

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 NATIONSTR MORTGAGE, LLC,)
)
 RESPONDENT,)
)
 vs.)
)
 BARBARA A. GIBBS, MELVIN E.)
 GIBBS, And WESTBROOK PHASE IV)
 HOMEOWNERS'S ASSOCIATION)
)
 PETITIONERS.)
 _____)

IN THE COURT OF APPEALS
 OF SOUTH CAROLINA

RECEIVED

MAR 21 2014

DOCKET NO:

SC Court of Appeals

71556

EMERGENCY

NOTICE OF MOTION AND

MOTION FOR
 TEMPORAY RESTRAINING ORDER/
 INJUNCTION

I. PRELIMINARY STATEMENT

The trial court does harm and violence to the American concept of justice, and defames the intent of Administrative Order 2011-05-02-01, issued by *Your Honor*. The trial court has “invented” a legal process whereby individuals who have not defaulted on their mortgages must submit to the judicial system home modification process as deemed by Administrative Order 2011-05-02-01. In my years as an attorney and life on this earth, I have not witnessed a case so poorly adjudicated. *The Plaintiff has not filed a NOTE: A fatal defect.*

The trial court has no concept concerning whether an issue is justiciable: whether an issue is ripe for adjudication, standing, etc. Nor does the trial court appreciate whether a material issue in dispute – an issue in which reasonable minds will not differ.

It would be if more palatable if the trial court armed the Plaintiff with a mask and gun and allowed them to steal my home in the middle of the night. In order to maintain my sanity I am forced

to use hyperbole, but the humor of this situation is lost on me; I will not allow the theft of my home by extortion!

Additionally,

The "hearing" was scheduled for March 11, 2014 at 9:30 a.m. At 9:15 a.m. Gibbs notified the court clerk: Gibbs' uncle was "buried" (funeral) on March 10, 2014 but due scheduling, their uncle could not be buried at the Veteran's Cemetery until 10:00 a.m. THAT DAY. Gibbs requested the judge be notified and arrangements be made for Gibbs to attend the burial. Dean Hayes, Esq. did not appear at 9:30 a.m. and arrangements were made for Attorney Hayes to be late, causing Gibbs to miss the burial.

It is my sincere hope the trial court will take NOTICE and correct this injustice prior to this motion being filed with the Court of Appeals, South Carolina Supreme Court and the US District Court for the District of Colorado.

The Supreme Court is well aware [Pending Appellate Case No. 2014-000210] Gibbs has not appeared in the Florence Court of Common Pleas in fifteen years; due to the illegal conduct that almost cost Gibbs and others, loss of life and/or great harm. AND,

It was illegal conduct that caused the Supreme Honorable Court to disbar Gibbs, and now form the basis for reinstatement of Gibbs' law license. The theft of Gibbs' psychiatric medical records and illegal use exposed why then, as well as now, Gibbs must not be exposed to illegal judicial conduct.

Where as here, Gibbs has articulated the illegal conduct and informed the trial court the only way forward for Plaintiff is collusion, action must be taken to stop the conspiracy. Thus far, it "appears" the Korn Law Firm and Benjamin D. Moore, Special Referee are acting as agents for the Corrupt Organization in violation of RICO,¹ with the *assistance* of the trial court???

¹ Civil suit filed in the US District Court for the District of Colorado: HAMP-less Gang (Bank of America, Nationstar Mortgage, Urban, SLS, etc.) are sued pursuant to 18 U.S.C. § 1964. They engaged in a conspiracy since 2009, to deny Gibbs and those similarly situated, loan modifications. This is the gravamen of the racketeering suit; now Nationstar seeks to artificially force Gibbs into destruction using the Court of Common Pleas.

It is not my desire to include the Court of Common Pleas as a defendant [injunction] in the federal racketeering suit. HOWEVER, I will not permit Nationstar to use the Court of Common Pleas to escape the [class action] federal racketeering suit (RICO).

II. STATEMENT

Gibbs proved beyond a reasonable doubt the Plaintiff committed fraud on the court by alleging Gibbs defaulted on their loan; fraud by alleging Gibbs did not apply for a mortgage modification; fraud by certifying to the court Gibbs had not completed and returned the required request for loan modification.

