

The State of South Carolina
In The Supreme Court

**BARBARA A. GIBBS, MELVIN E.
GIBBS, And WESTBROOK PHASE IV
HOMEOWNERS' ASSOCIATION**

Petitioners,

vs.

NATIONSTAR MORTGAGE, LLC,

Respondent,

Case No.

APPENDIX

RECEIVED

MAR 21 2016

S.C. SUPREME COURT



The South Carolina Court of Appeals

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V. CLAIRE ALLEN
DEPUTY CLERK

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February 25, 2016

The Honorable Connie Reel-Shearin
180 N Irby St MSC-E Rm B11
Florence SC 29501-3456

REMITTITUR

Re: Nationstar Mortgage v. Barbara Gibbs
Appellate Case No. 2015-001873

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Melvin E. Gibbs
Dean Anthony Hayes, Esquire
Vance L. Brabham, III, Esquire



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
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February 17, 2016

Melvin E. Gibbs
3276 Buford Drive
Suite 104-176
Buford GA 30519

Re: Nationstar Mortgage v. Barbara Gibbs
Appellate Case No. 2015-001873

Dear Mr. Gibbs:

Upon reviewing your correspondence received February 5, 2016, the following deficiency has been noted under the South Carolina Appellate Court Rules (SCACR), and must be received within seven (7) days of the date of this letter or your motion to reinstate will not be considered by this Court and the remittitur will be sent:

- The check representing the filing fee for the motion to reinstate has not been signed. The check is being returned to you.

Very truly yours,


CLERK

cc: Dean Anthony Hayes, Esquire
Vance L. Brabham, III, Esquire

Bank of America Advantage

MELVIN E. GIBBS 04-05
BARBARA A. GIBBS

812

67-448/539 SC
15E3

FLORENCE, SC 29501-8901
(843) 407-8297

Feb. 2, 2016
Date

Pay Clerk - SC Court of Appeal \$ 25. -
to the order of Twenty-Five ⁰⁰/₁₀₀ Dollars

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ACH R/T 053904483

Memo Case # 2015-001873

MP

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The South Carolina Court of Appeals

Nationstar Mortgage, LLC, Respondent,

v.

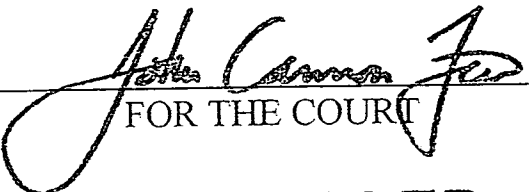
Barbara A. Gibbs, Melvin E. Gibbs, and Westbrook
Phase IV Homeowners' Association, Defendants,

—Of whom Melvin E. Gibbs is the Appellant.

Appellate Case No. 2015-001873

ORDER

This appeal was dismissed due to Appellant's failure to provide a copy of the orders on appeal and proof of service of the notice of appeal. Appellant filed a motion to reconsider, showing the proof of service was filed with this court and providing a copy of the orders on appeal. This court acknowledged receipt of the items and requested the parties file memoranda addressing the appealability of the underlying orders. Because Appellant provided a copy of the order on appeal and proof of service of the notice of appeal, the motion for reconsideration is granted and the appeal is reinstated. However, upon review of the orders on appeal and the appealability memoranda, this appeal is dismissed because the underlying orders on appeal are not immediately appealable. *See Huntley v. Young*, 319 S.C. 559, 462 S.E.2d 860 (1995) (holding that generally, the denial of a motion to dismiss is not immediately appealable); *North Carolina Federal Savings and Loan Ass'n v. Twin States Development Corp.*, 289 S.C. 480, 347 S.E.2d 97 (1986) (holding that an order of reference in an action to foreclose a mortgage is not subject to an immediate appeal). Remittitur will be sent as required by Rule 221, SCACR.


