

**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,

RECEIVED
JUN 02 2020
SC Court of Appeals

v.

William O. Smith, Respondent.

FINAL BRIEF OF APPELLANT

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- 2. Because the Master in Equity erred in Order of reformation in Master’s Report and Order of Foreclosure and Sale of property description” in the quit claim deed of BC Fund LLC member, Bobby Bellamy’s property by failing to inquire further about potential title defects or adverse claims in the public record that raise “red flags” in granting clauses that referred to an attached property description, which, in turn, incorporates a plat,**

description of the property, and a clause “right of reversion”, the Master failed to execute and deliver to Leticia LLC, good and of sufficient deed of conveyance, the Master in Equity’s Report on Sale and Disbursement, should be voided.....5, 6

3. Because the Master erred in Order dismissing Defendants counterclaim for civil conspiracy on March 18, 2015 and failed to comply with South Carolina Statue on LLC that prevents, William O. Smith, member of BC Fund and Management LLC from conveying and profiting from property owned by BC Fund LLC (a *separate entity*) as signer and alleged sole member of BC Fund LLC in a warranty deed to Tyrone Davis. The Master failed to execute and deliver to Leticia LLC, good and sufficient deed of conveyance, the Master in Equity’s Report on Sale and Disbursement, should be voided.....6, 7

4. Because the Master in Equity erred in Order of reformation in Master’s Report and Order of Foreclosure and Sale of property description ” in the quit claim deed of BC Fund LLC member, Bobby Bellamy’s property by failing to inquire further about potential title defects or adverse claims in the public record that raise “red flags” and granting clauses by mutual mistake, rather than clear, cogent and convincing mounting to a certainty, the Master failed to execute and deliver to Leticia LLC, good and sufficient deed of conveyance, the Master in Equity’s Report on Sale and Disbursement, should be voided.....8, 9

5. Because the court erred by order granting Plaintiff’s Motion to Amend complaint on November 6, 2013, adding BC Fund and Management LLC D/B/A BC Fund LLC on

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STATEMENT OF ISSUES ON APPEAL

Master in Equity's Report on Sale and Disbursement On September 3, 2019, Pursuant to Order of Court was held without notice and advertisement as per statute, the Master in Equity authorized the sale of property belonging to Bobby Bellamy. The property was sold, on sale day, September 4, 2019 to Leticia the highest bidder on that day without 30 day upset bid or allowance for appraisal. Writ of Assistance authorized on September 9, 2019. Order of reformation in Master's Report and Order of Foreclosure and Sale of property description failed to inquire further about potential defects or adverse claims in the public record that raise red flags on the quit claim deed of Bobby J. Bellamy's transfer to BC Fund LLC and illegal signer on warranty deed from BC Fund LLC to Tyrone Davis prevents the Master from executing and delivering a legal deed of conveyance.

STATEMENTS OF THE CASE

- 1. Did the Master in Equity's Report on Sale and Disbursement comply with South Carolina Statues on foreclosure sales by ordering all funds disbursed, the file closed and case ended on sale date to the highest bidder on that day?**
- 2. Did the Master err in Order of Reformation in Master's Report and Order of Foreclosure and Sale of property in description by failing to inquire further about potential defects or adverse claims in the public record that raised red flags on the quit claim deed of Bobby J. Bellamy's transfer to BC Fund LLC prevent the Master from executing and delivering a legal deed of conveyance?**
- 3. Did the Master err in Order dismissing Defendants counterclaim for civil conspiracy on March 18, 2015, fail to comply with SC Statue on LLC,**

that prevents a member of BC Fund and Management LLC, William O Smith from acting as alleged sole member of BC Fund LLC with no authority to sell property to Tyrone Davis in Warranty deed prevent the Master from executing and delivering a legal deed of conveyance?

- 4. Did the Master err in Order of Reformation in Master's Report and Order of Foreclosure and Sale of property description, for the plaintiff, M&T Bank for reason of mutual mistake, rather than clear, cogent and convincing mounting to a certainty prevent the Master from executing and delivering a legal deed of conveyance?**
- 5. Did the Court err in Order granting Plaintiff's Motion to Amend complaint on November 6, 2013, authorizing a South Carolina LLC, BC Fund and Management, LLC D/B/A BC Fund LLC, North Carolina LLC without consent of authority from the Secretary of State of South Carolina and failure to file a notice of that name change in the office of the register of deeds in Horry County in South Carolina prevent the Master from executing and delivering a legal deed of conveyance?**

STANDARD OF REVIEW

In pursuant of SC Rule 53 (e), 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 Court Rules. A matter may not be referred to a master or referee for the purpose of making a report to the circuit court. HISTORY: 1989 Act No. 36, Section 1, eff April 3, 1989. And applicable to all appeals from final judgment entered by master after July 25, 1988; 1999 Act No. 55, Section 17, eff June 1, 1999.

