

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

AUG 05 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.

**RETURN OF THE RESPONDENT M&T BANK TO
APPELLANT’S MOTION TO RECALL REMITTITUR**

The Respondent, M&T Bank opposes the Appellant’s Motion to Recall Remittitur dated July 31, 2019 because the Court of Appeals does not have jurisdiction to act on the Appellant’s Motion.

On June 27, 2019, the Court of Appeals entered its Order dismissing the Appellant’s appeal. The Appellant did not submit a petition pursuant to Rule 221, SCACR, and the Court of Appeals sent the remittitur to the lower court on July 15, 2019.

Once the appellate court properly sends a remittitur, it loses jurisdiction of the matter and the ability to act on the Appellant's Motion. *Wise v. S.C. Dep't of Corr*, 372, S.C. 173, 642 S.E.2d 551 (2007). The Motion to Recall Remittitur does not allege that the Court of Appeals sent the remittitur by mistake, error, inadvertence, or other improper reason. Accordingly, the Appellant has not offered anything to the Court of Appeals over which it has jurisdiction.

August 5, 2019.



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And

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William O. Smith.....Respondent.

PROOF OF SERVICE

I certify that I have caused the foregoing Return of Respondent M&T Bank to Appellant’s Motion to Recall Remittitur to be served on Bobby B. Bellamy by having a copy deposited in the United States Mail, postage prepaid, on August 5, 2019, addressed to Bobby J. Bellamy, 3664 Sea Mountain Highway, Little River, SC 29566.

I further certify that I have caused the foregoing Return of Respondent M&T Bank to Appellant’s Motion to Recall Remittitur to be served on all parties to this appeal by having a copy deposited in the United States Mail, postage prepaid, on August 5, 2019, addressed as follows:

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

August 5, 2019.

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ADAMS AND REESE LLP

August 5, 2019

Via Hand Delivery

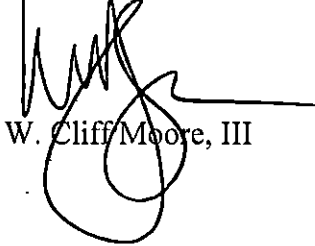
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina

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 Return of Respondent M&T Bank to Appellant's Motion to Recall Remittitur 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

Enclosure(s)

cc: *via U.S. Mail*

Mr. Bobby B. Bellamy
John B. Kelchner, Esq.
Daniel Q. Orvin, Esquire
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SC Court of Appeals