

IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA

**KIMBERLY CARTER and
KERRY CARTER,**


Plaintiffs,

v.

ALiant BANK,

Defendant.

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Shelby Cnty Judge of Probate, AL
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CASE NO: 58-CV-2014-901043

NOTICE OF LIS PENDENS

Notice is given that Kimberly Carter and Kerry Carter commenced a civil action Circuit Court Case No. CV-2014-901043 against Aliant Bank on the 30th day of September, 2014, in which the Plaintiffs, Kimberly Carter and Kerry Carter, ask the Court to strip Aliant Bank's judgment lien recorded in Instrument Number 20111128000357800 in the Office of the Judge of Probate in Shelby County, Alabama contrary to Alabama law on the property described in below:

Lot 10-7, according to the Resubdivision of Lot 10, Whispering Pines Farms, as recorded in Map Book 32, Page 28, in the Probate Office of Shelby County, Alabama.

Aliant Bank alleges, among other things the following:

Aliant Bank holds a valid judgment lien on the property identified in the Plaintiffs' Complaint and Application for Temporary Restraining Order (Exhibit "A"). The said lien lasts for ten years and takes precedence over all subsequently recorded liens and all subsequent purchasers. Aliant Bank plans to appeal to the Supreme Court of Alabama if it receives an adverse ruling from the Circuit Court of Shelby County, Alabama, in Case No. CV-2014-901043.

The names of the persons or entities whose estates may be affected by the above-styled action are:

Kimberly Carter
110 Highway 13
Helena, AL 35080


Kerry Carter
110 Highway 13
Helena, AL 35080

Respectfully submitted this 6th day of October, 2014.



Burt W. Newsome
Attorney for Aliant Bank

OF COUNSEL:
Newsome Law, LLC
P.O. Box 382753
Birmingham, AL 35238
(205) 747-1970



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IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA

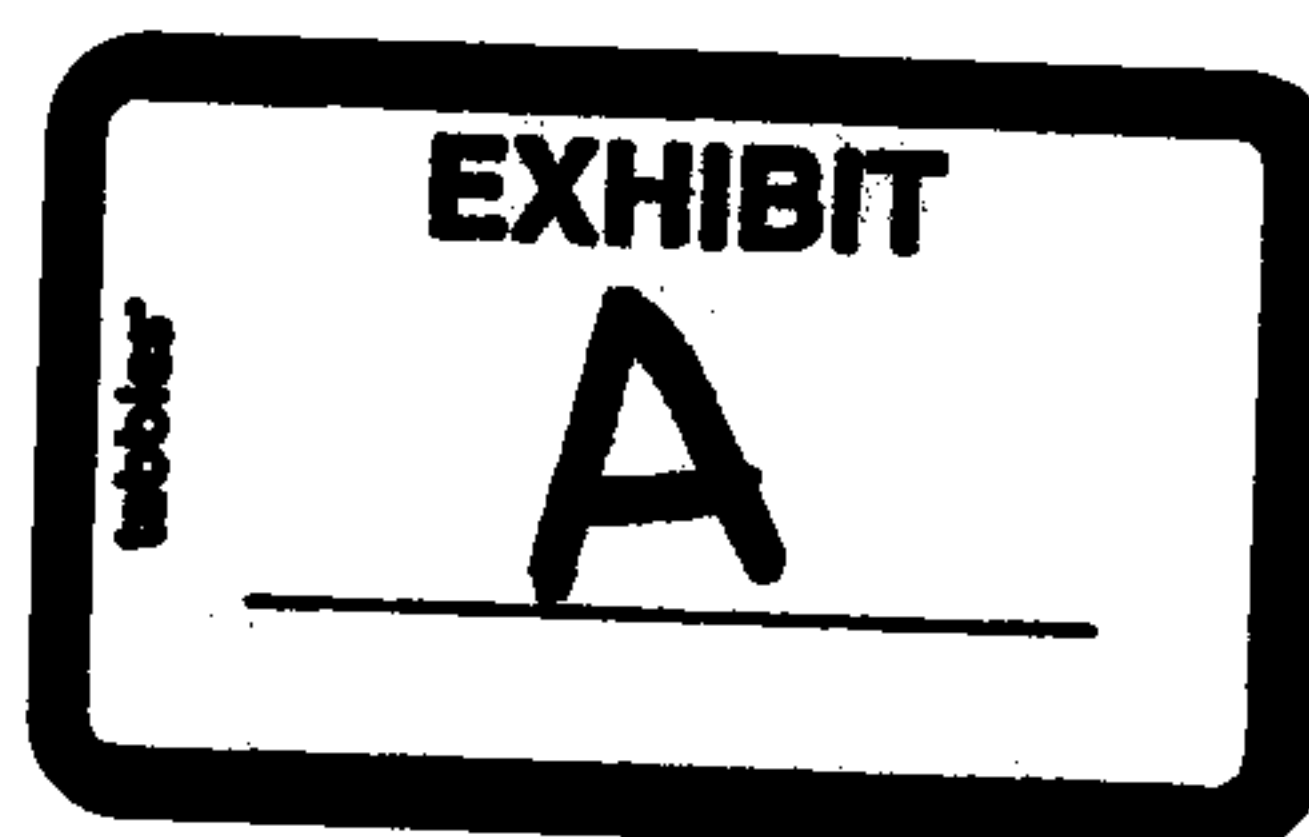
KIMBERLY CARTER and KERRY CARTER)
)
 Plaintiffs,) Case Action No.:
 vs.)
)
 ALIANT BANK,)
 a banking corporation)
)
 Defendant.)

