

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM HORY COUNTY

Court of Master-In-Equity

Judge Cynthia Howe, Master-In-Equity

Appellate Case No. 2018-001523

M&T Bank, Respondent,

v.

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

Of which Bobby J. Bellamy is the Appellant,

And

Tyrone Davis; BC Fund and Management, LLC d/b/a BC
Fund, LLC are Respondents,

And

Bobby J. Bellamy, Appellant

v.

William O. Smith, Respondent

RECORD ON APPEAL

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[Set out entire order Denying Defendant's Motion for Summary Judgement including caption and signature.]

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[Set out entire Plaintiff's second Amended Complaint including caption and signature.]

Answer October 31, 2011

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[Set out entire Motion to reconsider including caption and signature.]

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[Set out entire Response including caption and signature.]

Defendant's Exhibit A1

[set out exhibit]

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Defendant's Exhibit K

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[set out exhibit]

Certificate of Counsel

Plaintiff's Exhibits

[set out exhibits]

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties are not any other materials.


Bobby J. Bellamy, Attorney Pro se
3664 Sea Mountain Highway
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STATE OF SOUTH CAROLINA

COUNTY OF HORRY

M & T Bank,

Plaintiff,

v.

Tyrone Davis; Bobby J. Bellamy; BC
Fund and Management, LLC d/b/a BC
Fund, LLC; and the United States of
America through its agency - Internal
Revenue Service,

Defendant(s).

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

C.A. NO: 2011-CP-26-1809

ORDER DENYING DEFENDANT
BELLAMY'S MOTION FOR
SUMMARY JUDGMENT AND
GRANTING PLAINTIFF'S MOTION
TO AMEND COMPLAINT

HORRY COUNTY
13 NOV - 8 AM 2018
MELANIE HUNTER
CLERK

The parties to this action came before me on October 23, 2013 for a hearing regarding the Plaintiff M & T Bank's ("Plaintiff") Motion to Amend its Complaint and Defendant Bobby J. Bellamy's ("Defendant Bellamy") Motion for Summary Judgment as to its Counterclaim and Cross-Claim in this action. Present at the hearing were Lana H. Sims IV on behalf of the Plaintiff, Daniel Q. Orvin on behalf of the Defendant Tyrone Davis ("Defendant Davis"), and Howell V. Bellamy, Jr. and Howell V. Bellamy, III on behalf of Defendant Bellamy. For the reasons stated below, I deny Defendant Bellamy's Motion for Summary Judgment and grant Plaintiff's Motion to Amend its Complaint.

Plaintiff seeks foreclosure of a Mortgage issued by Defendant Davis that allegedly encumbers a certain tract of real property in Horry County ("the Property"). Plaintiff has also asserted actions to reform its Mortgage and two deeds in the Property's chain of title to revise an allegedly incorrect property description contained in these three

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instruments.¹ The first deed in question is a quitclaim deed executed by Defendant Bellamy in favor of BC Fund, LLC ("Bellamy Deed"), and the second is a Warranty Deed executed by BC Fund, LLC in favor of Defendant Davis ("Davis Deed"). It is undisputed that Defendant Davis is the record owner of the Property at this time.

Defendant Bellamy has filed a Counterclaim and Cross-Claim seeking a determination that he, rather than Davis, is the owner of the Property. Defendant Bellamy contends that BC Fund, LLC was not an entity "with a legal existence" at the time the Bellamy Deed and Davis Deed were executed. For this reason, Defendant Bellamy contends that the Bellamy Deed, Davis Deed, and Mortgage are all invalid and unenforceable.

On August 29, 2013, Plaintiff filed a Motion to Amend its Complaint, seeking to add an action to reform the Bellamy Deed and Davis Deed to indicate that "BC Fund and Management, LLC"—rather than "BC Fund, LLC"—was the intended grantee and grantor (respectively) of those instruments. Defendant Bellamy opposes Plaintiff's motion, and Defendant Davis has appeared in support of it.

On October 8, 2013, Defendant Bellamy filed a Motion for Summary Judgment as to its Declaratory Judgment action. Both Plaintiff and Defendant Davis oppose this Motion. In support of Defendant Bellamy's Motion, he has produced a "Certificate of No Record" from the South Carolina Secretary of State which certifies that, as of July 17, 2013, the Secretary of State is aware of no entity using the registered name "BC Fund,

¹ The Mortgage and deeds describe the Property as being bordered "on the East by North Pointe Development;" Plaintiff asserts that this description should read "on the West by North Pointe Development," as it reads on a number of prior deeds in the chain of title.

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LLC." Defendant Bellamy has also filed an Affidavit of Linda B. Nichols, the sister of Defendant Bellamy, in support of its motion.

Plaintiff and Defendant Davis admit that the Bellamy Deed and Davis Deed designate "BC Fund, LLC" as the grantee and grantor (respectively). Plaintiff and Davis also admit that there is currently no South Carolina entity with the registered name of "BC Fund, LLC." However, at the hearing, Plaintiff maintained that the recent deposition testimony of Defendant Bellamy and Defendant Davis revealed that "BC Fund, LLC" was in fact a *trade name* or *assumed name* of a South Carolina Limited Liability Company registered in the name of "BC Fund and Management, LLC."

According to Plaintiff, Defendants Bellamy and Davis both testified that they considered "BC Fund, LLC" and "BC Fund and Management, LLC" to refer to one entity—the entity with whom Defendants Bellamy and Davis dealt regarding the Property in 2007. As such, Plaintiff contended, the deed is valid and enforceable as an instrument entered into by BC Fund and Management, LLC using the trade name of "BC Fund, LLC." At a minimum, Plaintiff contended, the designation of "BC Fund, LLC" as grantee (rather than "BC Fund and Management, LLC") was merely a scrivener's error, which would not render the Bellamy Deed invalid or unenforceable. Defendant Bellamy disagreed with Plaintiff's characterization of the deposition testimony of Defendant Bellamy and did not dispute Plaintiff's characterization of the testimony of Defendant Davis.

Regarding Plaintiff's Motion to Amend, Plaintiff contends that this Court should allow it to amend under Rule 15 of the South Carolina Rules of Civil Procedure because Plaintiff's proposed amendment would promote justice and would not prejudice the

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Defendants in this action. Defendant Bellamy did not address these elements at the hearing. Instead, Defendant Bellamy took the legal position that Plaintiff did not have standing to assert a reformation action against Bellamy and BC Fund, LLC, because Plaintiff, as a subsequent mortgagee of the Property, was not in privity with either party. Plaintiff and Defendant Davis disagreed with Defendant Bellamy's legal position and contended that a mortgagee has standing to assert an equitable action to reform a deed in the mortgaged property's chain of title to ensure that the deed reflects the intent of the parties thereto.

On a number of occasions during the hearing, the attorney for Defendant Bellamy spoke at length about the equities of Defendant Bellamy's case, accusing all parties of conspiring to deprive Defendant Bellamy of the Property that allegedly still belongs to him. Plaintiff and Defendant Davis disagreed with the factual and legal positions taken by Defendant Bellamy in this regard.

In light of the arguments presented by the parties, I hereby find and conclude as follows:

1. There exist several genuine issues of material fact in this case that need to be developed and resolved by the parties before Summary Judgment would be appropriate. Specifically, there are issues of fact as to (1) whether the entity BC Fund and Management, LLC was using "BC Fund, LLC" as a trade name or assumed name at the time the Bellamy Deed and Davis Deed were executed, (2) whether the designation of "BC Fund, LLC" as grantee/grantor in these deeds was a simple scrivener's error made by the parties to the deeds, and (3) whether the parties to the Bellamy Deed and Davis Deed intended for the Property to be conveyed to and from BC Fund, LLC d/b/a BC

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Fund and Management, LLC. Without addressing the parties' legal arguments, Summary Judgment is not appropriate at this time due to these and other unresolved issues of material fact.

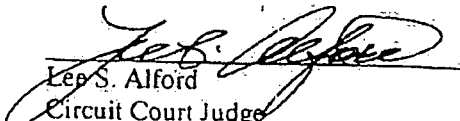
2. Justice requires that Plaintiff be allowed to amend its Complaint to include a reformation action regarding the allegedly incorrect designation of "BC Fund, LLC" as the grantee and grantor in the Bellamy Deed and Davis Deed (respectively). The Defendants in this action will not be prejudiced by such an amendment.

IT IS THEREFORE ORDERED that the Defendant Bellamy's Motion for Summary Judgment is denied.

IT IS FURTHER ORDERED that the Plaintiff's Motion to Amend is granted, and Plaintiff is granted leave to file its Second Amended Complaint.

AND IT IS SO ORDERED.

Dated: November 6, 2013


Leo S. Alford
Circuit Court Judge
Fifteenth Judicial Circuit

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS

M&T Bank,

PLAINTIFF,

vs.

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

DEFENDANT(S)

Bobby J. Bellamy,

THIRD-PARTY PLAINTIFF,

vs.

William O. Smith,

THIRD-PARTY DEFENDANT

MASTER'S ORDER AND JUDGMENT OF
FORECLOSURE AND SALE

(NON-JURY MORTGAGE FORECLOSURE)

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

DEFICIENCY REQUESTED

TO:

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

John B. Kelchner
Hutchens Law Firm
Attorney for Plaintiff

Daniel J. Orvin
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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 at 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.

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."

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

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.

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.

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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.

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.

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.

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 Shoe 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 named 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).

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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.

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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

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.

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.

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

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

~~CSH~~
~~Q1~~

FORM 4

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)

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: ☒ Plaintiff ☐ Defendant or
☐ Self-Represented Litigant

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:
the Court:

☒ See attached order (formal order to follow) ☐ Statement of Judgment by

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

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in
the appropriate attorney's box on this day of , 20 to attorneys of record or to
parties (when appearing pro se) as follows:

W. Cliff Moore, III (S.C. Bar No. 4067)

John B. Kelchner (S.C. Bar No. 13589)

SEE FORM 4 ATTACHMENT

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E- Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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



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

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS

M&T Bank,

PLAINTIFF,

vs.

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

DEFENDANT(S)

Bobby J. Bellamy,

THIRD-PARTY PLAINTIFF,

vs.

William O. Smith,

THIRD-PARTY DEFENDANT

WAIVER OF DEFICIENCY

(NON-JURY MORTGAGE
FORECLOSURE)

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

The Plaintiff waives its right to a personal or deficiency judgment in the above foreclosure matter.

s/ John B. Kelchner

May 7, 2018

John B. Kelchner (S.C. Bar No. 13589)

Attorneys for Plaintiff

Hutchens Law Firm

P.O. Box 8237

Columbia, SC 29202

803-726-2700

john.kelchner@hutchenslawfirm.com

Firm Case No: 1146352 (JFCS.CAE)

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

M&T Bank

PLAINTIFF,

vs.

Tyrone Davis, et al

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

C/A NO:

Submitted By: John S. Kay, (Bar #7914); John B. Kelchner, (Bar # 13589); Alan M. Stewart, (Bar #15576)

Telephone #: 803.252.5817

Address: 1300 Pickens Street

Fax #:

Columbia, SC 29201

Other:

F11-01640

E-mail:

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

- | | | | |
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| ☐ Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)

☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | ☐ Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
☐ Previous Notice of Intent Case # 20-CP-
☐ Notice/ File Med Mal (230)
☐ Other (299) | ☐ Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)

☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | ☐ Claim & Delivery (400)
☐ Condemnation (410)
☒ Foreclosure (420)

☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| ☐ Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | ☐ Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Other (799) | ☐ Administrative Law/Relief
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | ☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Commission (990)
☐ Employment Security Comm (991) |

Special/Complex /Other

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| ☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (670) |
|--|--|

Submitting Party Signature: John B. Kelchner

Date: 2/25/11

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

M&T Bank

PLAINTIFF,

vs.

Tyrone Davis, et al

DEFENDANT(S).

F11-01640

IN THE CIRCUIT COURT FOR THE
JUDICIAL CIRCUIT

(NON-JURY MORTGAGE FORECLOSURE)

CERTIFICATE OF EXEMPTION
FROM ADR

C/A NO:

DEFICIENCY REQUESTED

I certify that this action is exempt from ADR because:

- ☐ this is a special proceeding or action seeking extraordinary relief such as mandamus, habeas corpus or prohibition;
- ☐ this action is appellate in nature;
- ☐ this is a post-conviction relief matter;
- ☐ this is a contempt of court proceeding;
- ☐ this is forfeiture proceeding brought by the State;
- ☒ this is a case involving a mortgage foreclosure; or
- ☐ the parties submitted the case to voluntary mediation with a certified mediator prior to the filing of this action.

John B. Kelchner
Plaintiff/Attorney(s) for Plaintiff(s)

Defendant/Attorney(s) for Defendant(s)

PETER D. KORN /JOHN S. KAY

ALAN M. STEWART /JOHN B. KELCHNER

H. GUYTON MURRELL

Date: 2/25/11

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

M&T Bank,

PLAINTIFF,

vs.

Tyrone Davis, Bobby J. Bellamy and BC Fund LLC,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

SUMMONS

(NON-JURY MORTGAGE FORECLOSURE)

C/A NO:

DEFICIENCY REQUESTED

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FILED
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CLERK OF COURT

F11-01640

TO THE DEFENDANTS ABOVE NAMED:

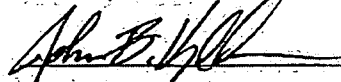
YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you; or otherwise appear and defend, and to serve a copy of your Answer to said Complaint upon the subscriber at his office, 1300 Pickens Street, P.O. Box 11264, Columbia, South Carolina, 29211-1264, within thirty (30) days after service hereof, except as to the United States of America, which shall have Sixty (60) days, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, or otherwise appear and defend, the Plaintiff in this action will apply to the Court for the relief demanded therein, and judgment by default will be rendered against you for the relief demanded in the Complaint.

TO MINOR(S) OVER FOURTEEN YEARS OF AGE, AND/OR TO MINOR(S) UNDER FOURTEEN YEARS OF AGE AND THE PERSON WITH WHOM THE MINOR(S) RESIDES, AND/OR TO PERSONS UNDER SOME LEGAL DISABILITY:

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Mortgagee immediately and separately and such application will be deemed absolute and total in the absence of your application for such an appointment within thirty (30) days after the service of the Summons and Complaint upon you.

YOU WILL ALSO TAKE NOTICE that should you fail to Answer the foregoing Summons, the Plaintiff will move for an Order of Reference of this cause to the Master-in-Equity or Special Referee in/for this County, which Order shall, pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, specifically provide that the said Master in Equity or Special Referee is authorized and empowered to enter a final judgment in this cause with appeal only to the South Carolina Court of Appeals pursuant to Rule 203(d)(1) of the SCAR, effective June 1, 1999.

KORN LAW FIRM, P.A.
1300 Pickens Street
P.O. Box 11264
Columbia, SC 29211-1264



Peter D. Korn / John S. Kay
Alan M. Stewart / H. Guyton Murrell
John B. Kelchner / Meredith S. Lee
Attorneys for Plaintiff

Columbia, South Carolina
February 22, 2011

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

M&T Bank,

PLAINTIFF,

vs.

Tyrone Davis, Bobby J. Bellamy and BC Fund LLC,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

COMPLAINT

(NON-JURY MORTGAGE FORECLOSURE)

C/A NO:

DEFICIENCY REQUESTED

F11-01640

The Plaintiff, complaining of the Defendants above-named would respectfully show unto this Honorable Court:

1. That the Plaintiff is a corporation organized and existing under and by virtue of the laws of the State of New York; and that the Defendants, Tyrone Davis and Bobby J. Bellamy, are upon information and belief, citizens and residents of the County of Horry, State of South Carolina. That the Defendant, BC Fund LLC, is upon information and belief a limited liability company organized and existing under the laws of South Carolina.
2. Any Defendant described herein as a judgment creditor(s) has, by filing the judgment(s), designated the attorney(s) entering the judgment(s) as their agent for service of process pursuant to the provisions of Section 15-35-840 of the S.C. Code of Laws (1976) as amended.
3. That the real property hereinafter described, which is the subject of this action, is situated and located in the County of Horry, State of South Carolina.
4. That on or about November 16, 2007, for value received, Tyrone Davis, did execute and deliver to M&T Bank, a certain promissory note in writing according to the terms and conditions set out therein, wherein and whereby said Tyrone Davis promised to pay to M&T Bank 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.
5. That in order to better secure the payments of the said note and debt, in accordance with the terms and conditions thereof, Tyrone Davis, did execute and deliver on November 16, 2007 unto M&T Bank, a mortgage covering the following described property:

Legal description and property address:

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 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 on 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 on 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, South Carolina 29566
TMS# 130-00-01-219

6. Thereafter said mortgage was recorded in Book 4996 at Page 1970 on November 19, 2007 in the Office of the Register of Deeds of Horry County.

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

8. 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 at the option of the holder, and if the same should be placed in the hands of an attorney for collection, all costs of collection, including a reasonable attorney's fee, would be secured by the said mortgage as a part of the debt secured thereby.

9. That under the terms and conditions of said mortgage, it is provided that, together with, and in addition to, the monthly payments of principal and interest payable under the terms of the note secured thereby, the mortgagor will pay to the mortgagee, on the payment due date each month until the said note is fully paid, certain additional sums, including but not limited to, certain amounts for fire and other hazard insurance and taxes and assessments due on the mortgaged premises.

10. Further, under the terms and conditions of said mortgage, it was agreed that the mortgagor would pay all taxes, assessments, water rates and other governmental or municipal charges, fines or impositions for which provisions were not otherwise made, and if they failed to do so, the mortgagee might pay same, which amount, together with interest thereon, would be secured by said mortgage.

11. According to the terms of said mortgage, and as additional security, the mortgagor assigned all rents, issues and profits of the mortgaged premises from and after any default there under, and should legal proceedings be instituted pursuant to said mortgage, the mortgagee, its successors or assigns, was given the right to have a Receiver appointed of the rents, issues and profits, who, after deducting all charges and expenses attending such proceedings, and the execution of his trust as a Receiver, shall apply the residue of the rents, issues and profits, toward the debt secured by said mortgage.

12. The monthly payments due on said note and mortgage are in default since October 1, 2010, and the conditions of said note and mortgage have been broken and the Plaintiff elects to, and does declare the entire balance of said indebtedness due and payable, and that there is due on said note and mortgage as of October 1, 2010 the sum of One Hundred Thirty-Two Thousand Three Hundred Thirteen And 68/100 Dollars (\$132,313.68), together with interest at the rate of seven and 50/100 per cent (7.5 %) per annum from September 1, 2010 and also for the costs and disbursements of this action, including attorney's fees.

AS FOR THE SECOND CAUSE OF ACTION
(REFORMATION OF MORTGAGE):

13. The Allegations of paragraphs 1 through 12 above are hereby incorporated herein.
14. That it was the mutual intent of the parties herein that the legal description of the subject mortgage refer to the metes and bounds of the subject property as follows:
- "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"
15. That due to a mutual mistake by the parties, the legal description of the mortgage executed to secure the subject note incorrectly references the metes and bounds of the Western boundary of the subject property as "on the East by North Pointe Development."
16. That Plaintiff seeks that the subject mortgage be reformed to correct the reference to the western boundary to designate and encumber the property shown in paragraph 18 below.
17. Plaintiff would should that irreparable harm and prejudice will be suffered by Plaintiff if the mortgage is not reformed as the present collateral under the mortgage is without sufficient equity to secure the debt.
18. Wherefore, Plaintiff does hereby move for a reformation of the mortgage at the hearing to correct the legal description to read as follows:

Legal Description

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.

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 on 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 on 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 December 19, 2007, in the Register of Deeds Office for Horry County, State of South Carolina, in Book 3294 at Page 817.

FOR A THIRD CAUSE OF ACTION
(REFORMATION OF DEED)

19. The Allegations of paragraphs 1 through 18 above are hereby incorporated herein.
20. That the Defendants, Bobby J. Bellamy and BC Fund LLC are named as parties by virtue of any interest they may have as a result of the defect in title described in the within cause of action.
21. That it was the mutual intent of the parties herein that the legal descriptions of the below listed deeds (hereinafter referred to as "the Deeds") refer to the following metes and bounds as described in Paragraph 14 herein.
- (a). Deed from Bobby J. Bellamy to BC Fund, LLC, dated June 29, 2007 and recorded July 18, 2007, in the Register of Deeds Office for Horry County, State of South Carolina, in Book 3261 at Page 2091.

(b). Deed from BC Fund, LLC to Tyrone Davis, 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.

22. That due to a mutual mistake by the parties to the Deeds, the legal descriptions of the Deeds incorrectly reference the metes and bounds of the Western boundary of the subject property as "on the *East* by North Pointe Development."

23. That Plaintiff seeks that the legal descriptions of the Deeds to be reformed to designate and encumber the property shown paragraph 18 herein.

24. Plaintiff would show that irreparable harm and prejudice will be suffered by Plaintiff if the Deeds are not reformed.

25. That Plaintiff is entitled to a Judgment extinguishing any interest Bobby J. Bellamy and BC Fund, LLC, may have in the subject property and declaring that Tyrone Davis has the sole ownership interest in the subject property.

26. That the Plaintiff does not waive but specifically demands judgment against the Defendant(s), Tyrone 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(s) Tyrone Davis, for any deficiency in this action remaining after sale of the mortgaged premises.

27. This Mortgage loan is not owned, securitized, or guaranteed by Fannie Mae or Freddie Mac nor is the servicer/investor participating in the Home Affordable Modification Program.

28. That upon information and belief, certain costs for inspecting and securing the subject property have been incurred by the Plaintiff as a result of this delinquency and Plaintiff is informed and believes it is entitled to reimbursement for such charges, if any.

29. The notice of consumer's right to cure, as contemplated under S.C. Code Sections 37-5-110 and 37-5-111, has been given or is not required, and all conditions precedent to the acceleration of the debt and foreclosure of the mortgage have been performed or have occurred.

WHEREFORE, having fully set forth its complaint, the Plaintiff prays that this Honorable Court inquire into the matters set forth herein and:

(1) That the amount due upon the said note and mortgage held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorney's fees and costs of this action.

(2) That the said Plaintiff's mortgage be declared a purchase money mortgage and that the said Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums which may be due, with a reasonable sum as attorney's fees and for the costs of this action.

(3) That the mortgaged premises be sold under the direction of this court, the equity of redemption be barred, and that the proceeds of sale be applied as follows:

First, to the costs and expenses of the within action and sale.

Second, to the payment and discharge of the amount due on Plaintiff's note and mortgage, together with attorney's fees as aforesaid, and

Third, the surplus, if any, be distributed according to law.

Fourth, Plaintiff have judgment against the Defendant Tyrone Davis for the full amount found to be due Plaintiff on the note and mortgage, with right to enter personal judgment against the Defendant Tyrone Davis for any deficiency in this action remaining after sale of the mortgaged premises.

(4) For an Order directing and empowering the Sheriff of Horry County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property hereinabove described should the same become necessary.

(5) For an Order granting the appointment of a receiver to secure and supervise the rental of the property sought to be foreclosed.

(6) For reimbursement of all costs for inspecting and securing the property incurred by the Plaintiff as a result of the delinquency.

(7) For such other and further relief as may be just and proper.

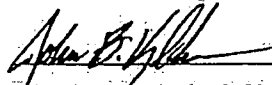
(8) For an order satisfying any prior liens that may be of record, but have been paid in full.

(9) For an order correcting the legal description of the subject mortgage to reflect the property intended to be mortgaged.

(10) For an order correcting the legal descriptions of the Deeds to reflect the property intended to be conveyed.

(11) For an order extinguishing any interest Bobby J. Bellamy and BC Fund, LLC, may claim to have in subject property and declaring that Tyrone Davis has the sole ownership interest in the subject property.

KORN LAW FIRM, P.A.
1300 Pickens Street.
P.O. Box 11264
Columbia, SC 29211-1264



Peter D. Korn / John S. Kay
Alan M. Stewart / H. Guyton Murrell
John B. Kelchner / Meredith S. Lee
Attorneys for Plaintiff

Columbia, South Carolina
February 22, 2011

NOTICE REQUIRED BY THE
FAIR DEBT COLLECTION PRACTICES ACT
15 U.S.C. Section 1601 As Amended

1. The amount of the debt is stated in paragraph 12 of the Complaint attached hereto.
2. The Plaintiff as named in the attached Summons and Complaint is the creditor to whom the debt is owed.
3. The debt as described in the Complaint attached hereto will be assumed to be valid by the creditor's law firm, unless the debtor(s), within thirty (30) days after the receipt of this notice, disputes the validity of the debt or some portion thereof.
4. If the debtor(s) notify the creditor's law firm in writing within thirty days of the receipt of this notice that the debt or any portion thereof is disputed, the creditor's law firm will obtain a verification of the debt and a copy of the verification will be mailed to the debtor(s) by the creditor's law firm.
5. If the creditor named as Plaintiff in the attached Summons and Complaint is not the original creditor, and if the debtor(s) makes a written request to the creditor's law firm within thirty (30) days from the receipt of this notice, the name and address of the original creditor will be mailed to the debtor(s) by the creditor's law firm.
6. Written requests should be addressed to Korn Law Firm, P.A., Post Office Box 11264, Columbia, South Carolina 29211-1264.
7. This notice should NOT be construed as a thirty (30) day grace period. Creditor may pursue collection efforts immediately and not wait thirty (30) days.

THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THIS COMMUNICATION IS FROM A DEBT COLLECTOR.

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

M & T Bank

Plaintiff/Petitioner

vs.

Tyrone Davis; et al.

Defendant/Respondent

Docket Number:
11-CP-26-1809

AFFIDAVIT OF NON SERVICE OF:
CIVIL ACTION COVER SHEET; CERTIFICATE OF
EXEMPTION FROM ADR; LIS PENDENS;
SUMMONS; COMPLAINT; NOTICE REQUIRED
BY THE FAIR DEBT COLLECTION PRACTICES
ACT

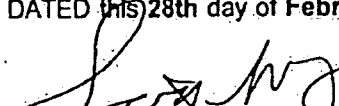
The undersigned, being first duly sworn, on oath deposes and says: That s(he) is now and at all times herein mentioned was a citizen of the United States, over the age of eighteen, not an officer of a plaintiff corporation, not a party to nor interested in the above entitled action, and is competent to be a witness therein.

Affiant states s(he) attempted to serve Tyrone Davis at the address of: 3664 Sea Mountain HWY, Little River, Horry County, SC 29566 and was unable to effect service for the following reasons:

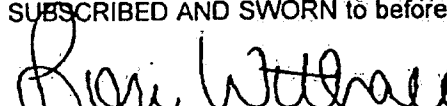
2/27/2011 5:15 PM: Per black male resident Bobby Bellamy said defendant does not reside there.

Is the Subject Property a Mobile Home? (☒) NO () YES
Is a Mobile Home VIN # visible? () NO () YES VIN #:

DATED this 28th day of February, 2011.


Scott Monaghan, Horry, SC

SUBSCRIBED AND SWORN to before me this 28th day of February, 2011


NOTARY PUBLIC in and for the State of South Carolina
My Commission Expires: _____

Lori P. Withall
NOTARY PUBLIC
STATE OF SOUTH CAROLINA
MY COMMISSION EXPIRES 06/06/2016



FOR: Korn Law Firm, P.A.
REF: F11-01640

ORIGINAL PROOF OF
NON-SERVICE

Tracking #: 6684964 CAE FIL



FILED
11 FEB 28 AM 10:59
CLERK OF COURT

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

M & T Bank

Plaintiff/Petitioner

vs.
Tyrone Davis; et al.

Defendant/Respondent

Docket Number:
11-CP-26-1809

AFFIDAVIT OF SERVICE OF:
CIVIL ACTION COVER SHEET; CERTIFICATE OF
EXEMPTION FROM ADR; LIS PENDENS;
SUMMONS; COMPLAINT; NOTICE REQUIRED
BY THE FAIR DEBT COLLECTION PRACTICES
ACT

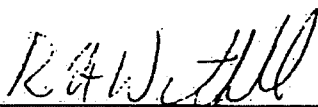
The undersigned, being first duly sworn, on oath deposes and says: That s(he) is now and at all times herein mentioned was a citizen of the United States, over the age of eighteen, not an officer of a plaintiff corporation, not a party to nor interested in the above entitled action, has the authority to serve pleadings in the State named below, and is competent to be a witness therein.

On the 28th day of February, 2011, at 11:00 AM, at the address of 1921 S ISLAND Road, GEORGETOWN, Georgetown County, SC 29440; this affiant served the above described documents upon Tyrone Davis, by then and there personally delivering 1 true and correct copy(ies) thereof, by then presenting to and leaving the same with Jason Davis, Brother/Co-resident, A black male approx. 30-35 years of age 5'10"-6'0" in height weighing 160-180 lbs with brown hair, a person of suitable age and discretion residing at the respondent's usual place of abode listed above.

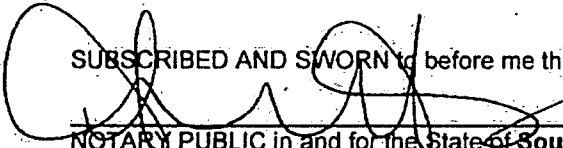
No information was provided or discovered that indicates that the subjects served are members of the U.S. military.

Is the Subject Property a Mobile Home? () NO () YES
Is a Mobile Home VIN # visible? () NO () YES VIN #:

Affiant hereby states under penalty of perjury under the laws of the State of South Carolina that the statement above is true and correct.


Robert Withall, Horry, SC

SUBSCRIBED AND SWORN to before me this 28th day of February, 2011


NOTARY PUBLIC in and for the State of South Carolina



Amber Haering
NOTARY PUBLIC
State of South Carolina
My Commission Expires
March 30, 2019



FOR: Korn Law Firm, P.A.
REF: F11-01640

ORIGINAL PROOF OF
SERVICE

Tracking #: 6684964 CAE FIL



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

M & T Bank,

Plaintiff,

v.

