

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Ralph P. Stroman, Special Referee

RECEIVED

Appellate Case No. 2019-001682
Trial Court Case No. 2011-CP-26-0189

DEC 20 2019
SC Court of Appeals

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 REPLY TO THE RETURN OF THE APPELLANT
ON M&T BANK'S MOTION TO DISMISS**

Pursuant to Rule 240(f), SCACR, Respondent M&T Bank (the "Respondent") files this
Reply to the Appellant's Return to the Respondent's Motion to Dismiss (the "Return").

The Return does not address the Respondent's primary argument in support of its Motion
to Dismiss – that the Appellant failed to timely file his initial brief. In its Motion to Dismiss, the
Respondent argues that the Lower Court did not conduct a hearing concerning either of the two
orders that the Appellant challenges in this appeal. As such, there is no transcript to be ordered
extending the time during which the Appellant was required to file his Initial Brief. In its
argument, the Respondent suggests that the ordering of the trial transcript by the Appellant

indicated the Appellant's attempt to challenge orders of the Lower Court that were the subject of a prior appeal that has been dismissed.

The Appellant has filed his Initial Brief and the arguments contained therein confirm the Respondent's suspicion. Arguments 2 and 4 of the Appellant's Initial Brief clearly set out that the Appellant seeks review of the Master's Report and Order of Foreclosure and Sale dated May 4, 2018 (the "Foreclosure Order"). That Foreclosure Order was the subject of a different appeal that the Court of Appeals dismissed on June 27, 2019. Further, Argument 3 of the Appellant's Initial Brief challenges a March 18, 2015, Lower Court order dismissing a counterclaim asserted by the Appellant and Argument 5 of the Initial Brief seeks review of the Lower Court's November 6, 2013, order allowing the Respondent to Amend its Complaint. The Appellant did not identify any of these Orders in his Notice of Appeal.

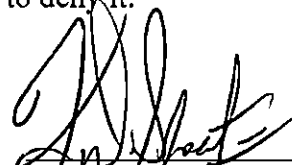
In his Return, the Appellant argues foreclosure sale irregularities as a basis for denial of the Respondent's Motion to Dismiss. This argument is part of the Appellant's argument on appeal and has no bearing on the Motion to Dismiss. However, the Appellant misstates facts in advancing this argument, and the Respondent uses this opportunity to correct those misstatements. The Appellant suggest that the Lower Court conducted the foreclosure sale on September 4, 2019, without notice and in violation of the sale provisions of S.C. Code §15-39-720 (2005). None of this information is correct.

Pursuant to the language contained in the Master's Report on Sale and Disbursement that is the subject of this appeal, the Lower Court conducted the Sale on September 4, 2018 (not 2019). The successful foreclosure sale bidder delayed compliance with its bid until the resolution of the appeal of the Foreclosure Order. The sale was conducted pursuant to a Notice of Sale entered in the Lower Court on August 29, 2018 (Exhibit 1) that the Lower Court

published as stated in the Affidavit of Publication entered in the Lower Court on September 19, 2018 (Exhibit 2). Pursuant to the terms and conditions of the Notice of Sale, the Respondent did not seek a deficiency judgment against the mortgagor, Tyrone Davis, and, as such, the provisions of S.C. Code §15-39-720 (2005) do not apply. S.C. Code §15-39-760 (2005).

The Respondent restates its Motion to Dismiss and its arguments in support of that motion. The Appellant has not offered any reason to deny it.

December 20, 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

EXHIBIT 1

Notice of Sale

C/A No: 2011-CP-26-01809

BY VIRTUE OF A DECREE of the Court of Common Pleas for Horry County, South Carolina, heretofore issued in the case of M&T Bank vs. Tyrone Davis, Bobby J. Bellamy, BC Fund and Management, LLC d/b/a BC Fund, LLC, and United States of America; Bobby J. Bellamy, Third Party Plaintiff vs. William O. Smith, Third Party Defendant. I, the undersigned as Master in Equity for Horry County, will sell on at September 4, 2018, at the Horry County Justice Center, 1301 2nd Ave., 3rd Floor Conway, SC 29526, Horry County, South Carolina, to the highest bidder:

Legal Description and Property Address:

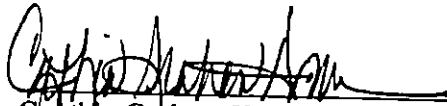
ALL THAT certain piece, parcel or tract of land situate, lying and being in Little River Township, County of Horry, State of South Carolina, being more particularly shown and designated on the west side of Sea Mountain Highway near Nixon's Crossroads, containing 3.39 acres more or less. Starting at a stake on the corner of Sea Mountain Highway and bounded on the South by Tract B, owned by Tommy J. Bellamy, on the West by North Pointe Development, on the North by Tract D. owned by Linda B. Nichols, on the East by Sea Mountain.

