

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM HORRY COUNTY
Court of Common Pleas**

Judge Cynthia Howe, Master-In-Equity

Ralph P. Stroman, Special Referee for Horry County

Case No: 2019-001682

Leticia LLC, Movant,

In Re:

M&T Bank, Plaintiff,

v.

**Tyrone Davis; Bobby J. Bellamy; BC Fund and Management, LLC d/b/a BC
Fund, LLC, Defendants,**

And

M&T Bank, Respondent,

v.

**Tyrone Davis, Bobby J. Bellamy, BC Fund and Management, LLC d/b/a BC
Fund, LLC, Defendants,**

Of whom Bobby J. Bellamy is the Appellant,

And

**Tyrone Davis, BC Fund and Management, LLC d/b/a BC Fund LLC are
Respondents.**

And

Bobby J. Bellamy, Appellant

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SC Court of Appeals

v.

William O. Smith, Respondent.

APPELLANT'S AMENDED INITIAL REPLY BRIEF

Bobby J. Bellamy

P.O. Box 1674

Little River, South Carolina, 29566

843 457-3625

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STATEMENT OF THE CASE

Appellant deny and incorporates by reference the Statement of Case and Facts presented in the Respondent M&T Bank's Initial Brief. The factual history discussed below is limited to reply to the issues raised in the Respondent M&T Bank Statement of the Case. Respondent M&T Banks Statement of the Case concludes that during lower court from which this appeal stems there was no testimony or evidence of wrongdoing in the mortgage. The Appellant concedes that there was no direct testimony or evidence during Lower Court that would legally lead to the sale of the property. The Appellant characterization of the purported sale of the property will show evidence that is misleading because the nature of the deeds, issues of title searches, and the temporal questions of whether the Master-In-Equity sale and disbursement was valid. These questions will be answered affirmatively by reference to inferences and circumstantial evidence in the record. According to the Respondent, deficiency judgement was waived.

ARGUMENT

1. **The Appellant failed to perfect the appeal.**

The Respondent, M&T Bank argues that Appellant failed to perfect the appeal by directing that Leticia should be a Respondent, an adverse party. The Respondent M&T Bank has issues with the service of the Notice of Appeal. The Appellant has already addressed these concerns and identified Leticia as movant in this case. Leticia had no part in the Lower Court decision to sell the property.

2. **The Lower Court complied with the statutory process for real estate foreclosure sales**

The Respondent seems confused as to Appellant's relevant issues in this Appeal. Appellant's appeal is not solely with the improper handling of the foreclosure sale, or an alleged waiver of deficiency judgement. The Appellant was not a signor on the mortgage. The Appellant **objects** to the Standard of Review in the Respondent, M&T Bank's initial brief because it addresses the mortgage, standing alone the mortgage has no relevance in this appeal. The Appellant was not a signor on the mortgage. The Respondent's legal jargon is confusing and excludes the simple facts. There exist a preponderance of evidence that the Master failed to execute and deliver to Leticia LLC, good and sufficient deed of conveyance.

3. The Appellant fails to appropriately identify the basis of his appeal and does not provide sufficient or supporting authority for his arguments numbered two (2) through five (5)

In this case there is a particular application of the rule found where parole evidence was admitted in Lower Court to show a different consideration that includes a written contract to build a housing development. In the Appellant's, quit claim deed, Bobby Bellamy to BC Fund LLC, there was an obligatory part of the deed that BC Fund LLC allegedly undertook to do or perform. The following cases have been cited in support of the appellants' contention as to the admissibility of the parole testimony to vary the consideration: *Garrett v. Stuart*, 1 McCord, 514; *Curry v. Lyles*, 2 Hill, 404; *Whitman v. Corley*, 72 S.C. 410; 52 S.E., 49; *Knighton v. Desportes*, 119 S.C. 340; 112 S.E., 346. The deed expresses a certain \$5.00 consideration; parole evidence will be filed in the Record on Appeal to show a different valuable other than \$5.00 consideration. No work was preformed, the development was a failure on paper, activating the right of reversion as stated on the deed transferring property back to Appellant.

4. **The Order allowing Amended Complaint, the Order dismissing civil conspiracy counterclaim, and the foreclosure Order cannot be challenged now.**

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 Court Rule 53(c). These Orders include appealable causes of action in connection with the Master-In-Equity's Report on Sale and Disbursements signed on September 3, 2019. On February 28, 2020, the Respondent's Motion to Dismiss was denied. The Clerk of Court notified all parties of the denial and included a Court Order for all Respondents to file initial briefs within 30 days after Motion to Dismiss was denied. The Court allowed the Respondents an additional 20 days due to Coronavirus. The Respondent, M&T Bank knew what was required and filed an initial Brief on April 15, 2020. The Co-Respondents had the ability to comply with that order, but willfully and knowingly failed to comply with that order. The Co-Respondents, are closing attorney and attorneys that represent title insurance holders. They all sit on un-clean hands. They have failed to comply with the orders of this court to file an initial brief. Their input was valuable to the success of this Appeal. The Appellant seeks sanctions for the co-respondent's to be held in contempt of court for failure to comply with court orders.