Tyrone Davis; Bobby J. Bellamy; BC
Fund and Management, LLC d/b/a BC
Fund, LLC; and the United States of
America through its agency - Internal
Revenue Service,

Defendant(s).

IN THE COURT OF COMMON PLEAS

C.A. NO: 2011-CP-26-1809

SECOND AMENDED COMPLAINT
(Non-Jury Mortgage Foreclosure)
(Deficiency Requested)

The Plaintiff, complaining of the Defendants above-named would respectfully show unto this Honorable Court:

1. That the Plaintiff is a corporation organized and existing under and by virtue of the laws of the State of New York; and that the Defendants, Tyrone Davis and Bobby J. Bellamy, are upon information and belief, citizens and residents of the County of Horry, State of South Carolina.

2. On information and belief, Defendant BC Fund and Management, LLC d/b/a BC Fund, LLC ("BC Fund") refers to a single limited liability company organized and existing under the laws of South Carolina, and BC Fund, LLC is a name adopted by BC Fund and Management, LLC for doing business.

3. Any Defendant described herein as a judgment creditor(s) has, by filing the Judgment(s), designated the attorney(s) entering the judgment(s) as their agent for service of process pursuant to the provisions of Section 15-35-840 of the S.C. Code of Laws (1976) as amended:

4. That the real property hereinafter described which is the subject of this action, is situated and located in the County of Horry, State of South Carolina.

5. That on or about November 16, 2007, for value received, Tyrone Davis, did execute and deliver to M&T Bank, a certain promissory note in writing according to the terms and conditions set out therein, wherein and whereby said

Tyrone Davis promised to pay to M&T Bank 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").

6. That in order to better secure the payments of the said Note and debt, in accordance with the terms and conditions thereof, Tyrone Davis, did execute and deliver on November 16, 2007 unto M&T Bank, a mortgage covering the following described property ("Subject Property"):

Legal description and property address:

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 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 on 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, South Carolina 29566
TMS# 130-00-01-219

7. Thereafter said mortgage was recorded in Book 4996 at Page 1970 on November 19, 2007 in the Office of the Register of Deeds of Horry County ("Mortgage").

8. The Mortgage constitutes a first priority mortgage and is a purchase money mortgage with the proceeds of the loan being used to purchase the Subject Property.

9. 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 at 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.

10. That under the terms and conditions of said Mortgage, it is provided that, together with, and in addition to, the monthly payments of principal and interest payable under the terms of the note secured thereby, the mortgagor will pay to the mortgagee, on the payment due date each month until the said note is fully paid, certain additional sums, including but not limited to, certain amount for fire and other hazard insurance and taxes and assessments due on the mortgaged premises.

11. Further, under the terms and conditions of said Mortgage, it was agreed that the mortgagor would pay all taxes, assessment, water rates and other governmental or municipal charges, fines or impositions for which provisions were not otherwise made, and if they failed to do so, the mortgagee might pay same, which amount, together with interest thereon, would be secured by said mortgage.

12. According to the terms of said Mortgage, and as additional security, the mortgagor assigned all rents, issues and profits of the mortgaged premises from and after any default there under, and should legal proceedings be instituted pursuant to said mortgage, the mortgagee, its successors or assigns, was given the right to have a Receiver appointed of the rents, issues and profits, who, after deducting all charges and expenses attending such proceedings, and the execution of his trust as a Receiver, shall apply the residue of the rents, issues and profits, toward the debt secured by said mortgage.

13. The monthly payment due on said Note and Mortgage are in default since October 1, 2010, and the conditions of said note and mortgage have been broken

and the Plaintiff elects to, and does declare the entire balance of said indebtedness due and payable, and that there is due on said Note and Mortgage as of October 1, 2010 the sum of One Hundred Thirty- Two Thousand Three Hundred Thirteen And 68/100 Dollars (\$132,313.68), together with interest at the rate of seven and 50/100 per cent (7.5%) per annum from September 1, 2010 and also for the costs and disbursements of this action, including attorney's fees.

14. That the Defendant, the United States of America through its agency, Internal Revenue Service ("USA"), may claim to have a lien upon all or a portion of the Subject Property described herein 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 for the District 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, a copy of which is attached hereto and incorporated herein by reference. Plaintiff alleges that any lien upon or interest in the Subject Property claimed by the USA does not attach to the Subject Property because the Abstract of Judgment is not entered in the name of any individual in the chain of title of the Subject Property. Plaintiff further alleges that any lien held by the USA has expired pursuant to S.C. Code Ann. § 15-35-810.

AS FOR THE SECOND CAUSE OF ACTION
(REFORMATION OF MORTGAGE):

15. The Allegations of Paragraphs 1 through 13 above are hereby incorporated herein.

16. That it was the mutual intent of the parties herein that the legal description of the Mortgage refer to the metes and bounds of the Subject Property as follows:

"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"

17. That due to a mutual mistake by the parties, the legal description of the Mortgage executed to secure the subject note incorrectly references the metes and

bounds of the Western boundary of the subject property as "on the *East* by North Pointe Development."

18. That Plaintiff seeks that the Mortgage be reformed to correct the reference to the Western boundary to designate and encumber the property shown in Paragraph 19 below.

19. Plaintiff would show that irreparable harm and prejudice will be suffered by Plaintiff if the Mortgage is not reformed as the present collateral under the Mortgage is without sufficient equity to secure the debt.

20. Wherefore, Plaintiff does hereby move for a reformation of the Mortgage at the hearing to correct the legal description to read as follows:

Legal Description

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.

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 on 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.

FOR A THIRD CAUSE OF ACTION
(REFORMATION OF DEEDS)

21. The Allegations of Paragraphs 1 through 19 above are hereby incorporated herein.

22. Defendants Bobby J. Bellamy and BC Fund are named as parties by virtue of any interest they may have as a result of the defect in title described in the within cause of action.

23. Bellamy purportedly conveyed the Subject Property to BC Fund through a 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").

24. BC Fund purportedly conveyed the Subject Property to Tyrone Davis through a 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").

25. It was the mutual intent of the parties to the BC Fund Deed that the Grantee therein be designated as "BC Fund and Management, LLC" rather than "BC Fund, LLC," and that the Subject Property be conveyed to BC Fund and Management, LLC rather than purportedly to BC Fund, LLC.

26. Due to a mutual mistake by the parties to the BC Fund Deed, the BC Fund Deed incorrectly designates the Grantee therein as "BC Fund, LLC."

27. It was the mutual intent of the parties to the Davis Deed that the Grantor therein be designated as "BC Fund and Management, LLC" rather than "BC Fund, LLC."

28. Due to a mutual mistake by the parties to the Davis Deed, the Davis Deed incorrectly designates the Grantor therein as "BC Fund, LLC."

29. It was the mutual intent of all parties that the legal descriptions in both the BC Fund Deed and the Davis Deed refer to the metes and bounds as described in Paragraph 15 herein.

30. Due to a mutual mistake by the parties to the BC Fund Deed and Davis Deed, the legal description in both deeds incorrectly identifies the metes and bounds of the Western boundary of the Subject Property as "on the *East* by North Pointe Development."

31. Plaintiff now seeks as follows:

- a. That the BC Fund Deed and Davis Deed be reformed to describe and affect the property as set forth in Paragraph 19 herein;
- b. That the BC Fund Deed be reformed to designate "BC Fund and Management, LLC" as the Grantee;
- c. That the Davis Deed be reformed to designate "BC Fund and Management, LLC" as the Grantor;

32. Plaintiff would show that irreparable harm and prejudice will be suffered by Plaintiff if the Deeds are not reformed.

33. That Plaintiff is entitled to a Judgment extinguishing any interest Bobby J. Bellamy and BC Fund may have in the Subject Property and declaring that Tyrone Davis has the sole ownership interest in the Subject Property.

34. That the Plaintiff does not waive but specifically demands judgment against the Defendant, Tyrone 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 Tyrone Davis, for any deficiency in this action remaining after sale of the mortgaged premises.

35. The Mortgage loan is not owned, securitized, or guaranteed by Fannie Mac or Freddie Mac nor is the servicer/investor participating in the Home Affordable Modification Program.

36. That upon information and belief, certain costs for inspecting and securing the Subject Property have been incurred by the Plaintiff as a result of this delinquency and Plaintiff is informed and believes it is entitled to reimbursement for such charges, if any.

37. The notice of consumer's right to cure, as contemplated under S.C. Code Sections 37-5-110 and 37-5-111, has been given or is not required, and all conditions precedent to the acceleration of the debt and foreclosure of the Mortgage have been performed or have occurred.

WHEREFORE, having fully set forth its complaint, the Plaintiff prays that this Honorable Court inquire into the matter set forth herein and:

(1) That the amount due upon the said Note and Mortgage held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorney's fees and costs of this action.

(2) That the said Plaintiff's Mortgage be declared a purchase money mortgage and that the said Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums which may be due, with a reasonable sum as attorney's fees and costs of this action.

(3) That the mortgaged premises be sold under the direction of this court, the equity of redemption be barred, and that the proceeds of the sale be applied as follows:

First, to the costs and expenses of the within action and sale.

Second, to the payment and discharge of the amount due on Plaintiff's Note and Mortgage, together with attorney's fees as aforesaid, and

Third, the surplus, if any, be distributed according to law.

Fourth, Plaintiff have judgment against the Defendant Tyrone Davis for the full amount found to be due Plaintiff on the Note and Mortgage, with right to enter personal judgment against the Defendant Tyrone Davis for any deficiency in this action remaining after sale of the mortgaged premises.

(4) For an Order directing and empowering the Sheriff of Horry County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property hereinabove described should the same become necessary.

(5) For an Order granting the appointment of a receiver to secure and supervise the rental of the property sought to be foreclosed.

(6) For reimbursement of all costs for inspecting and securing the property incurred by the Plaintiff as a result of a delinquency.

(7) For an Order satisfying any prior lien that may be of record, but have been paid in full.

(8) For an Order correcting the legal description of the subject mortgage to reflect to property intended to be mortgage.

(9) For an Order correcting the legal descriptions of the BC Fund Deed and Davis Deed to reflect the property intended to be conveyed.

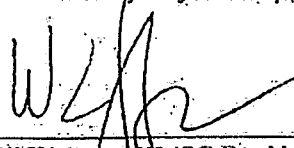
(10) For an Order correcting the BC Fund Deed to correctly designate "BC Fund and Management, LLC" as the Grantee.

(11) For an Order correcting the Davis Deed to correctly designate "BC Fund and Management, LLC" as the Grantor.

(12) For an Order extinguishing any interest Bobby J. Bellamy and BC Fund, LLC, may claim to have in the subject property and declaring that Tyrone Davis has the sole ownership interest in the Subject Property.

(13) For an Order stating that the Judgment filed by the USA does not attach to the Subject Property.

(14) For such other and further relief as may be just and proper.



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-and-

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gmurrell@kornlawfirm.com

Attorneys for the Plaintiffs

December 3, 2013
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

M & T Bank,

Plaintiff,

v.

Tyrone Davis; Bobby J. Bellamy; BC
Fund and Management, LLC d/b/a BC
Fund, LLC; and the United States of
America through its agency - Internal
Revenue Service,

Defendant(s).

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

C.A. NO: 2011-CP-26-1809

CERTIFICATE OF SERVICE

The undersigned, of the law office of Adams and Reese LLP, does certify that on December 3, 2013, she did cause to have served by U.S. Postal Service, regular mail with postage prepaid and return address clearly indicated, copies of the **Second Amended Complaint** to the following:

Daniel Q. Orvin, Esquire
Womble Carlyle Sandridge & Rice, PLLC
PO Box 999
Charleston, SC 29402-0999
Attorney for Defendant Tyrone Davis

Howell V. Bellamy, III, Esquire
Bellamy, Rutenberg, Copeland, Epps, Gavelly & Bowers, PA
PO Box 357
Myrtle Beach, SC 29578
Attorney for Defendant Bobby J. Bellamy

Matthew J. Modica, Esquire
Assistant U.S. Attorney
151 Meeting Street, Ste. 200
Charleston, SC 29401
Attorney for Defendant Internal Revenue Service


Jennifer A. Shirey, Paralegal
Adams and Reese LLP

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF Horry

C/A NO: 2011-CP-26-1809

M&T Bank

Plaintiff,

v.s.

Bobby Bellamy

Tyrone Davis

William O Smith

BC Fund LLC

Defendants

FILED
11 OCT 31 PM 1:52
CLERK OF COURT

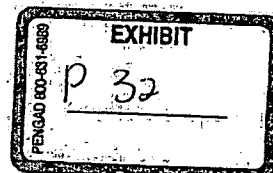
I Bobby Bellamy, Defendant, attorney Pro Se, Docket No. 2011- CP-26-1809, presents for your review exhibits to determine ownership of property at 3664 Sea Mountain Highway with cause to be eligible for foreclosure intervention. The evidence will show cause for Motion to Enforce Forfeiture Provisions of contract by BC Fund LLC causing execution of deed reversion. Documented proof will show cause to Motion for resolution of foreclosure and Motion requesting the court to dismiss Writ of Ejection executed by defendant, Tyrone Davis by Magistrates Court Civil case No. 2011CV261030531.

M&T Bank Plaintiff, by and through your attorney

Please take notice that the defendant, Bobby J. Bellamy Attorney Pro Se moves the Court for an order allowing the following:

MOTION TO Enforce Forfeiture Provisions and return property to the grantor, Bobby Bellamy due to grantee, BC Fund LLC and Defendants, Tyrone Davis, William O Smith failure to cure default. Bobby Bellamy request to execute reversionary interest in property as stated in Quit claim deed.

1. Exhibit 1: Contract and Deeds. On June 29, 2007; Please see clause in Quit claim deed that transfers Bobby Bellamy property to BC Fund LLC with provision for right of reversion.
2. Exhibit 2: Summons and notice. Filed 30 August 2011. Notice of Intent to Enforce Forfeiture provision of contract for deed. Defendants were required to answer within 30 days to show cause; why no work was done as agreed in contract to develop Bobby Bellamy property with 2 and 3 bedroom single family low income section 8 apartments and show cause for non-payment of monthly payments leading to foreclosure.
3. Exhibit 3: Answers to Summons by Tyrone Davis. Filed Sept 27, 2011. Tyrone Davis denied any involvement with BC Funding LLC. Tyrone Davis answers did not address the questions submitted in the Summons and Notice; therefore Tyrone Davis failed to cure the



default.

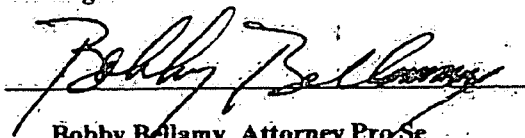
4. Exhibit4: Notice of Failure to Cure Default. Filed Oct 3, 2011. BC Funding LLC, Tyrone Davis and William O Smith failed to cure default by failing to submit suitable answers as required.
5. Exhibit5: Horry County Fifteenth Judicial Circuit Public Index. Multiple Breaches of contract cases against BC Fund LLC. Disposition June 06, 2011, Case No. 2011LP2600811 Plaintiff, Ana Ritter vs. BC Fund LLC, Ana Ritter received judgment against BC Fund LLC for the amount of 200,431.22. Tyrone D. Davis has multiple foreclosures. Filed March 25, 2011, Case No. 2011CP2602787 Wells Fargo vs. Tyrone D Davis and M&T vs. Tyrone D Davis.
6. Exhibit6: Receipt of Advancement on development of project received Nov 22 2007.

MOTION for resolution of foreclosure: Bobby J. Bellamy, Attorney Pro SE, according to agreement on (see contract) Phase I M&T Bank Draw #1, the only authorized draw was for the amount of 25, 500.00. The construction loan was to be monitored by the bank and proceeds distributed by percentage of completion of each designated job. No other Draws were authorized. The balance of the proceeds should have remained in M&T Bank for the amount of \$ 102,000. Bobby J. Bellamy agrees to repay M&T bank the advance received on Nov 22, 2007 on development of the project shown in Exhibit6 and any proceeds of draw# 1 upon presenting receipts and proof of completed work done for the Development of failed project.

MOTION to dismiss Writ of Eviction: Executed by Tyrone Davis in Magistrates Court Civil Case No. 2011CV261030531, Motion that the court moves for Bobby J Bellamy to return to his personal residence and deed be returned to Bobby J. Bellamy, grantor and all interests in the property given to BC Funding LLC be terminated.

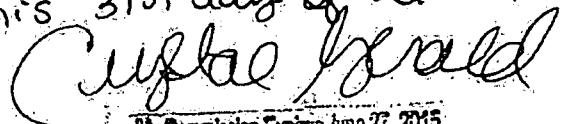
7. Exhibit7: Notice to Quit Premises for trespassing and Magistrate Summons. Tyrone D. Davis illegally evicted Bobby Bellamy from his personal residence on the grounds of trespassing and attempted to sell the property after Lis Penden was filed.

The undersigned states that on October 31, 2011, Bobby J. Bellamy caused true and correct statements to the best of my knowledge.



Bobby Bellamy, Attorney Pro Se
3664 Sea Mountain Highway
Little River, SC 29566

witnessed Bobby Bellamy
this 31st day of Oct. 2011



My Commission Expires June 27, 2015

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

M&T Bank,

Plaintiff,

vs

Tyrone Davis; Bobby J. Bellamy; BC Fund
and Management, LLC d/b/a BC Fund, LLC;
and the United States of America through its
agency - Internal Revenue Service,

Defendants.

Bobby J. Bellamy,

Third-Party Plaintiff,

vs

William O. Smith,

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2011-CP-26-1809

DEFENDANT BOBBY J. BELLAMY'S
NOTICE OF MOTION AND MOTION
FOR SUMMARY JUDGMENT AGAINST
THE PLAINTIFF M & T BANK

FILED
14 FEB 10 PM 4:51
CLERK OF COURT

TO: W. CLIFF MOORE, ESQUIRE, ATTORNEY FOR PLAINTIFF OF ADAMS AND
REESE, LLP, 1501 MAIN STREET, FIFTH FLOOR, COLUMBIA, S.C. 29201;

DANIEL Q. ORVIN, ESQUIRE, ATTORNEY FOR DEFENDANT TYRONE DAVIS

OF WOMBLE CARLYLE SANDRIDGE & RICE, PLLC, P.O. BOX 999,
CHARLESTON, S.C. 29402; AND

WILLIAM N. NETTLES, UNITED STATES ATTORNEY, FOR THE DEFENDANT
BC FUND, LLC, C/O MATTHEW J. MODICA, ASSISTANT U. S. ATTORNEY, 151
MEETING STREET, STE 200, CHARLESTON, S.C. 29401.

YOU WILL PLEASE TAKE NOTICE that the undersigned, Howell V. Bellamy, III, and
Howell V. Bellamy, Jr., as attorneys for the Defendant, Bobby J. Bellamy ("Bellamy"), will move
before the presiding Judge of the 15th Judicial Circuit within ten (10) days after the service hereof
or at such other time as counsel may be heard, pursuant to Rule 56 of the South Carolina Rules
of Civil Procedure, for an order directing that no genuine issue of material fact exists, and that the
Defendant Bellamy is entitled to Summary Judgment on his Declaratory Judgment action and/or
affirmative defenses raised in his second amended answer based on the following grounds:

1. The Plaintiff M & T Bank lacks standing to reform the "Bellamy Quitclaim Deed"
(Exhibit A) from the Defendant Bellamy to the former Defendant BC Fund LLC.
Specifically, the facts are uncontroverted that Plaintiff M & T Bank was not a party
to the written document (Exhibit A) nor in privity with a party. "[A] party requesting
reformation must have been a party to the written document or in privity with a
party." George v. Empire Fire and Marine Ins. Co., 336 S.C. 206, 212, 519 S.E.2d
107, 110 (Ct. App. 1999)(citing 66 Am. Jur.2d *Reformation of Instruments* § 60
(1973)). For these reasons, Plaintiff's reformation action fails in this matter due to
its lack of privity with a party.
2. Plaintiff M&T Bank's claim to reform the "Bellamy Quitclaim Deed" (Exhibit A)
based upon the alleged mutual mistake by the parties that the *original grantee* ("BC
Fund LLC") was wrongly designated is without merit.

*"A contract may be reformed on the ground of mistake when (1) the mistake
is mutual and (2) consists in the omission or insertion of some material element
affecting the subject matter or the terms and stipulations of the contract, and (3)
inconsistent with those of the parol agreement, which necessarily preceded it."
George v. Empire Fire and Marine Ins. Co., 344 S.C. 582, 590, 545 S.E.2d 500, 504*

(2001). A mistake is mutual where both parties intended a certain thing and by mistake in the drafting did not obtain what was intended. *Id.* Before equity will reform a contract, the existence of a mutual mistake must be shown by clear and convincing evidence. *Id.*

Here, no evidence of mutual mistake exists in the record to warrant Plaintiff's claim to reform the "Bellamy Quitclaim Deed" (Exhibit A) to substitute Defendant "BC Fund and Management, LLC" as the "*original grantee*" in replacement of the former Defendant BC Fund, LLC. Plaintiff's reformation claim is without merit and contrary to the evidence in the record for the following reasons. First, it was mutual intent of the Defendant Bellamy and Third-Party Defendant William O. Smith ("Smith") to form a new LLC to develop his 3.39 acres into low income housing. The new LLC was to be known as BC Fund LLC. (Dep. of Bobby J. Bellamy dated July 11, 2013, p. 43, lines 12-25; p. 44, lines 1-25; p. 45, lines 1-12.) Specifically, Defendant "BC Fund and Management, LLC" had already been organized in 2005 by Third-Party Defendant Smith. (Articles of Organization of BC Fund and Management, LLC filed with S. C. Secretary of State on October 28, 2005, attached hereto as (Exhibit E). Second, equity does not allow the adding or substituting¹ of other parties for those appearing on the face of a contract where the legal effect would be to make a new contract. See 66 Am. Jur.2d *Reformation of Instruments* § 51 (2014). After the Plaintiff determined that the former Defendant BC Fund, LLC was a non-existing legal entity in this State, it quickly filed a second amended complaint to substitute the Defendant "BC Fund and Management, LLC" as the "*original grantee*." It was unreasonable for the Plaintiff to wait in excess of 6 years to correct an alleged scrivener's error. Third, all the documents prepared by Third-Party Defendant Smith: (1) the development proposal titled Bellamy Enterprise, LLC ("Development Project") (Exhibit E), (2) the survey of the Bellamy property (Exhibit F), and (3) the deeds (Exhibits A, C, and D), evidence that BC Fund LLC was the only proposed entity that was going to develop the Bellamy property and not the Defendant "BC Fund and management LLC." Lastly, the Plaintiff's contention that it was the mutual intent to designate Defendant "BC Fund and Management LLC as the "*original grantee*" in "Bellamy Quitclaim

¹ "While a court of equity can reform contracts under many varying circumstances, it does not have the power to add a party to a contract or substitute parties to a contract. A court of equity may not add or substitute other parties for those appearing on the face of a contract where the effect may be to make a new contract. An agreement may not be reformed to make one a party to an instrument where that person was originally not a party to it." 66 Am. Jur.2d *Reformation of Instruments* § 51 (2014) (internal citations omitted). As such, the Plaintiff M&T Bank is precluded from reforming the quitclaim deed from the Defendant Bellamy to BC Fund LLC for the purpose of substituting "BC Fund and Management, LLC" as the new grantee instead of the former Defendant "BC Fund LLC."

Deed" (Exhibit A) is inconsistent with the prior oral agreement(s) between Third-Party Defendant Smith, Defendant Bellamy, and his brother Tommy Bellamy to form a new LLC known BC Fund, LLC to develop their 6.69 acres into low income housing (Exhibit E).

For the foregoing reasons, Plaintiff M&T Bank can not prove the 3 necessary elements of mutual mistake needed to reform "Bellamy Quitclaim Deed" (Exhibit A) to substitute Defendant "BC Fund and Management, LLC" as the "*original grantee*" in replacement of the former Defendant BC Fund, LLC. The former Defendant BC Fund, LLC was not a legal entity in existence at the time the Defendant Bellamy conveyed his 3.39 acres by quitclaim deed recorded on July 18, 2007 in Deed Book 3261 at Page 2091, records of Horry County, South Carolina, Tax Map number 130-00-01-042. See (Exhibit I.) See also, Foster v. Foster, 384 S.C. 380, 384-385, 682 S.E.2d 312, 314 (Ct. App. 2009) (Court of Appeals found that the deed was void because it designated a grantee that did not exist.)

3. Plaintiff M&T Bank's claim to reform the "Bellamy Quitclaim Deed" (Exhibit A) to substitute Defendant "BC Fund and Management, LLC" as the "*original grantee*" is barred by the *original grantee* ("BC Fund LLC")'s failure to pay any consideration for the conveyance of Defendant Bellamy's 3.39 acres. Specifically, *original grantee* ("BC Fund LLC") did not even pay the \$5,00 consideration recited in the quitclaim deed's conveying language. (Dep. of Bobby J. Bellamy dated July 11, 2013, p. 77, lines 8-25; p. 78, lines 1-7.) The *original grantee* ("BC Fund LLC") was to hold the Deed (Exhibit A) in trust until it had received the necessary financing from a bank to the develop the Bellamy property as described in (Exhibit C) which never occurred. Instead the *original grantee* ("BC Fund LLC") defrauded Defendant Bellamy by selling his 3.39 acres to the Defendant Davis (as the subsequent grantee) for \$ 170,000. As such, *original grantee* ("BC Fund LLC") does not have clean hands. Nor, even at this late date has the *original grantee* ("BC Fund LLC") offered to do equity, by offering to pay the Defendant Bellamy what he justly owes him for 3.39 acres. Accordingly, the *original grantee* ("BC Fund LLC") is not entitled to equity.

"A subsequent grantee seeking reformation of a deed to the original grantor, barred from relief in equity by his failure to pay the entire consideration, stands in the same shoes as such original grantor." Floyd v. Floyd, 112 S.C. 106, 98 S. E. 850 (1919).

Here, Defendant Davis, as the subsequent grantee, stands in the same shoes, and occupies no better position than his grantor ("BC Fund LLC") who had failed to

pay any consideration for the Defendant Bellamy's 3.39 acres. The same equitable principles apply to the Plaintiff M&T Bank's claim to reform the deed (Exhibit A) assuming privity exists under these facts and circumstances. Accordingly, based on the reasoning and equitable principles enunciated by our Supreme Court in the case of Floyd v. Floyd, 112 S.C. at 106, 98 S. E. at 850, Plaintiff M&T Bank occupies no better position than the Defendant Davis' grantor ("BC Fund LLC"), and therefore, can not reform the quitclaim deed (Exhibit A) to substitute "BC Fund and Management, LLC" as the new Grantee instead of former Defendant BC Fund, LLC.

4. Defendant Bellamy invokes the defense of Laches as a bar to the Plaintiff M&T Bank's claim to reform the "Bellamy Quitclaim Deed" (Exhibit A) to show that "original grantee" should have been designated as Defendant "BC Fund and Management, LLC" rather than former Defendant BC Fund LLC.

"Laches is the delay in asserting a legal right for an unreasonable length of time in circumstances permitting assertion of the right and signifying abandonment or surrender of the right by one who later seeks to enforce it." Wall v. Huguenin, 301 S. C. 94, 390 S. E. 2d 372 (1990). "Courts have the inherent power to do all things reasonably necessary to ensure that just results are reached to the fullest extent possible. Jones v. Leagan, 384 S.C. 1, 19, 681 S.E.2d 6, 16 (Ct. App. 2009). 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. 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. Chambers of S.C., Inc. v. County Council for Lee County, 315 S.C. 418, 421, 434 S.E.2d 279, 280 (1993). The party seeking to establish laches must show: (1) a delay, (2) that was unreasonable under the circumstances, and (3) prejudice. Hallums, 296 S.C. at 199, 371 S.E.2d at 528." (internal quotation marks omitted.) Robinson v. Estate of Harris, 389 S.C. 360, 371-373, 698 S.E.2d 801, 807- 808 (2010).

Here, the facts are uncontroverted in the record that the Plaintiff had neglected or failed to assert its claim for reformation to substitute the Defendant "BC Fund and Management, LLC" as the "original grantee" for a substantial period of time, in excess 6 years, after execution of the Davis Deed (Exhibit B). Plaintiff M&T Bank contends this failure to designate the proper grantee was a scrivener's error. This untimely delay has caused extreme prejudice to the Defendant Bellamy for the following reasons. First, the Defendant Bellamy is unable to locate Defendant

"BC Fund and Management, LLC," and the Third-Party Defendant Smith at the present time in order to take their depositions. Second, prior to the Plaintiff's reformation action filed on December 13, 2013, neither of these Defendants were necessary and material witnesses to Defendant Bellamy's affirmative defenses in response to the Plaintiff's foreclosure action in this case. Third, Plaintiff M&T Bank now seeks to hold the Defendant "BC Fund and Management, LLC" in default under Rule 55, SCRPC. (Affidavit of Default as to Defendant BC Fund and Management, LLC dated February 6, 2014 to pp. 1-2, attached hereto as (Exhibit G). Furthermore, the Plaintiff, upon information and belief, will assert that its allegations of mutual mistake as drafted by it in its second amended complaint are now deemed admitted. (Second Amended Complaint filed on December 9, 2013, p. 6, ¶¶ 22-31(a)(b)(c); p. 7, ¶¶ 32-37 attached hereto as (Exhibit H). Accordingly, for these reasons, the Plaintiff's reformation action is barred by equitable defense of Laches.

YOU WILL PLEASE TAKE FURTHER NOTICE that this Motion is based on the pleadings, affidavits, discovery responses, depositions, request to admit on file, and the record heretofore made in this matter, together with any and all applicable laws, statutes, rules, regulations, judicial decisions or other matters which may constitute controlling or persuasive on any issue raised herein.

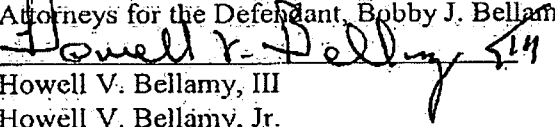
BELLAMY, RUTENBERG, COPELAND, EPPS,
GRAVELY & BOWERS, P.A.

