

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Joseph M. Strickland, Master in Equity

74108

Case No.: 2014-001656

Bank of America, N.A. Successor by Mortgage to BAC Home Loans
Servicing, LP,

Respondent,

v.

Kermit G. White, Jr.,

Appellant.

RESPONDENT'S MOTION TO DISMISS CONSOLIDATED APPEALS

RILEY POPE & LANEY, LLC

Damon C. Wlodarczyk, Esquire
Riley, Pope & Laney, LLC
2838 Devine Street
Post Office Box 11412 (29211)
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Attorneys for Respondent

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SC Court of Appeals

Respondent (“Lender”) hereby submits its Motion to Dismiss pursuant to Rule 240 of the South Carolina Appellate Court Rules and shows this Honorable Court the following:

This case involves a cause of action for the foreclosure of a mortgage involving a residential property located in Richland County, South Carolina. Pursuant to an Order filed by the Richland County Master in Equity on July 21, 2014, Respondent was granted an Order for Foreclosure and Sale. [See Appellant’s Initial Notice of Appeal and Order filed July 29, 2014]. Although Appellant (“Borrower”) timely filed and served his Notice of Appeal with this Court, Borrower failed to post the statutorily required bond pending an appeal of an order granting foreclosure. See S.C. Code § 18-9-170. [Exhibit A]. Due to Borrower’s failure to post the required bond, the sale went forward and the subject property was sold to a third-party bidder, State Street Holdings, LLC, who complied with its bid and a Deed was issued to the bidder. [Appellant’s Second Notice of Appeal and Order filed October 3, 2014].

On or about September 2, 2014, State Street Holdings, LLC, moved for a writ of assistance to eject and remove Borrower and his property from the subject property. On September 26, 2014, the lower court issued a Writ of Assistance ordering said ejectment to occur November 10, 2014, or as soon after as practicable. The Writ of Assistance is the subject of Borrower’s Second Notice of Appeal filed on October 3, 2014. [Id.].

By letter from this Court dated October 10, 2014, both appeals were consolidated under the above caption.

Lender now seeks to have first appeal dismissed based upon the that the property was sold to a third-party bidder due to Borrower’s failure to post the statutorily required bond, a Deed has been recorded transferring ownership in the subject property to the third-party and, therefore, the matter is moot.

Lender also seeks to have the second appeal dismissed based upon the fact that Lender is not the owner of the subject property, Lender did not move for a Writ of Assistance and, therefore, Lender is not a proper party to the appeal.

I. The Notice of Appeal Filed July 29, 2014, Should be Dismissed as Moot

“If the judgment appealed from direct the sale or delivery of possession of real property, the execution of the judgment shall not be stayed unless a written undertaking be executed on the part of the appellant, with two sureties . . .” S.C. Code Ann. § 18-9-170.

There is no evidence in the lower court’s docket that a bond was posted pending the first appeal. [Exhibit A]. In fact, it appears from Borrower’s Second Notice of Appeal that he alleges it was an error of law for the lower court to require Borrower to post a bond as required by § 18-9-170. [Appellant’s Second Notice of Appeal filed October 3, 2014, p. 1].

As the record reflects Borrower failed to post the required bond to stay the sale pending appeal and the property sold to a third-party with a Deed being issued and recorded, Borrower’s appeal of the Order for Foreclosure and Sale is moot and should be dismissed with prejudice. See Sloan v. Dep’t of Transp., 379 S.C. 160, 167, 666 S.E.2d 236, 240 (2008) (holding that generally this court “will not pass on moot and academic questions or make an adjudication where there remains no actual controversy”).

II. The Notice of Appeal Filed October 3, 2014, Should be Dismissed as the Appeal is Untimely

Rule 203(a), SCACR, requires that a party intending to appeal must serve the notice of appeal on all respondents within thirty (30) days after receipt of written notice of the entry of the order or judgment.

In the present case, although Borrower indicates he served a copy of the Notice of Appeal on Lender's foreclosure counsel (Korn Law Firm, P.A.) and counsel for the Bank of Omaha on October 3, 2014, there is no indication in the record that counsel for the current property owner who made the motion for a Writ of Assistance and receive the relief requested was served. [Appellant's Second Notice of Appeal filed October 3, 2014, Order]. As set forth in the Order being appealed, the motion was made by State Street Holdings, LLC, as owner and the attorney for the movant is listed as The Ruplle Firm, P.A. [Id.].

