court.

The very same day – November 6, 2020 – the Geddings noticed an appeal to this Court from both the Rule 12(c) Order and the Reconsideration Order, which were rulings with respect to the Amended Answer and Counterclaims, not the newly filed (and, at that time, operative) Second Amended Answer and Counterclaims. (Geddings' Notice of Appeal). On November 12, 2020, New Residential noticed a conditional cross-appeal to this Court from the Rule 12(c) Order, explaining: "This cross-appeal is contingent on the Court's determination that it has appellate jurisdiction over this appeal, and Respondent-Appellant does not waive any right to seek dismissal of the appeal for lack of jurisdiction." (New Residential's Notice of Appeal).

D. Cross-Motions to Dismiss the Appeals.

On December 1, 2020, New Residential filed a motion to dismiss the Geddings' appeal ("New Residential's Motion to Dismiss Appeal"), arguing that (a) the Geddings' appeal concerning the sufficiency of the non-operative Amended Answer and Counterclaims (as opposed

to the then-operative Second Amended Answer and Counterclaims) was moot and (b) the Rule 12(c) Order – which dismissed claims without prejudice and struck a jury demand with respect to an equitable claim – did not fit within the confines of this Court’s narrow appellate jurisdiction over interlocutory orders pursuant to S.C. Code Ann. § 14-3-330. (Motion to Dismiss Appeal). The Geddings, on December 23, 2020, moved to dismiss New Residential’s conditional cross-appeal (“Geddings’ Motion to Dismiss Appeal”). (Geddings’ Motion to Dismiss Appeal). New Residential made clear in response to the Geddings’ Motion to Dismiss Appeal that its cross-appeal was conditioned on this Court concluding it had jurisdiction over the Geddings’ Appeal, and that if the Court dismissed the Geddings’ appeal it should also dismiss New Residential’s appeal.

On January 14, 2021, this Court denied both motions to dismiss. (Order Denying Motions to Dismiss Appeal). As a result of the Court’s order (and the parties’ appeals going forward), the proceedings before the trial court – currently before the Circuit Court with the Second Amended Answer and Counterclaims as the operative pleading – are stayed pending the outcome of this appeal – from a decision by the Master in Equity on the non-operative First Amended Answer and Counterclaims.

SUMMARY OF THE ARGUMENT

The trial court erred in denying New Residential's motion for judgment on the pleadings as to the Geddings counterclaim for unjust enrichment. The Geddings' unjust enrichment counterclaim seeks quantum meruit recovery for money they allegedly spent to maintain and repair the Property. However, to prevail on their unjust enrichment counterclaim, the Geddings would have to establish that the money they allegedly spent was a benefit conferred on New Residential non-gratuitously. For a benefit to be non-gratuitous, a plaintiff must confer a benefit either (a) at a defendant's request or (b) in circumstances where the plaintiff reasonably relies on the defendant paying for the benefit and the defendant should understand that the plaintiff expects compensation from the defendant. A defendant's knowledge of the plaintiff's conduct is insufficient in and of itself.

Here, the Geddings allegedly invested money in the Property as an investment for their own benefit. There is no basis on which the Geddings could rely – much less reasonably rely – on New Residential to pay for this alleged benefit. Indeed, the Geddings allege they had no contact with New Residential prior to allegedly incurring the expenses underlying their unjust enrichment counterclaim.

ARGUMENT

I. The trial court erred in denying New Residential's motion for judgment on the pleadings on the Geddings unjust enrichment counterclaim because any benefit conferred was gratuitous.

The trial court's order denying New Residential's motion for judgment on the pleadings as to the Geddings' claim for unjust enrichment should be reversed. The Geddings have not and could not have asserted a counterclaim for unjust enrichment, and judgment should have been entered in favor of New Residential.

In reviewing a trial court's ruling on a motion for judgment on the pleadings under Rule 12(c), "[t]his court applies the same standard of review implemented by the circuit court." *Hambrick v. GMAC Mortg. Corp.*, 370 S.C. 118, 122, 634 S.E.2d 5, 7 (Ct. App. 2006). A motion for judgment on the pleadings should be granted when, based on the pleadings, "the moving party would be entitled to judgment on the merits, without regard to what the findings might be on the facts on which issue is joined." *Browne v. U. Ins. Co. of Am.*, 268 S.C. 254, 257, 233 S.E.2d 298, 300 (1977) (internal quotation marks omitted). Stated differently, this Court should grant a Rule 12(c) motion when a plaintiff "fail[s] to state facts sufficient to constitute a cause of action in the pleadings filed with the court." *Hambrick*, 370 S.C. at 121, 634 S.E.2d at 7. This Court must accept as true all well pleaded factual allegations, but a Rule 12(c) motion "does not admit the inferences drawn by the plaintiff from the facts nor does it admit conclusions of law." *Fireman's Ins. Co. of Newark, N.J. v. Cincinnati Ins. Co.*, 302 S.C. 234, 236, 394 S.E.2d 855, 856 (Ct. App. 1990).