1000 29th Ave. N.

Myrtle Beach, SC 29577

843-282-5393

Attorneys for the Defendant, Bobby J. Bellamy


Howell V. Bellamy, III
Howell V. Bellamy, Jr.

Myrtle Beach, South Carolina

February 10, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

M&T Bank,)
)
Plaintiff,)

vs)

Tyrone Davis; Bobby J. Bellamy; BC)
Fund and Management, LLC d/b/a BC)
Fund, LLC; and the United States of)
America through its agency - Internal)
Revenue Service,)

Defendants.)

Bobby J. Bellamy,)
)
Third-Party)
Plaintiff,)

vs)

William O. Smith,)
)
Third-Party)
Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2011-CP-26-1809

CERTIFICATE OF MAILING

14 FEB 10 PM 4:51
CLERK OF COURT

I, Lynn Hearl, an employee of the Law Firm of Bellamy, Rutenberg, Copeland, Epps,
Gravely & Bowers, P.A., certify that I have this day sent a copy of the Defendant Bobby J. Bellamy's

Notice of Motion and Motion for Summary Judgment Against the Plaintiff, M & T Bank with
sufficient postage attached, thereto as follows:

Daniel Q. Orvin, Esquire
Womble Carlyle Sundridge and Rice, PLLC
P. O. Box 999
Charleston, S.C. 29402

W. Cliff Moore, III, Esquire
Adams and Reese, LLP
Attorneys at Law
1501 Main Street
Columbia, SC 29201

Matthew J. Modica, Esquire
Assistant U. S. Attorney
151 Meeting Street, Ste 200
Charleston, S.C. 29401


Lynn Earl

Myrtle Beach, South Carolina 29577
February 10, 2014

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

M & T Bank

Plaintiff,

vs.

Tyrone Davis; Bobby J. Bellamy; BC Fund
and Management, LLC d/b/a BC Fund, LLC;
and the United State of America through its
agency - Internal Revenue Service

Defendants.

Bobby J. Bellamy

Third-Party Plaintiff,

vs.

William O. Smith

Third-Party Defendant.

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

CASE NO.: 2011-CP-26-1809

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

RECEIVED
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Plaintiff's Attorney:

Howell V. Bellamy, III, Bar No. 66575

Address:

1000 29th Ave. N., Myrtle Beach, SC 29577

Phone: 843-448-2400 Fax 843-448-3022

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Defendant's Attorney:

W. Cliff Moore, III, Bar No. _____

Address:

Adams & Reese, LLP, 1501 Main Street,
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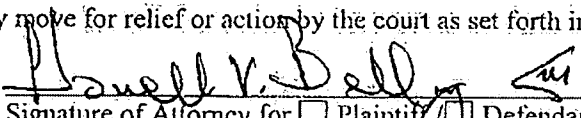
Phone: 803-212-4956 Fax 803-3443-1248

E-mail: cliff.moore@arlaw.com Other: _____

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information	
Nature of Motion: Defendant Bobby J. Bellamy's Notice of Motion and Motion for summary Judgment Against the Plaintiff	
Estimated Time Needed: 30 min.	Court Reporter Needed: ☒ YES / ☐ NO
SECTION II: Motion/Order Type	
☒ Written motion attached ☐ Form Motion/Order	
I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for ☐ Plaintiff / ☒ Defendant	2-10-2014 Date submitted
SECTION III: Motion Fee	
☒ PAID - AMOUNT: \$ _____ ☐ EXEMPT: (check reason)	
☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____	

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

M & T Bank)

Plaintiff,)

v.)

Tyrone Davis, Bobby J. Bellamy and BC
Fund, LLC, and the United States of America
through its agency - Internal Revenue
Service)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2011-CP-26-1809

AFFIDAVIT OF TOMMY J. BELLAMY
IN SUPPORT OF THE DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

FILED
HORRY COUNTY
2014 MAY 29 AM 8:16
MELANIE HUGGINS-WARD
CLERK OF COURT

I, Tommy J. Bellamy, personally appeared before me the undersigned officer whom is duly
authorized to administer oaths, and after being first duly sworn, deposes and says:

1. I am above the age of eighteen, competent to execute this affidavit, and give this affidavit based on my personal knowledge.
2. I am the brother of the defendant, Bobby J. Bellamy.
3. This affidavit is submitted in support of the defendant, Bobby J. Bellamy's motion for summary judgment regarding the above referenced matter.
4. In June, 2007 William O. Smith, Bobby J. Bellamy and I met to discuss a plan to develop low income housing on our property that contained 3.39 acres in a tract owned by Bobby J. Bellamy and a tract that contained 3.39 acres by myself.
5. The plan included how the project was to be funded by M&T Bank, a bank in New York where William O. Smith resides and a government grant. M&T Bank was to start up the



- project by financing the infrastructure in a construction loan and all proceeds of that loan to be monitored and released only upon receipt of completion of each job. The Plan also included how the project would be built in phases as well as how much money the apartments would generate and what percentage each partner would receive.
6. We agreed to form a LLC and establish BC Fund LLC and Bellamy & Bellamy Enterprise LLC. The proceeds to be divided 80% for Bellamy & Bellamy Enterprise LLC and 20% for BC Fund LLC. Bobby Bellamy transferred his property to BC Fund LLC (to be held in trust until an agreement was consummated).
 7. We later found out that BC Fund LLC was never established as agreed. William O. Smith illegally transferred Bobby J. Bellamy's property without authority from Tommy and Bobby Bellamy, agents of non-existing BC Fund LLC. William O. Smith transferred Bobby J. Bellamy's property as sole proprietor to Tyrone Davis in a warranty deed.
 8. The project was never started and after months of no progress and unpaid taxes, I asked William O. Smith to transfer my property back to my name. On February 25, 2010 William O. Smith transferred my property back into my name as agreed. He did not transfer Bobby J. Bellamy's property back to his name.
 9. I had no knowledge of BC Fund and Management LLC or Tyrone Davis at that time. I know that BC Fund LLC was not established in the State of South Carolina as promised by William O. Smith.
 10. The project was never started or completed. We gave William O. Smith a professional survey of our property in a map. He hired a surveyor from the area to draw the apartments on our map. William O. Smith gave Bobby J. Bellamy and I a check to pay the taxes for

2008. No other transactions were submitted.

Tommy J. Bellamy
Tommy J. Bellamy

SWORN to and subscribed before me this

28th day of May, 2014.

Stephen R. Threlkeld
Notary Public for South Carolina

My Commission Expires: 10-12-21

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

) CIVIL ACTION NO. 2011-CP-216-01809

M&T Bank,

Plaintiff,

v.

Tyrone Davis; Bobby J. Bellamy; BC Fund
and Management, LLC d/b/a BC Fund,
LLC; and the United States of America
through its agency - Internal Revenue
Service;

Defendants.

**DEFENDANT BOBBY J. BELLAMY'S
NOTICE OF MOTION AND MOTION TO
RECONSIDER, ALTER, AMEND THE
MASTER'S ORDER AND JUDGMENT OF
FORECLOSURE AND SALE PURSUANT TO
RULES 52 AND 59(E), SCRPC**

Bobby J. Bellamy,

Third-Party Plaintiff,

v.

William O. Smith,

Third-Party Defendant.

TO: W. CLIFF MOORE, ESQUIRE, ATTORNEY FOR PLAINTIFF

**DANIEL Q. ORVIN, ESQUIRE, ATTORNEY FOR DEFENDANT TYRONE
DAVIS**

**GEORGE J. CONITS, UNITED STATES ATTORNEY, FOR THE DEFENDANT
BC FUND, LLC**

YOU WILL PLEASE TAKE NOTICE that the undersigned, Howell V. Bellamy, III,
and Howell V. Bellamy, Jr., as attorneys for the Defendant, Bobby J. Bellamy ("Bellamy"), will
move before the presiding Judge of the 15th Judicial Circuit within ten (10) days after the service
hereof or at such other time as counsel may be heard, pursuant to Rules 52 and 59(e) of the South
Carolina Rules of Civil Procedure, based upon the Master's Failure to decide or explicitly rule on

issues raised and argued by the Defendant at trial. The Defendant's specific exceptions to the Master's Order are as follows:

- I. The Master erred in failing to find and conclude that the BC Fund Deed is null and void because the designated grantee, BC Fund, LLC, did not exist on the date of the conveyance.

The case of Foster v. Foster, 384 S.C. 380, 384, 682 S.E.2d 312, 314 (Ct. App. 2009), aff'd, 393 S.C. 95, 711 S.E.2d 878 (2011) stands for the principle *that a deed is void when it designates a grantee that does not exist on the date of its conveyance*. (Emphasis Added). The South Carolina Court of Appeals in Foster v. Foster cites the case of Gifford v. Linnell, 157 N.C. App. 530, S.E.2d 440 (N.C. Ct. App. 2003) as persuasive authority for the above principle. In Gifford v. Linnell, 157 N.C. App. 530, 579 S.E.2d 440, 443, the North Carolina Court of Appeals found a deed was void for lack of a grantee. The deed in Gifford specified the property was conveyed to "Beth Linnell, Trustee of Droffig Family Trust." Id. at 442. The Court found that because the deed referred to Linnell as a trustee, she was a grantee only in her representative capacity and not in her individual capacity. Id. at 443. Furthermore, the Court found that because the trust was not in existence on the date of conveyance, the deed failed to identify a valid grantee. Id.

In the present case, in responding to Defendant Bellamy's First set of Interrogatories, the Plaintiff indicates it will rely upon *"the records of the Secretary of State of South Carolina and the documents on file with the register of Deeds for Horry County,"* to establish the legal existence of BC Fund, LLC on July 18, 2007. (Plaintiff's Answers to Defendant Bobby J. Bellamy's First Set of Interrogatories, p. 7, Plaintiff's Answer to Interrogatory 17 dated April 5, 2013, marked as Exhibit A) (Emphasis Added). Contrary to the Plaintiff's offer of proof, there is no evidence in *"the records of the Secretary of State of South Carolina and the documents on file with the register of Deeds for Horry County,"* to show that the former Defendant BC Fund,

LLC was in existence on July 18, 2007, or even a trade name or the doing business name, such as BC Fund and Management, LLC D/B/A BC Fund, LLC on this date. This is evidenced by the following undisputed facts as set forth below:

- The "Certificate of No Record" issued by the Office of the South Carolina Secretary of State provides there is *"no record of corporation of corporation using the name: BC FUND, LLC"*. (Certificate of No Record, marked as Def.'s Trial Exhibit No.: 13);
- The Articles of Organization for BC Fund and Management, LLC do not identify BC Fund, LLC as its trade name, its adopted name, or its doing business as name. (Articles of Organization for BC Fund and Management, LLC, marked as Def.'s Trial Exhibit No.: 12);
- There is no Affidavit of Record on file in the Office of the Horry County Clerk identifying BC Fund, LLC as the trade name, the adopted name, or the doing business as name, such BC Fund and Management, LLC D/B/A BC Fund, LLC (Affidavit of Melanie Huggins-Ward, marked as Exhibit K);
- It is admitted when the Plaintiff M & T Bank originally brought its foreclosure lawsuit on February 25, 2011 against the defendants it did not allege that BC Fund and Management LLC was doing business as BC Fund, LLC. (Plaintiff's Responses to Defendant Bobby J. Bellamy's Request to Admit, p.2 Answer No.: 6, marked as Pl's Trial Exhibit No.:31);
- The Order to Cease and Desist issued against William O. Smith and BC Fund and Management, pursuant to S.C. Code Ann. § 35-1-604(a)(1), by the Securities Division of the Office of the Attorney General of the State of South Carolina does not show BC Fund, LLC as the trade name, or the doing business as name of BC Fund and Management, LLC. (Order to Cease and Desist, marked as Def.'s Trial Exhibit No.: 28);
- Victoria Pitts ("Pitts"); who is the office manager for BC Fund and Management, LLC, testified during her deposition on February 9, 2016 that Defendant Bellamy had nothing to do with BC Fund and Management, LLC. She also referred to BC Fund and Management, LLC as BC Fund. She never testified that that BC Fund and Management LLC was doing business as BC Fund, LLC. (Dep. of Pitts, p.21, lines 7-25; p. 22, lines 4-9, marked as Exhibit B);
- The South Carolina Department of Revenue's Tax Lien No. 3-51231553-2 against BC Fund and Management, LLC expressly indicates its DBA: BC FUND AND MANAGEMENT, and not BC Fund, LLC. (Tax Lien No. 3-51231553-2, marked as Def.'s Trial Exhibit No.: 21);

- At trial, Jeremy Roof ("Roof"), a revenue officer with the South Carolina Department of Revenue, testified that BC Fund, LLC is not the correct entity for the Taxpayer Identification Number identified on Plaintiff's Exhibits 19 and 20. (Dep. of Roof, pp.10-14, line 1, marked as Exhibit C);
- At Trial, Roof also testified that South Carolina Department of Revenue's Tax Lien No.3-51231553-2 against BC Fund and Management, LLC expressly indicates its DBA is BC Fund and Management and not BC Fund, LLC. (Dep. of Roof, pp.10-14, line 1, marked as Exhibit C);
- At Trial, William Randall Goff ("Goff"), a professional title abstracter, testified that he searched the electronic grantor and grantee index regarding the legal entity BC Fund and Management, LLC and found no recorded documents listing a doing-business-as, or otherwise, articles of amendments for BC Fund, LLC in connection with BC Fund and Management, LLC. Goff also testified that he had never seen a d/b/a with a LLC or a corporation behind it. (Trial Excerpt of Goff, pp.14-15, lines 1-20; p.18, lines 1-14, marked as Exhibit D);

Furthermore, during the four day trial, the Plaintiff failed to produce any corporate minutes, Affidavit of Record, or any other legal documentation identifying BC Fund, LLC as the trade name, or the doing business as name, such as BC Fund and Management, LLC, D/B/A BC Fund, LLC *on or before July 18, 2007*. (Emphasis Added.) At trial, both Tommy Bellamy and Defendant Bobby Bellamy testified that Third-Party Defendant William O. Smith ("Smith") told them in June of 2007, that he was going to form a new limited liability company known as BC Fund, LLC to develop their 6.78 acres into low income housing consisting of ninety-six (96) apartments. Third-Party Defendant Smith also told Tommy and Defendant Bellamy he would obtain a construction loan from Plaintiff M & T Bank ("Plaintiff") to finance the infrastructure for the multi-family apartments. (Affidavits of Tommy Bellamy, marked as Pl.'s trial Exhibit Nos.:37 and 38).

For the foregoing reasons, the Plaintiff failed to meet its burden of proof by the preponderance of the evidence in establishing: (1) that BC Fund, LLC was in existence on or before July, 18, 2007, and/or (2) that documentation existed identifying BC Fund, LLC as the trade name, or the doing business name, such as BC Fund and Management, LLC D/B/A BC Fund, LLC on or

before July 18, 2007. See Foster v. Foster, 384 S.C. at 384, 682 S.E.2d at 314. Accordingly, the Master erred in failing to find or conclude that the BC Fund Deed is null and void because its grantee BC Fund, LLC was not in existence on July 18, 2017, the date of the conveyance.

2. The Master erred in finding facts and concluding as matter of law that there was clear and convincing evidence of mutual mistake on the part of the parties to the BC Fund Deed, and thereby erred in ordering the reformation of the BC Fund Deed to designate BC Fund and Management, LLC D/B/A BC Fund, LLC as the *original* Grantee rather than BC Fund, LLC.

Before equity will reform an instrument, it must be shown by clear and convincing evidence not simply that there was a mistake on the part of one of the parties, but that there was a mutual mistake.” Kiawah Resort Assocs., L.P. v. Kiawah Island Cmty. Ass'n, Inc., 421 S.C. 538, 544, 808 S.E.2d 521, 524 (Ct. App. 2017), reh'g denied (Jan. 4, 2018) (quoting from Timms v. Timms, 290 S.C. 133, 137, 348 S.E.2d 386, 389 (Ct. App. 1986). “A mutual mistake is one whereby both parties intended a certain thing but because of a mistake in drafting did not get what they intended.” Id. (quoting from Kiawah Island Cmty. Ass'n, Inc., 421 S.C. at 544, 808 S.E.2d at 524).

Here, no evidence of mutual mistake in drafting exists in the record to warrant Plaintiff's claim to reform the “BC Fund Deed” (Plaintiff's Trial Exhibit No.: 6) to substitute new Defendant “BC Fund and Management, LLC” as the “*original grantee*” in replacement of the former Defendant BC Fund, LLC. Plaintiff's reformation claim based upon mutual mistake is without merit and contrary to the clear and convincing evidence in the record for the following reasons. First, it was the mutual intent of the Defendant Bellamy and Third-Party Defendant Smith to form a new limited liability company to develop his 3.39 acres as well as his brother, Tommy Bellamy's 3.39 acres into ninety-six (96) multi-family apartments. The new limited liability company was to be known as BC Fund, LLC. (Dep. of Bobby J. Bellamy dated July 11, 2013, p. 43, lines 12-25;

p. 44, lines 1-25; p. 45, lines 1-12, marked as Exhibit I). This mutual intent to form a new limited liability company was also confirmed by the two (2) recorded Affidavits and trial testimony of Tommy Bellamy.¹ Also, the statements made by Third-Party Defendant Smith to the Bellamy brothers, prior to July 18, 2007, that he was going to form a new limited liability company known as BC Fund, LLC are considered admissions by a Party-Opponent pursuant to Rule 801(d)(2). (Def.'s Trial Exhibit Nos.: 37 and 38). Second, Defendant BC Fund and Management, LLC had already been formed in 2005 by Third-Party Defendant Smith. Thus, BC Fund and Management, LLC could not be the new limited liability company that Smith promised to form to develop the Bellamy brothers' land as evidenced by its articles of organization.² Third, the Plaintiff's substitution of the new Defendant BC Fund and Management, LLC as the "*original grantee*" by the replacement of the former Defendant BC Fund, LLC has the legal effect of making a new contract. However, equity does not allow the adding or substituting of other parties for those appearing on the face of a contract where the legal effect would be to make a new contract. Progressive Max Ins. Co. v. Floating Caps, Inc., 405 S.C. 35, 54, 747 S.E.2d 178, 188 (2013) (citing Independence Nat'l Bank v. Buncombe Park, LLC, 402 S.C. 514, 519-23, 741 S.E.2d 572, 575-76 (Ct.App.2013) (finding the master erred in reforming a mortgage to alter the parties' priority rights where reformation was made to correct an error in failing to have a party sign a subrogation agreement; the individual was not a party to the mortgage and reformation does not permit a court to write a new, additional party into the mortgage to correct the error); Id. at 521, 741 S.E.2d at 576. ("A court of equity may not add or substitute other parties for

¹ See Affidavits of Tommy Bellamy recorded on May 24, 2014 and February 25, 2015, respectively, attached hereto as (Pl.'s Trial Exhibit Nos.: 37 and 38).

² See Articles of Organization of BC Fund and Management, LLC filed with S. C. Secretary of State on October 28, 2005, attached hereto as (Def.'s Trial Exhibit No.: 12).

those appearing on the face of a contract where the effect may be to make a new contract.” (quoting 66 Am.Jur.2d *Reformation of Instruments* § 51 (2011)).

For the foregoing reasons, the Master erred in finding facts and concluding that there was clear and convincing evidence of mutual mistake on the part of the Defendant Bellamy as well as Third-Party Defendant Smith. The affidavits, deposition testimony, and trial testimony of the Bellamy brothers make it abundantly clear that a new LLC was supposed to be formed to develop their land instead of existing company like BC Fund and Management, LLC. The effect of the Master’s error in reforming the BC Fund Deed is to write a new, additional party into the Deed, which is BC Fund and Management, LLC. This ruling will clearly have a negative effect on Bellamy’s rights to re-acquire his former land.

3. The Master erred in failing to find and conclude that the Plaintiff’s claim to reform the BC Fund Deed is barred by the equitable defense of failure to pay full consideration and/or adequate consideration.

At trial, Defendant Bellamy argued the Affirmative Defense of failure to pay full consideration as a complete bar to the Plaintiff’s equitable claim to reform the BC Fund Deed. However, the Master’s Order failed to address and/or rule on this specific defense.

Bellamy cites the case of Floyd v. Floyd, 112 S.C. 106, 98 S.E. 850 (1919) as authority for the principle that “[e]quity will not reform a deed . . . where the grantee had failed to pay the entire consideration.” Floyd v. Floyd involved an action to reform a deed, which conveyed only a life estate to the grantee, when, it is alleged, the intention was to convey the fee; the necessary words of inheritance having been omitted by mistake or ignorance of the scrivener. Id.

In 1877 Lewis H. Floyd (“Lewis Floyd”) executed and delivered to his son, Samuel Q. Floyd (“Samuel Floyd”), the deed in question, which conveyed 427 acres for the consideration of \$300. Id. In 1880, Samuel Floyd conveyed 177 acres of the tract to Johnson, who conveyed the

same to Burroughs & Collins Company ("Burroughs & Collins"). Id. Defendants are the heirs of Lewis Floyd, who died in 1885. Defendants denied the allegations of intention to convey the fee, and resisted the prayer for relief on the further grounds that the consideration of the deed had never been paid, and of plaintiffs' laches. According to the undisputed evidence, only about \$100 of the consideration was ever paid. Id.

Upon an ancient and time-honored principle of equity, the Supreme Court determined that Samuel Floyd was not entitled to relief due to his unclean hands and inability to do equity, by not offering to pay the heirs of Lewis Floyd what he justly owes them for the land. In addition, the Court found that the subsequent grantee Burroughs & Collins Company ("Burroughs & Collins") was also barred from seeking relief in equity by Samuel Floyd's failure to pay the entire consideration. Id. The Supreme Court reasoned that Burroughs & Collins stands in the same shoes as its predecessor-in-title Samuel Floyd, and the company occupies no better position. The Supreme Court found the complaint was properly dismissed. Floyd v. Floyd, 112 S.C. 106, 98 S.E. 850.

The present lawsuit is factually similar to the case of Floyd v. Floyd. Here, Defendant Bellamy, also, sold his land "for and in consideration of the sum of Five and No/100 (\$5.00) and no other consideration" to Smith d/b/a BC Fund, LLC in July of 2007, and did not receive full and/or adequate consideration based upon the following factors:

- a. It was stipulated that a licensed real estate appraiser, such as Jim Jayroe, looking at the consideration stated in the BC Fund Deed as well as the non-performance of the parol agreement, including his knowledge and investigation of the subject property, he would opine with a reasonable degree of certainty that Bellamy did not receive adequate consideration for his piece of property. (Trial Excerpt for Jim Jayroe, pp. 4-8, lines 1-12; marked as Exhibit E);
- b. The trial testimony of Bellamy establishes that Smith d/b/a BC Fund, LLC did not perform in accordance with terms and conditions of their parol agreement to develop his property into low income housing. His trial testimony also established that Smith

d/b/a BC Fund, LLC did not spend any money trying to get his property to comply with Horry County Land Development Regulations. (Trial Testimony for Bellamy, pp. 4-74, lines 1-25, marked as Exhibit F);

c. At trial, Steve Powell, P. E 9 ("Powell"), was qualified by the Master as an expert in the field of civil engineering and the sub-fields regarding design, site inspection, consulting work regarding dealing with developmental work both residential and commercial. Also, providing financial analysis regarding whether a project is feasible. Based upon his expertise, knowledge, and investigation of the Bellamy and Bellamy Development Project as it related to the former land of the Defendant Bellamy, Powell offered the following opinions and/or testimony at trial:

- (1) No sketch plan of the 96-unit or other multi-family project was ever submitted to Horry County Zoning for review;
- (2) No re-zoning application had ever been submitted to Horry County;
- (3) No engineering plans and building permit applications for the 96-unit or other multi-family project have been submitted;
- (4) Did not see engineering work on the subject property related to the 96-unit development based upon his inspection of the property in April of 2016;
- (5) Nothing in the record that indicates steps were taken to conduct feasibility study;
- (6) Not in a million years would you get re-zoning to put 96 units on the 7 acres in Horry County;
- (7) There's nothing in the record to indicate that what they were doing was going to benefit Bobby Bellamy;
- (8) Cannot build the 96 unit development on Bellamy and Bellamy for \$170,000; and
- (9) BC Fund, LLC does not exist. (Trial Testimony for Powell, pp. 4-30, lines 1-12, marked as Exhibit G)

d. It was admitted that Kathleen A. Martin, who was the M&T Bank's 30(b)(6) Witness, testified during her deposition that five dollars would be inadequate consideration for property valued at \$170,000.00. (Plaintiff's Responses to Defendant Bobby J. Bellamy's Request to Admit, p.5 Answer No.: 20, marked as Pl's Trial Exhibit No. 31); and

- e. The trial testimony of Johnny Roscoe, the Horry County Assessor, established that the appraised value for the former Bellamy land as of December 31, 2008 was in the amount of \$683,000.00. (Trial Testimony for Johnny Roscoe, pp. 4-8, lines 1-12, marked as Exhibit H).

In light of the above, the Plaintiff, as the subsequent grantee or mortgagee of the Bellamy property, stands in the same shoes, and occupies no better position than his predecessor-in-title Smith d/b/a BC Fund LLC who failed to pay the full consideration for the Defendant Bellamy's 3.39 acres. Specifically, the parol agreement between the Bellamy brothers and Smith d/b/a BC Fund, LLC was conditioned upon Smith forming a new limited liability company to be known as BC Fund, LLC to obtain a construction financing from Plaintiff M & T Bank to develop their 6.78 acres into low income housing. It is undisputed that Smith never obtained a construction loan from Plaintiff M & T Bank, but instead sold the Defendant Bellamy's 3.39 acres to Defendant Tyrone Davis ("Davis"), and he later benefited from the proceeds from the closing. It is important to emphasize that the Defendant Davis, at trial, testified that he was not part of the Bellamy and Bellamy Development Project.³ This is clear and convincing evidence that the Defendant Bellamy did not receive adequate or full consideration for transfer of his 3.39 acres on July 18, 2007. See also Citizens' Bank of Charleston v. White, 132 S.C. 295, 128 S.E. 27 (1925) (Equity will reform instruments to correct mutual mistakes, but not in face of good defense of fraud or failure of consideration); Bandy v. Bandy, 187 S.C. 410, 197 S.E. 396 (1938) (One signing a written instrument under seal may show failure of consideration by parol evidence).

Nor, even at this late date, does the Plaintiff as subsequent grantee offer to do equity, by offering to pay the Defendant Bellamy what he is justly owed for the land.⁴ Therefore, the Plaintiff is not entitled to ask for equity. The Plaintiff stands in Smith's shoes, and occupies no better

³ See Pl.'s Trial Exhibit No.: 27.

⁴ It is important to point out that if the appraised value of the former Bellamy land is still around \$683,000.00 for tax purposes, the Plaintiff will probably receive an unjust windfall.

position. See Floyd v. Floyd, 112 S.C. 106, 98 S.E. 850; Regions Bank v. Wingard Properties, Inc., 394 S.C. 241, 259, 715 S.E.2d 348, 358 (Ct. App. 2011)(Those who seek equity must do equity). This principle applies to one who affirmatively seeks equitable relief. City of Columbus v. Mercantile Trust & Deposit Co., 218 U.S. 645, 662, 31 S.Ct. 105, 54 L.Ed. 1193 (1910). In order for justice to be done between parties, a party is required to do equity when asking the court to invoke the aid of equity. See Ingram v. Kasey's Assocs., 340 S.C. 98, 107, 531 S.E.2d 287, 291 (2000) (declining to grant a plaintiff's request for specific performance where the plaintiff misled the defendants); Anderson v. Marion, 274 S.C. 40, 43, 260 S.E.2d 715, 716 (1979) (finding defendants who sought equity against the plaintiffs for specific performance were required to do equity and pay plaintiffs money they asserted they were willing and able to pay); Shumaker v. Shumaker, 234 S.C. 421, 427, 108 S.E.2d 682, 686 (1959) ("Plaintiffs who come into Court invoking the aid of equity should be required to do equity in order that justice might be done between the parties.")

Based upon the reasoning and equitable principles enunciated by the Supreme Court in Floyd v. Floyd, 112 S.C. at 106, 98 S. E. at 850 and other cited cases, the Master erred in reforming the BC Fund Deed (Pl.'s Trial Exhibit No.: 6) because the Defendant Bellamy had not received full or adequate consideration for the transfer of his land. (Pl.'s Trial Exhibit No.: 6).

4. The Master erred in failing to find and conclude that the Plaintiff's equitable claim to reform the BC Fund and Davis Deeds is barred by the doctrine of Laches. Under the heading of CONCLUSIONS OF LAW, Paragraph 4, "Concerning the affirmative defense that the Plaintiff's cause of action for reformation is barred by the doctrine of laches," the Master's conclusions of law and factual findings are not supported by the complete record in this matter.

Plaintiff contends the designation of BC Fund, LLC as original grantee rather than BC Fund and Management, LLC D/B/A BC Fund, LLC was merely a scrivener's error. (Order Denying Defendant Bellamy's Motion for Summary Judgment and Granting Plaintiff's Motion to

Amend Complaint, pp. 3-5, signed by Circuit Judge, Lee S. Alford on November 6, 2013, and recorded on November 8, 2013, marked as Exhibit I).

"Laches is the delay in asserting a legal right for an unreasonable length of time in circumstances permitting assertion of the right and signifying abandonment or surrender of the right by one who later seeks to enforce it." Wall v. Huguenin, 301 S. C. 94, 390 S. E. 2d 372 (1990). "Courts have the inherent power to do all things reasonably necessary to ensure that just results are reached to the fullest extent possible. Jones v. Leagan, 384 S.C. 1, 19, 681 S.E.2d 6, 16 (Ct. App. 2009). 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. 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 reasonably 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. Chambers of S.C., Inc. v. County Council for Lee County, 315 S.C. 418, 421, 434 S.E.2d 279, 280 (1993). The party seeking to establish laches must show: (1) a delay, (2) that was unreasonable under the circumstances, and (3) prejudice. Hallums, 296 S.C. at 199, 371 S.E.2d at 528." (internal quotation marks omitted.) Robinson v. Estate of Harris, 389 S.C. 360, 371-373, 698 S.E.2d 801, 807- 808 (2010).