This case represents an illegal attempt to extort moneys from Gibbs not due or owed! YOUR HONOR, Administrative Order 2011-05-02-01, must be expanded to address the fraud being perpetrated on Homeowners by unscrupulous law firms, referees, and complicity of the courts.

III. STATEMENT OF THE CASE

In or about July 2009, Gibbs requested information from Bank of America (Hereinafter BOA) concerning HAMP. Rather than provide the requested information, BOA attempted to renegotiate Gibbs' mortgages for a fee of \$30,000; Gibbs declined.

After much persistence, BOA accepted Gibbs' application for modification on or about September 28, 2011. BOA engaged in deliberate dilatory tactics to avoid processing Gibbs' application. Gibbs made multiple inquires as to the status of their application; and finally BOA informed Gibbs on August 22, 2012 that BOA would obtain the documentation and information to address Gibbs' inquires and stated, "We appreciate your patience while we research your request[s]"

In or about September 2012, Nationstar Mortgage began collecting the mortgage payments for BOA. AND, unbeknown to Gibbs, Nationstar recorded a mortgage deed on or about January 2013. Nationstar Mortgage in an attempt to shield BOA from the requirements of HAMP, immediately engaged in BOA's illegal conduct designed to artificially reflect a default by Gibbs.

On July 26, 2013 Gibbs wrote Nationstar a letter outlining the illegal conduct by BOA, and warned Nationstar Mortgage not to join the Corrupt Organization: falsely claiming \$2,258.82 was due and owed – then falsely escalating said amount to \$8,528.09.

Based on BOA's *egregious* conduct that began in 2009, in or about April 2013, Gibbs began research designed to file a lawsuit under the Racketeering and Influence Corrupt Organization Act (Hereinafter RICO).

On October 23, 2013 the Plaintiff filed this foreclosure action.

On October 28, 2013 Gibbs filed the RICO complain in Federal District Court for the District of South Carolina.

On or about October 29, 2013 Gibbs learned of the foreclosure suit from a bankruptcy attorney letter of introduction. Gibbs called Nationstar and advised Nationstar not to proceed with the suit in that the suit was in violation of the "mortgage," and Gibbs would provide bank records to show all payments were timely made.

On November 6, 2013 the Korn Law Firm, representing Nationstar, had Gibbs served with the foreclosure suit. Gibbs called the Korn Law Firm and advised "them" the suit was not valid and Gibbs would provide bank records to show all payments were timely made.

On November 19, 2013 Gibbs filed a motion to dismiss based on lack of subject matter jurisdiction, failure to state a claim upon which relief could be granted, and the suit [same] was

pending in federal court. And, asked the trial court to sanction Plaintiff and their attorney for having committed fraud on the court.

The Plaintiff did not respond and on December 10, 2013, Gibbs filed for default as to the motion to dismiss and sanctions: Plaintiff's egregious conduct; citing **Aoude v. Mobil Oil Corporation**, 892 F.2d 1115 (1989). Gibbs paid all fees and requested by proper form the motion be heard without a hearing.

On or about December 16, 2013 the court returned Gibbs' Motion and Order Information Form and Cover Sheet with a hand written note: A hearing will be scheduled[.]

On January 27, 2014 Gibbs filed a response to the court ordered hearing: requesting an order be entered articulating the reasons the court determined a hearing was necessary and/or warranted.

On February 24, 2014 Gibbs docketed the RICO suit in the Federal District Court for the District of Colorado. During Gibbs' research, Gibbs discovered a RICO class action suit was filed against BOA on July 10, 2013 – District of Colorado. Gibbs made the decision to dismiss the suit filed in the District of South Carolina.

On February 24, 2014 Gibbs filed a pre-hearing brief in the foreclosure suit alerting the court of Gibbs' Petition before the Supreme Court of South Carolina and the facts of the case not being conducive to a hearing.... Gibbs' law firm having been destroyed, Gibbs arrested, tortured and forced to confess to a crime that never happened, Gibbs' stolen psychiatric records used to disbar Gibbs, etc.

