

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS

<p>M&T Bank,</p> <p style="text-align: right;">PLAINTIFF,</p> <p style="text-align: center;">vs.</p> <p>Tyrone Davis; Bobby J. Bellamy; BC Fund and Management, LLC d/b/a BC Fund, LLC and United States of America;</p> <p style="text-align: right;">DEFENDANT(S)</p> <hr/> <p>Bobby J. Bellamy,</p> <p style="text-align: right;">THIRD-PARTY PLAINTIFF,</p> <p style="text-align: center;">vs.</p> <p>William O. Smith,</p> <p style="text-align: right;">THIRD-PARTY DEFENDANT</p>

MASTER'S ORDER AND JUDGMENT OF FORECLOSURE AND SALE
(NON-JURY MORTGAGE FORECLOSURE)

C/A NO: 2011-CP-26-01809

DEFICIENCY REQUESTED

RECEIVED
AUG 17 2018
SC Court of Appeals

TO:

W. Cliff Moore, III
Adams and Reese LLP
Attorney for Plaintiff

John B. Kelchner
Hutchens Law Firm
Attorney for Plaintiff

Daniel J. Orvin
Womble Bond Dickinson LLP
Attorney for Defendant Tyrone Davis

Howell V. Bellamy, Jr.
Howell V. Bellamy, III
Bellamy, Rutenberg, Copeland, Epps,
Gravelly & Bowers PA
Attorney for Defendant Bobby J. Bellamy

George J. Conits
U.S. Attorney's Office
Attorney for Defendant United States of America

Pursuant to Rule 53 SCRPC, the above-entitled matter was referred to the undersigned to make appropriate findings of fact and conclusions of law with authority to enter a final judgment in the case. Pursuant to the said Order of Reference, a trial was conducted on February 8-10 and

April 11-12. W. Cliff Moore, III and John B. Kelchner, attorneys for the Plaintiff, Daniel Q. Orvin, attorney for the Defendant Tyrone Davis, Howell V. Bellamy, Jr. and Howell V. Bellamy, III, attorneys for the Defendant Bobby Bellamy, Kathy Martin, the Plaintiff's representative, Tyrone Davis, and Bobby Bellamy were present for the trial.

Based on the pleadings filed in this matter, the testimony offered at trial, and the argument of counsel, I make the following findings of fact:

FINDINGS OF FACT

1. By Quitclaim Deed dated June 29, 2007 and recorded on July 18, 2007 in the Register of Deeds Office for Horry County, State of South Carolina, in Book 3261 at page 2091 ("BC Fund Deed"), Bellamy conveyed the following described real property (hereinafter "Subject Property") to BC Fund, LLC:

ALL THAT certain piece, parcel or tract of land situate, lying and being in Little River Township, County of Horry, State of South Carolina, being more particularly shown and designated on the west side of Sea Mountain Highway near Nixon's Crossroads, containing 3.39 acres more or less. Starting at a stake on the corner of Sea Mountain Highway and bounded on the South by Tract B, owned by Tommy J. Bellamy, on the East by North Pointe Development, on the North by Tract D owned by Linda B. Nichols, on the East by Sea Mountain Highway.

This is a portion of property conveyed to Charles Bellamy by Floyd and Essie Bellamy by deed 2/1/58, recorded in Deed Book 201 at page 362 and then later conveyed from Lela Bellamy estate to heirs in deed book 3207, page 2080 in the office of the Register of Mesne Conveyances for Horry County. This property is shown as Tract C on a map of the Bellamy estate lands, dated August 14, 2006 by JWH engineering.

2. By General Warranty Deed dated November 16, 2007 and recorded on December 19, 2007 in the Register of Deeds Office for Horry County, State of South Carolina, in Book 3294 at page 817 ("Davis Deed"), BC Fund, LLC conveyed the Subject Property to Defendant Tyrone Davis ("Davis").

3. On November 16, 2007, for value received, Davis, made, executed and delivered to the Plaintiff, a certain promissory note in writing according to the terms and conditions set out therein, wherein and whereby Davis promised to pay to the Plaintiff the sum of One Hundred Thirty-Six Thousand And 00/100 Dollars (\$136,000.00), together with interest thereon at the rate of Seven And 50/100 per cent (7.5%) per annum ("Note")

4. On November 16, 2007, Davis made, executed, and delivered to Plaintiff a certain Mortgage encumbering the Subject Property to secure the repayment of a Note in the original amount of \$136,000.00 ("Mortgage"). The Mortgage was recorded on November 19, 2007 in the Office of the Register of Deeds for Horry County, State of South Carolina, in Book 4996 at Page 1970.

5. According to the terms and conditions of the said Note and Mortgage, it is provided that in the event of default in the payment of any installment when due, and if such default is not made good prior to the due date of the next such installment, the entire principal and accrued interest shall at once become due and payable without notice a the option of the holder, and if the same should be placed in the hands of an attorney for collection, all costs of collections, including a reasonable attorney's fee, would be secured by the said mortgage as part of the debt secured thereby.

