

The State of South Carolina In the Court of Appeals

APPEAL FROM
THE COURT OF COMMON PLEAS FOR THE THIRTEENTH JUDICIAL
CIRCUIT,
COUNTY OF GREENVILLE

Letitia H. Verdin, Circuit Court Judge

Appellate Case No. 2021-000333
Civil Action No. 2020-CP-23-01663

RECEIVED

MAY 20 2021

SC Court of Appeals

NATIONSTAR MORTGAGE LLC,

Plaintiff,

v.

LOUISE M. DOYLE,
JUNE MCGAHEE,
BANK OF AMERICA, N.A. and
DOROTHY RABON

Defendants,

Of Which NATIONSTAR MORTGAGE LLC is the *Appellant,*

And

LOUISE M. DOYLE, JUNE MCGAHEE, BANK OF AMERICA, N.A.
and DOROTHY RABON are the *Respondents.*

**AFFIDAVIT IN SUPPORT OF
PETITION FOR REHEARING
UNDER RULE 221(a)**

Amanda K. Cutler (SC Bar # 101052)
Brian A. Calub (SC Bar # 72009)
McGuireWoods LLP
201 North Tryon Street, Suite 3000
Charlotte, NC 28202
(704) 343-2182
acutler@mcguirewoods.com
bcalub@mcguirewoods.com

Reginald Corley, Esq.
Scott & Corley, P.A.
2712 Middleburg Dr., #200
Columbia, SC 29204
(803) 252-3340

William Stork, Esq.
Brock and Scott
3800 Fernandina Road, Suite 110
Columbia, SC 29210

*Counsel for Plaintiff-Appellant
Nationstar Mortgage LLC*

AFFIDAVIT OF AMANDA K. CUTLER

STATE OF NORTH CAROLINA)
COUNTY OF MECKLENBURG)

BEFORE ME, the undersigned Notary Public, personally appeared Amanda K. Cutler who being by me duly sworn, stated that she is authorized in all respects to make this affidavit.

1. My name is Amanda K. Cutler, I am over the age of eighteen (18) years old and I am of sound mind and fully competent to testify herein. I have never been convicted of a crime of moral turpitude, and I suffer from no mental or physical disability that would render me incompetent to make this affidavit.

2. I am able to swear, and I hereby do swear, that the facts stated in this affidavit are true and correct and are within my personal knowledge.

3. I am an attorney licensed to practice in the state of South Carolina. I am Counsel at McGuireWoods LLP, and am attorney of record for Plaintiff-Appellant Nationstar Mortgage LLC (“Appellant”) in the above-captioned matter.

4. I submit this Affidavit pursuant to Rule 240(c)(3) in support of Appellant’s Petition for Rehearing in this matter since the Record on Appeal has not been filed.

5. Attached hereto as Exhibit A is a true and correct copy of the Complaint filed on September 17, 2015.

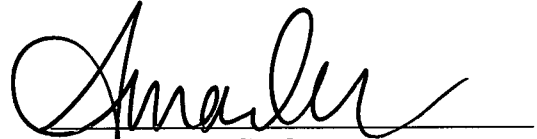
6. Attached hereto as Exhibit B is a true and correct copy of the Answer and Counterclaims filed on January 5, 2016.

7. Attached hereto as Exhibit C is a true and correct copy of the Motion Non-Jury Adjudication of Action and for Order of Reference filed on June 8, 2020.

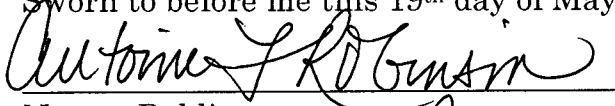
8. Attached hereto as Exhibit D is a true and correct copy of the Order denying the Motion to Refer to Master-in-Equity filed on February 23, 2021.

Further Deponent Sayeth Not.

This the 19th day of May, 2021.


Amanda K. Cutler

Sworn to before me this 19th day of May, 2021.



Notary Public

My Commission Expires: August 21, 2021

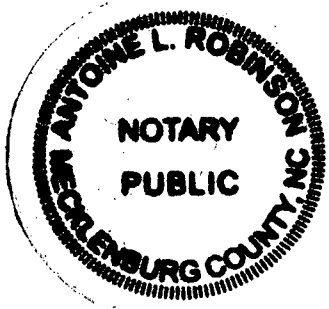


EXHIBIT A

FILED-CLERK OF COURT
STATE OF SOUTH CAROLINA GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
COUNTY OF GREENVILLE

Nationstar Mortgage LLC,
Plaintiff,
vs.

Louise M. Doyle; June McGahee; Bank of
America, N.A.; and Dorothy M. Rabon,

Defendant(s)

IN THE COURT OF COMMON PLEAS

C/A NO: **2015-CP-23-05701**

SUMMONS AND NOTICES
(NON-JURY)

FORECLOSURE OF REAL ESTATE
MORTGAGE

Deficiency Judgment Demanded

(021300-1)


TO THE ABOVE NAMED DEFENDANT(S):

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the Plaintiff's attorneys at their office, Post Office Box 2785, Columbia, SC 29202 or to otherwise appear and defend the action pursuant to applicable court rules within thirty (30) days after service hereof, exclusive of the day of such service; except that the United States of America, if named, shall have sixty (60) days to answer after the service hereof, exclusive of such service; and if you fail to answer the Complaint or otherwise appear and defend within the time aforesaid, the Plaintiff in this action will apply to the Court for judgment by default against you for the relief demanded in the Complaint.

TO MINOR(S) OVER FOURTEEN YEARS OF AGE, AND/OR TO MINOR(S) UNDER FOURTEEN YEARS OF AGE AND THE PERSON WITH WHOM THE MINOR(S) RESIDE(S), AND/OR TO PERSONS UNDER SOME LEGAL DISABILITY:

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Plaintiff.

