

1 Superior Court Case No. SC117126

2 US District Court Case No. 2:14-CV-09780 (REMANDED 6/17/2015)

3
4 IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

5 **MARINA J BOYD**

6 PETITIONER/PLAINTIFF

7 vs.

8 **LOS ANGELES SUPERIOR COURT WEST DISTRICT DEPT. O**

9 **1725 South Main Street, Santa Monica, California 90401**

10 **Honorable Lisa Hart Cole, Presiding**

11 **310-255-1866**

12 RESPONDANT

13 **CITIMORTGAGE, INC.**

14 DEFENDANT/REAL PARTIES AT INTEREST

15
16 Review of Superior Court Order Striking Plaintiff Statement of Disqualification
August 5, 2016

17 **PETITION FOR WRIT OF MANDATE AND SUPERSEDAS**
18 **IMMEDIATE ACTION REQUESTED**

19 Marina J. Boyd
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21 Los Angeles, California 90064
310-663-4811

22 *Petitioner/Plaintiff in Pro Per*

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EXHIBITS

- EXHIBIT A Transcript of Summary Judgement Hearing/Request for Recusal May 25, 2016
- EXHIBIT B Statement of Disqualification – July 27, 2016
- EXHIBIT C E-Mail regarding Clerks refusal to file Statement of Disqualification
- EXHIBIT D Judge Lisa Hart Cole’s Order Striking Statement of Disqualification
- EXHIBIT E Minute Order Setting Hearing on Motion for New Trial for August 16, 2016
- EXHIBIT F July 22, 2016 Complaint to the Commission of Judicial Performance

1 **ISSUES PRESENTED**

2 That Judge Lisa Hart Cole is prohibited by statute from sitting in judgment of the legal
3 sufficiency of my Statement of Disqualification by Ordering it Stricken after Plaintiff requested
4 and the Judge refused to recuse herself pursuant to Code of Civil Procedure §170.3(c)(5) which
5 states *“A judge who refuses to recuse himself or herself shall not pass upon his or her own*
6 *disqualification or upon the sufficiency in law, fact, or otherwise, of the statement of*
7 *disqualification filed by a party”*.

8
9 **STAY REQUESTED**

10 I request that the court issue a stay of proceedings in the trial court which shall expire ten
11 days after the Court’s ruling. Without such a stay, the judge being challenged will be permitted to
12 rule on my Motion for New Trial which is set to be heard August 16, 2016, before I have the
13 opportunity to seek review in the Supreme Court if this court denies the petition.

14 Failure to grant the stay would not only be a violation of my right to due process of seeking
15 Supreme Court review of the order striking my Statement of Disqualification if needed, but would
16 be contrary to the purpose behind the rigid statutory deadline for filing a writ of review to secure
17 a speedy review of that ruling.

18 In three recent cases, the Supreme Court has held that under subdivision (d), writ review is
19 the exclusive means of review of a statutory judicial disqualification claim. The Supreme Court
20 also observed, subdivision (d) "has the dual purpose of promoting 'judicial economy' and
21 'fundamental fairness,' " both of which are fostered by the timely seeking of a writ of mandate.

22 The stated purpose of the amendment, is to "assure that even the shadow of bias is kept out
23 of our courts". Therefore, it is proper that trial court proceedings to be stayed to allow for full due
24 process regarding the question of a disqualification before the ruling on my Motion for New Trial

25 By and with the filing of the verified statement by appellant setting forth the facts
26 constituting the ground of the asserted disqualification, the authority of the judge against whom
27 such statement was directed, to act further in the premises, was ipso facto limited to the extent and
28

1 in the manner provided for in section 170 of the Code of Civil Procedure. All other purported acts
2 were and are void ab initio. (*Collins v. Nelson, 26 Cal. App. 2d 42 (Cal. App. 1938)*).

3
4 **WHY RELIEF SHOULD BE GRANTED**

5 Currently, I am scheduled to have my Motion for New Trial heard by the same judge who
6 clearly has a bias against me. She continues to demonstrate her bias in her repeated refusals to
7 follow the law and her efforts to isolate me, this case and her rulings from the examination of any
8 other judge, even when the law requires such independent examination.

