

STATE OF SOUTH CAROLINA)
 COUNTY OF Charleston)
NATION STAR)
 Plaintiff,)
 vs.)
Carmen & Alan Sheppard)
 Defendant.)

IN THE COURT OF COMMON PLEAS
10th JUDICIAL CIRCUIT
 CASE NO.: 2011-CP-100-4201
 MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET

Plaintiff's Attorney: <u>PROSE ALAN SHEPPARD</u> Bar No. _____ Address: <u>462 COMMONWEALTH RD</u> <u>MT PLEASANT SC 29466</u> Phone: <input checked="" type="checkbox"/> Fax _____ E-mail: _____ Other: <u>843 224-9169</u>	Defendant's Attorney: <u>DEAN HAYS</u> Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ 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: _____
 Estimated Time Needed: _____ 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.

Alan Sheppard
 Signature of Attorney for Plaintiff / Defendant

8-10-1-13
 Date submitted

SECTION III: Motion Fee

- PAID - AMOUNT: \$ 25.00
 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, SCRPC)
 - 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

- Motion Fee to be paid upon filing of the attached order.
 Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

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

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 NationStar Bank)
)
)
)
)
 Plaintiff,)
 vs.)
)
 Alan and Carmen Sheppard)
)
)
)
 Defendants.)

IN THE CIRCUIT COURT
 CASE NO.: 2011-CP-100-4261

FILED
 2013 OCT -1 PM 4:15
 JULE J. ARMSTRONG
 CLERK OF COURT

MOTION FOR NEW TRIAL

This matter is before the Court, pursuant to THE SUMMARY JUDGEMENT filed by the Plaintiff, NationStar and its representative, Dean Hayes, ("Plaintiff"). The Plaintiff has made numerous requests to the Master in Equity during the hearing in September 2013 after the Defendants counsel asked to be removed. The removal of Counsel being granted by the Master in Equity has left Defendants Alan and Carmen Sheppard in the middle of a complex litigation for their primary residence that is being ruled on without details significant to the matter of law at hand being raised by previous counsel due to conflict and fees due from all matters that have been raised in conjunction with this case. Neither Defendants, Alan nor Carmen Sheppard are lawyers and the Defendants have had numerous legal actions forced upon them during the time that previous counsel had remained as counsel and partially represented them at best. It is for this reason that the MOTION for a NEW TRIAL is served on the court. The defendants are currently working to find legal counsel to formally repudiate the actions of previous counsel and make Judicial Note of the actions that have been left out of the current foreclosure hearing. The defendants request access to justice in the foreclosure of their primary owner/occupied residence and will address each of these actions raised in the MOTION for a NEW TRIAL.

The Plaintiff's Affidavit from NationStar and Motion for Summary judgment both served on the Court on June 6 2013 have had zero attention from Defendants previous counsel. As such none of the Defendants intentions, conflicts, rights or right to procedural due process have been expressed or preserved. For this reason, upon learning of the unauthorized act of our previous counsel and intent not to be bound thereby of the outcome Granted in the Plaintiffs Summary Judgment, The Defendants repudiate this act and any other action taken to date by the Plaintiff's counsel promptly. Citing (**Foxworth v. Murchison Nat. Bank, 134 S.E. 428, 136 S.C. 458 (S.C. 1926)**)

1. **2011-05-02-01, The Supreme Court of South Carolina Mortgage Foreclosure Actions**
 - a. "Foreclosure intervention" shall include any policy, process or procedure employed by a Mortgagee for the purpose of seeking a resolution of a foreclosure action by loan modification or other means of loss mitigation. The Defendants have never received any "Foreclosure Intervention" on their home, "Owner-Occupied dwelling" is defined as mortgaged real property that is the principal residence of any mortgagor. Upon notice of the September 2013 hearing the Defendants see that NationStar's name has replaced Aurora as the loan servicer and contacts NationStar direct via website's 800 number. The Defendant was invited to work out a loan modification on or about August 28 2013 and put together preliminary figures that led the Defendants Loss Mitigation Officer from NationStar to open a Loan Modification file and begin working with the Defendants September 27 2013. 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 past hearing and the hearing scheduled the first week in October 2013 are a direct conflict to the stay in this Act and the defendants want to make Judicial Note of both conflicts with the 2011-05-02-01 Act**
2. The Defendants contacted NationStar on their own accord to inquire why the Defendants could not work out a Modification of some kind due to the Extraordinary circumstances cast upon them in the Defendants pending case that has been dismissed and marked "Ended" on numerous occasions while still pending an Appeal in Charleston County Court Case # 2011-CP-10-4537 that has a direct effect on the Defendant pending foreclosure. After learning of the pending case NationStar has provided Access to Justice to the Defendants in the form of a pending "Foreclosure intervention" that includes a loan Modification. NationStar has informed the Defendants that Court Actions have stopped now that the Loan Modification is in progress while the Plaintiff's Counsel and Charleston County Court's MIE continues to proceed with Foreclosure and Assigning Tax implication along with changing basic \$\$ figures to the foreclosure that are way above the comprehension of the Defendants while the Defendant continues to reach out to capable lawyers to represent them in the complexities involved in this case. When Defendants contacted the Plaintiff's counsel to discuss the modification the conversation was defined as having no meaning or relevance towards the ongoing hearings. A clear breach of Due Process and outside the definitions of the SC Supreme Court Mortgage Foreclosure Actions.
3. **SCSC 2011-05-02-01 B-1-C, States-** Mortgagor has been afforded a full and fair opportunity to submit any other information or data pertaining to the Mortgagor's loan or personal circumstances for consideration by the Mortgagee. Clearly not true in this case. The defendants want to Make Judicial Note of the crude acts toward the Defendants taken on behalf of Aurora Mortgage that were clearly