6. The monthly payment due on said Note and Mortgage are in default since October 1, 2010, and the conditions of the Note and Mortgage have been broken. The Plaintiff elected to, and declared the entire balance of said indebtedness due and payable.

7. Plaintiff filed its Lis Pendens, Summons and Complaint on February 25, 2011, alleging that Davis is in default under the Note secured by the Mortgage. Plaintiff asserted a cause of action for foreclosure as well as an action for reformation to correct a mistake in the

property description in the Mortgage, the BC Fund Deed, and the Davis Deed. The correction that the Plaintiff seeks in the property description is the description of the eastern boundary of the Subject Property that is identified as North Pointe Development. North Pointe Development is the western boundary of the Subject Property.

8. The Defendant Bobby J. Bellamy, ("Bellamy"), filed a responsive pleading titled Notice of Intent to Enforce Forfeiture Provisions of Contract for Deed on August 30, 2011 and Answer to the Complaint on October 31, 2011, and another responsive pleading titled Summons and Notice on November 8, 2011.

9. The Defendant Tyrone Davis ("Davis") filed an Answer on September 27, 2011 and Reply to Bellamy's Summons and Notice on November 29, 2011.

10. On April 18, 2012, with consent from the parties, Plaintiff amended its Complaint to add the United States of America as a defendant.

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11. On May 16, 2012, Bellamy served an Amended Answer, Counterclaim and Cross-Claim ("Amended Answer") asking the court to declare that the BC Fund Deed, Davis Deed, and Mortgage are void on the grounds that: (1) these instruments lacked an existing grantor/grantee because BC Fund LLC was not an entity with a legal existence; (2) that Bellamy did not receive consideration for the BC Fund Deed; and (3) that there occurred fraud based on BC Fund LLC's lack of legal existence.

12. USA filed an Answer and Consent to Order of Reference on May 25, 2012 indicating that its lien was through its agency the Internal Revenue Service. In fact the lien is not through its Agency, the Internal Revenue Service, but rather a lien by virtue of an abstract of a judgment secured by the United State of America.

13. Plaintiff filed its Reply to Bellamy's Amended Answer, Counterclaim and Cross-Claim on May 29, 2012.

14. On August 29, 2013, Plaintiff filed a Motion to Amend its Complaint to include, as part of its existing reformation action, a request that the Court reform the BC Fund Deed and Davis Deed to designate "BC Fund and Management, LLC" as the grantee and grantor therein, respectively.

15. On November 6, 2013, the Court issued an Order granting Plaintiff's Motion to Amend.

16. Pursuant to the November 6, 2013 Order, Plaintiff filed its Second Amended Complaint on December 4, 2013, adding BC Fund and Management, LLC d/b/a BC Fund, LLC ("BC Fund") as a party to the action and seeking reformation of the BC Fund Deed and Davis Deed to designate BC Fund as the grantee and grantor therein, respectively.

17. Bellamy filed a Second Amended Answer, Counterclaims, and Cross-Claims on December 31, 2012.

18. Davis filed an Answer to the Second Amended Complaint on January 8, 2014.

19. Bellamy filed a Third (titled "Second") Amended Answer, Counterclaims and Cross-Claims and Third Party Complaint on February 19, 2014 in which Bellamy asserts as defenses:

- a. That the Plaintiff fails to state facts sufficient to constitute a cause of action;
- b. Estoppel;
- c. Lack of evidence to support the Plaintiff's reformation request;
- d. Lack of standing to reform the BC Fund Deed;
- e. No consideration for the BC Fund Deed;

- f. Negligence for failing to verify the existence of BC Fund, LLC;
- g. Names of the parties to a deed may not be reformed;
- h. Laches; and
- i. Unclean Hands.

As a further defense, asserted as a counterclaim against the Plaintiff and a cross claim against Davis, Bellamy requested a declaratory judgment stating that BC Fund, LLC was not a legal entity at the time of the BC Fund Deed and the Plaintiff had constructive notice of that fact; that the BC Fund Deed is null and void because the grantee does not exist; that BC Fund held the Subject Property in trust under the BC Fund Deed for purposes of development; that the development contract between BC Fund and Bellamy is null and void; that there was no mutual mistake in the creation of the BC Fund Deed or the Davis Deed; that the Mortgage is null and void and should be cancelled of record; and that Bellamy is the owner and holder of title to the Subject Property. As a further defense, asserted as a counterclaim against the Plaintiff, a crossclaim against Davis and a third party complaint against William O. Smith ("Smith"), Bellamy actual, special and punitive damages against for civil conspiracy. Finally, in the Second Amended Answer, Bellamy makes a third party complaint against Smith for compensatory and punitive damages arising from alleged fraudulent conduct.

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20. The Plaintiff filed a Reply to Bellamy's February 19, 2014 pleading on March 4, 2014.

