

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

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IN THE COURT OF APPEALS  
 OF SOUTH CAROLINA

CASE NO:

**EMERGENCY**

NOTICE OF MOTION AND

**MOTION FOR  
 MANDATORY INJUNCTION**

**I. JURISDICTION**

The lower court denied Appellants' motion to dismiss; stating – South Carolina is a notice pleading state and therefore Plaintiff is not required to abide by “SCRCP, Rule 12 and the rulings by the US Supreme Court. AND, if Appellants disagreed, I-20 runs straight to Columbia [Appeal]; Rules of Appellate Practice, Rules 201,202 and 262.

**II. PRELIMINARY STATEMENT**

Legally: Appellee (Nationstar Mortgage) does not have a remedy at law or equity – Appellee's foreclosure suit is: **FRAUD ON THE COURT!** Plaintiff's complaint was verified under the penalties of perjury certifying Gibbs defaulted on August 2013: Gibbs filed bank statement certifying timely payments from December 2012 thru September 2013. *Exhibit - A*

*The MORTGAGE NOTE that Nationstar Mortgage failed and neglected to file with this foreclosure suit was executed between Appellant, Barbara A. Gibbs and Bank of America; Bank of America is not a party to this litigation.* AND, Nationstar Mortgage has not provided proof

“they” have privity with Bank of America: that Bank of America has transferred the MORTGAGE NOTE to Nationstar Mortgage or that Bank of America has authorized Nationstar Mortgage to represent their [BOA] interest.

For the months of October, November and December 2013, Appellee returned Appellants’ mortgage payments that were paid when due and owed. *Exhibit – B*

The actions by Appellee began the same month this illegal foreclosure suit was filed – evidenced Appellee knew they were not entitled to the payments and/or forgiveness of all monies due and owed!

Thereafter, Appellee reported to the credit agencies that Appellant, Ms. Gibbs did not pay 29 mortgage payments: the last payment was made September 01, 2013 [Appellee last reported negative credit on July 31, 2015] and Barbara Gibbs owed \$79,554. *Exhibit - C*

These illegal acts destroyed any and all possibilities Appellant Ms. Gibbs had of obtaining mortgage for the home being purchased: for which a \$300,000 mortgage is needed. The home is a lake front, 6 bedrooms, and 4 baths – 4,000 sq. ft. home. Absent the requested relief Appellants will lose their home and \$3,000 cash. *Exhibit - D*

Appellee, twice: certified to the court Appellants failed and neglected to see a mortgage loan modification. Appellants filed the document evidencing their demand for loan modification; clearly setting forth the date all documents were submitted and the date Appellants complied with the Administrative Order of the South Carolina Supreme Court. *Exhibit - E*

Appellee and their co-conspirators: Bank of America, Urban Lending Solutions and SLS, improperly denied 5 million HAMP applications for an illegal profit of \$25 [B]illion per year.

Appellee knew Appellants paid each and every mortgage payment; there were no mortgage payment(s) due or owed Appellee; when this [FORECLOSURE] suit was filed. AND, because Appellants defended, Appellee refused to accept mortgage payments during litigation thereby having destroyed Mrs. Gibbs' ability to obtain a mortgage loan, to wit: reported to Credit Bureaus Ms. Gibbs had 29 missed mortgage payments and Ms. Gibbs was in arrears on her mortgage in the amount of \$79,554.00. *Exhibit – E*

Appellee filed this litigation to punish Appellants for requesting mortgage modification under the *Home Affordable Mortgage Program* (Hereinafter HAMP). Appellee was required to modify Gibbs' mortgage (2009 - 2015) from the current "alleged" 9.8% (\$2,900 per month) to 2% (\$1,400 per month): Appellee would receive \$1,500.00 less per month; during the past 6 years Appellee would "collect" \$108,000.00 less from Appellants on one loan or effectively 216,000 on both loans.

### III. STATEMENT

Appellee did not file this foreclosure based on the **MORTGAGE NOTE**; it is the mortgage note that sets out rights, responsibilities and remedies: it is the **MORTGAGE NOTE** that provides **STANDING** when a term or terms of the NOTE! Appellee has not suffered damages and therefore does not have standing to bring this litigation.

The Mortgage Note sets forth the terms of the agreement: the parties, the amount borrowed, the amount to be paid each month, the due date – what constitutes a breach, the right to "cure" a breach, the remedies for a breach, and/or jurisdictional and venue issues, etc.

