

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

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SC Court of Appeals

**FINAL BRIEF OF APPELLANT**

Bobby J. Bellamy, Attorney Pro se  
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## STATEMENT OF ISSUES ON APPEAL

1. Did the Master in Equity erred in failing to find and conclude that BC Fund LLC deed to Tyrone Davis is null and void?
2. Did the Master in Equity err On July 13, 2018, by granting the Plaintiff, M&T Bank the right to foreclosure and approved reformation of all deeds for reason of mutual mistake without clear, cogent and convincing evidence?

## STATEMENTS OF THE CASE

The Appellant, Bobby Bellamy employed William O. Smith, one of the organizers of BC Fund and Management LLC (**Exhibit E1. R.p 145-146b**) to develop a project to provide 96 units of low income housing (**Exhibit D. R.p. 125-128**) on 3.9 acre of his and 3.9 acres of Tommy Bellamy's property in July of 2007. (**Exhibit F. R.p. 154**) William O. Smith agreed to provide total financing of the project that would include a government grant and a construction loan from M&T Bank. (**Exhibit D R.p. 128**) Bobby J Bellamy and Tommy Bellamy transferred their property to BC Fund LLC. (**Exhibit A1. R.p. 107-109**), (**Exhibit A2. R.p. 110-112**). According to William O. Smith, BC fund LLC would be organized to open a bank account for financial holdings and distributions for the project after completion of the project Bellamy and Bellamy Enterprise would be organized (**Exhibit D1. R.p. 129-144**) for rents and Management. William O. Smith did not secure a grant or construction loan for the project as agreed. William O. Smith failed to provide construction, engineering or organization of the project. BC Fund LLC was dissolved. Tommy Bellamy's property was transferred from BC Fund LLC back to Tommy Bellamy. (**Exhibit C1. R.p. 116-118**) Bobby Bellamy's property was fraudulently sold. William O Smith fraudulently sold the property as alleged sole member of BC Fund LLC to associate Tyrone Davis (**Exhibit B. R.p. 113-115**) without contacting Tommy Bellamy and Bobby Bellamy owners and members of BC Fund LLC, for permission and failed to obtain a certificate of authority for approval to sell the property. William O. Smith embezzled the proceeds of the loan. Tyrone Davis purchased the property with mortgage from M&T Bank (**Exhibit H. R.p. 165-172**) (**R.p.183**). Tyrone Davis failed to make the payments. On February 25, 2011 (**Complaint R.p. 38-49**)... (**Exhibit C2. R.p. 119-124**)

August 30, 2011. Third party Plaintiff, Bobby J. Bellamy pro se filed responsive pleading **Notice of Intent to Enforce Forfeiture Provisions of Contract for Deed.** (**Exhibit I. R.p. 173-175**)

October 5, 2011 Third party Plaintiff, Bobby J. Bellamy pro se filed another responsive pleading **Notice of Termination or Cancellation of a Contract for the Sale of Real Property due to Default of Third Party defendant, William O. Smith.** (**Exhibit J. R.p. 176-179**)

October 31, 2011. Defendant, Bobby J. Bellamy pro se filed **Affidavit to Answer to Foreclosure requesting foreclosure intervention (Answer R.p. 60-61)**... M&T Bank Plaintiff vs Bobby Bellamy, Tyrone Davis, William O. Smith, and BC Fund LLC.

November 2, 2011 **Third Party Plaintiff, Bobby J. Bellamy pro se filed Summons and Complaint** on Third-Party, Defendant William O. Smith. (**Exhibit K. R.p. 180-182**)

November 29, 2011 Defendant Tyrone Davis filed a Reply to Bellamy's Summons and Complaint.

May 16, 2012 **Defendant Bobby J. Bellamy's Attorney filed Amended Answer, Counterclaim and Cross-Claim**... asking the court to declare that BC Fund LLC and Davis Deed and Mortgage are void with no legal existence. (**Exhibit E2. R.p. 147**)

May 29, 2012 Plaintiff filed Reply to Bellamy's Amended Answer, Counterclaim and Cross-claim ...

