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DEC 16 2019
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Ralph P. Stroman, Special Referee

Appellate Case No. 2019-001682
Trial Court Case No. 2011-CP-26-01809

Leticia LLC.....Movant,

In Re:
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 and William O.
Smith are..... Respondents..

M&T BANK'S MOTION TO DISMISS

Respondent M&T Bank moves to dismiss this Appeal for the following reasons:

- (1) Appellant failed to timely file his Initial Brief pursuant to Rule 208(a)(1), SCACR;
- (2) Appellant failed to serve Leticia LLC with the Notice of Appeal and the Amended Notice of Appeal; and
- (3) Appellant has failed to serve any party with his Letter Ordering Transcripts filed

with the Court on October 14, 2019.

(1) Appellant failed to timely file his Initial Brief pursuant to Rule 208(a)(1), SCACR.

The Appellant attached two orders to his Amended Notice of Appeal – (1) a Writ of Assistance filed September 9, 2019 (the “Writ”) and (2) the Master in Equity’s Report on Sale and Disbursements filed September 3, 2019 (the “Report”). The Court held no hearing concerning either Order. The Lower Court filed the Report to account for a foreclosure sale and the Court issued the Writ on request of the foreclosure sale purchaser to put it in possession of the real property purchased. Since hearings did not occur, there are no transcripts of proceedings to be ordered pursuant to Rule 207, SCACR. Therefore, Appellant’s Initial Brief was due thirty (30) days after the filing of the Notice of Appeal. Rule 208(a)(1), SCACR. The Appellant failed to file his Initial Brief within the time required.

The information contained in the four corners of the Report indicates that the Lower Court conducted a sale of real property in Horry County on September 4, 2018. The sale was pursuant to a Master’s Report and Order of Foreclosure and Sale dated May 4, 2018 (the “Foreclosure Order”). The Lower Court issued the Report on September 3, 2019 reporting the results of a foreclosure sale. The Report accounts for a sale to the highest bidder, Leticia LLC, for the price of One Hundred Five Thousand and 00/100 (\$105,000.00) Dollars. The Report also states that the lower court issued a deed to Leticia LLC and that it disbursed the foreclosure sale proceeds.

According to the language in the Writ, the Lower Court issued it on motion from Leticia LLC following the issuance of the deed to the highest bidder from the foreclosure sale. The Writ

orders the removal of Appellant and Tyrone Davis from the property and requires them to remove their personal property from the foreclosed property.

The Lower Court did not conduct a hearing concerning the issuance of the Report or the Writ, and there is no transcript of proceedings related to the Report or the Writ. Further, there is no evidence that Appellant ordered a transcript of proceedings related to the Report or the Writ. Rather, Appellant ordered the transcript of proceedings that resulted in the issuance of the Foreclosure Order. That transcript has no bearing on the Orders that are the subject of this Appeal. The Report and the Writ concern matters that occurred after the hearing reported in the transcript of proceedings that Appellant ordered and after the filing of the Foreclosure Order.

The Foreclosure Order was the subject of a different appeal that the Court of Appeals dismissed on June 27, 2019. *M&T Bank v. Tyrone Davis*, Appellate Case No. 2018-001523 (the “Prior Appeal”). Appellant in the Prior Appeal is identical to Appellant in this matter. The Court of Appeals dismissed the Prior Appeal because Appellant failed to provide proof that he had ordered the trial transcript (the “Trial Transcript”) as required by the Court of Appeals in its Order dated May 30, 2019.

Appellant appears *pro se*. It is clear from his filing in this matter and in the Prior Appeal that Appellant does not understand the appellate process and is confused about the parameters of his current Appeal. The language in the Notice of Appeal filed on October 4, 2019 and the Notice of Lis Pendens and Notice of Action Pending filed with the Notice of Appeal on October 4, 2019 make it clear that Appellant believes that he is appealing every order entered by the Lower Court in the foreclosure action, including the Foreclosure Order. Appellant’s order of the Trial Transcript confirms this characterization of Appellant’s intent. The only orders that are

subject to appeal are the Report and the Writ, nothing else. Appellant's efforts to request review of matters other than the Report and the Writ are not appropriate.