FACTS

1. Upset bids not allowed within thirty days on foreclosure or execution sale. In all judicial sales of real estate for the foreclosure of mortgages and sales in execution 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 sale. The bidding shall be allowed to continue until the property shall be knocked down in the usual custom of auction to the successful highest bidder complying with the terms of sale
2. Whether party has theretofore appeared in the action or not, may within thirty days after the sale of the mortgaged property, apply by verified petition to the clerk of court in which the decree or order of sale was taken for an order of appraisal.
3. If a limited liability company that owns real property in South Carolina is converted to a limited partnership, the newly-named limited partnership must file a notice of that name change in the office of the register of deeds of the county in South Carolina in which the real property is located as required. The notice of name change was not filed with the clerk of court of the county in which that real property is located.
4. A foreign limited liability company transacting business in this State may not maintain an action or proceeding in this State unless it has a certificate of authority to transact business in this State. BC Fund LLC was a foreign liability company unauthorized to

transact business in South Carolina,

5. Whereas an LLC is a separate legal company with its own tax identification number, a DBA is merely a name that a company can go by. If the name was registered as DBA, he still would be carrying on business, only he was doing so under the **fictitious name that he registered. BC Fund LLC was a separate legal company.**

ARGUMENT

1. **Because the Master in Equity's Report on Sale and Disbursement ordered all funds disbursed, the file closed and case ended on sale date, September 4, 2019 to the highest bidder on that day, the Master failed to abide by the South Carolina statues on sale of foreclosed property, the bidding was not reopened on the thirtieth day after the sale, allowing bidding to continue until the property be knocked down in the usual custom of auction to the successful highest bidder, the defendant was not allowed to upset the bid or petition for appraisal to comply with the terms of a foreclosure sale.**

Section 15-39-720 - Upset bids within thirty days on foreclosure or execution sale (**Rp Complaint pp 49-56**). In all judicial sales of real estate for the foreclosure of mortgages and sales in execution 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 sale (**Rp. Order pp 12-39**). The bidding shall be reopened by the officer making the sale on the thirtieth day after the sale, exclusive of the day of the sale, at eleven o'clock in the forenoon and the bidding shall be allowed to continue until the property shall be knocked down in the usual custom of auction to the successful highest bidder complying with the terms of sale (**Rp Order pp 43-44**) and (**Rp. Order pp 45-48**).

SC Code § 29-3-680 (2012) (A) In any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked, whether he has theretofore appeared in the action or not, may within thirty days after the sale of the mortgaged property apply by verified petition to the clerk of court in which the decree or order of sale was taken for an order of appraisal (**Rp. Order pp 45-48**). The foreclosure sale did not allow upset bidders or petition for appraisal.

2. Because the Master in Equity erred in Order of reformation in Master's Report and Order of Foreclosure and Sale (Rp Order pp 12-39) in the property description" in the quit claim deed of BC Fund LLC member, Bobby Bellamy's property by failing to inquire further about potential title defects or adverse claims in the public record (Rp Exh.8 pp 125, 126) that raise "red flags" in granting clauses that referred to an attached property description (Rp Order pp 40-42), which, in turn, incorporates a plat (Rp Exh.5 p 100), description of the property, and a clause "right of reversion"(Rp Exh.1 p 92), the Master failed to execute and deliver to Leticia LLC, good and of sufficient deed of conveyance, the Master in Equity's Report on Sale and Disbursement, should be voided.

Harry F. Bruton Ass., surveyed and prepared the plat for BC Fund LLC (**Rp Exh.5 p 100**). The Plat shows a one-acre portion of property on a map of total 3.9 acres more or less. The court failed to refer to an attached property description, which in turn incorporates a plat that clearly shows one acre of property of Bobby Bellamy (**Rp. Exh.1 pp. 92-94**) and one acre of Tommy Bellamy property (**Rp. Exh.2 p 95-97**) to be used for development (**Rp Exh.6 pp 101-121**). Further, a clause right of reversion, (**Rp Exh.1 p 92**) meaning all interest of BC Fund LLC return back to Bobby Bellamy if financing and development fell through (**Rp. Exh.10 pp 130-132**).