December 31, 2012 Defendant filed Second Amended Answer, Counterclaims, and Cross-claim

August 29, 2013, **Plaintiff filed a Motion to Amend the Complaint**...request that the court reform the BC Fund LLC deed to designate BC Fund and Management LLC. (**Complaint R.p. 50-59**).

November 8, 2013 the **Master –in –Equity Order granting Plaintiff's Motion to Amend**, adding BC Fund and Management LLC D/B/A BC Fund LLC **Order (R.p. 5-9)**.

February 10, 2014 Defendant, filed **Notice for Motion and Motion for Summary Judgement** in which asserts grounds for defense. (**Motion R.p. 62-71**) ... (**R.p. 72-74**)

February 19, 2014 Plaintiff filed a Reply to Motion for Summary Judgement.

March 18, 2015 the Master-in-Equity filed an Order that Defendants counterclaim for civil conspiracy dismissed with prejudice.

May 4, 2018 the Master-in-Equity filed Order and Judgement of Foreclosure and Sale. (**Order R.p. 10-37**) (**Motion R.p 75-93**) (**Response R.p 94-106**) .....

## STANDAND OF REVIEW

When reviewing the grant of a summary judgment, this court applies the same standard that governed the trial court; summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002); see also Rule 56(c), SCRPC. "On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the appellant, the non-moving party below." Willis v. Wu, 362 S.C. 146, 151, 607 S.E.2d 63, 65 (2004).

## FACTS

### THE FACTS THAT ARE RELIVANT TO THE ARGUMENT

1. Fact is that in order to transact business in the State of South Carolina. The Secretary of State, upon request and payment of the requisite fee, shall furnish to any person a certificate of existence for a limited liability company if the records filed in the office of the Secretary of State show that the company has been formed under Section 33-43-201

and the Secretary of State has not filed a statement of termination pertaining to the company.

2. Fact is when a member transfers a transferable interest, the transferor retains the rights of a member other than the interest in distributions transferred and retains all duties and obligations of a member.
3. Fact is a limited liability company member cannot be held liable for the malfeasance of a limited liability company by virtue of his membership in the limited liability company alone; in other words, he must do more than merely be a member in order to be liable personally for an obligation of the limited liability company.
4. Fact is when an agent acting with actual or apparent authority makes a contract on behalf of a disclosed principal, (1) the principal and the third party are parties to the contract; and (2) the agent is not a party to the contract unless the agent and third party agree otherwise.
5. Fact is by applying for a certificate of authority to transact business in this State, the foreign limited liability company agrees to be subject to the jurisdiction of the Department of Revenue and Taxation and the South Carolina courts to determine its South Carolina tax liability, including withholding and estimated taxes, together with any related interest and penalties, if any. Applying for a certificate of authority is not an admission of tax liability.

#### ARGUMENT

**1. Because the Master-in-Equity's failure to hear pleading and rule on the Third party plaintiff, Bobby Bellamy, pro se Notice of Intent to enforce forfeiture provision of contract for deed dated August 30, 2011, and Summons and Complaint dated November 8, 2011 on Third party defendant, William O. Smith and secondly, because the Master-in-Equity fail to properly rule by statute on all points of law presented by counsel for the defendant, Bobby Bellamy as defense in the Notice for Motion for Summary Judgement dated February 10, 2014 the Master- in- Equity's Order and Judgement was premature.**