9 As much as Judge Cole would like to strike my Statement of Disqualification as only *my*
10 *perception* of bias, that can only be derived from a bias reading of the Statement of Disqualification
11 and a continued practice of “cherry picking” documents which I submit for consideration, which
12 has been the hallmark of Judge Coles evaluating pleadings in this case.

13 In fact, my Statement of Disqualification is about Judge Cole violating the Canons of
14 judicial ethics to support her prejudicial misconduct which has resulted in bias against me. The
15 facts in the Statement of Disqualification demonstrate that Judge Cole was willing to make
16 false/misleading statement while on the bench when asked to explain her erroneous reversal of her
17 own ruling by stating “I never ruled on that portion of the motion”, (EXHIBIT B, page 6, line 10-
18 12 and EXHIBIT F), making implied threats toward plaintiff which were beyond her jurisdiction
19 by threatening to limit Plaintiffs ability to amend the complaint without foundation, becoming
20 embroiled in proceedings and advocating on behalf of CitiMortgage by ruling on motions based
21 on facts not pled by CitiMortgage (see EXHIBIT B, page 5), by ruling on Motions without
22 requiring CitiMortgage to respond and without providing me opportunity to submit arguments in
23 reply (see EXHIBIT B, page 6-8), making a MSJ ruling on facts not asserted by CitiMortgage¹
24 (see EXHIBIT B, page) and refusal to investigate basis for disqualification at the Motion for
25

26 _____
27 ¹ “a judge shall not independently investigate facts in a proceeding and shall consider only
28 the evidence presented”

1 Summary Judgement hearing, instructing court staff to reject filings (see EXHIBIT B, page 12 and
2 EXHIBIT F). None of these failures in her judicial and/or ministerial duties are related to the
3 obviously erroneous rulings, but rather a statement of the fact that Judge Cole shamelessly
4 displayed her bias against me by openly abusing her authority as a judge by intimidating and me
5 when I dared to question the legal foundation of her actions, obstructing my ability to file
6 documents and generally threatening to limit my ability to prosecute my case.

7
8 **PROCEDURAL BACKGROUND RELATIVE TO PETITION FOR WRIT**

9 On May 25, 2016, at the start of the hearing on CitiMortgage's Motion for Summary
10 Judgment, Lisa Hart Cole denied my request for her to recuse herself based on a series of events
11 in which she demonstrated bias against me both in her rulings and in her hostile treatment of me
12 in courtroom proceedings. She also failed to investigate the basis for my request that she disqualify
13 herself in violation of the Canons of judicial ethics (see EXHIBIT A).

14 On May 26, 2016, I filed a Statement of Disqualification pursuant to California Code of
15 Civil Procedure 170.1 and on May 27, 2016, I served a copy of the Statement of Disqualification
16 on P. Reynoso, courtroom clerk/judicial assistant in Department O of Santa Monica Division after
17 confirming that the Judge was in her chambers.

18 On June 1, 2016, Judge Lisa Hart Cole filed a verified answer generally denying any bias
19 and also ordered my Statement of Disqualification stricken for failure to disclose lawful grounds
20 in support of disqualification.

21 On June 13, 2016, I filed a Writ of Mandate requesting an immediate stay of trial court
22 proceedings pending a decision on the Petition for Writ of Mandate. The Appeals court issued an
23 immediate ruling denying the request for a STAY and on June 17, 2016 issued a summary denial
24 only determining that the judge did not err in striking the Statement of Disqualification.

25 The appeals court did not provide any additional information which would address the
26 limited manner in which Judge Cole evaluated my Statement of Disqualification and the Complaint
27 for Equity which was incorporated by reference, therefore, based on the limited interpretation of
28 my Statement of Disqualification and the lack of any indication that full scope of my allegation of

1 prejudicial misconduct resulting in bias against me and the facts in support thereof were
2 considered, the only possible option which remained was for me to file a new Statement of
3 Disqualification of Judge Lisa Hart Cole with the Clerk's office of the Santa Monica Division of
4 the Los Angeles Superior Court on July 27, 2016². Therein, I clarified the facts demonstrating
5 bias on the part of Judge Cole (see EXHIBIT A).

6 Based on the statements in Judge Cole's Order, it was clear that the judge had
7 misinterpreted my basis for disqualification believing that it was based "solely" on the Complaint
8 for Equity which was incorporated by reference in the Statement of Disqualification, but which
9 facts were not specified in the Verified Statement of Disqualification.