The Appellant **objects** to Respondent's Designation of Matter because it is riddled with matter which is irrelevant to this appeal because it was not presented in the Lower Court as required by Rule 210(c). *see designation of Matter* number: five (5), six (6), seven (7), eight (8), eleven (11), seventeen (17), twenty (20), twenty-one (21), twenty-two (22), thirty-four (34), thirty-five (35).

Respondent needs to be more specific on requested matter *see designation of matter* number: twenty-eight (28), twenty-nine (29) thirty (30) thirty-one (31) listed as: Plaintiff 's Trial Exhibits five (5) six (6) seven (7) and twenty-nine (29) these exhibits are unknown to the Appellant.

In South Carolina, any reputable mortgage lender will require that an attorney be selected to conduct the closing. The use of a closing agent rather than an attorney to close the loan is illegal, even if the transaction is "only" a refinance. In re Lester, 578 S.E.2d 7 (S.C. 2003.)Aug 15, 2017 South Carolina attorney rendering an opinion as to the title of the property, he was responsible for reviewing the abstractor's report and vouching for its legal sufficiency. *See Ex parte Watson, 356 S.C. 432, 436, 589 S.E.2d 760, 762 (2003)* ("[W]e hold that when non-lawyer title abstractors examine public records and then render an opinion as to the content of those records, they are engaged in the unauthorized practice of law. But if a licensed attorney reviews the title abstractor's report and vouches for its legal sufficiency by signing the report, title abstractors would not be engaged in the unauthorized practice of law.").

5. **The Lower Court properly issued a deed to the foreclosure sale purchaser**

Co-Respondent, **closing attorney**, Scott Umstead, Co-Respondent, Tyrone Davis, **buyer's insurance policy** holder and M&T Bank **lender's insurance policy** holder had responsibilities before approval of the mortgage to insure that the lender had a proper mortgage lien on the property, and that there were no defects in the title which may adversely affect the lender's lien. The real estate closing is an event that brings parties of a real estate transaction to a single location. During this meeting of interested parties, all relevant legal documents are signed, and the established payment is transferred from the buyer to the property owner. The closing attorney then issues a final opinion to the title company and pays the **title**

companies its premium. The closing attorney is available to explain documents such as the deed, a note, a deed of trust, or settlement statement, disbursement at the end of the transaction and loan documentation required by the lender. During the real estate closing, prior conveyances, and easements will be identified and dealt with before the transaction occurs. The Co-Respondent M&T Bank title insurance indemnify the title against loss under the terms of the policy. The title insurance company should have worked in advance of issuing a policy to identify and eliminate potential risks and therefore prevent losses caused by title defects. Respondent, M&T Bank acquired the policy, with the important knowledge that recorded matters have been searched and examined so that title insurance covering the property can be issued. S.C. Code Ann. § 40-5-320 (1986) strictly prohibits corporations from the practice of law. The mortgage was secured by property that required Lender's title insurance. For these reasons M&T Bank's initial Brief has no relevance in these matters. The property was "insurable", meaning that there were known defects in the chain of title, but the title company still approved the property as capable of being insured. The defects were as follows:

The granting clauses that referred to the attached property description, which, in turn, incorporates a plat

Boundary and Survey Issues – there was no current survey of property. The plat was drawn on a prior survey. The plat was inaccurate, incomplete and unapproved. The Plat included unsolved boundary dispute with neighboring property owners. The plat survey by Harry Bruton for BC Fund LLC clearly included neighboring property belonging to different owners. This error was not simply a misstatement of North Point Development as the property's eastern border to reflect North Pointe Development as the property's western boundary. There were defects in the property description that impaired a property owner's ability to obtain a marketable title

The description of property

Errors in the Public Record – There were no record of merger or name change on both deeds reported in county records. The defect of the grantor in the warranty deed impaired a property owner's ability to obtain a marketable title. There was no County record of BC fund and Management LLC DBA BC Fund LLC. This alleged name change was invented by Co-Respondent, Scott Umstead, closing attorney in a secret meeting with Co-Respondent William Smith, of BC Fund and Management LLC to secure the loan. This merger was not approved by SC Secretary of State LLC or NC Secretary of State LLC office. The closing attorney engage in conduct **tending to pollute the administration of justice** and created a conflict of interest by representing two clients on opposite sides of the same case. When it comes to buying and selling property, a real estate attorney can either represent the buyer or the seller. One attorney cannot do both. When the buyer needs to borrow money for a mortgage, the real estate attorney who does the closing doesn't represent either the buyer or the seller, but rather the lender. *See S.C. Code Ann. § 37-10-102* (2015) (requiring mortgage lenders to ascertain a borrower's preference as to the legal counsel they wish to employ to represent them in connection with closing the loan transaction).

