

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ANTHONY L. HUTCHINSON,
Plaintiff,

v.

BANK OF AMERICA, N.A.,
Defendant.

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CIVIL ACTION NO. H-14-1371

MEMORANDUM AND ORDER

Plaintiff Anthony L. Hutchinson filed this lawsuit challenging Defendant Bank of America, N.A.'s right to foreclose on his property and pursue his eviction. The case is now before the Court on Bank of America's Motion to Dismiss [Doc. # 4], to which Plaintiff filed a Response [Doc. # 6], and Defendant filed a Reply [Doc. # 9]. Having reviewed the full record and the governing legal authorities, the Court **grants** the Motion to Dismiss.

In December 2011, Plaintiff filed an Original Petition in Texas state court challenging Bank of America's right to foreclose on his property. Bank of America removed the case to federal court, where it was assigned to the Honorable Gray Miller as Civil Action No. H-12-3422. By Memorandum Opinion and Order [Doc. # 18 in H-12-3422] entered October 16, 2013, Judge Miller granted summary judgment in

favor of Bank of America, dismissing with prejudice each of Plaintiff's claims in opposition to foreclosure.

In March 2014, Plaintiff filed the current lawsuit in Texas state court asserting the same arguments and causes of action that were previously dismissed by Judge Miller in H-12-3422. Additionally, Plaintiff argued in the new lawsuit that Bank of America had no right to pursue his eviction because his challenge to Bank of America's right to foreclose was still pending before the United States Court of Appeals for the Fifth Circuit on appeal from Judge Miller's decision.


On July 17, 2014, the Fifth Circuit affirmed Judge Miller's dismissal of Plaintiff's claims in H-12-3422. *See* Fifth Circuit Opinion, Exh. A to Reply. The Fifth Circuit stated that Judge Miller had "debunked each of those dilatory actions by Hutchinson, clearly aimed at prolonging occupancy and possession of the properties while avoiding payments on the obligations secured by the encumbrances." *Id.* at 2.

In Civil Action No. H-12-3422, Judge Miller rejected each of Plaintiff's arguments challenging Bank of America's right to foreclose and dismissed with prejudice each of his causes of action. The Fifth Circuit affirmed Judge Miller's decision in its entirety. As a result, Plaintiff's identical claims and causes of action in this case are dismissed for the reasons stated by Judge Miller in H-12-3422, and affirmed by the Fifth Circuit. Absent any valid arguments challenging Bank of

America's foreclosure of the property, Plaintiff has no legally viable arguments against eviction. *See, e.g., Lo Voc v. JPMorgan Chase Bank, N.A.*, 2012 WL 6772061, *5 (N.D. Tex. Dec. 5, 2013) (citing *Byrd v. Chase Home Fin. LLC*, 2011 WL 5220421, *6 (N.D. Tex. Oct. 31, 2011)). Accordingly, it is hereby

ORDERED that Bank of America's Motion to Dismiss [Doc. # 4] is **GRANTED** and this case is **DISMISSED WITH PREJUDICE**. The Court will issue a separate dismissal order.

SIGNED at Houston, Texas, this 8th day of **September, 2014**.



Nancy F. Atlas
United States District Judge