21. By Order of the Court filed March 18, 2015, this case was referred to the undersigned and Bellamy's Counterclaim for civil conspiracy was dismissed with prejudice.

22. That the Defendant BC Fund and Management, LLC d/b/a BC Fund, LLC and Third Party Defendant are in default as shown by the Affidavit of Default on file herein.

23. All parties and/or all attorneys of record were notified of the time, date, and place of the hearing in this matter.

24. According to the Affidavit filed herein, no Defendant in default is in the Military Service of the United States of America, as contemplated under the Service members Civil Relief Act, and any amendments thereto.

25. No testimony was offered on Bellamy's Third Party complaint against Smith. That claim is outstanding and is not addressed in this Order.

26. The remaining counterclaim and all of the affirmative defenses relate to Bellamy's claim that the BC Fund, LLC and BC Fund and Management, LLC are not the same entity and that the BC Fund Deed is null and void because it purports to be a transfer to an entity that does not exist. Additionally, Bellamy's affirmative defenses challenges the timeliness of the Plaintiff's reformation request (laches), the standing of the Plaintiff to request the reformation of the BC Fund Deed and the Davis Deed, and the ability to reform the BC Fund Deed because of the lack of consideration given by BC Fund, LLC to Bellamy.

FINDINGS OF FACT AS TO THE ENTITY "BC FUND, LLC"

27. BC Fund and Management, LLC is a corporation organized and existing pursuant to the laws of the State of South Carolina. William O. Smith was the sole owner of BC Fund and Management, LLC.

28. At the time of the BC Fund Deed and the Davis Deed, BC Fund and Management, LLC had offices located at 401 Broadway Street, Myrtle Beach, SC. The sign outside of that office listed the name of the business as "BC Fund."

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29. Bellamy inherited the Subject Property from a family member and made the decision to develop the Subject Property and pursued real estate developers to assist him with that development.

30. After considering several candidates, Bellamy decided to work with Smith. Smith presented Bellamy with a business plan that listed Smith's interest in the plan as "BCFUND".

31. Bellamy freely and knowingly conveyed the Subject Property to BC Fund, LLC. The conveyance of the Subject Property to BC Fund, LLC was Bellamy's contribution to the enterprise set out in the described business plan.

32. When Attorney Scott B. Umstead closed the transfer of the Subject Property from B.C. Fund, LLC to Davis he secured a resolution from BC Fund and Management, LLC d/b/a BC Fund, LLC. The resolutions was embodied in documents dated November 16, 2007 and entitled "MINUTES OF A SPECIAL MEETING OF THE MEMBERS OF BCFUND AND MANAGEMENT, LLC, D/B/A BC FUND, LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY, HELD AT THE COMPANY OFFICE, MYRTLE BEACH, SOUTH CAROLINA ON NOVEMBER 16, 2007" and "WAIVER OF NOTICE AND RATIFICATION OF MEETING OF MEMBERS OF BC FUND AND MANAGEMENT, LLC D/B/A BC FUND, LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY."

33. The taxpayer identification number used by BC Fund, LLC in association with the transfer of the Subject Property from BC Fund, LLC to Davis was the taxpayer identification number for BC Fund and Management, LLC.

34. Before Bellamy asserted the affirmative defenses and counterclaim suggesting that the BC Fund Deed was null and void, Bellamy filed the following verified *pro se* pleadings

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in this action that indicate he understood, at all times material to this matter, that BC Fund, LLC and BC Fund and Management, LLC are the same entity:

- a. Notice of Intent to Enforce Forfeiture Provisions of Contract for Deed dated August 29, 2011 and filed August 30, 2011;
- b. Notice of Termination or Cancellation of a Contract for the Sale of Real Property Due to Default dated and filed October 5, 2011; and
- c. Summons and Third-Party Complaint dated and filed November 2, 2011.

35. At trial, Bellamy testified that BC Fund, LLC was Smith's Company.

36. At trial, Davis testified that BC Fund, LLC and BC Fund and Management, LLC are the same entity.

37. At trial, Scott B. Umstead testified that BC Fund, LLC and BC Fund and Management, LLC are the same entity.

38. At trial, Victoria Pitts, the office manager for BC Fund and Management, LLC, testified that BC Fund, LLC and BC Fund and Management, LLC are the same entity.

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FINDINGS OF FACT AS TO THE AMOUNT DUE ON THE NOTE AND MORTGAGE

38. The Mortgage constitutes a first mortgage lien and is purchase money mortgage with the proceeds of the loan being used to purchase the property above described.

39. Since the inception of this action, plaintiff's attorneys have assumed responsibility for the institution of this action and have searched and updated the title on the Property from the date the current owner received the Property or the date the Mortgage was executed to the date of the filing of the Lis Pendens.

The Firms have been responsible for the preparation of the following pleadings.