VERIFIED COMPLAINT and APPLICATION for
TEMPORARY RESTRAINING ORDER

1. Plaintiffs Kimberly Carter and Kerry Carter (hereinafter sometimes collectively referred to as "Carter") are both over the age of nineteen years and are resident citizens of Shelby County, Alabama.

2. Defendant Aliant Bank, a division of US AmeriBank, a foreign corporation registered to do business in Alabama and doing business in Shelby County, Alabama, (hereinafter "Aliant Bank").

3. Carter is the owner of a residence located on the property identified as Lot 10-7, according to the resubdivision of Lot 10 Whispering Pines Farms, as recorded in Map Book 32, Page 28 in the Probate Office of Shelby County, Alabama (hereinafter "Subject Residence." The warranty deed conveying the property to Carter is recorded at Instrument #20090602000208660 in the Office of the Judge of Probate of Shelby County, Alabama. A copy of said deed is attached hereto as *Exhibit A* and incorporated herein as if set out in full.



4. At the time of purchase of the Subject Residence, Carter obtained a purchase money mortgage from Aliant Bank. Mortgage Electronic Registration Systems, Inc. as nominee for Aliant Bank, in the original principal amount of \$400,000, recorded said mortgage in Instrument #20090617000232550 in the Probate Office of Shelby County, Alabama.

5. On or about December 15, 2010, BancorpSouth Bank recorded in Instrument #20101215000421360 a judgment in the amount of \$287,244.36 against Kerry Carter obtained in Case No. CV-2009-900592.

6. On or about April 7, 2011, BancorpSouth Bank recorded in Instrument #20110407000108460 a judgment in the amount of \$980,088.41 against Kerry Carter obtained in Case No. CV-2010-9000512.

7. On or about April 26, 2011, Merchant and Farmers Bank d/b/a M & F Bank recorded in Instrument #20110426000126410 a judgment in the amount of \$245,575.42 against Kerry Carter obtained in Case No. CV-2011-900099.

8. On or about November 28, 2011, Aliant Bank recorded in Instrument #20111128000357800 a judgment in the amount of \$789,738.08 against Kerry Carter obtained in Case No. CV-2011-900153.

9. On or about August 21, 2014, Kimberly Carter and Kerry Carter signed a real estate contract to sale the Subject Residence to Gregory R. Nunley and Robyn C. Nunley for a purchase price of \$438,900. A copy of the real estate contract is attached hereto as *Exhibit B* and incorporated herein as if set out in full.

10. In preparation for the closing, a title binder for the Subject Residence was prepared by Land Title Company of Alabama on or about September 5, 2014, a copy of

which is attached hereto as *Exhibit C* and incorporated herein as if set out in full. The title binder sets out the order and preference of the mortgage holder and the judgment creditors showing Bancorp South to be both the first in time and first to record as a judgment creditor.

11. Bancorp South has agreed to accept all of the profits that were due to go to Kerry Carter from the sale which are approximately \$13,685.22 and execute a partial release of both of its judgments from the subject property. These are the total profits that Kerry Carter is entitled to receive from the sale.

12. In preparation for the closing and sale of the subject residence, a settlement statement was prepared by Clayton T. Sweeney, Attorney at Law, representing the Nunley's lender. A copy of said settlement statement is attached hereto as *Exhibit C* and incorporated herein as if set out in full. Said settlement statement on line 507 shows all proceeds to which Kerry Carter is entitled being paid to Bancorp South.

13. Aliant Bank, the fourth judgment creditor in line, has refused to sign a partial release to allow the closing and sale of the subject residence to occur; even though all of the proceeds to which Kerry Carter is entitled are being paid to Bancorp South, the first judgment creditor.