YOU WILL ALSO TAKE NOTICE that pursuant to Rule 53(b) of the South Carolina Rules of Civil Procedure, the Plaintiff will move for a general Order of Reference to the Master in Equity for Greenville County, which Order shall specifically provide that the said Master in Equity is authorized and empowered to enter a final judgment in this action.



The Hunoval Law Firm, PLLC
ATTORNEYS FOR PLAINTIFF
 Christina Rampey Hunoval, SC Bar #69387
 Michael P. Morris, SC Bar #73560
 Kimberly R. Thompson, SC Bar #79161
 Mary R. Powers, SC Bar #16534
Post Office Box 2785
Columbia, SC 29202
(803) 602-6460

September 14, 2015

FILED - CLERK OF COURT
STATE OF SOUTH CAROLINA GREENVILLE CO. S.C.
COUNTY OF GREENVILLE PAUL B. WICKENSIMER

Nationstar Mortgage LLC,

PLAINTIFF,

vs.

Louise M. Doyle; June McGahee; Bank of America,
N.A.; and Dorothy M. Rabon,

DEFENDANT(S)

IN THE COURT OF COMMON PLEAS

C/A NO:

2015-CP-23-05701

COMPLAINT

(NON-JURY)

FORECLOSURE OF
REAL ESTATE MORTGAGE

Deficiency Judgment Demanded

The Plaintiff alleges as follows:

1. This is an action for the foreclosure of a mortgage upon certain real estate in Greenville County, South Carolina.
2. The Plaintiff is a corporation or other legal entity doing business in South Carolina.
3. The Plaintiff is the entitled to enforce the negotiable instrument secured by the Mortgage and is the real party in interest as defined by Rule 17(a) of the South Carolina Rules of Civil Procedure ("SCRCP").
4. The Defendant(s) named herein may claim an interest in or some lien on the real estate, the subject of this action.
5. Any Defendant(s) described herein as judgment creditors have by filing said judgments designated their attorney entering the judgment as their agent for service of process pursuant to the provisions of S.C. Code Ann. § 15-35-840.
6. Upon information and belief, the Defendant(s) herein are not in the military service of the United States of America pursuant to the provisions of the Servicemembers Civil Relief Act 50 U.S.C. § 501 et. seq. and any amendments thereto.
7. On or about August 27, 2007, for value received, Louise M. Doyle executed and delivered to Bank of America, N.A., a certain Promissory Note (the "Note") in the principal sum of \$70,000.00, payable in monthly installments.
8. To secure the payment of the said Note and debt, and in accordance with the terms and conditions thereof, on August 27, 2007, Louise M. Doyle executed and delivered to Bank of America, N.A., its successors and assigns, a Mortgage (the "Mortgage") covering the following described property:

ALL that piece, parcel or lot of land with all buildings and improvements thereon, situate, lying and being on the western side of Coligny Court in Greenville County, South Carolina, being known and designated as Lot No. 34 as shown on a plat entitled Pine

Gate made by Dalton & Neves Company dated November, 1984, recorded in the RMC Office for Greenville County, South Carolina, in Plat Book 10-M at page 70, and being more particularly shown and designated as Lot 34 upon a plat entitled "Survey for David F. Miller and Patricia L. Miller" dated March 7, 1990, prepared by Landrith Surveying of record in the RMC Office for Greenville County in Plat Book 18-I at page 88, having the metes and bounds, courses and distances as upon said plat appear. For a more accurate and detailed description as to the metes and bounds, courses and distances, reference is invited to the heretofore referenced plat.

This being the identical property conveyed to Louise M. Doyle by deed of Steven A. Moore and Lori A. Moore, dated August 27, 2007 and recorded August 28, 2007 in Deed Book 2286 at Page 880; subsequently, Louise M. Doyle conveyed the subject property to Louise M. Doyle and June McGahee by deed dated January 10, 2012 and recorded January 11, 2012 in Deed Book 2399 at Page 3224 in the Office of the Register of Deeds for Greenville County South Carolina.

TMS #: 0547060103400

Property Address: 4 Coligny Court, Greenville, SC 29607

9. Thereafter the Mortgage was recorded on August 28, 2007 in Book 4840 at Page 107 in the office of the Register of Deeds for Greenville County.
10. The Mortgage evidences and secures the repayment of money advanced by Plaintiff or its predecessor in interest to, or on behalf of, the mortgagor(s) and constitutes a first lien on the subject property.
11. The above-referenced instrument constitutes a purchase money mortgage with the proceeds of the loan being used to purchase the property above described.
12. The subject Note and Mortgage were assigned by instruments recorded, or to be recorded, in the Office of the Register of Deeds for Greenville County as follows:
 - a) By Assignment dated October 17, 2012, and recorded October 31, 2012, in Book 5185 at Page 1543, Bank of America, N.A. assigned the subject Note and Mortgage to Nationstar Mortgage LLC, the present lienholder and Plaintiff herein.
13. The loan that is subject to this action is serviced by a Home Affordable Modification Program (HMP) participant; AND the HMP process has been completed without resulting in a modification because the borrower has failed to respond to the HMP Solicitation Letter or declined to participate in HMP.
14. The hereinafter named Defendant(s) may have some interest in or lien upon the premises covered by the Mortgage, or some part thereof, but that such interests or liens are junior and subsequent to the lien of the Plaintiff's Mortgage, or, if specified below, have been paid in full and either should be

satisfied of record or the lien released from the subject real estate. Said liens or interests are of record in the Office of the RMC or Clerk of Court of the aforesaid county and are described as follows:

- a. Bank of America, N.A. by virtue of a Mortgage in the original amount of \$51,490.00 from Louise M. Doyle dated April 21, 2008, and recorded in Book 4951 at Page 2308 on May 5, 2008 in the Office of the Register of Deeds for Greenville County.
- b. Dorothy M. Rabon by virtue of a Judgment filed in Case Number 2014-CP-23-01809 against Louise M. Doyle dated April 1, 2014, and entered into record in the Office of the Clerk of Court for Greenville County on April 1, 2014 in the original amount of \$8,935.00.

