

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
ROOSEVELT L. SIMMONS)
 Plaintiff,)
 vs.)
MASE and COMPANY, LLC, et al)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT
 CASE NO.: 2011-CP-10-1084
**MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET**

Plaintiff's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: Wendy J. Keefer, Bar No. 16427 Address: 1643B Savannah Hwy, Suite 226 Charleston, SC 29407 Phone: 843-860-1534 Fax _____ E-mail: wendykeefe@yahoo.com Other: _____
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MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Transfer to Non-Jury
 Estimated Time Needed: 30 minutes Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

Written motion attached
 Form Motion/Order
 I hereby move for relief or action by the court as set forth in the attached proposed order.


 Signature of Attorney for Plaintiff / Defendant

September 24, 2019
Date submitted

SECTION III: Motion Fee

PAID – AMOUNT: \$ _____
 EXEMPT: (check reason)

- Rule to Show Cause in Child or Spousal Support
- Domestic Abuse or Abuse and Neglect
- Indigent Status State Agency v. Indigent Party
- Sexually Violent Predator Act Post-Conviction Relief
- Motion for Stay in Bankruptcy
- Motion for Publication Motion for Execution (Rule 69, SCRCP)
- Proposed order submitted at request of the court; or,
 reduced to writing from motion made in open court per judge's instructions
 Name of Court Reporter: _____
- Other: _____

JUDGE'S SECTION <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
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CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____
 MOTION FEE COLLECTED: \$ _____
 CONTESTED – AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT
CASE NO. 2011-CP-10-1084

ROOSEVELT SIMMONS)
Plaintiff)
Vs.)
MASE and COMPANY, LLC,)
CHARLESTON COUNTY)
SHERIFF'S DEPARTMENT,)
CHARLESTON COUNTY,)
CHARLESTON COUNTY)
REVENUE COLLECTIONS)
DEPARTMENT,)
Defendants.)

**DEFENDANTS' NOTICE OF MOTION
AND MOTION TO TRANSFER
TO NON-JURY ROSTER OR, IN THE
ALTERNATIVE TO THE MASTER IN EQUITY**

2019 SEP 26 AM 11:51
JULIE J. ARP
CLERK OF COURT

All Defendants named above, hereby jointly move this Honorable Court for an Order transferring this case either to the non-jury roster or to the Master in Equity for all remaining proceedings in this matter.

The bases for this Motion are as follows:

- 1) Though Plaintiff's pleadings originally raised both claims at law and in equity, summary judgment was granted on all claims by this Court.
- 2) Plaintiff appealed the grant of summary judgment.
- 3) The South Carolina Court of Appeals affirmed summary judgment on all claims except for Plaintiff's equitable claim seeking to set aside the judicial sale of property based on a claim of inadequate sales price.
- 4) Thus, the only remaining claim is an equitable one to which no jury trial is proper nor is Plaintiff entitled to a jury trial on this remaining claim.

"[T]he 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. *See, e.g., Defender*

Properties, Inc. v. Doby, 415 S.E.2d 383 (S.C. 1992) (action to determine fair market value of a stock treated as action in equity with no right to a jury trial).” *Lester v. Dawson*, 491 S.E.2d 240 (S.C. 1997). “Whether a judicial sale should be set aside is a matter within the discretion of the trial court.” *Bonney v. Granger*, 387 S.E.2d 720 (S.C. Ct. App. 1990); *see also Investors Sav. Bank v. Phelps*, 397 S.E.2d 780, 781 (S.C. Ct. App. 1990). “The review of a judicial sale is equitable in nature and within the discretion of the trial court.” *Fed. Nat’l Mortgage Ass’n v. Brooks*, 405 S.E.2 604, 607 (S.C. Ct. App. 1991).

As Plaintiff’s remaining claim is to set aside a judicial sale, it is equitable and not proper for a jury.

For these reasons, Defendants respectfully request this Honorable Court to transfer this case to the non-jury roster or, if deemed more appropriate, to the Master in Equity for all further proceedings.

September 24, 2019

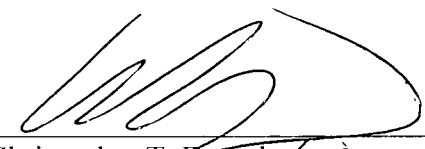
Respectfully submitted,



Wendy J. Keefer, Esq.
Keefer & Keefer, LLC
1643B Savannah Hwy, Suite 226
Charleston, SC 29407
(843) 860-1534
wendykeefer@yahoo.com

ATTORNEYS FOR DEFENDANT MASE
AND COMPANY, LLC

2011-CF-10-1084


for Christopher T. Dorsel (with permission)

Senn Legal, LLC
3 Wesley Drive
Charleston, SC 29407
(843) 556-4045
chris@sennlegal.com

ATTORNEYS FOR CHARLESTON
COUNTY DEFENDANTS

RULE 11 CERTIFICATION

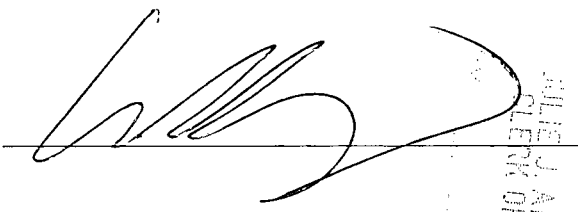
Plaintiff's counsel was consulted prior to filing this motion, but was unable to consent due to a recently filed Motion to be Relieved as Counsel.

CERTIFICATE OF SERVICE

I hereby certify that I have on this the 24th of September, 2019, had a true and correct copy of the foregoing Defendant Mase and Company, LLC's Notice of Motion and Motion to Transfer transmitted to Plaintiff's Counsel, identified below, via electronic transmission, and U.S. Mail:

Edward A. Bertele, Esq. – ebertele@msn.com

Attorney at Law
1812 Pierce Street
Charleston, SC 29492



Wendy J. Keefer

2019 SEP 26 AM 11:51
JULIE J. ARMSTRONG
CLERK OF COURT

Keefer & Keefer, LLC

1643B Savannah Highway
Suite 226
Charleston, SC 29407
(843) 860-1534
wendykeefe@yahoo.com

September 24, 2019

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street
Charleston, South Carolina 29401

Re: Roosevelt L. Simmons v. Mase and Company, LLC, et al.
Case No. 2011-CP-10-1084
Defendant Mase and Company, LLC's Motion for Summary Judgment
and Memorandum In Support

Dear Clerk:

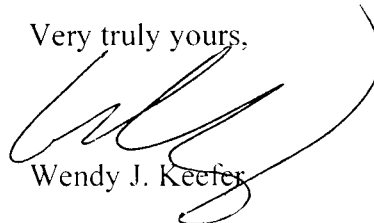
Enclosed please find the original and two (2) copies of the following documents
in the above-referenced action:

- a) Motion Cover Sheet; and
- b) Defendants' Notice of Motion and Motion to Transfer to Non-Jury Roster or,
In the Alternative, to the Master in Equity, with Certificate of Service
included.

Also enclosed is the motion filing fee. I would greatly appreciate your filing the originals
and returning two file-stamped copies to.

With kind regards, I remain,

Very truly yours,



Wendy J. Keefer

/wk
enclosures as stated

cc: Edward A. Bertele, Esq.
Christopher T. Dorsel, Esq.