

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 NATIONSTAR MORTGAGE, LLC,)
)
 Appellee,)
)
 vs.)
)
 BARBARA A. GIBBS, MELVIN E.)
 GIBBS, And WESTBROOK PHASE IV)
 HOMEOWNERS' ASSOCIATION)
)
 Appellants.)
 _____)

IN THE COURT OF APPEALS
 OF SOUTH CAROLINA

CASE NO: 2015-001873

MEMORANDUM OF LAW

RECEIVED
 OCT 26 2015
 SC Court of Appeals

I. JURISDICTION

Pursuant to this Court’s Order dated October 20, 2015: Appellants file this Memorandum of Law and state as follows:

a. The circuit court failed and neglected to rule of Appellants’ motion to dismiss: Therefore, on the 20th day of March 2014 Appellants filed their answer requesting a JURY TRIAL on each and every issue, ***EXHIBIT – A. The master-in-equity does not have jurisdiction over jury trials.***

b. The circuit having denied Appellants’ motion to dismiss deprives the master-in-equity of jurisdiction. The master-in-equity cannot reverse decisions rendered by a circuit court judge. Where, as here, the Appellee does not have standing, the master-in-equity would be forced to conduct an illegal proceeding.

(1) An order of reference is not designed for the abdication of a circuit court judge’s duties and responsibilities – but rather for the efficient administration of justice. AND,

(2) The order of reference does not provide guidance as to any issues.

II. PRELIMINARY STATEMENT

When a defendant under the guise of anonymity – wields deadly force; placing a person in fear while stealing their possessions, we do not hesitate to label his/her action as a ROBBERY. Yet, where, as here, Appellee commits the same act using this Court as the “weapon of choice,” we provide Appellee with aid and comfort.

III. STATEMENT OF FACTS

Foreclosure litigation is based on a mortgagor having breached a covenant(s) of the Mortgage Note! The mortgagee files suit alleging: they are the party entitled to relief; an affidavit attesting to the debt owed; the covenant(s) breached by the mortgagor and the damages permitted by the Mortgage Note.

IV. STATEMENT OF THE CASE

On October 23, 2013 the Appellee filed this illegal litigation disguised as a foreclosure suit.... On July 28, 2015, the lower court held a hearing concerning Appellee’s motions for substitution of counsel [**Butler & Hosch, P.A.**], motion for an order of reference, and Appellant’s motion to dismiss. The judge granted both motions [July 28, 2015] filed by Appellee. **EXHIBIT – B.** AND, denied Appellant’s motion to dismiss.

On July 29, 2015, Appellants filed a motion for reconsideration; the circuit court refused and neglected to rule on the motion.

Thereafter, unknown to Appellants, Appellee filed an ex-parte motion to have their order of July 28, 2015, amended. Appellee dated the requested order – July 30, 2015; however, the court’s

stamp and recordation of the order is dated August 24, 2015: changing the attorney of record from **Butler & Hosch, P.A.** to Scott and Corley P.A.

On August 25, 2015 – having no knowledge of the amended order of August 24, 2015, Appellants filed their Notice of Appeal. On August 7, 2015, Appellants made application to this Court for an Injunction: amended on August 10, 2015 to include a motion for Temporary Restraining Order.

MEMORANDUM OF LAW

V. ARGUMENT

Appellants filed their answer requesting a JURY TRIAL on each and every issue. *The master-in-equity does not have jurisdiction over jury trials.* The master-in-equity cannot reverse decisions rendered by a circuit court judge. Where, as here, the Appellee does not have standing, the master-in-equity would be forced to conduct an illegal proceeding. AND, the order of reference does not provide guidance as to any issues.

Appellants right to a jury trial is absolute and cannot be vindicated after final judgment, and are thus immediately appealable. *Salmonsens v. CGD, Inc.*, 377 S.C. 442, 661 S.E.2d 81 (2008)(order revising class action from opt-out to opt-in class immediately appealable as an order affecting the mode of trial); *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005)(order granting a motion to disqualify an attorney affects the mode of trial and is immediately appealable):

THE STATE OF SOUTH CAROLINA In The Supreme Court

JUSTICE BURNETT: We granted a writ of certiorari to review the Court of Appeals' opinion in *Hagood v. Sommerville*, S.C. Ct. App. Order dated May 22, 2003 (unpublished order). We reverse....