15. After all payments received by the Plaintiff have been credited to the subject loan, the loan is in default and due since May 1, 2013. Plaintiff elects to and does declare the entire balance of said indebtedness due and payable, and that there is due on the Note and Mortgage as of May 1, 2013, the principal sum of \$65,022.23, together with interest thereon from April 1, 2013, advances, late charges, and for the costs and disbursements of this action, including attorney's fees.

16. Plaintiff may be forced to pay sums for taxes and insurance for securing the subject property, which sums, according to the terms of the Mortgage, should be added to the amount of the debt.

17. Plaintiff may exercise its rights under the Mortgage to inspect the subject property; if the property is vacant or abandoned, then Plaintiff may take reasonable actions to protect and preserve the property; any costs associated thereto, should be added to the amount of the debt.

18. Pursuant to the terms of the Mortgage, Plaintiff has employed counsel to prosecute this action and a reasonable value of services of counsel in this action is such sum as the Court may find appropriate.

19. Pursuant to S.C. Code Ann. § 37-3-105, the subject Mortgage is a first lien on the subject property and is not a "consumer loan" for the purposes of the South Carolina Consumer Protection Code. Any required notice of right to cure has been given.

20. Pursuant to S.C. Code Ann. §§ 29-3-650 and 29-3-660, the Plaintiff specifically demands or reserves its right to a personal or deficiency judgment against Defendant(s) Louise M. Doyle. The Plaintiff reserves its right to withdraw or waive its demand for a personal or deficiency judgment at any time prior to the foreclosure sale herein.

WHEREFORE, having fully set forth its Complaint, the Plaintiff prays that this Honorable Court inquire into the matters set forth herein and:

1) Under the direction of this Court, ascertained and determined the amount due upon the Note and Mortgage held by Plaintiff together with attorney's fees and the costs of this action;

2) Declare that the Plaintiff's Mortgage is a first lien and render judgment of foreclosure for the amount found to be due and owing thereon, together with any ad valorem taxes, insurance premiums and any other expenses which may be due and have been advanced by the Plaintiff, with reasonable attorney's fees and for the costs of this action;

3) Order the reimbursement of all costs for inspecting and securing the property by the Plaintiff as a result of the delinquency;

4) Appoint a Receiver to collect the rents, issues, profits or designated sums from the mortgagor(s), and/or the grantee(s) of the mortgagor(s), and/or tenant(s) occupying or exercising control over the mortgaged premises and hold the same subject to the further order of this Court;

5) Under direction of this Court, sell the mortgaged premises, bar the equity of redemption, and apply the proceeds of the sale as follows:

a) First, to the costs and expenses of the within action and sale;

b) Second, to the payment and discharge of the amount due on Plaintiffs Note and Mortgage, together with the attorney's fees as aforesaid; and,

c) Third, to the distribution of any surplus pursuant to Rule 71(c) SCRPC;

6) Issue an Order directing and empowering the Sheriff of Greenville County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property hereinabove described should the same become necessary; and

7) Order such other and further relief as may be just and proper.



The Hunoval Law Firm, PLLC
ATTORNEYS FOR PLAINTIFF

Christina Rampey Hunoval, SC Bar #69387

Michael P. Morris, SC Bar #73560

Kimberly R. Thompson, SC Bar #79161

Mary R. Powers, SC Bar #16534

Post Office Box 2785

Columbia, SC 29202

(803) 602-6460

September 14, 2015

EXHIBIT B

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT

NATIONSTAR MORTGAGE, LLC,)
)
Plaintiff,)

CIVIL ACTION NO.: 2015-CP-23-5701

vs.)

LOUISE M. DOYLE, JUNE McGAHEE,)
BANK OF AMERICA, N.A. and)
DOROTHY M. RABON,)
)
Defendants.)

FILED IN COURT
GREENVILLE CO. S.C.
PAUL D. WICKENSIMMER
2016 JAN 5 AM 8 38

**ANSWER AND COUNTERCLAIMS
(Jury Trial Demanded)**

Defendants Louise M. Doyle and June McGahee (hereinafter referred to as "Defendants"), by and through undersigned counsel, answering the Complaint of Plaintiff, Nationstar Mortgage, LLC, responds as follows:

**AS AND FOR A FIRST DEFENSE
(General Denial)**

1. Defendants deny each and every allegation of the Complaint not herein after specifically admitted.
2. Defendants admit the allegations of Paragraph 1.
3. Defendants admit the allegations of Paragraph 2.
4. Defendants are without sufficient information to admit or deny the allegations of Paragraph 3.
5. Defendants are without sufficient information to admit or deny the allegations of Paragraph 4.

6. The allegations of Paragraph 5 require no response from Defendants.
7. Defendants admit the allegations of Paragraph 6.
8. Responding to the allegations of Paragraph 7, to the extent the allegations reference provisions of documents, Defendants hereby crave reference to those documents and deny the allegations to the extent the allegations are inconsistent therewith.
9. Responding to the allegations of Paragraph 8, to the extent the allegations reference provisions of documents, Defendants hereby crave reference to those documents and deny the allegations to the extent the allegations are inconsistent therewith.
10. As to the allegations of Paragraph 9, Defendants admit only those matters as set forth in the public records of Greenville County referenced therein.
11. Defendants admit the allegations of Paragraph 10.
12. Defendants admit the allegations of Paragraph 11.
13. As to the allegations of Paragraph 12, Defendants admit only those matters as set forth in the public records of Greenville County referenced therein.
14. Defendants deny the allegations of Paragraph 13 and demand strict proof thereof.
15. As to the allegations of Paragraph 14, Defendants admit only those matters as set forth in the public records of Greenville County referenced therein. Further responding, the mortgage referenced in subsection (b) has been marked as satisfied.
16. Defendants deny the allegations of Paragraph 15 and demand strict proof thereof.
17. Defendants deny the allegations of Paragraph 16.
18. The allegations of Paragraph 17 require no response from Defendants. To the extent a response is required, Defendant assert the subject property is occupied by Defendant McGahee and is not abandoned or vacant.