"One of the first canons of construction of a deed is that the intention of the grantor must

be ascertained and effectuated if no settled rule of law is contravened.” S. Ry. Co. v. Smoak, 243 S.C. 331, 336, 133 S.E.2d 806, 808 (1963) Holly Hill Lumber Co. v. Grooms, 198 S.C. 118, 135, 16 S.E.2d 816, 823 (1941) (“as a general rule, when maps, plats, or field notes are referred to in a grant or conveyance they are to be regarded as incorporated into the instrument and are usually held to furnish the true description of the boundaries of the land.”). McDaniel v. Connor, 206 S.C. 96, 100, 33 S.E.2d 75, 76 (1945) (“As has many times been said, the governing principle in the construction of deeds is that the intention of the grantor, if consistent with law, shall govern.”). Bobby Bellamy intention was not to sell his property for \$5.00 as the Plaintiff has claimed rather to transfer his property to BC Fund LLC with the intent of financing and developing the property (**Rp Answer pp. 78-91**) and (**Rp. Exh.6 pp 101-121**). Lancaster v. Smithco, Inc., 246 S.C. 464, 468, 144 S.E.2d 209, 211 (1965). When a deed describes land as shown on a certain plat, such plat becomes part of the deed for the purpose of showing the boundaries, metes, courses and distances of the property conveyed (**Rp. Exh.5 p 100**).

3. Because the Master erred in Order dismissing Defendants counterclaim for civil conspiracy on March 18, 2015 (Rp Order pp 6-11) and failed to comply with South Carolina Statue on LLC that prevents, William O. Smith, member of BC Fund and Management LLC (Rp. Exh.7 pp 122-124) from conveying and profiting from property owned by BC Fund LLC (a *separate entity*) as signer and alleged sole member of BC Fund LLC in a warranty deed to Tyrone Davis (Rp Exh.9 pp 127-129). The Master failed to execute and deliver to Leticia LLC, good and sufficient deed of conveyance, the Master in Equity’s Report on Sale and Disbursement, should be voided. William Smith, member of BC

Fund and Management LLC, South Carolina LLC (**Rp Exh.7 pp 122-124**), illegally acted as **sole member** of BC Fund LLC, North Carolina LLC (**Rp Exh.3 p 98**). He had no right to convey property to Tyrone Davis. William Smith and Scott Umstead, closing attorney for M&T Bank invented BC Fund and Management LLC DBA BC Fund LLC to rectify the deed and secure the mortgage from M&T Bank (**Rp. Complaint pp. 57-65**). The Master-in-Equity authorized BC Fund and Management LLC *DBA* BC Fund LLC, a NC foreign entity (**Rp. Order pp 1-5**). Scott Umstead failed to secure a Certificate of Authority for BC Fund LLC to sell real property as required by the State of South Carolina (**Rp. Exh.4 p 99**). Bobby Bellamy's property was sold to Tyrone Davis without his knowledge or permission (**Rp. Exh.9 pp.127-129**). The proceeds of that sale was misappropriated. In *Martin v. Floyd*, 282 S.C. 47, 51, 317 S.E.2d 133, 136 (Ct.App.1984), the court explained: A South Carolina general warranty deed embraces all of the following five covenants usually inserted in fee simple conveyances by English conveyors: (1) that the seller is seized in fee; (2) **that he has a right to convey**; (3) that the purchaser, his heirs and assigns, shall quietly enjoy the land; (4) that the land is free from all encumbrances; and (5) for further assurances. "[I]t is the duty of the court to construe deeds and determine their legal effect, where there is no such ambiguity as requires parole proof and submission to the jury." *Hunt*, 358 S.C. at 569, 595 S.E.2d at 848 (quoting 26A C.J.S. Deeds § 168 (2001)) *Vause v. Mikell*, 290 S.C. 65, 68, 348 S.E.2d 187, 189 (Ct.App.1986) ("The construction of an unambiguous deed is a question of law, not fact."). Law as follows: SECTION 33-44-911. When conversion takes effect; notice of name change as to real property. (c)(1) If a limited liability company that owns real property in South Carolina is converted to a limited partnership, the

newly-named limited partnership must file a notice of that name change in the office of the register of deeds of the county in South Carolina in which the real property is located (**Rp. Exh.8 pp 125,126**) If there is no office in that county, a notice of name must be filed with the clerk of court of the county in which that real property is located. SECTION 33-44-1005. Name of foreign limited liability company. (d) A foreign limited liability company may use in this State the name, including the fictitious name, of another domestic or foreign entity that is used in this State if the other entity is incorporated, organized, or authorized to transact business in this State and the State of the foreign limited liability company.