The Trial Transcript is not relevant to this appeal and ordering it should not extend the time for filing an Initial Brief. Appellant's time for filing the Initial Brief has expired and the Court of Appeals should dismiss this appeal.

(2) Appellant failed to serve Leticia LLC with the Notice of Appeal and the Amended Notice of Appeal.

Rule 202(a), SCACR, designates any parties adverse to the appellant as the respondent.

The Writ identifies Leticia LLC as the movant – the party that requested the Writ. If the Appellant appeals the relief given to Leticia LLC in the Writ, then Leticia LLC is adverse to Appellant and is a Respondent.

The Report names Leticia LLC as the purchaser at the foreclosure sale and the grantee of the foreclosure deed issued by the Lower Court. If Appellant challenges the sale and the deed described in the Report, Leticia LLC is adverse to the Appellant and is a Respondent.

Rule 203(b)(1), SCACR, requires Appellant to serve a notice of appeal on each Respondent within thirty (30) days of written notice of entry of the Report and the Writ. The Lower Court entered the Report on September 3, 2019 and the Writ on September 9, 2019. Appellant filed his Notice of Appeal in Master-in-Equity Case on October 4, 2019 and his Amended Notice of Appeal on October 16, 2019. In his proof of service of the Notice of Appeal and the Amended Notice of Appeal, Appellant states that he served Leticia LLC by serving John B. Kelchner, its attorney of record. Mr. Kelchner is attorney of record for the Respondent M&T Bank. He has not appeared as counsel for Leticia LLC. Mr. Kelchner's affidavit, attached to this

Motion, makes it clear that he is not Leticia LLC's attorney.

The requirement that Appellant timely serve all Respondents with the Notice of Appeal is jurisdictional. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004). Since Appellant failed to timely serve all Respondents, the appellate court lacks the authority to hear and decide this case. *Id.* This Court does not have jurisdiction to hear this matter and it should be dismissed.

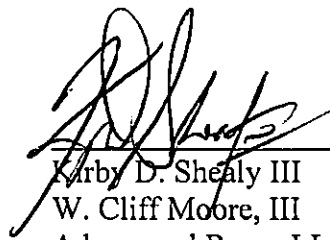
(3) The Appellant has failed to serve any party with his Letter Ordering Transcripts filed with the Court on October 14, 2019.

In the Prior Appeal, Appellant failed to serve Respondents or their counsel with its court filings. Appellant continues that practice in this appeal. Although the Letter Ordering Transcripts received by the Appellate Court on October 14, 2019, and the notification concerning change of mailing address received by the Appellate Court on October 25, 2019, purport to have been mailed to counsel of record, counsel of record did not receive them. These facts are set forth in the attached affidavits of John B. Kelchner and Daniel J. Orvin.

Respondent M&T Bank does not assert that Appellant's failure to serve counsel of record with these notices is an independent ground for dismissal. However, when that failure is coupled with Appellant's other conduct in this appeal and the Prior Appeal, it is clear that Appellant is abusing the appellate process in an attempt to delay the enforcement of the Lower Court's orders. The Court of Appeals should not allow this abuse and it should dismiss this appeal.

The Respondent M&T Bank respectfully requests the dismissal of this appeal for the reasons stated.

December 6, 2019.



Kirby D. Shealy III
W. Cliff Moore, III
Adams and Reese LLP
Post Office Box 2285
Columbia, S.C. 29202
P: 803-254-4190
Attorneys for M&T Bank, Respondent

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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 and William O.
Smith are..... Respondents.