FOR THE COURT

FILED

December 31, 2015

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

I. PRELIMINARY STATEMENT

Appellants received the Court’s dismissal of their appeal on the 12th day of January 2016. Appellant file this Motion for Reconsideration this 13th day of January 2016. Having been forced to move from the State of South Carolina does cause damages that must be mitigated.

II. STATEMENT OF FACTS

This Court asked Appellants to answer a single question: “Explain why this [C]ourt has jurisdiction.” Appellants provided the South Carolina Supreme Court’s statement as to why jurisdiction is MANDATED:

**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.**)

III. STATEMENT OF THE CASE

This case represents the illegal persecution and prosecution of Gibbs. The deliberate illegal acts committed when Appellee does not have STANDING, cannot be tolerated in a civilized society!

MEMORANDUM OF LAW

V. ARGUMENT

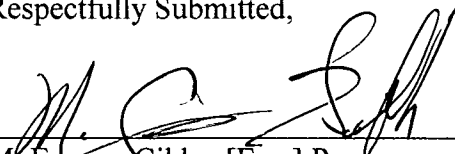
This Court may represent justice or cover-up the illegal acts of Appellee and their attorneys; a violation of 42 USC §§ 1983, 1985 and 1986.

VI. CONCLUSION

Appellee’s illegal conduct has caused Appellants irreparable harm for two (2) years and must stop!

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

January 13, 2016

| | | |
|-------------------------------|---|----------------------------|
| 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. |) | |
| |) | |

MEMORANDUM OF LAW

As to Appellants' motion for reconsideration, the Court overlooked Appellants having included the certificate of service on the Notice of Appeal and notified the Court the circuit court did not issue a written order denying Appellants' motion to dismiss. Appellants called the Court each day to inquire as to the status of the case. Additionally, Appellants' filed the instant appeal at the request of the circuit court judge to do so if Appellants did not agree with his decision. AND, Appellants have attached hereto a copy of the certificate of service; and a second written order being appealed from.

Appellants filed their motion for reconsideration on the 29th day of July 2015. The trial court has not ruled on that motion or filed a written motion denying Appellants' motion to dismiss – said motion was denied from the bench.

Appellants' submission, *supra*, is designed as persuasive rather than controlling authority:

Judge Posner authored a unanimous opinion at the close of 2010 holding that a denial of a Rule 12(b)(6) motion to dismiss based on *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007),

raised a “controlling question of law” suitable for interlocutory appeal pursuant to 28 U.S.C. § 1292(b). Judge Posner found the appeal to concern a controlling question of law, which was the legal significance of the facts as alleged, rather than the resolution of disputed facts. A question of law under 1292(b) includes the “question of the meaning of a . . . common law doctrine . . .” 630 F.3d at 626. The legal standard set forth in *Twombly* was not settled, but instead had placed pleading standards “in ferment.” Thus, the case did not concern the “routine application of well-settled legal standards to facts alleged in a complaint . . .” (630 F.3d at 626), which would not meet the requirements for a Section 1292(b) interlocutory appeal. Instead, the “question requires the interpretation, and not merely the application, of a legal standard – that of *Twombly*.” 630 F.3d at 625.

Granting an appeal would promote the “main task of an appellate court, which is to maintain the coherence, uniformity and predictability of the law . . .” *Id.* In addition, concerns underlying the holding in *Twombly* supported empowering the district court and court of appeal to authorize an interlocutory appeal. *Twombly* is “designed to spare defendants the expense of responding to bulky, burdensome discovery unless the complaint provides enough information to enable an inference that the suit has sufficient merit to warrant putting the defendant to the burden of responding to at least a limited discovery demand.” 630 F.3d at 625. Permitting a complex case of extremely dubious merit to proceed would place defendants in a “discovery swamp,” and create “unjustifiable harm to a defendant that only an immediate appeal can avert.” *Id.* at 626.

Gibbs has demonstrated 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).

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).

