

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

SHIRLEY HILL PERSON,
Appellant,

v.

**THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., AS
TRUSTEE ON BEHALF OF CWABS ASSET-BACKED CERTIFICATES
TRUST 2006-8, BANK OF AMERICA, N.A., and QUINCEY PARK
HOMEOWNERS ASSOCIATION, INC.,**
Appellees.

No. 4D15-3036

[October 19, 2016]

Appeal from the Circuit Court for the Seventeenth Judicial Circuit,
Broward County; Barry J. Stone, Senior Judge; L.T. Case No.
CACE14014087(11).

Shirley Hill Person, Pembroke Pines, pro se.

Kimberly Hopkins and Ronald M. Gaché of Shapiro, Fishman & Gaché,
LLP, Tampa, for appellee The Bank of New York Mellon Trust Company,
N.A., as Trustee on Behalf of CWABS Asset-Backed Certificates Trust
2006-8.

DAMOORGIAN, J.

Shirley Hill Person appeals a final judgment of foreclosure entered in
favor of The Bank of New York Mellon Trust Company, N.A., as Trustee on
Behalf of CWABS Asset-Backed Certificates Trust 2006-8 (the “Bank”)
following a bench trial. We affirm the final judgment of foreclosure, but
reverse the trial court’s order dismissing Person’s counterclaims for illegal
consumer debt collection.

The following events are relevant to this appeal. In response to the
Bank’s foreclosure complaint, Appellant filed a pro se answer and
affirmative defenses. Appellant did not assert any counterclaims at that
time. Despite having already filed a responsive pleading, Appellant later
filed a motion to dismiss. The court entered an order denying Appellant’s

motion and, although Appellant had already filed an answer, granted Appellant twenty days to file a new responsive pleading.

Thereafter, Appellant filed another responsive pleading which largely mirrored her previous filing except that it added counterclaims for illegal consumer debt collection. The Bank moved to strike Appellant's second answer, affirmative defenses, and counterclaims on the grounds that it was filed without leave of court. The court entered an order striking Appellant's second responsive pleading and counterclaims. In its order, the court provided that Appellant's original answer and affirmative defenses stood. The case proceeded to trial, concluding with judgment being entered in favor of the Bank. This appeal follows.

Appellant argues that her counterclaims were improperly stricken because the court's order denying her motion to dismiss granted her leave to file a new responsive pleading. We agree because, however unnecessary it was for the trial court to grant leave to file another responsive pleading at that point in the proceedings, Appellant was given the right to do so. See Fla. R. Civ. P. 1.190(e); Fla. R. Civ. P. 1.170(f).

Accordingly, we reverse the order striking Appellant's counterclaims and remand for reinstatement. As Appellant's debt collections counterclaims request affirmative relief separate and independent of the foreclosure, the counterclaims can be tried separately. See *Pearlman v. Nat'l Bank of New York City*, 600 So. 2d 5, 7 (Fla. 4th DCA 1992) (severance of foreclosure complaint for bench trial prior to jury trial on compulsory counterclaim is permissible); see also Fla. R. Civ. P. 1.270(b). Therefore, our decision does not impact the final judgment of foreclosure. Additionally, in reversing and remanding for reinstatement, we do not express an opinion as to the viability of the counterclaims.

Affirmed in part, reversed and remanded in part.

GROSS and TAYLOR, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.