

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
APPEAL FORM HORRY COUNTY
Court of Common Pleas
Judge Cynthia Howe, Master-In-Equity
Ralph P. Stroman, Special Referee for Horry County
Case No: 2019-001682

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DEC 31 2019

SC Court of Appeals

Leticia LLC, Movant

M&T Bank, Plaintiff

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 _____

M&T Bank; Tyrone Davis; BC Fund and Management, LLC DBA BC Fund LLC

and William O. Smith, Respondents

v.

Bobby J. Bellamy

Appellant

RETURN TO RESPONDEDANT'S M&T BANK'S SECOND MOTION TO DISMISS

COME NOW Appellant, Bobby J. Bellamy, Pro se, makes the following Return in opposition to Respondent, M&T Bank's, Second Motion to Dismiss. The Master in Equity's Report on Sale and Disbursement was **signed and executed** on September 3, 2019, Pursuant to Order of Court was held without notice and advertisement as per statue, the Master in Equity authorized the sale of property belonging to Bobby Bellamy. The property was sold, on sale day, September 4, 2018

to Leticia the highest bidder on that day without 30 day upset bid or allowance for appraisal or compliance with South Carolina Rule of Law. Writ of Assistance authorized on September 9, 2019. The Sheriff office served short order written notice of entry of this notice on October 3, 2019 and final complete order of written notice on **October 22, 2019 at 8:00 am**. The Notice of Appeal was timely filed on October 8, 2019.

Current Initial Brief, Standard of Review: in pursuant of SC Rule 53 (e) SCRPC, SC Code 14-11-60 and SECTION 14-11-85. Appeal from final judgment of Master-in-Equity. When some or **all of the causes of action** in a case are referred to a Master-in-Equity or special referee, the Master or Referee shall enter final judgment as to those causes of action, and an appeal from an **order or judgment** of the Master or Referee must be to the Supreme Court or the **Court of Appeals** as provided by the South Carolina Appellate.

The Appellant Appeals the final judgement of Master-in-Equity and all causes of actions in the case referred to the Master-in-Equity as final judgement as to those causes of action and to appeal the Orders listed below to the Court of Appeals:

1. Master's Order Granting Plaintiff's Motion to Amend, adding BC Fund and Management LLC D/B/A BC Fund LLC... November 6, 2013
2. Master's Order Dismissing Defendants counterclaim for civil conspiracy...March 18, 2015
3. Master's Order of Reformation of Deed in Masters Report and Order and Judgement of foreclosure and sale....May 4, 2018

The Respondent argues, the Appellant challenges Orders of the Lower Court these Orders were the subject of a prior appeal that has been dismissed.

Prior Initial Brief, Standard of Review: In pursuant to SC Rule 56 (c) SCRPC Appeal was to review the grant of a summary judgement; summary judgement is proper when there is no genuine issues as to any material fact and the moving part is entitled to judgement as a matter of law. Fleming v Rose, 350 S.C. 488, 493, 567 S.E. 2nd 857, 860 (2002).

The Respondent argues that the Lower Court did not conduct a hearing concerning either of the two orders that the Appellant challenges in his appeal, as such, there is no transcript

to be ordered extending the time during which the appellant was required to file his Initial Brief.

Rule 71 and 71(f) replace old Circuit **Rules 51 through 55**, and contain the changes in procedure on foreclosure and partition that have developed through case law and practice:

Rule 71(a) is amended so that a record of the hearings, but not necessarily a typed transcript, is preserved in the file. Any party who has appeared in the action may present proof that the debt may be satisfied by selling the property in parcels, rather than selling the whole to satisfy the claims. **In all cases proof shall be made of the facts and circumstances alleged in the pleadings and evidence given as to any payments which have been made or credits due.**

Rule 71(b) now requires waiver of the demand for a deficiency judgment in the pleadings or in writing, before the bidding will be closed on the day of sale. Unless the pleadings state that no personal or deficiency judgment is demanded or any right to such judgment is expressly waived in writing, the bidding shall not be closed upon the day of sale but shall remain open until the thirtieth day after such sale exclusive of the day of the sale. The judgment shall also contain a good and sufficient legal description of the property being sold, a provision for the necessary legal advertisement, the time and location of the sale, and notice of any senior liens, taxes, or other rights to which the property to be sold is subject. The judgment shall also specify the amount of good faith deposit necessary at the time of the sale, and the date that compliance must be made with the bid. **The manner and conduct of the bidding when a deficiency has been demanded shall be as required by law.**

Rule 71(c) any surplus moneys arising from the sale shall be held by the officer making the sale and shall be paid pursuant to Rule 71(c). The rule now requires filing of claims against the surplus within 45 days of the filing of the statement of the sale rather than the date the court confirms the sale. In the event of a surplus fund resulting from the sale, the master or other officer conducting the sale shall at the time he makes his report to the court on the sale and disbursements, cause to be furnished to all parties appearing in the action a notice advising of the surplus fund. Any surplus moneys arising from the sale shall be held by the officer making the sale and shall be paid pursuant to Rule 71(c).