Contrary to the Master's ruling on the Defendant Bellamy's equitable defense of laches, the facts are uncontroverted in the record that the Plaintiff neglected or failed to assert its claim for reformation to substitute the Defendant "BC Fund and Management, LLC" as the "*original grantee*" for the former Defendant BC Fund, LLC for a substantial period of time, in excess of six (6) years, after execution of the Davis Deed (Pl.'s Trial Exhibit No.: 7). Specifically, the Master's

Order points out that Attorney Scott B. Ulmstead ("Ulmstead"), "who closed the mortgage loan transaction that created Mortgage, had discovered the issue concerning the discrepancy between the name of the grantee on the BC Fund Deed and registered name of the entity BC Fund and Management, LLC." (Master's Order, p.2, par. 3) Further, Ulmstead as the closing agent for the Plaintiff M & T Bank, attempted to resolve the issue by creating a resolution that identified BC Fund, LLC as the doing business name for BC Fund and Management, LLC. The resolution expressly provided: **BC Fund and Management, LLC D/B/A BC Fund, LLC.** (Emphasis Added).

The knowledge of an agent received during a transaction pertaining to a matter within the scope of his employment is imputable to his principal. Able v. Pilot Life Ins. Co., 186 S. C. 26, 194 S. E. 628 (1938); 23 S.C. Jur. Agency § 94. In South Carolina, the rule that the knowledge or notice on the part of the agent is treated as notice to the principal is based on the agent's duty to communicate all material information to the principal and the presumption that the agent has done so. McSweeney v. Prudential Ins. Co., 128 F. 2d 660 (4th Cir. 1942) (citing Knobelock v. Germinia Sav. Bank; 50 S. C. 259, 27 S. E. 962 (1897)).

Based upon the foregoing principles of agency law, Ulmstead's knowledge is imputed to the Plaintiff M & T Bank concerning the above title defect issue. Furthermore, Ulmstead had an affirmative duty to communicate all material information and/or title defects to the Plaintiff M & T Bank regarding the mortgage loan transaction with the Defendant Davis.

In light of the above, the Plaintiff would have had notice in December of 2007 that BC Fund and Management, LLC's doing business name had changed to: **BC Fund and Management, LLC D/B/A BC Fund, LLC.** (Emphasis Added). See Arceneaux v. Arrington, 284 S.C. 500, 503-04, 327 S.E.2d 357, 359 (Cl. App. 1985) (The general rule is that to charge a party

with laches in the assertion of an alleged right, he must have knowledge of the facts upon which he bases his claim. However, if the circumstances are such as to have put him upon inquiry and the means of ascertaining the truth were readily available had inquiry been made, the neglect of the party to make enquiry will charge him with laches the same as if he had known the facts. *The restrictive covenants were clearly referenced in the deed conveying the property from the Development Company to Arrington. That deed was recorded on March 27, 1979. A party is deemed to have notice of a deed and its contents from the date it is recorded.* (citations were omitted). For these reasons, the Master erred in finding and concluding the Plaintiff did not have knowledge or notice of the title defects upon which the Defendant Bellamy bases his laches claim.

Additionally, the Plaintiff's untimely delay has caused and continues to cause extreme prejudice to the Defendant Bellamy for the following reasons. First, the Defendant Bellamy was unable to locate Defendant BC Fund and Management, LLC, and the Third-Party Defendant Smith between 2013 through 2016 in order to take their depositions and subpoena documents from them

Second, prior to the Plaintiff's reformation action filed on December 13, 2013, neither of these Defendants were necessary and material witnesses to the Defendant Bellamy's affirmative defenses in response to the Plaintiff's foreclosure action in this case. Third, the Plaintiff sought and was able to hold the Defendant "BC Fund and Management, LLC" in default under Rule 55, SCRPC. (Affidavit of Default as to Defendant BC Fund and Management, LLC dated February 6, 2014 to pp. 1-2, marked as Exhibit J). State ex rel. Medlock v. Love Shop, Ltd., 286 S.C. 486, 487, 334 S.E.2d 528, 530 (Ct. Ct. App. 1985) (Entry of an order of default is an admission by the defaulting party of the well-pleaded allegations of the complaint). Furthermore, the Plaintiff, upon information and belief, will assert that its allegations of mutual mistake as drafted by Plaintiff's counsel in its Second Amended Complaint are now deemed admitted. Roche v. Young Bros., Inc.

of Florence, 332 S.C. 75, 504 S.E.2d 311 (1998) (It is well settled that by suffering a default, the defaulting party is deemed to have admitted the truth of the plaintiff's allegations and to have conceded liability). Accordingly, for the reasons set forth above, the Master erred in finding facts and conclusions of law that the Plaintiff's reformation action is not barred by the equitable defense of Laches.

5. With respect to her factual findings under the heading: "FINDINGS OF FACT AS TO THE ENTITY BC FUND, LLC", the Master erred in her findings of fact that Victoria Pitts ("Pitts"), the Office manager for BC Fund and Management, LLC, had testified at trial that BC Fund, LLC and BC Fund and Management, LLC are the same entity for several reasons.⁵ First, Ms. Pitts did not testify during her deposition on February 9, 2016 that BC Fund, LLC and BC Fund and Management, LLC are the same legal entity as found by the Master. Excerpts from Ms. Pitts' deposition show otherwise:

p. 21, lines 7-25

Q. Right. So you just called what B.C. Fund?

A. The job. The job.

Q. And so the company –

A. I knew it was B. C. Fund and Management, L.L.C. But I just wrote B. C. Fund.

Q. Okay. And is that what everybody referred to B. C. Fund and Management as, they referred to it as B. C. Fund?

* * *

A. Okay. But you didn't even ask me about Bobby.

Q. Okay. Well, what do you want to tell me about Bobby?

⁵ See Master's Order and Judgement of Foreclosure and Sale, p. 7, ¶ 26).

A. I want to tell you just like Tyrone came, so did Bobby. Only Bobby wasn't on. He had a – he had a little relationship, him and Will, but I don't know what it was about. He come in looking for Will.

p. 22, lines 1-9

But he didn't have anything to do with B. C. Fund. I don't know what was going on, but it was [not] B. C. Fund Management, L.L.C.

Q. But Bobby didn't have anything to do with B. C. Fund?

A. No. I never saw Bobby with B. C. Fund. Will, I saw Bobby with Will once. And then after a while, Will wouldn't even talk to him. He was never – him and another couple was never a part of B. C. Fund and Management.

Second, Third-Party Defendant Smith and BC Fund and Management, LLC ("BC Fund and Management") by and through Smith, offered credit counseling, credit repair, investment, and other services in and from the State of South Carolina. (Def.'s Trial Exhibit No.: 28, Order to Cease and Desist, p. 2, ¶¶ 1-7). Specifically, Third-Party Defendant Smith strongly encouraged potential BC Fund and Management's clients to invest in an investment portfolio controlled by Smith. Smith and BC Fund and Management received payments, typically averaging about \$100.00 per month per investor, from three or more South Carolina residents who agreed to invest in Smith and BC Fund and Management's portfolio offering. Id. Defendant Bellamy did not invest in Smith and BC Fund and Management's portfolio offering, which had nothing to do with the development of 3.39 acres into low income housing consisting of ninety-six (96) apartments. Pitts confirms this when she testified Bellamy was never a part of B. C. Fund and Management and/or B. C. Fund. (Dep. of Pitts, p.22, lines 4-9, marked as Exhibit B).

6. The Master erred in failing to find and conclude that BC Fund, LLC and BC Fund and Management, LLC are not the same legal entity for the reasons set forth below:

- a. The "Certificate of No Record" issued by the Office of the South Carolina Secretary of State provides there is *"no record of corporation of corporation using the name: BC FUND, LLC"*. (Def.'s Trial Exhibit No.: 13);
- b. The Articles of Organization for BC Fund and Management, LLC do not identify BC Fund, LLC as its trade name, its adopted name, or its doing business as name, such as BC Fund and Management, LLC D/B/A BC Fund, LLC. (Def.'s Trial Exhibit No.: 12);
- c. There is no Affidavit of Record on file in the Office of the Horry County Clerk identifying BC Fund, LLC as the trade name, the adopted name, or its doing business as name, such as BC Fund and Management, LLC D/B/A BC Fund, LLC. (Affidavit of Melanie Huggins-Ward, marked as Exhibit K);
- d. It is admitted that when the Plaintiff M & T Bank originally brought its foreclosure lawsuit on February 25, 2011, against the defendants it did not allege that BC Fund and Management, LLC was doing business as BC Fund, LLC. (Def.'s Trial Exhibit No.: 6);
- e. The Order to Cease and Desist issued against William O. Smith and BC Fund and Management LLC, pursuant to S.C. Code Ann. § 35-1-604(a)(1), by the Securities Division of the Office of the Attorney General of the State of South Carolina does not show BC Fund, LLC as the trade name, the adopted name, or the doing business as name of BC Fund and Management, LLC. (Def.'s Trial Exhibit No.: 28);
- f. Pitts, who the Office manager for BC Fund and Management, LLC, testified during her deposition on February 9, 2016 that the Defendant Bellamy had nothing to do with BC Fund and Management, LLC. She also referred to BC Fund and Management, LLC as BC Fund. She never testified that that BC Fund and Management LLC was doing business as BC Fund, LLC. (Dep. of Pitts, p.21, lines 7-25; p. 22, lines 4-9, marked as Exhibit B);
- g. Third-Party Defendant Smith told both the Defendant Bellamy and his brother Tommy Bellamy, prior to July 18, 2007, that he was going to form a new limited liability company known as BC Fund, LLC to develop their properties into low income housing. This is an admission by Party Opponent pursuant to Rule 801(d)(2). (Def.'s Trial Exhibit Nos.: 37 and 38);

- h. The South Carolina Department of Revenue's Tax Lien No. 3-51231553-2 against BC Fund and Management, LLC expressly indicates its DBA: BC FUND AND MANAGEMENT, and not BC Fund, LLC. (Def.'s Trial Exhibit No.: 21); and
- i. Jeremy Roof ("Roof"); a revenue officer with the South Carolina Department of Revenue, testified at the trial that BC Fund, LLC is not the correct entity for the Taxpayer Identification Number identified on Plaintiff's Exhibits 19 and 20. Roof also testified that South Carolina Department of Revenue's Tax Lien No. 3-51231553-2 against BC Fund and Management, LLC does not expressly indicate its DBA is BC Fund, LLC. (Dep. of Roof, pp.10-14, line 1, marked as Exhibit C).

WHEREFORE, based upon the foregoing reasons and exceptions, and upon such other arguments and submissions of counsel as may be reviewed by the Master, the Defendant Bellamy respectfully requests the following relief from her Order:

- 1. Reconsidering and vacating your Order filed on May 4, 2018;
- 2. Alternatively, altering and amending your Order to specifically consider the questions, issues, arguments, and grounds raised by the Defendant and make a ruling thereon; and
- 3. For such other and further relief as the Master deems reasonable and proper.

YOU WILL PLEASE TAKE FURTHER NOTICE that this Motion is based on the pleadings, affidavits, discovery responses, depositions, request to admit on file, and the record heretofore made in this matter, together with any and all applicable laws, statutes, rules, regulations, judicial decisions or other matters which may constitute controlling or persuasive on any issue raised herein:

Bellamy, Rutenberg, Copeland,
Epps, Gravely & Bowers, P.A.

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BOBBY J. BELLAMY

May 14, 2018

Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

M & T Bank,

Plaintiff,

v.

Tyrone Davis; Bobby J. Bellamy; BC
Fund and Management, LLC d/b/a BC
Fund, LLC; and the United States of
America through its agency – Internal
Revenue Service,

Defendant(s).

Bobby J. Bellamy,

Third-Party Plaintiff,

v.

William O. Smith,

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

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

**PLAINTIFF'S RESPONSE TO
DEFENDANT BOBBY J. BELLAMY'S
MOTION TO RECONSIDER, ALTER,
AMEND THE MASTER'S ORDER AND
JUDGEMENT OF FORECLOSURE
AND SALE PURSUANT TO RULES 52
AND 59(e), SCRPC**

OVERVIEW

The Defendant Bobby J. Bellamy ("Bellamy") served a Motion to Reconsider, Alter, Amend the Master's Order and Judgment of Foreclosure and Sale Pursuant to Rules 52 and 59(e), SCRPC on May 14, 2018 (the "Motion to Reconsider"). This is the Plaintiff's response to that Motion.

In his Motion, Bellamy suggests that the Court reconsider its decision and amend the Master's Order and Judgment of Foreclosure and Sale entered May 4, 2018 ("Order") because he believes that the evidence directs that the Order should contain the following:

1. A determination that the BC Fund Deed (a term defined in the Order) is null and void because the grantee, BC Fund, LLC did not exist at the time of the execution of the BC Fund Deed (a term defined in the Order);

2. A finding that the Plaintiff did not meet the burden of proving mutual mistake that would entitle it to the reformation requested;

3. The decision that the Plaintiff is not entitled to a reformation of the BC Fund Deed because Bellamy has not been paid adequate consideration for his property;

4. The conclusion that the Plaintiff's request for reformation is barred by the doctrine of laches;

5. The determination that Victoria Pitts did not testify that BC Fund, LLC was the same entity as BC Fund and Management, LLC; and

6. The conclusion that BC Fund, LLC and BC Fund and Management, LLC are not the same entity.

Bellamy's argument selectively chooses the parts of the record that support his argument. A complete review of all of the testimony directs that the findings by the Court contained in its Order are accurate and they should not be changed.

ARGUMENT

1. **BC Fund and Management, LLC, doing business as BC Fund, LLC was an entity that existed at the time of the BC Fund Deed.**

Bellamy first challenges the Court's decision by arguing that the Court should have concluded that the BC Fund Deed was null and void because BC Fund, LLC did not exist at the time Bellamy executed the BC Fund Deed. To support the position that BC Fund, LLC did not exist, Bellamy focuses on what is not in the record as opposed to what

is in the record. He drums the facts that there is no record of BC Fund, LLC in the office of the South Carolina Secretary of State, in the Office of the Register of Deeds, in the Attorney General's Cease and Desist Order to BC Fund and Management, LLC, and in the records of the South Carolina Department of Revenue, but ignores the evidence offered at trial that BC Fund and Management, LLC did business in the name of BC Fund, LLC. The Plaintiff directs the Court's focus to what is in the record to prove that BC Fund and Management, LLC sometimes used the name BC Fund, LLC in its business operations:

- a. The Minutes of a Special Meeting of the Members of BC Fund 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;
- b. The 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;
- c. Forms executed by BC Fund, LLC in connection with the sale of Subject Property (a term defined in the Order) from BC Fund, LLC to Tyrone Davis in which BC Fund, LLC use the tax identification number of BC Fund and Management, LLC;
- d. Checks from Tyrone Davis made payable to "BC Fund Management" "BC Fund Management, LLC" that are endorsed with the stamp "For Deposit Only, BC Funds".

e. The verified, *pro se* pleadings filed by Bellamy in this action before he retained counsel that used the terms "BC Fund LLC", "BC Funding", "BC Funding, LLC", "BC Funding and Management, LLC" and "BC Fund and Management LLC" interchangeably;

f. The testimony of Eulada Pitts of her employment as a receptionist at BC Fund as early as the year 2007 and that the location of BC Fund's offices were at 401 Broadway in Myrtle Beach in a building on which there was a sign that read "BC Fund";

g. The testimony of Eulada Pitts that "most people", including herself referred to BC Fund and Management, LLC as "BC Fund";

h. Bellamy's testimony that BC Fund, LLC was William Smith's company; and

i. Tyrone Davis' testimony that BC Fund, LLC and BC Fund and Management, LLC were the same entity.

These facts support the Court's conclusion that BC Fund and Management, LLC did business as BC Fund, LLC.

At trial, and in his request for reconsideration, Bellamy argues that BC Fund, LLC was an entity that was planned, but never created. Bellamy asks the Court to rely on his testimony and the testimony of his brother concerning representations made by William O. Smith. According to the testimony of both Bellamy brothers, Mr. Smith told them in June 2007 that he was forming a new entity to develop the Subject Property and that new entity would be known as BC Fund, LLC. This testimony does not comport with the record. First, the verified, *pro se* pleadings initially filed by Bellamy set out that BC

Fund, LLC is an entity owned and operated by William Smith and Tyrone Davis. There is no allegation or mention that either Bellamy was to have an interest in BC Fund, LLC. Second, Bellamy approached William Smith with the idea of developing the Subject Property and the BC Fund Deed was a step in the development plan to which Bellamy and William Smith agreed. The only written record of that development agreement is titled "Bellamy & Bellamy Enterprise LLC Development Plan" – not the "BC Fund, LLC Development Plan." The details of the Bellamy & Bellamy Enterprise LLC Development Plan provide that the income from the project would be divided 40% to Bobby Bellamy, 40% to Tommy Bellamy and 20% to "BCFUND". This writing makes it clear that BC Fund, LLC was an entity that was in existence at the time that Mr. Smith and the Bellamy hatched the development plan. It was an entity that they intended to be a participant with the brothers Bellamy in the creation of Bellamy & Bellamy Enterprise LLC.

Bellamy cites two authorities for the position that a deed is void if the grantee does not exist at the time of conveyance – *Foster v. Foster*, 384 S.C. 380, 682 S.E.2d 312 (Ct. App. 2009), *aff'd* 393 S.C. 95, 711 S.E.2d 878 (2011) and *Gifford v. Linnell*, 157 N.C. App. 530, 579 S.E.2d 440 (N.C. Ct. App. 2003). Both of these cases involved an attempted transfer to a trust and in both instances the trust did not exist at the time of the conveyance. The critical issue in both cases was the existence of the entity on the date of the conveyance. Here B.C. Fund and Management, LLC existed at the time of the BC Fund Deed. Neither authority provides a reason for the Court to set aside its determination that BC Fund and Management, LLC did business as BC Fund, LLC on the date of the BC Fund Deed.

2. The Plaintiff met its burden of proving mutual mistake.

The Plaintiff agrees with the burden of proof standard for reformation of an instrument based on mutual mistake that is articulated by Bellamy in his Motion to Reconsider. The Plaintiff does not agree that it failed to meet that burden. The mistake at issue was using BC Fund and Management, LLC's trade name, BC Fund, LLC, as the grantee in the BC Fund Deed.

It is clear from the record that Bellamy made a decision to develop his property into an income producing housing project and requested the assistance of William O. Smith to assist him with that development. It is also clear that he conveyed the Subject Property to BC Fund, LLC in furtherance of that development plan. Bellamy recalls that the transfer to BC Fund, LLC was necessary to assist William O. Smith with his efforts to finance the development project. Bellamy produced a business plan for the development of the project and a disbursement sheet for the first phase of the development. The evidence presented at trial shows the payment of *ad valorem* property taxes in the amount stated on the disbursement sheet by BC Fund and Management, LLC for the benefit of Bellamy. The record confirms that Bellamy intended to convey the Subject Property to a third party that was owned and controlled by William O. Smith – BC Fund and Management, LLC. By mutual mistake the grantee was not listed exactly as the limited liability company is registered in the office of the South Carolina Secretary of State. Rather the parties used a trade name for BC Fund and Management, LLC – BC Fund, LLC.

As to the mistake being attributable to Bellamy, his verified, *pro se* Notice of Failure to Cure Default filed in this matter on October 5, 2011, and his testimony at trial

concerning his pursuit of the development of his property with William O. Smith and BC Fund, LLC make it clear that Bellamy intended to convey his property to Mr. Smith's company – BC Fund, LLC that was the trade name for BC Fund and Management, LLC.

As to the mistake made by BC Fund and Management, LLC, the Minutes of a Special Meeting of the Members of BC Fund 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 the 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 produced from Scott Umstead's files direct that BC Fund and Management, LLC did business as BC Fund, LLC and intended the deed into BC Fund, LLC to be a deed into BC Fund and Management, LLC. Further, the Plaintiff clearly set out in its pleadings that BC Fund and Management, LLC intended that the BC Fund Deed was a conveyance to BC Fund and Management, LLC and that the listing of the grantee in that deed as BC Fund, LLC was a mistake. BC Fund and Management did not file an answer and was determined to be in default. As such the allegations are deemed admitted by BC Fund and Management, LLC. Rule 8(d), SCRPC.

The record contains clear and convincing evidence that Bellamy intended to develop his property with the help of William O. Smith. As part of that effort he conveyed his property to BC Fund and Management, LLC and the use of BC Fund and Management, LLC's trade name was the mistake mutual of BC Fund and Management, LLC and Bellamy.

3. **Bellamy received the consideration for which he bargained in return for the BC Fund Deed.**

Bellamy believes this Court should have determined that the Plaintiff is not entitled to the awarded equitable relief because he did not receive full and fair consideration for the conveyance of the Subject Property to BC Fund and Management, LLC. In support of his position Bellamy cites *Floyd v. Floyd*, 112 S.C. 106, 98 S.E. 850 (1919) and a series of cases that adopt the maxim that “those who seek equity must do equity.”

Floyd involved a deed that recited consideration that was never paid. That is not the case here. Bellamy does not allege that BC Fund and Management, LLC failed to pay the amount stated in the deed, he argues that the consideration was not adequate.

Bellamy’s argument on the adequacy of the stated consideration of “Five and No/100 (\$5.00)” ignores his testimony that he conveyed the Subject Property as his contribution to the development plan with William O. Smith. Bellamy knowingly conveyed the property in return for bargained consideration. The fact that the development subsequently failed does not change the fact that Bellamy received the benefit of his bargain.

4. **The Plaintiff’s reformation claim is not barred by the doctrine of laches.**

The Court’s decision on Bellamy’s laches defense was that Bellamy did not meet his burden of proving the defense. The Court noted in the Order that there is no testimony as to when the Plaintiff discovered that the grantee in the BC Fund Deed was identified using the trade name of BC Funding and Management, LLC. The Court also

found that Bellamy did not offer evidence of the unreasonableness of the delay or the prejudice to Bellamy. As such, Bellamy did not meet his burden of proving laches. *See, Robinson v. Estate of Harris*, 389 S.C. 360, 372, 698 S.E.2d 801, 807 (2010), *citing Hallums v. Hallums*, 296 S.C. 195, 199, 371 S.E.2d 525, 528 (1988).

Bellamy challenges the Court's ruling suggesting that (a) the Plaintiff knew of the use of BC Fund and Management, LLC's trade name at the same time Scott Umstead knew of it because Scott Umstead's knowledge is imputed to the Plaintiff and (b) there has been prejudice. Bellamy's argument fails for four reasons:

First, to successfully defend against the Plaintiff's request on the basis of laches, Bellamy must prove (1) delay, (2) the delay was unreasonable under the circumstances, and (3) resulting prejudice. *Id.* Bellamy offers no proof as to the unreasonableness of the delay. Therefore, even if Bellamy can show delay and resulting prejudice, his laches defense would fail.

Second, Bellamy defines the period of delay as beginning on or about the time that Scott Umstead closed the sale of the Subject Property from BC Fund and Management, LLC to Tyrone Davis. Bellamy's argument is that Mr. Umstead was the Plaintiff's counsel and had knowledge of the discrepancy between the name in which BC Fund and Management, LLC held title and its registered name, as reflected in his preparation of corporate documents to indicate that BC Fund and Management, LLC did business as BC Fund, LLC. Bellamy believes that this knowledge is imputed to the Plaintiff. In an action involving the knowledge imputed by a closing attorney to his client, the South Carolina Supreme Court stated that "[t]he rule is that a principal has constructive notice of all the material facts which its agent, while acting in the scope of

his authority, receives notice.” *Independence Nat’l Bank v. Buncombe Prof’l Park, LLC*, 411, SC 605, 608, 769 S.E.2d 663, 665 (2015) (*emphasis added*). The notice is not actual notice. *Id.* The period of delay to be considered under the doctrine of laches begins when the party against whom the defense is raised has actual notice of inquiry notice. *McDaniel v. United States*, 97 F.Supp. 2d 679 (D.S.C. 2000); *Bell v. Mackey*, 191 S.C. 105, 3 S.E.2d 816 (1939); *Babb v. Sullivan*, 43 S.C. 436, 21 E.E. 277 (1895). Therefore, Bellamy’s argument that Mr. Umstead’s knowledge is imputed to the Plaintiff for purpose of defining the period of time addressed in his laches defense fails because the notice described by Bellamy is constructive notice, not the required actual notice.

The Plaintiff also notes that knowledge imputed from an attorney to a client are facts of which the attorney receives notice while acting in the scope of his authority. *Independence Nat’l Bank v. Buncombe Prof’l Park, LLC*, 769 S.E.2d at 665. Bellamy offers no evidence as to the attorney-client relationship between the Plaintiff and Mr. Umstead and the scope of that relationship. That evidence is critical to making a determination as to the portions of Mr. Umstead’s knowledge imputed to the Plaintiff and its absence is an additional reason for the failure of Bellamy’s argument.

Finally, Bellamy offers that the prejudice he suffered because of the Plaintiffs delay relates to his inability to engage complete discovery and properly prepare for trial. There is no evidence of this prejudice in the record. Bellamy cannot satisfy the requirements of the defense of laches by argument of counsel submitted after the trial of the case has ended.

While Bellamy asserted the defense of laches in his pleadings, he failed to offer the evidence at trial necessary to prove that defense.

5. Taken as a whole, the testimony of Eulada Pitts was that BC Fund, LLC and BC Fund and Management, LLC were the same entity.

While Eulada Pitts did not specifically state in her testimony that BC Fund, LLC and BC Fund and Management, LLC are the same legal entity, her testimony leads to that conclusion. Her testimony was provided by the publication of her deposition that was taken during a trial recess. In that testimony she provided:

- a. Q. All right. What is your relationship with Bobby Bellamy.
 A. I can't say he's a friend. He's an acquaintance.
 Q. Uh-huh.
 A. That's it.
 Q. How did you meet him?
 A. At B.C. Fund.
 Q. Okay. And what about Tommy Bellamy?
 A. B.C. Fund.

Deposition of Eulada Pitts, February 9, 2016, p. 8, ll. 16-24.

- b. Q. Okay. Do you know Tyrone Davis?
 A. Yes.
 Q. How do you know Tyrone Davis?
 A. B.C. Fund.
 Q. When did you first meet Tyrone Davis?
 A. I guess about '09.
 Q. And what were the circumstances that you met Tyrone Davis?
 A. He and Will had some business dealings going on. I mean I don't know what it was, but he would come to the office. I was the -- I was the receptionist, so I saw everybody that came in the door. And he was one of them.

Deposition of Eulada Pitts, February 9, 2016, p. 11, ll. 7-19.

- c. Q. Right. So you just called what B.C. Fund?
 A. The job. The job.
 Q. And so the company --
 A. I knew it was B.C. Fund and Management, L.L.C. But I just wrote B.C. Fund.
 Q. Okay. And is that what everybody referred to B.C. Fund and Management as; they referred to it as B.C. Fund?
 A. B.C. Fund, most people.
 Q. I'm going over here for just a second.

A. Okay.

Q. I've got food news for you. I don't have any more questions.

A. Okay. But you didn't even ask me about Bobby.

Q. Okay. Well what do you want to tell me about Bobby?

A. I want to tell you just like Tyrone came, so did Bobby. Only Bobby wasn't on. He had a -- he had a little relationship, him and Will, but I don't know what it was about. He come in looking for Will. But he did not have anything to do with B.C. Fund. I don't know what was going on, but it was B.C. Fund and Management.

Q. But Bobby didn't have anything to do with B.C. Fund?

A. No. I never saw Bobby with B.C. Fund. Will, I saw Bobby with Will once. And then after a while, Will wouldn't even talk to him. He was never -- him and another couple was never part of B.C. Fund and Management.

Deposition of Eulada Pitts, February 9, 2016, p. 21, l. 7 to p. 22, l. 9.

d. Q. Was there a sign on the building?

A. Yes.

Q. And what did the sign say?

A. B.C. Fund. B.C. Fund.

Q. B.C. Fund?

A. I am trying to think if it said B.C. Fund. That's all is said.

Deposition of Eulada Pitts, February 9, 2016, p. 17, ll. 12-19.

This testimony establishes that Ms. Pitts worked for BC Fund and Management, LLC, but called it BC Fund, as did "most people." The sign on the office of BC Fund and Management, LLC read "BC Fund." Equally as important, this testimony demonstrates that Bellamy was not part of BC Fund, LLC, as he claims he was.

6. **BC Fund, LLC and BC Fund and Management, LLC are the same entity.**

Although stated as an independent ground for reconsideration, Bellamy's sixth point is only a restatement of his first. As such, the Plaintiff relies on its previously stated argument.

¹ In the Motion for Reconsideration, Bellamy inserts the word "[not]" at this point. The Plaintiff is uncertain on what authority the "[not]" is inserted, but it changes the testimony without explanation.

CONCLUSION

Bellamy has failed to offer any reason for the Court to alter or amend its Order.
Bellamy's motion should be denied.

Respectfully submitted,

/s/ W. Cliff Moore, III
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June 7, 2018
Columbia, South Carolina

Exhibit A1

Instrument#: 2007000102181, DEED BK: 3261 PG: 2091 DOCTYPE: 001 07/18/2007 at 01:50:12 PM, 1 OF 3, EXEMPT, BALLERY V. SKIPPER, HORRY COUNTY, SC REGISTRAR OF DEEDS

EXHIBIT A

T163 Number correct
1260001219

QUITCLAIM DEED

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

KNOW ALL MEN BY THESE PRESENTS, THAT, I/we Bobby J. Bellamy, the Grantor(s), for and in consideration of the sum of Five and No/100 Dollars (\$5.00) and no other consideration to the Grantor(s) in hand paid at and before the sealing of these presents by BCFUND LLC, the Grantees, in the state aforesaid, the receipt of which is hereby acknowledged, have granted, bargained, sold, and released, and by BCFUND LLC, his heirs and assigns, forever, in fee simple, together with every contingent remainder and right of reversion, the following described property, to wit

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 Family estate lands, dated August 14th 2006 by JWH engineering.