In a well-established exception to the general rule, we repeatedly have held that the denial of a party's right to a particular mode of trial is immediately appealable as a substantial right under Section 14-3-330(2). See *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 72, 533 S.E.2d 331, 333 (2000) ("Pursuant to § 14-3-330(2), this Court has held on numerous occasions that when a trial court's order deprives a party of a mode of trial to which it is entitled as a matter of right, such order is immediately appealable.") (listing cases); *Creed v. Stokes*, 285 S.C. 542, 331 S.E.2d 351 (1985) (**order referring case to master in equity affects the mode of trial, a substantial right, and party waived his objection to the reference and his right to jury trial by failing to immediately appeal the order**); *Bateman v. Rouse*, 358 S.C. 667, 675, 596 S.E.2d 386, 390 (Ct. App. 2004) (**purpose of immediate appeal on right to particular mode of trial is to preserve party's constitutional right to trial by jury which would otherwise be lost.**)

Also unlike most other appeals, an order affecting the mode of trial must be immediately appealed or the right to appeal is lost. In other cases, a party may immediately appeal an order affecting a substantial right or wait to raise the issue on appeal from the final judgment. *Price v. Peachtree Elec. Services, Inc.*, 396 S.C. 403, 721 S.E.2d 461, 463 (S.C.App. 2011).

Courts more frequently encounter claims that an interlocutory order is immediately appealable because it affects a substantial right. This provision is narrowly construed to cover only those cases where the substantial right at issue cannot be later vindicated on appeal after the entire case is over. See, e.g., *Thornton v. South Carolina Elec. & Gas Corp.*, 391 S.C. 297, 305, 705 S.E.2d 475, 479 (S.C.App. 2011).

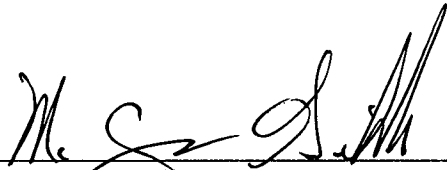
If the circuit court errs in striking out any material allegations of a good cause of action or good defense, it is impossible to remedy it in the course of the trial, because the evidence and the issues submitted to the jury cannot be extended beyond the issues made by the pleading, and on appeal from the final judgment this court could not say there was error of law in confining the evidence and charge to the pleadings. *Id.* (quoting *Harbert*, 74 S.C. at 16, 53 S.E. at 1002); see also *Caldwell v. McCaw*, 141 S.C. 86, 91, 139 S.E. 174, 175 (1927).

VI. CONCLUSION

Appellee's illegal conduct has caused Appellants irreparable harm for two (2) years and must stop! Appellants have suffered health issues do to the stress of their home being stolen; lost the \$3,000 "good faith" deposit placed on a second home being purchased to escape the persecution by Appellee; have put their home on the market to be sold; and purchased a home in another state!

WHEREFORE, Appellants pray this Honorable Court grant their motion for reconsideration and order all relief prayed for.

Respectfully Submitted,



M. Eugene Gibbs, [Esq.] Pro-se
4257 Monterey Drive
Florence, SC 29501
843-610-0674
mgibbs70@aol.com

October 26, 2015

FOURTH DEFENSE

If Defendants signed a NOTE, the NOTE has been discharged by the Plaintiff in that Plaintiff suspended any and all future payments.

FIFTH DEFENSE

The Defendants if obligate under a NOTE, made any and all payment due and owed August 2013, and was not in default as alleged by Plaintiff.

SIXTH DEFENSE

Plaintiff has committed fraud on this court by alleging Defendants were in default on August 2013; by alleging Defendants did not make application under HAMP; and falsely filing a Certificate of Mortgagor non-compliance.

SEVENTH DEFENSE

Plaintiff filed for an order of reference prior to complying with Administrative Order 2011-05-02-01 [South Carolina Supreme Court].

EIGHTH DEFENSE

This court does not have subject matter jurisdiction in that there is no NOTE evidencing a loan filed with the pleading(s).

NINTH DEFENSE

This court does not have jurisdiction in that there is a failure of the pleading to state facts sufficient to constitute a cause of action: no genuine issue is in dispute. And, Defendants are entitled to summary judgment as a matter of law.

TENTH DEFENSE

This court does not have jurisdiction in that there is another action pending between the same parties for the same claim [Federal District Court, District of Colorado], violations of HAMP necessitating the RICO suit.

DEFENDANTS DEMAND TRIAL BY JURY ON EACH AND EVERY ISSUE! This is a case concerning fraud and not a foreclosure no matter how pleaded.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "M. Eugene Gibbs", is written over a horizontal line.


M. Eugene Gibbs
4257 Monterey Drive
Florence, SC 29501
843-407-6297

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF FLORENCE)	
)	
NATIONSTR MORTGAGE, LLC,)	
)	
PLAINTIFF,)	DOCKET NO: 2013-CP-21-2795
)	
vs.)	
)	
BARBARA A. GIBBS, MELVIN E.)	
GIBBS, And WESTBROOK PHASE IV)	
HOMEOWNERS'S ASSOCIATION,)	
)	
)	
DEFENDANTS.)	
)	

CERTIFICATE OF SERVICE

I, Melvin E. Gibbs, hereby certify that a copy of Defendants' Answer was placed with USPS, postage prepaid, this 20th day of March 2014, addressed to:

Dean Hayes, Esq.
KORN LAW FIRM, P.A.
P.O. Box 11264
Columbia, SC 29211-1264



Melvin E. Gibbs
4257 Monterey Drive
Florence, SC 29501

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Nationstar Mortgage, LLC,

PLAINTIFF,

v.

