

IN THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas  
Case No. 2014-000140  
Joseph M. Strickland, Master in Equity

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Opinion Number 2015- UP- 444  
S.C. Ct. App., Filed August 26, 2015

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**RECEIVED**

DEC 18 2015

**S.C. Supreme Court**

Bank of America, N.A. ....Respondent,

v.

Duce Staley, Felicia Woods a/k/a Felicia B. Woods,  
SCBT, N.A., South Carolina Department of Revenue,  
Palmetto Health, Manheim Automotive, Financial Services,  
Inc., and Spring Valley Homeowners Association .....Defendants,

And Willie Zimmerman, Third Party Participant .....Appellant.

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**RETURN TO PETITION FOR A  
*WRIT OF CERTIORARI***

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Respondent Bank of America, N.A. (“Wells Fargo”) opposes Petitioner Willie Zimmerman’s (“Zimmerman”) Petition for a Writ of Certiorari on the following grounds:

**COUNTER-STATEMENT OF THE QUESTIONS PRESENTED FOR REVIEW**

1. Does the decision of the Court of Appeals warrant this Court’s discretionary review under the considerations of Rule 242, SCACR?
2. Did the Court of Appeals properly affirm the lower court’s Order Vacating Sale because the Appellant failed to preserve any issues for review?

**COUNTER-STATEMENT OF THE CASE**

Bank of America, N.A. (Respondent), filed its Summons and Complaint seeking Non-Jury Mortgage Foreclosure against Duce Staley on November 23, 2011. On September 20, 2012, Judge Joseph M. Strickland executed an order granting foreclosure and directed the foreclosure sale of the subject property on April 1, 2013 requiring the successful bidder to deposit five percent at sale and to fully comply with the remaining bid within twenty days. At sale, Willie Zimmerman (Appellant) placed the highest bid and deposited five percent with the court. Appellant failed to provide the remaining ninety five percent of the bid within twenty days and Judge Strickland vacated the sale by order on July 30, 2013 and returned Appellant's deposit. Appellant did not object at the subsequent hearing to address the bidding deficiencies or seek reconsideration. Appellant similarly bid at sale on September 3, 2013, submitted five percent of the bid and failed to provide the remaining ninety five percent within the prescribed time. Appellant did not object at the subsequent hearing to address the bidding deficiencies or seek reconsideration of the later filed Order Vacating the Sale. The Court of Appeals affirmed the Master’s Order Vacating the Sale and denied a subsequent petition for rehearing on

October 23, 2015. The Petition for Writ of Certiorari was filed and served by mail on November 20, 2015.

### STATEMENT OF THE FACTS

This appeal concerns the foreclosure of a mortgage given to Bank of America, N.A. (Respondent) by the mortgage loan borrower Duce Staley. Pursuant to the default of the mortgage loan, Respondent filed a mortgage foreclosure on November 23, 2011. The action was subsequently referred to The Honorable Joseph M. Strickland, as Master in Equity for Richland County, pursuant to Rule 53 of the *South Carolina Rules of Civil Procedure* on March 24, 2012. An Order of Foreclosure and Sale (Foreclosure Order) was entered on September 20, 2012, ordering the foreclosure of the mortgage and the judicial sale of the mortgaged property. The Foreclosure Order further requires that a successful bidder at the judicial sale of the property deposit five percent of the sales price on the day of sale and to fully comply with the bid within twenty days of the sale. (R. p. 4, ¶ 22). Willie Zimmerman (Appellant) was the winning bidder at the judicial sale, which took place on April 1, 2013. Appellant deposited five percent of the bid amount with the court, but did not provide the remaining amount within twenty days of the sale, as required by the Foreclosure Order. A hearing was held on June 21, 2013 regarding Appellant's failure to comply with the bid. Thereafter, on July 30, 2013, Judge Strickland entered an order vacating the April 1, 2013, sale (Order Vacating Sale), and Appellant's deposit was returned. (R. p. 33-34). No request for reconsideration or appeal was had from the entry of that Order Vacating Sale. (R. p. 24, lines 2-11). The property was again sold on September 3, 2013, and Appellant was again the winning bidder. Appellant

submitted the five percent deposit, but then failed to comply with the remaining bid amount within twenty days of the sale, as required by the Foreclosure Order. The time for Appellant to comply was extended until December 16, 2013 (Order Allowing Extension). The Order Allowing Extension further provided that if the bid was not complied with by December 16, 2013, the sale would be set aside and re-sold in January 2014. (R. pp. 58-59). An Order Vacating Sale and Forfeiture of Deposit was filed on December 17, 2013, after the bid was not complied with by the previously extended deadline (December 17, 2013 Order Vacating Sale). (R. pp. 60-61). Appellant did not object to or otherwise seek to alter or amend the December 17, 2013 Order Vacating Sale. Appellant's Notice of Appeal was filed on January 6, 2014.

