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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
APR 08 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 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.

This motion addresses issues similar to those raised in the Motion to Dismiss filed by the Respondent in this matter on December 3, 2018. By Order filed January 24, 2019, this Court denied that motion and directed the Appellant to order the entire trial transcript.

The Appellant attached two orders to his Notice of Appeal – (1) the Master’s Order and Judgment of Foreclosure and Sale entered May 4, 2018 and (2) the 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), SCRCF entered July 23, 2018.

The trial of this matter was before the Master in Equity for Horry County. The trial started on February 8, 2016, was recessed on February 11, 2016, reconvened on April 11, 2016 and concluded on April 12, 2016. The decisions of the Master in Equity on the matters presented at trial are contained in the Master’s Order and Judgment of Foreclosure and Sale. The Appellant filed a Motion to Reconsider the Master’s Order and Judgment of Foreclosure and Sale. The Master in Equity denied the Appellant’s Motion to Reconsider after a hearing on that Motion on July 3, 2018. The hearing on July 3, 2018 was not an evidentiary hearing.

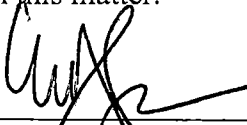
The Court Reporter for the trial was Kathryn B. Bostrom with Garber Reporting Service. The Court Reporter for the hearing on the Motion to Reconsider was Donna H. Martin with Prestige Court Reporting Services.

Following the Court’s Order filed on January 24, 2019, the Appellant secured the transcript from the July 3, 2018 hearing on the Appellant’s Motion to Reconsider. The Appellant did not request the transcript from the trial of this matter that occurred in February and April 2016.

The Appellant’s Initial Brief contains representations of what transpired at trial and references documents offered as evidence at trial. As such the transcript of the trial should be included in the Record on Appeal. The Respondent is not able to appropriately respond to the Appellant’s Initial Brief without the transcript of the trial proceedings.

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 that was filed with the Respondent's first Motion to Dismiss filed in this matter.

April 8, 2019.



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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 Motion to Dismiss to be served on Bobby B. Bellamy by having a copy deposited in the United States Mail, postage prepaid, on April 8, 2019, 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 April 8, 2019, addressed as follows:

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April 8, 2019.



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Attorneys for M&T Bank, Respondent

ADAMS AND REESE LLP

April 8, 2019

Via Hand Delivery

The Honorable Jenny Abbott Kitchings
Clerk, 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,


W. Cliff Moore, III

WCMIII/jas

cc: *via U.S. Mail*

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