AFFIDAVIT OF JOHN B. KELCHNER

Personally appeared before me, John B. Kelchner, who, after being duly sworn, deposes
and states that:

1. He is an attorney, licensed to practice law in the State of South Carolina.
2. He is familiar with the above styled matter and has appeared in that matter as
counsel for the Respondent M&T Bank.
3. He has not appeared in the above styled matter as counsel for Leticia, LLC.
4. Leticia, LLC is not his client and has never been his client.
5. He has reviewed the filings attached to this Affidavit as Exhibit 1 concerning the
Appellant's Ordering of Transcripts received by the SC Court of Appeals on October 14, 2019
(the "Letter"),

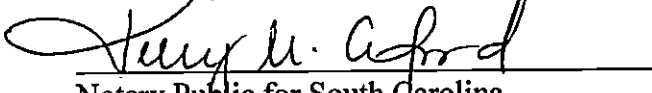
6. He has reviewed the filings attached to this Affidavit as Exhibit 2 concerning the change of the Appellant's mail address (the "Notice"),
7. The Letter and the Notice state that they were mailed to him as counsel of record.
8. He did not receive the Letter or the Notice by mail.

FURTHER THE AFFIANT SAYETH NAUGHT.



John B. Kelchner

Sworn to and subscribed before me
This 26 day of November 2019.



Notary Public for South Carolina
My Commission Expires: 4/12/2022

EXHIBIT 1

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629 Columbia, S.C. 29211

Re: M&T Bank et al., Respondent vs Bobby J. Bellamy, Appellant

Dear Ms. Kitchings:

Enclosed for filing is Letter Ordering Transcripts and email correspondence from Garber Reporting Service, Certified Court Reporters P.O. Box 12348 Columbia S. C. 229211.

October 11, 2019

Sincerely,



Bobby J. Bellamy Pro se
P.O. Box 1674
Little River, South Carolina. 29566
843 457-3625

Cliff Moore, III
Adams and Reese LLP
1501 Main Street 5th floor
Columbia, S.C. 29201 803 254-4190

John B. Kelchner, Esq.
Hutchens Law Firm
P.O. Box 8237
Columbia, S.C. 29202 803 726-2700

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

Daniel Q. Orvin, Esq.
Matthew Tillman, Esq.
Womble Bond Dickson (US) LLP
5 exchange Street
Charleston, S.C. 29401 843 772-3400

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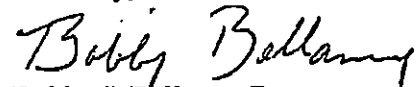
Dear Mr. Bryan:

I received your email dated 9/25/2019. I request that you provide me with final transcripts of the trial proceedings for February and April 2016, please transcribe the entire record. Payment in advance for approved hard copies will be paid on November 2, 2019 as agreed.

I agree to the terms of your email.

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Mary P. Jones, Esquire
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LINDA B. NICHOLS
HÖRRY COUNTY GOVERNMENT
15th JUDICIAL CIRCUIT, SOLICITOR
1301 2nd AVENUE
CONWAY, SC 29526

Date: 9/25/2019

2/8/2016

KATHRYN BOSTROM

2011-CP-26-1809
M & T BANK vs. TYRONE DAVIS, et. al.

TRIAL, 2/8/16 TRANSCRIPTION	1,205.40
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TRIAL, 4/12/16 TRANSCRIPTION	1,076.25
Total Due:	3,892.95

Due & Payable upon receipt

Nichols, Linda

From: Nichols, Linda
Sent: Friday, October 11, 2019 9:50 AM
To: Paul Greathouse
Subject: RE: transcript

Ok, payment in advance is ok with him, he probably will need a hard copy for his records.
Thank you

From: Paul Greathouse [mailto:pgreathouse@garberreporting.com]
Sent: Friday, October 11, 2019 9:42 AM
To: Nichols, Linda <nichols.linda@horrycounty.org>
Cc: James Bryan <jbryan@garberreporting.com>
Subject: RE: transcript

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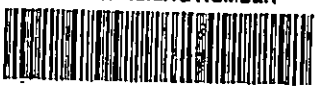
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Bobby Bellamy
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SC Appeals Court
The Honorable Jenny Abbott Kitchings
Chief, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

EXHIBIT 2

The Honorable Jenny Abbott Kitchings
Clerk , South Carolina Court of Appeals
P.O. Box 11629 Columbia, South Carolina 29211

M&T Bank v Tyrone Davis

Case: 2019-001682

Re: Change of Address

Dear Ms. Kitchings and Counsel

Please send all new correspondence for Bobby J. Bellamy to P.O. Box 1674, Little River, S.C.
29566.