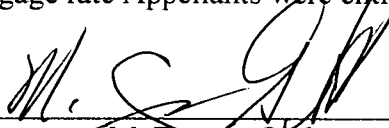
Standing is a fundamental requirement for instituting an action. Brock v. Bennett, 313 S.C. 513, 519, 443 S.E.2d 409, 412 (Ct.App.1994). "Generally, a party must be a real party in interest to the litigation to have standing." Hill v. S.C. Dep't of Health & Envtl. Control, 389 S.C. 1, 22, 698 S.E.2d 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 19th 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.¹ 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.



M. Eugene Gibbs
Mgibbs70@aol.com

¹ 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....

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case No. 2013-CP-21-02795
Court of Appeals No. 2015-001873

Nationstar Mortgage LLC..... Respondent.

v.

Barbara A. Gibbs, Melvin E. Gibbs, and
Westbrook Phase IV Homeowners Association, Defendants,
Of whom Melvin E. Gibbs is the.....Appellant.

**RESPONDENT NATIONSTAR MORTGAGE LLC'S
MEMORANDUM OF LAW IN RESPONSE TO
THE COURT'S ORDER DATED OCTOBER 20, 2015**

Brian A. Calub
S.C. Bar No. 72009
MCGUIREWOODS LLP
201 North Tryon Street
Suite 3000
Charlotte, NC 28202
Tel: (704) 343-2009
Fax: (704) 373-8842

Attorney for Respondent

Date: November 12, 2015

Pursuant to the Court's October 20, 2015, order, Respondent Nationstar Mortgage LLC ("Nationstar") submits this memorandum to address the appealability of the trial court order granting Nationstar's motion to appoint a special referee and to report on the status of underlying foreclosure action giving rise to this appeal.

STATEMENT OF THE CASE

This case concerns an equitable foreclosure action that Nationstar filed against Melvin E. Gibbs; his spouse, Barbara Gibbs;¹ and the Westbrook Phase IV Homeowners Association on October 23, 2013. (Ex. 1, Compl.) Nationstar filed the foreclosure action with the court of common pleas for Florence County, South Carolina. Mr. Gibbs was personally served with Nationstar's foreclosure complaint on November 8, 2013, and he filed an answer on March 20, 2014.

In this appeal and a previously dismissed appeal (Case No. 2014-000596), Mr. Gibbs seeks appellate review of orders of reference entered in the foreclosure action. The trial court entered the first order of reference on March 11, 2014, to refer Nationstar's foreclosure to Special Referee Benjamin D. Moore. Mr. Gibbs appealed the entry of that order ten days later, and this Court dismissed the appeal pursuant to an order entered that same day. In its order, the Court concluded that the first order of reference entered in the foreclosure action did not raise any appealable issues. After entry of the Order, the special referee recused himself from the foreclosure because Mr. Gibbs had amended a complaint that he had filed in a *pro se* action in the United States District Court for the District of Colorado to add the special referee as a defendant.

¹ Barbara Gibbs is the only defendant obligated to repay the note and mortgage subject to Nationstar's foreclosure action. Melvin E. Gibbs is only named as defendant in the foreclosure because he holds title to real property encumbered by Nationstar's first-priority mortgage.

Because the special referee recused himself, Nationstar filed a motion for appointment of another special referee. After a hearing on that motion, the trial court granted the motion by entering an order referring the foreclosure case to the master in equity for Horry County. On August 24, 2015, the trial court clarified its order by entering a Form 4 judgment that expressly granted Nationstar's motion for appointment and transferred the case to the master in equity for final adjudication.

On September 5, 2015, Mr. Gibbs initiated the current appeal, claiming that he is appealing the trial court's denial of his motion to dismiss Nationstar's foreclosure action.

ARGUMENT

In a memorandum of law filed on October 26, 2015, Mr. Gibbs appears to identify the following two issues for appellate review: (1) the denial of his motion to dismiss Nationstar's foreclosure action and (2) the reference of this case to the master in equity for final adjudication. (App. Mem.) Neither of these issues raises any viable grounds for appeal.

