

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
Appeal from Horry County
Cynthia Graham Howe, Master-in-Equity
Ralph P. Stroman, Special Referee

RECEIVED
MAR 31 2022
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 is the Respondent.

And

Bobby J. Bellamy, Appellant,

v.

William O. Smith, Third Party Defendant.

Appellate Case No. 2019-001682

MOTION FOR REHEARING

Appellant Bobby Bellamy moves this honorable court for rehearing of the case after the decision of the court filed on March 23, 2022.

The decision states that, Appellant Bellamy failed to serve Leticia, LLC, with the Notice of Appeal of the writ of assistance, which declared Leticia, LLC, was entitled to possession of the foreclosed property and ordered Bellamy be removed from the Property. This ruling is now the law of the case. See Rule 203(b) (1), SCACR (stating the notice of appeal in a civil action must be served on all **respondents** within thirty days following the receipt of written notice of the entry of the order or judgment). Accordingly, this case is moot because this court is unable to grant Bellamy the relief he seeks.

This Motion to rehear is in accordance with Rule 240, and shall state with particularity the points supposed to have been overlooked or misapprehended by the court as follows:

1. On December 6, 2019, the Respondent M&T Bank moves to Dismiss for the identical reason stated above. According to the respondent, the appellant failed to serve Leticia LLC, as respondent with the Notice of Appeal and the Amended Notice of Appeal.
2. On December 12, 2019, the Appellant Reply to M&T Banks Motion to Dismiss. When a timely motion for judgement n.o.v. (rule 50, SCRCPP), motion to amend the judgement (Rules 52 and 59, SCRCPP) has been made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion.
3. On February 28, 2020, Order, Respondent's Motion to Dismiss is denied by the Court.
4. The Notice of Appeal was filed in accordance with Section 18-7-20. Proof of Service was attached as required in form 7. The respondent's attorney recognized Coastal properties

LLC and Leticia LLC in a brief, both as highest bidder. The Horry County Sheriff's Office placed successful bidder in possession of the property to Rowe Ventures LLC (exhibit1). The Appellant consulted, Ms. Renae Elvis, Clerk of Court for guidance and the correct owner's address. Ms. Renae Elvis instructed the Sheriffs to stand down and leave the property because according to Ms. Elvis, her office was not presented the correct owners paperwork to give consent to remove the Plaintiff, Bobby Bellamy. Leticia LLC, Notice of Appeal was hand delivered to an address provided on google that appeared to be a vacate car lot. The Notice of Appeal was mailed to Cliff Moore III, Adams and Reese LLP, 1501 Main Street 5th floor, Columbia, S.C. 29201 and, John B. Kelchner, Hutchens Law Firm P.O. Box 8237, Columbia, S.C. 29202 as well.

5. 18 US Code 1701 obstruction of mail, whoever knowingly and willfully obstructs or retards the passage of the mail may face a felony crime. The attorneys had an option, return to sender. Attorney Kelchner mailed an affidavit proving that he was not representing Leticia LLC. Attorney Moore failed to identify whether he represented Leticia LLC. And failed to return to sender. It is illegal to destroy, hide, open or embezzle mail that is not addressed to you.
6. The Appellant, Bobby Bellamy moves the court to rehear under the grounds of res judicata as to innocent purchaser on an issue preclusion or collateral estoppel, which bars relitigation on failure to serve Leticia LLC with the Notice of Appeal and the Amended Notice of Appeal because **that issue has already been decided by the court.** To establish res judicata, the defendant must prove three elements: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit. Sealy v. Dodge,

289 S.C. 543, 347 S.E.2d 504 (1986); Rogers, 336 S.C. at 537, 520 S.E.2d at 817; Owenby v. Owens Corning Fiberglas, 313 S.C. 181, 437 S.E.2d 130 (Ct. App. 1993).

Where the defense of former adjudication was pleaded and the earlier of the judgments was established by sufficient proof, it had to prevail over the later judgment.

