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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

Appeal from the Court of Common Pleads Richland County, South Carolina,  
Honorable Ben N. Miller, III Special Referee for Richland County

Case No. 2010-CP-40-1571

CitiMortgage, Inc.,.....Respondent,

vs.

Bruce W. Gardner and First Citizens Bank and Trust Company, Inc., ....Appellant.

MOTION COMPLAINT OF MALICIOUS PROSECUTION AND  
PETITION TO CANCEL FORECLOSURE SALE

The Complaint, complaining of the Defendant-Appellant above-name, alleges  
and state:

MALICIOUS PROSECUTION

1.

At all times pertinent herein, Defendant-Appellant, Bruce W. Gardner (herein  
referred to as the Appellant) is a resident of the county of Lexington, State of  
South Carolina.

2.

At all times pertinent herein, the Plaintiff-Respondent, CitiMortgage, Inc. N.A. (herein referred to as the Respondent) is a Corporation organized and existing by virtue of the law of the United States of America, with its principal office in the City of New York, State of New York.

3.

On or about December 14, 2007, Appellant, Bruce W. Warren purchased property located at 104 Abraham Street, Columbia, South Carolina 29203 from Wachovia Bank of Delaware, N.A. and the deed was recorded December 28, 2007 in Record Book 1370, Page 1498.

4.

On or about December 14, 2007, Appellant, Bruce W. Gardner executed a Mortgage on property located at 104 Abraham Street, Columbia, South Carolina 29203 to Mortgage Electronic Registration Systems, Inc. (MERS) recorded December 28, 2007 in Record Book 1388, Page 1416.

5.

A mortgage was assigned to the Respondent, CitiMortgage, Inc. on April 17, 2009 and recorded on May 13, 2009 in Record Book 1520, Page 3794.

6.

The mortgage was assigned to the Respondent, CitiMortgage, Inc. on April 17, 2009 and recorded on May 13, 2009 in Record Book 1520, Page 3794 listed CitiMortgage, Inc. as the assignee and assignor.

7.

There is no record of an assignment of the mortgage on property located at

104 Abraham Street, Columbia, South Carolina 29203 to Mortgage Electronic Registration Systems, Inc. (MERS) recorded December 28, 2007 in Record Book 1388, Page 1498 by Mortgage Electronic Registration Systems, Inc. (MERS) assignor to Respondent, CitiMortgage, Inc. as assignee.

8.

Respondent, CitiMortgage, Inc. never established a basic chain of ownership for Foreclosure.

9.

Respondent, CitiMortgage, Inc. never established that both the promissory note and mortgage were legally executed, delivered, and transferred from the MERS to Respondent.

10.

Respondent, CitiMortgage, Inc. never produced a note establishing the MERS was the legal holder of the promissory note.

11.

Respondent, CitiMortgage, Inc. production of the note of Appellant, Bruce W. Gardner to CitiMortgage, Inc. and a mortgage on property located at 104 Abraham Street, Columbia, South Carolina 29203 to Mortgage Electronic Registration Systems, Inc. (MERS) recorded December 28, 2007 in Record Book 1388, Page 1498 demonstrates the Respondent's lack of ownership of the debt.

12.

Respondent, CitiMortgage, Inc. did not produce the note for Appellant Bruce W. Gardner. CitiMortgage, Inc. has a mortgage on the property located at 104 Abraham Street, Columbia, South Carolina 29203. Mortgage Electronic Registration Systems, Inc. (MERS) was recorded December 28, 2007 in Record

Book 1388, page 1498, which demonstrates the Respondent's lack of securitization of the property.

13.

Respondent, CitiMortgage, Inc. filed a Lis Pendens on March 9, 2010 and a summons and complaint was filed on March 9, 2010.

14.

The filing of the Lis Pendens and a summons and complaint on March 9, 2010 was the initiation of a foreclosure action against the Appellant.

15.

Respondent, CitiMortgage, Inc. therefore was not a real party of interest and lacked standing to sue Appellant.

16.

Respondent, CitiMortgage, Inc. failed to offer evidence it was the owner or holder of the note as required by Section 35-3-301 of the South Carolina Code (Supp.)

17.

As a direct and proximate cause of Respondent's Lawsuit the Appellant has Suffered actual and specific damages, included but not limited to, illegal foreclosure and potential of real property.

FOR A SECOND CAUSE OF ACTION  
PETITION TO CANCEL FORECLOSURE SALE

18.

As a direct and proximate cause of Respondent's Lawsuit the Appellant

has suffered actual and specific damages, included but not limited to, illegal foreclosure and potential loss of real property.

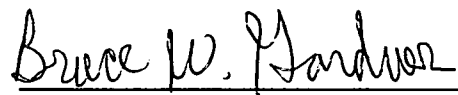
19.

Appellant suffered detrimentally as a result of this foreclosure action which the Respondent has no standing to bring this action that has resulted in the Appellant being severely harmed and the serious consequences of the potential of his real estate being sold as a result of a foreclosure sale.

Accordingly, in addition to and/or in the alternative to the other remedies requested above, Appellant is entitled to reinstatement of the subject property.

**WHEREFORE**, the Appellant prays that the Respondent be required to specifically perform their obligations under the terms of the agreement and complete the transfer of the subject property to the Appellant, or, in the alternative be awarded a judgment against the Respondent in the amount of the damages to be determined by the trier of the facts.

**Further**, Appellant respectfully request that this Order of Foreclosure Sale by the Richland County Special Referee be reversed, remanded and denied.

 LS  
Bruce W. Gardner, pro se, Appellant  
237 YMCA Road  
Lexington, South Carolina 29073  
(803) 605-2223

June 3, 2016  
Columbia, South Carolina

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CitiMortgage, Inc.,.....Respondent,

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\_\_\_\_\_  
CERTIFICATE OF COMPLIANCE  
\_\_\_\_\_

The undersigned certify that this Motion Complaint of Malicious Prosecution and Petition to Cancel Foreclosure Sale of Appellant complies with the South Carolina Court's Order.

 \_\_\_\_\_ LS  
Bruce W. Gardner Pro Se, Appellant  
237 YMCA Road  
Lexington, South Carolina 29073  
(803) 605-2223

June 3, 2016  
Columbia, South Carolina

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PROOF OF SERVICE  
\_\_\_\_\_

The undersigned certify that this Motion Complaint of Malicious Prosecution and Petition to Cancel Foreclosure Sale, that Appellant served upon the Respondent, by placing the same in the U.S. Mail, First class Postage prepaid, addressed as following on June 3, 2016, as addressed below:

Bruce W. Gardner LS  
Bruce W. Gardner Pro Se, Appellant  
237 YMCA Road  
Lexington, South Carolina 29073  
(803) 605-2225

Pete Balthazer, Esquire (803) 223-9791  
Riley Pope & Laney, LLC  
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2838 Devine Street  
Columbia, South Carolina 29205