

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Master in Equity

Mikel R. Scarborough, Master in Equity

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Appellate Case No.: 2013-002807

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NATIONSTAR MORTGAGE, LLC., ..... Respondents.

v.

CARMEN D. SHEPPARD a/k/a Carmen Sheppard, Carmen Dillard Sheppard,  
Alan J. Sheppard a/k/a Alan Sheppard, TD Bank, National Association, LVNV  
Funding LLC, and Darrell Creek Plantation Homeowners' Association, Inc.  
.....Defendants

Of whom CARMEN D. SHEPPARD and ALAN J SHEPPARD are the Appellants.

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APPELLANT'S INITIAL BRIEF

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- II. The Master in Equity Erred in moving the Foreclosure up on the timeline after Appellant notified Master in Equity that arrangements had been made with NationStar regarding a current loan Modification application and the "Niche Loan" found by the NationStar Representative.
  
- III. The Master in Equity Erred when updating the figures on Appellants Foreclosure after the Master in Equity acknowledged that he understood that

Appellants had made arrangements with NationStar Representative. Further the list of Action (included in the RA item#25) show that actions continue to be carried out after Master in Equity is clearly informed that NationStar is engaged with Appellants and that the loan modification is basically approved. The Master in Equity action taken would be the direct reason that the loan modification would be denied.

IV. The Master in Equity Erred when designating this Foreclosure proceeding “No longer subject to the SCSC Administrative Order 2011-05-02-01 when falsely stating that Appellants did not respond to Foreclosure intervention process when Appellant specifically made note to the Master in Equity on numerous level. So many notes including verbal,(Transcript Attached in RA item#29), Written Motions, Affidavits and Notices (included in the RA#15), The Motion for New Trial after all these are disregarded by the Master in Equity. The Master in Equity’s Order (included in the RA#16), signed days prior to Thanksgiving and received days before Christmas are so out of line with the truth that the Conflict of Interest has manifested itself again and could only be made right by a New Trial.

V. The Master in Equity Erred when taking the Affidavit and Writ filed with the Clerk of Court on January 6 2013(included in the RA#18) into his own hands when Appellants are informed by Clerk inside Master in Equity office to show up the following morning for a special hearing where the Master in Equity will consider Appellants decision to declare bankruptcy. The conflicts include numerous significant material facts that the Master in Equity refuses to

acknowledge. Including Appellants Affidavit stating she had never met previous counsel much less disregarded court documents he responded to. Appellants had pleaded for an opportunity to be heard regarding the different fraud that has been taken on the Appellants. The Master in Equity's office immediately requested a copy while Appellants actually filed the Writ and Affidavit. Appellants were given a copy and requested to take copy to Master in Equity office. Appellants informed Master in Equity of intention to file for bankruptcy if needed to protect Appellants home. Master in Equity would respond with that would be fine and scheduled a hearing for 10AM the following morning. Appellants are informed to locate a Court Reporter or take care of transcript. Appellants arrive at 10AM where not one person other than guard was in attendance. 45 minutes go by and people begin to arrive by 11AM, Master in Equity has still not shown up. Right at 11AM with standing room only the Master in Equity walks in to the court room where he calls our case. What transpire was nothing close to a Full and Fair Opportunity to discuss the Bankruptcy of any other legitimate option as (Transcript Attached in RA item#30) this was actually the prescheduled foreclosure sale (included in the RA#23). The Master in Equity conflict would show up again as he makes it impossible for Appellants to have any kind of full and fair trial.(*Conflicts are noted in Record on Appeal, Items 15, Motion for New Trial, item 17, Notice of Appeal, Item 18, Writ of Mandamus and Supporting Affidavit by Appellant.*)

VI. NationStar mortgage foreclosure practices have followed the previous two companies, Aurora and American Bankers Conduit that held Appellant's mortgage. NationStar has acquired the mortgage that Aurora Dismissed after

making "Special Modification Arrangement" in April 2011 to work with Appellants until a current case for fraud was decided that involved numerous Conflict of Interest Claims with one conflict tied to this foreclosure case. Also due to the value of the property that could be subdivided, if needed, that would include two waterfront properties at a minimum in Charleston County SC. One of the strongest Real Estate Markets in the Country. With previous Appraisal that included comps upwards of \$3,000,000.00 NationStar realizes the value and circumstances the foreclosure has been fast-tracked right after NationStar took over loan.

