

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 NATIONSTAR MORTGAGE, LLC)
 d/b/a MR. COOPER,)
)
 PLAINTIFF,)
)
 vs.)
)
 BARBARA A. GIBBS, MELVIN E.)
 GIBBS, and WESTBROOK PHASE IV)
 HOMEOWNERS' ASSOCIATION,)
)
 DEFENDANTS.)
 _____)

IN THE COURT OF APPEALS
 OF SOUTH CAROLINA

RECEIVED
 OCT 31 2019
 SC Court of Appeals

CASE No: 2019-000486

**APPELLANTS' EMERGENCY
 MOTION FOR HEARING**

TAKE NOTICE: The Honorable Chief Justice Wendy L. Hagenau has modified the STAY in this case; permitting this Court to proceed: copy of the ORDER is attached hereto, **pp. 8-9**.

COMES NOW, the above named Appellants and move this Honorable Court to restore this case to the active docket and GRANT Appellants an Emergency Hearing. The reasons for this motion are set forth below:

I. PRELIMINARY STATEMENT

1. Bank of America, aided by Nationstar Mortgage, formed a continuing criminal enterprise ten (10) years ago, designed to defraud the Treasury Department and 2 million mortgagors – including Appellants, of \$300 billion.

2. For six (6) years Nationstar, part and partial to the criminal enterprise used the Florence Court of Common Pleas to carry forth the criminal enterprise that Plaintiffs accurately named: The HAMP-less Gang. Nationstar acting for the HAMP-less Gang filed this illegal foreclosure and committed subsequent crimes to conceal [t]heir criminal acts.

II. STATEMENT

3. *The gravamen of Appellants Adversary Proceeding filed in the Bankruptcy Court for the Northern District of Georgia is filed pursuant to the Racketeering Influence Corrupt Organization Act (RICO), against Bank of America, Nationstar and Does 1-10. AND, alleges deprivation of rights by individuals under the color of state law and those having the authority to do so, failed and neglected to protect Appellants.*

4. Appellants have filed a motion to remove the complaint to the district court.

5. This motion is filed out of respect for the legal process and to avoid naming officials of the State of South Carolina as co-conspirators.

III. STATEMENT OF FACTS

6. Nationstar engaged in the subornation of perjury by certifying in the foreclosure Appellants failed to pay their mortgage for July, August and September 2013. AND, Nationstar continued the continuing criminal enterprise by filing a Proof of Claim (POC) in the bankruptcy court relying on the same perjury. AND,

7. In furtherance of the continuing criminal conspiracy, Nationstar alleged in their POC, Appellants did not pay their mortgage for December 2011: subornation of perjury. On July 26, 2013 Appellants wrote to Nationstar and included bank records that proved Appellants paid their mortgage for December 2011 and warned Nationstar not to join Bank of America's criminal enterprise.

a. It appears Nationstar may have communicated this false information to the judge(s) hearing the foreclosure litigation. It is impossible to maintain a foreclosure suit where, as here, Appellants never missed a mortgage payments and submitted 2 years of bank records as proof.

IV. STATEMENT OF THE CASE

8. Whether Nationstar may use South Carolina courts to pursue a foreclosure when Appellants never missed a mortgage payment. AND, whether the SUBORNATION OF PERJURY in furtherance of a continuing criminal enterprise, may be maintained in this Court and the lower courts?

9. Nationstar has failed to answer or otherwise plea in the Adversary Proceeding (Bankruptcy) thereby admitting to each and every allegation – in chief, subornation of perjury and the criminal enterprise designed to punish Appellants for pursuing their right to have their mortgage modified under the Home Affordable Mortgage Program (HAMP).

V. ARGUMENT

10. Chief Judge Wendy L. Hagenau, U.S. Bankruptcy Court, Northern District of Georgia (Atlanta) Case No. 19-54809WLH (Adversary Proceeding #: 19-05272WLH), issued an order modifying the Automatic Stay; permitting this Court to proceed with Appellants' appeal: **ORDER, pp. 8-9.**

11. The attached Title Page from the Adversary Proceeding was filed in opposition to Bank of America's motion to dismiss. The Title Page is included to provide this Court with the correct heading: **Title Page, pp. 10-11.**

12. Appellants filed suit against Nationstar alleging as the gravamen – a continuing criminal enterprise designed to defraud the Treasury Department and 2 million mortgagors, of which Appellants are members, of \$300 billion. Nationstar did not Answer or otherwise plea. Upon Appellants request for entry of default, the Clerk entered default on the 13th day of September 2019:

Entry of Default, pp. 13-14.

