

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY
Master-in-Equity

SC Court of Appeals

Charles B. Simmons, Jr., Master in Equity

Case No. 2019-CP-23-07305
Appeal No: 2021-000283

Rory D. Whelehan, in his
Capacity as Court-Appointed
receiver in the Matter of
Independence National Bank
v. Buncombe Professional
Park, LLC and David Decarlis
s/a David D Decarlis, Case
No. 2010-CP-23-03860,

Respondent,

v.

Royal Blue Lending House,
LLC, David D. Decarlis,
Individually, TJ Ventures of
South Carolina, LLC and 3009
Pal Blvd, LLC,

Of who, David D. Decarlis is
the

Appellant.

Initial Brief

July 9, 2021

/s/Shawn M. French, Sr.

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STATEMENT OF ISSUES ON APPEAL

DID THE MASTER IN EQUITY ERR BY DENYING DEFENDANT DAVID DECARLIS'
MOTION TO REMAND THE MATTER BACK TO THE JURY TRIAL ROSTER?

STATEMENT OF THE CASE

This is an appeal from the Master in Equity's Order Denying the Appellant's Motion to Remand.

This appeal has a complicated history. It arises from a foreclosure on commercial real property that was sold at a foreclosure auction in 2011. There was a judgment entered against Mr. Decarlis on May 13, 2011 which was reduced after the foreclosure sale. The Respondents have filed and pursued supplemental proceedings against David Decarlis.

A receiver was appointed by the Court and that receiver filed an action against Royal Blue Lending House, LLC, a Nevis LLC which held a mortgage against Mr. Decarlis' primary residence and property owned by 3009 Palm Blvd, LLC.¹ Originally, the receiver filed an action against Royal Blue only and only as a Petition for a Rule to Show Cause under S.C. Code Ann section 29-3-390 as to why the mortgage should not be satisfied of record and to enjoin Royal Blue from lending money. A Rule to Show Cause Order was entered setting a hearing date before the Greenville County Master in Equity. There were multiple amendments to the original action, but eventually the receiver Amended the petition to include causes of action against David Decarlis, 3009 Palm Blvd, LLC, and TJ Ventures, LLC. All Defendants answered the claims against them and demanded Jury Trials. 3009 Palm Blvd, LLC and TJ Ventures, LLC filed counterclaims against the Plaintiff that were dismissed. The Receiver brought claims for fraudulent conveyance and Civil Conspiracy against Mr. Decarlis.

¹ Originally, the mortgage given to Royal Blue was secured by several properties that have been sold. Some were held by Mr. Decarlis individually and some were held in LLCs. The only two properties still having an interest are Mr. Decarlis' home at 216 Cleveland Street, Greenville and 3009 Palm Blvd, Isle of Palms, owned by 3009 Palm Blvd, LLC.

David Decarlis filed his Motion to Remand to the Jury Roster on March 10, 2021. (Motion for Remand) The Master in Equity issued his order denying the Motion to Remand on March 15, 2021 without a hearing. (Order March 15, 2021)

The Notice of Appeal was filed by the Appellant on March 17, 2021.

STANDARD OF REVIEW

" 'Whether a party is entitled to a jury trial is a question of law.' Verenes v. Alvanos, 387 S.C. 11, 15, 690 S.E.2d 771, 772 (2010). 'An appellate court may decide questions of law with no particular deference to the [circuit] court.' Id. at 15, 690 S.E.2d at 772-73." Carolina First Bank v. BADD, LLC (S.C. App. 2012)

ARGUMENTS

I. DAVID DECARLIS HAS A RIGHT TO A JURY TRIAL

- a. **The claim of civil conspiracy is a legal claim against Mr. Decarlis and he has a right to a jury trial based on that claim brought against him.**

The claim brought against Mr. Decarlis by the Receiver for Civil Conspiracy is a legal claim. See Gordon v. Busbee, 397 S.C. 119, 723 S.E.2d 822 (S.C. App. 2012) and Carolina First Bank v. Badd, L.L.C., 414 S.C. 289, 778 S.E.2d 106 (S.C. 2015). “...Issues of fact in an action for the recovery of money only or of specific real or personal property must be tried by a jury, unless a jury trial be waived.” Rule 38(a) SCRPC.

The Court in this matter said that Mr. Decarlis was attempting to assert rights of his co-defendant, Royal Blue Lending House, LLC. This is false and is not supported by the pleadings. Mr. Decarlis was sued in his individual capacity, had a right to a jury trial, and made a timely demand in his answer. (Second Amended Petition)

b. Mr. Decarlis never waived his right to a jury trial.

Mr. Decarlis has not waived his right to a jury trial. Rule 38(d) SCRPC says:

Waiver. The failure of a party to serve a demand as required by this rule and to file it as required by Rule 5(d) constitutes a waiver by him of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties, except where an opposing party is in default under Rule 55(a).

Mr. Decarlis made a Jury Demand in his Answer (Decarlis Answer) so the only way it could have been subsequently withdrawn is by consent of the parties. This has not been done.