On March 11, 2014 the hearing was had: the trial judge stated, [very little was known about foreclosures and Gibbs' motion to dismiss and six exhibits only applied to trial.] *It was clear and convincing the trial court knew "nothing" of basic rules of pleadings and this matter should not*

have been set for a hearing.... Having arrived too late at the military burial of Gibbs' uncle, Gibbs became furious. In order to avoid problems, Gibbs placed his cousin's vehicle on a "car dolly," attached [it] to his van and drove "both" families to Jonesboro, LA and remained there until March 18, 2014.

IV. STATEMENT OF FACTS

Without any right to do so, Nationstar Mortgage filed this "bogus" foreclosure action against Gibbs in an attempt to defeat the RICO suit filed in federal court.

During the course of the mortgage [Foreclosure] referred to by Nationstar, Gibbs has never been in default – Gibbs has never missed a payment due or owed.

At all times relevant to this Foreclosure the Plaintiff and Plaintiff's attorney were/are aware they are committing fraud on the court, to wit: a default did not occur; falsely claiming Gibbs did not apply for mortgage modification [9/2011]; falsifying certification that Gibbs failed to request mortgage modification within 30 days after service [**CERTIFICATION OF MORTGAGOR NON-COMPLIANCE**, filed December 17, 2013]: Request for Foreclosure Intervention – filed by Gibbs the 19th day of November 2014 (*Motion to Dismiss*, ¶ 9, *Exhibit-F*).

During the hearing of March 11, 2014, had Gibbs learned of Dean Hayes' (Attorney for Plaintiff) contorted facial "smirks" during Gibbs' oral argument, the results of the hearing would have been catastrophic....

MEMORANDUM OF LAW

V. ARGUMENT

At no time in history has an attorney deluded himself into believing a foreclosure may be had absent a NOTE – identifying the parties thereto, an amount owed, terms of said note, detailing the

amount paid, the amount owed and the amount in default, and how the default occurred. The instant case cannot proceed without the aid and assistance of “corrupt” officials. The doctrine of *res ipsa loquitur* has never been more evident.... When a person is discovered robbing a bank and “they” request specific police officer to oversee the robbery, there is a limited conclusion to be drawn.... The court must not become robbers, brigands and pirates....

GIBBS MUST NOT BE PLACED IN A SITUATION WHEREBY GIBBS IS FORCED TO DEFEND HIS HOME!

Plaintiff’s egregious conduct cannot be tolerated in a civil and just society; citing Aoude v. Mobil Oil Corporation, 892 F.2d 1115 (1989). To wit: Defendants’ ANSWER -

FIRST DEFENSE -The Plaintiff failed and neglected to file the commercial paper with the pleading – NOTE, evidencing that Defendants signed such a note, an amount due and owed, the terms of said NOTE, i.e., what constitute(s) default, etc. **SECOND DEFENSE** - Defendants did not execute a NOTE evidencing a mortgage to which the Plaintiff has a financial interest or otherwise. **THIRD DEFENSE** - If Defendants signed a NOTE the NOTE has been satisfied in full and is therefore unenforceable in this court. **FOURTH DEFENSE** - If Defendants signed a NOTE, the NOTE has been discharged by the Plaintiff in that Plaintiff suspended any and all future payments. **FIFTH DEFENSE** - The Defendants if obligate under a NOTE, made any and all payment due and owed August 2013, and was not in default as alleged by Plaintiff. **SIXTH DEFENSE** - Plaintiff has committed fraud on this court by alleging Defendants were in default on August 2013; by alleging Defendants did not make application under HAMP; filing a false certificate of Mortgagor non-compliance. **SEVENTH DEFENSE** - Plaintiff filed for an order of reference prior to complying with Administrative Order 2011-05-02-01 [South Carolina Supreme Court]. **EIGHTH DEFENSE** - This court does not have subject matter jurisdiction in that there is no NOTE evidencing a loan. **NINTH DEFENSE** - This court does not have jurisdiction; the pleading do not state facts sufficient to constitute a cause of action: no genuine issue in dispute. And, Defendants are entitled to summary judgment as a matter of law. **TENTH DEFENSE** - This court does not have jurisdiction in that there is another action pending between the same parties for the same claim [Federal District Court, District of Colorado], violations of HAMP necessitating the RICO suit. **DEFENDANTS DEMAND TRIAL BY JURY ON EACH AND EVERY ISSUE! This is a case concerning fraud and not a foreclosure no matter how pleaded.**