The Court of Appeals affirmed the Master's order vacating the foreclosure sale in an unpublished opinion entered on August 26, 2015, in Unpublished Opinion No. 2015-UP-444. The Court of Appeals determined that Appellant did not properly preserve any issues for appeal. A petition for rehearing was filed by the Appellant on September 8, 2015, and an Order Denying Petition for Rehearing was filed on October 23, 2015.

### **ARGUMENT**

Pursuant to Rule 242(f), SCACR, Respondent files this Return to the Petition for Writ of Certiorari filed by Appellant, seeking review of the Court of Appeals' decision in this case.

The decision of the Court of Appeals does not warrant review under Rule 242, SCACR. Further, the Court of Appeals properly and correctly applied South Carolina

law. Accordingly, this Court should not be persuaded by the Appellant's arguments and should deny the Petition for Writ of Certiorari.

**III. THE DECISION OF THE COURT OF APPEALS DOES NOT WARRANT THIS COURT'S DISCRETIONARY REVIEW UNDER THE CONSIDERATIONS OF RULE 242, SCACR.**

In his Petition for Writ of Certiorari, Appellant does not set forth any special or important reason, pursuant to Rule 242, SCACR, why this Court should review the Court of Appeals' decision and this case presents no compelling reason to grant discretionary review under Rule 242, SCACR. Consequently, Appellant's Petition for Writ of Certiorari should be denied.

Pursuant to Rule 242 (b), SCACR, "a writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons." The Rule further notes five situations that indicate the character of reasons the Court will consider when deciding whether to accept a Writ of Certiorari. Rule 242, SCACR. The case at bar does not present any of the types of questions or issues traditionally necessary to be considered by the Supreme Court.

Here, the Court of Appeals decided this matter, without dissent, in an unpublished opinion. In that unpublished opinion, the Court of Appeals correctly applied relevant and settled precedent. Appellant has not demonstrated any "special and important reasons" to grant the Petition to review the Court of Appeals' decision in this matter, and no such "special and important reasons" exist in this case. This matter (1) does not involve a novel question of law; (2) did not contain a dissent in the decision of the Court of Appeals; (3) did not involve a decision of the Court of Appeals that is in conflict with a prior decision of this Court; (4) does not involve substantial constitutional issues that are

directly involved; and (5) does not include a federal question or a decision of the Court of Appeals that conflicts with a decision of the United States Supreme Court. Appellant has not asserted, nor can he, that this case merits any further appellate review.

Based on the foregoing, there is no basis on which it would be proper for this Court to grant Appellant's Petition. Appellant has had a full and fair opportunity to brief his arguments and the Court of Appeals reviewed the case and affirmed the lower court's Order Vacating Sale. Furthermore, Appellant's arguments in his Petition for Writ of Certiorari are identical to those that were rejected by the Court of Appeals in its Order denying Appellant's petition for rehearing *en banc*. Accordingly, this Court should decline the Appellant's Petition for Writ of Certiorari.

**IV. THE COURT OF APPEALS PROPERLY AFFIRMED THE MASTER'S ORDER VACATING SALE BECAUSE APPELLANT FAILED TO PRESERVE ANY ISSUES FOR REVIEW.**

The Court of Appeals correctly found that Zimmerman's issues raised on appeal were not preserved for review because Zimmerman did not timely object to or otherwise seek relief from either the July 30, 2013 Order Vacating Sale or the December 17, 2013 Order Vacating Sale.

"It is well settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved." *Pye v. Estate of Fox*, 369 S.C. 555, 565, 633 S.E.2d 505, 510 (2006). "If the losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellate review." *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000); *see also*

Rule 59(e), SCRCP. A contemporaneous objection is required to preserve an issue for appellate review. *Hill v. S.C. Dep't of Health & Envtl. Control*, 389 S.C. 1, 23, 698 S.E.2d 612, 624 (2010).

Review of the transcript shows that when Judge Strickland, Master in Equity of Richland County, ordered the resale of the property and vacated the first judicial sale there was no objection by or on behalf of the Appellant. (R. p. 24, lines 2-11). Similarly, Appellant did not file a motion for reconsideration. Rule 59(e), SCRCP. Without making a timely objection at hearing on June 21, 2013, moving the court to reconsider its order vacating sale executed July 30, 2013 or timely filing his notice of appeal, Appellant did not preserve this issue for appeal. Appellant also failed to move for reconsideration of the December 17, 2013 Order Vacating Sale.

For these reasons, Appellant's issues are not preserved for review and the Court of Appeals properly affirmed the Master's Order on those grounds.

## CONCLUSION

Based on the foregoing reasons, the Court should decline to issue a writ of certiorari to review the Court of Appeals' decision affirming the Master's ruling.

Respectfully Submitted,



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December 18, 2015

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And Willie Zimmerman, Third Party Participant .....Appellant.

PROOF OF SERVICE

I certify that I have served the **RETURN TO PETITION FOR A WRIT OF CERTIORARI** on Willie Zimmerman by depositing a copy of it in the United States Mail, postage prepaid, on December 18, 2015, addressed to Appellant Willie Zimmerman at Post Office Box 2013, Irmo, South Carolina, 29063.



Erica G. Lybrand (SC Bar # 79052)