4. Because the Master in Equity erred in Order of reformation in Master's Report and Order of Foreclosure and Sale in the property description" in the quit claim deed of BC Fund LLC member, Bobby Bellamy's property by failing to inquire further about potential title defects or adverse claims in the public record that raise "red flags" in granting clauses by mutual mistake, rather than clear, cogent and convincing mounting to a certainty (Rp Order pp 40-42), the Master failed to execute and deliver to Leticia LLC, good and sufficient deed of conveyance, the Master in Equity's Report on Sale and Disbursement, should be voided. When William Smith formed BC Fund and Management LLC, he created a separate legal entity. That entity carried on business from that point on, rather than he as an individual (**Rp. Exh.7 pp 122-124**). If he had register as DBA, he still would be carrying on business, only he was doing so under the **fictitious name that he registered**. Sole proprietors and partnerships, for example, can't use words such as "Corporation", "Inc." or "LLC" which imply that the business is anything other than a DBA (**Rp. Exh.4 p 99**). Once he formed BC Fund and Management LLC,

he would be required to use that LLC's legal name in all aspects of business, from banking to dealing with suppliers and customers to filing government forms (**Rp Exh.125-126**). William Smith of BC Fund and Management LLC decides to carry on business under a name other than its legal name, he would need to register a DBA for him to do so (**Rp Exh.4 pp 99**).

5. Because the court erred by order granting Plaintiff's Motion to Amend complaint on November 6, 2013, (Rp Order pp 1-5) adding BC Fund and Management LLC D/B/A BC Fund LLC, NC Foreign LLC on both deeds, the Master failed to execute and deliver to Leticia LLC, good and sufficient deed of conveyance, the Master in Equity's Report on Sale and Disbursement, should be voided.

William Smith and Scott Umstead, closing attorney for M&T Bank invented BC Fund and Management LLC D/B/A BC Fund LLC to rectify the warranty deed and to illegally secure the mortgage from M&T Bank. The Court authorized BC Fund and Management LLC D/B/A BC Fund LLC a NC foreign entity (**Rp. Order pp. 1-5**). Scott Umstead failed to secure a Certificate of Authority for BC Fund LLC to sell real property as required by the 11`State of South Carolina and allowed a non-owner to sign the warranty deed (**Rp. Exh.9 pp 127-129**) Bobby Bellamy's property was sold to Tyrone Davis without his knowledge or permission. Scott Umstead allowed the proceeds from the mortgage to be misappropriated. A quitclaim deed, does not convey the fee, but only the right, title, and interest of the grantor. *Martin v. Ragsdale*, 71 S.C. 67, 77, 50 S.E. 671, 674 (1905). **SECTION 33-44-404**. Management of Limited Liability Company, the only matters of a member or manager-managed company's business requiring the consent of all of the members are: (12) The sale, lease, exchange, or other disposal of all, or substantially all, of

the company's property with or without goodwill. **SECTION 33-44-501.** Member's distributional interest. (a) A member is not a co-owner of, and has no transferable interest in, property of a limited liability company. (b) A distributional interest in a limited liability company is personal property and, subject to Sections 33-44-502 and 33-44-503, may be transferred in whole or in part. (c) An operating agreement may provide that a distributional interest may be evidenced by a certificate of the interest issued by the limited liability company and, subject to Section 33-44-503, may also provide **SECTION 33-44-1002(a-c).** Application for certificate of authority. (a) A foreign limited liability company may apply for a certificate of authority to transact business in this State by delivering an application to the Secretary of State for filing. **SECTION 33-44-1005.** Name of foreign limited liability company. (d) A foreign limited liability company may use in this State the name, including the fictitious name, of another domestic or foreign entity that is used in this State if the other entity is incorporated, organized, or authorized to transact business in this State and the foreign limited liability company: (e) If a foreign limited company authorized to transact in this State changes its name to one that does not satisfy the requirements of Section 33-44-105, it may not transact business in this state under the name changed until it adopts a name satisfying the requirements of **SECTION 33-44-1008.** Effect of failure to obtain certificate of authority. (a) A foreign limited liability company transacting business in this State may not maintain an action or proceeding in this State unless it has a certificate of authority to transact business in this State. **SECTION 33-44-903.** Effect of conversion on entity; filing name change on title to real property (c)(1) If an entity that owns real property in South Carolina is converted to a limited liability company by amendment of its articles or by merger, share exchange, or reorganization, the newly-named

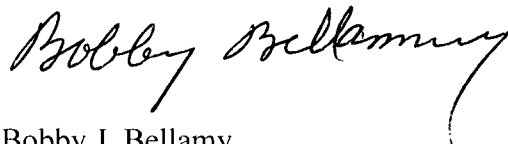
surviving, acquiring, or reorganizing limited liability company shall file a notice of that name change in the office of the register of deeds of that county. If there is no office in that county, the notice of name change must be filed with the clerk of court of the county in which that real property is located.

CONCLUSION

For the stated reasons, the S.C. Appellant Court should reverse the judgement of the Horry County Master in Equity, Special Referee and Circuit Court.

June 2, 2020

Respectfully submitted,

A handwritten signature in black ink that reads "Bobby J. Bellamy". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Bobby J. Bellamy
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