- 1. Notice of Foreclosure Intervention

2. Lis Pendens
3. Summons and Complaint and amended pleadings
4. Affidavit of Default
5. Order of Reference
6. Notice of Hearing
7. Proposed Master's Order and Judgment of Foreclosure and Sale
8. Notice of Sale
9. Other documents as applicable pertaining to service, foreclosure intervention and prosecution of the action.

Additionally, the Firms have arranged for service of process on the Defendant(s), scheduled and attended the hearing in the matter, provided reinstatement/payoff figures to the primary Defendant(s), if requested, and had telephone conversations with the Defendant(s), if requested. Future duties include forwarding copies of the Master's Order and Judgment of Foreclosure and Sale to the Defendant(s), advising the Defendant(s) of the date that the Property will be sold, arranging and coordinating the amount to be bid by Plaintiff, representation of Plaintiff at sale and preparation of after sale documentation as required. In light of the potential liabilities inherent in a foreclosure matter, the attendant responsibilities and the outcome obtained for the Plaintiff, I find that the contractual attorneys' fees in the amount of Eight Thousand One Hundred Sixty-Five Dollars and No Cents (\$8165.00) are reasonable.

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40. The amount due and owing on the Note, with interest at the rate provided in the Note, and other costs and expenses of collection, including attorneys' fees, secured by the Note and Mortgage, is as follows:

(a)	Total Principal due as of October 1, 2010	\$	132,313.68
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(b)	Interest from September 1, 2010 through May 7, 2018 @ current interest rate of 7.500%	\$	76,243.45
(c)	Escrow Adjustments (debits or credits)	\$	22,395.25
	County Taxes	\$	28,614.83
	Escrow Credit	(\$	6,219.58)
(d)	Late Charges	\$	54.00
(e)	Foreclosure Costs	\$	1287.08
(f)	Attorney Fees	\$	8165.00
	TOTAL DEBT	\$	240,458.46

Interest for the period from the date shown in (b) above, through the date of this Judgment at the above stated rate to be added to the above stated "Total Debt" to comprise the amount of the judgment debt entered herein and interest after the date of judgment at the current rate of Seven and 50/100 (7.50%) per annum (pursuant to the terms of the Note and Mortgage) on the judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the mortgage through the date to which such interest is computed.

Handwritten initials/signature

41. That the USA may claim to have a lien upon all or a portion of the Property by virtue of that certain Abstract of Judgment entered against Linda M. Nichols, Post office Box 1674, 3658 Sea Mountain Highway, Little River, South Carolina, 29566 on April 17, 2002 in the United States District Court of South Carolina and subsequently recorded in the Horry County Register of Deeds Office on May 8, 2002 in Book 0017 at Page 0308, in the original sum of \$22,348.35. Any lien upon or interest in the Property claimed by the USA does not attach to the Property because the Abstract of Judgment is not entered in the name of any individual in the chain of title of the Property.

42. That the Plaintiff does not waive but specifically demands judgment against Davis for the full amount found to be due to Plaintiff on the Note and Mortgage held by Plaintiff, with the right to enter personal judgment against the Defendant for any deficiency in this action remaining after sale of the mortgaged premises.

43. As a personal or deficiency judgment is demanded, the bidding will remain open for a period of thirty (30) days pursuant to S.C. Code Ann. Section 15-39-720 (1976).

44. That the Mortgage loan is not owned, securitized, or guarantee by Fannie Mae or Freddie Mac nor did the servicer/investor participate in the Home Affordable Modification Program at the time of the filing of the within action.

CONCLUSIONS OF LAW

I, therefore, conclude as follows:

1. Concerning the counterclaim and affirmative defenses based on Bellamy's assertion that that the BC Fund Deed is null and void because BC Fund, LLC did not exist.

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In South Carolina, "a contract is good between parties, no matter how incorrect the names used in the paper may be, if it appears they were intended as the names of the parties to be bound by the contract or to receive its benefits." *Cobb & Seal Shoe Store v. Aetna Ins. Co.*, 78 S.C. 388, 58 S.E. 1099 (1907) (citing *Neely v. Yorkville*, 10 S.C. 147; 1 Thompson on Corporations §294).

In the case of *Sumter Tobacco Warehouse Co. v. Phoenix Ins. Co., Ltd. of London*, 76 S.C. 76, 56 S.E. 654 (1907), property was deeded to "Sumter Tobacco & Cotton Warehouse Company" after the charter for the company had been filed, but before it was actually issued in the name of "Sumter Tobacco Warehouse Company." The defendant argued the misnomer rendered the deed insufficient to prove title to Sumter Warehouse Company. The Court disagreed, stating:

It is the duty of courts to give effect to deeds made in good faith rather than destroy them on technical grounds . . . to hold that the slight change in the name of the corporation should defeat the deed would be to refuse to regard the intention of all parties concerned for the sake of an attenuated technicality.

Sumter Tobacco Warehouse Co., 56 S.E. at 656.