The Master-in-Equity erred by failure to recognize the fact that the third party plaintiff had a constitutional right to proceed as pro se. (**Answer R.p. 60-61**), (**Exhibit I R.p.173-175**), (**Exhibit J. R.p.176-179**), (**Exhibit K R.p.180-182**) "The court will not hold a layman to any lesser standard than is applied to an attorney." Goodson vs. Am. Bankers Ins. Co., 295 S.C. 400,403, 398 S.E. 2d 687,689 (Ct.App.1988); see also Rouvet vs Rouvet, 388 S.C. 301,310,696 S.E. 2d 204,208 (Ct. App.2010). The Master-In-Equity provided no reason, cited no authority, made no reference to a motion or other petition and imposed no bond amount for appeals bond at the bond hearing for appeal. (**Order R.p.13 No. 8**), (**Order R.p. 16 No. 25**),

**2. Because the Master- In- Equity erred by order of reformation of the mortgage and deed for the plaintiff for reason of mutual mistake without clear, cogent and convincing evidence that the mistake was a mutual one that prevents the instrument from embodying**

**the parties, actual original agreement the Master- In- Equity Order of Reformation of the mortgage and deed was unfounded.**

The Master erred by Order of Reformation of the mortgage and deed by failing to consider the original **contract for services** that the third party defendant, William O. Smith failed to provide. **(Exhibit D. R.p.125-128)**. The defendants in this case failed to provide the court with a Certificate of Acceptance and authority as required to file for DBA to the South Carolina Secretary of State, authorizing BC Fund and Management LLC D/B/A BC Fund LLC to transact business of selling property in a trade name in South Carolina. **(Order R.p. 5-9)** The Master erred in failing to find and conclude that BC Fund LLC deed to Tyrone Davis is null and void because BC Fund LLC did not exist on the date of conveyance, **(Motion R.p. 76-79 No.1)** **(Response R.p. 95-98 No.1)**, **(Order R.p. 21-23 No.1)** William O. Smith was not the sole member of BC Fund LLC and was not authorized to transfer interest in the property of BC Fund LLC to the purchaser Tyrone Davis. **(Exhibit A1. R.p. 107-109)**, **(Exhibit A2. R.p. 110-112)** BC Fund LLC could not transact business of selling property in South Carolina without a Certificate of Authority from the Secretary of State of South Carolina: To reform a deed, there must be evidence that the parties made a mistake. This mistake must be one of fact and not of law. The mistake must be mutual. **(Motion R.p. 79-81 No.2)** If only one party has made a mistake, the other party is not at risk of having the deed reformed unless they were aware of the mistake and failed to say anything. And the mistake must be such **that it renders the deed incorrect as to the true intentions of the parties.** **(Response R.p.99-100 No.2)** since the original intent of the parties must control, a totally new agreement cannot be created through reformation as in this case. The original agreement of third party plaintiff, William O Smith and third party defendant Bobby J. Bellamy and true intention of the parties was to initiate a construction loan and a government grant funded by William O. Smith, member of BC Fund and Management LLC to develop 96 units of low income housing. **(Exhibit D. R.p.125-127)** The agreement was to organize BC Fund LLC, a new entity, for banking purposes only, to hold the proceeds of the grant and the loan to pay for engineering and construction costs. **(Exhibit D R.p.128)** According to the agreement, after construction of the project, Bellamy & Bellamy Enterprise would be organized for management purposes **(Exhibit D1. R.p. 129-144)** and holding a percentage of rents and BC Fund LLC would hold a percentage of rent until completion of financing **(Exhibit D. R.p. 127)**. BC Fund LLC would be dissolved after completion of finance. **Exhibit C1 (R.p. 116-118)**. Contrary to the intended agreement, the third party defendant, William O. Smith **fraudulently** sold the property as **sole member** of BC Fund LLC to Tyrone Davis with the assistance of Scott Umstead, M&T Bank's closing attorney. **(Exhibit B. R.p. 113-115)**. Scott Umstead provided M&T Bank all mortgage documents that led to the approval of the mortgage, including chain of title and certificate of authority for BC Fund LLC to transact business of selling property in the State of S.C. **(Exhibit E2. R.p. 147)**. William O. Smith and M&T's closing attorney, Scott Umstead failed to contact members of BC Fund LLC. they invented the alleged trade name theory that BC Fund and Management LLC D/B/A BC fund LLC in a secret meeting, **(Response R.p. 95-97)** then used BC Fund and Management LLC tax ID number and certification in the transaction for BC Fund LLC to close the mortgage.