Tax Map # 130-00-01-042

Grantee's Address 401 Broadway Suite 101
Myrtle Beach SC 29577

Grantor's Address Bobby J. Bellamy
3664 Sea Mountain Highway
Little River, S.C 29566

TOGETHER WITH all and singular the rights, members hereditaments and appurtenances to the
said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the said premises before mentioned unto the said
BCFUND LLC, his heirs and assigns, nor any other person or persons, claiming under him, shall at any
time hereafter, by and way or means, have, claim or demand any right or title to the aforesaid premises or
appurtenances, or any part of parcel thereof, forever.

WITNESS their hands and seals this 29 day of June, 2007

Signed, Sealed and Delivered
In the presence of

Jane S. Squire
1st Witness

Star L. Stubbins
2nd Witness / NOTARY

Robby Bellamy
W. S. Squire

I the undersigned, and Notary Public for South Carolina hereby certify that Carlos Cooper
personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this me this 29 day of June, 2007

Star L. Stubbins

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is located in the county of Horry as shown on a plat of a division of lands of Bellamy Estate.
Bearing Horry County Tax Map Number 103-00-01-042

was transferred by Bobby J. Bellamy on _____

3. Check one of the following: The deed is

(a) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.

(b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.

(c) ☒ exempt from the deed recording fee because (See Information section of affidavit):
LESS THAN \$100.00

(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.
If exempt under exemption #14 as described in the information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes _____ or No _____

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):

(a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of _____

(b) _____ The fee is computed on the fair market value of the realty which is _____

(c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____

5. Check Yes _____ or No _____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: _____

6. The deed recording fee is computed as follows:

(a) Place the amount listed in item 4 above here: _____

(b) Place the amount listed in item 5 above here: _____
(If no amount is listed, place zero here.)

(c) Subtract line 6(b) from Line 6(a) and place result here: _____

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: _____

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: _____

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Bobby J. Bellamy
Responsible Person Connected with the Transaction

SWORN to before me this 29
day of JUNE year of 2007
Stan A. Stubbs

Notary Public for SC
My Commission Expires: 5/27/12

Bobby Bellamy
Print or type the above name here

Stan A. Stubbs

Exhibit A2

11:08:13 AM, 1 OF 3, EXEMPT, BALLERY V. SKIPPER, HORRY COUNTY, SC REGISTRAR
DEEDS



EXHIBIT C-1

TMS Number correct
134001270

TRAFFIC LIGHTS, 477111
Horry County Register of Deeds
Deeds & Conveyances - Public & Private

QUITCLAIM DEED

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

KNOW ALL MEN BY THESE PRESENTS, THAT, I/we Tommy J. Bellamy, the Grantor(s), for and in consideration of the sum of Five and No/100 Dollars (\$5.00) and no other consideration to the Grantor(s) in hand paid at and before the sealing of these presents by BCFUND LLC, the Grantees, in the state aforesaid, the receipt of which is hereby acknowledged, have granted, bargained, sold, and released, and by BCFUND LLC, his heirs and assigns, forever, in fee simple, together with every contingent remainder and right of reversion, the following described property, to wit

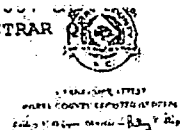
ALL THAT CERTAIN piece, parcel, or tract of land situate, lying and being in Little River Township, County of Horry, State of South Carolina, being more particularly shown and designated on the west side of Sea Mountain Highway near Nixon's Crossroads, containing 3.39 acres more or less. Situated at a stake on the corner of sea Mountain Highway and bounded on the south by Tract A owned by Shiela B. Golf, on the West by North Pointe Development, on the North by Tract C owned by BCFUND LLC, 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 Mesné Conveyances for Horry County. This property is shown as Tract B on a map of the Bellamy Family estate lands, dated August 14th 2006 by JWH engineering.

Tax Map # 130-00-01-042

Grantee's Address 401 Broadway Suite 101
Myrtle Beach SC 29577

Grantor's Address Tommy J. Bellamy
3684 Sea Mountain Highway
Little River, S.C 29566



TOGETHER WITH all and singular the rights, members hereditaments and appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the said premises before mentioned unto the said BCFUND LLC, his heirs and assigns, nor any other person or persons, claiming under him, shall at any time hereafter, by and way or means, have, claim or demand any right or title to the aforesaid premises or appurtenances, or any part of parcel thereof, forever.

WITNESS their hands and seals this 4 day of October, 2007

Signed, Sealed and Delivered
In the presence of

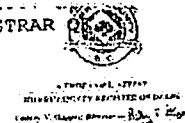
[Signature]
1st Witness

[Signature]
2nd Witness / NOTARY

[Signature]
STAR L. STUBBS
Notary Public
State of South Carolina
Commission Expires Aug. 27, 2012

I the undersigned, and Notary Public for South Carolina hereby certify that Carlos Cooper personally appeared before me this day and acknowledged the due execution of the foregoing instrument;

Witness my hand and official seal this me this 4 day of October, 2007



STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is located in the county of Horry as shown on a plot of a division of lands of Ballery Estate.
Bearing Horry County Tax Map Number 103-00-01-643

was transferred by Tommy J. Ballery on _____

3. Check one of the following: The deed is

(a) X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.

(b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.

(c) _____ exempt from the deed recording fee because (See Information section of affidavit):

(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes _____ or No _____

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):

(a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of _____

(b) _____ The fee is computed on the fair market value of the realty which is _____

(c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____

5. Check Yes _____ or No _____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: _____

6. The deed recording fee is computed as follows:

(a) Place the amount listed in item 4 above here: 5.00

(b) Place the amount listed in item 5 above here: 5.00
(If no amount is listed, place zero here.)

(c) Subtract line 6(b) from Line 6(a) and place result here: 5.00

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: _____

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: _____

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

William D. Smith
Responsible Person Connected with the Transaction

William D. Smith
Print or type the above name here

SWORN to before me this 4

day of October year of 2007

Notary Public for S.C.

My Commission Expires: 8/27/2012

Star A. Smith

TMS Number correct
1300001219

FILE NO: 2007-RE-3033

PREPARED BY:
SCOTT B. UMSTEAD, PA
4226 Mayfair Street, Suite 100
Myrtle Beach, SC 29577
Tax Map No. 130-00-01-219

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that I/we, BC Fund LLC, in the State aforesaid, for and in consideration of the sum of One Hundred Seventy Thousand and 00/100 Dollars (\$170,000.00), unto me/us paid by Tyrone Davis, in the State aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released and by these presents do grant, bargain, sell, and release unto the said Tyrone Davis, his heirs and assigns, forever, in fee simple, the following described property, to wit:

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 being the identical property conveyed to BC Fund LLC by deed from Bobby J. Bellamy, dated June 29, 2007 and recorded July 18, 2007 in Deed Book 3261 at Page 2091, records of Horry County, South Carolina.

Tax Map #: 130-00-01-219

Grantee Address: 1921 South Island Road
Georgetown, SC 29440

TOGETHER WITH all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Tyrone Davis, his heirs and assigns, forever, in fee simple.

AND I/we do hereby bind my/our their heirs and assigns, Executors and Administrators to
warrant and forever defend all and singular the said premises unto the said Tyrone Davis, his heirs and
assigns, forever, in fee simple, against me/us and my/our heirs and assigns against every person
whomsoever lawfully claiming, or to claim, the same or any part thereof.

IN WITNESS WHEREOF our Hands and Seals this 16th day of November, 2007.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Melissa E. Erle
Witness (1)

Melissa D. Trush
Witness (2) - maybe same person as Notary

BC Fund LLC

By William O. Smith

Its: Sole Member

STATE OF South Carolina

COUNTY OF Horry

)
) ACKNOWLEDGEMENT
) (S.C. CODE ANN. 30-5-30 (B) (C))

I, the undersigned, a Notary Public for South Carolina hereby certify that
William O. Smith as Sole Member of BC Fund LLC personally appeared before me
this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this me this 16th day of November, 2007.

Melissa D. Trush
NOTARY PUBLIC FOR SC
MY COMMISSION EXPIRES: 6/16/14

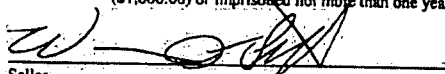
STATE OF SOUTH CAROLINA

COUNTY OF HORRY

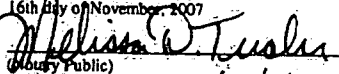
AFFIDAVIT

PERSONALLY appeared before me the undersigned, who, being duly sworn, deposes and says:

1. I have read the information on this Affidavit and understand such information.
2. The property being transferred is located at 3664 Sea Mountain Hwy (Lot "C" Bellamy Family Estates), Little River, SC 29566, bearing Horry County Tax Map Number 130-00-01-219, was transferred by BC Fund LLC to Tyrone Davis on November 16, 2007.
3. The Deed is (Check One):
 - a. ☒ subject to the Deed recording fee as a transfer for consideration paid or to be paid in money or in money's worth \$170,000.00
 - b. ☐ subject to the Deed recording fee as a transfer between a corporation, a partnership, or other entity and stockholder, partner or owner of the entity, or in a transfer to a trust or as a distribution to a trust beneficiary.
 - c. ☐ exempt from the deed recording fee because (see information section of Affidavit): _____
(if exempt, please skip to items 4-7, and go to item 8 of this Affidavit)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked:
 - a. ☒ the fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$170,000.00
 - b. ☐ the fee is computed on the fair market value of the realty which is \$ _____
 - c. ☐ the fee is computed on the fair market value of the realty as established for property tax purposes which is \$ _____
5. Check Yes ☐ or No ☒ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes", the amount of the outstanding balance of this lien or encumbrance is \$ _____
6. The Deed recording fee is computed as follows:
 - a. Place the amount listed in item 4 above here: \$170,000.00
 - b. Place the amount listed in item 5 above here: 0
 - c. Subtract Line 6(b) from Line 6(a) and place result here: \$170,000.00
7. The Deed recording fee dues is based on the amount listed on Line 6(c) above and the deed recording fee due is \$629.00
8. As required by Code § 12-24-70, I state that I am a responsible person who was connected with the transaction as: Seller
9. I further understand that a person required to furnish this Affidavit who willfully furnishes a false or fraudulent Affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than One Thousand and no/100 Dollars (\$1,000.00) or imprisoned not more than one year, or both.


Seller

SWORN to before me this
16th day of November, 2007


(Notary Public)

My commission expires 12/16/14

* The fee is based on the real property's value. Value means the realty's fair market value. In arm's length real property transactions, this value is the sales price to be paid in money or money's worth (e.g. stocks, personal property, other realty, forgiveness of debt, mortgages assumed or placed on the realty as a realty of the transaction). However, a deduction is allowed from this value for the amount of any lien or encumbrance existing on land, tenement, or realty before the transfer and remaining on it after the transfer.

Exhibit C1

Record to correct TMS number

Instrument#: 2010000021029, DEED BK: 3447 PG: 1341 DOCTYPE: 001 02/25/2010 at 09:56:27 AM, 1 OF 3, EXEMPT, BALLERY V. SKIPPER, HORRY COUNTY, SC REGISTRAR OF DEEDS

STATE OF SOUTH CAROLINA

QUITCLAIM DEED

COUNTY OF HORRY

TO ALL WHOM THESE PRESENTS MAY COME:

KNOW ALL MEN BY THESE PRESENTS, that BCFUND, LLC, hereinafter called Grantor, in consideration of the premises and also in consideration of the sum of Five and No/100s (\$5.00) Dollars, to the grantor in hand paid at and before the sealing of these presents by Tommy J. Bellamy, Grantee, the receipt of which is hereby acknowledged, has remised, released and forever quitclaimed, and by these presents does remise, release and forever quitclaim, unto Grantee, to-wit:

All of Grantor's interest in that certain piece, parcel or lot 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 A owned by Sheila B. Goff, on the West by North Pointe Development, on the North by Tract C owned by BCFUND, LLC on the East by Sea Mountain Highway

This being the identical property conveyed to Grantor by deed of Tommy J. Bellamy, dated October 4, 2007, and recorded in the Register of Deeds for Horry County on October 9, 2007, in Deed Book 3282 at Page 2931.

Tax Map # [REDACTED] 130-00-01-220

Grantee's Address Tommy J. Bellamy
3684 Sea Mountain Highway
Little River, SC 29566

TOGETHER WITH all and singular the rights, members, hereditaments and appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the said premises before mentioned unto the said Grantee and the grantee's heirs, successors and assigns forever, so that neither the said Grantor, nor Grantor's successors, nor any other person or persons claiming under Grantor, shall at any time hereafter by any way or means have, claim, or demand any right or title to the aforesaid premises or appurtenances, or any part or parcel thereof, forever.

WITNESS the grantor's hand and seal this 10th day of February, 2010

BCFUND, LLC

W. O. Smith (SEAL)
By: William O. Smith
Its: OWNER

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Deanne L. Smith

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

PROBATE

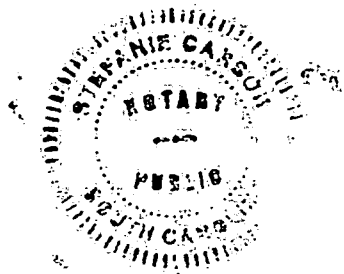
PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw William O. Smith, as Member of BCFUND, LLC, sign, seal and as his act and deed deliver the within written Quitclaim Deed; and that (s)he with the other witness whose signature appears above witnessed the execution thereof.

Deanne L. Smith

Sworn to and subscribed before me
this 10th day of February, 2010

Stephanie Cargill
Notary Public for South Carolina

My Commission Expires: May 27, 2018



STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is located at 3684 Sea Mountain Highway, Little River, South Carolina bearing Horry County Tax Map Number 21300001220, was transferred on February 8, 2010 by BCFUND, LLC

to Tommy J. Bellamy

3. Check one of the following: The deed is

- (a) ☐ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
- (b) ☐ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
- (c) ☒ exempt from the deed recording fee because (See Information section of affidavit); transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A)

(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes ☐ or No ☐

4. Check one of the following if either Item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):

- (a) ☐ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of _____
- (b) ☐ The fee is computed on the fair market value of the realty which is _____
- (c) ☐ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____

5. Check Yes ☐ or No ☐ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: _____ Recorded in Book _____ Page _____

6. The deed recording fee is computed as follows:

- (a) Place the amount listed in Item 4 above here: _____
- (b) Place the amount listed in Item 5 above here: _____
(If no amount is listed, place zero here.)
- (c) Subtract line 6(b) from Line 6(a) and place result here: _____

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: _____

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Managing Member of the Grantor

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this 10th

Day of February year of 2010

Notary Public for South Carolina

My Commission Expires May 27, 2018

Responsible Person Connected with the Transaction

William D. Smith

Print or type the above name here

Exhibit C2

NOTICE TO QUIT AFFIDAVIT

PLEASE PRINT

1. Plaintiff's Name:	Tyronne Davis			
Plaintiff's Address:	1921 South Island Rd, Georgetown SC 29440			
Plaintiff's Phone No:	(843)	655-1524		
2. Defendant's Name:	Bobby Bellamy			
Defendant's Address:	(843)	309-0129		
Defendant's Phone No:	3664 Sea Mountain Highway			
3. Do you own this property?	☒	YES	☒	NO
Do you own it with another person?	☒	YES	☒	NO
4. If not, who is your landlord?				
5. How long has the defendant lived with you?	3	Months	3	Years
6. Has this person ever paid you rent?	☒	YES	☒	NO
7. Did this person ever agree to pay you rent?	☒	YES	☒	NO
8. Are you married to this person?	☒	YES	☒	NO
9. Do you have a child in common with this person?	☒	YES	☒	NO
10. Is this person at least 18 years of age?	☒	YES	☒	NO
11. Does anyone else live in the household that will be remaining on the premises?	☒	YES	☒	NO
Are they in agreement for this person to eject this person from the premises?	☒	YES	☒	NO

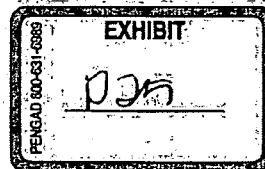
Date 3-31-11

Tyronne Davis
Plaintiff

Sworn before me this 3/8
day of March
Debra C. Kelling
Notary for South Carolina
My commission expires: 1-12-2015

THIS IS A TRUE AND
CERTIFIED COPY

Sammy Floyd



STATE OF SOUTH CAROLINA

2011CV261030272
CIVIL CASE NUMBER

COUNTY OF HORRY Horry County Magistrate

2011 APR - 7 AM 10:00 IN THE MAGISTRATE'S COURT
NOTICE TO QUIT PREMISES

DISTRICT SEVEN

Tyrone Davis
PO Box 2043
Georgetown, SC 29442
(843) 655-1524

PLAINTIFF(S)

Vs

Bobby Gerotta Bellamy
3664 Sea Mountain Hwy
Little River, SC 29566-7859

DEFENDANT(S)

Upon an affidavit filed by the plaintiff which states you:

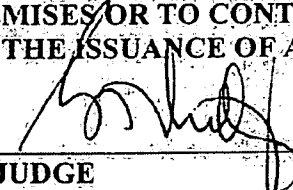
Bobby Gerotta Bellamy
defendant(s), are a trespasser(s) and are occupying the premises at 3664 Sea Mountain Hwy,
Little River, SC 29566-7859 without permission of the owner of said premises. You are
required to immediately vacate the premises or contact the:

Little River Magistrate Court
107 Hwy 57 North
Little River, SC 29566
Phone: (843) 915-5292 Fax: (843) 915-6292

within five (5) days to show cause, if any you can, why you should not be ejected from these
premises.

**FAILURE TO VACATE THE PREMISES OR TO CONTACT THIS OFFICE WITHIN
FIVE (5) DAYS MAY RESULT IN THE ISSUANCE OF A WRIT OF EJECTMENT.**

Dated: April 5, 2011

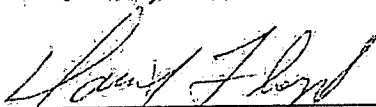

JUDGE

DE Floyd
PERSONALLY appeared before me, the undersigned deponent, who being duly sworn, says that s/he served the
herein Notice to Quit Premises/Rule to Show Cause on

Bobby on the 7 day of April,
20 11 at 9:00 ☒ AM ☐ PM

Sworn to and subscribed before me
this 8 Day of April, 2011

Kenneth William
NOTARY PUBLIC or JUDGE
My Commission Expires: 4-1-13


Sheriff's Deputy or Constable

THIS IS A TRUE AND
CERTIFIED COPY

Zammy Floyd

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

2011CV261030272
CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

JUDICIAL DISMISSAL

☐ With Prejudice
☒ Without Prejudice

Tyrone Davis
PO Box 2043
Georgetown, SC 29442
(843) 655-1524

PLAINTIFF(S)

Vs

Bobby Gerotta Bellamy
3664 Sea Mountain Hwy
Little River, SC 29566-7859

DEFENDANT(S)

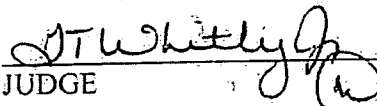
It is Ordered that Civil Case Number 2011CV261030272:

Tyrone Davis

vs Bobby Gerotta Bellamy

Shall reflect a disposition of Judicial Dismissal based upon the following:

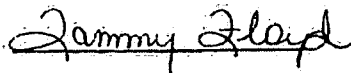
- ☐ Plaintiff's failure to prove case by preponderance of evidence
- ☐ Plaintiff's request to dismiss case
- ☐ Plaintiff and Defendant failed to appear for Court
- ☐ Plaintiff's failure to appear in Court
- ☒ Other: No follow up by plaintiff


JUDGE

Horry County
Little River Magistrate Court
107 Hwy 57 North,
Little River, SC 29566
Phone: (843) 915-5292 Fax: (843) 915-6292

May 26, 2011

THIS IS A TRUE AND
CERTIFIED COPY



NOTICE TO QUIT AFFIDAVIT

PLEASE PRINT

1. Plaintiff's Name:		Tyrone Davis			
Plaintiff's Address:		1921 South Island RD Georgetown, SC 291			
Plaintiff's Phone No:		(843) 655-1524			
2. Defendant's Name:		Bobby Bellamy			
Defendant's Address:		() 3664 Sea Mountain Hwy Little River, SC			
Defendant's Phone No:					
3. Do you own this property?		☒	YES	☐	NO
Do you own it with another person?		☐	YES	☒	NO
4. If not, who is your landlord?					
5. How long has the defendant lived with you?			Months	3 1/2	Years
6. Has this person ever paid you rent?		☐	YES	☒	NO
7. Did this person ever agree to pay you rent?		☐	YES	☒	NO
8. Are you married to this person?		☐	YES	☒	NO
9. Do you have a child in common with this person?		☐	YES	☒	NO
10. Is this person at least 18 years of age?		☒	YES	☐	NO
11. Does anyone else live in the household that will be remaining on the premises?		☐	YES	☒	NO
Are they in agreement for this person to eject this person from the premises?		☐	YES	☐	NO

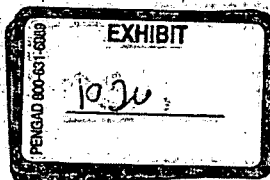
Date 7-5-11

Tyrone Davis
Plaintiff

Sworn before me this 5
day of July 2011.
Karen Williams
Notary for South Carolina
My commission expires: 4-1-13

THIS IS A TRUE AND
CERTIFIED COPY

Tammy Ziegler



STATE OF SOUTH CAROLINA

2011CV261030531
CIVIL CASE NUMBER

COUNTY OF HORRY

IN THE MAGISTRATE'S COURT
NOTICE TO QUIT PREMISES

Tyrone Davis
1921 South Island Rd
Georgetown, SC 29440
(843) 655-1524

PLAINTIFF(S)

Vs

Bobby Bellamy
3664 Sea Mountain Highway
Little River, SC 29566

DEFENDANT(S)

Upon an affidavit filed by the plaintiff which states you:

Bobby Bellamy

defendant(s), are a trespasser(s) and are occupying the premises at **3664 Sea Mountain Highway, Little River, SC 29566** without permission of the owner of said premises. You are required to immediately vacate the premises or contact the:

Little River Magistrate Court

107 Hwy 57 North

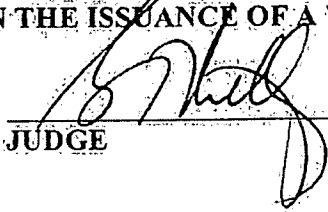
Little River, SC 29566

Phone: (843) 915-5292 Fax: (843) 915-6292

within five (5) days to show cause, if any you can, why you should not be ejected from these premises.

FAILURE TO VACATE THE PREMISES OR TO CONTACT THIS OFFICE WITHIN FIVE (5) DAYS MAY RESULT IN THE ISSUANCE OF A WRIT OF EJECTMENT.

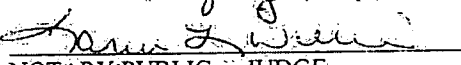
Dated: July 5, 2011


JUDGE

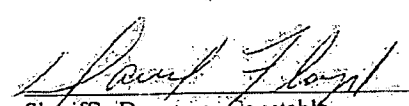
PERSONALLY appeared before me, the undersigned deponent, who being duly sworn, says that s/he served the herein Notice to Quit Premises/Rule to Show Cause on

Bobby on the 14 day of July,
20 11 at 8:30 ☒ AM ☐ PM

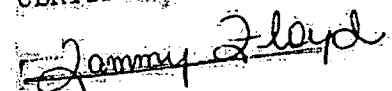
Sworn to and subscribed before me
this 14 Day of July, 2011


NOTARY PUBLIC or JUDGE

My Commission Expires: 1-1-13


Sheriff's Deputy or Constable

THIS IS A TRUE AND
CERTIFIED COPY



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

)
HORRY COUNTY MAGISTRATE COURT
2011CV261030531
CIVIL CASE NUMBER

2011 JUL 27 AM 8:31
IN THE MAGISTRATE'S COURT
DISTRICT SEVEN
WRIT OF EJECTMENT

Tyrone Davis
1921 South Island Rd
Georgetown, SC 29440
(843) 655-1524

PLAINTIFF(S)

Vs

Bobby Bellamy
3664 Sea Mountain Highway
Little River, SC 29566

THIS IS A TRUE AND
CERTIFIED COPY

Jimmy Floyd

DEFENDANT(S)

TO THE SHERIFF/DEPUTY SHERIFF/CONSTABLE:

Upon Judgment of this Court, you are hereby Ordered to proceed to the premises located at 3664 Sea Mountain Highway Little River, SC 29566, in accordance with S.C Code Sections 27-40-710, 27-40-735, and 27-37-160 as amended.

Announce your identity and purpose and serve on the defendant(s) and all occupants a copy of this Writ of Ejectment. Inform them they have twenty four (24) hours to voluntarily vacate the premises. If the premises appear unoccupied and no one responds to your announced identity and purpose, the Writ of Ejectment shall be served by securely attaching a copy of the Writ in a conspicuous place on the premises.

If after 24 hours following the service or posting of the Writ, the occupants have not voluntarily vacated the premises, a deputy sheriff may enter the premises using only as much force as is necessary to effectuate the Ejectment.

Upon gaining access, you shall remove from the premises any occupants and all items of personal property found on the premises. Such property may be deposited beside the public street or roadway. All personal property removed from the premises and placed on a public street or roadway may be removed by the proper local government agency after forty eight (48) hours, excluding Saturdays, Sundays, and holidays. Such property may also be removed in the normal course of debris or trash collection before or after a period of forty eight (48) hours.

July 21, 2011

Jimmy Floyd
Little River Magistrate Court

In accordance with the SC Rules for Magistrate Court, *DE FLOYD*, certify that:

- ☐ I personally served a copy of this Writ on *Bobby*, an occupant of the rental unit.
- ☐ On *07-27-2011*, at *100* the rental unit appeared unoccupied and no one responded when I announced my identity and intentions. I attached a copy of this Writ to a conspicuous part of the premise. On *07-27-2011*, at *100*, which was not less than 24 hours from the posting date and time, I returned to the rental unit for the purpose of ejectment.
- ☐ Under my supervision, I had all persons and personal property removed and evicted from the rental unit placing all personal property beside the roadside.
- ☐ The rental unit was unoccupied. The Tenant and all occupants had vacated the unit.
- ☐ Informed by Plaintiff that case is settled.

Date: *07-27-2011*

Jimmy Floyd
Sheriff/Deputy Sheriff/Constable

**BELLAMY & BELLAMY ENTERPRISE LLC.
DEVELOPMENT PROJECT**

Preparation

We will need a Tentative Subdivision Map for County approval. Investigate Zoning and General Plan Designation for our project site. Our development plan should conform to both of these Land Use designations. If there is a conflict, a Rezone or a Rezone/General Plan Amendment may be necessary. The cost to develop will vary greatly depending on type and style of structures we place on the site.

Topographic Survey

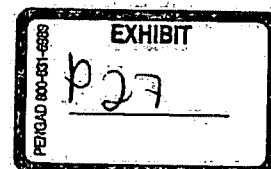
Depending on the land we use and the size of the project a ground survey or an aerial survey supplemented with a ground survey is utilized. Typically a two-foot contour interval will be used depending on the steepness of the topography. In addition to the site, an area approximately 50' to 100' around the perimeter of the site is mapped. The ground survey locates the existing utilities and other physical features not shown on the aerial survey. Oak trees and other native trees that might be removed or preserved are located. An orthophoto can be utilized to determine the tree canopy area as required by our County.

Tentative Map

The Tentative Map is developed based on the Topographic Survey. A Tentative Map contains a dimensioned lot conforming to the County standards such as lot size, minimum road frontage and other standards specific to the County. Map elements include, but are not limited to the following: existing and proposed utilities, existing and proposed drainage structures, proposed road section, road grades, limits of cuts and fills, grades for any padded lots, list of agencies providing services and any other information required by the County.

Potential Engineering Reports and Studies

1. Will-Serve letters from the utility agencies providing services may be required.
2. Site Investigation for Sewage Disposal Areas and Ground Water Elevation if septic is planned for onsite sewage disposal.
3. Drainage Report for surface water runoff and effects on onsite drainage system and downstream drainage systems showing existing and post-development flows.
4. Soils and Geology investigation of the site to determine soil type and any geologic hazards on or near the site.
5. Geotechnical study for roadways and public utilities.
6. Traffic Study to determine the traffic impacts of the development as well as existing traffic conditions.
7. Air quality analysis to determine the impacts of the development on the air quality within the air basin.
8. Archeological and Historical Resource Report to find any historical or prehistoric site located within the development.
9. Biological Study (Wetlands, Plants and animals) to find or determine if there is habitat for any endangered plant, animals or insects, and to delineate any wetland or "waters of the U.S." onsite.



10. Acoustical Analysis could be required if near a major transportation source, or adjacent or near existing stationary noise sources. This study is to determine the impacts of noise sources on the development and possible mitigation measures.
11. Preliminary Grading Plan showing the limits of the grading, slopes, road grades and other information required by the County.
12. Tree Preservation Plan showing the location and canopy of the existing trees and the trees to be removed. In addition, a mitigation plan prepared by a Licensed Arborist or Botanist showing the native trees to be removed or preserved as a result of the development.
13. Horry County may require a slope map showing slope categories on the map.
14. Horry County may require maps showing Zoning and General Plan designation on site and adjacent properties along with existing land use.
15. Horry County may require maps showing properties within 500 feet of the site and require a list of names and address of the property owners.

Tentative Map Application

Once the required studies are complete, they will be compiled along with maps and exhibits. Utilizing the information from the Tentative Map and reports, the applications and environmental questionnaire can be filled out for submission to the County.