In *Cobb* the Court espoused the same principals in a contract case with facts similar to the case at bar. There, the plaintiff was incorporated under the name "Cobb & Seal Shore Store," but did business under the name "Cobb & Seals." A policy of fire insurance was issued in the d/b/a name instead of the corporate name, and the defendant asked the court to hold, as a matter of law, that Cobb & Seal Shoe Store could not recover under a policy issued to "Cobb & Seals." The Court ruled in favor of the plaintiff, explaining:

If the real meaning of the contract was to insure the corporate property for the benefit of the corporation, designating the corporation as Cobb & Seals, instead of using its true corporate name, cannot have any effect to relieve the insurer from liability. . . . Evidence that there was no such legal entity as Cobb & Seals, and that the defendant's agent, before issuing the policy, knew that the property was owned by the corporation, Cobb & Seal Shoe Store, tended strongly to show the failure to use the true corporate name in the policy was a mere inadvertence, and that "Cobb & Seals," in the contract, meant the corporation.

Cobb, 58 S.E. at 1099.

Furthermore, it has long been recognized in this state that a corporation may be known by several names in the transaction of its general business. *See, McCall v. IKON*, 363 S.C. 646, 652, 611 S.E.2d 315, 318 (2005) (citing *Long v. Carolina Baking Co.*, 193 S.C. 255, 259, 8 S.E.2d 326, 332 (1939)). The Reporter's Comments following, S.C. Code Ann. §33-4-101, provide:

Under this section, the corporation must merely 'file' a distinguishable name. It may, but does not have to, use this name in dealing with the public."

The Court in *Long* noted:

"A corporation . . . may have or be known by several names in the transaction of

its general business so that it may enforce, as well as be bound by, contracts entered into in an adopted name other than the regular name under which it was incorporated.”

Long, 8 S.E.2d at 332 (citing 13 Am.Jur. 270).

Here, there is ample evidence that the parties to the transactions at issue viewed BC Fund, LLC and BC Fund and Management, LLC as one in the same, and that BC Fund and Management, LLC – through its principal and agents – prominently and unmistakably held itself out as BC Fund, LLC: the sign outside of William Smith’s office; the business plan used by Bobby Bellamy and William Smith; Bobby Bellamy filed verified *pro se* pleadings; corporate documents in the Mr. Umstead’s file; the company’s taxpayer identification number was used at closing when the property was transferred from BC Fund to Tyrone Davis; Bobby Bellamy’s own testimony referencing BC Fund as William Smith’s company at least 3 times; and Bellamy, Davis, Mr. Umstead, and Victoria Pitts all testified that “BC Fund and Management, LLC” and “BC Fund, LLC” were the same entity. Most importantly, testimony from Bellamy showed that while he may have been swindled by the overreaching, fraudulent schemes of Smith, he freely and knowingly conveyed his property by quitclaim deed to BC Fund, LLC. Therefore, while “BC Fund, LLC” may merely have been a d/b/a of BC Fund and Management, LLC, there is clear evidence that failure to use the full corporate name on the deeds was a mere inadvertence, that no party was misled or otherwise prejudiced by the use of “BC Fund, LLC” instead of “BC Fund and Management, LLC.” The names used were intended as the names of the parties to be bound or to receive benefits.

As such, the BC Fund Deed should not be declared null and void. That deed was a conveyance of the Subject Property by Bellamy to BC Fund and Management, LLC.

2. Concerning the affirmative defense to the reformation cause of action that the Plaintiff lacks standing to request the reformation of the BC Fund Deed.

In the responsive pleadings, Bellamy alleges, as an affirmative defense that the Plaintiff lacks standing to reform the BCFund Deed because the Plaintiff was not a party to the written document or in privity with a party to that Deed.

Plaintiff, as a subsequent grantee or mortgagee of the Subject Property, is in privity with Bellamy under South Carolina law. “[A] deed may be reformed ... if a mistake of description occurs in a series of conveyances, under circumstances that would entitle any one of the vendees to a reformation as against the original vendor. This statement of the law is based upon the principle that parties to deeds—vendors and vendees—in a series of conveyances may claim privity with each other.” *Chisolm v. Pryor*, 207 S.C. 54, 59, 35 S.E.2d 21, 23 (1945).

“Reformation may be had not only by the original parties to the instrument, but also by a real party in interest claiming privity with a party to the instrument such as a grantee or an assignee.” 66 Am.Jur.2d *Reformation of Instruments* § 60. Furthermore, “[a] grantee of property succeeds to the grantor’s right to maintain a suit to reform a prior deed.” *Id.*

The BC Fund Deed, on its face, shows that Bellamy conveyed his interest in the property to an entity known as “BC Fund, LLC.” The Davis Deed, on its face, shows that “BC Fund, LLC” then conveyed its interest to Davis, who then granted the Mortgage to Plaintiff. These public records, taken together, show that Plaintiff has privity with Bellamy.

