

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Appellate Case No. 2022-000756

Debi Baker Brookshire Petitioner,

v.

Community First Bank, Inc. and Benjamin Hiott,
of which,
Community First Bank, Inc. is Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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INTRODUCTION

This Petition arises from a unanimous, unpublished, *per curiam* opinion of the Court of Appeals, Unpublished Opinion No. 2022-UP-163. It does not present any novel question of law, does not raise a substantial constitutional issue, does not involve a federal question, and is not in conflict with any prior decision of this Court or the Court of Appeals. Given the foregoing, this case does not warrant discretionary review by this Court pursuant to Rule 242, SCACR.

QUESTIONS PRESENTED

1. Whether the Court of Appeals correctly affirmed the trial court's holding that S.C. Code Ann. § 15-3-110 (2005) does not apply to Petitioner's claims against Respondent.
2. Whether the Court of Appeals correctly affirmed the trial court's holding that Petitioner's claims against Respondent were barred by the statute of limitations set forth in S.C. Code Ann. § 15-3-530(5) (2005).
3. Whether the Court of Appeals correctly affirmed the trial court's holding that equitable tolling did not suspend the statute of limitations clock and that Respondent was not estopped from asserting the statute of limitations as a defense.

COUNTER-STATEMENT OF THE CASE AND FACTS

I. Counter-Statement of the Case.

On May 25, 2007, Petitioner Debi Baker Brookshire ("Brookshire") executed a power of attorney (the "POA") granting Benjamin Hiott ("Hiott") the personal authority to handle virtually all aspects of her financial affairs. With Brookshire's knowledge, Hiott exercised the authority granted by the POA by, among other things, making disbursements from Brookshire's checking account at Respondent Community First Bank, Inc. ("Community First") during the period from July 12, 2007, until the account was closed on February 23, 2011 (the "Account"). The only

relationship between Brookshire and Community First is by virtue of the Account, which is a checking account governed by a contract between Brookshire and Community First.

Brookshire filed her lawsuit against Community First and Hiott on September 8, 2014, based on the premise that disbursements Hiott made from the Account were unauthorized. The Complaint asserted six causes of action: breach of fiduciary duty, conversion, negligent supervision, negligence/gross negligence, breach of contract accompanied by fraudulent act, and an accounting. Community First answered Brookshire's Complaint on October 9, 2014, asserting various defenses and denying that Brookshire was entitled to relief on any of her causes of action, and also asserted offsets and counterclaims for conversion and unjust enrichment. Brookshire answered Community First's counterclaims on November 7, 2014. Community First and Hiott filed motions for summary judgment in October 2016, which the trial court heard on December 13, 2016. The trial court ultimately granted Community First's motion for summary judgment and directed the entry of a final judgment in its favor pursuant to Rule 54(b), SCRCP on September 26, 2017. Brookshire filed a motion to alter or amend the judgment pursuant to Rule 59(e), SCRCP on October 6, 2017, and a hearing was held on December 6, 2017. On March 22, 2019, the trial court issued an order denying Brookshire's Rule 59(e) motion, and Brookshire filed a notice of appeal on April 9, 2019.

II. The Trial Court's Order Addressing Brookshire's Claims.

The trial court granted summary judgment to Community First on all of Brookshire's claims, holding in pertinent part that: (1) the POA bars all of Brookshire's claims against Community First; (2) Brookshire's claims are time-barred under the Uniform Commercial Code ("UCC") pursuant to the statute of repose set forth in S.C. Code Ann. § 36-4-406 (2003 & Supp. 2021); (3) Brookshire's claims are time-barred pursuant to the statute of limitations set forth in S.C. Code Ann. § 15-3-530(5); (4) S.C. Code Ann. § 15-3-110 does not apply to this matter; (5)

neither equitable tolling nor equitable estoppel apply to save Brookshire's time-barred claims; and (6) there is no genuine issue of material fact as to the merits of all six of Brookshire's causes of action, and Community First is entitled to judgment as a matter of law on the merits of those causes of action. (R. 6-7.)

III. The Court of Appeals Affirmed the Trial Court in an Unpublished, *Per Curiam* Opinion.

The Court of Appeals reviewed the briefs in this matter and affirmed the trial court in pertinent part without oral argument in an unpublished opinion.¹ In that opinion, the Court of Appeals cited longstanding and bedrock South Carolina cases and statutes addressing the statute of limitations provided in S.C. Code Ann. § 15-3-530(5), the discovery rule for triggering the commencement of the statute of limitations, the inapplicability of equitable tolling or equitable estoppel, and the inapplicability of S.C. Code Ann. § 15-3-110. The Court of Appeals did not reach the remaining arguments on which the trial court granted summary judgment to Community First, *i.e.* (1) that the POA bars all of Brookshire's claims against Community First; (2) that Brookshire's claims are time-barred under the UCC's statute of repose; and (3) that there is no genuine issue of material fact as to the merits of all six of Brookshire's causes of action.

