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NOV 21 2018  
SC Court of Appeals

STATE OF SOUTH CAROLINA  
In the South Carolina Court of Appeals

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Satara Lopez and Francisco

v.

Joseph Strickland, Presiding Judge

**IN RE:**

THE STATE OF SOUTH CAROLINA  
In The South Carolina Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Master-In-Equity

Joseph Strickland, Presiding Judge

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Civil Action No. 2015-CP-40-03832

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CitiMortgage, Inc.,

Respondent,

v.

Satara Lopez and Francisco  
Lopez,

Petitioners

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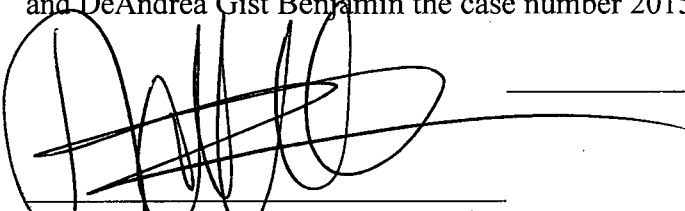
Appellate Case No.: 2018-00106

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**PETITION FOR A WRIT OF MANDAMUS  
TO THE COURT OF APPEALS**

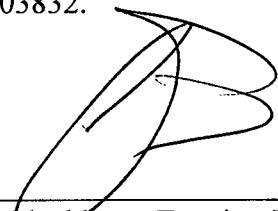
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Satara Lopez and Francisco Lopez, by and through their undersigned attorneys, hereby appeals the Order on May 4, 2018 and the previous judgments and all ruling, issued by Joseph Strickland and DeAndrea Gist Benjamin the case number 2015-CP-40-03832.



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## QUESTIONS PRESENTED

1. Did the Master-In-Equity err in not having testimony taken in writing so that a record of the motions and hearings heard before him would be created?
2. Did the absence of a court reporter at the multiple hearings, motions and arguments in this matter result in prejudice to the Petitioner?

## STATEMENT OF THE CASE

This case presents a long and tortuous history of filings in both the Circuit and the Master-In-Equity Courts.

Respondent initiated this matter by way of filing a Lis Pendens and Mortgage Foreclosure on June 15, 2015 seeking foreclosure of Petitioners' home located in Blythewood, South Carolina. Petitioners filed an Answer and Counterclaim to Respondent's Mortgage Foreclosure on July 17, 2015. Respondent filed a Motion to Refer Case to the Master-In-Equity on September 15, 2016 and an Order of Reference was executed and filed on September 15, 2016.

Several motions and hearings were heard both prior to and after this matter was referred to the master. Many, if not all, of the motions, arguments and hearings were held without a court reporter. The transcripts, or lack thereof, of the motions, hearings and arguments held before the master form the crux of this Motion for Writ of Mandamus. Particularly, the absence of a court reporter in many, if not all, of the hearings heard before the master make it impossible for Petitioners to produce a record as requested by the South Carolina Court of Appeals.

Petitioners have made numerous requests for the master's help in identifying the court reporters but have not been provided with this information by the master. Petitioner seeks a writ of mandamus to compel the master to produce the names of the court reporters, if any, that took the testimony in the hearings and motions heard in this matter.

## ARGUMENT

1. THE MASTER-IN-EQUITY ERRED IN NOT HAVING PROCEEDINGS BEFORE HIM BE TAKEN IN WRITING PURSUANT TO SECTION 14-11-110, SOUTH CAROLINA CODE OF LAWS.

S.C. Code Ann. Section 14-11-110 (1976), provides “the master **shall**, upon application of either party to any cause **or** proceedings in which **equitable relief** is demanded pending and at issue in his county, **take in writing** the testimony of any witness who may be produced before him . . . .” (Emphasis added). A mortgage foreclosure is an action in equity. *Wachovia Bank, Nat. Ass’n v. Blackburn*, 407 S.C. 321, 755 S.E. 2d 437 (2014). Accordingly, the master is required to have all hearings, motions and arguments heard before him taken in writing pursuant to S.C. Code Ann. Section 14-11-110 (1976) and as contemplated by *Wachovia Bank, Nat. Ass’n v. Blackburn*.

Rule 53(c), SCRCP provides that once a matter is referred to the master, he or she shall exercise all power and authority that a circuit court judge would have in a similar matter. Therefore, when a case is referred to the master under Rule 53, the master has the power to conduct hearings in the same manner as a circuit court unless the order of reference limits the master’s power. *Smith Cos of Greenville, Inc. v. Hayes*, 311 S.C. 358, 428 S.E. 2d 900 (Ct. App. 1993). In this case, the Order of Reference did not limit the master’s power to take written testimony and, as such, the master is mandated to take written testimony pursuant to S.C. Code Ann. Section 14-11-110 (1976).

Most, if not all, of the multiple hearings, arguments and motions were heard without a court reporter to take written testimony. Several of the hearings and motions are identified heard in this matter are identified in Petitioners’ Request for Permission to Order Transcript Out of

Time filed with this Court on August 21, 2018.

Furthermore, and critical to Petitioners' Appeal, the master has not responded to Petitioners' multiple requests to the master for the master to identify court reporters that attended the multiple hearings and motions heard before the master. The requests to the master by Petitioners' counsel to identify the court reporters are attached as exhibits to Petitioners' Request for Permission to Order Transcript Out of Time filed on August 21, 2018.