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**Foxworth v. Murchison Nat. Bank, 134 S.E. 428, 136 S.C. 458 (S.C. 1926)**

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## STATEMENT OF ISSUES ON APPEAL

- I. The Master in Equity Erred in Granting Summary Judgment for the Plaintiff after Appellant gave very specific reasons material to the Foreclosure in the hearing date September 6 2013 (Transcript Attached in RA item#29) that would prevent granting Summary Judgment according to the SC Rule of Law.
- This hearing original was scheduled by the MIE to consider Motion for Summary Judgment by Plaintiff, however Appellants would only know about hearing after previous Counsel sent a Notice to Appellants home informing them of Motion to be Relieved as Counsel. Previous Counsel was originally engaged and promised to take care of the blotched modifications at Auroras' hands.
- Mortgage is written in Carmen Sheppards name, wife of Mr Sheppard. An \$880,000 mortgage for a school teacher. Mr Sheppard is simply working with the previous counsel to take care of this modification. Mr Sheppard has no idea the foreclosure has gotten to the level of disgust that he would find in the hearing this day. Actual Appellant, Carmen Sheppard has no idea of trouble going on at this point and expects the lawyer Mr Sheppard is working with has taken care of their home of 17 years. This would be the only hearing that Appellants are noticed of as all other Notices went to previous Counsel of Record. In this hearing Appellants inform the MIE and Plaintiff counsel that they have established contact with NationStar after getting Notice from previous counsel regarding his Withdrawal a couple weeks earlier.. Further that NationStar has found a niche loan that is a fit for Appellants specific large loan amount. In

addition the MIE is informed that Appellants have the means to make a mortgage payment. Appellant's have been informed by NationStar that their policy is one customer, One NationStar contact and that the Appellant now have a contact Ms Kim Cavanarough. The hearing would continue as previous counsel would walk into hearing and discussions would go on that are beyond Appellants understanding. Appellants make a request for time to have a chance to get another lawyer to review their case if any actions are going to be done by the MIE and Court along with at the Plaintiff request as Appellants are of the understanding that Foreclosure is now on Hold according to NationStar Representative until Modification is complete. The MIE informs Plaintiff that "Figures will not be Updated"( Transcript Attached in RA item#29). Appellants inform MIE that there are numerous issues that have not been brought to the courts attention that are material to the case to prevent granting Summary Judgement. Also If the MIE and Plaintiff Counsel are considering other items regarding the foreclosure then these need to be included. Appellants leave court with understanding that Foreclosure is on hold pending the modification application. The MIE wishes Appellants best of luck. Then issues are brought up that are outside Appellants understanding regarding different issues with work. Mr Sheppard informs the MIE that we make good money but he has not worked in a job in some time. At this point we have met Auroras /NationStar requirements

II. The foreclosure actions taken on Appellants primary residence simply did not

meet the strict guidelines prepared to prevent this exact abuse by Chief justice Toal's SCSC Administrative Order 2011-05-02-01. Regardless of the numerous attempts Appellants made to make mortgage payments and submitted packages with larges fees included to mortgage company, no decision was ever given to Appellants regarding their modification. Foreclosure sales were carried out three times that Appellants were made aware of after the fact while in the middle of a loan modification procedure. The Master in Equity Court was a complete error brought about by parallel or dual proceedings on NationStars behalf that brought complete chaos to the court and for this reason we pray that the South Carolina Court of Appeals will remand this case to trial court for further proceedings.

### **STATEMENT OF THE CASE**

The Appellant brought 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 Appellants counsel asked to be removed. The removal of Counsel being granted by the Master in Equity has left Appellant 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 Appellants are lawyers and the Appellants 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 was served on the court. The Appellants were 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 Appellants 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 Appellants previous counsel. As such none of the Appellants 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 Appellants 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)**)

### **Facts**

1. **2011-05-02-01, The Supreme Court of South Carolina Mortgage Foreclosure Actions**

“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 Appellants 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 Appellants see that NationStar’s name has replaced Aurora as the loan servicer and contacts NationStar direct via website’s 800 number. The Appellant was invited to work out a loan modification on or about August 28 2013 and put together preliminary figures that led the Appellants Loss Mitigation Officer from NationStar to open a Loan Modification file and begin working with the Appellants 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 Appellants want to make Judicial Note of both conflicts with the 2011-05-02-01 Act**

2. The Appellants contacted NationStar on their own accord to inquire why the Appellants could not work out a Modification of some kind due to the Extraordinary circumstances cast upon them in the Appellants 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 Appellant pending foreclosure. After learning of the

pending case NationStar has provided Access to Justice to the Appellants in the form of a pending "Foreclosure intervention" that includes a loan Modification. NationStar has informed the Appellants 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 Appellants while the Appellant continues to reach out to capable lawyers to represent them in the complexities involved in this case. When Appellants 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. SCSC2011-05-02-01 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 Appellants want to Make Judicial Note of the crude acts toward the Appellants taken on behalf of Aurora Mortgage that were clearly outside of any full and fair opportunity in dealings with the Appellants. 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 Appellants and what has been done to the Appellants

while previous counsel was not engaging the court. This has ill effects on the Appellants and has caused the Appellants 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 Appellants 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 Appellant made note during the hearing on or about August 28 2013, which Foreclosure Intervention had begun with the talks between the Appellant 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 Appellants 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 Appellants regarding this case and other pending cases that were completely resolved but continue to be called back to court. After the repossession of the Appellants primary vehicle in case # 2010CP1007009 that satisfied the

Judgment in full. The Appellants reached out to previous counsel to get the details of what is being done for the continued legal assault from the numerous cases. The Appellants 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 Appellants 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 Appellants Motion for a New Trial in Circuit Court. Previous Counsel was fully informed and has left the Appellants 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 Appellants have a mutual release that shows The Appellants 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 Appellant made note of in the hearing held on or about August 28 2013, the foreclosure and repossession of the Appellants 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 Appellants North Carolina Farm that Appellants 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 Appellants have been subject of and due to this extraordinary information significant to the matter of law at hand that was sent to the Appellants previous counsel having not been made note of in these hearings, the Appellants have made a Motion for a New Trial so that the Appellants 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..

