
**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION
MORTGAGE FORECLOSURE/MECHANICS LIEN SECTION**

Wilmington Trust, National Association,
not in its individual capacity, but solely
as trustee of MFRA Trust 2016-1,

Plaintiff,

v.

The Beardon Group, Inc.; Rose Mary
Reddice; Unknown Owners and
Non-Record Claimants,

Defendants.

Case Number: 2021 CH 02732

Calendar 60

Honorable William B. Sullivan,
Judge Presiding

Property Address:
7430 South Union Avenue
Chicago, Illinois 60621

MEMORANDUM OPINION AND ORDER

WILLIAM B. SULLIVAN, Circuit Judge:

Before the Court is Defendant THE BEARDON GROUP, INC.'S ("Beardon") Motion to Clarify Whether This Court Will Conduct the Jury Trial on Its Counterclaim ("Motion"). For the following reasons, Beardon's Motion is hereby GRANTED and this Order is entered clarifying that (1) this Court will not conduct a jury trial on the pending Counterclaim and (2) this Court has jurisdiction to hear the Counterclaim via bench trial.

I. BACKGROUND

On June 4, 2021, Plaintiff WILMINGTON TRUST, NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY, BUT SOLELY AS TRUSTEE OF MFRA TRUST 2016-1 ("Wilmington") filed its Complaint against

Beardon, *et al.* seeking to foreclose a mortgage lien encumbering the property commonly known as 7430 South Union Avenue in Chicago, Illinois. In response to Wilmington's Complaint, on October 26, 2023, Beardon filed its Answer, Affirmative Defenses, and Counterclaim with leave of this Court. Defendant's Counterclaim brought under the Consumer Fraud and Deceptive Business Practices Act seeks compensatory and punitive damages, attorneys fees and costs, as well as injunctive relief and demands a trial by jury. Def. Answer, at 23-25. On March 15, 2024, Beardon filed the instant Motion seeking "clarification from this Court as to whether it will conduct the jury trial requested by Defendant in its Counterclaim." Def. Mot. to Clarify, ¶ 4. The "wherefore clause" at the end of Defendant's Motion states, "The Beardon Group Inc., respectfully moves this Court for an order clarifying whether it will conduct the jury trial on the pending Counterclaim." Def. Mot. to Clarify, at 2. Beardon originally noticed this Motion for presentment on April 2, 2024, but then re-noticed the Motion for presentment on April 4, 2024, to be presented with other matters scheduled before this Court on that date for this case. Prior to presentment and without briefing or hearing on the Motion, the Court rules as follows. *See TIG Insurance Co. v. Canel*, 389 Ill. App. 3d 366, 375 (1st Dist. 2009) ([I]t [is] well within the circuit court's discretion to grant or withhold permission regarding a briefing schedule. No authority exists to nullify that discretion"); *see Parkway Bank & Trust Co. v. Meseljevic*, 406 Ill. App. 3d 435, 441 (1st Dist. 2010) ("Oral argument in a civil proceeding *** is a privilege, not a right, and is accorded to the parties by the court in its discretion").

II. ANALYSIS

The Court would like to begin by pointing out that in paragraph 4 of the Motion, Beardon seems to be seeking an advisory opinion from this Court to help it make its decisions as to how it should proceed in this case regarding its Counterclaim; however, "Illinois judges have *no authority* to issue advisory opinions." *Howlett v. Scott*, 69 Ill. 2d 135, 143 (1977) (emphasis added). Additionally, "Courts should not resolve an issue just to establish precedent or guide future actions." *Kristen B. v. Department of Children & Family Services*, 2022 IL App (1st) 200754, ¶ 24 (citing *Fisch v. Loews Cineplex Theater, Inc.*, 365 Ill. App. 3d 537, 540 (1st Dist. 2005)). Consistent with the premise that courts are not in the business of advising parties as to their litigation decisions, this Court consequently refuses to issue an advisory opinion guiding and counseling Beardon as to what strategic litigation choices it should make. These decisions, including the one selecting where and how to prosecute its Counterclaim, are best left with Defendant's counsel, who, unlike the Court which hung up its hat from the practice of law years ago, is in the best position to escort Defendant through the judicial system.