13. Nationstar has admitted [t]hey are engaged in a continuing criminal enterprise with Bank of America and Does 1-10. AND, Nationstar as part and partial to the criminal enterprise committed fraud and other criminal acts, to wit:

a. Nationstar is not the party-in-interest to Appellant's mortgage note and therefore did not have standing to file the foreclosure litigation – lack of jurisdiction.

(1) Nationstar in furtherance of the criminal enterprise, constructed and had the lower court sign an order, Nationstar was falsely created to protect the criminal enterprise.

b. Nationstar knew Appellants paid their mortgage for the months of July, August and September 2013 and because there were no damages Nationstar did not have standing to file the foreclosure litigation. Nationstar having breached the mortgage contract, prevents the breaching party from suing on said contract.

c. Nationstar filed an affidavit of debt they knew was prepared falsely and filed in the lower court in violation of prohibition of subornation of perjury.

d. Nationstar violated the Administrative Order of the South Carolina Supreme Court and did not serve on Appellants their right to Modification with the complaint and summons.

e. Nationstar did not provide Appellants, pursuant to federal law, a 30 day notice to cure the alleged default: detailing any and all moneys due and owed, prior to filing foreclosure litigation.

f. Nationstar willfully and falsely reported to the credit bureaus that Appellant had failed and neglected to pay the mortgage when due and owed – to destroy Appellants' ability to be financially secure: Barbara Gibbs' credit score changed from more than 825 to about 500.

14. Nationstar filed their Proof of Claim (POC) in the bankruptcy court: the POC was based on the mortgage contract rather than the judgment of the lower court. Nationstar having voluntarily transferred jurisdiction to federal court, renders the foreclosure null and void.

15. During the bankruptcy and without a order or direction by Judge Hagenau, Nationstar voluntarily accepted mortgage payments of \$2,197.32 for the months of June, July, August, September and October 2019.

a. Nationstar's *offered* modification required Appellants to pay three (3) timely mortgage payments for the modification to become permanent.

b. Nationstar's acceptance of three (3) mortgage payments reinstates Appellants mortgage contract, forgives any and all money in arrears caused by Nationstar's breach of the mortgage contract and renders the foreclosure litigation null and void.

14. Congress enacted the RICO to provide an additional effective crime fighting tool to combat organized crime – including a civil remedy for damaged there from. In relevant part:

a. 18 U.S. Code § 1964. Civil remedies –

(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee...

15. Even if by some legal miracle, Nationstar is able to have their default vacated and set aside, the evidence submitted in this case, proves each and every stated criminal act.

16. Fair legal analysis produces two (2) conclusions that “eat” at the integrity of the lower courts. If, there is another conclusion exist, [i]t must be stated! This case was allowed to proceed for six (6) years although Nationstar is not the party-in-interest and Appellants never missed a mortgage payment.

17. One analysis requires Nationstar having, *ex-parte*, provided the lower court information alleging Appellants did not pay their mortgage December 2011 and other costs due and owed: this claim was not included in the foreclosure complaint and a motion to amend was not filed. If this happened, given an opportunity to respond, Appellants would have produced bank records to prove payment and Appellants warned Nationstar not to join the criminal enterprise and use this as an issue: **Appellants’ Letter dated July 26, 2013, pp. 14-15.**

18. The lower courts accepted some type of benefit to dismiss this case as required by law: Appellant, M. Gibbs filed an Answer denying each and every allegations – this pleading prevented Nationstar from amending the complaint without leave to do so. Appellant, B. Gibbs filed a motion to dismiss – attaching bank records proving timely mortgage payments for January 2012 to December 2013.

a. The lower court never ruled on the motion to dismiss: a proper ruling would have provided Appellant, B. Gibbs 30 days to file an Answer. AND, the lower court granted Nationstar’s motion for summary judgment although every issue, not only was disputed, Appellants by uncontroverted evidence and affidavits, Nationstar’s facts were false and criminal.