## **ARGUMENT**

- I. The Master in Equity Erred in Granting Summary Judgment for the Plaintiff after Appellant gave very specific reasons material to the Foreclosure in the

hearing date September 6 2013 (Transcript Attached in RA item#29) that would prevent granting Summary Judgment according to the SC Rule of Law. The Master in Equity Erred in moving the Foreclosure up on the timeline after Appellant notified Master in Equity that arrangements had been made with NationStar regarding a current loan Modification application and the “Niche Loan” found by the NationStar Representative. The Master in Equity Erred when updating the figures on Appellants Foreclosure after the Master in Equity acknowledged that he understood that Appellants had made arrangements with NationStar Representative. Further the list of Action (included in the RA item#25) show that actions continue to be carried out after Master in Equity is clearly informed that NationStar is engaged with Appellants and that the loan modification is basically approved. The Master in Equity action taken would be the direct reason that the loan modification would be denied. The Master in Equity Erred when designating this Foreclosure proceeding “No longer subject to the SCSC Administrative Order 2011-05-02-01 when falsely stating that Appellants did not respond to Foreclosure intervention process when Appellant specifically made note to the Master in Equity on numerous level. So many notes including verbal,(Transcript Attached in RA item#29), Written Motions, Affidavits and Notices (included in the RA#15), The Motion for New Trial after all these are disregarded by the Master in Equity. The Master in Equity’s Order (included in the RA#16),signed days prior to Thanksgiving and received days before Christmas are so out of line with the truth that the Conflict of Interest has manifested itself again and could only be made right by a New Trial. The Master

in Equity Erred when taking the Affidavit and Writ filed with the Clerk of Court on January 6 2013(included in the RA#18) into his own hands that include numerous significant material facts that the Master in Equity refuses to acknowledge. Including Appellants Affidavit stating she had never met previous counsel much less disregarded court documents he responded to. Appellants had pleaded for an opportunity to be heard regarding the different fraud that has been taken on the Appellants. The Master in Equity's office immediately requested a copy while Appellants actually filed the Writ and Affidavit. Appellants were given a copy and requested to take copy to Master in Equity office. Appellants informed Master in Equity of intention to file for bankruptcy if needed to protect Appellants home. Master in Equity would respond with that would be fine and scheduled a hearing for 10AM the following morning. Appellants are informed to locate a Court Reporter or take care of transcript. Appellants Arrive at 10AM where not one person other than guard was in attendance. 45 minutes go by and people begin to arrive by 11AM, Master in Equity has still not shown up. Right at 11AM with standing room only the Master in Equity walks in to the court room where he calls our case. What transpire was nothing close to a Full and Fair Opportunity to discuss the Bankruptcy of any other legitimate option as (Transcript Attached in RA item#30) this was actually the prescheduled foreclosure sale(included in the RA#23). The Master in Equity conflict would show up again as he makes it impossible for Appellants to have any kind of full and fair trial.

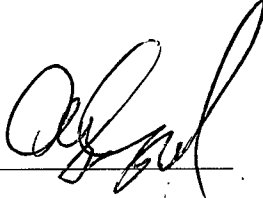
NationStar mortgage foreclosure practices have followed the previous two companies, Aurora and American Bankers Conduit that held Appellant's mortgage. NationStar has acquired the mortgage that Aurora Dismissed after making "Special Modification Arrangement" in April 2011 to work with Appellants until a current case for fraud was decided that involved numerous Conflict of Interest Claims with one conflict tied to this foreclosure case. Also due to the value of the property that could be subdivided, if needed, that would include two waterfront properties at a minimum in Charleston County SC. One of the strongest Real Estate Markets in the Country. With previous Appraisal that included comps upwards of \$3,000,000.00 NationStar realizes the value and circumstances the foreclosure has been fast-tracked right after NationStar took over loan.

NationStar Mortgages had two separate negotiations/ actions going on simultaneously. On one hand you have NationStar counsel, Mr Dean Hayes pursuing the foreclosure action and on the other hand you have NationStar Representative and loan modification specialist Ms Kim Cavanarough pursuing a loan modification. When the Master In Equity is made aware of the modification in progress and notice from NationStar documenting foreclosure sale is on hold, He wishes Appellants best of luck (Transcript of Record, September 6, 2013). Other activities are discussed regarding taxes that are above Appellants understanding and several requests are made to have an attorney review it if possible due to significance of the proceedings regarding the foreclosure of Appellants primary residence of 17 years.

## CONCLUSION

Based on the above, the Appellant acerts that the Master in Equity erred in issuing its Order of Foreclosure and this case should be remanded to trial court for further proceedings.

Respectfully submitted In Part but not yet complete.

Carmen Sheppard 

Carmen Sheppard and Alan Sheppard

June 20 2014