Tentative Map Processing

Application for the Tentative Map is submitted to the County and the map is circulated to a list of agencies and organizations for comments. Based on the comments, the County may require some or all of the above-mentioned engineering reports that were not required at the time of submittal. They may also require we to expand on existing studies. In some cases the project could require a redesign due to the comments.

Once the application is complete, an environmental document is prepared and the project is set for a hearing. As a result of the hearing, the map is either Conditionally Approved or Denied. The approval of the Tentative Map is only good for three years in most cases and five one-year time extensions can be applied for.

Final Map Development

After the Tentative Map has reached final approval, we can then move forward to Final Map stage. The Final Map is the actual creation of the new parcels. The Final Map is filed once the Conditions of Approval have been satisfied.

Other Considerations

If we are developing a Parcel Map, Rezoning the parcel, requesting a General Plan Amendment, Special Use Permit or any other County approval requiring an Environmental Document, we may be required to provide some or all of the above mentioned engineering reports.

Please Note

Additional consultants may be required to comply with County, State and Federal requirements. Survey of boundary is typically generated from record data. Application fees, processing fees, or any other fee required for submittal, processing and approval of the Tentative Subdivision Map is generally our responsibility.

BELLAMY & BELLAMY DEVELOPMENT PROJECT

Land Usage	6000	Sqr Feet	aprox	0.5	Acres	
	Length	Width	Total	Units	Sqr Ft Per	Bedrooms
Structure	75	30	2250	4	1000	3
F setback	80	25	2000			
B setback	80	10	800			
L setback	30	15	450			
R setback	30	15	450			

Land Usage	Project Cost	Project Equity	Total Value
5950	\$ 4,520,000.00	\$ 4,720,000.00	\$ 9,240,000.00

Units 1-2						
	Per Sqr	Total Sqr	Complete Cost	equity		
Cost Per Unit	\$ 65.00	8,000.00	\$ 520,000.00			
Appraisal	\$ 105.00	8,000.00	\$ 840,000.00	\$ 320,000.00		
Income	Per Mo	Units	Total Monthly	Debt Serv	Gross Inc	Net Inc
	\$ 800.00	8	\$ 6,400.00	\$ 4,349.00	\$ 2,051.00	\$ 1,025.50
		40%	Bellamy	Monthly	Annual Income	Complete
		40%	Bellamy	\$ 410.20	\$ 4,922.40	Monthly
		20%	BCFUND	\$ 205.10	\$ 2,461.20	\$ 1,025.50

Units 4-5						
	Per Sqr	Total Sqr	Complete Cost	equity		
Cost Per Unit	\$ 50.00	8,000.00	\$ 400,000.00			
Appraisal	\$ 105.00	8,000.00	\$ 840,000.00	\$ 440,000.00		
Income	Per Mo	Units	Total Monthly	Debt Serv	Gross Inc	Net Inc
	\$ 800.00	8	\$ 6,400.00	\$ 3,345.00	\$ 3,055.00	\$ 1,527.50
		40%	Bellamy	Monthly	Annual Income	Complete
		40%	Bellamy	\$ 1,021.20	\$ 12,254.40	Monthly
		20%	BCFUND	\$ 510.60	\$ 6,127.20	\$ 2,553.00

Total Project						
	Per Mo	Units	Total Monthly	Debt Serv	Gross Inc	Net Inc
	\$ 800.00	96	\$ 76,800.00	\$ 37,799.00	\$ 39,001.00	\$ 19,500.50
		40%	Bellamy	Monthly	Annual Income	Complete
		40%	Bellamy	\$ 7,800.20	\$ 93,602.40	Monthly
		20%	BCFUND	\$ 3,900.10	\$ 46,801.20	\$ 19,500.50

PHASE I - M & T BANK

BELLAMY PROJECT

LAND VALUE

\$ 170,000.00

COST OF COMPLETION

75% \$ 127,500.00

DRAW # 1

20% \$ 25,500.00

Tax Payment

\$ (2,186.84) \$ 23,313.16

Planning & Zoning

\$ (1,428.00) \$ 21,885.16

Utilities

\$ (1,510.16) \$ 20,375.00

Survey

\$ (1,300.00) \$ 19,075.00

Site Map

\$ (375.00) \$ 18,700.00

Core of Engineers

\$ (3,500.00) \$ 15,200.00

Engineering-lay out

\$ (2,700.00) \$ 12,500.00

Rough Road Layout

\$ (12,500.00) \$

REMAINING BALANCE

\$ 102,000.00

INTEREST PAYMENT

14.75% \$ 626.88

BOBBY BELLEMY

WILLIAM O SMITH

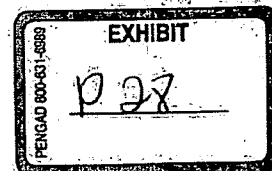


Exhibit D1

BELLAMY & BELLAMY ENTERPRISE LLC.

- 1) Set up Corporation
- 2) Place Assets into Corporation
- 3) Complete Prospectus
- 4) Research
- 5) Amend Prospectus
- 6) Acquire Funding
- 7) Phase 1 Construction

**STATE OF SOUTH CAROLINA
SECRETARY OF STATE
ARTICLES OF ORGANIZATION
LIMITED LIABILITY COMPANY**

The undersigned delivers the following articles of organization to form a South Carolina limited liability company pursuant to Sections 33-44-202 and 33-44-203 of the 1976 South Carolina Code of Laws, as amended.

1. The name of the limited liability company which complies with Section 33-44-105 of the South Carolina Code of 1976, as amended is

BELLAMY & BELLAMY ENTERPRISE LLC

2. The address of the initial designated office of the Limited Liability Company in South Carolina is

401 BROADWAY SUITE 101

Street Address

<u>MYRTLE BEACH</u>	<u>SOUTH CAROLINA</u>	<u>29577</u>
City	State	Zip Code

3. The initial agent for service of process of the Limited Liability Company is

William Smith

Name

Signature

and the street address in South Carolina for this initial agent for service of process is

401 Broadway Suite 101

Street Address

<u>MYRTLE BEACH</u>	<u>SOUTH CAROLINA</u>	<u>29577</u>
City	State	Zip Code

4. The name and address of each organizer is

(a) William Smith

Name

401 Broadway Suite 101

Street Address City

Myrtle Beach South Carolina 29577

City

State

Zip

BELLAMY & BELLAMY ENTERPRISE LLC

Name of Limited Liability Company

(b) Bobby Bellamy
Name

Street Address

SOUTH CAROLINA

29510

City

State

Zip Code

5. ☐ Check this box only if the company is to be a term company. If so, provide the term specified:

6. ☒ Check this box only if management of the limited liability company is vested in a manager or managers. If this company is to be managed by managers, specify the name and address of each initial manager:

(a)

Name

Street Address City

State Zip Code

(b)

Name

Street Address City

State Zip Code

(c)

Name

Street Address City

State Zip Code

(Add additional lines if necessary)

BELLAMY & BELLAMY ENTERPRISE LLC

Name of Limited Liability Company

7. ☐ Check this box only if one or more of the members of the company are to be liable for its debts and obligations under section 33-44-303(c). If one or more members are so liable, specify which members, and for which debts, obligations or liabilities such members are liable in their capacity as members.

8. Unless a delayed effective date is specified, these articles will be effective when endorsed for filing by the Secretary of State. Specify any delayed effective date and time:

9. Set forth any other provisions not inconsistent with law which the organizers determine to include, including any provisions that are required or are permitted to be set forth in the limited liability company operating agreement.

10. Signature of each organizer

	Date
	Date

UNITY DEVELOPERS, LLC

Name of Limited Liability Company

FILING INSTRUCTIONS

1. File two copies of this form, the original and either a duplicate original or a conformed copy.
2. If space on this form is not sufficient, please attach additional sheets containing a reference to the appropriate paragraph in this form, or prepare this using a computer disk which will allow for expansion of the space on the form.
3. This form must be accompanied by the filing fee of \$110.00 payable to the Secretary of State.

Return to: Secretary of State
P.O. Box 11350
Columbia, SC 29211

NOTE

THE FILING OF THIS DOCUMENT DOES NOT, IN AND OF ITSELF, PROVIDE AN EXCLUSIVE RIGHT TO USE THIS CORPORATE NAME ON OR IN CONNECTION WITH ANY PRODUCT OR SERVICE. USE OF A NAME AS A TRADEMARK OR SERVICE MARK WILL REQUIRE FURTHER CLEARANCE AND REGISTRATION AND BE AFFECTED BY PRIOR USE OF THE MARK. FOR MORE INFORMATION, CONTACT THE TRADEMARKS DIVISION OF THE SECRETARY OF STATE'S OFFICE AT (803) 734-1728.

**OPERATING AGREEMENT FOR
BELLAMY & BELLAMY ENTERPRISE LIMITED LIABILITY COMPANY**

THIS OPERATING AGREEMENT Articles is made as of the ____ day of _____ 2007 and among the signatories identified on the signature pages hereto.

IN CONSIDERATION OF the mutual promises of the parties hereto and other good and valuable consideration, receipt and adequacy of which is hereby acknowledged, it is mutually agreed by and between the parties hereto as follows:

1. _____
2. _____
3. Community Development Agency LLC

The name of the limited liability company shall be BELLAMY & BELLAMY ENTERPRISE LLC

2. PURPOSE

Developed tracks of land as well as individual parcels to provide suitable housing for individuals and there families. Not to exclude the developing of land for the sole purpose of building suitable structures for local business or non profit organizations. These buildings and land will be designed to meet the needs of the local community.

Development Process

1. Acquire Parcel of Land
2. Petition local community for proper Zoning to meet the needs of the proposed Development.
3. Prepare prospectus including projected profit loss statements.
4. Submit proposal to planning to the review board
4. Build proposed structures.
5. Supply the proper marketing to accomplish the task in prospectus.

3. REGISTERED OFFICE AND AGENT

The name of the registered agent of the limited liability company shall be William O. Smith. The registered office of the limited liability company shall be located at 401 Broadway Suite 101 Myrtle Beach SC. 29577.

4. FILING OF ARTICLES OF ORGANIZATION

The members of the limited liability company shall:

(a) promptly file a duly executed original copy of the Articles of Organization of the limited liability company, together with one or more additional copies thereof as appropriate, with the Secretary of State of South Carolina and in such other place or places as may be required by law.

(b) Tender and pay all fees, charges and do all other things requisite for the due formation of the limited liability company pursuant to the laws of the State of South Carolina.

5. TERM

The limited liability company shall be deemed formed at the time of the filing of the Articles of Organization with the Secretary and shall continue for a period of thirty (30) years from the date of filing, unless sooner terminated pursuant to the further provisions of these Articles.

6. INTERESTS AND CONTRIBUTIONS OF MEMBERS

6.1 The name and present mailing address of each member and the percentage interest of each member of the limited liability company are set forth on Schedule I hereto. The total amount of cash constituting the initial aggregate contribution by the members is \$1,000,000.00

6.2 The initial contribution of each member shall be contributed to the limited liability company upon execution of these Articles by such member.

6.3 An individual capital account shall be maintained for each member. The capital account of each member shall consist of such member's initial contribution, increased by:

- (a) additional contributions made by such member, and
- (b) such member's share of the limited liability company's net profits;

and decreased by:

- (i) distributions made to such member, and
- (ii) such member's share of the limited liability company's losses,

all in accordance with any applicable provision of the Internal Revenue Code of 1986, as amended (the "Code"), or any rule or regulation thereunder.

6.4 No additional contributions have been agreed to as of the date of these articles, and none shall be required or permitted without the unanimous written consent of all the members.

6.5 Except as set forth in Article 13.3, a member shall not receive from the limited liability company any part or all of his or her contribution to capital until:

(a) all liabilities of the limited liability company, except liabilities to members on account of their contributions to capital, have been paid or there remains property of the limited liability company sufficient to pay them;

(b) the consent of all members is had, unless the return of the contribution to capital may be rightfully demanded as provided herein; and

(c) the Articles of Organization or these Articles are cancelled or so amended as to set out the withdrawal or reduction of the contributions of capital.

6.6 Subject to the provisions of Article 6.5, a member may rightfully demand the return of his or her contribution only upon the dissolution of the limited liability company.

6.7 The limited liability company shall have the discretion to distribute cash, notes, property or a combination thereof to a member in return for his or her contribution to capital as it deems appropriate.

6.8 A member of the limited liability company may have the limited liability company dissolved and its affairs wound up when:

(a) the member rightfully but unsuccessfully has demanded the return of his or her contribution to capital; or

(b) the other liabilities of the limited liability company have not been paid, or the limited liability company's property is insufficient for their payment and the member would otherwise be entitled to the return of his or her contribution.

7. ALLOCATION OF PROFITS AND LOSSES

7.1 For purposes of these Articles and until determined otherwise by the manager of the limited liability company, in such manager's sole discretion, the term "fiscal year" shall mean the calendar year.

7.2 The profits and losses of the limited liability company shall be determined for each fiscal year of the limited liability company in accordance with the accounting methods followed for federal income tax purposes and otherwise in accordance with generally accepted accounting principles and procedures applied in a consistent manner and shall be deemed to have been earned ratably during the fiscal year. For purposes of Sections 702 and 704 of the Code or the corresponding sections of any future internal revenue law or any similar tax law of any state or jurisdiction, and for such purposes only, the determination of each member's distributive share of all items of income, gain, deduction, loss, credit or allowance for any period or year shall be made in proportion to the amounts of the members' respective percentage interests in the limited liability company during such period or year.

7.3 The profits of the limited liability company shall be shared among the members, and the losses of the limited liability company shall be borne by the members in proportion to each member's respective percentage interest in the limited liability company.

8. DISTRIBUTIONS

8.1 To the fullest extent allowed by the South Carolina Limited Liability Company Act (the "Act"), the Net Cash Flow, if any, of the limited liability company shall be distributed at least annually among the members in proportion to each member's respective percentage interest in the limited liability company. For such purpose, "Net Cash Flow" shall mean:

(a) For each calendar year, all cash income and receipts of whatsoever nature or kind received by the limited liability company less all costs and expenses incurred or paid by, and all net additions to reserves of, the limited liability company (whether operating or capital costs, and including without limitation, all costs to acquire its interest in the real property described in Article 3, payments upon the principal of any indebtedness, secured or unsecured, of the limited liability company, expenditures for capital improvement, additions or replacements and any other expenditures which are not deductible in arriving at the limited liability company's federal taxable income, such as expenses for repairs and reserves to meet anticipated expenses as the manager shall deem to be reasonably necessary); plus

(b) Any other funds deemed by the manager to be available for distribution.

8.2 The net proceeds from the sale of all or any portion of any real property of the limited liability company shall be distributed to the members in proportion to each member's respective percentage in the limited liability company.

9. DESIGNATION OF MANAGER

9.1 For the purpose of conducting the business and affairs of the limited liability company, WILL SMITH, shall act as manager until the first annual meeting of the members or until its successor is elected and qualifies. The address of the manager is as follows: 7433 Springside Drive Myrtle Beach SC 29575

9.2 The manager of the limited liability company shall be elected annually at a meeting of the members or by other action of the members to be held or taken on each annual anniversary of the date of these Articles, or as soon thereafter as such meeting or action can be held or taken. Such person who receives the approval of those members who own an aggregate of more than fifty percent (50%) of the total percentage interests of all members of the limited liability company shall be elected manager, and the Articles of Organization shall be amended to any extent required under the Act. The number of managers may be increased or decreased as determined also by the consent of those members whose respective percentage interests in the limited liability company in the aggregate exceed fifty percent (50%) of the total percentage interests of all members of the limited liability company.

9.3 Whenever the consent or approval of the members is referred to in these Articles, the consent or approval by sufficient members authorized to make such a decision shall be effective whether votes are cast at a meeting of members (and whether or not all of the members are in attendance at such meeting), or by formal or informal, oral or written instructions of such members, or otherwise, and such determination so made by the members shall be effective and legally binding upon all the members, regardless of the number of members who may actually vote or otherwise participate therein.

10. RIGHTS AND POWERS OF THE MANAGER

10.1 The manager shall have sole and complete control of the management and operation of the affairs and business of the limited liability company and shall operate the limited liability company for the benefit of all of the members. One of the signatures of the manager shall be sufficient to bind the limited liability company (so long as such signatory has the consent thereto of the other managers, if there is more than one manager).

10.2 The manager (acting for and on behalf and at the expense of the limited liability company), in extension and not in limitation of the rights and powers given by law or by the other provisions of these Articles, shall, in its sole discretion, have full and entire right, power and authority in the management of the business and affairs of the limited liability company:

(a) to purchase, acquire, own, lease, manage and operate, either directly or indirectly, the real estate described in Article 3 hereof (or any interest or interests therein), and to carry on any and all activities related thereto; and to invest and reinvest any funds or monies of the limited liability company in such property, real, personal, or mixed, as may be consistent with the purposes of the limited liability company set forth in Article 3 hereof;

(b) subject to the provisions of Article 12.2 hereof, to sell, with or without notice, at public or private sale, and to exchange, trade, transfer, assign, convey, mortgage or otherwise encumber, finance, refinance, lease for any term, pledge, appraise, or have appraised, apportion, divide in kind, borrow on, hypothecate or give options for any and all of the property of the limited liability company, upon such terms and conditions as the manager, in its sole discretion, may deem to be in the best interests of the limited liability company, and in so doing to execute, acknowledge, seal and deliver all necessary documents or instruments;

(c) to cause the limited liability company to participate in any capacity (whether as stockholder, bondholder, creditor, partner, venturer, member, fiduciary, beneficiary or otherwise) in any business or organization or enterprise, whether incorporated or unincorporated, in any manner or form whatsoever, to the extent consistent with the purposes of the limited liability company set forth in Article 3 hereof;

(d) to employ agents, servants, employees and independent contractors to assist in or assume full responsibility for the management and operation of the business of the limited liability company, including persons related to or affiliated with the manager, and, in each such instance, to pay them reasonable compensation therefor;

(e) to commence or defend litigation with respect to the limited liability company or any of its assets or liabilities; to compromise, settle, arbitrate, or otherwise adjust claims in favor of or against the limited liability company and to insure its assets and undertakings and the manager against any and all risks;

(f) to make loans and extend credit to the limited liability company; to borrow money from any member, bank, lending institution, and other lender for any purpose of the limited liability company, and in connection therewith, issue notes, debentures or any other evidence of indebtedness and encumber the assets of the limited liability company to secure repayment of borrowed sums; and no member, bank, lending institution or other lender to which application is made for a loan by the manager shall be required to inquire as to the purposes for which such loan is sought, and as between this limited liability company and such member, bank, lending institution or other lender, it shall be conclusively presumed that the proceeds of such loan are to be and will be used for the purposes authorized under these Articles; and to obtain replacement or refinancing of any indebtedness or security therefor with respect to any property of the limited liability company, or to repay the same in whole or in part and whether or not a prepayment penalty may be incurred;

(g) to own, improve, develop, operate, manage and lease the real estate described in Article 3 hereof; to construct, alter, improve, demolish or repair buildings, structures, or other improvements on such real estate; to settle boundary lines and to grant and reserve easements, covenants, rights-of-way and other rights or privileges with respect to such real estate; and to partition and to join with co-owners and others in dealing with such real estate in any way;

(h) to make such elections under the tax laws of the United States, the several states and other relevant jurisdictions as to the treatment of items of income, gain, loss, deduction and credit, and as to all other relevant matters, as the manager, in its sole discretion, deem necessary or desirable; and

(i) to make investments in government obligations, bank certificates of deposit, short-term debt securities, and short-term commercial paper, pending initial investment or future reinvestment of the funds of the limited liability company, and to provide a source from which to meet contingencies.

10.3 To the extent permitted by the Act, all powers of the manager hereunder may be exercised by it, and any or all of such powers may be assigned or delegated by the manager to any other person or persons, including the other members of the limited liability company and other persons and entities related to or affiliated with the manager.

10.4 In addition to the specific rights and powers herein granted to the manager, the manager shall possess and may enjoy and exercise all of the rights and powers of manager as provided in the Act.

10.5 The manager or its delegate(s), as the case may be, shall devote such of their time to the business of the limited liability company as they may, in their sole discretion, deem to be necessary to conduct said business. Any of the members and any manager may engage in or possess an interest in other business ventures of every nature and description, whether or not in competition with the business of the limited liability company, independently or with others, including, but not limited to, the ownership, financing, leasing, operation, management, syndication, brokerage and development of real property; and neither the limited liability company nor the members shall have any right by virtue of these Articles in and to such independent ventures or to the income or profits derived therefrom.

10.6 The limited liability company shall, to the fullest extent permitted by law, indemnify, defend and save harmless the manager and former manager(s) from any and all claims, actions, causes of action, suits, proceedings, losses, damage, liability, costs and expenses (including, without limitation, attorneys' fees and expenses, and court costs) asserted against or incurred or sustained by them by reason of any act performed by them while manager or any omission on their part while manager to act for or in behalf of the limited liability company and in furtherance of its interest provided that the manager(s) acted in good faith and in a manner the manager(s) reasonably believed to be in, or not opposed to, the best interest of the limited liability company and, with respect to any criminal action or proceeding, had no reason to believe that their conduct was unlawful.

10.7 The manager shall not be liable for any mistakes in judgment or for any inadvertent failure to perform any of its obligations hereunder, or for any loss due to such mistake or failure to perform, or due to the negligence, dishonesty, fraud or bad faith of any employee or other agent of the limited liability company.

10.8 The manager, on behalf of the limited liability company, may contract with any person related to or affiliated with the manager, and the manager and such persons related to or affiliated with the limited liability company (including any of the directors, officers or employees of such person), their designees and nominees, shall not be liable to the limited liability company or to any of the members for damages, losses, liability or expenses of any nature whatsoever resulting from mistakes in judgment or any acts or omissions, whether or not disclosed, unless caused by willful misconduct.

10.9 Notwithstanding anything to the contrary contained herein, the manager shall not perform any act on behalf of the limited liability company without the approval of those members who own an aggregate of more than fifty percent (50%) (or 75% in the case of the last sentence of Article 12.2 below) of the total percentage interests of all members of the limited liability company, which approval may be made in writing or at a meeting of the limited liability company in accordance with Article 12.3 below; provided that each member, by its execution of these Articles, approves of the execution, delivery and performance, from time to time, of, and directs the manager to execute, deliver and perform [identify agreements or transactions which have already been approved by a majority of the members and/or may be entered into and performed without specific approval of the members].

10.10 Unless not required by applicable law, the identification "a limited liability company" shall appear after the name of the limited liability company on all correspondence, stationery, checks, invoices and any and all documents and papers executed by the limited liability company.

11. LEGAL TITLE TO PROPERTY

Legal title to all or any portion of the property of the limited liability company shall be held in the name of "**BELLAMY & BELLAMY ENTERPRISE LLC**" or, to the extent allowed by the Act, in such other name as the manager, in its sole discretion, shall determine to be in the best interest of the limited liability company. Without limiting the foregoing grant of authority, to the extent permitted by the Act, the manager may arrange to have title taken and held in its own name or in the names of trustees, nominees or straw parties for the limited liability company. It is expressly understood and agreed that the manner of holding title to the property (or any part thereof) of the limited liability company is solely for the convenience of the limited liability company, and that all such property shall be treated as property of the limited liability company, subject to the terms of these Articles.

12. RIGHTS AND POWERS OF MEMBERS

12.1 With the exception of the manager(s) designated in Article 9 herein and as they shall be so elected from time to time, no member of the limited liability company shall participate in the management of the business and affairs of the limited liability company, except as otherwise provided in these Articles.

12.2 The manager of the limited liability company shall have the authority to amend these Articles provided that any such amendment shall have received the consent of those members whose aggregate percentage interests in the limited liability company exceed fifty percent (50%) of the total percentage interests of all members of the limited liability company and the agreement of a majority in number of the managers. A sale, exchange, lease, mortgage, pledge or other transfer of any substantial assets of the limited liability company shall require consent of members whose aggregate percentage interests in the limited liability company exceed seventy-five percent (75%) of the total percentage interests of all members of the limited liability company.

12.3 Meetings of the limited liability company for any purpose shall be held at the call of the manager. All such meetings shall be held at a place designated by the manager, and notice of such location and of the date and time of the meeting shall be given by the manager to each member at least ten (10) days prior to such date (unless such notice is waived as to any member, by such member).

12.4 The members of the limited liability company shall have the right and the power to admit additional members upon the unanimous consent of all of the then members.

13. TRANSFERABILITY AND REDEMPTION OF INTERESTS

13.1 Except as otherwise provided in this Article 13, none of the members of the limited liability company shall have the right to transfer or assign any part or all of their interest in the limited liability company, and any purported transfer or assignment shall be void and of no force or effect, and may be ignored by the limited liability company and its members. If all members of the limited liability company other than the member proposing to dispose of his or her interest do not approve of the proposed transfer or assignment by unanimous written consent, the transferee of the member's interest shall have no right to participate in the management of the business and affairs of the limited liability company or to become a member. In that event, the transferee shall only be entitled to receive the share of profits or other compensation by way of income and the return of contributions, to which that member otherwise would be entitled.

13.2 In the event of an assignment pursuant to this Article 13, the limited liability company shall, upon the unanimous written consent of all remaining members, continue with respect to the remaining members; appropriate adjustments shall be made to their capital accounts and percentage interests to reflect the assignment of the interest of the assignor member; and an election may be made by the manager, in its sole discretion, to adjust the basis of assets of the limited liability company.

13.3 Notwithstanding any provisions of Article 13.1, no transfer or assignment of all or any portion of a member's interest in the limited liability company shall be effective, unless the transferor or assignor delivers to the limited liability company a written opinion of counsel acceptable to the limited liability company, to the effect that:

(a) such transfer or assignment, when added to the total of all other transfers and assignments of interest in the limited liability company within the preceding twelve (12) months, would not result in the limited liability company being considered to have terminated within the meaning of Section 708 of the Code;

(b) such transfer or assignment would not violate the Securities Act of 1933, as amended, or any state securities of "Blue Sky" laws applicable to the limited liability company or the interest to be transferred or assigned; and

(c) such transfer or assignment would not cause the limited liability company to lose its status as a partnership for federal income tax purposes, result in a nonexempt "prohibited transaction" as defined under Section 4975 of the Code, with respect to the limited liability company or any of its managers or members or cause the limited liability company to be subject to registration as an investment company under the Investment Company Act of 1940.

13.4 Each transferor or assignor and each transferee or assignee agrees that it will pay all reasonable expenses, including attorneys' fees, incurred by the limited liability company in connection with a transfer or assignment of all or any portion of such transferor's or assignor's interest in the limited liability company being transferred to such transferee or assignee.

13.5 A person who is the transferee or assignee of all or any portion of the interest of a member as permitted hereby but does not become a substituted member and who desires to make a further transfer or assignment of all or any portion of such interest, shall be subject to all of the provisions of this Article 13 to the same extent and in the same manner as any member desiring to make a transfer or assignment of all or any portion of its interest.

14. DISSOLUTION

14.1 The limited liability company shall be dissolved upon the occurrence of any of the following events:

- (a) when the period fixed for the duration of the limited liability company shall expire;
- (b) by the unanimous agreement of all members, which shall be in writing;
- (c) upon the death, retirement, resignation, expulsion, bankruptcy, court declaration of incompetence with respect to, or dissolution of, a member or the occurrence of any other event that terminates the continued membership of a member in the limited liability company, unless within ninety (90) days after such event there are at least two (2) remaining members and all the remaining members elect to continue the business of the limited liability company by unanimous agreement; or
- (d) upon the occurrence of any other event specified in section 35-1 of the Act.

14.2 As soon as possible following the occurrence of any of the events specified in this Article effecting the dissolution of the limited liability company, the limited liability company shall execute and file, with the Secretary, articles of dissolution in accordance with Sections 35-15 and 35-20 of the Act and in such form as shall be prescribed by the Secretary.

14.3 Upon a dissolution of the limited liability company, the assets thereof shall be liquidated, and the proceeds therefrom, together with assets distributed in kind to the extent sufficient therefor, shall be applied and distributed in order of priority as follows:

- (a) First, to creditors of the limited liability company, including members who are creditors, in the order of priority provided by law, in satisfaction of liabilities of the limited liability company other than liabilities for distribution to members under Section 25-1 or Section 25-10 of the Act;
- (b) Second, to members of the limited liability company in respect of their share of the profits and other compensation by way of income on their contributions; and
- (c) Third, to members of the limited liability company in respect of their contributions to capital.

14.4 The manager of the limited liability company shall not be personally liable for the return or repayment of all or any portion of the contributions of any member; any such return or repayment shall be made solely from assets of the limited liability company.

15. BANK ACCOUNTS

The funds of the limited liability company shall be deposited in such bank account or accounts as the manager shall deem appropriate, in its sole discretion, and the manager shall arrange for the appropriate conduct of such accounts. The name "BELLAMY & BELLAMY ENTERPRISE LLC" shall appear on all bank accounts in which funds of the limited liability company are deposited.

16. MISCELLANEOUS PROVISIONS

16.1 Unless otherwise provided in these Articles, no member shall be liable to any other member or to the limited liability company for any good faith act or omission to act in the exercise of his or her judgment under the provisions of these Articles.

16.2 Nothing herein contained shall be construed to constitute any member hereof the agent of any other member or to limit in any manner the members in the carrying on of their own respective business or activities.

16.3 The use of any gender herein shall be deemed to be or include the other genders, and the use of the singular herein shall be deemed to be or include the plural (and vice versa), wherever appropriate. The headings herein are inserted only as a matter of convenience and reference, and in no way define, limit or describe the scope of these Articles, or the intent of any provisions thereof.

16.4 These Articles set forth all (and are intended by all parties hereto to be an integration of all) of the covenants, promises, agreements, warranties and representations among the parties hereto with respect to the limited liability company, the business of the limited liability company and the property of the limited liability company, and there are no covenants, promises, agreements, warranties or representations, oral and written, express or implied, among them other than as set forth herein.

