

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM YORK COUNTY

Master In Equity

S. Jackson Kimball, III

Case No. 2014-CP-46-2394

Nationstar Mortgage

Respondent,

V.

Norman D. Lowery

Appellant.

(INITIAL) BRIEF OF APPELLANT

1. I certify Rogers Townsend and Thomas, 220 Executive Center Drive, Columbia SC 29210, PHH Corporation, 2001 Bishops Gate Boulevard, Mt Laurel NJ 08054, Nationstar Mortgage, 350 Highland Drive, Lewisville TX 75067 and Coldwell Banker Mortgage, P.O. Box 5452 Mt. Laurel NJ 08054 were served with notice of initial brief of appeal via first-class mail on 3/14/2016.

2. On 23 October 2015 I arrived at the Master In Equity (S. Jackson Kimball, III) hearing to respond to the allegations made by the Plaintiff, PHH Mortgage Corp., here on noted as PHH) represented by Rogers Townsend & Thomas and provide evidence the allegations include but not limited to the following: false, miss-leading/manufactured, Robo signed/verified supporting documents, failure to follow appropriate foreclosure procedures, and related unfair and deceptive practices include, dual tracking, double jeopardy. Violations of the US Constitution, and its Amendments (5<sup>th</sup> and 14<sup>th</sup> Amendment) to include but not limited to Due Process and a Property rights, 12 CFR paragraphs: 1024.35, 10124.35 (b), 1024.38(b), 1024.39(a)(b), 1024.35(f), 1-3, 1026.36, 15U.S.C. 1692(g)(j)

2. History of this case: The case was initiated by PHH Mortgage Corporation Here on noted as PHH) at/about February or March 2013 and represented by Rogers Townsend and Thomas (here on noted as RTT) and served to me on/about 15 May 2013. There was no "Good Faith" effort to contact me in any shape or form regarding any issue with the mortgage (RESPA 12CFR 1024.35(f)). I made all required payments with the exception of Jan 2013, when I suffered a Heart Attack and subsequent surgery and rehabilitation. During which time my wife made the monthly payments February thru May 2013 and

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assumed I had paid the mortgage before the heart attack. She made all subsequent payments via personal check. I didn't have a financial hardship which prevented me from making monthly Mortgage payments. I didn't receive any notifications of any shape form or fashion from PHH indicating missing payment(s) as required by 12 CFR 1024.39(b). PHH failed to make "Good Faith Efforts" in contacting me to make Early Intervention efforts (IAW 12 CFR 1024.39(a) and 12 CFR 1024.39(a). After making all payments I was served with court documents (2013-CP-46-1503) for foreclosure action by PHH. After learning the January 2013 payment was missed, February 2013 payment was processed by PHH and subsequent payments were not process, I contacted PHH via phone offered to PHH Mortgage an RTT the opportunity to stop foreclosure action and reinstate the mortgage, where I would at least double payments to put the mortgage loan back on track, regardless of the gross errors made by PHH. In addition I wrote RTT with the same offer. I responded, in writing, to RTT and PHH who failed to satisfy all errors put forth in the Qualified Letter or Notice/Dispute and refused the opportunity to reinstate the mortgage in a reasonable manner. The case was dismissed by the Court for the case not being moved forward by PHH or RTT . Within month(s) PHH thru RTT initiated another foreclosure action (Docket No. 2014CP4602394) using the same false, not validated (Robo signed) (Debt collection Practices Act - Title VIII Sec 807(2) (A), [15 USC 1692e (1-2a),(j)], information on the Affidavit. I again resubmitted an updated Letter of Notice/Dispute of errors with the account and the affidavit and. To this date as well as the date of the hearing with the Master In Equity, PHH/RTT has failed to produce any response to my Qualified letter of Notice/Demand nor go forward in a timely manner. Additionally there hasn't been any action on the Courts part to move the case along in a reasonable manner.

3. While awaiting RTT to submit the letter/motion to move forward with the case, changes were made by RTT under the guise of PHH as the Plaintiff, at the same time went back to Coldwell Banker's for servicing and subsequently to Nationstar Mortgage as the servicer during the Foreclosure process with PHH Mortgage as the Plaintiff. All subsequent Court Documents were filed by RTT with PHH as the Plaintiff on the Court Docket and subsequent document until the morning of the Master In Equity Hearing on 23 September 2015. During the Hearing the Plaintiff was changed to Nationstar Mortgage and subsequently awarded foreclosure action on my home and property which is violation of Fair Debt Collection Practices title VIII, Sec 807 (14) [15 USC 1692e]. Subsequently I was denied a fair hearing and due process under the Constitution of the United States and Amendment(s) to the same.

a. The right to a fair hearing and due process was violated in a number of instances including but not limited to the following:

b. failing to properly identify the foreclosing party [15 U.S.C. 1692e(16): All court documents Note only PHH Corporation VS. Norman Lowery. No Court Docket or document contain the Plaintiff as Nationstar Mortgage, yet was awarded the right to seize and sell my home/property.

c. I was not allowed to prepare for a defense with Nationstar Mortgage as the newly identified Plaintiff. Documents subsequent to the Hearing Note Nationstar as the Plaintiff and/ or possibly lawyers associated with RTT

d. A continuance or reschedule of a new hearing was not done in that I could be prepare an adequate defense.