I. The denial of a motion to dismiss does not give rise to the right to an interlocutory appeal to this Court.

Under South Carolina law, the denial of a motion to dismiss for failure to state a claim is not immediately appealable under S.C. Code Ann. § 14-3-330. See *Moyd v. Johnson*, 289 S.C. 482, 482, 347 S.E.2d 97, 98 (1986) ("We hold that the denial of a Rule 12(b)(6) motion is not directly appealable under S.C. Code Ann. § 14-3-330 (1976)."); see also *McLendon v. S.C. Dep't of Highways and Pub. Transp.*, 313 S.C. 525, 526, 443 S.E.2d 539, 540 (1994). In *McLendon*, the appellant attempted to appeal an order denying his motion to dismiss, which he based upon the passing of the statute of limitations. The South Carolina Supreme Court recognized that such a motion to dismiss

was simply an attempt to argue that the respondent failed to state a cause of action. *Id.* Like the motion to dismiss at issue in *McLendon*, the motion to dismiss that Mr. Gibbs has filed in the foreclosure action simply attempted to dismiss Nationstar's complaint for failure to state a claim. (Ex. 2, Mot. to Dismiss.²) Accordingly, the trial court's denial of the motion to dismiss the foreclosure complaint cannot be the subject of any immediate appeal to this Court.

II. The procedural posture of the foreclosure precludes Appellant from raising any appealable issue regarding mode of trial.

As a general rule, "orders affecting the right to jury trial are immediately appealable and must be raised in court at the first opportunity." *Mortg. Elec. Sys., Inc. v. White*, 384 S.C. 606, 612, 682 S.E.2d 498, 501 (Ct. App. 2009). Nationstar's foreclosure action, however, is an action in equity. *Wachovia Bank, N.A. v. Blackburn*, 407 S.C. 321, 328, 755 S.E.2d 437, 441 (2014). "In equity the parties are not entitled, as a matter of right, to a trial by jury." *Id.* (quoting *Williford v. Downs*, 265 S.C. 319, 321, 218 S.E.2d 242, 234 (1975)). Accordingly, because Nationstar's foreclosure action is an action in equity, Mr. Gibbs is not entitled, as a matter of right, to a trial by jury.

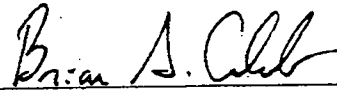
Moreover, nothing in Mr. Gibbs's answer changes the purely equitable character of Nationstar's foreclosure: (Compl. *passim*; Ans. *passim*.) In his answer, Mr. Gibbs alleges ten affirmative defenses to Nationstar's foreclosure cause of action. (*Id.*) None of the ten affirmative defenses alleges any counterclaim against Nationstar, and nothing in the answer alleges a demand for a remedy against Nationstar. (*Id.*) Accordingly, because Nationstar's foreclosure is an action in equity and because Mr. Gibbs has failed to plead

² Nationstar is not providing the exhibits attached to Mr. Gibbs's Motion to Dismiss filed with the trial court because he included unredacted bank statements and correspondence that disclose various account numbers and personal identifying information. If the Court wishes, Nationstar can supplement the record with redacted exhibits.

any legal claims against Nationstar in his answer, the procedural posture of Nationstar's equitable foreclosure action precludes the appeal of any mode of trial rights. *See, e.g., N.C. Fed. Sav. & Loan Ass'n v. Twin States Dev. Corp.*, 289 S.C. 480, 481, 347 S.E.2d 97, 97 (1987) (granting respondent's motion to dismiss an appeal of an order of reference entered in a foreclosure action).

CONCLUSION

For the foregoing reasons, Appellant's motion to reinstate this appeal should be denied, and this appeal should remain dismissed.