outside of any full and fair opportunity in dealings with the Defendants. Further that the Previous Counsel has never made any judicial notes at all regarding the issues and pending actions ongoing with the court so much so that new counsel will need time to simply understand what has not been done for the Defendants and what has been done to the Defendants while previous counsel was not engaging the court. This has ill effects on the Defendants and has caused the Defendants significant hardship as the numerous cases thought to have been properly defended have continued to cause a backed up stack of unresolved matters of law. These legal actions need professional legal attention. This has left the Defendants in a frenzy trying to comply with the Rules of Court on numerous claims simultaneously and is far from a "full and fair opportunity "

4. The Court improperly granted a motion for summary judgment when The Defendant made note during the hearing on or about August 28 2013, which Foreclosure Intervention had begun with the talks between the Defendant and NationStar. This alone should have "stayed" the Hearing according to SCSC Mortgage foreclosure Act. Previous Counsel had emails directing him to submit affidavits and other admissions on file, to show that there "is" genuine issues as to any material fact and that the moving party is not entitled to a summary judgment as a matter of law." Rule 56(c), SCRCP. (Specific issues follow) Clearly there have been some with holding of the Defendants current status regarding pending actions, available foreclosure intervention assistance, etc, etc, etc... that has caused a shift in the balance of justice that can only be corrected by a New Trial in Circuit Court.
5. The previous counsel has taken on his own initiative without a notice to the Defendants regarding this case and other pending cases that were completely resolved but continue to be called back to court. After the repossession of the Defendants primary vehicle in case # 2010CP1007009 that satisfied the Judgment in full. The Defendants reached out to previous counsel to get the details of what is being done for the continued legal assault from the numerous cases. The Defendants were put on notice that previous counsel is "unable to help you any further without being paid. My schedule is too busy to put your case in front of other without being retained formally." Leaving the Defendants in an unfair advantage that can only be sorted out in Circuit Court with a New Trial.
6. The Master in Equity submitted an "Order to Recuse" himself due to the individuals involved in the pending case and I forwarded it to previous counsel in order to show that the MIE has a conflict from the pending case and it has never been submitted. All of the same individuals involved in the original action that the MIE recused himself from are under Federal legal review that finds the same conflict at hand and is another basis for the Defendants Motion for a New Trial in Circuit Court. Previous Counsel was fully informed and has left the Defendants in an unfair advantage.
7. Darrell Creek Homeowners Association, Inc. is noted as a party to the Plaintiffs. Darrell Creek Homeowners Association, Inc. and the Defendants have a mutual release that shows The Defendants are not subject to the Restrictions and fees that is part of the record but continues to show up as a party to Action to the Mortgage company and is another resolved case that is still being pursued in another unresolved matter of law in connection with Charleston County Court that

- need to be resolved in a New Trial in Circuit Court
8. The Equity loan listed under TD Bank previously Carolina First Bank is another unresolved matter of law looked over by previous counsel and has significant legal implication involving the current foreclosure proceedings. As the Defendant made note of in the hearing held on or about August 28 2013, the foreclosure and repossession of the Defendants North Carolina Farm that never had a mortgage note on it is being reviewed due to the similarity of documents used on the equity loan being from this same bank. These documents are being reviewed to confirm whether they were used to prepare closing documents to the Defendants North Carolina Farm that Defendants were not a party to. This clearly leaves considerable questions to the matter of law at hand and is another basis to the Motion for a New Trial to be answered in the circuit court with a jury.
 9. Due to the numerous cases that The Defendants have been subject of and due to this extraordinary information significant to the matter of law at hand that was sent to the Defendants previous counsel having not been made note of in these hearings, the Defendants have made a Motion for a New Trial so that the Defendants may be afforded a full and fair trial according to the laws of the State of South Carolina in compliance with the SCSC Mortgage foreclosure Act..

For the reasons set forth above, the Defendants request that the Motion for a New Trial should be granted.



Alan Joseph Sheppard
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Mt. Pleasant, SC
30 day of September, 2013.

PROOF OF SERVICE

THE STATE OF SOUTH CAROLINA
In The Circuit Court

CHARLESTON COUNTY
Master in Equity

Scarborough, Mikell R., Master in Equity

Case No. 2011-CP-100-4201

NATIONSTAR MORTGAGE
COUNSEL, DEAN HAYES

Plaintiff

v.

CARMEN SHEPPARD
ALAN SHEPPARD

Defendants

PROOF OF SERVICE

I certify that I have served the MOTION FOR A NEW TRIAL on PLAINTIFFS' by depositing a copy of it in the United States Mail, postage prepaid, on September 30, 2013, addressed to their attorney of record, Dean A. Hayes, (addresses below)

September 30, 2013

s/ 

ALAN SHEPPARD,
462 Commonwealth Rd.
Charleston, South Carolina 29466
(843) 224-9169,
alanjosephsheppard@gmail.com
Defendant

CC; Honorable Scarborough, Mikell R
Dean Hayes
Rosalyn W. Frierson

FILED
2013 OCT -1 PM 4:15
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

RECEIVED
MAR 26 2014
SC Court of Appeals

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