

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

69869

---

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Larry Hyman, Circuit Court Judge

---

Case No. 2011-CP-26-7324

---

Bank of America, N.A.,

Respondent

v.

Zachariah Floyd, South Carolina  
Department of Revenue, and Bullhead  
Investments, LLC, Defendants,

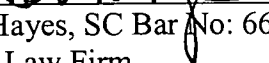
Of Whom Zachariah Floyd is the

Appellant.

---

RESPONDENT'S MOTION TO DISMISS APPEAL

---

  
Dean A. Hayes, SC Bar No: 66066  
The Korn Law Firm  
1300 Pickens Street  
Post Office Box 12369  
Columbia, SC 29211-2369  
Telephone: (803) 252-5817  
Facsimile: (803) 231-2060  
Attorney for Respondent  
Bank of America, N.A.

Other Counsel of Record:  
Zachariah Floyd  
4 Spirit Place  
Myrtle Beach, South Carolina 29577  
(843) 455-7951  
Pro Se Defendant

RECEIVED


SEP 24 2013

SC Court of Appeals

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS APPEAL

The respondent, Bank of America, N.A. moves to dismiss Zachariah Floyd's appeal of the order of the Honorable Larry Hyman dated July 15, 2013. A copy of the order being appealed is attached as exhibit A. The order denied Zachariah Floyd's motion to reconsider an order of reference. Pursuant to *North Carolina Federal Savings & Loan Ass'n v. Twin States Development Corp.*, 289 S.C. 480, 481, 347 S.E.2d 97, 97 (1986), an order of reference is not an immediately appealable issue under Rule 72, SCRCF, as determined by S.C. Code Ann. § 14-3-330, therefore, Bank of America's motion to dismiss should be granted.

Wherefore, Bank of America respectfully requests that the Court dismiss the appeal filed by Zachariah Floyd.

  
\_\_\_\_\_  
Dean A. Hayes, SC Bar No: 66066  
The Korn Law Firm  
1300 Pickens Street  
Post Office Box 12369  
Columbia, SC 29211-2369  
Telephone: (803) 252-5817  
Facsimile: (803) 231-2060  
Attorney for Respondent  
Bank of America, N.A.

September 20, 2013  
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF Horry

Bank of America, N.A.,

PLAINTIFF,

vs.

Zachariah Floyd, South Carolina Department  
of Revenue, and Bullhead Investments, LLC,

DEFENDANTS.

F11-04830

IN THE COURT OF COMMON PLEAS

C/A NO: 2011-CP-27-07324

ORDER DENYING DEFENDANTS  
MOTION FOR RECONSIDERATION

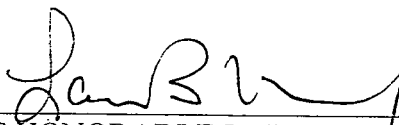
13 JUL 22 PM 2:48  
CLERK OF COURT

On June 26, 2013, a hearing was held on the motion for reconsideration filed by the defendant, Zachariah Floyd. Present at this hearing were the pro se defendant, Zachariah Floyd, and Dean A. Hayes, attorney for the plaintiff.

Zachariah Floyd moves that the court reconsider the order signed on December 5, 2012, that referred this foreclosure action to Cynthia Graham Howe, as Master in Equity for Horry County. Floyd asserts that the allegations in his amended answer and counterclaim regarding the failure of the plaintiff to ascertain his preference as to an attorney for the closing of the loan entitles him to a jury trial. However, in *Wells Fargo v. Smith*, 398 S.C. 487, 730 S.E.2d 328 (Ct. App. 2012), the Court of Appeals held that such allegations are permissive, not compulsory, therefore, a party who asserts such claims is not entitled to a jury trial. For this reason,

IT IS ORDERED that the motion for reconsideration filed by the defendant, Zachariah Floyd, be and hereby is denied.

IT IS SO ORDERED!



THE HONORABLE LARRY B. HYMAN, JR.  
CIRCUIT COURT JUDGE

Conway, South Carolina  
July 15, 2013

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Larry Hyman, Circuit Court Judge

---

Case No. 2011-CP-26-7324

---

Bank of America, N.A.,

Respondent

v.

Zachariah Floyd, South Carolina  
Department of Revenue, and Bullhead  
Investments, LLC, Defendants,

Of Whom Zachariah Floyd is the

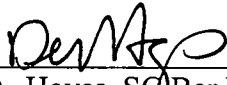
Appellant.

---

PROOF OF SERVICE

---

I certify that I have served the Motion to Dismiss on the appellant, Zachariah Floyd, by depositing a copy of it in the United States Mail, postage prepaid, on September 23, 2013, addressed to Zachariah Floyd, 4 Spirit Place, Myrtle Beach, South Carolina 29577.

  
\_\_\_\_\_  
Dean A. Hayes, SC Bar No: 66066  
The Korn Law Firm  
1300 Pickens Street  
Post Office Box 12369  
Columbia, SC 29211-2369  
Telephone: (803) 252-5817  
Facsimile: (803) 231-2060  
Attorney for Respondent  
Bank of America, N.A.

September 23 2013

**KORN LAW FIRM, P.A.**  
ATTORNEYS AND COUNSELORS AT LAW  
1300 PICKENS STREET  
COLUMBIA, SOUTH CAROLINA 29201

MAILING ADDRESS  
POST OFFICE BOX 12369  
COLUMBIA, SOUTH CAROLINA 29211-2369  
(803) 252-5817  
FACSIMILE (803) 231-2060

September 23, 2013

Jenny Abbot Kitchings  
Clerk of the South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

Re: *Bank of America, N.A. v. Zachariah Floyd*  
C/A No.: 2011-CP-26-7324  
Appellate Case No.: 2013-001774  
My File No.: F11-04830

Dear Ms. Kitchings:

Enclosed please find the original and six copies of the respondent, Bank of America's, motion to dismiss the appeal and memorandum in support of the motion. Also enclosed are the original and six copies of the proof of service and the \$25.00 filing fee.

Thank you for your assistance.

With kind regards, I am

Very truly yours,

  
Dean A. Hayes

DAH/tsg

**RECEIVED**  
SEP 24 2013  
**SC Court of Appeals**