**(Order R.p. 17, No: 32-33)** The Appellant Bobby J. Bellamy was not a member of BC Fund and Management LLC and unaware of the meeting to invent a trade name. **(Order R.p.24 No.2)**

M&T Bank approved the fraudulent deed and mortgage with their closing attorney, Scott Umstead, then he distributed the proceeds of the loan. Bobby J. Bellamy was not made a party to the mortgage and received no proceeds from the loan. **(Response R.p.101 No. 3) (Order R.p. 24, 25 No. 3)** The court, in the exercise of its **Equity** powers to do justice, will reform a document only in the event that **Fraud** or mutual mistake occurred in its execution. The Court of Appeals held that a party seeking reformation of a written instrument need not prove that mutual mistake was reasonable or neglect-free, only that "there is clear, cogent, and convincing evidence that the mistake was a mutual one and that it prevents the instrument from embodying the parties' actual, original agreement. **(Complaint R.p. 54-58)** A **Mistake of Law** by which both parties to the instrument have incorrectly comprehended the legal effect of the facts and the document might also result in reformation. **(Motion R.p 79 -81 No. 2) (R.p 72-74)**, Clear and convincing evidence standard, the party attempting to prove that a deed does not reflect the actual intent of the parties must do so by clear and convincing evidence. **(Order R.p. 26-27 No 5)**. To make out a *prima facie* case for reformation, the party must show "the mistake is one of **fact** rather than **law**, the proof clearly and convincingly shows a mistake was made, and the mistake was mutual and common to both parties to the instrument." *Id* at 72. See e.g., *Skelly v Ersch*, 305 Ill 126, 137 NE 106 (1922). This burden of proof in a reformation action is a higher burden than a party would carry in a regular civil suit. *Farmer City State Bank v Guingrich*, 139 Ill App 3d 416, 427, 487 NE2d 758, 765, 94 Ill Dec 1, 8 (4th D, 1985). Courts have further attempted to refine what this standard means. One court said that the evidence must be "such as will strike all minds alike as being unquestionable and free from reasonable doubt. **(Motion (R.p.81-85 No. 3) (Order R.p. 24-25 No. 3)** the remedy and reformation on account of an alleged mistake is never granted upon a probability, nor upon a mere preponderance of the evidence, but only upon evidence amounting to a certainty." *David v Schiltz*, 415 Ill 545, 114 NE2d 691 (Ill, 1953), citing *Christ v Rake*, 287 Ill 619, 122 NE 854 (Ill, 1919). Both parties do not have to agree that a mutual mistake was made. One party clearly would have an incentive to argue that there was no mutual mistake; otherwise, the issue likely would not have been litigated in the first place **(Motion R.p 89-92 No. 5-6). (Order R.p. 16-18 No. 27-38)** but if the evidence successfully shows that there was a mutual mistake at the time the deed was executed and "that at that particular time the parties intended to say a certain thing and by mistake of fact expressed another," the deed will be reformed. *Matthews v Whitethorn*, 220 Ill 36, 77 NE 89 (Ill, 1906). **(Motion R.p. 85-89 No. 4), (Order R.p. 25-26 No. 4)** William O. Smith failed to provide any services pertaining to the agreement with the Appellant.