This being a portion of the same property conveyed to Sheila B. Goff, Linda B. Nichols, Bobby G. Bellamy and Tommy J. Bellamy by Deed of Distribution of Estate of Lela Bellamy Young dated December 27, 2006 and recorded December 28, 2006 in the Register of Deeds Office for Horry County, State of South Carolina, Book 3207 at Page 2080. Thereafter, Linda B. Nichols, Sheila B. Goff and Tommy J. Bellamy conveyed the subject property to Bobby J. Bellamy, dated January 3, 2007 and recorded January 9, 2007 in the Register of Deeds Office for Horry County, State of South Carolina in Book 3211 at Page 1955. Thereafter Bobby J. Bellamy conveyed the subject property to BC Fund, LLC dated June 29, 2007 and recorded on July 18, 2007 in the Register of Deeds Office for Horry County, State of South Carolina, in Book 3261 at Page 2091. Thereafter, BC Fund, LLC conveyed the subject property to Tyrone Davis by deed dated November 16, 2007 and recorded on November 19, 2007 in the Register of Deeds Office for Horry County, State of South Carolina in Book 3294 at Page 817.

3664 SEA MOUNTAIN HIGHWAY
LITTLE RIVER, SC 29566
TMS# 130-00-01-219

TERMS OF SALE: For cash. Interest at the current rate of Seven and 50/100 (7.50%) to be paid on balance of bid from date of sale to date of compliance. The purchaser to pay for

papers and stamps, and that the successful bidder or bidders, other than the Plaintiff therein, will, upon the acceptance of his or her bid, deposit with the Master in Equity for Horry County a certified check or cash in the amount equal to five percent (5%) of the amount of bid on said premises at the sale as evidence of good faith in bidding, and subject to any resale of said premises under Order of this Court; and in the event the said purchaser or purchasers fail to comply with the terms of sale within Thirty (30) days, the Master in Equity shall forthwith resell the said property, after the due notice and advertisement, and shall continue to sell the same each subsequent sales day until a purchaser, who shall comply with the terms of sale, shall be obtained, such sales to be made at the risk of the former purchaser. Since a personal or deficiency judgment is waived, the bidding will not remain open but compliance with the bid may be made immediately. If the Plaintiff or the Plaintiff's representative does not appear at the above-described sale, then the sale of the property will be null, void, and of no force and effect. In such event, the sale will be rescheduled for the next available sales day. Plaintiff may waive any of its rights, including its right to a deficiency judgment, prior to sale. Sold subject to taxes and assessments, existing easements and restrictions of record.


Cynthia Graham Howe
Master in Equity for Horry County

Conway, South Carolina
August 27, 2018
Hutchens Law Firm
P.O. Box 8237
Columbia, SC 29202
803-726-2700

Affidavit of Publication

Notice of Sale
 C/A No. 2011CP2601809
 BY VIRTUE OF A
 DECREE of the Court
 of Common Pleas for
 Horry County, South
 Carolina, heretofore
 issued in the case of
 M&J Bank vs. Tyrone
 Davis, Bobby J.
 Bellamy, BC Fund and
 Management, LLC
 d/b/a BC Fund, LLC
 and United States of
 America, Bobby J.
 Bellamy, Third Party
 Plaintiff vs. William O.
 Smith, Third Party
 Defendant, the
 undersigned as Master
 in Equity for Horry
 County, will sell on
 September 4, 2018, at
 11:00 a.m. at the Horry
 County Justice Center,
 1301 2nd Ave., 3rd
 Floor, Conway, SC
 29528, Horry County,
 South Carolina, to the
 highest bidder.
 Legal Description
 and Property
 Address:
 ALL THAT certain
 place, parcel or tract
 of land situate, lying
 and being in Little
 River Township,
 County of Horry,
 State of South
 Carolina, being more
 particularly shown
 and designated on
 the west side of Sea
 Mountain Highway
 near Nixon's
 Crossroads, contain-
 ing 3.39 acres, more
 or less. Starting at a
 stake on the corner
 of Sea Mountain
 Highway and bound-
 ed on the South by
 Tract B, owned by
 Tommy J. Bellamy,
 on the West by North
 Pointe Development,
 on the North by Tract
 D, owned by Linda B.
 Nichols, on the East
 by Sea Mountain
 Highway, being a portion
 of the same property
 conveyed to Sheila
 B. Goff, Linda B.
 Nichols, Bobby G.
 Bellamy and Tommy
 J. Bellamy by Deed
 of Distribution of
 Estate of Lela
 Bellamy Young dated
 December 27, 2006
 and recorded
 December 28, 2008 in
 the Register of
 Deeds Office for
 Horry County, State
 of South Carolina,
 Book 3207 at Page
 2080. Thereafter,
 Linda B. Nichols,
 Sheila B. Goff, and
 Tommy J. Bellamy
 conveyed the subject
 property to Bobby J.
 Bellamy, dated