19. Defendants deny the allegations of Paragraph 18.
20. The allegations of Paragraph 19 require no response from Defendants.
21. The allegations of Paragraph 20 require no response from Defendants.

**AS AND FOR A SECOND DEFENSE
(Failure to Mitigate)**

Defendants reassert and reallege the previous allegations of this Answer as fully and completely as if set forth herein verbatim.

22. Further and affirmatively answering the Plaintiff's Complaint and as an additional and complete defense thereto, Plaintiff has failed to mitigate its damages.

**AS AND FOR A THIRD DEFENSE
(Unclean Hands)**

Defendants reassert and reallege the previous allegations of this Answer as fully and completely as if set forth herein verbatim.

23. Further and affirmatively answering the Plaintiff's Complaint and as an additional and complete defense thereto, Plaintiff's claims are barred in whole or in part by the doctrine of unclean hands.

**AS AND FOR A FOURTH DEFENSE
(Estoppel, Laches and Waiver)**

Defendants reassert and reallege the previous allegations of this Answer as fully and completely as if set forth herein verbatim.

24. Further and affirmatively answering the Plaintiff's Complaint and as an additional and complete defense thereto, Plaintiff's claims are barred in whole or in part by the doctrines of estoppel, laches and waiver.

AS AND FOR A FIFTH DEFENSE AND FIRST COUNTERCLAIM
(Violations of 12 U.S. Code § 2605)

Defendants reassert and reallege the previous allegations of this Answer as fully and completely as if set forth herein verbatim.

25. Plaintiff is a limited liability company that conducts business in Greenville County, South Carolina.

26. Defendants are citizens and residents of Greenville County, South Carolina. Defendants hold title to the property that is the subject of the above-captioned foreclosure suit as joint tenants with rights of survivorship.

27. Jurisdiction and venue in the Court are proper.

28. On February 9, 2015, Defendants submitted a "qualified written request" to Plaintiff pursuant to 12 U.S. Code § 2605. In the qualified written request, Defendants requested specific information relating to the note and mortgage that are the subject of the above-captioned foreclosure action. A copy of the qualified written request is attached as Exhibit A.

29. 12 U.S. Code § 2605(1)(A) required Plaintiff to provide a written response acknowledging the qualified written request within five (5) days of receipt. Plaintiff never provided Defendants with the required written response.

30. 12 U.S. Code § 2605(2) required Plaintiff to either (a) make appropriate corrections to Defendants account or (b) provide a written explanation as to why Plaintiff believed the account was correct or (c) provide a written explanation as to why Plaintiff could not provide the information requested and (d) provide the contact information of an employee or the office or department who could provide assistance to the Defendants. Plaintiff did not make any corrections to Defendants account or provide the required information to Defendants.

31. Defendants did not request an extension of time to respond to Defendants qualified written request or request any additional information from Defendants.

32. Upon information and belief, Plaintiff's actions represent a pattern or practice of noncompliance with the requirements of 12 U.S. Code § 2605.

33. Plaintiff's actions are a violation of 12 U.S. Code § 2605 and Defendants are entitled to actual damages, additional damages in the amount of \$2,000.00 for Plaintiff's pattern or practice of noncompliance with the requirements of 12 U.S. Code § 2605, together with attorney's fee and costs.

**AS AND FOR A SIXTH DEFENSE AND SECOND COUNTERCLAIM
(Negligence)**

Defendant reasserts and realleges the previous allegations of this Answer as fully and completely as have set forth herein verbatim.

34. Plaintiff owed Defendants a duty to comply with applicable laws and regulations, including but not limited to 12 U.S. Code § 2605, and to exercise that degree of care and caution which a reasonable and prudent person would have exercised under the same or similar circumstances.

35. Plaintiff breached its duty to Defendants by failing to comply with applicable laws and regulations and failing to exercise that degree of care and caution which a reasonable and prudent person would have exercised under the same or similar circumstances.

36. As a direct and proximate result of Plaintiff's breaches of its duty of care, Defendants have suffered damages in an amount to be determined by the trier of fact.

**AS AND FOR AN SEVENTH DEFENSE AND THIRD COUNTERCLAIM
(Breach of Contract)**

Defendants reassert and reallege the previous allegations of this Answer as fully and completely as have set forth herein verbatim.

37. Plaintiff has alleged the note and mortgage represent an enforceable contract.

38. Implicit in every contractual agreement in South Carolina is a duty of good faith and fair dealing.

39. Plaintiff has breached the implied covenant of good faith and fair dealing and the contract by failing to comply with applicable laws and regulations.

40. As a direct and proximate result of Plaintiff's breach of contract, Defendants have suffered damages in an amount to be determined by a trier of fact.

**AS AND FOR AN EIGHTH DEFENSE AND FOURTH COUNTERCLAIM
(South Carolina Unfair Trade Practices Act Violation)**

Defendants reassert and reallege the previous allegations of this Answer as fully and completely as if set forth herein verbatim.

41. As alleged above, Plaintiff has operated its business in a manner which constitutes unfair and/or deceptive acts and/or practices in the course of trade and/or commerce, all in violation of the South Carolina Unfair Trade Practices Acts ("SCUTPA"), S.C. Code § 39-5-10, et. seq.

42. Plaintiff knowingly, willfully and/ or intentionally violated the SCUTPA.

43. The acts and practices of Plaintiff impact the interest of the public because they have the potential for repetition or otherwise.

