2018-000056

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON CHURCHILL PARK Plaintiff, ALAN G. NIX, NORMA J. NIX AND ESTATE OF NORMA J. NIX Defendants,	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT Case No.: 2017-CP-10-04031 **DEFENDANT'S 60(b) MOTION FOR ORDER FILED 9 NOVEMBER 2017**

PLEASE TAKE NOTICE, pursuant to Rule 60(b), SCRCP, Defendant Alan Nix hereby submits this motion to set aside Judge Scarborough's order filed with the Charleston County Clerk of Court on 9 November 2017 and to dismiss the case, with prejudice, in favor of the defendants.

This motion is based on the pleadings, the record and the applicable law and such other matters as may be presented to the Court before or at the time of the hearing.

Due to the ongoing delay and contradictory and unclarified denials of the SC Court of Appeals related to multiple motions of defendant during the proceeding five months attempting to properly be granted leave of the Court of Appeals to timely file a 60(b) motion, this motion is being filed at the last moment allowed to ensure defendants' rights are not any further denied, resulting in further and unnecessary financial, physical, and emotional injury to himself, his family and his property.

I.

ARGUEMENT

1. The lien that is the basis of these actions, filed by McCabe, Trotter and Beverly, PC with the Charleston County RMC on 23 May 2013 in Book 0333, Page 083, suffers from at least

September 2011, Book 0208, Page 155, 7) 21 September 2001, Book 0208, Page 157, and 8) 8 July 2016, Book 0569, Page 039. Of note, all but one of these liens are older than the lien which is the subject of these two foreclosure lawsuits, so clearly, not all owners "faced the same collection process" as Judge Scarborough seems to declare as fact.

5. With respect to the lien recorded on 8 July 2016, Book 0569, Page 039, of special note, it is recorded in the name of the Real Party in Interest, Churchill Park Homeowners' Association, Inc. Second, that lien was discussed on 4 May 2017 in a hearing with Judge Scarborough and he reviewed a copy of the lien during that hearing. Lastly, and quite important, Judge Scarborough oversaw a related foreclosure of this property on 2017 in which the party that was notified of the hearing, Southern Community Services, did not have an answer to the complaint filed initially, and did not apparently have an attorney attend the final foreclosure hearing on 8 August 2017, before Judge Scarborough.

6. Plaintiff introduced exhibit 12 at the hearing of 26 September 2017 which consisted of copies of the front and back of five checks. Four of the checks had been mailed to the Southern Community Services lockbox in Atlanta, GA between 30 August 2017 and 1 September 2017. All four of these checks had been endorsed on the back as "endorse to mtb", had #989 B written on the front, and a partial electronic processing statement imprinted on the back. The fifth check was mailed to the Gold Crown Management office in Mt. Pleasant, SC on 8 August 2017 and it was endorsed as "Churchill @ pw to mccabe trotter". Four of the checks were made out to the Real Party in Interest Churchill Park Homeowners Association, Inc. and the fifth check was made out to Churchill Park at Park West Association, Inc. Legally, once a check is endorsed, it is considered transacted and consequently should be applied to the related account. In these circumstances, given all five checks were endorsed to some version of McCabe Trotter and Beverly, they all five were legally transacted, should have been applied to some account(s) and if a legal foreclosure or lien were in place at the time, the endorsements of these checks operated to reset the timeline to file a lien or foreclose on a lien. Somehow, Judge Scarborough did not understand this basic principle of business, accounting and law.

7. On page sixteen of the order, number 4, Judge Scarborough awards an interest rate of 18% to the plaintiff despite one, the initial complaint filed 4 September 2014 only specified an interest rate of 8.75% and the SC State law, Section 34-31-20 is limited to prime rate as listed in

the first edition of the Wall Street Journal for the calendar year for which the damages are awarded, plus four percentage points. Clearly 18% is not a legal interest rate to be awarded.

8. On page sixteen of the order, Judge Scarborough awards the plaintiff a total amount of $22,554.97. However, at the conclusion of the hearing on 26 September 2017, Judge Scarborough found it proper to award the plaintiff a total amount of $25,146.72. Judge Scarborough has yet been able to explain the difference of the two amounts, eg. 2591.75, and apparently didn't find it necessary to explain the difference between his originally well reasoned award amount and his revised apparently better reasoned 1award amount when he finally managed to file the order 44 days later.