18. **This Court must REMAND this case to the lower court to allow that court to provide a third explanation.**

19. THIS IS NOT A CIVIL CASE – IT IS A CRIMINAL CASE IN WHICH A CRIMINAL ENTERPRISE IS USING THE CIVIL FORECLOSURE PROCESS AND THIS COURT TO ACCOMPLISH A CRIMINAL PURPOSE!


20. This Court, using the parameters of 18 USC § 1964(a), must take any and all actions necessary to protect Appellants from the criminal acts being perpetrated by Nationstar and the criminal enterprise; and protect the integrity of this Court and the lower court.

VI. CONCLUSION

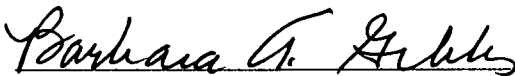
This Court must issue an Order – protecting Appellants from the criminal acts of Nationstar and their co-conspirators, sanction Nationstar and REMAND this case to the lower court for an *evidentiary hearing*.

WHEREFORE, Defendants pray this Honorable Court hold an EMERGENCY HEARING, sanction Nationstar, REMAND the case to the lower court, and grant such other and further relief, at law and equity, general or special, to which Defendants have shown themselves justly entitled.

Respectfully Submitted,



M. Eugene Gibbs, Esq. *Pro-se*
3108 Hidden Falls Drive
Buford, Georgia 30519
(843) 610 0674
mgibbs70@aol.com



Barbara A. Gibbs, Pro-se
3108 Hidden Falls Drive
Buford, Georgia 30519
mgibbs70@aol.com

IT IS ORDERED as set forth below:

Date: October 21, 2019



Wendy L. Hagenau

Wendy L. Hagenau
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:

BARBARA A. GIBBS,

Debtor,

CASE NO. 19-54809-WLH

CHAPTER 13

ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY

The Court held a hearing in the above-styled case on October 16, 2019. Debtor, Debtor's husband M. Eugene Gibbs, counsel for Nationstar Mortgage LLC d/b/a Mr. Cooper, Taylor Mansell, Paul A. Rogers, and counsel for the Chapter 13 Trustee, Ryan Williams, were present. Mr. Gibbs, who is also the Plaintiff in a related adversary proceeding, stated he wished to proceed with the pending litigation in South Carolina. The Court construes his statements as an oral motion for relief from the automatic stay. All parties in interest were present and were in favor of the relief requested. For the reasons stated on the record, which the Court reserves the right to supplement.

1

IT IS ORDERED that Mr. Gibbs's oral motion for relief from the automatic stay is **GRANTED**. The automatic stay is lifted for the parties to proceed with litigation pending in the Florence County South Carolina Court of Common Pleas case no. 2018-CP-21-03238 Nationstar Mortgage LLC vs. Gibbs and any appeals therefrom, provided that the stay is NOT lifted for purposes of collection of any amounts due from the Debtor.

END OF ORDER

Distribution List

M. Eugene Gibbs
3108 Hidden Falls Drive
Buford, GA 30519

Barbara Albyrne Gibbs
3108 Hidden Falls Drive
Buford, GA 30519

Taylor S. Mansell
Shapiro Pendergast & Hasty LLLP
211 Perimeter Center Parkway NE, Suite 300
Atlanta, GA 30346

Paul A. Rogers
McGuire Woods
1230 Peachtree Street NE
Promenade II, Suite 2100
Atlanta, GA 30309-3534

Ryan Williams
Nancy J. Whaley, Standing Chapter 13 Trustee
303 Peachtree Center Avenue
Suite 120, Suntrust Garden Plaza
Atlanta, GA 30303

Nationstar Mortgage LLC d/b/a Mr. Cooper
c/o Corporation Service Corporation
40 Technology Pkwy South, Ste 300
Norcross, GA 30092-2924

Bank of America
c/o CT Corporation System

COPY

In The United States Bankruptcy Court

For The Northern District of Georgia
(Atlanta Division)