10 I first attempted to file the clarified Statement of Disqualification on June 17, 2016,
11 however, the judicial assistant in Department O of the Santa Monica Division of the Los Angeles
12 Superior Court where my case is assigned, refused to accept my statement for filing because they
13 advised that Judge Cole was not currently assigned to that Courtroom and was not in the building.
14 The clerk advised that she did not know when Judge Cole would return.

15 In mid-July, 2016 I received a minute order from Judge Lisa Hart Cole indicating that the
16 hearing on my Motion for a New Trial was advanced from July 29, 2016 at 8:30am to July 28,
17 2016 at 1:30pm. It was clear from the minute order that despite no longer being assigned to the
18 Department where my case was assigned, Judge Cole intended to rule on my Motion for New Trial
19 pursuant to Civil Code of Procedure §661, so I prepared a new Statement of Disqualification
20 specifically clarifying the facts in support of my allegation of bias and a request that Judge James
21 K. Hahn rule on the disqualification of Judge Lisa Hart Cole. I attempted to file it in the clerk's
22 office at the Santa Monica Division of the LA Superior Court, however the clerk refused to accept
23 the statement for Filing. When I explained I wished to file the Statement in accordance with Code
24 of Civil Procedure §170.1. I was advised that I could wait to speak to a supervisor.

27 ² In striking my May 26, 2016 Statement of Disqualification, Judge Lisa Hart Cole made clear she interpreted my
28 Statement of Disqualification as being based solely on the Complaint for Equity, and not the facts therein' (which I
stated was incorporated by reference), however this interpretation was contrary to the intent of my Statement of
Disqualification and as such I did not have the opportunity to have the issue heard and determined on the merits.

1 After waiting approximately 30 minutes, Mr. Glen Nakagaki, Operations Manager for the
2 clerk's office emerged and advised me that he was refusing to file my Statement of Disqualification
3 and I would have to wait until the Judge was in the building to file the statement with the Clerks.
4 Just as I advised the first employee, I recited the wording of California Civil Code 170.1 and, but
5 the manager refused to accept my statement for filing. Needless to say this caused me significant
6 distress since, according to the manager, the Judge would not be back in the office until the hearing
7 on my Motion for New Trial on the afternoon of July 28, 2016, and I had already experienced the
8 judicial assistants of Department O refusing to accept my statement of disqualification for filing
9 before the Motion of Summary Judgement hearing on May 25, 2016 (although I later learned it
10 was not in the proper format, neither the judicial assistants or the judge should have known that
11 since they refused to receive it for filing or even to review what I was attempting to file), and again
12 on June 17, 2016.

13 After careful research of the issue, I returned to the clerk's office of the Santa Monica
14 Division of the Los Angeles Superior Court on July 27, 2016 and left for filing, my Statement of
15 Disqualification with the Clerk and sent a follow up e-mail (EXHIBIT C) to the manager of the
16 Clerk's office advising him of my belief that I was legally entitled to have the statement filed. A
17 copy of the Statement was served by mail to opposing counsel and a copy was also provided to
18 opposing counsel at the hearing on July 28, 2016.

19 At the hearing on my Motion for New Trial on July 28, 2016, I served a copy of the
20 Statement of Disqualification on the clerk for Department O, after confirming that the judge was
21 in Chambers and the hearing on the Motion for New Trial was not heard that day.

22 On August 9, 2016, I received Judge Hart Cole's verified answer and order striking my
23 Statement of Disqualification and a minute order resetting the hearing on my Motion for New Trial
24 for August 16, 2016 at 8:30am (see EXHIBIT E).

25 LEGAL STANDARD

26 A. Judge Cole Lacks Jurisdiction to Strike Petitioners Statement of Disqualification

27 This Statement of Disqualification was and is submitted to clarify that the facts in support
28 of my claim of bias against Judge Cole which were not considered incorporated by reference on

1 my May 26, 2016 Statement of Disqualification which was stricken by Judge Cole on June 1, 2016.
2 Further, it follows my request for Judge Cole to recuse herself on May 25, 2016 which she refused
3 to do (see EXHIBIT A). The Statement of Disqualification request that Judge James K Hahn,
4 Department A of the Santa Monica Division of the Los Angeles Superior Court rule on the
5 disqualification, not objection to Judge Hahn was received from opposing counsel.