Petitioners' have been prejudiced by the lack of a record of written testimony taken before the master as mandated by S.C. Code Ann. Section 14-11-110 (1976). Accordingly, Petitioners' request this Court to issue a writ of mandamus compelling the master to divulge the names of any and all court reporters that took written testimony before the master in this case.

To obtain a writ of mandamus requiring performance of an act, the applicant must show (1) a duty of the opposing party to perform the act, (2) the ministerial nature of the act, (3) the applicant's specific legal right for which discharge of the duty is necessary, and (4) a lack of any other legal remedy. *Redmond v. Lexington County School Dist. No. Four*, 314 S.C. 431, 445 S.E. 2d 441 (1994).

The writ of mandamus is the highest judicial writ known to the law... The primary purpose or function of a writ is to **enforce an established right**, and to enforce a corresponding duty **created or imposed by law**. *Willimon v. City of Greenville*, 243 S.C. 82, 132 S.E. 2 169 (1963). (emphasis added). Accordingly, pursuant to S.C. Code Ann. Section 14-11-110 (1976) and Rule 53(c), SCRCP, Petitioners seek this court to issue a writ of mandamus to the master to compel the identity of any and all court reporters that took written testimony in this matter so that Petitioners will not have this case dismissed due to the seemingly lack of a record in this matter.

2. THE ABSENCE OF A COURT REPORTER AT THE HEARINGS, ARGUMENTS AND MOTIONS HEARD IN THIS MATTER MAKES IT IMPOSSIBLE TO PRODUCE A WRITTEN TRANSCRIPT OF THIS MATTER.

The absence of a court reporter at the multiple hearings and motions held before the master has severely prejudiced the Petitioners and have violated Petitioners' rights under Rule 53(b), SCRPC. Rule 53(b), SCRPC provides that any party may request a jury "on any or all issues triable of right by a jury and, upon the filing of a jury demand, the matter **shall** be returned to circuit court. (emphasis added). Generally, the relevant question in determining the right to trial by jury is whether an action is legal or equitable. *Lester v. Dawson*, 327 S.C. 263, 491 S.E. 2d 240 (1997).

The central issue in the underlying case, involves the foreclosure on Petitioners' home. Questions of fact exist, as set forth in Petitioners' Motion for Remand to Common Pleas Court filed on September 26, 2016. A copy of this Motion is attached herein as Exhibit A. Petitioners also included a filed copy of its Motion for Remand to Common Pleas Court in its letter to this court hand delivered on June 15, 2018.

Petitioners cannot produce a record of the proceedings heard in this case as required by Rule 207(a) SCACR and as demanded by the South Carolina Court of Appeals. Petitioners are unable to meet this bar because Petitioners cannot identify, if any, the identity of the court reporters that took written testimony at the multiple hearings and motions heard in this matter before the master. To demand the Petitioners to do so without the existence of a transcript of the underlying proceedings would be tantamount to proving a negative. Furthermore, Petitioners repeated requests to the master (as identified in Petitioners' Request for Permission to Order Transcript Out of Time) have been stonewalled.

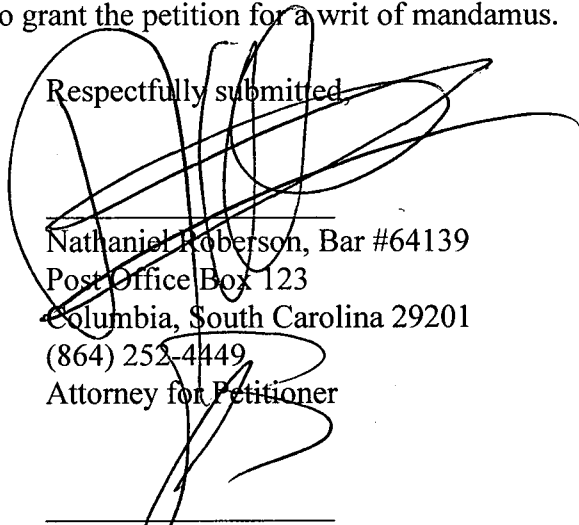
The repeated efforts by Petitioners to obtain the transcript of record as required by Rule 207(a) SCACR and as demanded by the South Carolina Court of Appeals, and as evidenced in Petitioners' Request for Permission to Order Transcript Out of Time, have not been met with success. Accordingly, Petitioners' request for this court to issue a writ of mandamus compelling the master to identify court reporters of record in the underlying case is crucial in Petitioners' case. Without this requested writ of mandamus and the absence of any other legal remedy, Petitioners stand to have this Appeal dismissed.

#### CONCLUSION

For the reasons stated, petitioner asks the Court to grant the petition for a writ of mandamus.

November 21, 2018

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

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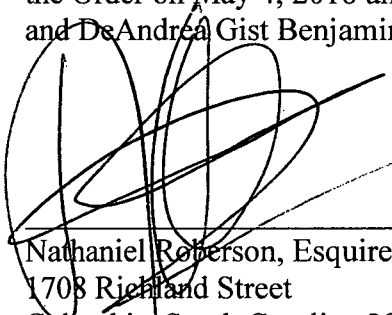
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