9. When Judge Scarborough filed his final order on 9 November 2017, he filed it in the Charleston County Clerk of Court's office, not in the Richland County Clerk of Court's office as required by the Order of Reference for case 2014-CP-10-05407, signed by Ms. Armstrong on 14 November 2014. Consequently, when Judge Scarborough did not file his final order with the Richland County Clerk of Court's Office by 27 November 2017, 60 days after the final hearing, Judge Scarborough's final order was null and void.

10. Likewise, when Judge Scarborough did not file his improper Form 4 order dated 21 March 2016 with the Richland County Clerk of Court by 20 May 2016, Judge Scarborough's improper dismissal of case 2014-CP-10-05407, citing an alleged 40(j) agreement, was null and void. In this instance, this means that even if case 2014-CP-10-05407 was properly dismissed on 21 March 2016, which it clearly wasn't, it was not dismissed once Judge Scarborough failed to file the Form 4 order dated 21 March 2016 with the Richland County Clerk of Court's office by 20 May 2016, hence, case 2014-CP-10-05407 is still the active case.

11. Given Judge Scarborough clearly dismissed case 2014-CP-10-05407 under false pretenses on 21 March 2016, and with an improper purpose, Judge Scarborough should have recused himself from the case at the same time he signed the Form 4 Order on 21 March 2016.

12. Even if Judge Scarborough chose not to do the right thing until a situation occurred that made it overtly required, Judge Scarborough should have recused himself from case 2014-CP-10-05407 no later than 23 March 2017 when the motions to restore were received by the Charleston County Clerk of Court of Master's in Equity offices.

13. Even if Judge Scarborough chose not to the right thing and recuse himself on or about 22 March 2016, clearly he should have recused himself on or about 8 May 2017 when he knowingly and improperly restored the original case to the original case number, once again in direct violation of the plain language of Rule 40(j).

14. Even if Judge Scarborough chose not to do the right thing and recuse himself on or about 8 May 2017, he clearly should have recused himself on 8 August 2017 when he had to properly restore the case by signing the original order a second time, after he had knowingly and willfully ran an improperly restored case as if it were real for three months, and actually held a hearing for the case on 7 August 2017, knowing the case was not actually restored.

15. Hence, it would have been proper for Judge Scarborough to have recused himself on 21 March 2016 when he knowingly and willfully dismissed a case for an improper purpose, but beyond a doubt, Judge Scarborough was clearly required to recuse himself not later than 8 August 2017 when he had not only dismissed a case improperly on 21 March 2016, but improperly restored the case on or about 8 May 2017, had scheduled two hearings for an improperly restored case, actually held a hearing for an improperly restored case, and then had to sign the same order a second time to properly restore it, three months later.

16. On 26 September 2017, Judge Scarborough intentionally, knowingly, willfully, and with an improper purpose, did not allow defendant Nix to present his defense case. Specifically, including but not limited to, an intentional violation of defendant Nix's Fourteenth Amendment Rights. One definition of such is: "The required elements of due process are those that "minimimize substantively unfair or mistaken deprivations" by enabling persons to contest the basis upon which a state proposes to deprive them of protected interests. The core of these requirements is notice and a hearing before an impartial tribunal. Due process may also require an opportunity for confrontation and cross examination." Footnote 1.

17. Clearly, Judge Scarborough cannot claim he remotely represents an impartial tribunal. His order itself of 9 November 2017 makes the case against Judge Scarborough as a impartial tribunal. As just one example, consider his apparent finding of fact on page four of the order where he states: "As with most neighborhood owners associations, the Board Members aer simply volunteer neighbors and those volunteer neighbors on the Board rely on the professional property managers to properly address such matters as insurance, taxes, any permits, or licenses,

and associated paperwork, ant to meet all necessary corporate formalities of the Association" While it is permissible for a Board of Directors to employ assistance of other to help them run a corporation, there is no arguing the fact that the Board of Directors has a fiduciary responsibility to it's members to run the corporation properly, and provide proper oversight to all Persons that it employs to assist it in running the corporation. For all practical purposes, and this is not the only instance, Judge Scarborough is essentially acting as the defense attorney for the apparent Plaintiff Board of Directors, arguing a irrational line of reasoning that is in direct contradiction to the plain fact that a Board of Directors of a corporation is ultimately responsible to its members and for the proper management of the corporation, and may not assign those responsibilities to another.