*Appellee having failed and neglected to file the mortgage note, cannot comply with Request for Foreclosure Intervention – Administrative Order 2011-05-02-01*: Appellee cannot determine the

amount borrowed; Appellee cannot determine the interest rate; Appellee cannot determine the amount of Appellants' monthly payments; Appellee cannot determine the amount needed for "pay-off;" nor can Appellee determine the amount needed to cure the "alleged" breach or whether any moneys are due or owed! This case represents an illegal attempt to extort moneys from Gibbs not due or owed!

#### **IV. 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 Appellants' application for modification on or about September 28, 2011. BOA engaged in deliberate dilatory tactics to avoid processing Appellants' application. Appellants made multiple inquires as to the status of their application; and finally BOA informed Appellants on August 22, 2012 that BOA would obtain the documentation and information to address Appellants' 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 Appellants, 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 Appellants.

***On July 26, 2013 Appellants 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, Appellants began research designed to file a lawsuit under the Racketeering and Influence Corrupt Organization Act (Hereinafter RICO).

On October 23, 2013 the Appellee filed this illegal foreclosure action.

On October 28, 2013 Appellants filed the RICO complain in Federal District Court for the District of South Carolina: Appellants had the case dismissed without prejudice and refilled the case in the District of Colorado.

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

On November 6, 2013 the Korn Law Firm, representing Nationstar, had Appellants served with the foreclosure suit. Appellants 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 Appellants filed a motion to dismiss based on lack of subject matter jurisdiction, failure to state a claim upon which relief could be granted, and suit was pending – addressing Appellee's racketeering activities. And, asked the trial court to sanction Appellee and their attorney for having committed fraud on the court.

## V. STATEMENT OF FACTS

The illegal foreclosure litigation filed by Appellee is designed to “thwart” the conspiracy and racketeering (RICO) litigation Appellant, Mr. Gibbs filed against Appellee, Bank of America, Urban Lending Solutions and SLS: currently pending in the Maryland Circuit Court. Appellee has ensured Gibbs will not be able to “cash out” the \$350,000 equity he has in his home. Thereby forcing Gibbs to sell the 152 works of art valued at more than \$500,000: displayed in Appellants’ 6,000 sq. ft. home [\$150 per sq. ft.]; at “fire sale” prices or selling vehicles for which Appellants have paid more than \$200,000 cash and/or exhausting savings now under \$200,000.

The home being purchased will be used to provide Appellant, Mr. Gibbs a sanctuary to litigate the conspiracy and racketeering case in Maryland. The outcome of the case will serve the public at large: five (5) million HOMEOWNERS were illegally denied mortgage modifications; the banks, listed *supra*, make \$25 [B]illion per year in illegal profits. ADDITIONALLY,

Appellant, Mr. Gibbs has litigated for more than 20 years to recover \$50 [B]illion of stolen Black art: Gibbs was retained in 1995 to represent the Estate of African American Artist, William H. Johnson. The “Godfather” of the art thefts (corrupt organization in violation of RICO) is none other than William “Bill” Cosby, *see*, [www.mystolenart.com](http://www.mystolenart.com). It is the lake front solace of “this home” that will provide the impetus for the RICO civil suit Mr. Gibbs will file in the US District Court for the Western District of California: pursuant to 18 USC § 1964. Under the same statute Mr. Gibbs is setting out legal facts that will provide a cause of action for the more than 50 women, drugged and raped by Bill Cosby. Cosby’s “handlers,” “fixers,” “door keepers,” the talent agencies that supplied the young girls, etc., also provide the RAPE victims a PATHWAY to civil litigation under 18 USC §§ 1962 & 1964.

Mr. Gibbs must also be extracted from this legal suit in order to affect current events: the BlackLivesMatter and police killings have reached epic proportions. Many of Mr. Gibbs' former colleagues: police officers, lawyers/judges and politicians believe Mr. Gibbs may be the "glue" capable of resolving "these" extreme hostilities. Exhibit – F

## MEMORANDUM OF LAW

### VI. ARGUMENT

Appellants are entitled to protection from lost of their right to purchase the home of their choice; the home is "one of a kind." If the sought relief is not granted Appellants will suffer irreparable and irreversible damage (lost of home and \$3,000) due to the illegal acts by Appellee. 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). 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).

Nationstar Mortgage's fraud on the courts is unequivocal. The US Supreme Court resolved the issue Appellants present to this Honorable Court 143 years ago. The Supreme Court decision "clearly states Appellee [Plaintiff] must own the **Note** and **Mortgage** at the time the Complaint is

filed. The most basic elements of standing are deliberately violated. See, Carpenter v. Longen, 83 U.S. 271, 16 Wall. 271, 21 L. ed. 313 (1872).

