

THE STATE OF SOUTH CAROLINA
In The 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,

Appellant,

v.

Community First Bank and
Benjamin Hiott,

Defendants,

Of Which, Community First
Bank is

Respondent.

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STATEMENT OF ISSUES ON APPEAL

- a. The Court failed to issue a ruling as to why the debts owed to the Appellant are not considered governed by S.C. Code Ann. § 15-3-110.
- b. The Court erred in finding that a single triggering date for the statute of limitations applies to all occurrences of malfeasance and deceit, even though there were multiple and continuing injuries to the Appellant.
- c. The Court erred in affirming the circuit court's determination that equitable tolling did not suspend the limitations clock and that Community First was not estopped from asserting the statute of limitations.

STATEMENT OF THE CASE

The Appellant filed a Summons and Complaint on September 8, 2014 alleging six (7) causes of action against the Respondent and Benjamin Hiott, including Breach of Fiduciary Duty, Conversion, Negligent Supervision, Negligence/Gross Negligence, Breach of Contract Accompanied by Fraudulent Act, and Accounting. Respondent timely filed an Answer and Counterclaim against Appellant alleging two (2) causes of action for Conversion and Unjust Enrichment. Appellant filed a timely reply to the counterclaims, wherein she raised, among other things, the statute of limitations as a defense to the Respondent's counterclaims.

Defendant Hiott filed a motion to dismiss pursuant to Rule 12, SCRCF on October 30, 2014. By Form 4 Order filed February 2, 2015 and formal Order filed February 25, 2015, the trial court denied Hiott's motion to dismiss. On October 13, 2016 and October 19, 2016 respectively, Respondent and Defendant Hiott each filed motions for summary judgment. A hearing was held December 13, 2016, where the matter was taken under advisement. On August 29, 2017 the court issued a Form 4 Order denying "all Motions for Summary Judgment." On September 8, 2017 the court issued a Form 4 Order replacing and superseding, in its entirety, the Form 4 Order issued on August 29, 2017, and denying Defendant Hiott's motion for summary judgment with a formal order to follow. The trial court issued an Order filed September 26, 2017 granting Respondent's motion for summary judgment and denying Defendant Hiott's motion for summary judgment. Appellant filed a timely Motion to Alter or Amend the Judgment Pursuant to Rule 59(e), SCRCF on October 6, 2017. A hearing was held on Appellant's motion on December 6, 2017, where the matter was taken under advisement. On March 22, 2019 the court issued an Order Denying Appellant's Motion to Alter or Amend Judgment. On April 9, 2019 Appellant

filed a timely notice of appeal. On April 6, 2022, this Court affirmed in part and reversed in part the decision of the circuit court in a per curiam, unpublished opinion. Appellant filed a timely Petition for Rehearing. On May 3, 2022, the Court of Appeals denied Appellant's Petition for rehearing.

STATEMENT OF FACTS

On May 25, 2007, Debi Baker Brookshire signed a Power of Attorney with Benjamin Lee Hiott. At the time, Defendant Hiott was a Senior Vice President of Community First Bank. A month later, all of the proceeds (\$1,171,823.58) from an established trust account at BB&T were transferred to Respondent, in what Appellant believed to be a Trust account (App. pp. 1009 – 1024, p. 1059, line 19 - p. 1060, line 22; p. 1061, line 15 - p. 1062, line 20; p. 1063, lines 5-10, 17-21; p. 1064, lines 7-11; p. 1065, lines 3-14; p. 1066, lines 3-7; p. 1066, line 12 - p. 1067, line 6; p. 1068, lines 13-24; p. 1069, lines 19-25; p. 1070, lines 18-20; p. 1071, line 1 - p. 1072, line 4) operating in substantially the same manner as her trust at BB&T. At no time did any bank employee, including Hiott, ever inform Appellant that Respondent did not have a trust department or the legal authority to open or maintain a trust account. On the contrary, to Appellant, who's only knowledge of finances came from her own affairs, the account paperwork indicated that she was opening a trust with Respondent. (App. pp. 1009 – 1024). Less than one week after the account was opened, and unbeknownst to the Appellant, Defendant Hiott, acting supposedly under the Power of Attorney, but also acting within the scope and course of his employment and agency with Respondent, issued a \$500,000 cashier's check to a Joseph C. Crosby, an account and loan holder of Respondent. Neither Hiott, Appellant, nor the trust received anything of value in return for the "gift" of half a million dollars. From this point on, Defendant Hiott withdrew or transferred sums in excess of \$2,000,000 from Appellant's

trust account in which Appellant received no benefit.