18. In actuality, there are a number apparent findings of fact by Judge Scarborough in his order that are not based on any valid evidence or testimony.

19. With respect to testimony, there were apparently two witnesses at the hearing of 26 September 2017, neither of which offered valid testimony because neither were actually sworn in as is represented in the transcript on page 21, line 2 and on page 123, line 22. Since Charleston County nor Sandlapper Reporting LLC have produced the request recordings and steno notes since 16 August 2018 relative to this transcript, a subpoena will be issued for this information as soon as the improper order of Judge Scarborough's dated 1 Dec 2017 is resolved.

20. On page four, Judge Scarborough also appears to find a finding of fact that "*In this case some confusion has arisen because at times, the various property management companies have identified Charleston County's Churchill Park neighborhood by different geographically identifying labels, such as Churchill at Park West, Churchill @ Park West, Churchill Park at Park West, and Churchill Park @ Park West, and also because such property managers have mistakenly used different corporate labels in different communications as Association forms, A property managers's use of such labels cannot, however, be construed as an adoption of multiple corporate entities or names for the single Association.*" This is another example of Judge Scarborough playing the rather ironic role of defense attorney for the Plaintiff. First, it appears Judge Scarborough somehow forgot to include the multiple corporate names that the allegedly professional property managers have used that used the "Inc" suffix. For example, Churchill Park at Park West Association, Inc., Churchill at Park West Association, Inc., Churchill Park

Homeowners' Association, Inc. Likewise, Judge Scarborough somehow seems to be confused himself about the difference between a neighborhood and a corporation and seemingly chooses to avoid explaining how an apparently competent, engaged Board of Directors of a corporation would allow their agents, employees, contractors, subcontractors, third party contractors, etc. "mistakenly" use multiple wrong names for their corporation on an ongoing basis and often, multiple wrong names for their corporation at the very same time in the very same communication,

21. On page five, Judge Scarborough seems to further make a finding of fact that "*The mistaken us by a property manager or third-party vendor engaged through such a property manager of some other label to denote the Association does not alter the fact that the Association operates the community*". Clearly, Judge Scarborough has missed his calling as a ____ defense attorney. First, having apparently found such a definitive finding of fact, Judge Scarborough seems unable to actually identify the legal name of the "Association". Furthermore, the "property manager" assists the Board of Directors of the corporation (eg. Real Party in Interest) to operate the corporation, not the "community".

22. On page six, Judge Scarborough apparently makes a very conclusive finding of fact that "*From at least the point of turnover from the developer to property owner control, no entity known as "Churchill Park Homeowners' Association, Inc. has ever exercised any operational or management authority or control over Park West's Churchill Park community. Rather the Association, which was created to operate and manage the Churchill Park community, has continuously exercise the operational and management control over the neighborhood.*" First, apparently Judge Scarborough read the Declaration of Protective Covenants for Churchill Park very closely to be able to craft this interesting defense of the "Board". Secondly, there is no testimony or valid evidence to remotely support this apparent finding of fact. Third, at the point of "turnover from the developer to property owner control" is actually when the Declarant, C. Richard Dobson Builders, Inc., through their Division President, Mr. Brian Gardner, recorded the Title to Real Estate with the Charleston County RMC on 5 October 2003 at Book F470, Page 328. Somehow, Judge Scarborough doesn't not seem to recognize that the Declarant, C. Richard Dobson Builders, Inc. actually specifies Churchill Park Homeowners' Association, Inc. twice in the Title to Real Estate document, but then for some reason, gets confused when they write in the name of the Grantee, and somehow mistakenly writes in the name of a different

company, admittedly with a very similar name, incorporated just fourteen days before the Title to Real Estate is executed, with a different address than the Real Party in Interest, Churchill Park Homeowners' Association, Inc.