Clearly Gibbs is entitled to protection from robbery, mayhem, death and/or destruction. To obtain an injunction, a party must demonstrate irreparable harm, a likelihood of success on the

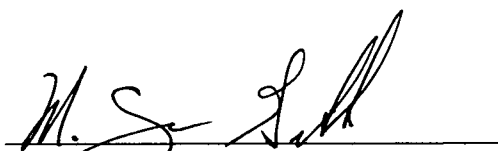
merits, and the absence of an adequate remedy at law:” Denman v. City of Columbia, 387 S.C. 131, 140-41, 691 S.E.2d 465, 470 (2010). Actions for injunctive relief are equitable in nature. See Grosshuesch v. Cramer, 367 S.C. 1, 4, 623 S.E.2d 833, 834 (2005). To obtain an injunction, a party must demonstrate irreparable harm, a likelihood of success on the merits, and the absence of an adequate remedy at law. *Id.* at 4, 623 S.E.2d at 834; Sanford v. S.C. State Ethics Com’n, 385 S.C. 483, 496, 685 S.E.2d 600, 607 (2009). “An injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff.” Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc., 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004).

Defendants have proven Plaintiff’s foreclosure suit is a fraud. And, the only salvation for Plaintiff to prevail and escape sanctions, unfortunately, is to have the foreclosure adjudicated by someone who will disregard the law in a way that avoids appellate review....

VI. CONCLUSION

The Plaintiff filed the foreclosure suit in an attempt to defeat the RICO federal suit filed in Colorado. The conduct in this case calls into question the integrity of the courts and must not be tolerated.

Respectfully Submitted,



M. Eugene Gibbs
4257 Monterey Drive
Florence, SC 29501
843-407-6297

March 21, 2014
Florence, SC

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
NATIONSTR MORTGAGE, LLC,)
RESPONDENT,)
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ORDER

Upon consideration of Defendants, Barbara A. and Melvin E. Gibbs' Motion For TRO/Injunction, the Court finds as follow:

Background

The instant suit seeks damages in the amount of \$292,519.20, alleging the Defendants defaulted on their mortgage on August 2013, and certified to the Court Defendants did not make application for modification under HAMP. Gibbs has by clear and convincing evidence proved the allegations are false, that fraud was committed on the court, and the foreclosure was filed in an attempt to defeat RICO litigation filed in federal district court. Each and every allegation is supported by documented proof and uncontroverted by Plaintiff.

Gibbs has pending before our Supreme Court [Appellate Case No. 2014-000210] a petition to have his license reinstated based on the criminal actions committed to have Gibbs disbarred: theft of Gibbs' psychiatric medical records – causing Gibbs to lapse into a “murderous rage.” See, Gibbs' Pre Hearing Brief filed the 24th day of February 2014.

Findings of Fact

It is uncontroverted that:

(1) Plaintiff deliberately failed and neglected to file a copy of the mortgage deed and NOTE, to prevent this Court from discovering their fraud.

(2) Plaintiff deliberately failed and neglected to file a sum certain representing an amount not paid by Defendants on the mortgage: allowing Plaintiff to deceive this Court by alleging the Defendants defaulted August 2013 on said mortgage.

(3) Defendants' letter dated the 26th day of July 2013, Defendants notified the Plaintiff that their actions had no basis in fact or law and that Bank of America were engaged in racketeering.

(a) Defendants put Plaintiff on notice of the RICO suit filed against BOA in Colorado, and Defendants filed suit in the Federal District Court for the Districts of South Carolina and Colorado.

(4) Having discovered the Plaintiff filed the instant action; Defendant Melvin Gibbs called the Plaintiff on October 28, 2013 and informed the Plaintiff that this suit constituted fraud on the court.