**3. Because of the Master-in-Equity's failure to hear pleadings of the Defendant and rule, according to statute to prove Tyrone Davis, purchaser was not qualified to be a bona fide purchaser the Master- in- Equity's Order and Judgement was premature.**

0A purchaser may assert a plea in equity of a bona fide purchaser for value, without notice of defect in his title, by showing (1) he has actually paid in full the purchase money (giving security for the payment is not sufficient, nor is past indebtedness a sufficient consideration); (2) he

purchased and acquired the legal title, or the best right to it; and (3) he purchased bona fide, i.e., in good faith and with integrity of dealing, without notice of a lien or defect. The bona fide purchaser must show all three conditions – actual payment, acquiring of legal title, and bona fide purchase – occurred before he had notice of a title defect or other adverse claim, lien, or interest in the property. S.C. Tax Commn. v. Belk, 266 S.C.539, 543, 225 S.E.2d 177,179 (1976).

Tyrone Davis could not assert a plea in equity of a bona fide purchaser for value of the property. The bona fide purchaser must show all three conditions:(1) he failed to actually pay in full the purchase money to the owner of the property (giving security for the payment is not sufficient, nor is past indebtedness a sufficient consideration; (**Response R.p. 101 No.3**) (2) he failed to purchase and acquire the legal title (**Exhibit B R.p.113-115**)and (3) he failed to purchase bona fide, i.e. in good faith and with, or the best right to it integrity of dealing, without notice of a lien or defect-occurred before he had notice of a title defect or other adverse claim, lien or interest in the property (**Motion R.p.81-85 No. 3**) (**Exhibit H R.p 165-172**) (**R.p 183**) as follows: There are two basic forms of notice by which a purchaser may be charged with knowledge of the rights of another in real property. **Actual and Constructive** /inquiry notice. Belk, 266 S.C. at 544-43, 225 S.E. 2dat 179 **Actual notice**. According to the South Carolina Tort Claims Act. Actual notice means all the facts are disclosed and there is nothing left to investigate. Notice is regarded as actual where the person sought to be charged therewith either knows of the existence of the particular facts in question or is conscious of having the means of knowing it, even thou such means may not be employed by him (**Exhibit L R.p. 184-185**). Consist of facts or conditions observed by a prospective purchaser as well as information conveyed orally or in writing (**Exhibit E1 R.p. 145-146b**). The Respondent Attorney, Scott Umstead, before closing the mortgage loan transaction for M&T bank, discovered the issue concerning discrepancy between the names of the grantee on the Bobby Bellamy transfer to BC Fund LLC quit claim deed and the registered name of the entity BC Fund and management LLC. (**Exhibit E2. R.p. 147**) (**Motion R.p.79-81 No. 2**), (**Response R.p. 99 -100 No.2**) The M&T Bank closing attorney, Scott Umstead assisted William O. Smith, organizer of BC Fund and Management LLC with an invention of corporate documentation that allegedly made it clear that BC Fund and management LLC did business using the trade name BC Fund LLC but failed to file the trade name with the South Carolina Secretary of State. (**Response R.p. 95-98 No.1**) M&T bank's closing attorney, Scott Umstead had actual notice of a claim of interest in the property. (**Exhibit A1. R.p. 107-109**) Walker v. Taylor, 104 S.C. 1, 15, 88 S.E. 300,303-04 (1916) (where land buyer prior to sale had actual notice, orally and in writing of a claim of interest in property, buyer was not a bona fide purchaser for value without notice. In this case facts indicate notice of defect and adverse claim. See (Master's Order and Judgement of foreclosure sale, page 17 paragraph 2). (**Order R.p. 17 No. 32**)

**Constructive inquiry notice**. According to the South Carolina Tort Claims Act that constructive notice is a legal inference which substitute for actual notice. It is notice imputed to a person whose knowledge of facts is sufficient to put on inquiry; if these facts were pursued with due diligence, they would lead to other undisclosed facts. Constructive inquiry notice is grounded in an examination of the public record because it is the proper recording of documents asserting an interest or claim in real property which gives constructive notice to the world (**Exhibit A1. R.p.**