23. Judge Scarborough then does make a correct finding of fact that "*no CPHAI entity even exists: Secretary of State records reveal that the entity's corporate status has been forfeited and the entity dissolved*" Apparently, in good defense attorney role playing, Judge Scarborough doesn't seem to note a couple of important facts about this finding of fact. First, "CPHAI" stands for Churchill Park Homeowners' Association Inc. Second, as much as it is true that on 9 November 2017 Churchill Park Homeowners' Association, Inc. had been dissolved, that incident had only occurred on 27 July 2017, less than three and a half months earlier. Third, "CPHAI" just coincidentally was dissolved by the SC Secretary of State's office less than two days after Gold Crown Management, Inc. had been served with a subpoena for Churchill Park Homeowners' Association Inc. tax returns for the period 2010 through 2017. Fourth, Gold Crown Management Inc. had sent a letter dated 30 December 2016 that clearly stated they were the "professional management company" for Churchill Park Homeowners' Association, Inc, Fifth, Gold Crown Management, Inc. and their business partner LPPM, Inc. and several attorneys had received a certified letter three weeks earlier informing them that Churchill Park Homeowners' Association, Inc. was without a Registered Agent and that they needed to correct that situation promptly. And last for now, Gold Crown Management, nor any of the other parties on the certified letter dated 5 July 2017 took any action to correct the lack of a registered agent for Churchill Park Homeowners' Association, Inc., thereby setting up a situation to have the corporation dissolved and make make their apparently premeditated strategy of making "Churchill Park" the successor in interest, just like Judge Scarborough inquired about during the 4 May 2017 hearing to restore the previously improperly dismissed case of 2014-CP—10-05407.

24. Apparently, Judge Scarborough found Plaintiff, Plaintiff's attorneys and Plaintiff's attorney's associates last minute scheme to create the appearance of "reasonable attorney fees incurred" proper given he apparently raised no issue, nor remotely questioned their "good faith" by creating an invoice dated 25 September 2017, apparently billing all of their apparent hours since December 2014 the day before a trial.

25. Apparently Judge Scarborough is so familiar with Mr. Musheff's and McCabe Trotter and Beverly, PC that he did not think it was necessary to inquire about all of the time they billed that has redacted descriptions of where the time was billed.

26. Apparently Judge Scarborough didn't see the description of the time spent 7 March 2017 where the concept of "two Churchill Board entities" is cited.

27. Apparently Judge Scarborough thought it was appropriate to award hourly attorney rates for work associated with something other than a foreclosure action. Eg. Small claim case that the "two Churchill Board entities" and "two Neighbors of Nix's" were involved in.

28. Apparently Judge Scarborough is familiar enough with McCabe Trotter and Beverly to believe their story about a fee arrangement without seeing a contract that documents that fee arrangement.

29. Apparently Judge Scarborough believes that the incurred attorney fees and costs, even from more than two years earlier, doesn't have to reflect anywhere on the "Associations" alleged "continuous financial records" to be considered "incurred"

30. Apparently, even though Judge Scarborough clearly read the Declaration of Protective Covenants of Churchill Park very closely to hone in on that whole "operational and management control" theory, in lieu of properly relying on SCRCP Rule 17 to properly establish the Real Party in Interest, it appears Judge Scarborough missed the paragraph that specifies personal liability.

> d. Personal Liability. Each Owner shall be personally liable for the portion of each assessment coming due while the owner of a Lot, and each grantee of an Owner shall be jointly and severally liable for the assessments which are due at the time of conveyance; however, the liability of a grantee for the unpaid assessments of its grantor shall not apply to any first Mortgagee taking title through foreclosure proceedings.

The complaint does not waive the right to personal deficiency, the Plaintiff does not waive the right to personal deficiency in writing before Judge Scarborough's apparent judgement of 9 November 2017, and yet, apparently Judge Scarborough doesn't believe he should enforce that part of the contract that the "Association" that allegedly "operates" the Churchill Park Neighborhood relies upon to attempt to make a case as the successor to an intentionally dissolved corporation to avoid being found guilty of slander of title, malicious prosecution, etc.

31. On page four, Judge Scarborough apparently finds it very important to note that Gold Crown Management is the Registered Agent for "Churchill Park", yet fails to state the obvious that being a Registered Agent is potentially meaningless beyond being the agent to accept service of process for a company in the state it is operating in. Likewise, Judge Scarborough knew of should have known, at the time he signed this order that Gold Crown Management was supposedly ending its service for the "Churchill Park Neighborhood" effective 1 November 2017, and a new company, Cedar Management Group out of Charlotte NC was taking over on 1 November 2017. However, to prove how meaningless Judge Scarborough's apparent findings of fact are, Gold Crown Management was paying property taxes on property owned by Churchill Park Homeowners' Association, Inc. as late as 25 November 2017, when Cedar Management Group had become the Registered Agent of "Churchill Park" five days earlier on 20 November 2017.