14. Aliant Bank's refusal to execute a partial release of its judgment, even when all of the proceeds due Kerry Carter are going to a judgment creditor prior in time and right, is done maliciously and intentionally to tortuously interfere with the contract between Carter and Nunley for the subject residence.

15. Aliant Bank is aware of the Carter to Nunley contract and has been provided a copy of the title binder and the settlement statement.

16. Aliant Bank is aware of its rights as the fourth judgment creditor and has intentionally and maliciously refused to execute a partial release of the subject property in order to prohibit Carter from being able to fulfill his obligations under the purchase contract even though all profits due Kerry Carter are being disgorged and paid to the appropriate judgment creditor, Bancorp South.

17. Aliant Bank by its tortious interference and malicious conduct is also forcing Kimberly Carter and Kerry Carter into default and forcing him to not to be able to pay off the first mortgage on the subject residence due to Aliant Bank in the amount of approximately \$372,000. There are no outstanding judgments against Kimberly Carter or her interest in the Subject Residence.

17. Kimberly and Kerry Carter and the Nunleys have no adequate remedy at law and irreparable injury will occur if the court does not declare the rights of the parties to the Subject Residence and the proceeds derived from the sale. The Nunleys loan approval is due to expire within the next seven days.

18. Therefore, any further attempt by Aliant Bank to refuse to release the Subject Residence from its judgment when all of the proceeds due to Kerry Carter are being paid to a judgment creditor who is first in time and right is wrongful and should be enjoined as irreparable injury will occur should the sale transaction of the Subject Residence not be allowed to proceed and close. The Purchasers, Nunley, are also being irreparable injured by the wrongful conduct of Aliant Bank.

19. The court should declare that as long as all proceeds from the sale are distributed as shown on **Exhibit C**, with the proceeds remaining after the payment of real estate commissions and normal closing costs being utilized to first satisfy the mortgage

on the Subject Residence to Aliant Bank and then all remaining proceeds due to Kerry Carter being paid to Bancorp South, the judgment creditor who is actually first and second in line and time; then, all other judgments shall be partially released from the Subject Residence.

25. Notice of the filing of this action has been given to Burt Newsome as counsel for Aliant Bank.

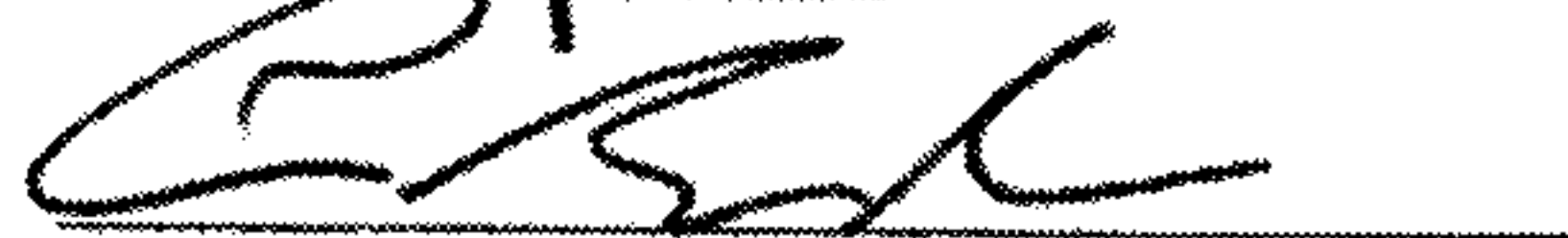
**I HEREBY CERTIFY THAT I HAVE READ ALL THE ALLEGATIONS AND
AVERMENTS OF THE ABOVE COMPLAINT AND THEY ARE TRUE AND
CORRECT.**


KERRY CARTER

STATE OF ALABAMA }
SHELBY COUNTY }


I, the undersigned, a Notary Public in and for said county in said state, hereby certify that Kerry Carter, whose name is signed to the foregoing complaint verification, and who is known to me, acknowledged before me that, being informed of the contents of this complaint, he executed the same voluntarily on the day the same bears date.

Given under my hand and seal this 30th day of Sept., 2014.


Notary Public


LAURIE BOSTON SHARP (BOS012)

OF COUNSEL:
LAURIE BOSTON SHARP,
Attorney at Law, LLC
P. O. Box 567
Alabaster, Alabama 35007
(205) 685-9450


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Serve Defendants via Sheriff's Deputy at:

Aliant Bank
Meadow Brook Corporate Park
1100 Corporate Parkway
Birmingham, Alabama 35242



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