

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

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JAN 15 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.

**M&T BANK’S REPLY TO APPELLANT’S AMENDED RETURN TO STRIKE
RESPONDENT’S MOTION TO DISMISS AND RULE ON THE MERITS**

The Respondent M&T Bank (the “Respondent”) files this Reply to Appellant’s Amended Response to Strike Respondent’s Motion to Dismiss and Rule on the Merits (the “Amended Return”). The Respondent filed its Reply to the initial Return on January 14, 2018 and incorporates the arguments contained in that Reply in this response. These filings all concern the Respondent’s Motion to Dismiss filed on December 3, 2018.

In his Amended Return the Appellant asks the Appellate Court to deny the Motion to Dismiss because (1) it was not timely filed and (2) because a transcript of the trial proceedings is not required.

The new information provided by the Appellant offers no basis for denial of the Respondent's Motion.

(a) The Motion to Dismiss was timely filed.

The Appellant submitted his Initial Brief *pro se*. Because the Appellant was represented by counsel in the lower court and because there was not an order relieving that counsel, the Court delayed the briefing schedule to address the representation of the Appellant in this appeal. By Order filed November 21, 2018, the Court relieved the Appellant's counsel, accepted the Appellant's Initial Brief, and directed that the time for serving and filing Respondent's Initial Brief would expire on December 19, 2018. The Respondent filed the Motion to Dismiss on December 3, 2018, which was before the date of that the Respondent was required to file its Initial Brief. The filing of that Motion automatically stayed the time for filing of the Respondent's Initial Brief. Rule 240(b), SCACR.

(b) A transcript of the trial proceedings is necessary for the Court to address the issues raised by the Appellant.

The Appellant appears to be confused about the nature of the orders appealed and that confusion has led him to rely on authority that has no application in this matter. Throughout his filings in this matter, the Appellant refers to the orders identified in his Notice of Appeal as summary judgment decisions. In the Amended Return his argument suggests that he believes that his appeal concerns an order granting summary judgment and an order denying summary

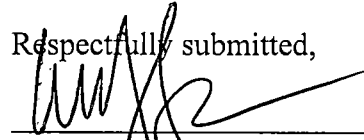
judgment entered pursuant to Rule 56, SCRC.P.¹ He then presents authority for the position that a transcript of the trial proceedings is not always required when the subject of an appeal is an order granting summary judgment.

This appeal does not concern an order granting or denying summary judgment. The orders attached to the Appellant's Notice of Appeal are the final order entered by the lower court after a multi-day trial and an order denying a request to the lower court to reconsider that final order.

As set out in the Reply to the initial Return, the arguments made by the Appellant in his Initial Brief challenge findings of fact made by the lower court based on the testimony offered at trial and are based on exhibits considered by the lower court. An Appellate Court cannot rely on a party's characterizations of the evidence offered at trial. The transcript of the proceedings before the lower court is necessary.

The Respondent renews its request for dismissal.

Respectfully submitted,



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

January 14, 2019.

¹ An order denying summary judgment is not reviewable on appeal. *In re Manigo*, 398 S.C. 149, 160, 728 S.E.2d 32, 37 (2012) (“[T]he denial of summary judgment cannot be reviewed by an interlocutory appeal nor can such an order be appealed after final judgment”).

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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.

PROOF OF SERVICE

I certify that I have caused the foregoing Reply to Appellant’s Amended 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 15, 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 Amended 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 15, 2019, addressed as follows:

John Brian Kelchner, Esq.
Hutchens Law Firm
PO Box 8237
Columbia, SC 29202

George J. Conits, Esq.
US Attorney's Office
55 Beattie Place, Suite 700
Greenville, SC 29601

January 15, 2019.

Daniel Q. Orvin, Esq.
Matthew Tillman, Esq.
Womble Bond Dickinson (US) LLP
5 Exchange Street
Charleston, SC 29401



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

ADAMS AND REESE LLP

January 15, 2019

Via Hand Delivery

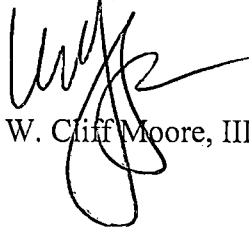
The Honorable Jenny Abbott Kitchings
Clerk, The South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina

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

Dear Ms. Kitchings:

I have enclosed the original and seven (7) copies of the Respondent M&T Bank's Reply to Appellant's Amended 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.
Daniel Q. Orvin, Esquire
Matthew Tillman, Esq.
George J. Conits, Esquire

Attorneys at Law

Alabama

Florida

Georgia

Louisiana

Mississippi

South Carolina

Tennessee

Texas

Washington, DC

W. Cliff Moore III

Direct: 803.212.4956

Fax: 803.343.1248

cliff.moore@arlaw.com

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