BC Fund's use of its trade name

Forgery, Fraud, and Impersonation – There was Forgeries, fraud, and impersonation of the property owner in the warranty deed to Co-Respondent Tyrone Davis, and conflicting claims of ownership. Co- Respondent, William O Smith owner of BC Fund and Management LLC, South Carolina LLC impersonated as sole member of BC Fund LLC, North Carolina LLC. Co-Respondent, William O Smith had no **certificate of authority** and no SC legal authority to act as sole member, to sell property belonging to BC Fund LLC. It is a fact, BC Fund LLC was a

North Carolina LLC, licensed by the State of North Carolina with tax ID number. BC Fund LLC was not a trade name for BC Fund and Management LLC.

The Co-Respondent Tyrone Davis, purchased an additional owner's title insurance policy to insure the buyer's title to the property. The Court has addressed the unauthorized practice of law in the real estate context on at least three occasions. In the first case, the Court held that the preparation of title abstracts by title companies for buyers constituted the unauthorized practice of law. *State v. Buyers Serv. Co., Inc.*, 292_S.C.426, 357_S.E.2d_15_(1987). The Court found that "[t] the examination of titles requires expert legal knowledge and skill." *Id.* at 432, 357_S.E.2d_at 19. As a result, the Court established a requirement that title examinations and abstract preparation be conducted "under the supervision of a licensed attorney." *Id.* at 432 33, 357 S.E.2d_at 19. Similarly, in another case, this Court considered whether a title search performed by a title company for a lender constituted the unauthorized practice of law. *Doe v. McMaster*, 355_S.C._306, 585_S.E.2d_773_(2003). As in *Buyers*, the Title Company's title search and preparation of title documents for the lender, without direct attorney supervision, constitutes the unauthorized practice of law. The property had title searches performed by two different title insurance companies and a closing attorney. For this reason, the Respondent's M&T Bank knew of the defects of the title and approved the mortgage. The court should reject the Respondent's argument that the Warranty deed used to secure the mortgage was valid.

The clause right of reversion.

The Appellant quit claim deed stated a right of reversion clause. No work was preformed, the development was a failure on paper, and the property should have been transferred back to the Appellant. The Appellant's brother, Tommy Bellamy's quit claim deed stated a right of reversion. His property was transferred back as required in right of reversion. The Appellant's

property was sold. The property was fraudulently sold without knowledge of the Appellant. The Appellant received no money from the proceeds of the Mortgage. For this reason, the court should reject the Respondent's argument that the sale of the property was within the code of South Carolina law.

CONCLUSION

For these reasons, as well as those addressed in the Appellant's Initial Brief to this Court, the Lower Court decisions should be reversed.

Respectfully submitted,

A handwritten signature in cursive script that reads "Bobby Bellamy".

Bobby Bellamy
P.O. Box 1674
Little River, South Carolina
29566

843 457-3625

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And

Bobby J. Bellamy, Appellant,

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v.

William O. Smith, Respondent.

PROOF OF SERVICE

The Undersigned certify that I have served the **Appellant's Amended Initial Reply Brief** on M&T Bank by depositing a copy of it in the United States Mail, postage prepaid, on May 18, 2020 addressed to his attorney of record, **Cliff Moore, III Adams and Reese LLP, 1501 Main Street 5th floor, Columbia, S.C. 29201.**

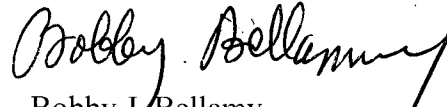
The Undersigned certify that I have served the **Appellant's Amended Initial Reply Brief** on M&T Bank by depositing a copy of it in the United States Mail, postage prepaid, on May 18, 2020, 2020 addressed to his attorney of record, **John B. Kelchner, Hutchens Law Firm P.O. Box 8237, Columbia, S.C. 29202**

The Undersigned certify that I have served the **Appellant's Amended Initial Reply Brief** on Tyrone Davis by depositing a copy of it in the United States Mail, postage prepaid, on May 18, 2020 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 **Appellant's Amended Initial Reply Brief** 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 May 18, 2020 addressed to his attorney of record, **Scott Umstead**
4226 Mayfair St. #100 Myrtle Beach, S.C. 29577.

May 18, 2020

A handwritten signature in black ink that reads "Bobby Bellamy". The signature is written in a cursive style with a long, sweeping tail that extends downwards and to the right.

Bobby J. Bellamy
P.O. Box 1674
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The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
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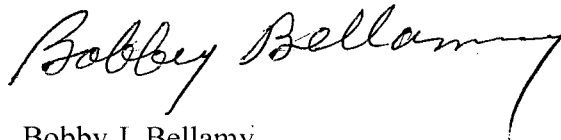
Re: M&T Bank v. Tyrone Davis, et al Appellate Case No. 2019-001682 .

Dear Ms. Kitchings:

I have enclosed the Original and a copy of the **Appellant's Amended Initial Reply Brief** and served a copy to the Attorneys listed below by United States mail with Proof of Service, for filing in the above referenced case.

May 18, 2020

Sincerely,



Bobby J. Bellamy

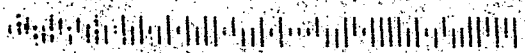
cc:


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