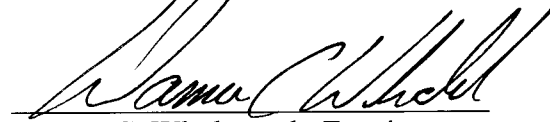
Presuming that Borrower received notice of the entry of the Writ of Assistance by October 3, 2014, when he filed the second Notice of Appeal, more than thirty (30) days has passed and, therefore, the appeal has not been perfected and should be dismissed. USAA Prop. & Cas. Ins. Co. v. Clegg, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008) (stating "[t]he requirement of service of the notice of appeal is jurisdictional, *i.e.*, if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice.").

CONCLUSION

For the reasons set forth herein, Respondent respectfully requests an Order dismissing the consolidated appeals with prejudice.

Signature Block Appears on Following Page

RILEY POPE & LANNEY, LLC

A handwritten signature in black ink, appearing to read "Damon C. Wlodarczyk", written over a horizontal line.

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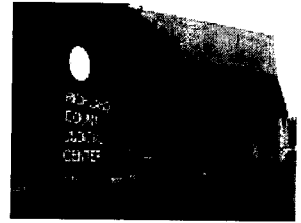
Attorneys for Respondent

Columbia, South Carolina

November 6, 2014



Richland County 5th Judicial Circuit Public Index



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Bank Of America N A , plaintiff, et al vs Kermit G White , defendant, et al					
Case Number:	2011CP4007826	Court Agency:	Richland County Master In Equity	Filed Date:	12/06/2013
Case Type:	Common Pleas	Case Sub Type:	Foreclosure 420	File Type:	Non-Jury
Status:	Disposed	Assigned Judge:	Strickland, Joseph M.		
Disposition:	Ended by Non Jury	Disposition Date:	07/15/2014	Disposition Judge:	Strickland, Joseph M.
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials						
Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Bank Of America N A	Master's Report on Sale and Disbursements and Order Of Confi	Order		10/09/2014-13:14		
Bank Of America N A	Writ Of Assistance/Judge Strickland	Order		09/30/2014-14:22		
Bank Of America N A	Summons and Order Of Appointment/Judge Strickland	Order		09/19/2014-14:54		
Bank Of America N A	Status Conference	Motion		09/19/2014-10:16		
White, Kermit G	Request to Have Sale Nullified and Buyers Name Removed	Filing		09/10/2014-09:53		
State Street Holdings	Master/Balance of Bid on Sale Due	Action		09/05/2014-11:00	08/26/2014-11:00	
Bank Of America N A	Petition	Filing		09/02/2014-14:25		
Bank Of America N A	Rule To Show Cause and Writ Of Assistance/Judge Strickland	Order		09/02/2014-14:24		



Bank Of America N A	Order/Order Filing Fee	Filing	09/02/2014-12:06		
Bank Of America N A	RTSC Writ of Assistance	Motion	09/02/2014-11:43		
Bank Of America N A	Master/Writ of Assistance	Action	08/28/2014-14:17		
State Street Holdings	Master/Sale Amount Paid in Full	Action	08/26/2014-15:09		
Bank Of America N A	Verification/Verified	Filing	08/11/2014-09:12		
Bank Of America N A	Affidavit/Publication	Filing	08/07/2014-15:59		
State Street Holdings	Master/Bid by Third Party	Action	08/04/2014-11:00	08/26/2014-11:00	
Bank Of America N A	Certificate Of Sales Decree	Filing	07/28/2014-15:40		
City of Columbia	Judgment/Foreclosure	Judgment	07/21/2014-14:43		
BAC Home Loans Servicing L P	Judgment/Foreclosure	Judgment	07/21/2014-14:43		
First National Bank of Omaha	Judgment/Foreclosure	Judgment	07/21/2014-14:43		
BAC Home Loans Servicing L P	Judgment/Foreclosure	Judgment	07/21/2014-14:43		
White, Kermit G	Judgment/Foreclosure	Judgment	07/21/2014-14:43		
BAC Home Loans Servicing L P	Judgment/Foreclosure	Judgment	07/21/2014-14:43		
City of Columbia	Judgment/Foreclosure	Judgment	07/21/2014-14:42		
Bank Of America N A	Judgment/Foreclosure	Judgment	07/21/2014-14:42		
Bank Of America N A	Judgment/Foreclosure	Judgment	07/21/2014-14:42		
First National Bank of Omaha	Judgment/Foreclosure	Judgment	07/21/2014-14:42		
White, Kermit G	Judgment/Foreclosure	Judgment	07/21/2014-14:42		
Bank Of America N A	Judgment/Foreclosure	Judgment	07/21/2014-14:42		