(5) The attorney, Korn Law Firm, had the pleadings served on Defendants on or about November 6, 2013. Defendant, Melvin Gibbs, immediately called and informed the attorneys that the attorneys had perjured themselves, to wit:

(a) Defendants provided this Court bank records certifying that each and every payment had been made to NaionStar: Jan. 2013 - Aug. 2013 and Jan. 2012 - Dec. 2012.

(b) Their certification to the court that Defendants had not applied for modification under HAMP was not only false, but knowingly false.

(c) Falsifying certification that Gibbs failed to request mortgage modification within 30 days after service [CERTIFICATION OF MORTGAGOR NON-COMPLIANCE, filed December 17, 2013]: Request for Foreclosure Intervention – filed by Gibbs the 19th day of November 2014 (*Motion to Dismiss*, ¶ 9, *Exhibit-F*).

The Plaintiff and their attorney [Hereinafter Plaintiffs] by affirmation, swore to this Court the Defendants are in default of their mortgage, (Comp. ¶ 16). The Plaintiff failed and neglected to document a single default by Defendants and/or show how such a default was in violation of a specific section of the mortgage agreement for the purpose of extorting \$292,519.20 from Defendants concerning their property: Book B059 at Page 510: 4257 Monterey Drive, Florence, S.C. 29501, TMS #04915-01-018

Conclusions of Law

Accordingly, the Court finds that Plaintiff and their attorney have committed fraud on this Court. AND, Gibbs is entitled to not having his life, liberty and safety placed at risk by the illegal conduct of Plaintiff. Accordingly, Defendants are entitled to the relief requested. Clearly Defendants are entitled to protection from robbery, mayhem, death and/or destruction. To obtain an injunction, a party must demonstrate irreparable harm, a likelihood of success on the merits, and the absence of an adequate remedy at law:” Denman v. City of Columbia, 387 S.C. 131, 140-41, 691 S.E.2d 465, 470 (2010). Actions for injunctive relief are equitable in nature. *See Grosshuesch v. Cramer, 367 S.C. 1, 4, 623 S.E.2d 833, 834 (2005)*. To obtain an injunction, a party must demonstrate irreparable harm, a

likelihood of success on the merits, and the absence of an adequate remedy at law. *Id.* at 4, 623 S.E.2d at 834; *Sanford v. S.C. State Ethics Com'n*, 385 S.C. 483, 496, 685 S.E.2d 600, 607 (2009). “An injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff.” *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004).

Wherefore, Defendants’ motion is:

ORDERED AND ADJUDGED that the motion for TRO/Injunction be and hereby is GRANTED.

IT IS FURTHER ORDERED AND ADJUDGED that Plaintiff and their attorney are enjoined from further action against Gibbs.

IT IS FURTHER ORDERED AND ADJUDGED that Benjamin D. Moore, Special Referee is enjoined from proceeding in this case. AND,

IT IS FURTHER ORDERED AND ADJUDGED that the 12th Judicial Circuit Court shall stay all foreclosure cases pending a full and complete investigation.

DONE AND ORDERED in Chambers at Columbia, Richland County, South Carolina, the _____ day of March 2014.

South Carolina Court of Appeals Judge,

STATE OF SOUTH CAROLINA)
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 COUNTY OF RICHLAND)
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CERTIFICATE OF SERVICE

I, Melvin E. Gibbs, hereby certify that Notice [TRO/INJUNCTION] and copy of same was provided March 19, 2014 via Email: dean.hayes@kornlawfirm.com notifying Dean Hayes, Esq. and Helen Harrington Gibbs would appear before this Honorable Court on March 21, 2014 at 11:00 a.m., and make application for a TRO/Injunction and a copy was placed with USPS, postage prepaid, the 20th day of March 2014, addressed to:

Dean Hayes, Esq. and
 Helen Harrington
 KORN LAW FIRM, P.A.
 P.O. Box 11264
 Columbia, SC 29211-1264



 M. Eugene Gibbs, Pro-se
 4257 Monterey Drive
 Florence, SC 29501

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