**107-109).** The recording of documents alert all future grantee of the rights of the recorder because the law assumes the grantee will search the index and discover the interest or claim. (Epps, 139 S.C. at 499, 138 S.E. at 303(recording amounts to notice, whether known or unknown, because the means of information are at hand.) M&T Bank’s Attorney, Scott Umstead searched the public record for proper chain of title recording of documents that may assert an interest or claim in the property. **(Exhibit L R.p. 184-185).** Such a **mistake could render the deed incorrect as to the true intentions of the parties.** M&T bank’s closing attorney, Scott Umstead, failed to consult the Appellant Bobby Bellamy, member of BC Fund LLC, who had knowledge of facts that was sufficient to put the transfer of deed on inquiry. **(Response R.p. 101-102 No. 4)** S.C. Code Ann. 30-7-10(Supp.2004); accord Belcher v. Powers, 573 S.E. 2d 12,19(W.Va,2002) ( party is not entitled to protection as a bone fide purchaser, without notice, unless he looks to every part of the title he is purchasing, neglecting no source of information respecting it which common prudence suggests);Tauber v. Com. Ex rel. Kilgore, 562 S.E. 2d 18, 127 (Va.2002)( purchaser of real property is bound by both actual and constructive notice and has no right to shut his eyes or ears to the inlet of information, and then say he is bona fide purchaser for value without notice. Respondent, Tyrone Davis never gained legal title to the property, the principle that a grantor may not claim bona fide purchaser status if his grantor never had title to the property in question. See Cook v. Eller, 298 S.C. 395,397,380 S.E.2d 853,854(Ct. App. 1989) (states the general principle); 92AC.J.S. Vendor & Purchaser 484(2000) (stating “doctrine of bona fide purchaser without notice generally does not apply where there is a total absence of title in the vendor , and the good faith of the purchaser cannot create a title where none exist. 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. The “Certificate of No Record” issued by the Office of the South Carolina Secretary of State provided there is “no record of corporation using the name: BC Fund, LLC **(Exhibit E2 R.p. 147).**

Section 33-43-802. (a) A foreign limited liability company may apply for a certificate of authority to transact business in this State by delivering an application to the Secretary of State for filing. Section 33-43-808. (a) A foreign limited liability company transacting business in this State may not maintain an action or proceeding in this State unless it has a certificate of authority to transact business in this State. Was the Master- in- Equity’s Order and Judgement premature, despite the failure to rule on pleadings according to statue that prevents member, William O. Smith, from undertaking activities outside the ordinary course of William O. Smith’s business, BC Fund and Management LLC, further the Master erred in shielding that member of BC Fund and Management LLC from personal liability for his tortious conduct?

**4. Because of the Master-in-Equity’s failure to hear pleadings and rule, according to statue, transfer of Bobby Bellamy and Tommy Bellamy interest in their property to BC Fund LLC, authorizes their membership to BC Fund LLC, that Bobby Bellamy and Tommy Bellamy were members of BC Fund LLC and William O. Smith organizer of BC Fund and Management LLC had no authority to allegedly act as sole member of BC Fund LLC and sell property of BC Fund LLC, secondly had no authority to transfer property without the consent of all members of BC Fund LLC, and thirdly there was no statement in the articles of organization of BC Fund and Management LLC or BC Fund LLC giving**

**William O. Smith authority to transfer interest in real property from BC Fund LLC to Tyrone Davis, the Master- in- Equity's Order and Judgement was premature.**

According to **Section 33-43-602(4) (B)**, when a member transfers a transferable interest, the transferor retains the rights of a member other than the interest in distributions transferred and retains all duties and obligations of a member. Appellant, Bobby J. Bellamy and his brother Tommy Bellamy, transferors retained the rights of a member when transferring the interest to their property and became members of BC Fund LLC (**Exhibit A1. R.p. 107-109**), (**Exhibit A2 R.p.110-112**) and retained all duties and obligations of a member.