Bank Of America N A	TMS# 13801-05-10	Filing		07/21/2014-14:41	
Bank Of America N A	3321 Prentice Avenue Columbia SC 29205	Filing		07/21/2014-14:40	
Bank Of America N A	Master In Equity's Order and Judgment of Foreclosure and Sal	Order		07/21/2014-14:40	
Bank Of America N A	Record Of Hearing	Filing		06/18/2014-13:18	07/15/2014-13:18
Bank Of America N A	Certificate Of Counsel	Filing		06/18/2014-13:18	07/15/2014-13:18
Bank Of America N A	Notice of Hearing and Certificate Of Mailing	Filing		06/13/2014-13:23	07/15/2014-13:23
Bank Of America N A	Amended Notice Of Hearing/Certificate Of Service	Filing		01/27/2014-13:28	07/15/2014-13:28
Kelchner, John Brian	Notice of Motions Roster Publication Sent	Action		01/15/2014-13:11	07/15/2014-13:11
White, Kermit G	Notice of Motions Roster Publication Sent	Action		01/15/2014-13:11	07/15/2014-13:11
White, Kermit G	Notice of Motions Roster Publication Sent	Action		01/15/2014-13:11	07/15/2014-13:11
Kelchner, John Brian	Notice of Motions Roster Publication Sent	Action		01/15/2014-13:11	07/15/2014-13:11
Kelchner, John Brian	Notice of Motions Roster Publication Sent	Action		01/15/2014-13:08	07/15/2014-13:08
White, Kermit G	Notice of Motions Roster Publication Sent	Action		01/15/2014-13:08	07/15/2014-13:08
Bank Of America N A	Notice of Motions Roster Publication Sent (02-26-14@4:00pm)	Action		01/15/2014-09:34	07/15/2014-09:34
Kelchner, John Brian	Notice of Motions Roster Publication Sent	Action		12/12/2013-12:46	07/15/2014-12:46
White, Kermit G	Notice of Motions Roster Publication Sent	Action		12/12/2013-12:46	07/15/2014-12:46
Bank Of America N A	Amended Motion For Summary Judgment	Motion		12/12/2013-12:44	07/15/2014-12:44
Bank Of America N A	Notice of Motions Roster Publication Sent (02-17-14@3:30PM)	Action		12/12/2013-08:48	07/15/2014-08:48
Bank Of America N A	Notice of Motions Roster Publication Sent	Action		09/18/2013-09:43	07/15/2014-09:43
Bank Of America N A	Notice of Case Roster Publication Sent	Action		09/18/2013-09:38	07/15/2014-09:38
Bank Of America N A	Answer of Kermit G. White Jr. to Plaintiff's Motion For Summ	Filing		09/09/2013-16:56	07/15/2014-16:56

Bank Of America N A	Motion/Motion Filing Fee	Filing		08/26/2013-13:24	07/15/2014-13:24
Bank Of America N A	Affidavit of Debt	Filing		08/26/2013-09:52	07/15/2014-09:52
Bank Of America N A	Motion For Summary Judgment	Motion		08/26/2013-09:51	10/11/2013-09:51
Bank Of America N A	Certification Of Mortgagor Non-Compliance/Certificate Of Ser	Filing		08/22/2013-11:57	07/15/2014-11:57
Bank Of America N A	Order Denying Defendant's Motion to Dismiss/Judge Strickland	Order		03/19/2013-08:56	07/15/2014-08:56
Bank Of America N A	Order Staying Case Pursuant ot Justice Toal's Administrtive	Order		11/13/2012-12:04	07/15/2014-12:04
Bank Of America N A	Order/Order Filing Fee	Filing		11/09/2012-12:43	07/15/2014-12:43
Bank Of America N A	Affidavit Regarding Military Service	Filing		10/04/2012-15:03	07/15/2014-15:03
Bank Of America N A	Motion/Motion Filing Fee	Filing		09/26/2012-13:47	07/15/2014-13:47
Bank Of America N A	Amended Motion to Dismiss and Memorandum in Support	Motion		09/26/2012-15:27	09/26/2012-15:27
Bank Of America N A	Summons and Order of Appointment/Judge Strickland	Order		08/30/2012-15:32	07/15/2014-15:32
Bank Of America N A	Notice of Hearing	Filing		08/09/2012-12:12	07/15/2014-12:12
Bank Of America N A	Certificate Of Service	Filing		07/27/2012-12:09	07/15/2014-12:09
Bank Of America N A	Affidavit of Non Military Service	Filing		07/27/2012-12:09	07/15/2014-12:09
Bank Of America N A	Affidavit of Default	Filing		07/27/2012-12:09	07/15/2014-12:09
Bank Of America N A	Motion & Mandatory Order of Reference/Jeanette W. McBride	Order		07/27/2012-12:07	07/15/2014-12:07
Bank Of America N A	Order/Order Filing Fee	Filing		07/24/2012-12:08	07/15/2014-12:08
Bank Of America N A	Notice of Case Roster Publication Sent	Action		07/17/2012-10:56	07/15/2014-10:56
Bank Of America N A	Memorandum Of Law in Opposition to Defendant Kermit G. White	Filing		06/27/2012-15:37	07/15/2014-15:37
Bank Of America N A	Form Order Motion for Continuance DENIED.	Order		06/22/2012-12:18	07/15/2014-12:18

