

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
Nov 05 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 Respondent.

And

Bobby J. Bellamy, Appellant,

v.

William O. Smith, Third Party Defendant.

**M&T BANK’S RETURN TO APPELLANT’S MOTION TO SUPPLEMENT THE
SECOND AMENDED RECORD ON APPEAL**

On October 15, 2020, Appellant served his Motion to Supplement the Second Amended Record on Appeal (the “Motion to Supplement”). Although styled as a new motion, the Motion to Supplement appears to be a return to M&T Bank’s Motion to Correct Second Amended Record on Appeal or, in the alternative, Motion to Dismiss filed October 13, 2020 (the “Motion to Dismiss”). In fact, the Motion to Supplement is not a motion to add to the Second Amended Record on Appeal, as the style of the motion suggests. Rather it is a request to be excused from including documents designated by M&T Bank for the same reasons it objected to the inclusion of the designated documents in a return to an earlier motion on this same issue. The Court of Appeals has already specifically decided against Appellant on the exact same arguments advanced in the Motion to Supplement. It should therefore deny Appellant’s Motion to Supplement and grant M&T Bank’s Motion to Dismiss.

This is the chronological history of the filings and motions related to the Record on Appeal in this Matter:

- Appellant filed the Record on Appeal on May 14, 2020.
- On May 15, 2020 M&T Bank filed a Motion to Correct Record on Appeal because the Record on Appeal (1) failed to include all documents designated by M&T Bank, (2) included documents not presented to the Lower Court, and (3) contained documents with editorial comments and marks written on them.
- Appellant filed an Amended Record on Appeal on May 20, 2020 that did not

address the concerns detailed in M&T Bank's May 15, 2020 Motion.

- On May 21, 2020 Appellant filed a Return to M&T Bank's May 15, 2020 Motion that included the arguments that Appellant now advances in the Motion to Supplement.
- The Court of Appeals entered its Order on September 23, 2020 requiring Appellant to file a Second Record on Appeal that (1) included matters designated by M&T Bank, (2) excluded records not submitted to the Lower Court, and (3) removed editorial markings from documents in the Record on Appeal. The Order cautions that failure to comply with its terms may result in the dismissal of the appeal.
- On September 30, 2020, Appellant filed a Second Amended Record on Appeal that (1) failed to include matters designated by M&T Bank, and (2) failed to exclude one document not presented to the Lower court. The Second Amended Record on Appeal otherwise complied with the September 23, 2020 Order.
- On October 2, 2020, counsel for M&T Bank wrote a letter to Appellant advising him of his failure to comply with the September 23, 2020 Order and provided him with copies of the documents omitted from the Second Amended Record on Appeal. In that letter, M&T Bank's counsel requested that Appellant correct the Second Amended Record on Appeal by including the documents designated by M&T Bank and excluding the one record that was not submitted to the Lower Court.
- Appellant did not respond or otherwise react to the letter from M&T Bank's

counsel dated October 2, 2020.

- On October 13, 2020, M&T Bank filed a Motion to Dismiss seeking either a corrected Record on Appeal or a dismissal of the appeal for failure to comply with the Order dated September 23, 2020.
- On October 13, 2020, Appellant filed his Motion to Supplement, advancing the same argument contained in his May 21, 2020 Return to Motion to Correct Record on Appeal as to why he should not include documents designated by M&T Bank in the Record on Appeal.
- By Order dated November 3, 2020, the Court of Appeals allowed M&T Bank to file a Return to the Motion to Supplement on or before November 5, 2020.

The September 23, 2020 Order has already decided the current Motion to Supplement. Appellant's Motion to Supplement should be denied and the Court of Appeals should dismiss this appeal.

November 5, 2020.

s/ W. Cliff Moore, III
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Attorneys for M&T Bank, Respondent

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..... Defendants,

Of whom Bobby J. Bellamy is the Appellant,

And

Tyrone Davis Respondent.

And

Bobby J. Bellamy, Appellant,

v.

William O. Smith, Third Party Defendant.

PROOF OF SERVICE

I certify that I have caused the foregoing M&T Bank's Return to Appellant's Motion to Supplement the Second Amended Record on Appeal, to be served on the Appellant, Mr. Bobby J. Bellamy, by having a copy deposited in the United States Mail, postage prepaid, on November 5, 2020 addressed to Bobby J. Bellamy, PO Box 1674, Little River, SC 29566.

I further certify that I have caused the foregoing M&T Bank's Return to Appellant's Motion to Supplement the Second Amended Record on Appeal to be served on all parties to this appeal by having a copy deposited in the United States Mail, postage prepaid, on November 5, 2020, addressed as follows:

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Attorneys for M&T Bank, Respondent

November 5, 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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Nov 05 2020

SC Court of Appeals

W. Cliff Moore III

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Dear Ms. Kitchings:

I have enclosed M&T Bank's Return to Appellant's Motion to Supplement the Second Amended Record on Appeal for filing in the referenced action, pursuant to the extension granted in the Court's November 3, 2020 Order.

Thank you for your attention to this matter.

Sincerely,

s/ W. Cliff Moore, III

W. Cliff Moore, III

WCMIII/jas

Enclosure

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