

SUPREME COURT OF VIRGINIA



SUPREME COURT BUILDING
100 NORTH NINTH STREET
RICHMOND, VIRGINIA 23219
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Granted Appeal Summary

Case

DWAYNE RAMON SMITH v. BANK OF AMERICA, N.A., ET AL.
(Record Number 191559)

From

The Circuit Court of Chesterfield County; D. Johnson, Judge.

Counsel

Henry W. McLaughlin (The Law Office of Henry McLaughlin, P.C.) for appellant.

Robert W. Loftin (McGuireWoods LLP) for appellee.

Assignment of Error

1. The Circuit Court of Chesterfield County, Virginia (“the trial court”) erred in the trial court’s written rulings on July 3, 2019 sustaining a plea in bar by appellee Bank of America, N.A. (“Bank of America”) and a plea in bar by appellee Equity Trustees, LLC (“Equity Trustees”). This was error because, when those pleas in bar came on for an evidentiary hearing before the trial court on June 13, 2019, after counsel had presented oral argument on a motion craving oyer and demurrers, although the appellant, Dwayne Smith (“Smith”) was present to present evidence in opposition to the plea in bar, on the basis of a proposal by counsel for Bank of America, agreed to by all counsel of record, the evidentiary hearing that had been scheduled for June 13, 2019 on the pleas in bar was not held, rather the trial court stated

“Then we’ll just take the plea in bar completely under advisement. I’ll take the motion to crave oyer and the demurrer, with respect to the demurrer, today, under advisement. And I will respond to you within a week on the motion to crave oyer and the two demurrers. And then we’ll set the plea and bar or not depending on how the Court rules.”

This amounted to a continuance of the evidentiary hearing set for June 13, 2019 on the pleas in bar. As a result, the case was not ready for decision on the pleas in bar and Smith was deprived of his due process opportunity to present evidence in opposition to the pleas in bar when the trial court, on July 3, 2019 issued written rulings sustaining the pleas in bar.