16.5 Nothing contained in these Articles shall be construed as requiring the commission by any person of any act contrary to applicable law, including, without limitation, Section 4975 of the Code (to the extent applicable). Wherever there is any conflict between any provision of these Articles and any statute, law, ordinance or regulation contrary to which the parties have no legal right to contract, the latter shall prevail, but in such manner that the provision(s) of these Articles thus affected shall be curtailed and limited only to the extent necessary to conform with said requirement of law. In the event that any part, section, paragraph or clause of these Articles shall be held to be indefinite, invalid or otherwise unenforceable, the entire Articles shall not fail on account thereof, and the balance of the Articles shall continue in full force and effect.

16.6 The limited liability company shall indemnify, defend and save harmless each member or former member of the limited liability company against expenses actually and reasonably incurred by him, her or it in connection with the defense of an action, suit or proceeding, civil or criminal, in which he, she or it is made a party by reason of being or having been such member, except in relation to matters as to which he, she or it shall be adjudged in the action, suit or proceeding to be liable for gross negligence or willful misconduct.

17. GOVERNING LAW

It is the intention of the parties hereto that these Articles shall be governed by and construed and enforced in accordance with the internal laws of the South Carolina

18. BURDEN AND BENEFIT

These Articles are binding upon and shall inure to the benefit of the parties hereto and their respective heirs, guardians, executors, administrators, personal and legal representatives, and successors and to the assigns of the parties hereto to the extent, but only to the extent, the same is provided for in accordance with, and permitted by, the provisions of these Articles.

19. NOTICES

Except as otherwise provided in these Articles, any notice, consent or other communication required or permitted hereunder shall be in writing and shall be addressed, in the case of the limited liability company, to its principal place of business specified in Article 2, in the case of the manager, to its office at the location specified in Article 9.1, and, in the case of any member, to its address set forth opposite its signature below, as specified on or to such other address or person as any of the foregoing parties shall furnish to the other parties in writing; and any such communication so addressed shall be deemed to have been given when delivered by hand or on the earlier of actual receipt and three (3) business days after being sent by registered or certified mail, postage prepaid, return receipt requested, or one (1) business day after being sent by overnight courier, telegram, or cable or on actual receipt after being sent by any means not specified herein.

IN WITNESS WHEREOF, the parties have executed these Articles as of the day and year first above written.

MEMBER Date

Address Percentage

MEMBER Date

Address Percentage

MEMBER Date

Address Percentage

Exhibit E1

EXHIBIT E



CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

OCT 25 2013

STATE OF SOUTH CAROLINA SECRETARY OF STATE

ARTICLES OF ORGANIZATION LIMITED LIABILITY COMPANY

Mark Hammond

SECRETARY OF STATE OF SOUTH CAROLINA

TYPE OR PRINT CLEARLY IN BLACK INK

The undersigned delivers the following articles of organization to form a South Carolina limited liability company pursuant to Sections 33-44-202 and 33-44-203 of the 1976 South Carolina Code of Laws, as amended

1 The name of the limited liability company which complies with Section 33-44-105 of the South Carolina Code of 1976, as amended is BC Fund and Management, LLC

2 The address of the initial designated office of the Limited Liability Company in South Carolina is:

819 17th Ave

Street Address

Surfside Beach

City

29575

Zip Code

3 The initial agent for service of process of the Limited Liability Company is:

William O. Smith

Name

Signature

and the street address in South Carolina for this initial agent for service of process is

819 17th Avenue North

Street Address

Surfside Beach

City

29575

Zip Code

4 The name and address of each organizer is

(a) William O. Smith

Name

819 17th Avenue North

Street Address

Surfside Beach

City

South Carolina

State

29575

Zip Code

(b) Diane L. Smith

Name

819 17th Avenue North

Street Address

Surfside Beach

City

South Carolina

State

29575

Zip Code

(Add additional lines if necessary)

5 ☐ Check this box only if the company is to be a term company. If so, provide the term specified

051109-0061 FILED 11/02/2005
BC FUND AND MANAGEMENT, LLC
Filing Fee \$110.00 ORIG



Mark Hammond

South Carolina Secretary of State

BC Fund and Management, LLC

Name of Limited Liability Company

- 6 ☐ Check this box only if management of the limited liability company is vested in a manager or managers. If this company is to be managed by managers, specify the name and address of each initial manager.

(a) _____
Name

Street Address City

State Zip Code

(b) _____
Name

Street Address City

State Zip Code

(c) _____
Name

Street Address City

State Zip Code

(d) _____
Name

Street Address City

State Zip Code

(Add additional lines if necessary)

- 7 ☐ Check this box only if one or more of the members of the company are to be liable for its debts and obligations under section 33-44-303(c). If one or more members are so liable, specify which members, and for which debts, obligations or liabilities such members are liable in their capacity as members.

BC Fund and Management, LLC

Name of Limited Liability Company

- 8 Unless a delayed effective date is specified, these articles will be effective when endorsed for filing by the Secretary of State. Specify any delayed effective date and time.

- 9 Set forth any other provisions not inconsistent with law which the organizers determine to include, including any provisions that are required or are permitted to be set forth in the limited liability company operating agreement.

- 10 Signature of each organizer

William J. Smith

Date 10/28/05

(Add Additional lines if necessary)

FILING INSTRUCTIONS

1. File two copies of this form, the original and either a duplicate original or a conformed copy.
2. If space on this form is not sufficient, please attach additional sheets containing a reference to the appropriate paragraph in this form, or prepare this using a computer disk which will allow for expansion of the space on the form.
3. This form must be accompanied by the filing fee of \$110.00 payable to the Secretary of State.

Return to: Secretary of State
P.O. Box 11350
Columbia, SC 29211

NOTE

THE FILING OF THIS DOCUMENT DOES NOT, IN AND OF ITSELF, PROVIDE AN EXCLUSIVE RIGHT TO USE THIS CORPORATE NAME OR IN CONNECTION WITH ANY PRODUCT OR SERVICE. USE OF A NAME AS A TRADEMARK OR SERVICE MARK WILL REQUIRE FURTHER CLEARANCE AND REGISTRATION AND BE AFFECTED BY PRIOR USE OF THE MARK. FOR MORE INFORMATION, CONTACT THE TRADEMARKS DIVISION OF THE SECRETARY OF STATE'S OFFICE AT (803) 734-1728.

Form Revised by South Carolina
Secretary of State, January 2000

The State of South Carolina



Office of Secretary of State Mark Hammond

Certificate of No Record

I, Mark Hammond, Secretary of State of South Carolina Hereby certify that:

At this time, this office can find no record of a corporation using the name:
BC FUND, LLC

Given under my Hand and the Great
Seal of the State of South Carolina this
17th day of July, 2013.

A handwritten signature in cursive script that reads "Mark Hammond".
Mark Hammond, Secretary of State

Exhibit E3

ADMINISTRATIVE PROCEEDING

BEFORE THE

SECURITIES COMMISSIONER OF SOUTH CAROLINA

IN THE MATTER OF:

William O. Smith and

BC Fund and Management, LLC,

Respondents.

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)
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)
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ORDER TO CEASE AND DESIST

File No. 07047

WHEREAS, the Securities Division of the Office of the Attorney General of the State of South Carolina (the "Division"), pursuant to authority granted in the South Carolina Uniform Securities Act of 2005 (the "Act"), S.C. Code Ann. § 35-1-101 to 35-1-703 (Supp. 2010), on or about December 28, 2007, received information regarding alleged activities of William O. Smith and BC Fund and Management, LLC (collectively, the "Respondents") which, if true, would constitute violations of the Act; and

WHEREAS, the information led the Division to open and conduct an investigation of the Respondents pursuant to S.C. Code Ann. § 35-1-602; and

WHEREAS, in connection with the investigation, the Division has determined that evidence exists to support the following findings and conclusions:

1. Respondent William O. Smith ("Smith") is a South Carolina resident with a last known address of Post Office Box 15993, Myrtle Beach, South Carolina 29587.
2. Respondent BC Fund and Management, LLC ("BC Fund") is a limited liability company registered in South Carolina with a last known address of 401 Broadway, Suite 107, Myrtle Beach, South Carolina 29577.

3. Respondent Smith is the registered agent for Respondent BC Fund.
4. The Respondents, through Respondent Smith, offered credit counseling, credit repair, investment, and other services in and from the State of South Carolina.
5. The Respondents primarily targeted their business efforts at persons they describe as the "blue collar" residents of Horry County, South Carolina.
6. Respondent Smith offered his investment services as a "Financial Consultant" and a "Senior Financial Advisor" through Respondent BC Fund.
7. Respondent Smith strongly encouraged potential BC Fund clients to invest in an investment portfolio controlled by Smith.
8. Respondent Smith encouraged clients investing in the portfolio to make periodic payments to the portfolio following their initial investment.
9. From in or about September, 2005, to at least September, 2007, the Respondents received payments, typically averaging about \$100.00 per month per investor, from three or more South Carolina residents who agreed to invest in the Respondents' portfolio offering.
10. BC Fund documents reflect a one-year maturity for deposits into the portfolio, with an expected return of twenty-five percent (25%) payable to the investor at the end of the period.
11. Funds given to the Respondents for investment were commingled with operational funds in bank accounts controlled by the Respondents.
12. Funds given to the Respondents for investment were not deposited or used in an investment portfolio controlled by Respondent Smith.
13. When asked by Division staff, Respondent Smith admitted he did not invest funds given to him for investment but, instead, the Respondents used them for other purposes.

14. Respondent Smith was at all times herein in control of Respondent BC Fund and served as its primary agent.

15. Respondent Smith is not and at all times herein was not registered with the Division as an agent, investment advisor or investment advisor representative, or in any other capacity.

16. Respondent BC Fund is not and at all times herein was not registered with the Division as a broker-dealer, an investment advisor, an issuer or issuer agent, or in any other capacity.

17. The shares of the alleged investment portfolio offered and sold by Respondents constitute "securities."

18. The securities offered and sold by Respondent Smith, on behalf of himself and Respondent BC Fund, are not and at all times material herein were not registered or notice filed with the Division.

19. No claim of exemption from registration has been filed with the Division by either Respondent or on behalf of either Respondent or the securities Respondents recommended, offered and sold in and from this State;

WHEREAS, the shares of the investment fund Respondents recommended, offered and sold constitute "securities" within the meaning of S.C. Code Ann. § 35-1-102(29); and

WHEREAS, the Respondents recommended, offered and sold the securities in and from the State of South Carolina; and

WHEREAS, the securities the Respondents recommended, offered and sold in and from South Carolina were not registered or federal covered securities, and no exemption from registration was asserted on behalf of the securities; and

WHEREAS, the Respondents acted as agents and investment advisers in recommending, offering, and selling the securities in and from South Carolina; and

WHEREAS, the Respondents at the time of the recommendations, offers, and sales of the securities were not registered as agents or investment advisers and no exemption from registration was asserted on behalf of either Respondent; and

WHEREAS, the Respondents, in connection with the recommendations, offers, and sales described above, made untrue statements of material facts and/or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and

WHEREAS, based on the foregoing, the Division has determined that the Respondents have engaged, are engaging, and/or are about to engage in acts and practices which violate S.C. Code Ann. §§ 35-1-301, 35-1-401 to 35-1-404, and 35-1-501; and

WHEREAS, after due deliberation, the Division finds that it is necessary and appropriate, in the public interest, for the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act to issue the following Order:

CEASE AND DESIST ORDER

NOW THEREFORE, pursuant to S.C. Code Ann. § 35-1-604(a)(1), IT IS HEREBY ORDERED that each Respondent and every successor, affiliate, control person, agent, servant, and employee of each Respondent, and every entity owned, operated, or indirectly or directly controlled by or on behalf of either Respondent:

- a. Immediately cease and desist from transacting business in this State in violation of the Act, and in particular, S.C. Code Ann. §§ 35-1-301, 35-1-401 to 35-1-404, and 35-1-501;
 - b. Specifically, cease and desist (i) soliciting investment in any BC Fund account located in or contacted from South Carolina, (ii) offering any other security in or from South Carolina, and (iii) collecting fees for investment advice given in or from South Carolina;
- and

- c. Pay a civil penalty in the amount of fifteen thousand dollars (\$15,000.00) per Respondent if this Order becomes effective by operation of law, or, if any Respondent seeks a hearing and any legal authority resolves this matter, pay a civil penalty in an amount not to exceed ten thousand dollars (\$10,000.00) for each violation of the Act by that Respondent, and the actual cost of the investigation or proceeding.

REQUIREMENT OF ANSWER AND NOTICE OF OPPORTUNITY FOR HEARING

The Respondents are hereby notified that they have the right to a hearing on the matters contained herein. To schedule a hearing, a Respondent must file with the Securities Division, Post Office Box 11549, Rembert C. Dennis Building, Columbia, South Carolina 29211-1549, attention: Thresechia Navarro, within thirty (30) days after the date of service of this Order a written Answer specifically requesting that a hearing be held to consider rescinding the Order.

In the written Answer, a Respondent, in addition to requesting a hearing, shall admit or deny each factual allegation of the Order, shall set forth specific facts on which the Respondent relies, and shall set forth concisely the matters of law and affirmative defenses upon which the Respondent relies. If a Respondent is without knowledge or information sufficient to form a belief as to the truth of an allegation, he shall so state.

Failure by a Respondent to file a written request for a hearing in this matter within the thirty (30) day period stated above shall be deemed a waiver by that Respondent of his right to such a hearing. Failure of a Respondent to file an Answer, including a request for a hearing, shall result in this Order, including the stated civil penalty, becoming final as to that Respondent by operation of law.

CONTINUING TO ENGAGE IN ACTS DETAILED BY THIS ORDER AND/OR
SIMILAR ACTS MAY RESULT IN THE DIVISION'S FILING ADDITIONAL
ADMINISTRATIVE ACTIONS AND/OR SEEKING FURTHER ADMINISTRATIVE FINES.

WILLFUL VIOLATION OF THIS ORDER COULD RESULT IN CRIMINAL PROSECUTION.
REGARDING MATTERS DESCRIBED HEREIN, THIS ORDER DOES NOT PRECLUDE THE
FILING OF PRIVATE CAUSES OF ACTION OR THE FILING OF CRIMINAL CHARGES
UNDER S.C. CODE ANN. § 35-1-508 OR ANY OTHER APPLICABLE CODE SECTION.

SO ORDERED, this 2nd day of March, 2011.

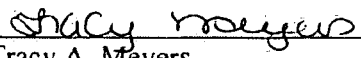

Tracy A. Meyers
Assistant Attorney General
Securities Division
Office of the Attorney General
Rembert C. Dennis Building
1000 Assembly Street, Suite 501
Columbia, S. C. 29201

Exhibit G1

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

M & T Bank,

Plaintiff,

v.

Tyrone Davis; Bobby J. Bellamy; BC
Fund and Management, LLC d/b/a BC
Fund, LLC; and the United States of
America through its agency – Internal
Revenue Service,

Defendant(s).

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

C.A. NO: 2011-CP-26-1809

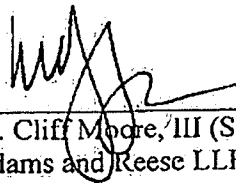
**AFFIDAVIT OF DEFAULT AS TO
DEFENDANT BC FUND AND
MANAGEMENT, LLC D/B/A BC
FUND, LLC**

PERSONALLY appeared before me, W. Cliff Moore, III, attorney for the Plaintiff, M & T Bank ("Plaintiff"), who, being duly sworn, deposes and says as follows that:

(1) The Defendant BC Fund and Management, LLC d/b/a BC Fund, LLC ("Defendant") was duly served a copy of the Second Amended Summons and Second Amended Complaint by Publication pursuant to the Order for Publication filed in this action on December 11, 2013, as evidenced by the Affidavit of Publication filed in this action on January 16, 2014;

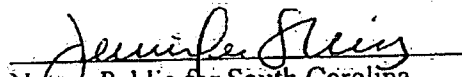
(2) The Defendant was served a copy of the Second Amended Summons and Second Amended Complaint by U.S. Mail to the Defendant at its last known address and the last known address of its Registered Agent pursuant to the Order for Publication filed in this action on December 11, 2013, as evidence by the Certificate of Service filed simultaneously herewith;

(3) That he is the attorney for the Plaintiff above named; and that thirty (30) days have elapsed since the service aforesaid, exclusive of the date of service, upon the Defendant by U.S. Mail on December 11, 2013 and by Publication on December 24, 2013, December 31, 2013 and January 7, 2014; that no responsive pleading or Notice of Appearance has been served as required by the Second Amended Summons in this action; and the said Defendant is in default.



W. Cliff Moore, III (SC Bar No. 4067)
Adams and Reese LLP
1501 Main Street, 5th Floor (29202)
PO Box 2285
Columbia, SC 29201
P: 803-254-4190
F: 803-779-4749
cliff.moore@arlaw.com
Attorney for the Plaintiff

Sworn to and subscribed before me
On this 6 day of February, 2014


Notary Public for South Carolina
My Commission expires October 6, 2018.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

M & T Bank,

Plaintiff,

v.

Tyrone Davis; Bobby J. Bellamy; BC
Fund and Management, LLC d/b/a BC
Fund, LLC; and the United States of
America through its agency – Internal
Revenue Service,

Defendant(s).

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

C.A. NO: 2011-CP-26-1809

CERTIFICATE OF SERVICE

The undersigned, of the law office of Adams and Reese LLP, does certify that on **February 6, 2014**, she did cause to have served by U.S. Postal Service, regular mail with postage prepaid and return address clearly indicated, copies of the **Affidavit of Default as to Defendant BC Fund and Management, LLC d/b/a BC Fund, LLC** to the following:

Howell V. Bellamy, III, Esquire
Bellamy, Rutenberg, Copeland, Epps, Gavely & Bowers, PA
PO Box 357
Myrtle Beach, SC 29578
Attorney for Defendant Bobby J. Bellamy

Daniel Q. Orvin, Esquire
Womble Carlyle Sandridge & Rice, PLLC
PO Box 999
Charleston, SC 29402-0999
Attorney for Defendant Tyrone Davis

Matthew J. Modica, Esquire
U.S. Attorney's Office
151 Meeting Street, Ste. 200
Charleston, SC 29401
Attorney for Defendant Internal Revenue Service

BC Fund and Management, LLC d/b/a BC Fund, LLC
401 Broadway, Suite 101
Myrtle Beach, SC 29577

BC Fund and Management, LLC d/b/a BC Fund, LLC
c/o William O. Smith
819 17th Avenue North
Surfside Beach, SC 29575

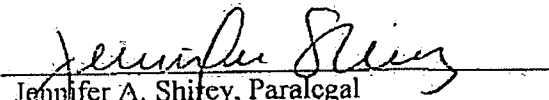

Jennifer A. Shirey, Paralegal
Adams and Reese LLP

Exhibit G2

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2011-CP-26-1809

M&T BANK,)
)
Plaintiff(s),)

Vs.)

AFFIDAVIT OF NON-SERVICE

Tyrone Davis, Bobby J. Bellamy,)
BC Fund and Management, LLC,)
d/b/a BC Fund, LLC, and the United)
States of America through its agency-)
Internal Revenue Service,)

Defendant(s).)

Bobby J. Bellamy,)
)
Third-Party Plaintiff,)

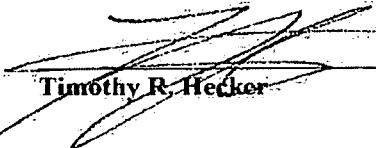
Vs.)

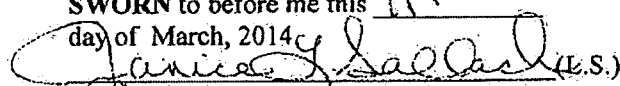
William O. Smith,)
)
Third-Party Defendant.)

Timothy R. Hecker, being duly sworn, deposes as follows:

1. That he is, by profession, a process server in and around the State of South Carolina.
2. That he made due and diligent effort to serve the defendant, BC FUND and MANAGEMENT, LLC d/b/a BC FUND, LLC/William O. Smith, Registered Agent by delivering to him personally copies of the COVER SHEET, ADR, SUMMONS, SECOND AMENDED ANSWER, COUNTERCLAIMS AND CROSS-CLAIMS AND THIRD-PARTY COMPLAINT OF THE DEFENDANT, BOBBY J. BELLAMY herein but that he could never serve this defendant despite attempts to do so at 819 17th Avenue, Myrtle Beach (Surfside Beach), SC 29575 (P.O. Box 15993, Myrtle Beach (Surfside Beach), SC 29575, at 7433 Springside Avenue, Myrtle Beach, SC 29588 and at 401 Broadway, Suite 101, Myrtle Beach, SC 29577; and checks with the USPS and other available records (Auditor's, Assessor's Offices, at Horry County Business License Office and at Myrtle Beach Business License Office), which revealed these to be the last/only addresses connected to this defendant in this area.
3. That interviews and inquiry indicate that this defendant does not live at these addresses and that no forwarding or other indication of any current residence or work place in this area has surfaced.

4. That he is of the opinion that he will be unable to effect personal service on the defendant, at this time in Horry County, South Carolina.


Timothy R. Hecker

SWORN to before me this 11th
day of March, 2014 
Notary Public for South Carolina
My Commission Expires: 9/12/2015

Professional Process Services
600 16th Avenue North, Suite #2
Myrtle Beach, SC 29577

POSTMASTER

29575

HARRY CO. CASE
2011-CP-26-1809

DATE 3-11-14

REQUEST FOR CHANGE OF ADDRESS OR BOXHOLDER
INFORMATION NEEDED FOR SERVICE OF LEGAL PROCESS

Please furnish the new address or the name and street address (if a boxholder) for the following:

Name: WILLIAM O. SMITH / A/B C FUND, LLC,

Address: 819 17TH AVE MB (SSB) 29575
PO BOX 15953 MB (SCB) 29575

The following information is provided in accordance with 39 CFR 265.6 (d) (6) (ii). There is no fee for providing boxholder information. The fee for providing change of address information is waived in accordance with 39 CFR 265.6(d) (1) and (2) and corresponding Administrative Support Manual 352.44a and b.

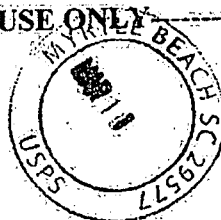
1. Capacity of requester: PROCESS SERVER
2. Regulation that empowers me to serve process: 15-9-40 SC Code 1976 as amended
3. All known parties to the litigation: SEE ATTACHED
4. Court in which the case will be heard: SEE ATTACHED
5. The index number: SEE ATTACHED
6. The capacity in which this individual is to be served: PERSONALLY AND REG. ALER.

I certify that the above information is true and that the address information is needed and will be used solely for service of legal process in connection with actual litigation. (Copy attached)

FOR PROFESSIONAL PROCESS SERVERS, INC.

FOR POST OFFICE USE ONLY

- ☒ No change of address order on file.
☐ Not known at address given.
☐ Moved, left no forwarding address.



NEW ADDRESS: _____

Professional Process Services
600 16th Avenue North, Suite #2
Myrtle Beach, SC 29577

POSTMASTER

29588 HARRY CO. CASC
2011-CP-26-1809

DATE 3-11-14

REQUEST FOR CHANGE OF ADDRESS OR BOXHOLDER
INFORMATION NEEDED FOR SERVICE OF LEGAL PROCESS

Please furnish the new address or the name and street address (if a boxholder) for the following:

Name: WILLIAM O. SMITH / R / AG-FORD / BIA BC FUND AND MGMT, LLC
BC FUND AND MGMT, LLC

Address: 7433 SPRINKSIDE AVE MB, SC-29588

The following information is provided in accordance with 39 CFR 265.6 (d) (6) (ii). There is no fee for providing boxholder information. The fee for providing change of address information is waived in accordance with 39 CFR 265.6(d) (1) and (2) and corresponding Administrative Support Manual 352.44a and b.

1. Capacity of requester: PROCESS SERVER.
2. Regulation that empowers me to serve process: 15-9-40 SC Code 1976 as amended
3. All known parties to the litigation: SEE ATTACHED
4. Court in which the case will be heard: SEE ATTACHED
5. The index number: SEE ATTACHED
6. The capacity in which this individual is to be served PERSONALLY & REG. AGENT

I certify that the above information is true and that the address information is needed and will be used solely for service of legal process in connection with actual litigation. (Copy attached)

FOR PROFESSIONAL PROCESS SERVERS, INC.

FOR POST OFFICE USE ONLY

- ☒ No change of address order on file.
☐ Not known at address given.
☐ Moved, left no forwarding address.

NEW ADDRESS:



Professional Process Services
600 16th Avenue North, Suite #2
Myrtle Beach, SC 29577

POSTMASTER

HERRY CO. CASE DATE 3-11-14
295 77 2014 CP-26-1809

REQUEST FOR CHANGE OF ADDRESS OR BOXHOLDER
INFORMATION NEEDED FOR SERVICE OF LEGAL PROCESS

Please furnish the new address or the name and street address (if a boxholder) for the following:

Name: WILLIAM O. SMITH / RA BC FUND, LLC BC FUND AND MGMT D/B/A

Address: 401 BROADWAY SUITE 101 MB. SC 29577

The following information is provided in accordance with 39 CFR 265.6 (d) (6) (ii). There is no fee for providing boxholder information. The fee for providing change of address information is waived in accordance with 39 CFR 265.6(d) (1) and (2) and corresponding Administrative Support Manual 352.44a and b.

1. Capacity of requester: PROCESS SERVER
2. Regulation that empowers me to serve process: 15-9-40 SC Code 1976 as amended
3. All known parties to the litigation: SEE ATTACHED
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5. The index number: SEE ATTACHED
6. The capacity in which this individual is to be served PERSONALLY REG. AGENT

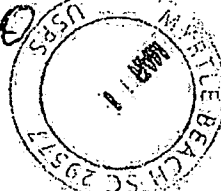
I certify that the above information is true and that the address information is needed and will be used solely for service of legal process in connection with actual litigation. (Copy attached)

FOR PROFESSIONAL PROCESS SERVERS, INC.

FOR POST OFFICE USE ONLY

- ☒ No change of address order on file.
☒ Not known at address given.
☐ Moved, left no forwarding address.

NEW ADDRESS:



2014

PROFESSIONAL PROCESS SERVICES (PPS)

**T. R. HECKER
(843) 424-3300 (Cell)**

March 11, 2014

TO: Bellamy Law Firm
1000 29th Avenue North
Myrtle Beach, SC 29577

ATTN: Howell V. Bellamy, III, Attorney Requesting Service

RE: M&T Bank Vs. Tyrone Davis, Bobby J. Bellamy, BC Fund
and Management, LLC d/b/a BC Fund, LLC, et al.
Case No.: 2011-CP-26-1809

INVOICE

Attempted Service on BC Fund and Management, LLC
d/b/a BC Fund, LLC/William O. Smith, Registered Agent
(Extra time involved in trying to locate/serve) **75.00**

Attempted at 819 17th Avenue, Myrtle Beach (Surfside Beach),
SC 19575 (P.O. Box 15993, Myrtle Beach
(Surfside Beach), SC 29575
at 7433 Springside Avenue, Myrtle Beach, SC 29588
at 401 Broadway, Suite 101, Myrtle Beach, SC 29577

TOTAL AMOUNT DUE UPON RECEIPT: \$75.00

Please make check payable to:

**Professional Process Services
600 16th Avenue North, Suite 2
Myrtle Beach, SC 29577**

Thank You!

Return To:

M&T Bank
P.O. Box 4613
Buffalo, NY 14240

Prepared By:

Ryan Wienhold
2270 Erin Court
P.O. Box 7628
Lancaster, PA 17604

[Space Above This Line For Recording Data]

2007-RE-3033

MORTGAGE

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

- (A) "Security Instrument" means this document, which is dated November 16, 2007 together with all Riders to this document.
(B) "Borrower" is TYRONE DAVIS

Borrower is the mortgagor under this Security Instrument.
(C) "Lender" is M&T Bank

Lender is a
organized and existing under the laws of New York

12520763

12520763

SOUTH CAROLINA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3041 1/01

VMP - 8(SC) 0409.01

Page 1 of 15

Initials: TD

VMP Mortgage Solutions, Inc.

Lender's address is 1 Mt Plaza, Buffalo, NY 14203

Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated November 16, 2007

The Note states that Borrower owes Lender One Hundred Thirty Six Thousand And
Zero/100 Dollars

(U.S. \$136,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic
Payments and to pay the debt in full not later than December 01, 2010

(E) "Property" means the property that is described below under the heading "Transfer of Rights in the
Property."

(F) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges
due under the Note, and all sums due under this Security Instrument, plus interest.

(G) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following
Riders are to be executed by Borrower [check box as applicable]:

☐ Adjustable Rate Rider	☐ Condominium Rider	☐ Second Home Rider
☐ Balloon Rider	☐ Planned Unit Development Rider	☒ 1-4 Family Rider
☐ VA Rider	☐ Biweekly Payment Rider	☐ Other(s) (specify)

(H) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations,
ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final,
non-appealable judicial opinions.

(I) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other
charges that are imposed on Borrower or the Property by a condominium association, homeowners
association or similar organization.

(J) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by
check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic
instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit
or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller
machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse
transfers.

(K) "Escrow Items" means those items that are described in Section 3.

(L) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid
by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i)
damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the
Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the
value and/or condition of the Property.

(M) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on,
the Loan.

(N) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the
Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its
implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to
time, or any additional or successor legislation or regulation that governs the same subject matter. As used
in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard
to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage
loan" under RESPA.