Brian A. Calub
S.C. Bar No. 72009
MCGUIREWOODS LLP
201 North Tryon Street
Suite 3000
Charlotte, NC 28202
Tel: (704) 343-2009
Fax: (704) 373-8842

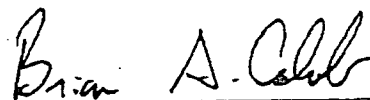
Attorney for Respondent

CERTIFICATE OF SERVICE

The undersigned certifies that *Respondent Nationstar Mortgage LLC's Memorandum of Law In Response to the Court's Order Dated October 20, 2014*, was served on Appellant by depositing a copy thereof in the United States Mail, first class, postage prepaid, addressed to:

Melvin E. Gibbs
4257 Monterey Drive
Florence, SC 29501

This the 12th day of November, 2015.



Brian A. Calub

EXHIBIT "1"

2013 OCT 23 PM 2:28
CONNIE REEL-SHEARIN
CLERK C.P. & G.S.
FLORENCE COUNTY, S.C.
FILED

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Nationstar Mortgage LLC,

PLAINTIFF,

vs.

Barbara A. Gibbs, Melvin E. Gibbs, and Westbrook
Phase IV Homeowner's Association,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

COMPLAINT

(NON-JURY MORTGAGE FORECLOSURE)

C/A NO:

20 13 CP 21 2795

DEFICIENCY REQUESTED

F13-02446

The Plaintiff, complaining of the Defendants above-named would respectfully show unto this Honorable Court

1. That the Plaintiff is a limited liability company organized and existing under and by virtue of the laws of the State of Texas; and that the Defendants, Barbara A. Gibbs and Melvin E. Gibbs, are upon information and belief, citizens and residents of the County of Florence, State of South Carolina. That the Defendant, Westbrook Phase IV Homeowner's Association, is upon information and belief an association organized and existing under the laws of South Carolina.

2. Any Defendant described herein as a judgment creditor(s) has, by filing the judgment(s), designated the attorney(s) entering the judgment(s) as their agent for service of process pursuant to the provisions of Section 15-35-840 of the S.C. Code of Laws (1976) as amended.

3. That the real property hereinafter described, which is the subject of this action, is situated and located in the County of Florence, State of South Carolina.

4. That on or about February 23, 2005, for value received, Barbara A. Gibbs did execute and deliver to Bank of America, N.A., a certain promissory note in writing according to the terms and conditions set out therein, wherein and whereby said Barbara A. Gibbs promised to pay to Bank of America, N.A. the sum of Three Hundred Twenty-Nine Thousand Six Hundred And 00/100 Dollars (\$329,600.00), together with interest thereon at the rate of Six And 375/1000 per cent (6.375%) per annum.

5. That in order to better secure the payments of the said note and debt, in accordance with the terms and conditions thereof, Barbara A. Gibbs did execute and deliver on February 23, 2005 unto Bank of America, N.A., a mortgage covering the following described property:

Legal description and property address:

All that certain piece, parcel or tract of land in the County of Florence, State of South Carolina, containing 0.65 acres, more or less, designated as Lot 18 of Westbrook Subdivision, Phase IV, as shown on a map of Westbrook Subdivision, Phase IV, prepared by David A. Nesbitt, R.L.S., dated February 29, 2000, a copy of which is recorded in the office of the Clerk of Court for Florence County in Plat Book 73 at page 402. Said lot of land is more particularly bounded according to said plat as follows: North by Traces Golf Course as shown on the aforesaid plat for a distance of 176.98 feet; East by Lot 17 as shown on the aforesaid plat for a distance of 225.47 feet; South by Monterey Drive as shown on the aforesaid plat for a total distance of 98.38 feet; and west by Lot 18 as shown on the aforesaid plat for a distance of 209.02 feet.

CERTIFIED A TRUE COPY

Connie Reel Shearin

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

This being the same property conveyed to Barbara A. Gibbs by virtue of a Deed from West Florence Investment Group, a General Partnership, dated August 29, 2003 and recorded September 19, 2003, in Book A782 at Page 273 in the Office of the Register of Deeds for Florence County, South Carolina. Thereafter, this same property was conveyed to Barbara A. Gibbs and Melvin E. Gibbs by virtue of a Deed from Barbara A. Gibbs, dated November 30, 2006 and recorded November 30, 2006, in Book B059 at Page 510 in the Office of the Register of Deeds for Florence County, South Carolina.