44. Plaintiff, in violating the SCUTPA, has directly and proximately damaged Defendants.

45. Defendants are entitled to all remedies permitted by the South Carolina Unfair Trade Practices Act, including actual damages, punitive damages and treble damages, as well as attorney's fees and costs and for such other relief as the Court deems just and proper.

WHEREFORE, having fully answered the Complaint herein, Defendants

1. Expressly deny that the Plaintiff is entitled to any relief requested;
2. Pray Plaintiff's Complaint be dismissed with prejudice;
3. Demand a jury trial;
4. Award Defendants damages for Plaintiff's violations of 12 U.S. Code § 2605, negligence, breach of contract and violations of SCUTPA
5. That Defendants' costs and attorneys' fees be taxed against the Plaintiff; and
6. And for such other and further relief as this Court may deem just and proper.

LAW OFFICE OF MARCUS W. MEETZE, LLC



Marcus W. Meetze
Post Office Box 81118
Simpsonville, South Carolina 29680
(864) 271-3555
(864) 757-8691 fax
wes@meetzelaw.com
Attorney for Defendants

Simpsonville, South Carolina
December 30, 2015

EXHIBIT A

February 9, 2015

Nationstar Mortgage
Loss Mitigation Dept.
350 Highland Dr.
Lewisville, TX 75067

RE: Account #0597592872

We are requesting information about the foreclosure fees, costs and escrow accounting on our loan. Please treat this letter as a "qualified written request" under the Real Estate Settlement and Procedures Act (Section 2605 "e").

Specifically, we are requesting the following information:

1. The payment dates, purpose of payment and recipient of all foreclosure fees and costs charged to our account;
2. The payment dates, purpose of payment, and recipient of all escrow items charged to our account in the last 24 months;
3. A breakdown of our current escrow payment showing how it was calculated and the reasons for any increase/decrease in the last 24 months; include a copy of any annual escrow payments prepared within the last 24 months.
4. A payment history that can be easily read and understood listing the dates and amounts of all payments for the last 24 months, and showing how they have been applied.

Also, on February 2, 2015, I sent our February payment to Nationstar.

Thank you for taking time to acknowledge and respond to this request.

Truly yours,

Louise M. Doyle
June McGahee
4 Coligny Court
Greenville, SC 29607

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT

NATIONSTAR MORTGAGE, LLC,)
)
Plaintiff,)

CIVIL ACTION NO.: 2015-CP-23-5701

vs.)

LOUISE M. DOYLE, JUNE McGAHEE,)
BANK OF AMERICA, N.A. and)
DOROTHY M. RABON,)

Defendants.)

FILED
GREENVILLE CO. S.C.
PAUL D. WIGRENSIMMER
2016 JUN 5 AM 8 38

CERTIFICATE OF SERVICE

I hereby certify that, on this 30th day of December, 2015 a copy of *Defendants Louise M. Goyle and June McGahee's Answer and Counterclaims* was served upon the below stated parties via United States Postal Service with sufficient first class postage affixed thereto and addressed as follows:

Kimberly R. Thompson
The Hunoval Law Firm, PLLC
Post Office Box 2785
Columbia, SC 29202
Attorney for Plaintiff

LAW OFFICE OF MARCUS W. MEETZE, LLC



Marcus W. Meetze
Post Office Box 81118
Simpsonville, South Carolina 29680
(864) 271-3555
(864) 757-8691 fax
wes@meetzelaw.com
Attorney for Defendants

EXHIBIT C

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Nationstar Mortgage LLC,

Plaintiff,

v.

Louise M. Doyle, June McGahee, Bank of
America, N.A., and Dorothy M. Rabon

Defendants,

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CASE NO.: 2020-CP-23-01663

**PLAINTIFF'S MOTION FOR NON-JURY
ADJUDICATION OF ACTION AND FOR ORDER OF REFERENCE**

Because this case concerns an equitable action of foreclosure, Plaintiff Nationstar Mortgage LLC ("Nationstar") respectfully asks the court to issue an order of reference for non-jury adjudication of this entire lawsuit by the master-in-equity for Greenville County pursuant to Rule 53(b) of the South Carolina Rules of Civil Procedure.

BACKGROUND

This lawsuit arises out of Nationstar's foreclosure of a promissory note and mortgage because Defendant Louise M. Doyle ("Doyle"), the maker of the note at issue, became delinquent on her repayment obligations. In response to Nationstar's foreclosure complaint, Doyle filed counterclaims for alleged violations of 12 U.S.C. § 2605, Negligence, Breach of Contract and South Carolina Unfair Trade Practices Act ("SCUTPA"). Ans. & Countercl. ¶¶ 25-45.

According to Doyle, Nationstar was negligent in servicing her loan by mis-accounting for payments and balances, in not correcting Doyle's account or provide an explanation as to why it is believed the account was correct. Countercl. ¶¶ 28 – 33. Doyle further alleges that Nationstar violated 12 U.S.C. § 2605 by not making appropriate corrections to her account. Nationstar

complied with 12 C.F.R. § 1024.36(b) despite the fact that the purported Qualified Written Request (“QWR”) was not properly served by Doyle. Plaintiff’s allegations, however, simply concern Nationstar’s pursuit of the remedy of foreclosure after a default by Doyle and how payments were applied to her account, which are all equitable in nature. See *Wachovia Bank, N.A. v. Blackburn*, 407 S.C. 321, 755 S.E.2d 437 (2014) (“A mortgage foreclosure is an action in equity.”); *Carolina First Bank v. BADD, L.L.C.*, 414 S.C. 289, 294, 778 S.E.2d 106, 108 (2015) (“The power to render a deficiency judgment is included within the jurisdiction of courts of equity.”). A foreclosure action is an action in equity and the nature of the action does not change to one at law by virtue of the fact that the defendant asserts counterclaims related to the amount due on the loan. *Collier v. Green*, 244 S.C. 367, 371, 137 S.E.2d 277, 280 (1964). Thus, Doyle’s counterclaims are equitable in nature and she is not entitled to a jury trial on this claim.