2019 AUG -7 AM 9:29
E. O. DELP...
E. O. DELP...

IN RE,)
)
BARBARA ALBYTINE GIBBS,)
)
Debtor,)
_____)
)
M. EUGENE GIBBS,)
Plaintiff,)
)
v.)
)
BARBARA ALBYTINE GIBBS,)
NATIONSTAR MORTGAGE LLC)
d/b/a MR. COOPER, and)
BANK OF AMERICA,)
Defendants.)
_____)

CHAPTER 13
CASE No. 19-54809-WLH

E. O. Del...

19-5272

Adv. Pro. No. _____

JURY TRIAL DEMANDED

ADVERSARY PROCEEDING
[Proof of Claim and Counterclaim]

I. PRELIMINARY STATEMENT

1. The vast majority of individuals who appear before this Court are seeking relief from creditors based on choices that weren't prudent and/or negative circumstances. This case is an "outlier!" *Plaintiff and Debtor seek relief because Nationstar Mortgage and Bank of America's criminal behavior forced Debtor into bankruptcy.*

II. STATEMENT

2. Nationstar Mortgage [Hereinafter Nationstar] having full and complete knowledge Debtor never missed a mortgage payment, nevertheless, filed foreclosure litigation designed to steal the home owned by Debtor and Plaintiff. NOW, Nationstar has filed a POC seeking to profit from their criminal enterprise.

**U.S. Bankruptcy Court
Northern District of Georgia (Atlanta)
Adversary Proceeding #: 19-05272-wlh**

Assigned to: Chief Judge Wendy L. Hagenau

Date Filed: 08/07/19

Lead BK Case: 19-54809

Lead BK Title: Barbara Albyttine Gibbs

Lead BK Chapter: 13

Demand: S11500000

Nature[s] of Suit: 71 Injunctive relief - reinstatement of stay
91 Declaratory judgment
21 Validity, priority or extent of lien or other interest in property
14 Recovery of money/property - other

Plaintiff

M. Eugene Gibbs
3108 Hidden Falls Drive
Buford, GA 30519

represented by **M. Eugene Gibbs**
PRO SE

V.

Defendant

Barbara Albyttine Gibbs
3108 Hidden Falls Drive
Buford, GA 30519

represented by **Michael R. Rethinger**
Law Offices of Michael R. Rethinger, LLC
Suite 1150
50 Hurt Plaza SE
Atlanta, GA 30303
(770) 922-0066
Fax : (866) 656-4321
Email: michael@rethingerlaw.com
LEAD ATTORNEY

Defendant

Nationstar Mortgage LLC d/b/a Mr. Cooper
c/o Corporation Service Corporation
40 Technology Parkway South
Suite 300
Norcross, GA 30092-2924

represented by **Nationstar Mortgage LLC d/b/a Mr. Cooper**
PRO SE

Defendant

Bank of America

represented by **Bank of America**

		09/10/2019)
09/12/2019	<u>13</u> (4 pgs)	Plaintiff's motion for Default Judgment and Partial Default Judgment against Bank of America filed by M. Eugene Gibbs . (aam)
09/12/2019	<u>14</u> (3 pgs)	Request for Entry of Default against Bank of America Filed by M. Eugene Gibbs . (aam)
09/12/2019	<u>15</u> (4 pgs)	Plaintiff's Motion for Default Judgment and Partial Default Judgment against Nationstar Mortgage d/b/a Mr. Cooper filed by M. Eugene Gibbs . (aam)
09/12/2019	<u>16</u> (3 pgs)	Request for Entry of Default Against Nationstar Mortgage d/b/a Mr. Cooper Filed by M. Eugene Gibbs . (aam)
09/12/2019	<u>17</u> (13 pgs)	Plaintiff's Hearing Brief and Affidavit in Support of Hearing Brief Filed by M. Eugene Gibbs . (aam) Modified on 9/13/2019 (jlc).
09/13/2019		Clerk's Entry of Default, pursuant to Bankruptcy Rule 7055 and a Request for Entry of Default filed by M. Eugene Gibbs. It appears from the record that Bank of America, has failed to plead or otherwise defend in this case as required by law. (related document(s) <u>14</u>) (jlc)
09/13/2019		Clerk's Entry of Default, pursuant to Bankruptcy Rule 7055 and a Request for Entry of Default filed by M. Eugene Gibbs. It appears from the record that Nationstar Mortgage LLC d/b/a Mr. Cooper, has failed to plead or otherwise defend in this case as required by law. (related document(s) <u>16</u>) (jlc)