32. Plaintiff exhibit 11 is patently and intentionally incorrect and deceptive. Southern Community Services was in charge of whatever the professional property managers are in charge of through 31 December 2014. LPPM, Inc. took over on 1 January 2015 and were in control through 31 December 2016. Gold Crown Management took over on 1 January 2017.

33. Based on information and belief, the company currently operating as "Churchill Park" is actually a for profit corporation principally operating in a state other than South Carolina. Once Judge Scarborough's improper order of 1 December 2017 is set aside, a subpoena will be issued to obtain the actual information associated with the account that was used to cash a check made out to Churchill Park Homeowners' Association, Inc. in April 2018.

34. Plaintiff exhibit 3 is intentionally deceptive and fraudulent and was introduced to support the story being portrayed in exhibit 11. The name on the document has been changed from Park West Master Association, Inc. to "Churchill Park", and the charges have been stopped at the end of July 2014, instead of when the charge through Southern Community Services actually stopped in December 2014.

Therefore, between intentionally deceptive and inaccurate evidence being utilized by Plaintiff, no witnesses that were properly sworn in, inaccurate and uncorrected transcript(s), a clearly biased judge, this proceeding and all orders issued are improper and should be set aside and the case dismissed, with prejudice, in favor of defendants.

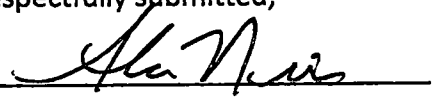
WHEREFORE, Defendant, respectfully requests the Court to:

1. Dismiss case 2017-CP-10-04031, with prejudice, in favor of defendants.
2. Sanction Plaintiff and Plaintiff's attorneys appropriately.
3. Properly restore case number 2014-CP-10-05047 and grant equitable tolling of the statutes of limitations for all possible related causes of action, as well as the time counted toward rules of civil procedure for this motion and all subsequent motions, to equitably account for the improper restrictions this order imposed on defendants, thereby preventing further injury to defendants.
4. Require Judge Scarborough to recuse himself immediately.
5. Any and all other and further relief as the Court deems just, prudent, and proper.

The defendant reserves the right to supplement this motion with additional evidence, supporting exhibits and written and oral arguments at or before any scheduled hearings related to this matter.

November 9, 2018

Respectfully submitted,



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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2017-CP-10-04031

CHURCHILL PARK
Plaintiff,
vs.
ALAN G NIX, NORMA J NIX and ESTATE OF NORMA J NIX
Defendant.

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

Plaintiff's Attorney:	Defendant's Attorney:
Todd Musheff, Bar No. _____ Address: 1121 Park West Blvd, St. B, #148, Mount Pleasant, SC 29466 Phone: 843.729.3187 Fax _____ E-mail: tmucheff@musheff-law.comOther: _____	Alan Nix, Bar No. Pro Se Address: 1401 Densmore Circle, Mt. Pleasant, SC 29466 Phone: 843.991.4170 Fax_____ E-mail: alan.g.nix@gmail.comOther: _____

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: 60(b)
Estimated Time Needed: 30 mins Court Reporter Needed: ☒ YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

Ala Nix (PRO SE) 9 Nov 2018
Signature of Attorney for ☐ Plaintiff /☒ Defendant Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $_____
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

RECEIVED
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SC Court of Appeals

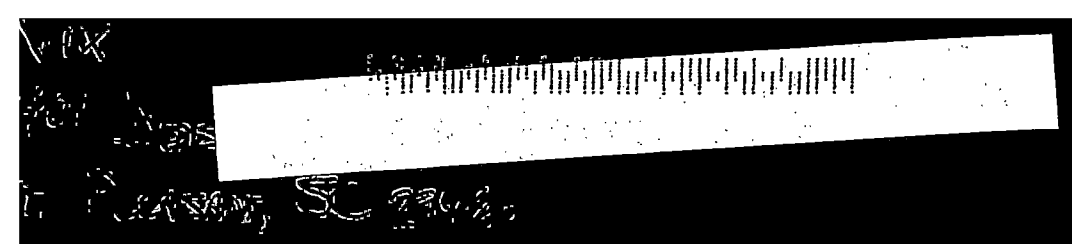
JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: _____

JUDGE CODE _____
Date: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____



SC Court of Appeals
Clerk of Court
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