4. The preparing, executing or filing affidavits in foreclosure proceedings without personal knowledge of the assertions contain in affidavits and without review of any information documentation to verify the

assertions in such affidavits (Fair Debt Collection Practices title VIII, Sec 807, 2a [15 USC 1692e].. This practice of repeated false attestation of information in affidavits is popularly known as "Robo signing".

a. Documents PHH and RTT Law used as evidence to support foreclosure action were not reviewed for accuracy in that supporting document lack any notation, initials, signature, Date stamps of any shape or form validating them for correctness. My letters to RTT (besides the May 3013 Letter of Dispute/Unresolved) Letters of Dispute were again sent to RTT on 8-24-2014 and 1 September 2014

b. The document noting monthly payments [12 CFR 1024.35 (b)] lacks 2 payments for \$1359.38 made on December 2010 and another payment for \$1338.11 on January 2011 which should have been applied to the mortgage payment. Proof of this is substantiated by the Bank statement provided to me by the North Carolina State Employees Credit Union account report yet, the payment is not noted on the PHH customer account activity report.

(1). PHH failed to properly apply these funds to my mortgage payment which in violation of federal law. I have no idea what came of the funds PHH debited from my checking account other than they were not applied towards my mortgage payment.

(2). Additionally had there been any irregularity PHH Mortgage had the opportunity every month up to Jan 2013 to advise me otherwise, especially when they were asked if everything was in order.

(3). I have been in telephone contact with PHH every month up to December of 2012, when I last spoke with the call center and paid the mortgage payment via debit card, as I have done since 2010. As late as December 2012 all payments were up to date otherwise PHH mortgage Corp. would/should have advised me otherwise as I always asked if everything was up to date. PHH records their phone calls so it is a simple matter for them to verify the substance of the monthly phone call to the call center.

(4). At the Master In Equity Hearing the case was announced by S. Jackson as Nationstar Mortgage (Plaintiff) vs. Norman Lowery (Defendant) (violation of Fair Debt Collection Practices title VIII, Sec 807 (14), [15 USC 1692e & j]). All my Court Docket(s) do not indicate The Plaintiff as being Nationstar.

c. The Affidavit used to support foreclosure action falsely states no payments were made to PHH for the months of Feb March April and May of 2013. This is assertion is false [15U.S.C. 1692g]

(1). January 2013 payment was missed when I ended up in the Hospital suffering a heart attack and subsequent surgery, all payments to PHH for my mortgage were up to date as of December 2013. Following this procedure my wife took over making payment an assumed I paid the January 2013 payment.

(2). Subsequent months beginning in February 2013 payments made PHH via personal check No. 1310 for \$817.41 was processed by PHH Mortgage verified by North Carolina State Employees Credit Union bank statement.

(3). Payments to PHH via check with check No. 1312 (\$777.15, check No. 1316 in th (\$777.15) and check No. 1317 (\$777.15), Were not Processes and PHH/RTT has yet to date failed to produce these instruments of payment [12 CFR 1024.35(b)] [Truth In

Lending Act 1026.36(c)(1)]. Stop payment on these checks was in order since PHH/RTT would not produce these payments.

d. PHH falsely stated (initially via recorded telephone conversation on 15 May 2013) PHH returned the personal check with a short payment notice. After being told the NC State Employees Credit Union documents show the check was processed by PHH. PHH then stated they processed the check then sent a check from them #2013199158 along with the "Notice of short payment". This is a false assertion and PHH/RTT have yet to even produce any image of this check. The Customer Account Activity Report (Robo signed) is unverified for correctness, doesn't show processing the check or where the funds were returned. If the alleged check was issued and sent why did I receive a different check seven (7) months after it was supposedly sent from PHH dated 20 August 2013 #2013911073 for the amount of \$817.41. The Aug 2013 check PHH check doesn't even have the same sequence number as the PHH Check supposedly sent in March (No. 2013199158)

(1). I received two (2) letters "Notice of Short Payment" dated 18 Feb 2013. One was received from PHH the other from RTT. The two (2) letters were processed by two (2) different individuals on the same date.

(2). these documents were provided to me after the foreclosure process was initiated by PHH thru RTT.

(3). I received no communication written or verbal from PHH or RTT indicating there was an issue with my mortgage payments from 1 Jan 2013 to 14 May 2013. I advised in writing to RTT and the Court Additional actions

e. misrepresenting the identity, office, or legal status of the affiant executing foreclosure related documents:

(1). The Master In Equity announced the Case 2014CP4602394 was announced a Nationstar Vs. Norman Lowery. I questioned the court that does this not constitute Double Jeopardy due to having two Mortgage companies filing on the same property and I was not prepared to defend against Nationstar due to all court documents showing the Plaintiff as PHH Mortgage not Nationstar (15 U.S.C. 1692e(14))

(2). The Master In Equity conferred with the Plaintiffs Representation and stated it was in proper order. I was not provided the opportunity to be ready to defend myself properly due to the last minute change to the Plaintiff while conducting a hearing as follows:

(3). Actions presented during the hearing is a direct violation to the 5<sup>th</sup> Amendment to the Constitution of the United States "deprived of due process to life liberty and property without due process" as well as the 14<sup>th</sup> Amendment in that the obligation to provide "fair procedures" was violated.

