

STATE OF SOUTH CAROLINA	)	IN THE COURT OF APPEALS
	)	OF SOUTH CAROLINA
COUNTY OF RICHLAND	)	
	)	
NATIONSTR MORTGAGE, LLC,	)	
	)	
Appellee,	)	
	)	CASE NO: 2015-001873
vs.	)	
	)	
BARBARA A. GIBBS, MELVIN E.	)	MOTION FOR RECONSIDERATION
GIBBS, And WESTBROOK PHASE IV	)	
HOMEOWNERS' ASSOCIATION	)	and
	)	
	)	AMENDED TRO
Appellants.	)	
	)	

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**AFFIDAVIT**

STATE OF SOUTH CAROLINA   \*

  \* ss:

RICHLAND COUNTY            \*

I, **M. EUGENE GIBBS**, do solemnly declare and affirm under the penalties of perjury that the contents of the foregoing affidavit and documents are true and correct to the best of my knowledge, information, and belief. This affidavit is made upon my personal knowledge.

1.     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].” *Appellants’ Motion for Mandatory Injunction*

2.     Gibbs called the clerk’s office each day – several times some days, prior to dismissal and inquired as to the status of case the case. Gibbs was not informed that their filings designed to cure the defects requested by the clerk.

3.     Appellee did not file this foreclosure based on the **MORTGAGE NOTE**; it is the mortgage note that sets out rights, responsibilities and remedies.

4. Appellee; under the then existing law, was required to modify Gibbs' mortgages (2009 - 2015) from the current "alleged" 9.8% (\$2,900 per month) to 2% (\$1,400 per month): Nationstar would have received \$1,500.00 less per month; during the past 6 years Nationstar would have "collect" \$108,000.00 less from Gibbs on one loan or effectively 216,000 on both loans.

5. Nationstar destroyed Gibbs' ability to obtain a mortgage loan; the "due diligence" period of ten (10) days expired on Saturday, the 12<sup>th</sup> day of September 2015 - The Seller can void the purchase contract and retain Gibbs' \$3,000; AND, sell Gibbs' home to another Buyer. Gibbs show there is no adequate remedy at law and immediate injunctive relief is necessary: ***TO RETAIN THE STATUS QUO.***

6. The seven (7) day delay: notification to the seller this matter would be resolved on the 14<sup>th</sup> day of September, and today, places Gibbs in a precarious position. The Seller has the right to void the purchase agreement and retain Gibbs' "good faith" deposit (\$3,000). Gibbs' desire to purchase was based on the water front home having a value of about \$410,000 and being "perfect" for Gibbs' transition.

7. In order to save Gibbs' purchase of said home, given Gibbs is not interested in accumulating damages against Appellee; the most viable option to Gibbs is completing the purchase.

a. Gibbs' home has a value of about \$800,000. AND, the requested loan modification would provide Gibbs the \$300,000 needed.

8. 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.

9. 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.

10. 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.

11. 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 Nationstar’s racketeering activities. And, asked the trial court to sanction Nationstar and their attorney for having committed fraud on the court. *Nationstar attempted to steal Gibbs’ \$1 million home by illegally foreclosing on a \$292,000 mortgage not due or owed.* Nationstar’s criminal “onslaught” has created conditions in which Melvin Gibbs’ psychiatric health requires relocation – replacing Gibbs’ \$1 million HOME!

12. On the 29<sup>th</sup> day of April 2015 Nationstar by and through their attorneys: Butler & Hosch, made application for an Order of Reference. Gibbs filed an objection based on fraud on Gibbs and the court; and the Korn Law Firm was the attorney of record.

13. On the 28<sup>th</sup> day of July 2015 a substitution of counsel was granted whereby Butler & Hosch became the attorney of record.

14. 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. (*Appellants’ Mandatory Injunction, EXHIBIT – A*)

15. *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.

16. For the months of October, November and December 2013, Appellee returned Appellants’ mortgage payments that were paid when due and owed. (*Appellants’ Mandatory Injunction, EXHIBIT – B*)

17. Nationstar began their refusal to process Gibbs’ mortgage payments same month this illegal foreclosure suit was filed – this act evidenced Nationstar knew they were not entitled to the payments and/or forgiveness of all monies due and owed!

18. Thereafter, Nationstar reported to the credit agencies that Appellant, Ms. Gibbs did not pay 29 mortgage payments: the last payment was made September 01, 2013 [Nationstar last reported negative credit on July 31, 2015] that Barbara Gibbs owes \$79,554. (*Appellants’ Mandatory Injunction, EXHIBIT – C*)

19. These [illegal] acts destroyed any and all possibilities Appellant, Ms. Gibbs had of obtaining a mortgage loan 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. (*Appellants’ Mandatory Injunction, EXHIBIT – D*)

20. Nationstar, twice: certified to the court Gibbs failed and neglected to seek a mortgage loan modification. Gibbs filed the document evidencing there demand for loan modification; clearly setting forth the date all documents were submitted and the date Gibbs

complied with the Administrative Order of the South Carolina Supreme Court. (*Appellants' Mandatory Injunction, EXHIBIT – E*)

21. On September 07, 2015, Gibbs HAND CARRIED a copy of their Motion for Mandatory Injunction to the Offices of Butler & Hosch: doing business at: 1201 Main Street, Suite 1110, Columbia, SC 29201; said motion was addressed to Dean Hayes, Esq. Gibbs was informed Butler & Hosch abandoned their offices in May 2015; and did not provide a forwarding address for the law firm or any of their attorneys. (*Appellants' Amended Mandatory Injunction, EXHIBIT – H*)

22. Gibbs then telephoned Butler & Hosch directly on (803) 252-7370 and was informed by AT&T, the number was no longer in operation, but AT&T could provide Gibbs with the numbers of similar businesses.

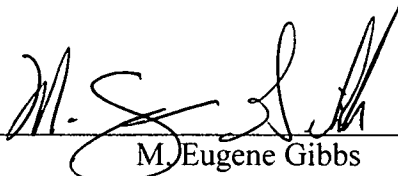
23. On August 26 and 27, 2015, Gibbs attempted to serve pleadings on Nationstar Mortgage via the email address provided by their attorney, Dean Hayes, Esq.: dhayes@butlerandhosch.com. The emails were returned because the Host or domain name could not be found. (*Appellants' Amended Mandatory Injunction, EXHIBIT – I*)

a. My email served on Dean Hayes, Esq., dhayes@butlerandhosch.com: Letter to Chief Judge Few, September 17, 2015, was not returned via MAILER DAEMON.

24. On August 28, 2015, Gibbs attempted to serve pleadings on Nationstar Mortgage via the **PHYSICAL** address provided by their attorney, Dean Hayes, Esq.:

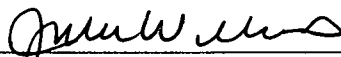
Dean Hayes, Esq.  
BUTLER & HOSCH  
P.O. Box 7128  
Columbia, SC 29202.

The United States Postal Service returned the pleading with the explanation as follows:  
Return to Sender, ATTEMPTED – NOT KNOWN, UNABLE TO FORWARD. (*Appellants’  
Amended Mandatory Injunction, EXHIBIT – J*)

  
\_\_\_\_\_  
M. Eugene Gibbs  
4257 Monterey Drive  
Florence, SC 29501

Subscribed and sworn to before me, this 19<sup>th</sup> day of September 2015.

[Notary Seal:]

  
\_\_\_\_\_  
My commission expires: 10-10-2024

NOTARY PUBLIC