January 3, 2007 and
 recorded January
 2007 in the Register
 of Deeds Office for
 Horry County, State
 of South Carolina,
 Book 3211 at Page
 1956. Thereafter,
 Bobby J. Bellamy
 conveyed the sub-
 ject property to BC Fund
 Management, LLC dated June 29,
 2007 and recorded
 on July 18, 2007 in
 the Register of
 Deeds Office for
 Horry County, State
 of South Carolina,
 Book 3281 at Page
 2081. Thereafter, BC
 Fund, LLC convey-
 ed the subject prop-
 erty to Tyrone Davis by
 deed dated
 November 16, 2007
 and recorded on
 November 19, 2007
 in the Register of
 Deeds Office for
 Horry County, State
 of South Carolina,
 Book 3254 at Page
 817.
 3684 SEA MOUNTAIN
 HIGHWAY
 LITTLE RIVER, SC
 29559
 TMS# 130-00-01-219
 TERMS OF SALE:
 For cash. Interest at
 the current rate of
 Seven and 60/100
 (7.60%) to be paid on
 balance of bid from
 date of sale to date of
 compliance. The pur-
 chaser to pay for
 papers and stamps,
 and that the success-
 ful bidder or bidders,
 other than the Plaintiff
 therein, will, upon the
 acceptance of the of-
 fer, bid, deposit with
 the Master in Equity
 for Horry County a cer-
 tified check or cash in
 the amount equal to
 five percent (5%) of
 the amount of bid on
 said premises at the
 sale as evidence of
 good faith in bidding,
 and subject to any
 resale of said prem-
 ises under Order of the
 Court, and in the event
 the said purchaser or
 purchasers fail to com-
 ply with the terms of
 sale within thirty (30)
 days, the Master in
 Equity shall forthwith
 resell the said prop-
 erty, after the due notice
 and advertisement,
 and shall continue to
 sell the same each
 subsequent sales day
 until a purchaser, who
 shall comply with the
 terms of sale, shall be
 obtained; such sales
 to be made at the next
 of the former purchas-
 er. Since a personal or
 deficiency judgment is
 waived, the bidding
 will not remain open,
 but compliance with
 the bid may be made

immediately if the
 plaintiff or the
 plaintiff's representa-
 tive does not appear at
 the above-described
 sale, then the sale of
 the property will be
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 will be rescheduled for
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 sales day. Plaintiff may
 waive any of its rights
 including its right to a
 deficiency judgment,
 prior to sale. Sold sub-
 ject to taxes and
 assessments, existing
 easements and restric-
 tions of record.
 Cynthia Graham Howe
 Master in Equity for
 Horry County
 Conway, South
 Carolina
 Huchens Law Firm
 P.O. Box 6237
 Columbia, SC 29202
 803-726-2700
 18.23.30

State of South Carolina
 County of Horry

Steve Robertson personally
 appears before me, and after being duly
 sworn, deposes and says: That he is the

Publisher of the
Horry Independent

a newspaper, published at _____

Conway, Horry County, S.C.
 in that County and State aforesaid;
 that the

Notice of Sale
 was printed and published in said
 newspaper, for and during the weekly
 publication, and appear in the issues of

Aug. 16, 23, 30

A.D. 2018

Steve Robertson
 Sworn to and subscribed before me
 this

30th day of August

A.D. 2018

Rebecca Stearns (L.S.)
 Notary Public for South Carolina

12/20/27

1146358

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Ralph P. Stroman, Special Referee

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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.

PROOF OF SERVICE

I certify that I have caused the foregoing Reply of M&T Bank to the Return of the Appellant on 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 December 20, 2019 addressed to Bobby J. Bellamy, PO Box 1674, Little River, SC 29566.

I further certify that I have caused the foregoing Reply of M&T Bank to the Return of the Appellant on M&T Bank’s 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 20, 2019, addressed as follows:

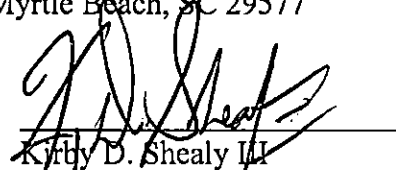
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Matthew Tillman, Esq.
Womble Bond Dickinson (US) LLP
5 Exchange Street
Charleston, SC 29401

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

Leticia LLC
c/o Kevin Pendergrass, Registered Agent
2943 Fred Nash Blvd
Myrtle Beach, SC 29577

December 20, 2019.



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w. Cliff Moore, III
Adams and Reese LLP
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Attorneys for M&T Bank, Respondent

ADAMS AND REESE LLP

December 20, 2019

Via Hand Delivery

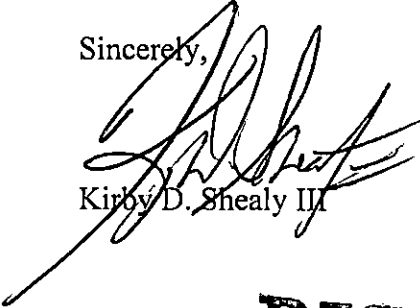
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina

RE: *M&T Bank v. Tyrone Davis, et al.*
Appellate Case No. 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 Reply to the Appellant's 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 courier.

Sincerely,



Kirby D. Shealy III

KDS/jas

Enclosure(s)

cc: *via U.S. Mail w/encl.*
Mr. Bobby B. Bellamy
John B. Kelchner, Esq.
Daniel Q. Orvin, Esq.
Matthew Tillman, Esq.
George J. Conits, Esq.
Leticia LLC c/o Kevin Pendergrass

Attorneys at Law
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Tennessee
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