

NATIONSTAR

2011-CP-10-4201

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CARMEN & ALAN
SHEPPARD

Writ of Mandamus

And Supporting

Affidavit of Carmen Sheppard

FILED
2014 JAN -6 PM 12:30
JULIE J. ARMSTRONG
CLERK OF COURT
BY

I, Carmen Sheppard, with a primary residence at 462 Commonwealth Rd. Mt Pleasant SC hereby inform the court that there are counterclaims requiring a jury trial in Charleston County Case#2011-CP-10-4201, an action for Foreclosure by Aurora and under Rule 53(b) any party may file a demand for a jury trial under Rule 38 . Other than the counterclaims made note of above, I did not consent to the transfer to Master in Equity as represented to the clerk of court by Attorney David Haller. Mr Haller represented my husband Alan Sheppard as counsel for "Edisto Environmental Group LLC". According to Alan, Mr Haller informed him that he would "take care of our home loan modification" after numerous attempts at a modification were severely mishandled by Aurora who was in the process of being sanctioned by the "Office of Thrift Supervision" for mishandling loans across the board just like our loan modification. This mishandling included constant lost paperwork and abusive fees heaped upon us after we informed Aurora in good faith that we were honest and hard-working homeowners who are down on our luck after a bout with cancer. Regardless, we were put off repeatedly after Aurora demanded large stacks of required documents and paying enormous fees in range from approx. \$8,000.00 to \$30,000.00 that would supposedly complete the loan modification. In an eerie similarity to previous attempts by me and Alan, Mr Haller's attempts to push the process or negotiate have been stalled by the banks for months or over a year until the point that we are even farther behind on our payments and the bank is again threatening foreclosure and bullying us instead of working with us. This is not fair and it's bad practice. Around the end of 2012 with all the information we put together certainly Mr Haller had more than enough to sustain a complete loan modification. After an accident in January 2013 that left Alan's back broken with four crushed vertebra, we hoped that this hardship would find that a complete modification must have been right around the corner. However, by the time Alan heard from his lawyer friend, something had changed and Mr Haller wanted Alan to inform the court of the previous conflicts and material violations relating to our loan modification attempts with Aurora that included **CFR, Title 12 - Banks and Banking § 1026.35 Prohibited acts or practices in connection with higher-priced mortgage loans.** (b) *Rules for higher-priced mortgage loans.* Higher-priced mortgage loans are subject to the following restrictions: (1) *Repayment ability.* A creditor shall not extend credit based on the value of the consumer's collateral without regard to the consumer's repayment ability as of consummation as provided in § 1026.34(a)(4) plus a handful more to go along with this. This foreclosure is based on an \$879,000.00 interest only note on a primary residence of 17 years that was given to a lifelong school teacher who barely made \$40,000.00 a year.

Mr Haller had enough of helping an old client out without any money and informed Alan that he need to attend a hearing as he was going to totally withdraw from this case. It would be at this time that we find that NationStar has now taken ownership of our loan and the case was referred to the Master in Equity who had recused himself from another pending case due to a conflict that remains a conflict. Alan would contact NationStar via their website 800 number and inform them as to the trouble we have had in the past with Aurora Loans. NationStar immediately informed us that they would very much like to work with us on a loan modification especially after hearing the whole story. NationStar now has a new policy where there is one representative for one

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SC Court of Appeals

client. This one representative for the Sheppard modification would be the loan modification Specialist Ms Kim Cavagnaro. Over the next 30 to 60 days, we would supply Ms Kim with all the forms, hardship letters, tax returns and any other request to meet NationStar's needs' for loan modification according to one of the programs Ms Kim had found for us. I also informed Ms Kim that we were noticed that the lawyer who had been helping with no success has scheduled a hearing to officially withdraw from working on our loan modification. NationStar now had the bulk of the requested documents and Ms Kim stated that she noted our NationStar file that halted the foreclosure process. An email the following day would verify this and Alan would inform the court at the hearing. After arriving at the only hearing regarding our foreclosure the first week of September 2013, Alan had a chance to share the good news with NationStar local Counsel Mr Dean Hayes who figured the hearing to be quick after the update; however, something was going on that did not make sense. According to the 2011-05-02-01 SCSC Mortgage Foreclosure Action Section B,1, all proceedings in the foreclosure action shall be stayed until completion of such foreclosure intervention. The Master in Equity began to take on new issues after Alan notified him of the approved Loan Modification and regardless of this notification carried on as if he had not been informed that Mr Haller had not informed Alan of any of the Mortgage Foreclosure Action as he was in back recovery. I have never spoken with nor met Mr Haller ever.

For this reason, we filed a Motion for a New Trial to repudiate the false representations by previous counsel, the conferences and the hearing scheduled from the first week in October 2013 that continued through until the end of November 2013 that are a direct conflict to the stay in this Act. After the Motion for New Trial was denied and with the realization that multiple hearings took place without either of the Sheppard's presence, a notice of appeal would be filed. An e-mail from NationStar Counsel Mr Dean Hayes informed us that the appeal would not stop the sale on January 7, 2014.

It is for this reason that I file a **Writ of Mandamus** according to **SC Rule 65 (f)(1) Remedial Writs** and let this Affidavit support our Constitutional Right and Demand for a Jury Trial under **Rule 38** with new counsel present thus placing a Stay status in the foreclosure Sale scheduled for January 7, 2014 for 462 Commonwealth Rd. The mistakes or wrongs that have occurred regarding our primary residence foreclosure hearings after transfer without our consent to The Master in Equity along with the Repudiation of previous Counsel's actions on his own accord have found no other viable legal options available other than to move the court to accommodate our demand for a jury trial. The motion for a jury trial under Rule 38 states the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

It is for this reason the request for this Writ of Mandamus is accompanied by **RULE 24(C) INTERVENTION Notice to State When Validity of Statute Questioned. When the constitutionality of a statute is drawn in question in any action in which the State or an officer, agency or employee thereof is not a party, the party shall also serve the motion on the Attorney General.**

It is our goal to have the effort we put forth to engage proper counsel immediately to represent our Home Foreclosure after the withdrawal of Mr David Haller as loan modifier at the hearing on or about September 6, 2013. A refusal or denial to accommodate this Writ will equate to a forced

bankruptcy that will further destroy what is left of formally sound financial standing and reputations of the Sheppard's.

Neither of the Sheppard's are lawyers and have made no attempt to act as one. Both have read considerable amounts of Court Rules to save their home through a Loan Modification and can attest that all of the above are true to the best of our knowledge, so help me GOD.

Signed: Carmen Sheppard Jan.6 2014 Signed: Alan Sheppard Jan.6 2014

Signature Carmen Sheppard Signature Alan Sheppard