PACER Service Center			
Transaction Receipt			
09/13/2019 16:05:20			
PACER Login:	mgibbs70:6104632:0	Client Code:	
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Billable Pages:	2	Cost:	0.20

Mr. Eugene & Barbara A. Gibbs

4257 Monterey Drive
Florence, South Carolina 29501
(843) 407-6297

July 26, 2013

Nationstar Mortgage LLC
Customer Service Department
350 Highland Drive
Lewisville, TX 75067

In Re: Loan Number: **600987135**
:BOA - #**871471818**

Dear Madame/Sir:

This letter is written to advise you that we are/were in negotiations with BOA: Rogelio Chua, Customer Relationship Manager, BOA [Letter attached hereto]. The negotiations included this loan and Loan Number: **870811531**. BOA steered my wife into a predatory loan, and when we attempted to re-finance both loans, we were charged \$400 in application fees, and informed the closing cost would be \$30,000. THEREAFTER, for more than two (4) years we attempted to have BOA provide us with the correct information as to HOME MODIFICATION PROGRAMS. We were provided either incorrect information or no information.

Mr. Chua was provided all supporting financial documentation; including but not limited to tax return and form 4506-T, proof of income, financial statement, etc., documents attached hereto.

The critical issues for Nationstar are: the moneys you allege are due and owing; ARE NOT! Part and partial to BOA's fraud, the alleged mortgage payment not paid: December 2012, WAS PAID! The proof is attached hereto: statements showing BOA cashed both checks totaling \$2,258.82; a check cashed from the account of Melvin Gibbs on Nov. 30, 2011 in the amount of \$1,200 and a check cashed from the account of Barbara Gibbs on Dec. 03, 2011 in the amount of \$1,058.82.

This was a deliberate situation: alleged nonpayment, caused by BOA to destroy the negotiation undertaken with us. Including but not limited to the sale of our mortgage to Nationstar. Given the present actions of Nationstar: escalating the falsely stated amount of \$2,258.82 to \$8,528.09, that Nationstar has positioned itself as a co-conspirator and therefore an intricate perpetrator in the Racketeering and Influence Corrupt Organization (RICO)....

The attached documents, and BOA employee affidavits [filed in the RICO suit: US District Court-Colorado], provides by clear and convincing evidence BOA engaged in conspiracy and racketeering (RICO) in violation of the US Code: preponderance of the evidence.

We will either join the suit filed in Colorado or file a separate action: US Federal Court for the District of South Carolina, Florence Division....

We respectfully request you advise whether we must add Nationstar as a co-conspirator, or its Nationstar's intent to transfer our mortgage back to BOA.

With warm regards, we remain

Barbara A. Gibbs

M. Eugene Gibbs

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
NATIONSTAR MORTGAGE, LLC)
d/b/a MR. COOPER,)
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BARBARA A. GIBBS, MELVIN E.)
GIBBS,)
Appellants.)
_____)

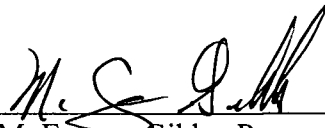
IN THE COURT OF APPEALS
OF SOUTH CAROLINA

CASE No: 2019-000486

CERTIFICATE OF SERVICE

I, Melvin E. Gibbs, hereby certify that a copy of Appellants' Motion for Emergency Hearing was placed with USPS, postage prepaid, the 29th day of October 2019, addressed to:

H. Guyton Murrell, Esq.
SCOTT AND CORLEY, P.A.
2712 Middleburg Drive, Suite 200
Columbia, SC 29204, and



M. Eugene Gibbs, Pro-se
3108 Hidden Falls Drive
Buford, Georgia 30519
mgibbs70@aol.com
(843) 610-0674

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OCT 31 2019
SC Court of Appeals

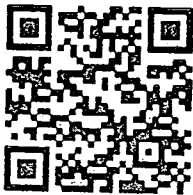
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OCT 31 2019
SC Court of Appeals



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