

STATE OF SOUTH CAROLINA      IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON      FOR THE NINTH JUDICIAL CIRCUIT

AURORA LOAN,      )

Plaintiff,      )

-      )

VS.      )

CASE NO.:2011-CP-10-4201

CARMEN SHEPPARD,      )

Defendants.      )

Hearing before the

Honorable Mikell R. Scarborough,  
at 10:00 a.m. on January 7, 2014  
2013 at 100 Broad Street, Charleston, South Carolina.

A P P E A R A N C E S

For the Plaintiff: Dean A. Hayes, Esq.  
Korn Law Firm  
PO Box 11264  
Columbia, S.C. 29211

For the Defendant: Carmen Sheppard and Alan Sheppard, Pro se'

[Background noise and conversation from 00:00:00 to 00:15:58]

[Hearing commenced 11:00am.]

Speaker 1: All rise and come to order.

[Background noise and conversation from 00:16:00 to 00:17:24]

Judge Scarborough: All right, quiet we still [inaudible 00:17:25], I got two ... two matters that I've been told that I have, Motions to Stop the sale ... I don't see anything there's [inaudible 00:17:36].

Mr. Sheppard?

Mr. Sheppard: Yes, sir.

Judge Scarborough: Um, I need to make sure that I get clear on this one.

Mr. Sheppard: All right.

Judge Scarborough: There's [inaudible 00:17:54] NationStar versus Sheppard before I just accept [inaudible 00:17:57].

Mr. Sheppard: Yes, sir.

Judge Scarborough: All right, and then to read that ...

Mr. Sheppard: Yeah.

Judge Scarborough: You made [inaudible 00:18:12] you sent a copy to NationStar and we're going to try to get him on the phone OK [inaudible 00:18:14].

Mr. Sheppard: Okay.

Judge Scarborough: Uh, did you bring a court reporter with you this morning?

Mr. Sheppard: I tried ... I called up there to um ... court administration. They ... you really couldn't reach them. I think they got the bad line or something.

Judge Scarborough: All right. I figured with a days' notice [Inaudible 00:18:27]

[Background conversation 00:18:27 to 00:19:08]

Judge Scarborough: Dean? Is this Dean Hayes? All right, you're Dean Hayes? Yes ... yeah ... get the bailiff and set it up where they can sit down and then they got to move ... and then you'll have a place to sit... [inaudible 00:19:34].

I got Mr. Sheppard [crosstalk 00:19:34] I got what's been filed as a Writ of Mandamus about yesterday at 12:30 [crosstalk 00:19:47].

Mr. Sheppard: Yeah, I copied them too[inaudible 00:19:48]

Judge Scarborough: So I want to make sure you got that. I also looked through the file and I found a Notice of Appeal, okay ...

Mr. Sheppard: Okay.

Judge Scarborough: Have you filed a Notice of Appeal here?

Mr. Sheppard: Yes, sir.

Judge Scarborough: All right. Did you get it? At the end?

Mr. Hayes: I got ... if he ... might even get it Tuesday briefly chambered and I think you might ... you may come in better if you kindly call that number, it's ... it's 25 ... 3-2557, Judge.

The problem is that [inaudible 00:20:28] paperwork are 843-255-5712, 843-255-5712.

Judge Scarborough: All right, I'll call you right back. All right?

Mr. Hayes: Okay.

Speaker 3: Hello.

Judge Scarborough: Yes, this is Judge Scarborough. I'm trying to actually [inaudible 00:21:17] reach Dean Hayes.

Speaker 3: I sure will.

Mr. Hayes: Hi Judge, I greatly appreciate you letting me do that. I thought the connection might be a little better.

Judge Scarborough: Okay, yeah ... I can hear you better and I'm here in the courtroom with Carmen and Alan Sheppard...

Mr. Sheppard: Yes, sir.

Judge Scarborough: ... Sheppard and I got what's actually a Writ of Mandamus and [inaudible 00:21:37] Affidavits from Carmen Sheppard.

Now, I got ... this was filed yesterday ... I got a Notice of Appeal filed ... I don't know if it was filed at all. It's filed December 23 I believe [inaudible 00:21:51]?

Mr. Sheppard: Yes, sir.

Judge Scarborough: And then I also have a Motion for a New Trial [inaudible 00:21:58] I think we dealt with that in the order [inaudible 00:22:04].

Mr. Sheppard: Your Honor, I never ...

Mr. Hayes: Thank you, Your Honor.

Mr. Sheppard: I never got notice of those... any of those hearings. The one ...

Judge Scarborough: I'll give you a Notice of Hearing. You had an attorney at one time, Mr. Sheppard.

Mr. Sheppard: Yes, sir, and he ... when he ... he withdrew ... that was the hearing that I came from and the reason I got that Notice was because he mailed it to me. The other ... the other stuff I never got any of and he certainly wouldn't have ...

Judge Scarborough: All right. Dean, let's set this for [inaudible 00:22:31].

Mr. Hayes: Well, Judge ... um ... we had a Motion for a Summary Judgment immediately prior to David Haller's [assumed spelling] Motion for ... to be relieved as counsel and both were heard the same day. He made the Summary Judgment motion and then granted David Haller's motion to be relieved as council said there was no other hearing, Your Honor.

Judge Scarborough: Okay. So all I think what he's doing ... he filed about the 3rd of October, right?

Mr. Hayes: Yes, sir.