7. **Appeals. Rule (53) SC Code 14-11-60 and Section 14-11-85**, when a matter has been referred, **any** appeal from any order or judgment issued by the master in equity or special referee shall be to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.
8. Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court. E.g., Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (“It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.”); Long v. Dunlap, 87 S.C. 8, 68 S.E. 801 (1910) Gaffney v. Peeler, 21 S.C. 55 (1884) (question of law which was not presented to or passed upon by the trial court cannot be raised on appeal); Rule 210(c), SCACR (record on appeal shall not include matter which was not presented to lower court).
9. A Court of law can know no other persons as parties, than those whose rights are made to appear by the record MElwee v. House, 17 S.C.L. (1 Bail.) 108, 109 (1828). A person without interest in the subject matter of the lawsuit has no legal standing to be heard. Duke Power Co. v. S.C. Pub. Serv. Commn, 284 S.C. 81, 326 S.E.2d 395 (1985); Furman Univ. v. Livingston, 244 S.C. 200, 136 S.E.2d 254 (1964).

10. Respondent presented no affidavits or depositions to the trial court regarding the purported testimony of the alleged Leticia LLC. Further, prior to this appeal, all parties had a substantial amount of time to prepare for trial and conduct extensive discovery. This cases had been on the docket for well over a decade in lower court prior to the appeal.
11. For determining whether res judicata applies, the identity of the parties in the first lawsuit also includes persons in privity with the named parties. Pye v. Aycock, 325 S.C. 426, 480 S.E.2d 455 (Ct. App. 1997). One not a party to a prior action can be precluded from relitigating the issue only if he is in privity with a party to the prior action against whom an adverse finding is made. Roberts v. Recovery Bureau, Inc., 316 S.C. 492, 450 S.E.2d 616 (Ct. App. 1994). In regard to res judicata or collateral estoppel, privity does not embrace relationships between persons or entities, but rather it deals with a person's relationship to the subject matter of the litigation as follows:
12. **SECTION 15-39-40.** Counties to which execution may be issued. When the execution is against the property of the judgment debtor it may be issued to the sheriff of any county in which the judgment is docketed by the clerk of court in which the judgment was originally entered up or by the clerk of court of any county in which the judgment is docketed or transcribed.
13. **SECTION 15-39-830.** Conveyance after sale. Upon a judicial sale being made and the terms complied with the officer making the sale must execute a conveyance to the purchaser which shall be effectual to pass the rights and interests adjudged to be sold.
14. **SECTION 15-39-840.** Conveyances of real estate sold under execution.
When any sheriff or other officer makes a conveyance of any real estate sold by virtue of

a tax execution or other execution the conveyance shall contain the name of the person owning the property executed on, the name of the judgment creditor executing, the date of execution and the date of sale.

15. **SECTION 15-39-860.** Recording and indexing of execution conveyances.

When any conveyance under Section 15-39-840 is offered to any clerk of court or register of deeds of this State for recording he shall index it under the name of the officer who made the conveyance, the name of the person whose property was executed on, as grantor, and the name of the person who purchased, as grantee.

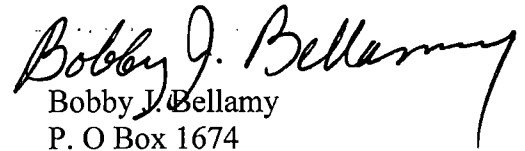
16. **SECTION 15-39-870.** Judicial sales shall be res judicata as to innocent purchasers, even without confirmation. Upon the execution and delivery by the proper officer of the court of a deed for any property sold at a judicial sale under a decree of a court of competent jurisdiction the proceedings under which such sale is made shall be deemed res judicata as to any and all bona fide purchasers for value without notice, notwithstanding such sale may not subsequently be confirmed by the court.

17. South Carolina follows the "hammer rule." Once the hammer falls at the foreclosure sale, the homeowner's property rights are cut off forever. Coastal properties was the highest bidder of the property at the foreclosure sale. Leticia LLC writ of assistance had no standing by law. Rowe Ventures LLC was the successful bidder on October 22, 2019 at 8:00 am on that day.

