

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

RECEIVED
Oct 13 2020
SC Court of Appeals

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,

v.

William O. Smith, Respondent.

**M&T BANK’S MOTION TO CORRECT SECOND AMENDED RECORD ON APPEAL
OR, IN THE ALTERNATIVE, MOTION TO DISMISS**

Respondent M&T Bank (“Respondent”) challenges the Second Amended Record on Appeal submitted by Appellant for the following reasons:

- (1) The Second Amended Record on Appeal does not include items designated by Respondent in its Designation of Matter To Be Included In The Record on Appeal; and
- (2) The Second Amended Record on Appeal includes matters not presented to the Lower Court.

On May 15, 2020, Respondent filed a motion to correct the original Record on Appeal that requested a correction for reasons that included those stated above.

On September 23, 2020, the Court of Appeals entered its Order (“Order”) that states, in part, “Appellant shall serve and file a second amended record on appeal that (1) includes all matters designated by all parties; (2) omits any matters not presented to the lower court pursuant to Rule 210(c), SCACR [footnote omitted]; and (3) does not include any markings or editorial comments on any documents contained in the record.” The Order also provides that “[f]ailure of Appellant to comply may result in the dismissal of this appeal.”

On September 30, 2020, Appellant filed the Second Amended Record on Appeal without including all documents designated by Respondent and including one document that is not part of the record before the lower court.

On October 2, 2020, following the filing of the Second Amended Record on Appeal,

counsel for Respondent sent Appellant copies of the documents he omitted from the Second Amended Record on Appeal; requested that he remove page 105 from the Second Amended Record on Appeal; and asked Appellant to correct the Second Amended Record on Appeal to comply with the Order (Exhibit 1, attachments omitted). Appellant has not responded to this request.

Respondent requests that the Court of Appeals either require Appellant to file a corrected record on appeal or that the appeal be dismissed.

1. The Record on Appeal does not include items designated by Respondent in its Designation of Matter to Be Included in the Record on Appeal. The Respondent designated ten (10) items to be included in the Record on Appeal that Appellant failed to include. Specifically, items numbered 5, 6, 7, 8, 17, 20, 21, 22, 34, and 35 in the Respondent's Designation of Matter to Be Included in the Record on Appeal were not included in the Record on Appeal. Pursuant to Rule 210(c), SCACR these items should have been included. In its Order, the Court of Appeals agreed with this position and required Appellant to file an amended record on appeal that included the omitted designated documents. Appellant's Second Amended Record on Appeal does not include these omitted designated documents.

2. The Record on Appeal includes matters not presented to the Lower Court. Appellant designated and included in the Record on Appeal a single page from the unsigned and unrecorded documents concerning the formation of Bellamy and Bellamy, LLC (Record on Appeal, p. 105). This document was not presented to the Lower Court and should not be included in the Record on Appeal. Rule 210 (c), SCACR. In the Order, the Court of Appeals agreed with Respondent and indicated that the identified document should not be included in the

Record on Appeal. The Second Amended Record on Appeal improperly included the document that appears at page 105.

The Respondent M&T Bank respectfully requests an Order of this Court requiring the Appellant to correct the Record on Appeal to include omitted matters and exclude improper records, or, in the alternative, dismiss the appeal.

October 13, 2020.



W. Cliff Moore, III
Kirby D. Shealy III
Adams and Reese LLP
Post Office Box 2285
Columbia, S.C. 29202
P: 803-254-4190

and

John B. Kelchner
Ashley Z. Stanley
Stephanie M. Huggins
Hutchens Law Firm
Post Office Box 8237
Columbia, SC 29202
P: 803-726-2700

Attorneys for M&T Bank, Respondent

Exhibit 1

ADAMS AND REESE LLP

October 2, 2020

Via U.S. Mail

Mr. Bobby Bellamy
PO Box 1674
Little River, SC 29566

Re: M&T Bank v. Tyrone Davis, et al.
Appellate Case No. 2019-001682
A&R File No. 050168-000223

Attorneys at Law
Alabama
Florida
Georgia
Louisiana
Mississippi
South Carolina
Tennessee
Texas
Washington, DC

W. Cliff Moore III
Direct: 803.212.4956
E-Fax: 803.343.1248
cliff.moore@arlaw.com

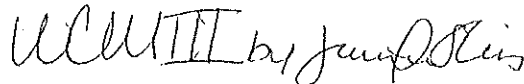
Dear Mr. Bellamy:

I have received and reviewed your Second Amended Record on Appeal. I do not believe that it meets the requirements set out in the Court of Appeals' recent Order.

Specifically (1) you included the document at page 105 of the Record that should be removed, and (2) you failed to include documents numbered 5, 6, 7, 8, 17, 20, 21, 22, 34, and 35 in the Designation filed by the Respondent M&T Bank. I have enclosed copies of the documents that I believe should be included in the Record on Appeal that you failed to include.

Please file a corrected Record on Appeal. If you fail to correct what has been filed within five (5) days, I will file a new Motion requesting that the Court require the correct Record on Appeal be filed or, alternatively, for dismissal.

Sincerely,



W. Cliff Moore, III

WCMIII/jas

Enclosure(s)

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Ralph P. Stroman, Special Referee

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And

M&T Bank, Respondent,

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..... 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,

v.

William O. Smith, Respondent.

PROOF OF SERVICE

I certify that I have caused the foregoing Second Motion to Correct Record on Appeal or, In The Alternative, Motion to Dismiss, to be served on the Appellant, Mr. Bobby J. Bellamy, by having a copy deposited in the United States Mail, postage prepaid, on October 13, 2020 addressed to Bobby J. Bellamy, PO Box 1674, Little River, SC 29566.

I further certify that I have caused the foregoing Second Motion to Correct Record on Appeal or, In the Alternative, 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 October 13, 2020, addressed as follows:

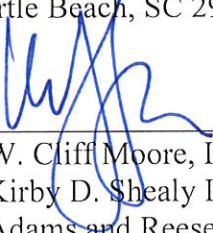
John Brian Kelchner, Esq.
Ashley Zarrett Stanley, Esq.
Stephanie M. Huggins, Esq.
Hutchens Law Firm
PO Box 8237
Columbia, SC 29202

Daniel Q. Orvin, Esq.
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

October 13, 2020.



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

October 13, 2020

Via OneDrive

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals

RE: *M&T Bank v. Tyrone Davis, et al.*
Appellate Case No. 2019-001682
A&R File No. 050168-000223

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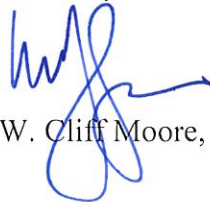
W. Cliff Moore III
Direct: 803.212.4956
E-Fax: 803.343.1248
cliff.moore@arlaw.com

Dear Ms. Kitchings:

I am hereby filing the Respondent M&T Bank's Motion to Correct Second Amended Record on Appeal or, in the alternative, Motion to Dismiss and Proof of Service in the referenced case. Under separate cover, I am placing in today's mail a check in the amount of \$50.00 to cover the filing fee for this Motion.

Thank you for your assistance with this matter.

Sincerely,



W. Cliff Moore, III

WCMIII/jas

cc: *via U.S. Mail w/encl.*

Mr. Bobby B. Bellamy

John B. Kelchner, Esq. and Ashley Z. Stanley, Esq.

Daniel Q. Orvin, Esq. and Matthew Tillman, Esq.

George J. Conits, Esq.

Leticia LLC c/o Kevin Pendergrass