Counsel of Record

Cliff Moore, III Adam and Reese LLP
1501 Main Street 5th Floor Columbia S.C, 29201
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Scott Umstead
4226 Mayfair st # 100
Myrtle Beach SC 29577
843 913-4610

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Thank You,

Bobby Bellamy

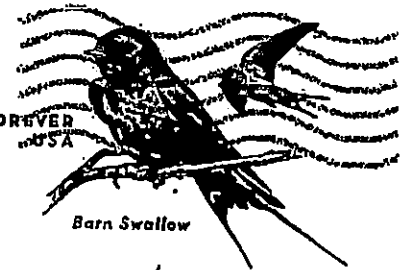
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COLUMBIA SC 290

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Attn: Clerk of Court

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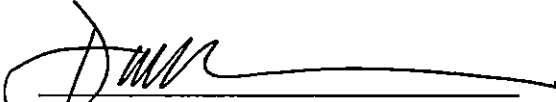
AFFIDAVIT OF DANIEL Q. ORVIN

Personally appeared before me, Daniel Quigley Orvin, who, after being duly sworn,
deposes and states that:

1. He is an attorney, licensed to practice law in the State of South Carolina.
2. He is familiar with the above styled matter and has appeared in that matter as counsel for the Respondent Tyrone Davis.
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Daniel Q. Orvin

Sworn to and subscribed before me
This 3rd day of December 2019.

Carol B. Casey
Notary Public for South Carolina
My Commission Expires: March 1, 2029

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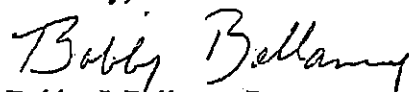
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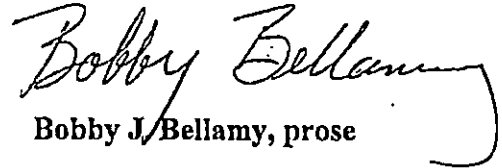
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Bobby J. Bellamy, prose

Counsel of Record

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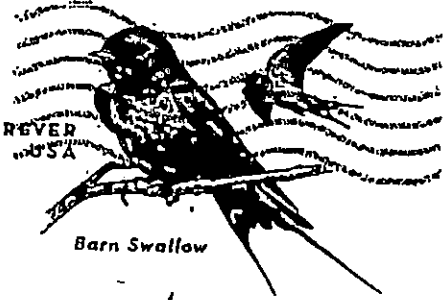
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Smith are..... Respondents.

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 December 6, 2019 addressed to Bobby J. Bellamy, PO Box 1674, 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 December 6, 2019, addressed as follows:

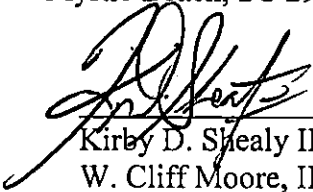
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Daniel Q. Orvin, Esq.
Matthew Tillman, Esq.
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December 6, 2019

Via U.S. Mail

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
PO Box 11629
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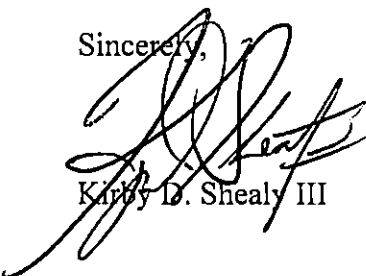
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RE: *M&T Bank v. Tyrone Davis, et al.*
Appellate Case No. 2019-001682
A&R File No. 050168-000223

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 using the envelope enclosed for your convenience.

Sincerely,


Kirby D. Shealy III

KDS/jas

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