Brookshire's petition for rehearing included the same substantive grounds as its Petition to this Court. The Court of Appeals denied the petition for rehearing.

¹ The Court of Appeals also reversed the trial court in part, but that reversal is not part of the issues contained in Brookshire's Petition to this Court.

ARGUMENT

The three issues presented in Brookshire's Petition have been fully addressed.

I. The Court of Appeals correctly ruled that S.C. Code Ann. § 15-3-110 does not apply to this matter.

South Carolina Code Ann. § 15-3-110 (originally adopted in 1870) states that the chapter setting forth statutes of limitations for various causes of action “shall not affect actions to enforce the payment of bills, notes or other evidences of debt issued by moneyed corporations or issued or put in circulation as money.” Brookshire suggested to the trial court and the Court of Appeals that, as a result of Section 15-3-110, no statute of limitations whatsoever applied to the claims she asserted against Community First in this case.

Brookshire's Petition argues that the Court of Appeals failed to issue a ruling as to why S.C. Code Ann. § 15-3-110 does not apply to the claims she asserted against Community First. This is incorrect, as the Court of Appeals addressed this issue, holding that “we agree with Community First that this statute applies to bank instruments that are not at issue here.” Community First's briefing details the undisputed history of this statute, which fully shows its inapplicability to this matter, as well as this statute's inconsistency with the UCC's statute of repose.

Brookshire focuses on only one aspect of S.C. Code Ann. § 15-3-110 and deems it dispositive: whether Community First would be considered a “moneyed corporation” (it would). But Brookshire ignores the remaining language of the statute limiting its application to actions or claims for “the payment of bills, notes or other evidences of debt issued by moneyed corporations or issued or put in circulation as money.” *Id.* Both historical banking practice and cases from other jurisdictions with similar statutes demonstrate that this statute is antiquated and applies only to bank-specific bills, notes, or actual tangible instruments intended to function as currency, which

are no longer circulated and of which there is no evidence of use by Community First here. *See, e.g., Butts v. Vicksburg & Meridian R.R. Co.*, 63 Miss. 462 (Miss. 1886); *Quattrochi v. Farmer's & Merchants' Bank*, 89 Mo. App. 500 (Mo. Ct. App. 1901); (R. 1188-1190; 1192-1194) (noting that these cases, and the statutes they are interpreting, are all from a pre-New Deal economic era where companies, including banks and railroads, would circulate their own bills and currency).²

Further, applying this statute to the modern practice of banking would upend the UCC and decades of established case law. The UCC represents a specific balancing of modern commercial practice and a careful allocation of rights and responsibilities among the parties to commerce. Article 4 of the UCC specifically addresses the timeframe that a bank customer has to challenge disbursements from his or her Account. *See* S.C. Code Ann. § 36-4-406 (2003 & Supp. 2021) as applicable; *Sabatino v. Atl. Sav. Bank, F.S.B.*, 314 S.C. 402, 403, 444 S.E.2d 537, 538 (Ct. App. 1994). This more recent and specific statute prevails over the older and more general provisions of S.C. Code Ann. § 15-3-110. *See Stone v. State (City of Orangeburg)*, 313 S.C. 533, 535, 443 S.E.2d 544, 545 (1994).

II. The Court of Appeals correctly ruled that Brookshire's claims were barred by the three-year statute of limitations set forth in S.C. Code Ann. § 15-3-530.

As noted by the Court of Appeals, civil actions for “any injury to the person or rights of another” are barred if not filed within three years, which period begins to run when the injured party “knew or by the exercise of reasonable diligence should have known that he had a cause of

² Brookshire asserts that the Court of Appeals improperly considered Community First's arguments on the inapplicability of S.C. Code Ann. § 15-3-110. Not so. Community First cited case law, statutory law, and scholarly articles in support of its argument, all of which was briefed to both the trial court and the Court of Appeals. (*See* R. 1142-1144.) Further, there is no requirement to file a reply memorandum under the South Carolina Rules of Civil Procedure, and there is no dispute that Community First's reply memorandum and attachments were presented to the trial court and were thus appropriately contained in the record on appeal for this case. *See* Rule 210(c), SCACR; R. 1195-1196.

action.” S.C. Code Ann. §§ 15-3-530, -535. The Court of Appeals affirmed the trial court’s ruling that Brookshire’s claims were barred by this statute of limitations.

In her Petition, Brookshire argues that the Court of Appeals erred in finding that a single triggering date for the statute of limitations applies to all of the transactions she challenged in this matter. The Court of Appeals did not make such a ruling. Rather, it held that “the record shows *multiple points* more than three years before she brought this actions when Brookshire knew or should have known she had claims against” Community First (emphasis added).