By reason of Defendant Hiott's position within the bank, he was able to manipulate account balances electronically, and often manipulated account balances by transferring assets from one account to another in order to avoid detection and to attempt to conceal his fraudulent acts.¹ Respondent identified these transfers as "journal transfers." In the years prior to 2007, Defendant Hiott, while acting in his capacity as a Senior Vice President of Respondent, began to manipulate and misappropriate both customer and bank funds. These misappropriations were not discovered by Respondent, due to its lack of internal controls and adherence to standard banking practice, until the allegations regarding Appellant's accounts came to light. Respondent's negligence and failure to operate in a manner consistent with banking industry standards, allowed Appellant to be the victim of a scheme that had begun with other accounts, specifically MPS, Inc., owned by three well known members of the bank and community – James McCoy (Chairman of the Board of Directors of both Respondent and its parent company); John Powell (Owner of Powell Real Estate); and Frederick D. Shepard, Jr. (President of Respondent and Defendant Hiott's direct supervisor), more than two (2) years before Appellant's money was transferred to the Respondent. (App. p. 1027, line 14 - p. 1029, line 18).

Respondent hired Palmetto Consulting Services (hereafter "PCS") to conduct an investigation into irregular transactions in 2013, after repeated requests by Appellant's counsel to explain the discrepancies in Appellant's account. While researching Appellant's account, PCS "became aware that other such 'juggling' entries had been made to the general ledger securities account prior to the initial opening of the Brookshire DDA

¹ Towards the end of the time Appellant's account was open, Appellant requested monies be transferred from her account with Respondent to her BB&T checking account. In an effort to avoid detection, Defendant Hiott transferred money to Appellant's account from other places, including from Respondent's own accounts, as Appellant's account was so depleted of funds.

account.” (App. pp. 1030 – 1053, 1054 – 1057). Defendant Hiott used the accounts of MPS Incorporated, which is comprised of MPS Golf, Inc. and MPS Development, Inc. and owned by Frederick D. Shepherd, Jr., James McCoy, and John Powell. Defendant Hiott, utilizing the exact same concealment scheme as with Appellant’s account, transferred \$1,665,898 of bank money to MPS Incorporated in which the three owners benefitted. (App. pp. 1195 - 1197). Moreover, using the exact same concealment scheme, Defendant Hiott transferred \$994,666 of Respondent’s money to Joseph C. Crosby during the same time as Appellant’s money was stolen. (App. pp. 1195 - 1197). Respondent did not discover either the MPS Incorporated misappropriations nor the Crosby misappropriations committed by Senor Vice President Hiott until the Brookshire investigation in 2013.

Appellant was not aware of receiving bank statements at any point in time while the account was open. (App. p. 1059, line 19 - p. 1060, line 22; p. 1061, line 15 - p. 1062, line 20; p. 1063, lines 5-10, 17-21; p. 1064, lines 7-11; p. 1065, lines 3-14; p. 1066, lines 3-7; p. 1066, line 12 - p. 1067, line 6; p. 1068, lines 13-24; p. 1069, lines 19-25; p. 1070, lines 18-20; p. 1071, line 1 - p. 1072, line 4). At best, Appellant received the few statements discussed in Respondent 's motion when Defendant Hiott returned an RV belonging to Appellant and her husband. (App. p. 1077, lines 13-23). In fact, in early 2010, the bank statements began to read "Exclude - do not mail." According to Carol Wilson, from February 2010 until the closing of the account, these "excluded" and returned statements were placed in a box at the branch. (App. p. 1080, lines 13-24). In fact, Appellant was not provided these specific statements until the morning of Mrs. Wilson's deposition on February 25, 2016. Moreover, Defendant Hiott had access to the mail and could have easily removed all statements from the mail, especially since he had power of attorney over Appellant’s finances. Even if Appellant was receiving statements, these statements would