4257 Monterey Drive, Florence, SC 29501
TMS# 04915-01-018

6. Thereafter said mortgage was recorded in Book A909 at page 1711 on March 4, 2005 in the office of the Register of Deeds of Florence County.

7. The above referenced instrument constitutes a first lien priority mortgage.

8. Thereafter, by virtue of an assignment dated January 3, 2013, recorded January 14, 2013, in Mortgage Book B444 at page 1567, Bank of America, N.A. assigned said mortgage unto Nationstar Mortgage LLC, making Nationstar Mortgage LLC the present lien holder and Plaintiff herein.

9. Pursuant to South Carolina law, Plaintiff is entitled to enforce the terms of the subject note and mortgage.

10. That the Defendant, Melvin E. Gibbs, is made a party by virtue of being a titleholder of record by virtue of a Deed from Barbara A. Gibbs, dated November 30, 2006 and recorded November 30, 2006, in Book B059 at Page 510 in the Office of the Register of Deeds for Florence County, South Carolina.

11. That the Defendant, Westbrook Phase IV Homeowner's Association, is made a party by virtue of any homeowners liens or assessments recorded or unrecorded that are due or that may become due in the future.

12. According to the terms and conditions of the said note and mortgage, it is provided that in the event of default in the payment of any installment when due, and if such default is not made good prior to the due date of the next such installment, the entire principal and accrued interest shall at once become due and payable without notice at the option of the holder, and if the same should be placed in the hands of an attorney for collection, all costs of collection, including a reasonable attorney's fee, would be secured by the said mortgage as a part of the debt secured thereby.

13. That under the terms and conditions of said mortgage, it is provided that, together with, and in addition to, the monthly payments of principal and interest payable under the terms of the note secured thereby, the mortgagor will pay to the mortgagee, on the payment due date each month until the said note is fully paid, certain additional sums, including but not limited to, certain amounts for fire and other hazard insurance and taxes and assessments due on the mortgaged premises.

14. Further, under the terms and conditions of said mortgage, it was agreed that the mortgagor would pay all taxes, assessments, water rates and other governmental or municipal charges, fines or impositions for which provisions were not otherwise made, and if they failed to do so, the mortgagee might pay same, which amount, together with interest thereon, would be secured by said mortgage.

15. According to the terms of said mortgage, and as additional security, the mortgagor assigned all rents, issues and profits of the mortgaged premises from and after any default there under, and should legal proceedings be instituted pursuant to said mortgage, the mortgagee, its successors or assigns, was given the right to have a Receiver

appointed of the rents, issues and profits, who, after deducting all charges and expenses attending such proceedings, and the execution of his trust as a Receiver, shall apply the residue of the rents, issues and profits, toward the debt secured by said mortgage.

16. The monthly payments due on said note and mortgage are in default since August 1, 2013, and the conditions of said note and mortgage have been broken and the Plaintiff elects to, and does declare the entire balance of said indebtedness due and payable, and that there is due on said note and mortgage as of August 1, 2013 the sum of Two Hundred Ninety-Two Thousand Five Hundred Nineteen And 20/100 Dollars (\$292,519.20), together with interest at the rate of Six and 375/1000 per cent (6.375%) per annum from July 1, 2013 and also for the costs and disbursements of this action, including attorney's fees.

17. That the Plaintiff does not waive but specifically demands judgment against the Defendant, Barbara A. Gibbs, for the full amount found to be due to Plaintiff on the note and mortgage held by plaintiff, with the right to enter personal judgment against the Defendant, Barbara A. Gibbs, for any deficiency in this action remaining after sale of the mortgaged premises.