To obtain quantum meruit recovery for unjust enrichment, a plaintiff must show: (1) he conferred a non-gratuitous benefit on the defendant; (2) the defendant realized some value from the benefit; and (3) it would be inequitable for the defendant to retain the benefit without paying

the plaintiff for its value. *Inglese v. Beal*, 403 S.C. 290, 297, 742 S.E.2d 687, 691 (Ct. App. 2013).³ For a benefit to be “non-gratuitous,” the plaintiff “must confer the benefit either (1) at the defendant’s request or (2) in circumstances where the plaintiff reasonably relies on the defendant to pay for the benefit and the defendant understands or ought to understand that the plaintiff expects compensation and looks to him for payment.” *Campbell v. Robinson*, 398 S.C. 12, 24, 726 S.E.2d 221, 228 (Ct. App. 2012). “It is not enough that the defendant has knowledge of the plaintiff’s conduct; he must have induced the plaintiff to confer the benefit.” *Niggel Assocs., Inc. v. Polo’s of N. Myrtle Beach, Inc.*, 296 S.C. 530, 532–33, 374 S.E.2d 507, 509 (Ct. App. 1988).

Here, accepting the allegations as true, the Geddings fail to state sufficient facts to constitute a cause of action for unjust enrichment because they do not – and cannot – allege that the purported benefit they conferred was non-gratuitous. Specifically, the Geddings allege, in relevant part, as follows:

- “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.” (Amended Answer and Counterclaims ¶ 36);
- “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” (Amended Answer and Counterclaims ¶ 39); and
- “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

³ Although the Geddings plead the relevant counterclaim “under the doctrine of *quantum meruit* and/or unjust enrichment” (Amended Answer and Counterclaims ¶ 42 (emphasis in original)), quantum meruit is merely “an equitable doctrine to allow for recovery for unjust enrichment.” *JASDIP Props. SC, LLC v. Estate of Richardson*, 395 S.C. 633, 640, 720 S.E.2d 485, 488 (Ct. App. 2011); see *Gillins v. Celadon Trucking Serv., Inc.*, 2016 WL 4455018, at *5 (D.S.C. Aug. 24, 2016) (“[T]he tests for quantum meruit and unjust enrichment are indistinguishable.”). Lest there be any doubt, for a quantum meruit claim – just like an unjust enrichment claim – “the benefit conferred must be nongratuitous.” *Church v. McGee*, 391 S.C. 334, 345, 705 S.E.2d 481, 487 (Ct. App. 2011).

entitled to judgment against one or both of these parties under the doctrine of *quantum meruit* and/or unjust enrichment.” (Answer and Counterclaims ¶ 42 (emphasis in original)).

If these allegations are accurate, the Geddings spent the funds in the hope of increasing the value of the Property they erroneously believed they owned or simply recouping sufficient value from their investment in the Property. However, the Geddings do not – and cannot – allege that New Residential asked or otherwise induced them to make the alleged improvements. To the contrary, the Geddings make clear in their pleadings that they had no contact with New Residential whatsoever prior to allegedly incurring money to repair the Property. Specifically, the Geddings allege they “attempted to communicate with the purported mortgage holders several times and *received no response.*” (Amended Answer and Counterclaims ¶ 37 (emphasis added)). Having not communicated with the Geddings, New Residential could not possibly have requested or induced any conduct on the part of the Geddings. Because – based on their own pleadings – any benefit to New Residential from the improvements is gratuitous, the Geddings have failed to state a cause of action for unjust enrichment. Therefore, New Residential’s Rule 12(c) motion should be granted as to the Geddings’ unjust enrichment counterclaim.

CONCLUSION

For the foregoing reasons, this Court should reverse the portion of the trial court’s September 3, 2020 Order denying New Residential’s motion for judgment on the pleadings as to the Geddings’ counterclaim for unjust enrichment/quantum meruit, and it should enter judgment in New Residential’s favor dismissing the Geddings’ counterclaim for unjust enrichment/quantum meruit.

This 12th day of February 2021.

/s/ Jonathan E. Schulz

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PROOF OF SERVICE

I hereby certify that a copy of the foregoing **INITIAL APPELLANT'S BRIEF OF RESPONDENT/APPELLANT** was sent via first-class U.S. Mail, postage prepaid, and addressed as follows:

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