Standing is a fundamental requirement for instituting an action. Brock v. Bennett, 313 S.C. 513, 519, 443 S.E.2d 409, 412 (Ct.App.1994). "Generally, a party must be a real party in interest to the litigation to have standing." Hill v. S.C. Dep't of Health & Env'tl. Control, 389 S.C. 1, 22, 698 S.E.2d 612, 623 (2010) (internal quotation marks omitted).

Unless a claimant can colorably assert a loss, it lacks standing. See, Lujan v. Defenders of Wildlife, 504 U.S., 560 (1992) (noting that an injury is a required element of constitutional standing))... "[T]he assignment of a note secured by a mortgage carries with it an assignment of the mortgage, but . . . the assignment of the mortgage alone does not carry with it an assignment of the note." Hahn v. Smith, 157 S.C. 157, 167, 154 S.E. 112, 115 (1930); see also Ballou v. Young, 42 S.C. 170, 176, 20 S.E. 84, 85 (1894) ("The transfer of a note carries with it a mortgage given to secure payment of such note."). "A mortgage and a note are separate securities for the same debt, and a mortgagee who has a NOTE and a MORTGAGE to secure a debt has the option to either bring an action on the note or to pursue a foreclosure action." U.S. Bank Trust Nat'l Ass'n v. Bell, 385 S.C. 364, 374, 684 S.E.2d 199, 204 (Ct. App. 2009). The party seeking foreclosure has the burden of establishing the existence of the debt and the mortgagor's default on that debt. Id. at 374-75, 684 S.E.2d at 205.

At all times relevant to this foreclosure, Appellee was/is aware they have committed fraud on the court, to wit: a default did not occur; falsely claiming Appellants did not apply for mortgage modification: September 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 – Administrative Order 2011-05-02-01; was filed by Appellants on the 19<sup>th</sup> day of November 2014 (*Motion to Dismiss*, ¶ 9, *Exhibit-F*). See, **Exhibit - B**

ARGUMENTO: Because Appellee does not have the MORTGAGE NOTE, it is a *legal impossibility* for Appellee to offer Appellants mortgage modification. Appellants established by clear and convincing evidence – uncontroverted by Appellee, Appellants paid their mortgage!

A mandatory injunction must issue requiring Appellee to grant Appellants two (2) mortgages: replacement of Appellants' two (2) homes.<sup>1</sup> Purchase money [Mortgage note] shall be in the form of a mortgage rate of .5% for 5 years; allowing Appellants to be made WHOLE: moneys illegally collected by Appellee by denying Appellants' HAMP applications and 2% for the remaining 25 years; the mortgage rate Appellants were entitled to under HAMP.

## VI. CONCLUSION

Appellee filed the foreclosure suit in an attempt to defraud Gibbs – steal their homes. Appellee has stolen Gibbs' home: 20105 Torrey Pond Place, Montgomery Village, Maryland 20886; AND, destroyed Gibbs' mortgage: 4257 Monterey Drive, Florence, South Carolina 29501; both mortgages must be replaced to avoid Appellants suffering irreparable damage.

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<sup>1</sup> Appellant, Mr. Gibbs underwent CANCER surgery at Johns Hopkins Hospital, Baltimore, Maryland and while being treated lived at his [their] primary home: 20105 Torrey Pond Place, Montgomery Village, Maryland 20886. Ms. Gibbs lived at her [their] primary home: 4257 Monterey Drive. Mr. Gibbs had been awarded more than \$350,000 (Department of Defenses): in retaliations a district manager "caused" almost \$1,500 per month to be deducted from Gibbs' benefits. Mrs. Gibbs had retired and her income was reduced more than \$40,000 per year: these factors made both mortgages eligible for modification: 2% under HAMP....

Appellee's illegal conduct is in violation of 18 USC §§ 1961, 1962 and 194; ADDITIONALLY, Appellee violated 42 USC §§ 1983 and 1985. AND, **COMES NOW**, the Appellee and attempts to have the Courts of South Carolina violate 42 USC § 1986.... **EXHIBIT - G**

WHEREFORE, Appellants pray this Honorable Court order Appellee to provide Appellants two (2) – 30 year home mortgage loans: .5% for 5 years and 2% for the remaining 25 years, dismiss this suit with prejudice, and that the Honorable Court grant such other and further relief, at law and equity, general or special, to which Appellants have shown themselves justly entitled.

Respectfully Submitted,



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September 7, 2015  
Florence, SC