3. Concerning the affirmative defense to the reformation cause of action that the BC Fund Deed cannot be reformed because there was no consideration for the transfer.

The BC Fund Deed states that the consideration for the transfer is “..the sum of Five and No/100 Dollars (\$5.00) and no other consideration...” However, at trial Bellamy testified that

the Subject Property was transferred to BC Fund, LLC as his contribution to the low income housing construction enterprise that he freely entered with Smith. The actual and bargained-for consideration for the BC Fund Deed was the recited \$5.00 and Bellamy's interest in his enterprise with Smith.

4. Concerning the affirmative defense that the Plaintiff's cause of action for reformation is barred by the doctrine of laches.

"The equitable doctrine of laches is defined as 'neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done.'" Robinson v. Estate of Harris, 389 S.C. 360, 372, 698 S.E.2d 801, 807 (2010), quoting, Hallums v. Hallums, 296 S.C. 195, 198, 371 S.E.2d 525, 527 (1988). "Under the doctrine of laches, if a party, knowing his rights, does not seasonably assert them, but by unreasonable delay causes his adversary to incur expenses or enter into obligations or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce those rights." Robinson, 296 S.C. at 372, 689 S.E.2d at 807, citing, Chambers of S.C., Inc. v. County Council of Lee County, 315 S.C. 418, 421, 434 S.E.2d 279, 280 (1993). The party alleging laches must show (1) delay, (2) the delay was unreasonable under the circumstances, and (3) resulting prejudice. Robinson, 296 S.C. at 372, 689 S.E.2d at 807, citing, Hallums, 296 S.C. at 199, 371 S.E.2d at 528.

There was no evidence offered as to when the Plaintiff discovered that its mortgagor's grantor was referred to, in the applicable deeds in the chain of title, as BC Fund, LLC and not BC Fund and Management, LLC. The initial reformation request from the Plaintiff was to correct an error in the property description. The Plaintiff did not request a reformation to clarify that BC Fund, LLC was the same entity as BC Fund and Management, LLC until after Bellamy claimed

in his pleadings that the BC Fund Deed was a nullity. Therefore, it appears from the pleadings alone that the Plaintiff did not discover the need to reform the BC Fund Deed to address the name of the Grantor until the pleadings were filed in this matter.

Bellamy also did not provide evidence that the delay in requesting reformation was unreasonable and that there was resulting prejudice. As such, Bellamy has failed to demonstrate that the defense of laches would preclude this Court from awarding the Plaintiff the reformation relief requested.

The Court also notes that the attorney who closed the mortgage loan transaction that created the Mortgage discovered the issue concerning discrepancy between the name of the grantee on the BC Fund Deed and the registered name of the entity BC Fund and Management, LLC. The closing attorney timely addressed that discrepancy by assisting BC Fund and Management, LLC with the creation of corporate documentation that made it clear that BC Funds and Management, LLC did business using the trade name "BC Fund, LLC". BC Fund and Management, LLC created this documentation prior to the transfer of the Subject Property to Davis. As such, even if the Plaintiff knew of the issue relating to the trade name before Bellamy raised it in his pleadings, a fact not in evidence, it would have had every reason to believe that the matter had been resolved by that closing attorney.

5. Concerning the Plaintiff's request for reformation.

A contract can be reformed if there is material mistake and the mistake is mutual between the parties to the contract. *Independent Nat'l Bank v. Buncombe Prof'l Park, LLC*, 402 S.C. 514, 471 S.E.2d 572 (Ct.App. 2012) (quoting *George v. Empire Fire & Marine Ins. Co.*, 344 S.C. 582, 590, 545 S.E.2d 500, 504 (2001) (quoting *Crosby v. Protective Life Ins. Co.*, 293 S.C. 203, 206, 359 S.E.2d 298, 300 (Ct. App. 1987))). An instrument may be reformed to correct mistakes in

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the names of the parties. 66 Am.Jur.2d *Reformation of Instruments* § 51.

The Plaintiff seeks reformation of the property description in the BC Fund Deed, the Davis Deed and the Mortgage. No party contests that relief and it should be granted.

The Plaintiff also seeks reformation of the name of the grantee in the BC Fund Deed and the name of the grantor in the Davis Deed. As I found earlier in this Order when addressing the Bellamy Counterclaim and affirmative defenses, Bellamy freely and knowingly conveyed the Subject Property to BC Fund, LLC. Therefore, while "BC Fund, LLC" may have been a d/b/a of BC Fund and Management, LLC, there is clear evidence that failure to use the full corporate name on the deeds was an inadvertence and a mistake and no party was misled or otherwise prejudiced by the use of "BC Fund, LLC" instead of "BC Fund and Management, LLC." The names used were intended as the names of the parties to be bound or to receive benefits. Reformation of the name of the grantee in the BC Fund Deed and the name of the grantor in the Davis Deed so that both reflect the name "BC Fund and Management, LLC" in place of "BC Fund, LLC" is appropriate and should be ordered.

