

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

GARY W. CHAPMAN )  
 )  
v. ) NO. 3-11-0504  
 ) JUDGE CAMPBELL  
BANK OF AMERICA, et al. )

ORDER

Pending before the Court is Defendant Bank of America's Motion to Reconsider (Docket No. 23). The Motion is DENIED.


Defendant asks the Court to dismiss Plaintiff's Complaint for failure to allege a case or controversy. The case or controversy, as noted by the Court in its previous Order (Docket No. 22), is whether Defendant has any legal or equitable rights in the subject Note and Deed of Trust. Plaintiff's Complaint, which must be accepted as true on a Motion to Dismiss, does allege a case or controversy. The Court cannot find, as a matter of law, that there is no case or controversy without finding whether Defendant has legal or equitable rights in the subject Note and Deed of Trust, and the Court cannot find whether Defendant has legal or equitable rights in the subject Note and Deed of Trust on a Motion to Dismiss.

A Motion to Dismiss with evidence presented outside the pleadings is not the proper vehicle for the Court to resolve these disputed facts. Defendant's arguments are issues for a Motion for Summary Judgment, with properly presented evidence of the allegedly undisputed facts.

For these reasons, Defendant's Motion is denied, and the parties shall participate in alternative dispute resolution as previously ordered by the Court. Docket No. 22. This case is

referred to the Magistrate Judge to issue all necessary Orders to implement the alternative dispute resolution procedures.

IT IS SO ORDERED.

  
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TODD J. CAMPBELL  
UNITED STATES DISTRICT JUDGE