

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Cynthia Graham Howe, Master in Equity

Appellate Case No. 2018-001523
Trial Court Case No. 2011-CP-26-01809

RECEIVED
DEC 03 2018
SC Court of Appeals

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 and BC Fund and Management, LLC d/b/a BC Fund, LLC are....Respondents,

And

Bobby J. Bellamy.....Appellant,

v.

William O. Smith.....Respondent.

M&T BANK'S MOTION TO DISMISS

The Respondent M&T Bank moves to dismiss this Appeal for the reason that the Appellant, Bobby J. Bellamy, has failed to comply with Rule 207, SCACR in the following particulars:

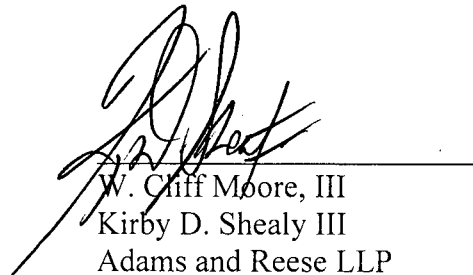
- (1) The Appellant failed to order the transcript of the trial proceedings in violation of Rule 207(a)(1), SCACR.
- (2) The Appellant failed to notify the Office of Court Administration, the Appellate

Clerk of Court and the Court Reporter that he had not received the transcript of the trial proceedings within the time allotted by the South Carolina Appellate Court Rules in violation of Rule 207(a)(5), SCACR.

The Appellant has filed its Initial Brief that contains representations of what transpired at trial and incorporates references to evidence offered at trial. The Respondent is not able to appropriately respond to the Appellant's Initial Brief without the transcript of the trial proceedings being included in the Record on Appeal.

The Respondent's Motion is based on the South Carolina Appellate Court Rules, the filings with the Court on this Appeal, and the Affidavit of Paul W. Greathouse filed with this Motion.

December 3, 2018.



W. Cliff Moore, III
Kirby D. Shealy III
Adams and Reese LLP
Post Office Box 2285
Columbia, S.C. 29202
P: 803-254-4190
Attorneys for M&T Bank, Respondent

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Affidavit of Paul W. Greathouse

Personally appeared before me, Paul W. Greathouse who, after being duly sworn, deposes and states that:

1. He is the Manager for Garber Reporting Service and in that capacity receives requests for transcripts of proceedings for which Court Reporters engaged through Garber Reporting Service have served as the reporter.

2. In August 2018, Garber Reporting Service received a "Letter Ordering Transcript from Court Reporter" (the "Request") dated August 23, 2018 from Bobby J. Bellamy.

3. The Request asked that Garber Reporting Service provide a transcript of the proceedings before The Honorable Cynthia Graham Howe, Master-in-Equity for Horry County in the matter styled *M&T Bank v. Tyrone Davis, et al.* (the "Action") on July 3, 2018 (the "Hearing").

4. Garber Reporting Service did not provide a Court Reporter for the Hearing.

5. Kathryn B. Bostrom, a Court Reporter who works through Garber Reporting Service, was the Court Reporter for the trial in the Action that occurred on February 8 through 10, 2016, that was recessed and concluded April 11 through 12, 2016. No request has been made for that trial transcript.

6. After determining that a Court Reporter working through Garber Reporting Service did not serve as the court reporter for the Hearing, he contacted the offices of Howell V. Bellamy, Jr. and Howell V. Bellamy, III and advised them that Garber Reporting Service did not provide a Court Reporter for the Hearing.

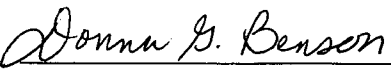
7. Garber Reporting Service has not received any additional demand for the preparation of any transcript for any proceedings in this action after it received the Request.

FURTHER THE AFFIANT SAYETH NAUGHT.



Paul W. Greathouse

Sworn to and subscribed before me
This 29th day of November, 2018



Notary Public for South Carolina
My Commission Expires: 03-23-2028

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And

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v.

William O. Smith.....Respondent.

PROOF OF SERVICE

I certify that I have caused the foregoing Motion to Dismiss to be served on Bobby B. Bellamy by having a copy deposited in the United States Mail, postage prepaid, on December 3, 2018, addressed to Bobby J. Bellamy, 3664 Sea Mountain Highway, Little River, SC 29566.

I further certify that I have caused the foregoing Motion to Dismiss to be served on all parties to this appeal by having a copy deposited in the United States Mail, postage prepaid, on December 3, 2018, addressed as follows:

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Hutchens Law Firm
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December 3, 2018.



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Attorneys for M&T Bank, Respondent

ADAMS AND REESE LLP

December 3, 2018

Via Hand Delivery

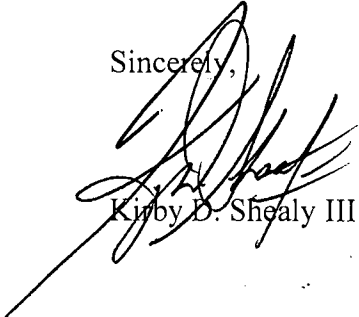
The Honorable Jenny Abbott Kitchings
Clerk, The South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina

RE: *M&T Bank v. Tyrone Davis, et al.*
Appellate Case No. 2018-001523
A&R File No. 050168-000223

Dear Ms. Kitchings:

I have enclosed the original and seven (7) copies of the Respondent M&T Bank's Motion to Dismiss and Proof of Service for filing in the referenced case. I have also enclosed a check in the amount of \$50.00. I would appreciate your returning a received copy to me via my firm's courier.

Sincerely,


Kirby D. Shealy III

KDSIII/jas

cc: *via U.S. Mail*,
Mr. Bobby B. Bellamy
John B. Kelchner, Esq.
Daniel Q. Orvin, Esquire
Matthew Tillman, Esq.
George J. Conits, Esquire

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