18. That the servicer is participating in the Home Affordable Modification Program (HMP). The HMP modification process specified by the Guidelines or Supplemental Directive has been completed without resulting in a modification because the borrower failed to respond to the HMP solicitation.

19. That upon information and belief, certain costs for inspecting and securing the subject property have been incurred by the Plaintiff as a result of this delinquency and Plaintiff is informed and believes it is entitled to reimbursement for such charges, if any.

20. The notice of consumer's right to cure, as contemplated under S.C. Code Sections 37-5-110 and 37-5-111, has been given or is not required, and all conditions precedent to the acceleration of the debt and foreclosure of the mortgage have been performed or have occurred.

WHEREFORE, having fully set forth its complaint, the Plaintiff prays that this Honorable Court inquire into the matters set forth herein and:

- (1) That the amount due upon the said note and mortgage held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorney's fees and costs of this action.
- (2) That the said Plaintiff's mortgage be declared a first mortgage lien and that the said Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums which may be due, with a reasonable sum as attorney's fees and for the costs of this action.
- (3) That the mortgaged premises be sold under the direction of this court, the equity of redemption be barred, and that the proceeds of sale be applied as follows:
First, to the costs and expenses of the within action and sale.
Second, to the payment and discharge of the amount due on Plaintiff's note and mortgage, together with attorney's fees as aforesaid, and
Third, the surplus, if any, be distributed according to law.

Fourth, Plaintiff have judgment against the Defendant Barbara A. Gibbs for the full amount found to be due Plaintiff on the note and mortgage, with right to enter personal judgment against the Defendant Barbara A. Gibbs for any deficiency in this action remaining after sale of the mortgaged premises.

(4) For an Order directing and empowering the Sheriff of Florence County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property hereinabove described should the same become necessary.

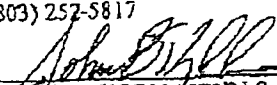
(5) For an Order granting the appointment of a receiver to secure and supervise the rental of the property sought to be foreclosed.

(6) For reimbursement of all costs for inspecting and securing the property incurred by the Plaintiff as a result of the delinquency.

(7) For such other and further relief as may be just and proper.

(8) For an order satisfying any prior liens that may be of record, but have been paid in full.

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Attorneys for Plaintiff

Columbia, South Carolina
October 12, 2013

EXHIBIT "2"

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)
)
 NATIONSTR MORTGAGE, LLC,)
)
 PLAINTIFF,)
)
 vs.)
)
 BARBARA A. GIBBS, MELVIN E.)
 GIBBS, And WESTBROOK PHASE IV)
 HOMEOWNERS'S ASSOCIATION,)
)
 DEFENDANTS.)

IN THE COURT OF COMMON PLEAS

DOCKET NO: 2013-CP-21-2795

**MOTIONS TO DISMISS and
 SANCTIONS**
 [Fraud on the Court]

2013 NOV 19 11:27
 FILED
 CONNIE REBEL
 CLERK OF COURT
 FLORENCE COUNTY, S.C.

NOW COMES, the above named Defendant, Melvin E. Gibbs and moves this Honorable Court to dismiss the instant action and sanction the Plaintiff and their attorney. The reasons for these motions are more fully set forth below.

I. FRAUD ON THE COURT

1. Defendants' letter dated the 26th day of July 2013, Defendants notified the Plaintiff that their actions had no basis in fact or law and that Bank of America were engaged in racketeering.

Exhibit-A

a. Defendant put Plaintiff on notice of the RICO suit filed against BOA in Colorado, and the fact that Defendants would file suit, said suit attached hereto. **Exhibit-B**

a. Having discovered the Plaintiff filed the instant action; Defendant Melvin Gibbs called the Plaintiff on October 28, 2013 and informed the Plaintiff that this suit constituted fraud on the court.