The evidence is undisputed that Brookshire executed the POA on May 25, 2007, granting Hiott the authority to handle virtually all aspects of her financial affairs (R. 321-323) and that, with her knowledge, Hiott was actively and regularly exercising that authority by, among other things, making deposits into and disbursements from the Account at Community First from July 12, 2007, until Brookshire closed the Account on February 23, 2011. Brookshire did not file this suit until September 8, 2014.

The Court of Appeals correctly noted that the record shows other undisputed events that triggered the statute of limitations more than three years before Brookshire filed suit. For example, Brookshire told someone in 2010 that Hiott was “stealing her money.” (R. 502, lines 9-17.) Further, Brookshire hired a lawyer who was provided with copies of Brookshire’s Account statements from July 2007 through late 2010 in December 2010, that lawyer wrote Hiott a letter in 2010 complaining about serious inconsistencies and serious matters related to her Account, and Brookshire closed the Account in February 2011 at her lawyer’s instruction. (R. 493, line 1- 494, line 24; 496, lines. 4-10; 506-507; 509-588; 590.) Further, Brookshire’s own expert opined that bank customers have a duty to review their account statements and report discrepancies (or any failure to receive statements) in a timely manner. (R. 814-816.) Based on this and other

overwhelming and undisputed evidence, the Court of Appeals correctly affirmed the trial court's ruling that Brookshire's claims are barred by S.C. Code Ann. § 15-3-530.

In her Petition, Brookshire also mentions stock purchases and transfers. Exercising the POA, Hiott purchased stock in Community First's holding company in Brookshire's name with funds from the Account. At Hiott's request to a non-party stock transfer agent (Transfer Online, Inc.), the shares were later transferred to another party. Those transfers were not an issue in Brookshire's Complaint and have never been the subject of a motion to amend the Complaint. (R. 1042; 1291, line 10 – 1292, line 10.) Moreover, the transfers were made by Transfer Online, Inc., which is not a party to this case.

III. The Court of Appeals correctly ruled that equitable tolling did not suspend the running of the statute of limitations clock and that Community First was not estopped from asserting the statute of limitations as a defense.

Brookshire argues that, in determining that equitable tolling did not suspend the statute of limitations, the Court of Appeals relied on a small portion of her deposition testimony in which she testified that disbursements of \$500,000 and \$200,000 by Hiott in 2007 were inappropriate to make. That testimony was certainly relevant to the ruling, but it was not the only evidentiary basis of the ruling.

The Record reflects that Brookshire produced in discovery certain original Account statements and a copy of an original Account statement sent to her by Community First. (R. 402-404, ¶¶ 27-35.) One of those Account statements was dated July 31, 2007 (sent to Brookshire by Community First shortly after the Account was opened), and reflected a disbursement in the amount of \$500,000. (R. 430.) Another Account statement produced by Brookshire was dated November 30, 2007, and reflected a disbursement for \$200,000. (R. 417.) Brookshire testified at her deposition that it would have been inappropriate for Hiott to have made disbursements for any purpose for these amounts. (R. 225, lines 5-11.) Yet, Brookshire continued to allow Hiott to

disburse funds from her Account until 2011. That evidence certainly supports a finding that the statute of limitations should not have been tolled.

The Court of Appeals also did not limit its ruling to this evidence. Instead, it stated that “as noted above, the circumstances gave reasonable notice that a claim might exist.” Those other circumstances “noted above” are discussed in Section II and include Brookshire’s knowledge that Hiott was actively exercising the authority under the POA by regularly making disbursements from the Account; telling someone in 2010 that Hiott was stealing from her; hiring a lawyer who reported serious issues and inconsistencies in 2010; and closing the Account in February 2011 at her attorney’s direction after receipt and review of a full set of Account statements. This and other record evidence amply support the ruling that the circumstances gave reasonable notice that a claim might exist.

CONCLUSION

Brookshire has failed to present any argument in her Petition that implicates the considerations listed in Rule 242(b), SCACR. Further, nothing about the opinion of the Court of Appeals is inconsistent with binding precedent, the Petition does not present any question of exceptional importance, and the rulings by the trial court and Court of Appeals dismissing Brookshire’s claims against Community First are fully supported by the record. Therefore, the Petition must be denied.

In addition, even if this Court disagreed with an issue addressed by the Court of Appeals, it would be a waste of judicial resources to grant the Petition because the trial court’s ruling should be affirmed on additional sustaining grounds not reached by the Court of Appeals. As discussed above, the trial court held that: (1) Brookshire’s claims were barred because the POA granted Hiott authority to conduct all of the transactions challenged by Brookshire; (2) Brookshire’s claims are time-barred by the UCC’s statute of repose because Brookshire failed to review her Account

statements and bring her concerns about Hiott allegedly exceeding his authority to Community First's attention within one year as required by S.C. Code Ann. § 36-4-406; and (3) Community First was entitled to summary judgment on the merits on all six of Brookshire's causes of action. Accordingly, it would not change the result of dismissal of Brookshire's claims even if this Court disagreed with one or more of the rulings addressed by the Court of Appeals.

Respectfully submitted,

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