

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

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JAN 11 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; BC Fund and Management, LLC d/b/a BC
Fund, LLC are Respondents,

And

Bobby J. Bellamy, Appellant

v.

William O. Smith, Respondent

January 10, 2019

**APPELLANT'S AMENDED RESPONSE TO STRIKE RESPONDENT'S
MOTION TO DISMISS AND RULE ON THE MERITS.**

Now comes the Appellant with an Amended Response to Strike Respondent's Motion to Dismiss and Rule on Merit. The Respondent's motion is presented OUT OF TIME before this honorable court. Secondly, the Respondent's Attorney was mailed a copy of the Notice of Appeal on August 15, 2018. The Appellant filed Notice of Appeal, Pursuant to Rule 56, the above-entitled matter, Bobby J. Bellamy Appeals the Order and Judgement of the Honorable

Judge Cynthia Howe, Master-In-Equity. The Master's Order and Judgement of Foreclosure and Sale. The Appellant Bobby Bellamy requests an order from the South Carolina Court of Appeals to review each point contained in the Order and Judgement made by the Master-Equity on the ruling to the order, based on facts of law. On appeal, the appellate court shall apply the same Rule 56 standard that applies in the trial court. *Woodson*, citing *Quail Hill, LLC v. Cnty. of Richland*, 387 S.C. 223, 234, 692 S.E.2d 499, 505 (2010). A one-sentence order forces the appellate court to decide for itself whether there are genuine issues of material fact and whether the Plaintiff, M&T Bank is entitled to Judgment as a matter of law.

When reviewing the grant of a summary judgment, the South Carolina Appellant 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." *Willis v. Wu*, 362 S.C. 146, 151, 607 S.E.2d 63, 65 (2004).

The Master-in-Equity erred in denying defendant's motion for Summary Judgment in a written order which did little more than recite that the court reviewed the evidence and was granting judgment for the Plaintiff. The Plaintiff failed to present evidence to prove any claim or defense by clear and convincing evidence.

According to the Supreme Court, Parties who appeal a summary-judgment order do not need to include in the Record on Appeal the transcript of the trial-court hearing on the motion. In *Woodson v. DLI Properties*, 406 S.C. 517, 753 S.E.2d 428 (2014), a couple sued over their attempt to buy some property. The trial court granted the defendants summary judgment in a written order which did little more than recite that the court reviewed the evidence and was granting judgment. The couple appealed and included in the Record on Appeal the supporting documents and legal arguments before the trial court when the court ruled. But they did not include a transcript of the hearing on the motion. According to the Supreme Court holding: 1. Trial Courts do not need to make findings of fact or conclusions of law in their summary-judgment orders.

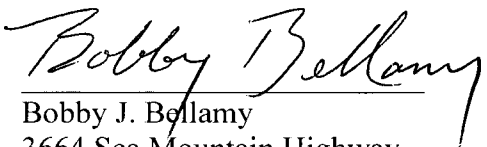
2. Trial Courts base summary-judgment orders on the evidence presented and not statements made during the hearing
3. A Trial Judge's statements during a hearing are irrelevant as the later, written order is the final judgment.

The Court then concluded that the trial court's reasoning in the summary-judgment order was clear enough to allow meaningful appellate review, and affirmed on the merits.

The Supreme Court's first point, that summary-judgment orders need not include findings of fact or conclusions of law, is straight out of **Rule 52 (a)**, SCRCP. A bare-bones order, On appeal, the appellate court applies the same Rule 56 standard that applies in the trial court. *Woodson*, citing *Quail Hill, LLC v. Cnty. of Richland*, 387 S.C. 223, 234, 692 S.E.2d 499, 505 (2010). A one-sentence order forces the appellate court to decide for itself whether there are genuine issues of material fact and whether the Appellant is entitled to judgment as a matter of law.

I pray that the court accepts this request, Appellant's Amended Response to Strike Respondent's Motion to Dismiss and Rule on the Merits.

Sincerely,


Bobby J. Bellamy
3664 Sea Mountain Highway
Little River, SC 29566

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Judge Cynthia Howe, Master-In-Equity

Appellate Case No. 2018-001523

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v.

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Fund, LLC and United States of America, Defendants,

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And

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

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And

Bobby J. Bellamy, Appellant

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PROOF OF SERVICE

I certify that I have served the Appellant's Amended Response to Strike Respondent's Motion to Dismiss and Rule on the Merits on M&T Bank by depositing a copy of it in the United States Mail, postage prepaid, on January 10, 2019 addresses to his attorney of record, Cliff Moore, III Adams and Reese LLP, 1501 Main Street 5th Floor, Columbia, S.C. 29201.

I certify that I have served the Appellant's Amended Response to Strike Respondent's Motion to Dismiss and Rule on the Merits on M&T Bank by depositing a copy of it in the United States Mail, postage prepaid, on January 10, 2019 addresses to his attorney of record, John B. Kelchner, Hutchens Law Firm P.O. Box 8237, Columbia, S.C. 29202.

I certify that I have served the Appellant's Amended Response to Strike Respondent's Motion to Dismiss and Rule on the Merits on Tyrone Davis by depositing a copy of it in the United

States Mail, postage prepaid, on January 10, 2019 addresses to his attorney of record, Daniel J. Orvin, Womble Bond Dickson LLP, 5 Exchange St. Charleston, S.C. 29401

I certify that I have served the Appellant's Amended Response to Strike Respondent's Motion to Dismiss and Rule on the Merits on Scott Umstead, William O. Smith, BC Fund and Management LLC DBA BC Fund LLC. By depositing a copy of it in the United States Mail, postage prepaid, on January 10, 2019 addressed to attorney Scott Umstead 4226 Mayfair St. #100 Myrtle Beach, S.C. 29577.

January 10, 2019



Bobby J. Bellamy, Attorney Pro se

3664 Sea Mountain Highway,
Little River, S.C. 29566 843 457-3625

January 10, 2019

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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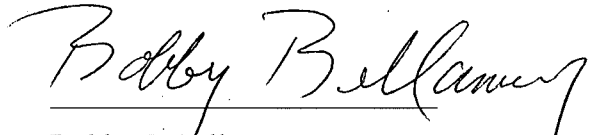
SC Court of Appeals

RE: M&T Bank etal, Respondent vs Bobby J. Bellamy, Appellant case no. 2018-001523.

Dear Ms. Kitchings:

Enclosed for filing is Appellant's Amended Response to Strike Motion to Dismiss and Rule on Merits with proof of service.

Sincerely,


Bobby J. Bellamy, **Pro se Appellant**
3664 Sea Mountain Highway,
Little River, South Carolina 29566
843 457- 3625

Attorney for Respondent

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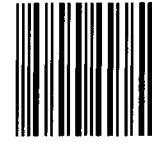
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Honorable Jenny A Kitchings CofC
P.O. Box 11629
Columbia, SC 29211