Judge Scarborough: Okay, all right and from that order that incorporated [inaudible 00:23:07].

Mr. Hayes: That's correct, Your Honor.

Judge Scarborough: Okay. All right. Um, you seeing the ... Notice of uh, appeal?

Mr. Hayes: I have [inaudible 00:23:16] Notice of Appeal and I did make copy to ... I think to Judy Dawkins in your office at Spencer Craig and um, I also included Alan uh, Sheppard uh on that uh via email because I didn't have Carmen Sheppard's email that day. I did have Alan Sheppard's email.

Judge Scarborough: Okay.

Mr. Hayes: And I informed him that the appeal did not stay the foreclosure[inaudible 00:23:43]Sale and I included a copy of the statute um showing him that the appeal did not stay the sale [inaudible 00:23:51].

Now, I just wanted it to be clear as I could to let him know that he [inaudible 00:23:58] maybe he just wanted to stay the foreclosure sale [inaudible 00:23:58] but the appeal by itself does not.

Judge Scarborough: Okay. All right, I'm looking at ... how about this Writ of Mandamus? Are you reading it?

Mr. Hayes: Yes, sir. I am ... I'm ready to ... yesterday evening uh ... I mean to me, all it basically says is that um that Carmen ... that ... just Carmen Sheppard uh is just stating that she wants a jury trial and that David Haller really didn't represent her. But I mean the fact is she was properly served with the basic Complaint over two and a half years ago.

Uh, if David Haller did not represent her, then she didn't call ... um, she ... I think they objected to the Order of [inaudible 00:24:49] Reference that David Haller can stand to the Order of Reference [ph] and in regards to her no counterclaims and[inaudible 00:24:54] the answer we were entitled to uh ... to have the case referred to Your Honor in the matter of right anyway under the DAB case.

Mr. Sheppard: Your Honor ...

Mr. Hayes: [Inaudible 00:25:12] so any claim they're talking about in origination, [inaudible 00:25:22], there's no way then that way past the statue of limitations [inaudible 00:25:24]. They've waived their right to a jury trial uh ... again, if there were no counterclaims set forth in their answer and we gave them a chance to um ... to turn into a loan modification. And I ... our office mail them loan modification documents on August ... in August, 2011. We followed up in September and October of 2011.

I didn't receive anything. They mentioned in their ... in their affidavit that they'd been dealing with a Kim Cavagnaro [assumed spelling] at NationStar. I talked to her personally on Monday and last Friday ...

yesterday and last Friday and there's nothing we can do [inaudible 00:26:20]. The fact is, that they do not make enough income to support um, the principle balance. It's almost \$900,000, Your Honor. And when we've offered Cash For Keys, my understanding is they're not interested in it. I think ... I think uh ... their stance is they're just going to fight it the whole way through.

Judge Scarborough: All right. Let me hear from [inaudible 00:26:52].

Mr. Sheppard: Well, we really tried of fighting everything and um ... we were under the impression that David just sort of told us he had everything taken care of and that was just nothing further from the truth and uh ... and when I came to that hearing because he said he was going to withdraw and found out that actually ... that's when I found out it was in the Master's hands and I also found out that it was ... that all this other stuff had taken place.

So what we did, is immediately try to find a attorney and you know, we've dealt with our share of scams and you know, paid these people \$1,500 to do this 'til we're, you know, about broke and so we finally found an attorney and um ... you know, all we ask is that you let our attorney just deal with them [inaudible 00:27:38] Let us do a Cash For Keys or something like that. We'd certainly be open to it instead of, you know, just losing our house. We have two 14-year olds and we just ... you know, we're just regular people, too.

Judge Scarborough: All right. Ms. Sheppard, I'm looking at this, it says something about a motion for a new trial and the counterclaim and I've looked through the file I don't see any counter claims and I don't see request for a jury trial were ever filed but [inaudible 00:28:00].

Mr. Sheppard: It's already been filed ... maybe they just never filed it.

Judge Scarborough: They're filed by [inaudible 00:28:07]. So I'm going to ... I'm going to ... I'm going to have to deny your motion. I ... I'm not sure that I have jurisdiction but it comes to a point where a Writ of Mandamus ... a Mandamus to Act on something. Based on the record before me, based on the length of time to take and not hear anything from [inaudible 00:28:31], based on the record ... the matter's been outstanding since 2011.

Mr. Sheppard: What about you give us a chance to have an attorney with us ... you know, deal with them and give us the ...

Judge Scarborough: You had an attorney, that's just your problem. Now, that the lady got you turned down on your modification. Your attorney [inaudible 00:28:41], so he should have warned you at that time as to what was going on.

Mr. Sheppard: All Right.

Judge Scarborough: But ..I'm just going to deny your motion and move forward with the sale [inaudible 00:28:51].

[Crosstalk 00:28:53]

Mr. Hayes: Your Honor, I would issue an Order of Court [inaudible 00:28:54]. I wonder if ...

Judge Scarborough: I will.

Mr. Hayes: Okay, thank you, Your Honor.

Judge Scarborough: I'll do that [inaudible 00:28:58].

Mr. Sheppard: Your Honor, Your Honor...Well, we'd like to ... file a, ... you know, Right of Rescission on this as well.

Judge Scarborough: You can file whatever [Inaudible 00:29:06] you like

Mr. Sheppard: Thank you.

Mr. Hayes: Judge, thank you.

Mr. Sheppard: Have a good one.

Judge Scarborough: [Inaudible 00:29:17]

