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SC Court of Appeals

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

v.

William O. Smith, Respondent.

APPELLANT'S REPLY BRIEF

**Bobby J. Bellamy
P.O. BOX 1674
Little River, SC 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 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

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.

1. On July 23 2018 the Master-in-Equity issued its Order Denying the Defendant Bobby Bellamy's Motion to Reconsider. M&T Bank finalized its foreclosure action, The Master-in-Equity orders that the real estate be auctioned off to satisfy the outstanding indebtedness.
2. On September 4, 2018 the Lower Court held the foreclosure sale, at which Coastal Resort Properties, LLC won the bid for the price of one hundred and five Thousand

Dollars (\$105,000). An **assignment of bid** must occur by September 14, 2018 during the ten-day period after the property sale and before the issuance of title.

3. On September 3, 2019 the Master In Equity's Report on Sale and Disbursement order allowed Coastal Resort Properties, the winning bidder to assign their bid to a third party, Leticia LLC. A proper assignment of bid, must have occurred during the ten-day period after the property sale and before the issuance of title, on or about a compliance date of September 14, 2018.
4. On September 9, 2019 Leticia moved the Special Referee to issue a Writ of Assistance, placing Leticia in possession of the property.

The Assignment of Bid to third party resulted in Leticia LLC as movant and not a Respondent in this case.

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

On September 3, 2019 one year after the foreclosure sale, the Master-in-Equity allowed Coastal, the winning bidder to "assign their bid" to a third party, Leticia LLC. The Master-in-Equity Report and Disbursements failed to report that Coastal complied with the bid and issue title to Coastal as required after 10 day timeline, instead, the Master-in-Equity issues assignment one year later to a third party, and entered that Leticia complied with the bid and issued a title to the property to Leticia LLC. As a result, the statutory process for real estate following the opening of the sale: Notice of Sale, Affidavit of Publication for September 4, 2018 sale was unlawful after one year in 2019 and subjected the property to a delinquent tax sale.

On September 9, 2019 the Special Referee issued a Writ of Assistance, placing Leticia in possession of the property.

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 March 18, 2015, the Defendant, through his legal counsel, consented to the Order Dismissing Civil Conspiracy, with prejudice. The remaining claims and counterclaims were for **foreclosure of a mortgage, reformation of a mortgage and declaratory judgement**. Since all these claims and counterclaims were equitable, the parties agreed to refer the matter to the Master-in-Equity. The Respondent is mistaken, Appellant did not waive his right of appeal. Any appeal from the final judgement entered by the Master-in-Equity shall be made directly to the South Carolina Court of Appeals.

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. 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 prepared was merely a sketch drawn on an original map of the Bellamy Estate that was prepared

by another surveyor, approved by the Horry County Mapping office and given to Harry Bruton. 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

The defect of the grantor in the warranty deed impaired a property owner's ability to obtain a marketable title. The Respondent refers to a small error in property description is an understatement. The entire property description was incorrect and infringed upon property boundary lines belonging to other property owners in the area. These defects presented issues that should have been resolved by M&T Bank's closing attorney.

The closing attorney engage in conduct **tending to pollute the administration of justice** and created a conflict of interest by attempting to represent 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

The Respondent is mistaken, BC Fund, LLC was not the adapted and or trade name for BC Fund & Management LLC in 2007 or any time thereafter and BC Fund LLC was not a legal entity in existence in South Carolina, at the time the Bellamy property was transferred. The Appellant offered as exhibit, a certificate of no existence of BC Fund LLC from the South Carolina Secretary of State. William O Smith owner of BC Fund and Management LLC, South Carolina LLC impersonated as sole member of BC Fund LLC. 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. BC Fund LLC was not a trade name for BC Fund and Management LLC. M&T Bank's closing attorney had a responsibility to ensure authenticity of authority

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 language in the Bellamy deed to BC Fund LLC clearly reference a right of reversion. The right of reversion was implied by reference on the deed. The unauthorized project was a failure on paper, no need to invoke the right of reversion at trial. 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 Brief to this Court, the Lower Court decisions should be reversed.

Respectfully submitted,



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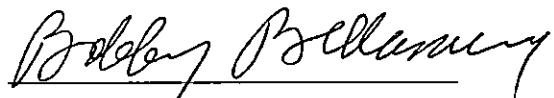
William O. Smith, Respondent.

PROOF OF SERVICE

The Undersigned certify that I have served the **Appellant's Reply Brief** on M&T Bank by depositing a copy of it in the United States Mail, postage prepaid, on February 8, 2011 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 Reply Brief** on M&T Bank by depositing a copy of it in the United States Mail, postage prepaid, on February 8, 2011 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 Reply Brief** on Tyrone Davis by depositing a copy of it in the United States Mail, postage prepaid, on February 8, 2011 addressed to his attorney of record, **Daniel J. Orvin, Womble Bond Dickson LLP, 5 Exchange St. Charleston, S.C. 29401**



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The Honorable Jenny Abbott Kitchings
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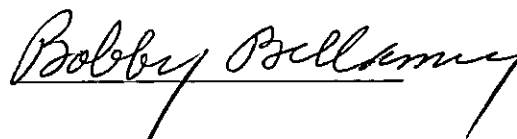
Re: M&T Bank v. Tyrone Davis, et al Appellate Case No. 2019-001682

Dear Ms. Kitchings:

I have enclosed, the Original of the **Appellant's 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.

February 8, 2021

Thank you,



Bobby J. Bellamy

c:

Cliff Moore, III, Esq.

John B. Kelchner Esq.

David Orvin, Esq

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