Doyle further alleges that Nationstar breached its duty by failing to comply with applicable laws and regulations, and failing to exercise that degree of care and caution. Countercl. ¶¶ 34-36. Doyle also alleges that Nationstar breached the implied covenant of good faith and fair dealing and the contract by failing to comply with applicable laws and regulations. Countercl. ¶¶ 37-40. Doyle’s final allegation is that Nationstar violated SCUTPA. Doyle alleges that Nationstar operated its business in a manner which constitutes unfair and/or deceptive acts and/or practices in the course of trade and/or commerce. Countercl. ¶¶ 41-45.

Even if Doyle’s counterclaims are viewed as legal causes of action, she is not entitled to a jury trial because the counterclaims are permissive, and she waived her right to a jury trial by alleging the claim in this foreclosure action. To this end, Nationstar’s foreclosure action and Doyle’s counterclaims should be tried as a non-jury action before the master-in-equity for Greenville County, South Carolina.

STANDARD FOR DECISION

The right to proceed in the proper mode of trial is a substantive right, and a court cannot require a party to proceed before a jury in an equity case. See *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 72, 533 S.E.2d 331, 333 (1978) (addressing mode of trial analysis). A defendant in a foreclosure action is entitled to a jury trial on a counterclaim only if that claim is a compulsory legal counterclaim. The South Carolina Supreme Court’s analysis in *Wachovia Bank, N.A. v. Blackburn* determines whether an entire case or portions of it should be referred to a master-in-equity for non-jury adjudication. See 407 S.C. 321, 755 S.E.2d 437 (2014). In *Blackburn*, the Supreme Court of South Carolina explained that “[a] mortgage foreclosure is an action in equity.” 407 S.C. at 328, 755 S.E.2d at 440. Thus, “the parties are not entitled, as a matter of right, to a trial by jury.” *Id.*, 755 S.E.2d at 441 (quoting *Williford v. Downs*, 265 S.C. 319, 321, 218 S.E.2d 242, 243 (1975)).

Nevertheless, “counterclaims—including those raised in equitable actions—may, at times, be entitled to a jury trial.” *Id.* Whether a party raising a counterclaim in a foreclosure action is entitled to a jury trial on its counterclaim depends, first, on whether the counterclaim is an equitable counterclaim or a legal counterclaim. See *id.* at 328–29, 755 S.E.2d at 441. If the counterclaim is an equitable counterclaim, a party has no right to a jury trial. *Id.* If the claim is a legal counterclaim, the party asserting the claim is entitled to a jury trial on that claim *only* if the claim is a compulsory counterclaim that the party would have lost the right to make had the claim not been asserted in the same action. *Wachovia Bank, N.A. v. Blackburn*, 407 S.C. at 328–29, 755 S.E.2d at 441. Alternatively, if the counterclaim is a legal but *permissive* counterclaim, asserting the claim in an equitable action constitutes a waiver of the right to a trial by jury. *Id.* Legal counterclaims asserted in a foreclosure proceeding are permissive unless they are logically related to the enforceability of the note. See *N.C. Fed. Sav. & Loan Ass’n v. Corp.*, 298 S.C. 514, 519,

381 S.E.2d 903, 906 (1989) (adopting logical relationship test to determine whether counterclaims alleged in foreclosure action were permissive or compulsory to determine mode of trial issues).

ARGUMENT

Adjudication of Nationstar's foreclosure action and Doyle's counterclaims by non-jury trial before the master-in-equity is appropriate for the following reasons: First, Nationstar's equitable foreclosure action precludes trial by jury of this action as a matter of right. In a foreclosure action, the determination of all issues relating to the amount due on the loan and the plaintiff's right to foreclosure are for the court, not a jury, based upon the South Carolina statutory regime contained in Title 29 and Rule 71 of the South Carolina Rules of Civil Procedure. Second, Doyle's counterclaims are equitable that have been raised in Nationstar's equitable foreclosure action. Indeed, the counterclaims are neither legal nor compulsory. Because the entire action sounds in equity, Doyle is not entitled to a jury trial, as of right, for any matters at issue in this equitable foreclosure action. However, even if the counterclaims are viewed as legal causes of action, the counterclaims are permissive, and Doyle waived her right to a jury trial by alleging the permissive counterclaim in this equitable foreclosure action.

I. Doyle is not entitled to a jury trial for Nationstar's foreclosure action.

Under South Carolina law, Nationstar's equitable foreclosure action is subject to non-jury adjudication by the master-in-equity. *See Carolina First Bank v. BADD, LLC*, 414 S.C. at 293, 778 S.E.2d at 108 ("Because a foreclosure action is one sounding in equity, a party is not entitled, as a matter of right, to a jury trial."); S.C. R. Civ. P. 53(b) ("In ...an action for foreclosure, some or all of the causes of action in a case may be referred to a master or special referee by order of a circuit judge...."). Accordingly, Doyle is not entitled to a jury trial of Nationstar's foreclosure action.

II. Because Doyle's counterclaims concern the amount due on the debt by addressing the application of payments and a false default, it is an equitable claim that is subject to bench trial before the master-in-equity.

Doyle's counterclaims sound in equity. In a mortgage foreclosure action, counterclaims relating to the plaintiff's right to foreclose or the amount due on the debt secured by the mortgage are merely part of the equitable action, and the defendant has no right to a jury trial on such claims. *Collier v. Green*, 244 S.C. at 371-72, 137 S.E.2d at 280; *see also Bryn v. Walker*, 275 S.C. 83, 267 S.E.2d 601 (1980) (counterclaims in a foreclosure that affect the validity of a mortgage lien or the amount due are equitable in nature).