18. The respondent's failed to abide by the rules as stated above of the State of South Carolina, non-compliance resulted in confusion. The respondent's attorney recognized Coastal properties LLC and Leticia LLC in a brief, both as highest bidder. The Horry County Sheriff's Office placed successful bidder in possession of the property to Rowe

Ventures LLC (exhibit1). The Appellant did not know who the correct successful bidder was. There were three alleged movants including, Leticia LLC, Rowe Ventures LLC and Coastal properties LLC, none of which should be referred to as respondents.

I certify by signing below that these statements are true and correct and I pray that this honorable court will move to rehear and rule accordingly to the new statements presented this 29th day of March 2020.



Bobby J. Bellamy
P. O Box 1674
Little River, S.C. 29566
843 457-3625

Attorney Pro se

Exhibit 2



HORRY COUNTY SHERIFF'S OFFICE

Phillip E. Thompson, Sheriff

Post Office Box 380 • Horry County Judicial Complex • 1301 2nd Avenue • Conway, South Carolina 29528 0380
Office: (843) 915-5450 • Fax: (843) 915-6451 • www.HorryCounty.org

Real Property Seizure:

Date: 10/22/19

Case # 2011 CP 26 01809

Time: 8:00

Plaintiff: Leticia Defendant: Tyrone Davis Bobby Bellant

Property description: 3672 sea MT Hwy Little R. Ver
(Address)

TMS# 130-00-01-219
(if available)

By virtue of a court order in the above named case, the Horry County Sheriff places the successful bidder in possession of the real property described below. The receiving party undersigned accepts possession as the agent of the successful bidder, and further acknowledges that the property in this case has been placed in their possession in accordance with the requirements of the court order.

B. Strickland

Deputy Sheriff

Ally
Party (receiving possession)
(print name)

Ally
(signature)

Rowe Ventures II
Agency or company name

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

Appeal from Horry County

Cynthia Graham Howe, Master-in-Equity

Ralph P. Stroman, Special Referee

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And

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Appellate Case No. 2019-001682

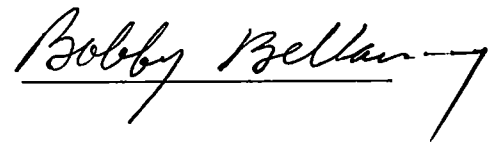
PROOF OF SERVICE

The undersigned certify that I have served the Motion to Rehear on M&T Bank by depositing a copy of it in the United States Mail, postage prepaid, on March 29, 2022 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 Motion to Rehear on M&T Bank by depositing a copy of it in the United States Mail, postage prepaid, on March 29, 2022 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 Motion to Rehear on M&T Bank by depositing a copy of it in the United States Mail, postage prepaid, on March 29, 2022 addressed to his attorney of record, **Daniel J. Orvin, Womble Bond Dickson LLP, 5 Exchange St. Charleston, S.C. 29401**

March 29, 2022

A handwritten signature in cursive script that reads "Bobby Bellamy". The signature is written in black ink and is positioned above a horizontal line. The line extends to the right, ending in a long, sweeping tail that curves downwards and to the right.

**Bobby J. Bellamy
P.O. Box 1674
Little River, S.C. 29566**

**The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211**

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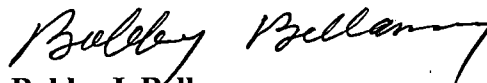
**Re: M&T Bank v. Tyrone Davis, et al.
Appellate Case No. 2019-001682**

Dear Ms. Kitchings:

I have enclosed the original Motion to rehear, proof of service and exhibit (1) for filing in the referenced case I have enclosed a check for \$50.00 for filing fee. Thank you for your assistance.

March 29, 2022

Sincerely,


Bobby J. Bellamy

cc:

Cliff Moore Esq.

John Kelchner Esq.

Daniel Orvin Esq.

Nancy Shielder
111 Spinnaker Pointe
Leesville, SC 29070

Bobby
P.O. Box 1674
Little River, SC
29566



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