CERTIFIED: A TRUE COPY
Connie Rebel Spearin
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

b. The attorney, Korn Law Firm, had the pleadings served on Defendants on or about November 6, 2013. Defendant, Melvin Gibbs, immediately called and informed the attorneys that the attorneys had perjured themselves, to wit:

(1) Defendants would provide bank records certifying that each and every payment had been made to their client, NaionStar.

(2) Their certification to the court that Defendants had not applied for modification under HAMP was not only false, but knowingly false.

2. The Plaintiff and their attorney [Hereinafter Plaintiffs] by affirmation, swore to this Court the Defendants are in default of their mortgage. (Comp. ¶ 16)

a. The Plaintiffs failed and neglected to document a single default by Defendants and/or show how such a default was in violation of a specific section of the mortgage agreement, to wit:

(1) Defendants failed and neglected to pay mortgage due and owed on "this date" and/or "that date" and due to said failure the Defendants failed and neglected to pay Xs months mortgage and/or fees resulting in-"sum certain" not being paid;

(2) Defendants' failure are in violation of section "so and so" of the included agreement and therefore constitutes a default, etc, etc.

3. The Plaintiffs' fraud is deliberate and calculated: their pleadings are devoid of legal reality and designed to elicit judicial sympathy. The Plaintiffs attempt to portray themselves as honest brokers within the economic community; and portray Defendants as deadbeats.

4. Plaintiffs' attempt to make a mockery of the "sum certain" rule that is the most basic element of any pleading. Stated, supra, the Plaintiffs failed and neglected to state any amount that

was due and owed and not paid. Their pathetic attempt to cover for a mistake a 2nd year law student would not make is further evidence of deliberate fraud.

5. Plaintiffs know the mortgage amount isn't material or relevant, unless and/or until the bargained for contractual obligations are violated. First, the Plaintiffs know they cannot show that Defendants failed and neglected to pay a single monthly mortgage payment. Therefore, they cannot prove a default!

a. Defendants are not required to prove they do not owe moneys. But, to prove the deliberate fraud by Plaintiffs: Defendants are attaching their bank records that show payments- Jan. 2013 to Sep. 2013,¹ AND, Jan. 2012 to Dec. 2012. **Exhibit-C**

6. Plaintiff is an agent of or co-conspirator with BOA. Defendants' mortgage was recorded by Plaintiff Jan. 2013; however Plaintiff has been, at the direction of BOA, collecting mortgage payments from Defendants from on or before Sept. 2012.

7. Plaintiff was aware of or became aware of the fact that Defendants had made application to BOA to have their mortgages covered under HAMP. Further, the Plaintiff assisted BOA in their attempt to deny Defendants access to HAMP. **Exhibit-D**

8. On August 22, 2012, BOA sent Defendants a letter informing Defendants that BOA was "obtaining the documentation necessary to address your (Defendant) questions." While BOA and Plaintiff were conspiring to foreclose Defendants' mortgage, they insisted Defendants do nothing! "We appreciate your patience while we research your request." **Exhibit-F**

9. Defendants submit the Request for Foreclosure Intervention only to the extent necessary to protect Defendants' rights as subscribed by the SC Supreme Court. **Exhibit-G**

¹ Plaintiff returned the October 2013 mortgage payment.


a. The submission of this form may in no way taken as Defendants relinquishing their rights as being litigated in US Federal District Court.

CONCLUSION


Their existed no basis for Plaintiff to file this litigation. Plaintiff and their attorney have engaged in the subornation of perjury, and now rely on this Honorable Court to ratify their illegal deeds. The impartiality of the Court must never be demeaned in this matter. This Court for the benefit of home owners in this jurisdiction must send a clear and concise message!

WHEREFORE, Defendants pray this Honorable Court dismiss this action with prejudice, sanction the Plaintiff and their attorney the amount of \$292,519.20: the attempted amount of extortion and any additional and further relief as this Honorable Court may deem just and proper.

Respectfully Submitted,



Melvin E. Gibbs



Barbara A. Gibbs

Florence, South Carolina
November 18, 2013