That being said, looking at the "wherefore clause" on page 2 of the Motion, Beardon is requesting entry of "an order clarifying whether it will conduct the jury trial on the pending Counterclaim." The Court hereby grants this request and enters this Order clarifying that, for the below listed reasons, (1) this Court will not

conduct a jury trial on the pending Counterclaim and (2) this Court has jurisdiction to hear the Counterclaim via bench trial.

A. Beardon Has No Right to a Trial by Jury

To begin, the Court turns to see if Beardon even has a right to a trial by jury on its Counterclaim in the first instance. For the following reasons, the Court holds that Beardon does not have a right to a jury trial on its Counterclaim, and this Court will not conduct a jury trial on said Counterclaim where no such right to a jury even exists.

The Seventh Amendment to the United States Constitution provides in part that, “the right of trial by jury shall be preserved.” U.S. Const., amend VII. This federal right, like all enumerated federal constitutional rights found in the Bill of Rights, however, must be incorporated by the Due Process Clause of the Fourteenth Amendment to the United States Constitution to be enforceable against the States. *Timbs v. Indiana*, 586 U.S. ___, ___, 139 S. Ct. 682, 687 (2019). The Seventh Amendment is one of only a handful of such rights that has never been incorporated via the Fourteenth Amendment against the States. *McDonald v. City of Chicago*, 561 U.S. 742, 765 n.13 (2010). Thus, absent a right to a jury trial under the laws of this State, no such right exists.

The Illinois Constitution of 1970 states, “[t]he right of trial by jury as heretofore enjoyed shall remain inviolate.” Ill. Const. 1970, art. I, § 13. Our Supreme Court has held that “the right to a jury trial shall continue in all cases where such right existed at common law at the time the constitution was adopted,

but that constitutional provision has never been held to prohibit the legislature from creating new rights unknown to the common law and provide for their determination without a jury.” *Standidge v. Chicago Railways Co.*, 254 Ill. 524, 532 (1912). Additionally, “the constitutional provision *** was not intended to guarantee trial by jury in special or statutory proceedings unknown to the common law.” *People ex rel. Keith v. Keith*, 38 Ill. 2d 405, 408 (1967) (quoting *People v. Niesman*, 356 Ill. 322, 327 (1934)). “In Illinois, the right to a jury trial does not attach to every action at law. Instead, such right only attaches in those actions where such right existed under the English common law at the time the Constitution was adopted.” *Martin v. Heinold Commodities*, 163 Ill. 2d 33, 73-74 (1994).

Here, Beardon has brought a Counterclaim for “Violation of the Consumer Fraud Deceptive Business Practices Act” pursuant to “815 ILCS 510/1, *et seq.*”¹ Def. Answer, at 23. In bringing this Counterclaim, Beardon also demanded trial by jury. While Beardon prays for money damages in its *ad damnum* (generally a legal issue) and the Consumer Fraud and Deceptive Business Practices Act is somewhat similar to the common law action of fraud,² an action under that Act is a new statutory

¹ The Court would like to note that Defendant, in its Answer, states in the title of its Counterclaim that it is brought under Act 510 of Chapter 815; however, throughout the Counterclaim, including the Counterclaim’s *ad damnum*, Defendant cites to Act 505 of Chapter 815. Def Answer, at 23-25. This is important, because Act 510 is the Uniform Deceptive Trade Practices Act while Act 505 is the Consumer Fraud and Deceptive Business Practices Act. Compare 815 ILCS 505/1, *et seq.*, with 815 ILCS 510/1, *et seq.* It is clear from the content of the Counterclaim that Defendant intended to proceed under Act 505 and not under Act 510 of Chapter 815, so the Court proceeds through its analysis as Defendant’s intent clearly demonstrates: under Act 505 of Chapter 815—the Consumer Fraud and Deceptive Business Practices Act.