Barbara A. Gibbs, Melvin E. Gibbs, and
Westbrook Phase IV Homeowners Association,

DEFENDANTS.

347348

IN THE COURT OF COMMON PLEAS

C/A No.: 2013-CP-21-02795

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR AN
ORDER OF REFERENCE**

CERTIFIED: A TRUE COPY

Cynthia R. Stearns
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

It appearing pursuant to Rule 53 - SCRCF that this action is one for the foreclosure of a mortgage and as such may be referred to The Honorable Cynthia Graham Howe as Master-In-Equity for Horry County, and that the Master-In-Equity shall have the authority to enter final judgment, with appeal, if any, directly to the South Carolina Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules; now, on motion of the undersigned attorney for the Plaintiff,

IT IS ORDERED that this case be referred to The Honorable Cynthia Graham Howe as Master-In-Equity to direct entry of final judgment in this action under Rule 53 (b), SCRCF. Any appeal from the final judgment entered by the Master-in-Equity shall be directly to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

Michael M. [Signature]
CLERK OF COURT/PRESIDING JUDGE
Stearns, South Carolina
7-28-, 2015

I SO MOVE:

BUTLER & HOSCH, P.A.

[Signature]
Dean A. Hayes, SC Bar No.: 66066
Robert P. Jackman, SC Bar No.: 78755
Post Office Box 7128
Columbia, SC 29202
Telephone: (803) 569.1765
Facsimile: (803) 403.9753
ATTORNEYS FOR PLAINTIFF

FILED
2015 JUL 28 PM 2:19
CLERK OF COURT
C.C.P. & G.S.
FLORENCE COUNTY, S.C.

April 29, 2015

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEAS

FILED

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP2102795

Nationstar Mortgage

2015 AUG 24 PM 4:00

Barbara A Gibbs

Melvin E Gibbs

Westbrook Phase Iv

Homeowners Association

CONNIE REEL-SHEAR
CCCP & GS
FLORENCE COUNTY, SC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

CERTIFIED: A TRUE COPY

Carla B. Swain
Date

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Michael M. [Signature]
Circuit Court Judge

2140
Judge Code

For Clerk of Court Office Use Only

This judgment was entered on August 24, 2015, and a copy mailed first class or placed in the appropriate attorney's box on August 25, 2015, to attorneys of record or to parties (when appearing pro se) as follows:

John Brian Kelchner PO Box 8237 Columbia, SC 29202
✓ Andrew Michael Sullivan PO Box 2065 Columbia, SC 29202
Vance L. Brabham III PO Box 2065 Columbia, SC 29202

Melvin E Gibbs 4257 Monterey Drive Florence, SC 29501
Barbara A Gibbs 4257 Monterey Drive Florence, SC 29501

ATTORNEY(S) FOR THE PLAINTIFF(S)

Cynthia G. Howe
PO Box 1236
Conway, SC 29528

Court Reporter

ATTORNEY(S) FOR THE DEFENDANT(S)

Connie Reel-Shearin

Connie Reel-Shearin - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Plaintiff's Motion for Substitution of Counsel and Motion to Appoint Special Referee was heard on July 28, 2015. It is Ordered that Scott and Corley P.A. shall now be Plaintiff's attorney of record and, further, that the current counsel of record is hereby relieved of any further responsibility for Plaintiff in this matter.

Motion to Appoint Special Referee granted. It is Ordered that case # 2013-CP-21-2795 is hereby transferred to Horry County and referred to the Master in Equity Cynthia Graham Howe.

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

IN THE COURT OF APPEALS
OF SOUTH CAROLINA

RECEIVED

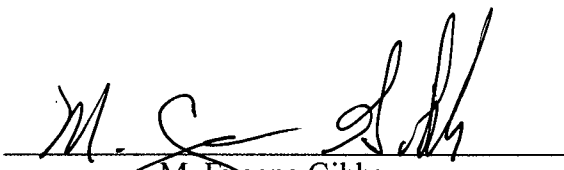
OCT 26 2015

CASE NO: 2015-001876
SC Court of Appeals

CERTIFICATE OF SERVICE

I, Melvin E. Gibbs, hereby certify that a copy of Appellants' Memorandum of Law, was placed with USPS Priority Mail, this 26th day of October 2015, to:

Dean Hayes, Esq.
SCOTT & CORLEY, P.A.
2712 Middleburg Drive
Suite 200
Columbia, SC 29204



M. Eugene Gibbs
4257 Monterey Drive
Florence, SC 29501