Bank Of America N A	Request for Continuance	Filing		06/20/2012-12:18	07/15/2014-12:18
Bank Of America N A	Motion/Motion Filing Fee	Filing		06/20/2012-10:19	07/15/2014-10:19
Bank Of America N A	Notice of Hearing on June 27, 2012	Filing		06/15/2012-15:33	07/15/2014-15:33
Bank Of America N A	Notice of Motions Roster Publication Sent	Action		06/07/2012-11:26	07/15/2014-11:26
Bank Of America N A	Service/Affidavit Of Service on Kermit G. White	Filing		03/19/2012-11:15	07/15/2014-11:15
Bank Of America N A	Motion/Motion Filing Fee	Filing		03/08/2012-15:56	07/15/2014-15:56
Bank Of America N A	Motion to Dismiss and Memorandum In Support	Motion		03/08/2012-10:20	03/08/2012-10:20
Bank Of America N A	Certificate of Exemption from Administrative Order	Filing		03/05/2012-15:48	07/15/2014-15:48
Bank Of America N A	Service/Affidavit Of Service on Kermit G. White	Filing		02/21/2012-11:04	07/15/2014-11:04
Bank Of America N A	Service/Affidavit of Non Service on Kermit White	Filing		02/06/2012-15:20	07/15/2014-15:20
Bank Of America N A	Service/Affidavit Of Service on City of Columbia	Filing		12/19/2011-11:58	07/15/2014-11:58
Bank Of America N A	Service/Affidavit of Non Service on Kermit G. White	Filing		12/19/2011-11:58	07/15/2014-11:58
Bank Of America N A	Stipulation Of Dismissal as to defendant City of Columbia	Filing		12/06/2011-11:04	07/15/2014-11:04
Bank Of America N A	Service/Affidavit Of Service on First National Bank of Omaha	Filing		11/23/2011-11:37	07/15/2014-11:37
Bank Of America N A	Verification/Verified	Filing		11/22/2011-08:53	07/15/2014-08:53
Bank Of America N A	Certificate/Certificate of Exemption from ADR	Filing		11/16/2011-14:52	07/15/2014-14:52
Bank Of America N A	Certificate/Certificate of Exemption from ADR	Filing		11/16/2011-14:51	07/15/2014-14:51
Bank Of America N A	Lis Pendens Filed	Filing		11/16/2011-13:31	07/15/2014-13:31
Bank Of America N A	Summons & Complaint	Filing		11/16/2011-13:08	07/15/2014-13:08

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
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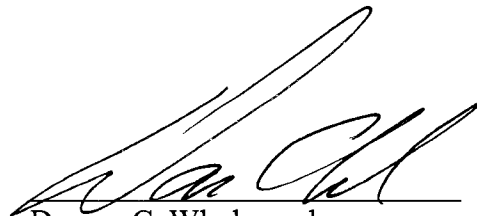
Kermit G. White, Jr.,

Appellant.

CERTIFICATE OF SERVICE

I do hereby certify that I served the Respondent's Motion to Dismiss Consolidated Appeals upon the parties below herein by depositing a copy of same, this date, in the U.S. Mail, first class postage prepaid, and addressed as follows:

Kermit G. White, Jr.
3321 Prentice Avenue
Columbia, SC 29205


Damon C. Wlodarczyk

Columbia, SC

November 7, 2014

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SC Court of Appeals

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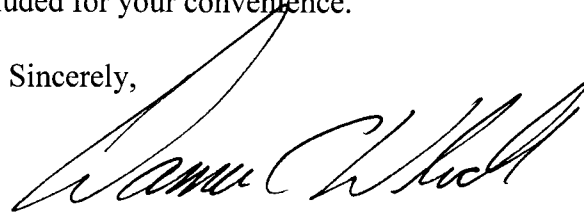
Ms. Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Bank of America v. Kermit White
Appeal No.: 2014-001656
Our File No. 6031.02114

Dear Ms. Kitchings:

Enclosed please find an original and seven (7) copies of the Respondent's Motion to Dismiss and proof of service along with my firm's check in the amount of \$25.00 to cover the filing fee. Please file the enclosed documents and return the clocked copy to me in the self-addressed, postage paid envelope I have included for your convenience.

Sincerely,



Damon C. Wlodarczyk

DCW/
Enclosures

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SC Court of Appeals

COUNSELORS AT LAW

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