² “In order to establish a claim for common law fraud in Illinois, a plaintiff must allege and prove: (1) a false statement of material fact; (2) the party making the statement knew or believed it to be untrue; (3) the party to whom the statement was made had a right to rely on the statement; (4) the party to whom the statement was made did rely on the statement; (5) the statement was made

right created by the legislature, and thus not conferring the right to a trial by jury. Def. Answer, at 25; *Martin*, 163 Ill. 2d at 75. Therefore, because the Consumer Fraud and Deceptive Business Practices Act provides a statutory right of action through a statutory proceeding unknown to the common law at the time the Constitution was adopted, “our constitution does not confer the right to a jury” for such an action. *Id.* at 76. In fact, “the legislature intended the action to be tried without a jury.” *Id.*

As it relates to Beardon’s demand for a jury here, it is clear that neither the Federal nor State Constitutions protect such a right to a jury under this statutory cause of action, the statute under which Beardon is proceeding (815 ILCS 505/1, *et seq.*) does not bestow a right to a jury trial itself, and mandatory Illinois Supreme Court precedent explicitly declines to confer such a right either. For these reasons, this Court holds that Beardon has no constitutional, statutory, or common law right to a jury trial on its Counterclaim under the Consumer Fraud and Deceptive Business Practices Act, and this Court will not conduct a jury trial on said Counterclaim. Such a trial, if any, held in the future on this pending Counterclaim, shall be a bench trial. Accordingly, this Court shall be economical and so *sua sponte* orders Beardon’s jury demand be STRICKEN with prejudice. *Hamilton v. Ceasar*, 218 Ill. App. 3d 268 (1st Dist. 1991) (holding that a trial court did not err when it—

for the purpose of inducing the other party to act; and (6) the reliance by the person to whom the statement was made led to that person's injury. *Siegel v. Levy Organization Development Co.*, 153 Ill. 2d 534, 542-43 (1992). On the other hand, under the Consumer Fraud and Deceptive Business Practices Act, only “(1) a deceptive act or practice, (2) intent on the defendant's part that plaintiff rely on the deception, and (3) that the deception occurred in the course of conduct involving trade or commerce” need to be shown. *Id.*

even for the merely technical reason of not paying the jury fee—*sua sponte* struck the defendant's jury demand).

B. This Court has Jurisdiction to Hear the Counterclaim

The Court now looks to see if this Court of Chancery is fit to hear what might be seen as a legal cause of action in Beardon's Counterclaim. For the following reasons, the Court holds that it maintains jurisdiction to hear Beardon's Consumer Fraud and Deceptive Business Practices Act Counterclaim.

The Circuit Court of Cook County, like all circuit courts in this State, is a court of general jurisdiction. Ill. Const. 1970, art. VI, § 9. "The fact that the circuit court, for administrative purposes, has established divisions to hear certain types of cases does not affect its jurisdiction to hear all justiciable matters, and does not affect the power of any of its judges to hear and dispose of any matter properly pending in the circuit court." *Fulton-Carroll Center v. Industrial Council of Northwest Chicago*, 256 Ill. App. 3d 821, 823 (1st Dist. 1993) (citing *Kaplan v. Keith*, 60 Ill. App. 3d 804 (1st Dist. 1978)). "The transfer of cases to specialized divisions within a judicial circuit is a matter committed to the administrative authority of the chief judge of the circuit." *Fulton-Carroll Center*, 256 Ill. App. 3d at 823. As such, this Court, despite being a court of chancery, has general jurisdiction over this matter and may entertain Beardon's Counterclaim notwithstanding any argument that it is a legal claim.