not be reliable, nor would she have had a reason to question whether or not her money was being misappropriated (App. pp. 651 - 731), as Mr. Hiott engaged in a scheme to conceal the originating and ending location of fund transfers and also manipulated the dates that funds were shown to be transferred or were actually transferred. Further, because Defendant Hiott had a valid POA, further inquiry and detail of the nature of transactions would be necessary to determine if any wrongdoing had taken place. All legitimate transfers to BB&T and other bills look exactly like the illegitimate transfers, as they are all marked as "miscellaneous debits" or "investment counter withdrawals" or "wire transfer." When counsel met with Jim Williams (of counsel for Respondent) and Jeff Griffith (employee for Respondent), Mr. Griffith explained the statements were marked this way because there are rules on how many transactions that can be completed per month with Trust Accounts. Respondent, during the course of this litigation, consistently maintained that the bank did not have a trust department or trust powers and that Mrs. Brookshire's account was NOT a trust account.

On August 23, 2010, Appellant, through counsel (Kathleen McDaniels), requested an accounting of the Trust assets from Respondent. On September 7, 2010, Defendant Hiott sent via facsimile to Appellant's attorney a purported "accounting." This "accounting" consisted of a generic list of amounts withdrawn from the Trust with no explanation of withdrawals, and with no accounting of the monthly deposits Appellant received from Baker & Baker. (App. pp. 1088 - 1091). Defendant Hiott further stated that Ms. Brookshire should have been in possession of the documentation related to the \$500,000 "annuity" and that it was concerning to him that she had not provided this information to Mrs. McDaniels. Unbeknownst to Mrs. McDaniels or Appellant, there was no documentation relating to any "annuity" because no annuity was ever purchased. On September 21, 2010, Appellant's

attorney again requested a formal accounting of the Trust assets. (App. pp. 1093 - 1095). Mrs. McDaniels never received a formal accounting or other complete record of transactions from the account, including transaction details as requested.

Defendant Hiott, acting within the scope and course of his employment with Respondent, closed Appellant's Trust at some point between October 1, 2010, and October 19, 2010 without informing the Appellant of this action. He also failed to disclose that the Trust had a balance of zero. On October 19, 2010, Mrs. McDaniels sent a letter to Frederick D. Shepherd, Jr. (President of Respondent) and James E. McCoy (Chairman of the Respondent's Board), requesting assistance with Defendant Hiott in obtaining the requested documents, including a full accounting. On October 21, 2010, Defendant Hiott sent Appellant's counsel a letter stating that he had set aside money for Appellant's two children and would be glad to send documentation reflecting the whereabouts of this money. (App. p. 1090). Appellant has since learned that these documents do not exist. On December 1, 2010, Mrs. McDaniels and Mr. Williams spoke on the phone. Mr. Williams advised that he would send a full accounting of the Appellant's Trust account. (App. p. 1102). He never did. Moreover, at some point in Mrs. McDaniels' dealings with Respondent, either Defendant Hiott or Mr. Williams told her that the \$500,000 miscellaneous debit was used to purchase a Lafayette product single premium annuity. (App. p. 1105, lines 1 - 16). This, of course, was false information and a direct effort by Defendant Hiott and Respondent to mislead the Appellant and to conceal their malfeasance.

On February 17, 2011, Mrs. McDaniels sent Mr. Williams a letter requesting that Mrs. Brookshire's account be closed and all of the funds delivered to Appellant's attorney. (App. p. 1107). On February 22, 2010, Defendant Hiott, at all times acting within the scope and course of his employment and agency with Respondent, re-opened Appellant's Trust

with one penny. Defendant Hiott, using his managerial position in Respondent, transferred \$285,233.34 from account number 117001 at Respondent bank, via journal entry, into the Trust. That same day Mrs. McDaniels closed the account and received a check in the above-referenced amount which allegedly represented all assets of the Trust. On March 11, 2011, Mrs. McDaniels notified counsel for Respondent that she no longer represented the Appellant and requested that he send the documents requested to Appellant at her home address. (App. p. 1109). These documents were never sent.