The Order says that because Mr. Decarlis had not filed his Motion to Remand sooner, he had somehow waived this right. There is no legal support and no factual support for this assertion in the record. Mr. Decarlis was added to this action when the Receiver sought to amend his original petition. The order granting the Motion to Amend was granted on June 3, 2020 after a hearing on May 27, 2020. (Order Dated June 3, 2020). Mr. Decarlis was not served until September 26, 2020 and he filed his answer demanding a jury trial on October 26, 2020. (Decarlis Answer)

c. The Matter should have been automatically returned to the Jury Roster.

Rule 53(b) SCRPC says “In an action where the parties consent, in a default case, or an action for foreclosure, some or all of the causes of action in a case may be referred to a master or special refereeAny party may request a jury pursuant to Rule 38 on any or all issues triable of right by a jury, and, upon the filing of a jury demand, the matter shall be returned to the circuit court.”

In this matter, the demand for a jury trial was made and it should have been returned to the circuit court.

d. The Master in Equity has no Authority or Jurisdiction in this matter.

There is no Order of Reference in this action referring it to the Greenville County Master in Equity. The Master in Equity’s Order denying the Motion to Remand says, “The Master in Equity has authority, both as Master in Equity and as Special Circuit Court Judge, to address issues in the lawsuits involved herein.” (Order March 15, 2021). The record does not support this.

The only order that grants authority of the Greenville County Master in Equity in this action is the product of an *ex parte* application to the Court for a Rule to Show Cause under S.C. Code Ann. §29-3-390.

That Amended Rule to Show Cause Order dated January 27, 2020 says:

That you, Royal Blue Lending House, LLC, appear before the Honorable Charles B. Simmons, Jr., Master in Equity for Greenville County at Greenville County Courthouse, 305 E. North Street, Courtroom 5, Greenville, South Carolina on April 21st, 2020 at 11:00 a.m., to show cause under oath why an Order should not be granted directing that the Mortgage from David DeCarlis, Individually, TJ Ventures of South Carolina, LLC, and 3009 Palm Blvd, LLC, to Mortgagee Royal Blue Lending House, LLC, dated February 25, 2010, be released, satisfied, and cancelled of record in all counties in which it may be recorded. (Rule to Show Cause, January 27, 2020)

No hearing was held on this Motion. There is no other motion granting any authority of the Master in Equity in this matter.

On May 5 2020 Mr. Whelehan filed a motion to amend his Petition to add 3009 Palm Blvd, LLC, TJ Ventures, LLC and David Decarlis as defendants and to include additional legal claims against the parties. This motion was granted on June 3, 2020 and the Plaintiff/Petitioner added legal claims against all parties. Mr. Decarlis was not at this hearing and he was not notified of this hearing.

The Appellant is aware that Masters in Equity have at times been granted limited authority to hear motions as a circuit court judge, and there may be such an order. However, there is no such order in the record of this case. If there is such an order, it seems that it would need to be filed in cases where such authority is being exercised. Finally, even if there is such an order, it could not deny Mr. Decarlis of his right to a jury trial that the order under appeal does.

As a Master in Equity, the power and authority is limited by Rule 53 SCRCPP. He only has authority in those matters referred to him. In this matter, the only cause of action referred to him was the Petition for Rule to Show Cause brought against Royal Blue. What is more, he still did not have any right to deny Mr. Decarlis' right to a jury trial.

e. Expediency is not a reason to deny a defendant's right to a Jury Trial.

The Master in Equity, in his order denying the Motion to Remand, made allegations against Mr. Decarlis that he was attempting to delay the actions of Independence National Bank in attempting to collect on its judgment. First, this is an ancillary action claiming Mr. Decarlis has committed Civil Conspiracy against Independence National Bank. While it should be dismissed after the judgment expires, this right stems from a claim other than the Bank's attempt to collect on its debt.

Second, there is no legal foundation to deny the right to a jury trial for the purposes of expediency. Third, this action was not brought against Mr. Decarlis until there was less than a year left on the 10-year time to collect on the judgment. The judgment was issued on May 13, 2021. He did appeal that judgment but he did not attempt to stop any actions to collect during the pendency of that appeal. In 2015, Independence National Bank filed an execution and received a nulla bona but did nothing with it. It was not until 2020 with less than a year left on

the judgment that this action was brought. That is the fault of Independence National Bank, not Mr. Decarlis.

II. CONCLUSION

The Master in Equity has wrongly denied Mr. Decarlis his right to a jury trial. The Order that was issued without a hearing has factual inaccuracies and gross legal errors that show the Order Denying the Motion to Remand should be granted. The lower court's order should be reversed.

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Individually, TJ Ventures of
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Pal Blvd, LLC,

Of who, David D. Decarlis is
the

Appellant.

Proof of Service

I certify that I have served the Initial Brief on Rory Whelehan and Royal Blue by depositing a copy of it in the United States Mail, postage prepaid, addressed to its attorneys of record listed below.

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