The Court would like to point out, however, that in spite of seeming to be a legal claim, Beardon specifically prays in its *ad damnum* that this Court grant it

“[i]njunctive relief enjoining the [sic] Wilmington from further engaging in fraudulent and deceptive practices.” Def. Answer, at 25. Because injunctive relief is an equitable remedy, this Court, a court of chancery, may also hear the Counterclaim since it requests such equitable relief. *Town of Cicero v. Metropolitan Water Reclamation District*, 2012 IL App (1st) 112164, ¶ 46. Even if the Counterclaim were legal in nature, there is no requirement that the original demand (here, equitable relief for mortgage foreclosure) and the Counterclaim be of the same character—they may be legal, equitable, or both. *People ex rel. Bradford Supply Co., Inc. v. Circuit Court of Pulaski County*, 393 Ill. 520, 526 (1946). It is true that, “where a law and equity action are joined but a *proper* demand for a jury in the law action is made, the latter cannot be tried with the chancery action.” *Rozema v. Quinn*, 51 Ill. App. 2d 479, 486 (1st Dist. 1964) (emphasis added). As discussed *supra* however, since Beardon has no right to a trial by jury, despite improperly demanding one, “the trial court has jurisdiction to hear the entire cause.” *Id.* at 485. Out of fairness to the parties, the principle of merger and not of severance should be embraced here to minimize fees, to streamline discovery, to simplify litigation and motion practice generally, to nullify the chance of inconsistent judgments, and to be judicially efficient. Thus, this Court finds it has jurisdiction to hear the Counterclaim.

Lastly, and as a bit of a side note, in the face of the fact that Beardon’s Counterclaim seeks equitable relief, there is a vehicle in the Illinois Code of Civil Procedure that could potentially allow this issue to go to a jury. 735 ILCS 5/2-1111

provides, “[a] court may in its discretion direct an issue or issues to be tried by a jury, whenever it is judged necessary in any action seeking equitable relief.” Of overarching importance, however, is that even if this Court impaneled a jury under Section 2-1111, any such verdict from said jury would be merely advisory and not binding upon the court. *Keith v. Henkleman*, 173 Ill. 137, 143 (1898); *see generally* *Bublitz v. Wilkins Buick, Mazda, Suzuki, Inc.* 377 Ill. App. 3d 781, 785 (2nd Dist. 2007). Therefore, using its discretion, this Court finds that no issue in this case needs to go to a jury and that this Court is fit and has jurisdiction to adjudicate Beardon’s Counterclaim via bench trial of the entire cause.

III. CONCLUSION

Accordingly, for the aforementioned reasons, Beardon’s Motion is hereby GRANTED and this Order is entered clarifying that (1) this Court will not conduct a jury trial on the pending Counterclaim and (2) this Court has jurisdiction to hear the Counterclaim via bench trial.

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THEREFORE, FOR THE AFOREMENTIONED REASONS, THE COURT HEREBY ORDERS AS FOLLOWS:

- (1) Beardon's Motion to Clarify Whether This Court Will Conduct the Jury Trial on Its Counterclaim is hereby GRANTED and the Court enters this Order clarifying as follows:
 - (a) The Court will not conduct a jury trial on Beardon's pending Counterclaim under the Consumer Fraud and Deceptive Business Practices Act because Beardon has no right to a jury trial as it relates to said pending Counterclaim; and
 - (b) The Court has jurisdiction to hear Beardon's pending Counterclaim under the Consumer Fraud and Deceptive Business Practices Act via a bench trial of the entire cause.
- (2) *Sua sponte*, Beardon's jury demand as it relates to its pending Counterclaim under the Consumer Fraud and Deceptive Business Practices Act is hereby STRICKEN with prejudice because Beardon has no right to a jury trial as it relates to said pending Counterclaim.

IT IS SO ORDERED.

Date: April 4, 2024

ENTERED:



Honorable William B. Sullivan
Cook County Circuit Judge

ORDER PREPARED BY THE COURT
ccc.mfmlcalendar60@cookcountyil.gov
(312) 603-3894