In *Collier*, the assignee of a mortgage brought a foreclosure action against the mortgagor. *Collier*, 244 S.C. at 368, 137 S.E.2d at 278. The mortgagor admitted execution of and delivery of the note and mortgage, but alleged that the assignment was fraudulent and sought a jury trial on that issue. *Id.* at 369, 137 S.E.2d at 279. In affirming the trial court's order referring the entire case to the master-in-equity, the South Carolina Supreme Court initially noted that a foreclosure is an action in equity and concluded that the nature of the action does not change to one at law by virtue of the fact that the defendant asserts counterclaims related to the amount due on the loan. *Id.* at 371, 137 S.E.2d at 280. To support its conclusion, the Court cited to its prior opinions in foreclosure cases holding that where the defenses and counterclaims bear primarily upon the amount due, the entire case, including the defenses and counterclaims, remains one in equity. *See id.* (citing cases). Thus, under South Carolina law, where a defendant asserts counterclaims in a foreclosure that go to the plaintiff's right to foreclosure or challenge the amount due upon the debt secured by the mortgage, the counterclaims are merely part and parcel of the equitable action, and a defendant has no right to a jury trial for such claims. *Id.*

Further, the South Carolina Supreme Court rejected attempts by litigants to "earn" the right to a jury trial in an equitable action. In *Rosenbaum v. S-M-S* 32, the plaintiff purchased real

property at a tax sale and filed an action to clear title pursuant to S.C. Code Ann. § 12-61-20. *Rosenbaum v. S-M-S* 32, 311 S.C. 140, 141, 427 S.E.2d 897, 897 (1993). The defendant filed an answer with a general denial, and the defendant asserted a counterclaim for trespass to try title and seek damages. The defendant demanded a jury trial. *Id.* at 141-42, 427 S.E.2d 897. The Supreme Court affirmed the trial court's decision, holding that the defendant could not "evade the intent of the legislature and obtain the right to a jury trial by interposing a counterclaim designed to thwart the reasonable and practical implication of Chapter 61." *Id.* The trial court struck the counterclaims because the plaintiff had asserted an equitable claim seeking a remedy via a non-jury process expressly provided by statute for purchasers at tax sales. *Id.*

In her counterclaims, Doyle alleges that Nationstar "mis-accounted payments" and created a false default as a result of the bad accounting. Countercl. *passim*. Here, Doyle's claims simply concern determining if a default occurred, and, if so, the total amount owed under the note and mortgage. To this end, the allegations giving rise to her counterclaims do not change the equitable character of the action, and Doyle is not entitled to a jury trial on any issue. *See Collier*, 244 S.C. at 371, 137 S.E.2d at 280; *Bank of New York Mellon , as Successor Trustee under NovaStar Mortgage Funding Trust, Series 2004-1 v. Lindsay*, Op. No. 2015-UP-208 (Ct. App. 2015) (holding that borrower's eight counterclaims based on a lender's alleged misapplication of payments were equitable in nature because they ultimately relate to the amount due on the underlying debt) (unpublished).

Furthermore, under the Supreme Court's decision in *Rosenbaum*, Doyle may not "earn" the right to a jury trial in this equitable foreclosure action by styling her allegations as legal counterclaims. Like the plaintiff in *Rosenbaum*, Nationstar brought this action pursuant to a statutory scheme created by the legislature that provides for a non-jury trial. Here, S.C. Code Ann. § 39-3-610 to 790 provides a procedure by which a mortgagee may foreclose in an equitable action

decided by the court. Consistent with the statutory scheme, Rule 71, S.C.R.C.P., also provides that foreclosure actions “shall be tried by the court, and shall ordinarily be referred to a master.” This codified a process established by the Act of 1791, which integrated the action of foreclosure and the action for deficiency after sale into one equitable action, without the right to a jury trial. *See Carolina First Bank v. BADD, LLC*, 414 S.C. at 293, 778 S.E.2d at 108 (referencing the role played by the Act of 1971 in vesting courts of equity with jurisdiction to decide mortgage related disputes); *McConnell, et al. v. Barnes, et al.*, 142 S.C. 112, 140 S.E. 310 (1927) (noting that the Act of 1791 integrated the action for foreclosure and the action for the deficiency after sale, abandoning the strict distinction between action in rem and in personam). Therefore, consistent with *Rosenbaum*, the court should grant this motion and issue an order of reference of this entire action because Doyle is not entitled to evade the statutory scheme for resolving foreclosure actions by bench trial.

III. In the alternative, if Doyle’s counterclaims are viewed as legal causes of action, the counterclaims are permissive, and Doyle has waived her right to jury trial.

If the Court were to disagree that Doyle’s counterclaims are equitable in nature, she is still not entitled to a jury trial for counterclaims because they are permissive rather than compulsory. In the foreclosure context, there is a logical relationship between the counterclaim and the complaint only when the counterclaim bears upon enforceability of the loan documents. *Advance Intern., Inc. v. N.C. Nat’l Bank of S.C.*, 316 S.C. 266, 269-70, 499 S.E.2d 580, 582 (Ct. App. 1994), *aff’d in part, vacated in part on other ground*, 320 S.C. 532, 466 S.E.2d 367 (1996).

Here, none of Doyle’s counterclaims challenge the enforceability of the loan documents. Even though the counterclaims are based on the alleged mis-application of payments that issue only goes to the question of whether Doyle defaulted on the loan. Doyle has not expressly pled that the loan would not have been in default but for the mis-application of her payments.

Therefore, Doyle's counterclaims are permissive and she waived the right to a jury trial by asserting permissive causes of action in this equitable foreclosure proceeding. *See N.C. Federal Savings and Loan Ass'n v. DAV Corp.*, 298 S.C. 514, 516, 381 S.E.2d 903, 904 (1989); *Johnson v. S.C. Nat'l Bank*, 292 S.C. 51, 54, 354 S.E.2d 895, 897 (1987) (summarizing analysis for determining the trial of legal and equitable issues in complaints and counterclaims and holding "[i]f the complaint is equitable and the counterclaims is legal and permissive, the defendant waives her right to a jury trial.").