1. William O. Smith failed to execute the original contract agreement with the Appellant to provide finance, engineering and construction of 96 rental units Section 33-43-402. A contribution to a LLC may consist of tangible or intangible property or other benefit to a limited liability company, including money, services performed, and promissory notes, other agreements to contribute money or property, and **contracts for services to be performed.** (**Exhibit D. R.p. 125-128**)
2. William O Smith, as alleged sole member of BC Fund LLC, fraudulently sold property without a Certificate of Authority to transfer real property as BC Fund and management LLC D/B/A BC Fund LLC and without the **consent of all members.** Except as otherwise provided in Section 33-43-602(4) (B), when a member transfers a transferable interest, the transferor retains the rights of a member other than the interest in distributions transferred and retains all duties and obligations of a member. **Section 33-43-407. (a) A limited liability company is a member-managed limited liability company unless stated in the operating agreement:** (b) In a member-managed limited liability company, the following rules apply (1) The management and conduct of the company are vested in the members (2) Each member has equal rights in the management and conduct of the company's activities (3) A difference arising among members as to a matter in the ordinary course of the activities of the company may be decided by a majority of the members. (4) An act outside the ordinary course of the activities of the company may be undertaken only with the consent of all members (5) the operating agreement may be amended only with the consent of all members. See (Exhibit No: operating agreement)
3. The Master erred in Order of Consent to impose additional fiduciary duties to William O. Smith in the Order and Judgement to reform the deed. (**Exhibit E1. R.p.145-146b**) the fiduciary duties listed in Section 33-43-409 are the exclusive fiduciary duties that are imposed on members or managers. Unless a written operating agreement specifically includes additional fiduciary duties, the fiduciary duties provided in this section are the only ones that affect members or managers; **Judges should not impose any additional fiduciary duties.** (Exhibit operating agreement). Because the parties to a long-term, relational contract cannot anticipate or reduce all important terms to well-defined obligations, the contractual duty of good faith and fair dealing imposed by Section 33-43-409(d) is mandatory and provides judges with the equitable power to sanction opportunistic conduct. Thus, the duty of good faith and fair dealing fills in gaps in the parties' operating agreement and limits their ability to exploit control provisions in unforeseen circumstances. For further elaboration, see Benjamin Means, A Contractual Approach to Shareholder Oppression Law, 79 Fordham L. Rev.1161 (2010).

**5. Because of the Master-in-Equity's failure to rule on pleadings according to statute that prevents member, William O. Smith, from undertaking activities outside the ordinary course of William O. Smith's business without the consent of all members of BC Fund and Management LLC, further Did the Master erred in shielding that member of BC Fund and Management LLC from personal liability for his tortious conduct, and did the Judge err in shielding that member and the closing Attorney, Scott Umstead from personal liability for tortious conduct the Master-in-Equity's Order and Judgement was premature.**

**Section 33-43-407.** (4) An act outside the ordinary course of the activities of the company may be undertaken only with the consent of **all** members (5) the operating agreement may be amended only with the consent of all members. **(Exhibit E1. R.p. 145-146b),**

