

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**  
JAN 14 2019  
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.

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**M&T BANK’S REPLY TO APPELLANT’S RETURN  
TO M&T BANK’S MOTION TO DISMISS**

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The Respondent M&T Bank (the “Respondent”) files this Reply to identify misstatements contained in the Appellant’s Return to the Respondent’s Motion to Dismiss for failure to comply with Rule 207, SCACR ( the “Motion”). In the Motion the Respondent requests dismissal because the Appellant failed to order the transcript of the trial proceedings and because 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 hearing for which he ordered a transcript – the July 3, 2018 Motion to Reconsider Hearing.

In response to the Motion, the Appellant offers, among other things, that:

- (1) “ [t]he Initial brief does not contain representation of what transpired at trial and no references to evidence offered at trial” (Appellant, Response to Motion to Dismiss, p. 1);
- (2) the Respondent failed to agree to the Appellant ordering a partial transcript;
- (3) that Garber Reporting Service was used for all proceedings in the lower court; and
- (4) he is appealing from the lower court’s denial of summary judgment.

These representations are not accurate.

- (1) The Appellant’s argument on appeal relies on evidence submitted at trial.

This matter concerns a parcel of real estate in Horry County, South Carolina and the validity of certain deeds transferring title to the real property. One of the challenged deeds conveyed the real property from the Appellant to BC Fund, LLC. The crux of the Appellant’s argument is that BC Fund, LLC did not exist and his deed is therefore a nullity. The lower court disagreed and determined that BC Fund, LLC was the trade name of BC Fund and Management, LLC, an entity that does exist, and that the Appellant’s conveyance of title was to BC Fund and Management, LLC. (Master’s Order and Judgment of Foreclosure and Sale, May 4, 2018, p. 14) In reaching that conclusion, the lower court made findings of fact concerning the Appellant’s decision to convey the real property. (Master’s Order and Judgment of Foreclosure and Sale, May 4, 2018, p. 8)

The Appellant’s Statements of the Case (sic) provide a statement of facts that contradict the lower court’s findings. The Appellant’s arguments rely on his version of what occurred.

The Appellant's submissions suggest that the Appellant intends to use affidavits offered in support of motions for summary judgment argued before the lower court and documents that were not presented as evidence at trial to support his position.

The Orders that the Appellant appeals are the May 4, 2018 Master's Order and Judgment of Foreclosure and Sale and the July 23, 2018 Order Denying Defendant Bobby J. Bellamy's Motion to Reconsider, Alter, Amend the Master's Order and Judgment of Foreclosure and Sale Pursuant to Rules 52 and 59(e), SCRCP. As such, the testimony and evidence presented to the lower court at the trial of this matter February 8 -10 and April 11-12, 2016 is the only record that the Appellate Court should consider in its review of the lower court decisions under appeal.

Additionally, the Appellant filed a Record on Appeal (the "Record") with the Court prematurely. It contains the documents that the Appellant identified in his Designation of Matter To Be Included In the Record On Appeal. Pages 119 through 128 and page 158 of the Record are trial exhibits and bear the trial exhibit stamps of Plaintiff's Exhibits 25, 26, 27, 28 and 29. The transcript of the trial in the lower court is needed to determine the context in which the lower court considered those Exhibits.

(2) The Appellant never requested that the Respondent agree to the ordering of a partial Transcript.

In his Return, the Appellant argues that the Respondent failed to agree to the Appellant ordering less than the "entire transcript of seven years of proceedings." (Appellant's Response to Motion to Dismiss, p. 2.) The Appellant never requested that the Respondent make any agreement concerning the transcript of the trial proceedings.

(3) Prestige Court Reporting provided a court reporter for the hearing for which the Appellant ordered a transcript.

The Appellant's counsel arranged for the Court Reporter to be present at the July 3, 2018 hearing on the Appellant's Motion to Reconsider. The undersigned has confirmed with Prestige Court Reporting that the court reporter that who attended the hearing was from Prestige Court Reporting. The Appellant ordered the transcript of the July 3, 2018 proceedings from Garber Reporting Services.

(4) The Appellant's appeal is from the lower court's final orders and not from a summary judgment order.

The Notice of Appeal in a Master-in-Equity Case served by the Appellant on the Respondent did not attach copies of the Orders appealed by the Appellant. However, the Appellate Court file indicates that the appealed Orders are (a) the May 4, 2018 Master's Order and Judgment of Foreclosure and Sale and (b) the July 23, 2018 Order Denying Defendant Bobby J. Bellamy's Motion to Reconsider, Alter, Amend the Master's Order and Judgment of Foreclosure and Sale Pursuant to Rules 52 and 59(e), SCRPC. The Appellant's Return and his Initial Brief make reference to the appeal of a summary judgment decision. ("This appeal is based on the Denial of Motion for Summary Judgment as pertaining to the S.C. Rule of Law and S.C. case law." Appellant's Response to Motion to Dismiss, p. 2).

The Motion to Dismiss was timely filed and the Appellant offers no reason that it should not be granted.

Respectfully submitted,



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January 14, 2019

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And

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And

Bobby J. Bellamy.....Appellant,

v.

William O. Smith.....Respondent.

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**PROOF OF SERVICE**

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I certify that I have caused the foregoing Reply to Appellant’s Return to M&T Bank’s Motion to Dismiss to be served on Bobby B. Bellamy by having a copy deposited in the United States Mail, postage prepaid, on January 14, 2019, addressed to Bobby J. Bellamy, 3664 Sea Mountain Highway, Little River, SC 29566.


I further certify that I have caused the foregoing Reply to Appellant’s Return to M&T Bank’s Motion to Dismiss to also be served on all parties to this appeal by having a copy deposited in the United States Mail, postage prepaid, on January 14, 2019, addressed as follows:

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# ADAMS AND REESE LLP

January 14, 2019

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

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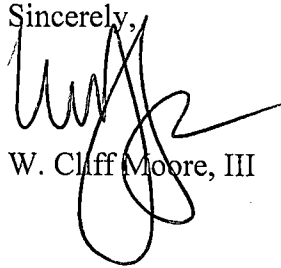
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Dear Ms. Kitchings:

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

Sincerely,



W. Cliff Moore, III

WCMIII/jas

cc: *via U.S. Mail w/encl.*  
Mr. Bobby B. Bellamy  
John B. Kelchner, Esq.  
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