5. Double Jeopardy/Conflict of Interest. Two Mortgage Servicers are on the same Court Docket and represented by the same Law Firm, Rogers Townsend and Thomas. This allowed Rogers Townsend and Thomas to manipulate which Mortgage company would be represented at the Master In Equity Hearing

ensuring one of three (or more) Plaintiffs had a better chance at winning the award. Additionally, I noted after the Hearing that in the last Court Dockets I was sent PHH Cooperation as the Plaintiff with an office file number (RTT) Nationstar, though it was lacking on the notice for the Master In Equity hearing.

a. All court documents show the Plaintiff as PHH Corporation v. Norman Lowery. Below that box is the number (013225-03514), this number is a Rogers Townsend & Thomas file number for Nationstar. I noted other documents with the number 011227-01181, subsequently discovering the number is the Rogers Townsend & Thomas Office case number for PHH Mortgage. The numbers were substituted on documents just prior to the hearing. I can only assume this is how Nationstar was the plaintiff even though PHH Mortgage was clearly identified as the Plaintiff and awarded foreclosure action. Ghosting Nationstar on court related documents ensured I wasn't able to present a reasonable defense at the hearing.

b. Servicers were changed during an active foreclosure case before the Court. On a normal course of business this is acceptable, however by changing the servicer during an active foreclosure action the legal dynamic was changed to benefit the servicer and their legal representation. Nationstar documents were fast-traced to catch up to the point of PHH Mortgage then attaching the new servicer to the same court docket under the guise of PHH Mortgage Corp., withholding and/or creating documents not clearly noting the true Plaintiff to the court docket/Hearing Notification. In doing so, the action intentionally and adversely impacted my ability to defend myself at the Court Hearing and ensured I didn't receive a fair hearing.

c. Five (5) days after Master In Equity substituting PHH Corp. on Court Docket 14-CP-46-2394 on 23 September Court Docket PHH Mortgage Corp vs Norman Lowery being changed to read "Order Substituting Plaintiff (filed 28 September 2015) on Court Docket 14-CP-46-2394.

6. Outcome of the hearing was already decided well before the Hearing took place:

a. verbal/recorded call with Nationstar call center, stating specifically my property was scheduled for public auction on the 6<sup>th</sup> of November, Master In Equity didn't want to receive additional information/evidence from me. He set my files and submissions to the side and made his decision based on Nationstar only, which was just announced and/or recognized as the true Plaintiff represented by Rogers Townsend and Thomas.

b. US Department of Veterans Administration Letter (DTD: 25 August 2015)/phone call stating my home-property was scheduled for public auction on 25 October 201. This information and copies of documents were submitted to the Master In Equity prior to the Hearing.

c. Property assessment was conducted prior to the court hearing on 13 September 2015 t # 11). I was not provided written notice of the appraisal except for the letter sent to me by The Department of Veteran Affairs.

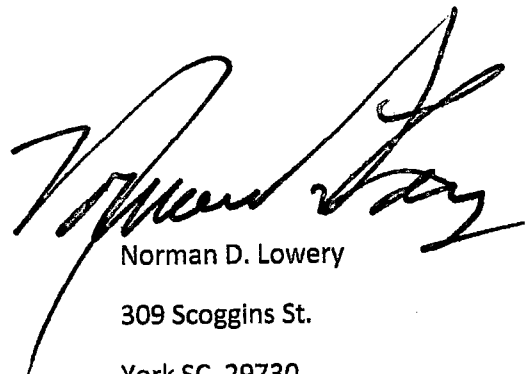
7. Documents, specifically the initial court affidavit and supporting documents, were Robo signed/passed off as verified to be true and correct. Had I been allowed an impartial hearing I have evidence the documents used to initiate the foreclosure process are incorrect and in some cases manufactured to support justification supporting foreclosure action.

a. PHH as well as Rogers Townsend and Thomas since (on/about) 15 May 2013 have been made aware of the true facts, I contested the information on numerous occasions (in writing) since May 2013. Starting with 15 May 2013 and 2014, in a number of documents of the true facts, via Qualified Notice of Dispute, the Documents are false/misrepresent the true facts/or are manufactured.

a. Have the incorrect address, nothing is signed except the Validation of Debt, however the information contained is incorrect/misleading or manufactured. Subsequent payments were not properly processed and applied to the mortgage.

8. In closing as a minimum but not limited to: all foreclosure actions, to include auction of the property, be suspended until such point case/docket/affidavits and documents and hearing process is verified, my personal checks are located and returned, mortgage payments properly posted to my account, credit report expunged of derogatory reports related to this case, property rights restored.

9. I appreciate the courts reconsideration in this matter



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