The Master erred in reforming a deed that of a sole member **undertaking actives outside the ordinary course of the BC Fund and Management LLC Company's activities.** Order to, Cease and Desist from S.C. Security Exchange Commission, **(Exhibit E3. R.p. 148-153).** Members of BC Fund and Management LLC invested in a portfolio, William O Smith associate, Tyrone Davis and members of BC Fund and Management LLC made payments averaging \$100.00 per month, with promise of a substantial return on their investment. **(Response R.p. 96 No. d.)** Appellant Bobby Bellamy, his brother, Tommy Bellamy were members of BC Fund LLC and Respondent William O. Smith, organizer of BC Fund and Management LLC had an agreement to form a new limited liability company to hold financing of the project that William O. Smith was to obtain from a government grant and a construction loan from M&T Bank to develop 7.8 acres into 96 multifamily apartments. *Frasier v. Palmetto Homes of Florence, Inc.*, 323 S.C. 240,244,473 S.E. 3rd 865-69(Ct. App. 1996). A principle may be held liable to a third person in a civil lawsuit for the fraud, deceit, concealment, misrepresentation, negligence and other omissions of duty of his agent which occur in the scope of the agent's employment, even when the principle forbade or disapproved of the act in question. *Jones v. Elbert*, 211 S.C. 553,558,34 S.E.2d 796.798(1945)( as a matter of public policy, principle who selects agent and directs manner in which agent executes his role, in justice to third person with whom agent may deal and who are not responsible either for his selection or conduct, is liable for agent's torts committed in furtherance of principle's business); *Federal Land Bank of Columbia v. Ledford*, 194 S.C. 347,359, 9 S.E. 2d 804.809 (1940) (where agency is established and there is a wrong committed by agent, principal must ordinarily bear the loss whether the agency is actual or apparent; and equity intervenes under the rule where one or two innocent persons must suffer, he who brings about the loss must bear it). The liability shield provided by Section **33-43-304** to both members and managers protects them "solely" in their status as members or managers. The shield provides no protection when a member engages in actionable conduct. "A tort is no less a tort for being committed in the service of a separate legal person. There also may be statutes, such as S.C. Code Section **41-10-10** et. seq. that may impose personal liability on a member. 16 *Jade St. LLC v R. Design Constr. Co. LLC* 27107,(2012)

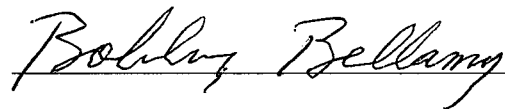
## CONCLUSION

Appellant Bobby Bellamy, his brother, Tommy Bellamy were members of BC Fund LLC and Respondent William O. Smith, organizer of BC Fund and Management LLC had an agreement to form a new limited liability company BC Fund LLC for the purpose to open a bank account in that name to hold proceeds and distribute financing to subcontractors as need to construct the project known as Bellamy & Bellamy Enterprise. William O. Smith agreed to obtain a government grant and to secure a construction loan from M&T Bank and agreed to oversee the development of 7.8 acres into 96 multifamily apartments.

Contrary to the mutual agreement William O. Smith, singularly, acting as alleged sole member of BC Fund LLC with no Certification of Authority to transact business in the State of South Carolina under foreign name BC Fund LLC and without the mutual consent and knowledge of other members of BC Fund and Management LLC or BC Fund LLC. William O. Smith, fraudulently created a new agreement and sold the property belonging to BC Fund LLC. William O Smith allegedly organized BC Fund and Management LLC D/B/A BC Fund LLC. The property was sold to Respondent Tyrone Davis in a mortgage loan approved by M&T Bank. The closing Attorney M&T Bank, Scott Umstead, failed secure a proper title search, failed to secure proper certificate of authority from the S.C. secretary of State giving BC Fund LLC, a foreign entity authority to illegally transact business in South Carolina for the sale of the property and approved BC Fund and management LLC D/B/A BC Fund LLC. The Master erred in Reformation of the deed because Tyrone Davis was not a bona fide purchaser for value because (1) he didn't pay the purchase money in full, (2) did not purchase and acquire the legal title, and (3) did not purchase in good faith and with integrity of dealing without notice of a lien or defect .Respondent, Tyrone Davis never gained legal title to the property principle that a grantor may not claim bona fide purchaser status if his grantor never had title to the property in question.

For the reasons stated, the Court of Appeals should reverse the Judgement of the Master-In-Equity.

October12, 2018



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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

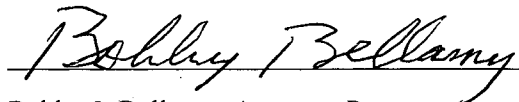
The Undersigned, hereby certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR.

October 12, 2018

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OCT 15 2018

SC Court of Appeals



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