6 California Code of Civil Procedure §170.3(a)(5) states “A judge who refuses to recuse
7 himself or herself shall not pass upon his or her own disqualification or upon the sufficiency in
8 law, fact, or otherwise, of the statement of disqualification filed by a party. In that case, the
9 question of disqualification shall be heard and determined by another judge agreed upon by all the
10 parties who have appeared”.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Petitioners pray for judgment as follows:

13 Plaintiff ask that the Court find Judge Lisa Hart Cole is disqualified from further
14 proceedings in this matter, or, as CitiMortgage, Inc. has not filed any objection to Judge James K.
15 Hahn hearing the disqualification on Judge Lisa Hart Cole in this case, Plaintiff request that the
16 court issue a peremptory writ of mandate without a hearing (*Brown, Winfield & Canzoneri, Inc.*
17 *v. Superior Court (2010) 47 Cal.4th 1233; Palma v. U.S. Industrial Fasteners, Inc. (1984) 36*
18 *Cal.3d 171*), or with such further hearing or notice as the Court deems proper directing the trial
19 court to GRANT the relief requested in Petitioner/Plaintiffs Petition for Writ of Mandate and/or
20 any other such other relief as may be just.

21
22 Date: August 15, 2016

23
24 By  _____
25 MARINA BOYD
26 Petitioner/Plaintiff in Pro Per
27
28

VERIFICATION

I, MARINA JOY BOYD, declare,

I, am the Plaintiff in the Superior Court Case #SC117126, Boyd vs. CitiMortgage, Inc. and
Petitioner/Plaintiff in the Petition for Writ of Mandate.

I have prepared the foregoing Petition, and know its contents.

The matters contained in this Petition, including all matters contained in the Petition for
Writ of Mandate are known to me personally and if called upon to testify as to such matters
under oath in a court of law, I could and would do so competently.

I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct.

Executed thisn the 15th day of August, 2016 at Los Angeles, California.



MARINA JOY BOYD
Petitioner/Plaintiff/Petitioner

1 **CERTIFICATION OF WORD COUNT**

2 I hereby certify that I have checked the length of this computer-generated brief using
3 the word count feature of my word-processing application. (Rule 8.204, subd. (c)(1), C.R.C.)
4

5 The brief as currently constituted, excluding tables, indices and this certificate, contains 2,295
6 words.
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MARINA JOY BOYD

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PROOF OF SERVICE

I, Earlie R. Jones, am a resident of Los Angeles County, state of California. I am over the age of 18 and not a party to this action. My address is 7257 Motz Avenue, Paramount, California 90723.

On August 15, 2016, I served the document(s) described as PETITION FOR REVIEW to all interested parties in said action by placing a true copy thereof in a sealed envelope addressed as stated on the attached SERVICE LIST.

- (x) BY Mail as follows: I caused such documents to be deposited with the U.S. Postal Service with postage thereon fully prepaid at Los Angeles, California.
- () BY FACSIMILE as follows: I caused such documents to be transmitted to the telephone facsimile number of the address listed below, by use of facsimile machine telephone number 818-. The facsimile machine used complied with California Rules of Court, Rule 2004 and no error was presorted by the machine. Pursuant to California Rules of Court, Rule 2006(d), a transmission record of the transmission was printed. (#1 Only)
- () BY PERSONAL SERVICE as follows: I caused a copy of such envelope to be delivered by hand to the offices of the addressee between the hours of 9:00am and 5:00p.m. (#2 Only)
- () BY OVERNIGHT COURIER SERVICE as follows: I caused such documents to be delivered by overnight courier service to the offices of the addressee. The envelope was deposited in or with a facility regularly maintained by the overnight courier service with delivery fees paid or provided for.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 15, 2016 at Los Angeles, California.


Signature

Earlie R. Jones

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SERVICE LIST

SUPERIOR COURT OF THE STATE OF CALIFORNIA
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Respondent

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Real Party at Interest

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EXHIBIT A

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EXHIBIT B

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EXHIBIT C

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EXHIBIT D

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EXHIBIT E

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EXHIBIT F

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