12520763

6(S) (010101)

Page 2 of 18

12520763

Form 3041 1/01

(P) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and assigns, the following described property located in the
County of Horry

(Type of Recording Jurisdiction)

(Name of Recording Jurisdiction)

See Attached Legal Description

Parcel ID Number: 130-00-01-219

which currently has the address of

3664 Sea Mountain Highway

(Street)

Little River

(City), South Carolina 29566

(Zip Code)

("Property Address"):

TO HAVE AND TO HOLD this property unto Lender and Lender's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this 12520763

12520763

VMD-6(SC) 0109101

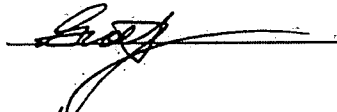
Page 3 of 13

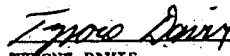
Initials: *TD*

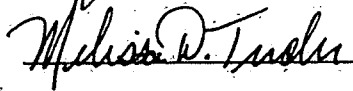
Form 3041 1/01

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this
Security Instrument and in any Rider executed by Borrower and recorded with it.

Signed, sealed and delivered in the presence of:



 (Seal)
TYRONE DAVIS -Borrower



____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

12520763

UMP-S(SC) (0409)01

Page 14 of 15

12520763

Form 3041 1/01

STATE OF SOUTH CAROLINA, Horry

County is:

I, Melissa D. Tucker
TYRONE DAVIS

do hereby certify that

personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 16th day of November, 2007

Melissa D. Tucker
Notary Public for South Carolina

My Commission Expires: 6/16/14

12520763

VMD-6(SC) (2-10-01).01

Page 16 of 16

Initials: AD

12520763

Form 3041 1/01

Exhibit "A"
Legal Description

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 being the identical property conveyed to Mortgagor herein by deed of BC Fund LLC, which deed is recorded simultaneous herewith in the Office of the Register of Deeds for Horry County, South Carolina.

TMS# 130-00-01-042

1-4 FAMILY RIDER (Assignment of Rents)

THIS 1-4 FAMILY RIDER is made this 16th day of November, 2007
and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed
of Trust, or Security Deed (the "Security Instrument") of the same date given by the
undersigned (the "Borrower") to secure Borrower's Note to M&T Bank

(the
"Lender") of the same date and covering the Property described in the Security Instrument
and located at: 3664 Sea Mountain Highway, Little River, SC 29566

[Property Address]

1-4 FAMILY COVENANTS. In addition to the covenants and agreements made in the
Security Instrument, Borrower and Lender further covenant and agree as follows:

A. ADDITIONAL PROPERTY SUBJECT TO THE SECURITY INSTRUMENT. In addition to
the Property described in the Security Instrument, the following items now or hereafter
attached to the Property to the extent they are fixtures are added to the Property description,
and shall also constitute the Property covered by the Security Instrument: building materials,
appliances and goods of every nature whatsoever now or hereafter located in, on, or used, or
intended to be used in connection with the Property, including, but not limited to, those for
the purposes of supplying or distributing heating, cooling, electricity, gas, water, air and light,
fire prevention and extinguishing apparatus, security and access control apparatus, plumbing,
bath tubs, water heaters, water closets, sinks, ranges, stoves, refrigerators, dishwashers,
disposals, washers, dryers, awnings, storm windows, storm doors, screens, blinds, shades,
curtains and curtain rods, attached mirrors, cabinets, paneling and attached floor coverings,
all of which, including replacements and additions thereto, shall be deemed to be and remain
a part of the Property covered by the Security Instrument. All of the foregoing together with
the Property described in the Security Instrument (or the leasehold estate if the Security
Instrument is on a leasehold) are referred to in this 1-4 Family Rider and the Security
Instrument as the "Property."

B. USE OF PROPERTY; COMPLIANCE WITH LAW. Borrower shall not seek, agree to or
make a change in the use of the Property or its zoning classification, unless Lender has
agreed in writing to the change. Borrower shall comply with all laws, ordinances, regulations
and requirements of any governmental body applicable to the Property.

C. SUBORDINATE LIENS. Except as permitted by federal law, Borrower shall not allow
any lien inferior to the Security Instrument to be perfected against the Property without
Lender's prior written permission.

D. RENT LOSS INSURANCE. Borrower shall maintain insurance against rent loss in
addition to the other hazards for which insurance is required by Section 5.

12520763

12520763

MULTISTATE 1- 4 FAMILY RIDER - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
Form 3170 1/01

Wolters Kluwer Financial Services

VMP®-57R (0411).01

Page 1 of 3

Initials: *TD*

E. "BORROWER'S RIGHT TO REINSTATE" DELETED. Section 19 is deleted.

F. BORROWER'S OCCUPANCY. Unless Lender and Borrower otherwise agree in writing, Section 6 concerning Borrower's occupancy of the Property is deleted.

G. ASSIGNMENT OF LEASES. Upon Lender's request after default, Borrower shall assign to Lender all leases of the Property and all security deposits made in connection with leases of the Property. Upon the assignment, Lender shall have the right to modify, extend or terminate the existing leases and to execute new leases, in Lender's sole discretion. As used in this paragraph G, the word "lease" shall mean "sublease" if the Security Instrument is on a leasehold.

H. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION. Borrower absolutely and unconditionally assigns and transfers to Lender all the rents and revenues ("Rents") of the Property, regardless of to whom the Rents of the Property are payable. Borrower authorizes Lender or Lender's agents to collect the Rents, and agrees that each tenant of the Property shall pay the Rents to Lender or Lender's agents. However, Borrower shall receive the Rents until: (i) Lender has given Borrower notice of default pursuant to Section 22 of the Security Instrument, and (ii) Lender has given notice to the tenant(s) that the Rents are to be paid to Lender or Lender's agent. This assignment of Rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of default to Borrower: (i) all Rents received by Borrower shall be held by Borrower as trustee for the benefit of Lender only, to be applied to the sums secured by the Security Instrument; (ii) Lender shall be entitled to collect and receive all of the Rents of the Property; (iii) Borrower agrees that each tenant of the Property shall pay all Rents due and unpaid to Lender or Lender's agents upon Lender's written demand to the tenant; (iv) unless applicable law provides otherwise, all Rents collected by Lender or Lender's agents shall be applied first to the costs of taking control of and managing the Property and collecting the Rents, including, but not limited to, attorney's fees, receiver's fees, premiums on receiver's bonds, repair and maintenance costs, insurance premiums, taxes, assessments and other charges on the Property, and then to the sums secured by the Security Instrument; (v) Lender, Lender's agents or any judicially appointed receiver shall be liable to account for only those Rents actually received; and (vi) Lender shall be entitled to have a receiver appointed to take possession of and manage the Property and collect the Rents and profits derived from the Property without any showing as to the inadequacy of the Property as security.

If the Rents of the Property are not sufficient to cover the costs of taking control of and managing the Property and of collecting the Rents any funds expended by Lender for such purposes shall become indebtedness of Borrower to Lender secured by the Security Instrument pursuant to Section 9.

Borrower represents and warrants that Borrower has not executed any prior assignment of the Rents and has not performed, and will not perform, any act that would prevent Lender from exercising its rights under this paragraph.

Lender, or Lender's agents or a judicially appointed receiver, shall not be required to enter upon, take control of or maintain the Property before or after giving notice of default to Borrower. However, Lender, or Lender's agents or a judicially appointed receiver, may do so at any time when a default occurs. Any application of Rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of Rents of the Property shall terminate when all the sums secured by the Security Instrument are paid in full.

I. CROSS-DEFAULT PROVISION. Borrower's default or breach under any note or agreement in which Lender has an interest shall be a breach under the Security Instrument and Lender may invoke any of the remedies permitted by the Security Instrument.

12520763

12520763

VMP 6-57R (0411).01

Page 2 of 3

Initials: TD
Form 3170 1/01

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

SUMMONS AND NOTICE

Bobby J. Bellamy,

PLAINTIFF,

(NON-JURY MORTGAGE
FORECLOSURE)

vs.

C/A NO: 2011-CP-26-1809

BC Fund LLC,
Tyrone Davis, and
William O. Smith

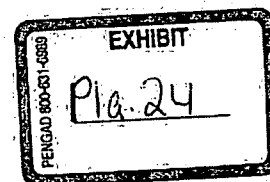
DEFENDANT(S)

CLERK OF COURT
JUL 30 AM 10:25
Horry County**NOTICE OF INTENT TO ENFORCE FORFEITURE PROVISIONS OF
CONTRACT FOR DEED****TO: THE DEFENDANT(S) ABOVE NAMED:**

YOU ARE HEREBY SUMMONED and required to appear and defend by answering the **AMENDED** Complaint in the action, a copy of which is hereby served upon you, and to serve a copy of your Answer on the subscribers, within thirty (30) days after the service hereof, exclusive of the day of such service; except that the United States of America, if named, shall have sixty (60) days to answer after the service hereof, exclusive of the day of such service; and if you fail to do so, judgment of default will be rendered against you for the demanded in the complaint.

THIS NOTICE CONCERNS THE CONTRACT FOR DEED ENTERED into by and between Bobby J. Bellamy (SELLER) and BC FUND AND MANAGEMENT LLC (PURCHASER), concerning the property located at the following address: AND ALL SINGULAR that certain piece, parcel or tract of land, situated, 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.

This notice is to inform you that you have failed to meet the terms and conditions of the Contract for Deed and you are in default based upon the following reason(s):



1. That B.C. Funding and Management, LCC is operating and is in good standing as of this date. The state of incorporation is an organization in South Carolina for profit. Registered Agent name is William O. Smith address is 819 17th Avenue North in Surfside Beach, South Carolina 29575 with the Secretary of State effective date 11/02/2005.
2. That on or about July 2007 I, Bobby Bellamy and BC Fund LLC Agent, William O. Smith, agreed to develop 3.9 acres of my (Bobby Bellamy) property. The development project known as Bellamy and Bellamy Enterprise was to build a development of single family homes. The project was to be turn-key to completion. (See Exhibits and Contract for Deed.)
3. That 3.9 acres of property was transferred by Bobby J. Bellamy with Quitclaim to BC Fund LCC for the sole purpose of developing the 3.9 acres of property. BC Fund LCC Agent and employee Tyrone Davis was to seek total finance of that project. That same property was deeded to BC Fund Agent Tyrone Davis in a Warranty Deed by sole BC Fund LCC Agent, William O. Smith, in November of 2007, in the sum of \$170, 000. For the purpose of start up of the project. Tyrone Davis mortgaged that same property with lender, M&T Bank for the sum of \$136, 000. (See Exhibits and Contract for Deed.)
4. That as of this date no work as been presented to me (Bobby J. Bellamy) by BC Fund LLC from July 2007 to August 2011 as in agreement.
5. That BC Fund LLC Agent, Tyrone Davis, failed to make agreed upon payments to M&T Bank causing the bank to foreclose on property.

You have been provided with Notice of Default and have failed to cure the default referenced above. Therefore, the Seller has elected to begin forfeiture and termination of the Contract for the Deed.

You may stop the forfeiture by curing the default. To cure the default, you must provide the answers to this summons within **thirty (30) days** from date of this notice as stated above.

IF YOU DO NOT DO THE ABOVE THINGS WITHIN 30 DAYS, YOUR INTEREST IN THE PROPERTY SHALL BE FORFEITED AND THE CONTRACT WILL BE TERMINATED. IF THE DEFAULT IS NOT CURED, YOU ARE REQUESTED TO VACATE THE PROPERTY BY THE DATE ABOVE.

AT THE END OF THE PERIOD ABOVE, YOU WILL LOSE ALL THE MONEY YOU HAVE PAID ON THE CONTRACT; YOU WILL LOSE YOUR RIGHT TO POSSESSION OF THE PROPERTY; YOU MAY LOSE YOUR RIGHT TO ASSERT ANY CLAIMS OR DEFENSES THAT YOU MIGHT HAVE; AND YOU WILL BE EVICTED FROM THE PROPERTY IF YOU DO NOT VACATE IT VOLUNTARILY. IF YOU HAVE ANY QUESTIONS ABOUT THIS NOTICE, CONTACT AN ATTORNEY IMMEDIATELY.

The undersigned states that on August 29, 2011, he/she caused a true and correct copy of the Plaintiff's Notice of Foreclosure Intervention to be served upon the party identified below by depositing in the United States mail, proper postage affixed and addressed as follows:

8-29-2011
(DATE)


(SIGNATURE OF SELLER)

*Person sworn before me
This 29th day of August
2011 At (Longs) Porters SC*

Bobby Bellamy
3664 Sea Mountain Highway
Little River, SC 29566
(843) 742-3782 or (843) 997-0982


S.C. Notary Public
my commission Expires 2016

M&T Bank
P. O. Box 4613
Buffalo, NY 14240

Korn Law Firm P. A.
P.O. Box 11264
1300 Pickens Street,
Columbia, SC 29201

Tyrone Davis, BC Funding Agent
1921 South Island Rd.
Georgetown, SC 29440

William O. Smith, BC Funding Agent
819 17th Avenue North
Surfside Beach, SC 29575

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

NOTICE OF FAILURE TO CURE
DEFAULT

Bobby J. Bellamy,

PLAINTIFF,

(NON-JURY MORTGAGE
FORECLOSURE)

Vs.

C/A NO: 2011-CP-26-1809

BC Fund LLC,
Tyrone Davis, and
William O. Smith

DEFENDANT(S)

HORRY COUNTY
11 OCT - 5 AM 10:03
MELANIE HOGGINS-WARD
CLERK OF COURT

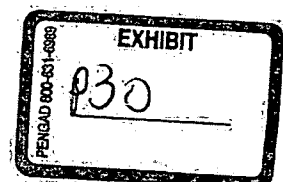
**Notice of Termination or Cancellation of a Contract for the
Sale of Real Property due to Default**

October 3 2011

TO: THE DEFENDANT(S) ABOVE NAMED:

THIS IS TO NOTIFY YOU THAT, PURSUANT TO THE TERMS OF THE AGREEMENT DATED JULY 2007, BETWEEN THE UNDERSIGNED, BOBBY BELLAMY AND YOU AS PURCHASER, BC FUND LLC, TYRONE DAVIS, WILLIAM SMITH FOR THE SALE OF THE REAL PROPERTY DESCRIBE IN EXHIBIT A ATTACHED HERETO AND MADE A PART OF THIS NOTICE BY REFERENCE, THE UNDERSIGNED ELECTS TO CANCEL AND TERMINATE THE AGREEMENT FOR THE FOLLOWING REASONS: (SET FORTH FACT CONSTITUTING DEFAULT)

THIS NOTICE CONCERNS THE CONTRACT FOR DEED ENTERED into by and between Bobby J. Bellamy (SELLER) and BC FUND AND MANAGEMENT LLC (PURCHASER), concerning the property located at the following address: AND ALL SINGULAR that certain piece,



parcel or tract of land, situated, 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 y 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. Owned by Bobby Bellamy

THAT DEFENDANT WAS SUMMONED AND REQUIRED TO APPEAR AND DEFEND BY ANSWERING THE AMENDED COMPLAINT IN THE ACTION, A COPY OF WHICH WAS SERVED UPON THE DEFENDANTS.

That notices inform the Defendants that they failed to meet the terms and conditions of the Contract for Deed and was in default based upon the following reason(s):

1. That B.C. Funding and Management, LCC is operating and is in good standing as of this date. The state of incorporation is an organization in South Carolina for profit. Registered Agent name is William O. Smith address is 819 17th Avenue North in Surfside Beach, South Carolina 29575 with the Secretary of State effective date 11/02/2005.
2. That on or about July 2007 I, Bobby Bellamy and BC Fund LLC Agent, William O. Smith, agreed to develop 3.9 acres of my (Bobby Bellamy) property. The development project known as Bellamy and Bellamy Enterprise was to build a development of single family homes. The project was to be turn-key to completion. (See Exhibits and Contract for Deed.)
3. That 3.9 acres of property was transferred by Bobby J. Bellamy with Quitclaim to BC Fund LCC for the sole purpose of developing the 3.9 acres of property. BC Fund LCC Agent and employee Tyrone Davis was to seek total finance of that project. That same property was deeded to BC Fund Agent Tyrone Davis in a Warranty Deed by sole BC Fund LCC Agent, William O. Smith, in November of 2007, in the sum of \$170,000. For the purpose of start up of the project. Tyrone Davis mortgaged that same property with lender, M&T Bank for the

sum of \$136,000. (See Exhibits and Contract for Deed.)

4. That as of this dates no work as been presented to me (Bobby J. Bellamy) by BC Fund LLC from July 2007 to August 2011 as in agreement.
5. That BC Fund LLC Agent, Tyrone Davis, failed to make agreed upon payments to M&T Bank causing the bank to foreclose on property.

THAT A COPY OF THE DEFENDENTS ANSWERS BE SERVED ON THE SUBSCRIBERS, WITHIN THIRTY (30) DAYS AFTER AUGUST 30, 2011. THE SERVICE THEREOF, EXCLUSIVE OF THE DAY OF SUCH SERVICE THAT DEFENDANT FAILED TO DO SO BEFORE DUE DATE OCTOBER 1, 2011. THAT JUDGMENT OF DEFAULT BE RENDERED AGAINST THEM FOR THE DEMANDED IN THE COMPLAINT

THAT DEFENDANT DID NOT CURE DEFAULT WITHIN 30 DAYS ENDING ON OCTOBER 1, 2011. THAT DEFENDENTS INTEREST IN THE PROPERTY IS FORFEITED AND THE CONTRACT TERMINATED.

THAT DEFENDANT LOSES ALL THE MONEY THEY HAVE PAID ON THE CONTRACT; THEY LOSE THE RIGHT TO POSSESSION OF THE PROPERTY; THEY LOSE THE RIGHT TO ASSERT ANY CLAIMS OR DEFENSES THAT THEY MIGHT HAVE;

THAT DEFENDENTS BE EVICTED FROM THE PROPERTY, IF THEY DO NOT VACATE IT VOLUNTARILY.

PLEASE TAKE NOTICE THAT pursuant to the Supreme Court of South Carolina Administrative Order 2011-05-02-01 I, Bobby Bellamy, acting as Attorney Pro Se in my own defense of this foreclosure action due here by request for the purpose of foreclosure intervention in resolving the above referenced foreclosure action. I am sending notice to Korn Law Firm, P. A., P. O. Box 11264, 1300 Pickens Street, Columbia, SC 29201, BC Fund LLC Agent(s) Tyrone Davis and of William O. Smith by depositing copies of same into the United States Mail, first class postage prepaid, addressed as shown below:

M&T Bank
P. O. Box 4613
Buffalo, NY 14240

Korn Law Firm P. A.
P.O. Box 11264
1300 Pickens Street,
Columbia, SC 29201

Tyrone Davis, BC Funding Agent
1921 South Island Rd.
Georgetown, SC 29440

William O. Smith, BC Funding Agent
819 17th Avenue North
Surfside Beach, SC 29575

The undersigned states that on _____, 2011, he/she caused a true and correct copy of the Plaintiff's Request for Foreclosure Intervention to be served upon the party identified above by depositing in the United States mail, proper postage affixed and addressed as follows:

10/5/11
(DATE)

Bobby Bellamy
(SIGNATURE OF SELLER)

Bobby Bellamy, Attorney Pro Se
3664 Sea Mountain Highway
Little River, SC 29566
(843) 742-3782 or (843) 997-0982

David Wilburn
Notary Public
Horry County SC
D. Wilburn 10/5/11

Notary Public
My commission expires
10/20/2013

Exhibit K

Page 1 of 3

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

SUMMONS AND NOTICE

M&T BANK,
PLAINTIFF

(NON-JURY MORTGAGE
FORECLOSURE)

Bobby Bellamy,
DEFENDANT, THIRD PARTY PLAINTIFF

C/A NO: 2011-CP-26-1809

William O. Smith,
THIRD PARTY DEFENDANT

Tyrone Davis,
DEFENDANT

SUMMONS ON A THIRD-PARTY COMPLAINT

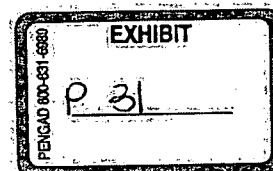
TO: THIRD PARTY DEFENDANT ABOVE NAMED:
William O Smith

A lawsuit has been filed against Defendant Bobby Bellamy, who as Third Party Plaintiff is making this claim against you to pay part or all of what the defendant may owe to the Plaintiff M&T Bank.

YOU ARE HEREBY SUMMONED and required to appear and defend by answering the AMENDED Complaint in the action, a copy of which is hereby served upon you, and to serve a copy of your Answer on the subscribers, within thirty (30) days after the service hereof, exclusive of the day of such service; except that the United States of America, if named, shall have sixty (60) days to answer after the service hereof, exclusive of the day of such service; and if you fail to do so, judgment of default will be rendered against you for the demanded in the complaint.

THIS NOTICE CONCERNS THE CONTRACT FOR DEED ENTERED into by and between Bobby J. Bellamy (SELLER) and BC FUND AND MANAGEMENT LLC (PURCHASER), concerning the property located at the following address: AND ALL SINGULAR that certain piece, parcel or tract of land, situated, 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

180



Mountain Highway and bounded on the South by Tract B owned y 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.

This notice is to inform you that you have failed to meet the terms and conditions of the Contract for Deed and you are in default based upon the following reason(s):

1. That B.C. Funding and Management, LCC is operating and is in good standing as of this date. The state of incorporation is an organization in South Carolina for profit. Registered Agent name is William O. Smith address is 819 17th Avenue North in Surfside Beach, South Carolina 29575 with the Secretary of State effective date 11/02/2005.
2. That on or about July 2007 I, Bobby Bellamy and BC Fund LLC Agent, William O. Smith, agreed to develop 3.9 acres of my (Bobby Bellamy) property. The development project known as Bellamy and Bellamy Enterprise was to build a development of single family homes. The project was to be turn-key to completion. (See Exhibits and Contract for Deed.)
3. That 3.9 acres of property was transferred by Bobby J. Bellamy with Quitclaim to BC Fund LCC for the sole purpose of developing the 3.9 acres of property. BC Fund LCC Agent and employee Tyrone Davis was to seek total finance of that project. That same property was deeded to BC Fund Agent Tyrone Davis in a Warranty Deed by sole BC Fund LCC Agent, William O. Smith, in November of 2007, in the sum of \$170, 000. For the purpose of start up of the project. Tyrone Davis mortgaged that same property with lender, M&T Bank for the sum of \$136, 000. (See Exhibits and Contract for Deed.)
4. That as of this date no work as been presented to me (Bobby J. Bellamy) by BC Fund LLC from July 2007 to August 2011 as in agreement.
5. That BC Fund LLC Agent, Tyrone Davis, failed to make agreed upon payments to M&T Bank causing the bank to foreclose on property.

You have been provided with Notice of Default and have failed to cure the default referenced above. Therefore, the Seller has elected to begin forfeiture and termination of the Contract for the Deed.

You may stop the forfeiture by curing the default. To cure the default, you must provide the answers to this summons within thirty (30) days from date of this notice as stated above.

IF YOU DO NOT DO THE ABOVE THINGS WITHIN 30 DAYS, YOUR

INTEREST IN THE PROPERTY SHALL BE FORFEITED AND THE CONTRACT WILL BE TERMINATED. IF THE DEFAULT IS NOT CURED, YOU ARE REQUESTED TO VACATE THE PROPERTY BY THE DATE ABOVE.

AT THE END OF THE PERIOD ABOVE, YOU WILL LOSE ALL THE MONEY YOU HAVE PAID ON THE CONTRACT; YOU WILL LOSE YOUR RIGHT TO POSSESSION OF THE PROPERTY; YOU MAY LOSE YOUR RIGHT TO ASSERT ANY CLAIMS OR DEFENSES THAT YOU MIGHT HAVE; AND YOU WILL BE EVICTED FROM THE PROPERTY IF YOU DO NOT VACATE IT VOLUNTARILY. IF YOU HAVE ANY QUESTIONS ABOUT THIS NOTICE, CONTACT AN ATTORNEY IMMEDIATELY.

The undersigned states that on Nov. 2nd, 2011, he/she caused a true and correct copy of the Third Party Plaintiff's Notice of Summons on a Third Party Complaint be served upon the party identified below by depositing in the United States mail, proper postage affixed and addressed as follows:

11/2/11
Date

Bobby Bellamy
Defendant, Third Party Plaintiff

Bobby Bellamy, Attorney Pro Se
3664 Sea Mountain Highway
Little River, SC 29566
(843) 742-3782 or (843) 997-0982

M&T Bank
P. O. Box 4613
Buffalo, NY 14240

Korn Law Firm P. A.
P.O. Box 11264
1300 Pickens Street,
Columbia, SC 29201

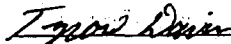
Tyrone Davis, BC Funding Agent
1921 South Island Rd.
Georgetown, SC 29440

William O. Smith, BC Funding Agent
819 17th Avenue North
Surfside Beach, SC 29575

11/2/11 Elizabeth S. Hardwick



BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained
in this 1-4 Family Rider.


TYRONE DAVIS

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

12520763

VMP®-57R (0411).01

Page 3 of 3

12520763

Form 3170 1/01

Exhibit L

ELECTRONICALLY FILED - 2018 May 14 4:56 PM - HORRY - COMMON PLEAS - CASE#2011CP2601809

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

M&T Bank,)

Plaintiff,)

v.)

Tyrone Davis, Bobby J. Bellamy, BC Fund)
and Management, LLC d/b/a BC Fund, LLC,)
and the United States of America through its)
agency - Internal Revenue Service,)

Defendants.)

Bobby J. Bellamy,)

Third-Party Plaintiff,)

v.)

William O. Smith,)

Third-Party Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2011-CP-26-1809

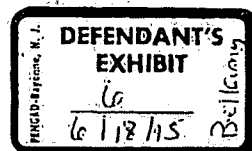
AFFIDAVIT OF MELANIE
HUGGINS-WARD
CLERK OF COURT FOR HORRY COUNTY

FILED
HORRY COUNTY
2015 JUN 11 AM 8:10
MELANIE HUGGINS-WARD
CLERK OF COURT

Personally appeared before me the undersigned, who being duly sworn under oath, deposes
and says:

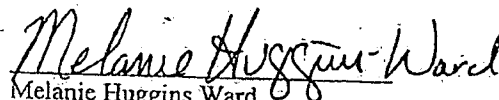
1. My name is Melanie Huggins Ward. I am over the age of 18 and I have personal knowledge of the facts herein.
2. I am the Horry County Clerk of Court. I have been employed in this position from January 2, 2005 to the present date.
3. My duties consist of filing civil and family court documents, and being the custodian of civil, criminal, and family court documents.
4. On February 25, 2011, Plaintiff, M&T Bank, brought this action against Defendants, Tyrone Davis, Bobby J. Bellamy, and BC Fund, LLC.

Page 1 of 2



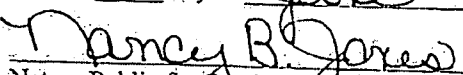
5. In December 2013, Plaintiff filed a Second Amended Complaint in which Plaintiff identified BC Fund, LLC as "BC Fund Management, LLC d/b/a BC Fund, LLC" in the case caption.
6. I have been asked to determine whether any document was filed in the Horry County Clerk's office in this matter regarding the change in designation from "BC Fund, LLC" to "BC Fund Management, LLC d/b/a BC Fund, LLC". The file in this matter, which this office maintains, does not contain nor does this office have any record that shows BC Fund, LLC and BC Fund Management, LLC d/b/a BC Fund, LLC are the same legal entity. There is also nothing in the file which indicates that the caption was formally changed by Plaintiff to reflect the change in designation from BC Fund, LLC to BC Fund Management, LLC d/b/a BC Fund, LLC.
7. I affirm that the foregoing is true to the best of my personal knowledge or on information and belief; I understand that the penalty for intentionally providing false information involves prosecution for perjury and the penalties associated with doing the same.

Further the affiant sayeth not.


Melanie Huggins Ward
Clerk of Court of Horry County

Sworn to and subscribed before

me this 11th day of June, 2015



Notary Public for South Carolina

My Commission Expires: 1-21-19

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM HORY COUNTY

Court of Master-In-Equity

Judge Cynthia Howe, Master-In-Equity

Appellate Case No. 2018-001523

M&T Bank, Respondent,

v.

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

Of which Bobby J. Bellamy is the Appellant,

And

Tyrone Davis; BC Fund and Management, LLC d/b/a BC
Fund, LLC are Respondents,

And

Bobby J. Bellamy, Appellant

v.

William O. Smith, Respondent

RECEIVED

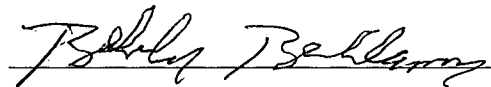
SEP 26 2018

SC Court of Appeals

CERTIFICATE OF APPELLANT

The Appellant, Bobby J. Bellamy, Attorney Pro se certifies that the Record on Appeal contains material and proposed matters that are previously designated to be included in the Designation of Matter under Rule 209 and 210. The Record on Appeal comply with the requirements of Rule 267. The undersigned hereby certifies that this Record on Appeal contains all true materials proposed to be included by the Appellant in this case.

September 25, 2018



Bobby J Bellamy, Attorney Pro se
3664 Sea Mountain Highway,
Little River, South Carolina 29566
843 457-3625
Attorney for the Appellant

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM HORY COUNTY

Court of Master-In-Equity

Judge Cynthia Howe, Master-In-Equity

Appellate Case No. 2018-001523

M&T Bank, Respondent,

v.

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

Of which Bobby J. Bellamy is the Appellant,

And

Tyrone Davis; BC Fund and Management, LLC d/b/a BC
Fund, LLC are Respondents,

And

Bobby J. Bellamy, Appellant

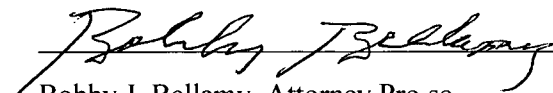
v.

William O. Smith, Respondent

CERTIFICATE OF COUNSEL

The Undersigned, hereby certifies that this Record on Appeal complies with Rule 211(b), SCACR.

September 25, 2018



Bobby J. Bellamy, Attorney Pro se
3664 Sea Mountain Highway
Little River, South Carolina, 29566
843 457-3625