6. Concerning the Plaintiff's request for judgment on the Note and foreclosure of the Mortgage.

The Plaintiff should have judgment of foreclosure of the mortgage and the mortgaged property should be ordered sold at public auction after due advertisement.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. The caption of this matter should be revised to replace the Defendant identified as "United States of America through its Agency – Internal Revenue Service" with "United States of America".

2. Bellamy's request for declaratory relief is denied.

3. The description of the Subject Property in the BC Fund Deed, the Davis Deed and the Mortgage is reformed so that the property description in each shall read:

ALL THAT certain piece, parcel or tract of land situate, lying and being in Little River Township, County of Horry, State of South Carolina, being more particularly shown and designated on the west side of Sea Mountain Highway near Nixon's Crossroads, containing 3.39 acres more or less. Starting at a stake on the corner of Sea Mountain Highway and bounded on the South by Tract B, owned by Tommy J. Bellamy, on the West by North Pointe Development, on the North by Tract D owned by Linda B. Nichols, on the East by Sea Mountain Highway.

4. The language describing the derivation of the BC Fund Deed, the Davis Deed and the Mortgage shall not change.

5. The BC Fund Deed is reformed to reflect that the grantee in that deed is BC Fund and Management, LLC, d/b/a BC Fund, LLC.

6. The Davis Deed is reformed to reflect that the grantor in that deed is BC Fund and Management, LLC, d/b/a BC Fund, LLC.

6. There is due to the Plaintiff on the obligation and mortgage set forth in the Complaint the sum of Two Hundred Forty Thousand Four Hundred Fifty-Eight and 46/100 Dollars (\$240,458.46) representing the "Total Debt" due Plaintiff as set forth supra, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.

7. The amount due in the preceding paragraph (the "Total Debt" as set forth supra and later accrued interest on the principal) shall constitute the total judgment debt due the Plaintiff and shall bear interest hereafter at the current rate of 7.500% percent per annum.

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8. That the Defendant liable for the aforesaid mortgage debt shall, on or before the date of sale of the property hereinafter described, pay to the Plaintiff, or Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

9. That on default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, be sold by the Master in Equity at public auction at the Horry County Justice Center, 1301 2nd Ave., 3rd Floor Conway, SC 29526 in Horry County, South Carolina, on some convenient sales day hereafter, on the following terms, that is to say:

A. FOR CASH: The Master in Equity will require a deposit of Five percent (5%) on the amount of the bid (in cash or equivalent) at the time of the sale, same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within Thirty (30) days same to be forfeited and applied to the costs and Plaintiff's debt.

B. Interest on the balance of the bid shall be paid to the day of compliance at the current rate of 7.500% percent.

C. The sale shall be subject to taxes and assessments, existing easements and easements and restrictions of record.

D. The above referenced instrument constitutes a first mortgage lien and is purchase money mortgage with the proceeds of the loan being used to purchase the property.

E. The Purchaser is to pay for the deed preparation, for Deed Stamps and costs of recording the Deed.

Handwritten initials/signature

F. If the successful bidder is a third party other than the Plaintiff, interest on the balance of the bid shall be paid to the date of compliance at the rate listed in the figures above.

10. If Plaintiff be the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of the Plaintiff in full, Plaintiff may pay to the Master in Equity only the amount of the costs and expenses crediting the balance of the bid on Plaintiff's indebtedness.

11. The Plaintiff has judgment against the Defendant(s), Tyrone Davis, for the full amount found to be due the Plaintiff on the note and mortgage, with right to enter a personal judgment against the Defendant(s), Tyrone Davis, for any deficiency in this action remaining after sale of the mortgaged premises.

12. As a personal or deficiency judgment is demanded, the bidding will remain open for a period of thirty (30) days pursuant to S.C. Code Ann. Section 15-39-720 (1976).

13. That the Master in Equity will, by advertisement according to law, give notice of the time, and place of sale, and the terms thereof; and will execute to the Purchaser, or Purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, may become a purchaser at such sale, and that if, upon such sale being made, the Purchaser, or Purchasers, should fail to comply with the terms thereof within Thirty (30) days after date of sale, then the Master in Equity may advertise the said premises for sale on the next, or some other subsequent sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured.

14. That the Master in Equity will apply the proceeds of the sale as follows:

FIRST: To payment of the amount of the costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court.

NEXT: To the payment to the Plaintiff or Plaintiff's attorney, of the amount of Plaintiff's debt and interest, so much thereof as the purchase money will pay on the same.

NEXT: Any surplus will be held pending further order of the court.

15. It is further ORDERED, ADJUDGED AND DECREED that in the event the successful bidder to whom the deed of conveyance has been issued subsequent to the sale is other than the Defendants in possession herein, the Sheriff of Horry County is ordered and directed to eject and remove from the premises the occupants of the property sold, together with all personal property located thereon, and put the successful bidder to whom the deed of conveyance has been issued or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.

