

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

71709

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master in Equity for Richland County

Case No. 2014-000140

Bank of America, N.A. Respondent,

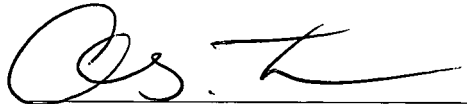
v.

Willie Zimmerman Appellant.

RESPONDENT'S MOTION TO DISMISS

Respondent now moves to dismiss Appellant's Appeal for failure to timely file an initial brief and failure to provide notice of appeal in the lower court.

March 27, 2014



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Pro Se Appellant

RECEIVED

MAR 27 2014

SC Court of Appeals

THE RESPONDENT HEREBY MOVES TO DISMISS UPON APPELLANT'S FAILURE TO TIMELY FILE AN INITIAL BRIEF WITHIN 30 DAYS OF RECEIVING THE TRANSCRIPT PURSUANT TO RULE 208(a)-(b)(1)(C), SCACR, AND FOR FAILURE TO FILE A NOTICE OF APPEAL WITH THE LOWER COURT PURSUANT TO RULE 203(d)(1)(B), SCACR:

1. Respondent filed its Summons and Complaint, 2011-CP-40-08074, seeking foreclosure on November 23, 2011.
2. Judge Joe M. Strickland, Richland County Master in Equity, issued a Master's Order and Judgment of Foreclosure and Sale on September 20, 2012.
3. Foreclosure sale occurred on April 1, 2013 and Appellant was the successful bidder.
4. At hearing on June 21, 2013 Judge Strickland ruled that the April 1, 2013 foreclosure sale should be vacated for Appellant's failure to provide the bid, minus the 5% deposit, within twenty (20) days of sale and issued a formal order on July 30, 2013.
5. Appellant appeared pro se at hearing on June 21, 2013.
6. The foreclosure sale was rescheduled to September 3, 2013 and Appellant was the successful bidder.
7. At a Status Conference on November 21, 2013 Judge Strickland ruled the September 3, 2013 foreclosure sale be vacated for Appellant's failure to provide the bid, minus the 5% deposit, within thirty (30) days and executed a formal order on December 17, 2013.
6. Beth Bernstein, Esq. appeared on behalf of Appellant on November 21, 2013.
7. Appellant filed a Notice of Appeal in the Court of Appeals on January 6, 2014 expressing the intent to appeal Judge Strickland's December 16 [sic], 2013 Order Vacating the Sale.

8. Appellant acknowledges receipt of the December 16 [sic], 2013 order on December 16 [sic], 2013.

9. Appellant has not filed a notice of appeal with the clerk of the lower court.

10. On February 25, 2014 Appellant filed an Initial Brief of Appellant seeking to appeal Judge Strickland's Order Vacating Sale executed on July 30, 2013.

11. On February 25, 2014 Appellant filed the November 21, 2013 transcript.

12. Appellant does not reference the date of receipt of Judge Strickland's July 30, 2013 order in Appellant's Initial Brief.

13. Rule 208(a)(1) provides with regard to initial briefs, "[w]ithin thirty (30) days after receiving the transcript . . . appellant shall serve one copy of his brief . . . and file with the clerk of court one copy of the brief with proof of service." Rule 208(a)(1), SCACR. Rule 208(b)(1)(C) provides the brief of appellant shall contain "the date and nature of the order, judgment or decision appealed from." Rule 203(b)(1), SCACR.

14. Appellant's Initial Brief improperly seeks to submit for appellate review issues regarding an order executed approximately five months before the filing of the Notice of Appeal.

15. Appellant's Brief fails to allege any facts or issues relevant to Judge Strickland's December 17, 2013 Order Vacating Sale.

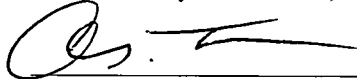
16. Appellant has failed to file an Initial Brief in the proper form or with the appropriate content to seek review of an issue timely appealed in compliance with 208(a)-(b)(1)(C), SCACR.

15. Appellant has failed to file a notice of appeal with the clerk of the lower court in compliance with 203(d)(1)(B), SCACR.

For the reasons stated, Respondent respectfully requests that this Court DISMISS Appellant's Appeal where the Initial Brief fails to provide any facts, issues or arguments related to the December 16 [sic], 2013 order as initially referenced, the Initial Brief is therefore effectively more than thirty (30) days overdue and where Appellant has failed to file a notice of appeal with the clerk of the lower court. Rule 208(b)(1), SCACR, Rule 203(d)(1)(B), SCACR.

March 27, 2014

Respectfully submitted,



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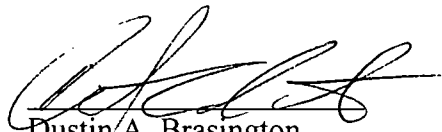
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v.

Willie Zimmerman Appellant.

PROOF OF SERVICE

I certify that I have served Respondent's Motion to Dismiss on Willie Zimmerman by depositing a copy of it in the United States Mail, postage prepaid, on March 27, 2014 addressed to Appellant Willie Zimmerman at P.O. Box 2013, Irmo, South Carolina, 29063 by depositing a copy of it in the United States Mail.



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