Respondent' suspicion that in Arguments 2 and 4 of the Appellants Initial Brief seek to review the Master's Report and Order of Foreclosure and Sale dated May 4, 2018.

Rule 71 (e) Actions When Title Is at Issue. In foreclosure or partition actions when title to real property is at issue the court or master to whom the action is referred shall take testimony and receive evidence as to the title and interest in the premises of the several parties. In all such actions the judge or master shall ascertain the rights and interests of the several parties and set forth in the report or order of judgment the **conveyances** or probate estates, if any, through which the rights or interests were acquired. In all such actions a transcript of record shall be made and reserved in the case file in the office of the clerk of court.

The Respondent is mistaken, the appellant does not agree foreclosure sale irregularities although there are many irregularities, as a basis for denial of the Respondent's Motion to Dismiss. The Appellant argues that the property that guarantees the illegal mortgage did not belong to the mortgage holder. The property should not have been attached to the mortgage and sold at foreclosure sale.


According to the Respondent, the successful foreclosure sale bidder delayed compliance with its bid until the resolution of the appeal of the foreclosure order on September 4, 2018.

The property was not sold in pursuant of SC Rule.

1. Legal newspaper of legal record general circulation publication, Horry Independent in local newspaper published in Conway, SC only security property in Little River, S.C. (Noncompliance)
2. Foreclosure sale shall be published once a week during three successive calendar weeks before foreclosure sale must be published at the courthouse door and two other public places **at least three weeks** prior to the date of sale. Not published as required, local Conway newspaper August 16, 23, and 30 2018 and sold September 4, 2018. (Noncompliance)
3. 12 U.S. Code 3758 , the occupants of the property must be notified 21 days before sale under clause (iv) before the date of the foreclosure sale to be posted at the security property if address unknown or notified by certified or registered mail. Notice of Sale filed August 29, 2018. Property sold September 4, 2018. (Noncompliance)

The Appellant restates his opposition to the Respondent's Motion to Dismiss

Respectfully submitted

A handwritten signature in black ink that reads "Bobby Bellamy". The signature is written in a cursive style with a large, prominent initial "B".

Bobby J. Bellamy Pro se

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Appellant

PROOF OF SERVICE

The Undersigned certify that I have served the Reply to M&T Bank, Second Motion to Dismiss on M&T Bank by depositing a copy of it in the United States Mail, postage prepaid, on December 30, 2019 addressed to his attorney of record, **Cliff Moore, III Adams and Reese LLP, 1501 Main Street 5th floor , Columbia, S.C. 29201.**

The Undersigned certify that I have served the Reply to M&T Bank, Second Motion to Dismiss on M&T Bank by depositing a copy of it in the United States Mail, postage prepaid, on

December 30, 2019 addressed to his attorney of record, **John B. Kelchner, Hutchens Law Firm
P.O. Box 8237, Columbia, S. C. 29202**

The Undersigned certify that I have served the Reply to M&T Bank, Second Motion to Dismiss on Tyrone Davis by depositing a copy of it in the United States Mail, postage prepaid, on December 30, 2019 addressed to his attorney of record, **Daniel J. Orvin, Womble Bond
Dickson LLP, 5 Exchange St. Charleston, S.C. 29401**

The Undersigned certify that I have served the Reply to M&T Bank, Second Motion to Dismiss on BC Fund and Management LLC D/B/A BC Fund LLC by depositing a copy of it in the United States Mail, postage prepaid, on December 30, 2019 addressed to his attorney of record, **Scott Umstead 4226 Mayfair St. #100 Myrtle Beach, S.C. 29577.**

December 30, 2019



Bobby J. Bellamy

P.O. Box 1674

Little River, S.C. 29566

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

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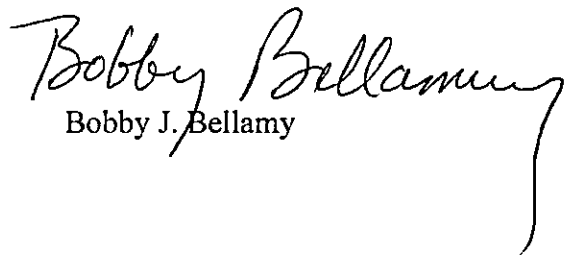
Re: M&T Bank v. Tyrone Davis, et al Appellate Case No. 2019-001682

Dear Ms. Kitchings:

I have enclosed the Original and a copy of the Reply to M&T Bank Second Motion to Dismiss
and I have served a copy to the Attorneys listed below by United States mail with Proof of
Service, for filing in the above referenced case.

December 30, 2019

Sincerely,


Bobby J. Bellamy

cc:

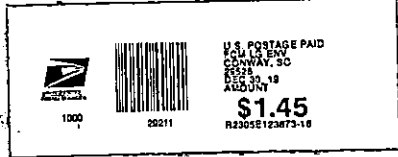
Cliff Moore, III, Esq.

John B. Kelchner Esq.

David Orvin, Esq

Scott Umstead, Esq.

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