16. And it is further ORDERED, ADJUDGED AND DECREED that each Defendant and all persons whomsoever claiming under him, her or them, be forever barred and foreclosed of all right, title, interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.

17. And it is further ORDERED, ADJUDGED AND DECREED that any prior lien that has been paid in full is hereby satisfied and canceled of record.

18. IT IS FURTHER ORDERED that the Deed of conveyance made pursuant to said sale shall contain the names of only the first named Plaintiff and the first named Defendant and the Defendant who was the titleholder of the mortgaged property at the time of filing of the Notice of Pendency of the within action, and the name of the Grantee, and the Master in Equity

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is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said Deed.

19. The Master in Equity will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance.

20. Upon issuance of a Master in Equity's Report on Sale and Disbursements, the Register of Deeds is directed to release of record the mortgage lien being foreclosed, which mortgage lien is described as follows:

That Mortgage originally given to M&T Bank by Tyrone Davis, dated November 16, 2007 and recorded November 19, 2007, in Mortgage Book 4996 at page 1970.

21. The following is a description of the premises herein ordered to be sold:

ALL THAT certain piece, parcel or tract of land situate, lying and being in Little River Township, County of Horry, State of South Carolina, being more particularly shown and designated on the west side of Sea Mountain Highway near Nixon's Crossroads, containing 3.39 acres more or less. Starting at a stake on the corner of Sea Mountain Highway and bounded on the South by Tract B, owned by Tommy J. Bellamy, on the West by North Pointe Development, on the North by Tract D. owned by Linda B. Nichols, on the East by Sea Mountain.

This being a portion of the same property conveyed to Sheila B. Goff, Linda B. Nichols, Bobby G. Bellamy and Tommy J. Bellamy by Deed of Distribution of Estate of Lela Bellamy Young dated December 27, 2006 and recorded December 28, 2006 in the Register of Deeds Office for Horry County, State of South Carolina, Book 3207 at Page 2080. Thereafter, Linda B. Nichols, Sheila B. Goff and Tommy J. Bellamy conveyed the subject property to Bobby J. Bellamy, dated January 3, 2007 and recorded January 9, 2007 in the Register of Deeds Office for Horry County, State of South Carolina in Book 3211 at Page 1955. Thereafter Bobby J. Bellamy conveyed the subject property to BC Fund, LLC dated June 29, 2007 and recorded on July 18, 2007 in the Register of Deeds Office for Horry County, State of South Carolina, in Book 3261 at Page 2091. Thereafter, BC Fund, LLC conveyed the subject property to Tyrone Davis by deed dated November 16, 2007 and recorded on November 19, 2007 in the Register of Deeds Office for Horry County, State of South Carolina in Book 3294 at Page 817.



3664 SEA MOUNTAIN HIGHWAY
LITTLE RIVER, SC 29566
TMS# 130-00-01-219

22. IT IS FURTHER ORDERED that if the Plaintiff or the Plaintiff's representative does not appear at the scheduled sale of the above-described property, then the sale of the property will be null, void and of no force and effect. In such event, the sale will be rescheduled for the next available sales day.

23. No decision is entered on Bellamy's third party complaint against Smith.

JUDGE'S SIGNATURE PAGE TO FOLLOW



STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2011-CP-26-01809

M&T Bank,
PLAINTIFF(S)

Tyrone Davis; Bobby J. Bellamy; BC Fund and Management, LLC d/b/a BC Fund, LLC and United States of America
DEFENDANT(S)

RECEIVED
AUG 17 2018
SC Court of Appeals

Bobby J. Bellamy,
THIRD-PARTY PLAINTIFF,

vs.

William O. Smith,
THIRD-PARTY DEFENDANT

Submitted by: W. Cliff Moore, III (S.C. Bar No. 4067), John B. Kelchner (S.C. Bar No. 13589)	Attorney for : <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
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DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON): Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (final order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

Foreclosure Action

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
M&T Bank	Tyrone Davis	\$N/A
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: 3664 SEA MOUNTAIN HIGHWAY, LITTLE RIVER, SC 29566 / TMS# 130-00-01-219

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Cynthia Graham Howe, Master in Equity

Judge Code

Date

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FORM 4 ATTACHMENT

Daniel J. Orvin
Womble Bond Dickinson LLP
Attorney for Defendant Tyrone Davis

Howell V. Bellamy, Jr.
Howell V. Bellamy, III
Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers PA
Attorney for Defendant Bobby J. Bellamy

George J. Conits
U.S. Attorney's Office
Attorney for Defendant United States of America

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Horry Common Pleas

Case Caption: M&T Bank , plaintiff, et al VS Tyrone Davis , defendant, et al
Case Number: 2011CP2601809
Type: Master/Order/Form 4

So Ordered

s/Cynthia Graham Howe, 3073, Master in Equity

Electronically signed on 2018-05-04 11:09:59 page 28 of 28

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SC Court of Appeals

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