CONCLUSION

WHEREFORE, Plaintiff Nationstar Mortgage LLC respectfully requests that the court grant this motion and issue an order of reference to the master-in-equity for non-jury adjudication of Nationstar's foreclosure and Doyle's counterclaims.

Dated: 8th day of June, 2020.

Respectfully submitted,

NATIONSTAR MORTGAGE LLC

By Counsel

/s/ Amanda K. Cutler

McGuireWoods LLP

Amanda K. Cutler (S.C. Bar No. 101052)

201 N. Tryon Street, Suite 3000

Charlotte, NC 28202

Telephone: (704) 343-2182

Fax: (704) 373-8842

acutler@mcguirewoods.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **PLAINTIFF'S MOTION FOR NON-JURY ADJUDICATION OF ACTION AND FOR ORDER OF REFERENCE** has been served this day upon the parties to this action via electronic filing or by United States Mail, addressed to the following:

Marcus W. Meetze
PO Box 81118
Simpsonville, SC 29680
Attorney for Defendants Louise Doyle & June McGahee
Served via ECF

Dorothy M. Rabon
1027 Byron Road
Columbia, SC 29209

Bank of America, N.A.
c/o CT Corporation System
2 Office Park Court, Suite 103
Columbia, SC 29223

This the 8th day of June, 2020.

/s/ Amanda K. Cutler
McGuireWoods LLP
Amanda K. Cutler (S.C. Bar No. 101052)
201 N. Tryon Street, Suite 3000
Charlotte, NC 28202
Telephone: (704) 343-2182
Fax: (704) 373-8842
acutler@mcguirewoods.com

EXHIBIT D

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

This matter came before the Court pursuant to Plaintiff's Motion to Refer to Master-In-Equity and Motion for Summary Judgment. A hearing was held on February 23, 2021 via WebEx Virtual Courtroom. Present at the hearing were Amanda Cutler, counsel for Plaintiff; and Wes Meetze, counsel for Defendants. Plaintiff's Motion for Summary Judgment shall be held in abeyance based on consent of both parties.

"The relevant question in determining the right to trial by jury is whether an action is legal or equitable; there is no right to trial by jury for equitable actions." Wells Fargo Bank, NA v. Smith, 398 S.C. 487, 494, 730 S.E.2d 328, 333 (Ct. App. 2012). A foreclosure is considered an equitable action. Id. Pursuant to Rule 53(b) of the South Carolina Rules of Civil Procedure, foreclosure actions may be referred to the master-in-equity. Rule 53(b), SCRPC. "A party does not waive its right to a jury trial on a counterclaim asserted in an equity action if the counterclaim is legal and compulsory in nature." North Carolina Federal S&L v. DAV Corp., 298 S.C. 514, 517, 381 S.E. 2d 903, 905 (1989). "A counterclaim is compulsory if it arises out of the same transaction or occurrence as the [plaintiff]'s claim." Carolina First Bank v. BADD L.L.C., 414 S.C. 289, 295, 778 S.E.2d 106, 109 (2015).

Defendants raised four counterclaims: violation of 12 U.S.C. §2605, negligence, breach of contract, and violation of the South Carolina Unfair Trade Practices Act. After review of the file and consideration of arguments by counsel, it appears the counterclaims are legal and intertwined with the original claim for foreclosure. Therefore, they are compulsory and Defendants are entitled to a jury trial.

Therefore, Plaintiff's Motion to Refer to Master-In-Equity is DENIED.

It is so Ordered.



Greenville Common Pleas

Case Caption: Nationstar Mortgage LLC vs. Louise M Doyle , defendant, et al
Case Number: 2020CP2301663
Type: Order/Electronic Form 4

So Ordered

s/Letitia H. Verdin, SC Judge 2162

Electronically signed on 2021-02-23 12:11:57 page 3 of 3

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

RECEIVED

MAY 20 2021

SC Court of Appeals

The Honorable Letitia H. Verdin, Circuit Court Judge

Common Pleas Case No. 2020-CP-23-01663

Appellate Case No. 2021-000333

Nationstar Mortgage LLC.....Appellant,

v.

Louise M. Doyle, June McGahee, Bank of America, N.A. and Dorothy
Rabon..... Respondents,

Of whom Nationstar Mortgage LLC is theAppellant.

PROOF OF SERVICE

I hereby certify that I served the foregoing **AFFIDAVIT** by depositing a copy of it on the date shown below in the United States Mail, postage prepaid, addressed as follows:

Marcus W. Meetze, Esq.
Law Office of Marcus W. Meetze, LLC
PO Box 81118
Simpsonville, SC 29680
Attorney for Defendants Louise M. Doyle and June McGahee

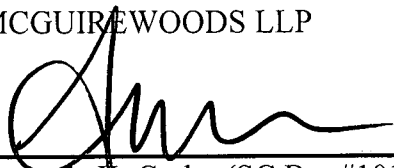
Dorothy Rabon
1027 Byron Road
Columbia, SC 29209

Bank of America, N.A.
c/o CT Corporation System
2 Office Park Court, Suite 103
Columbia, SC 29223

Reginald Corley, Esq.
William Stork, Esq.
SCOTT & CORLEY, P.A.
2712 Middleburg Dr., #200
Columbia, SC 29204

This the 19th day of May, 2021.

MCGUIREWOODS LLP



Amanda K. Cutler (SC Bar #101052)

Brian A. Calub (SC Bar # 72009)

MCGUIREWOODS LLP

201 North Tryon Street, Suite 3000

Charlotte, North Carolina 28202

Telephone: (704) 343-2182

Facsimile: (704) 444-8819

acutler@mcguirewoods.com

bcalub@mcguirewoods.com

Attorneys for Appellant Nationstar Mortgage LLC