Appellant enlisted the help of Tabor Investigative Services to track down the paperwork associated with the \$500,000 miscellaneous debit. On November 27, 2012 Tabor Investigative Services phoned Carol Wilson, an employee of Respondent, and requested documents from Appellant's Trust account. Mrs. Wilson requested that a signed authorization of release be faxed to her for her review and that she would contact Tabor when she received the authorization. This authorization was sent the same day and as of the date this case was dismissed, Tabor Investigative Services has yet to receive a response to this request from anyone at Respondent. (App. pp. 1111 - 1113).

On March 19, 2013, Appellant, through current counsel, sent a letter to Defendant Hiott requesting an accounting of the Trust assets and a meeting. Copies of this letter were also sent to Frederick D. Shepherd, Jr., James E. McCoy, and Carol Wilson. (App. p. 1115). Sometime between March 19, 2013 and May 7, 2013, Defendant Hiott telephoned counsel and represented that the \$500,000 transfer was put into two separate annuities for Appellant's two children and that the annuities were placed with Nationwide Insurance Agency. Nationwide Insurance has no annuities payable to Appellant or her children. This was yet another direct effort by Defendant Hiott and Respondent to mislead the Appellant. (App. pp. 1117 - 1118).

On May 7, 2013, Tabor Investigative Services and counsel met with Defendant Hiott. In this meeting Defendant Hiott informed Tabor and counsel that he wrote a check for \$500,000 to Mr. Holcombe of Holcombe Insurance Agency in Easley, South Carolina and that Mr. Holcombe used the funds to purchase two annuities in the names of Jordan Taylor Blackwell and Laura Ann Elizabeth Blackwell (Appellant's children) from Lafayette Insurance Company. Lafayette Insurance has no annuities payable to the Appellant or her children. Moreover, Defendant Hiott and Respondent failed to provide Appellant with a formal accounting of the Trust. (App. pp. 1117 – 1118). Additionally, Defendant Hiott said he would not provide any documentation unless Appellant provided the following information: "account of amounts and purpose of Debi's withdrawals from her BB&T account(s); copy of her tax returns since 2009; copy of her DBS reports; and asked her to be drug tested." (App. p. 1120).

On June 14, 2013, Appellant's counsel sent a letter to Mr. Williams, counsel for Respondent, informing him of the communications between counsel and Defendant Hiott and again requesting a formal accounting of the Trust. (App. pp. 1117 – 1118).

On July 18, 2013, Mr. Williams wrote to Appellant's counsel and he advised that Defendant Hiott indicated to him that the \$500,000 was removed from the Trust, with Appellant's consent and knowledge, for an investment with Joseph C. Crosby, Jr., and that the Appellant was provided a promissory note signed by Mr. Crosby and that Appellant was in possession of the note. Appellant does not and has never had a promissory note, nor had she ever heard of Mr. Crosby before this lawsuit, has never met him, and was never aware of this transaction. Respondent provided some documents related to the Trust but did not provide a formal and complete accounting, or a copy of the alleged promissory note. Mr. Crosby testified that he never signed a promissory note with Appellant. (App. p. 1123). The

bogus promissory note was just more false information provided by the Respondent and Defendant Hiott to the Appellant in order to delay any lawsuit.

On August 19, 2013, Appellant's counsel requested records of all deposits and the source of the deposits into the Trust, all documents related to any and all "miscellaneous debits" and "investment counter withdrawals," and all monthly bank statements from November 1, 2010 through February 22, 2011. (App. pp. 1131 – 1136). Having not heard from Respondent, Appellant sent a follow up letter on September 17, 2013. (App. p. 1138). Again, not hearing anything from Respondent or counsel. Appellant sent another follow up letter on October 17, 2013 re-requesting the documents listed in the two previous letters as well as a full accounting and an entire copy of the Trust file from the date of creation to date of termination. (App. pp. 1140 – 1146).

On December 17, 2013, Respondent provided the Appellant with the documents purportedly showing the activities in the Trust account. Donald Jones, with Palmetto Consulting, created 4 binders detailing the Appellant's Trust Account for Respondent. When Mr. Jones turned them over to Mr. Shepherd, Mr. Jones was able to account for all transactions in and out of the Trust. When transferring the 4 binders to Appellant's counsel, Mr. Williams and Mr. Griffith represented to Appellant's counsel that these were all of the documents associated with the Trust. This was in fact, not the case. Paperwork for over \$500,000 was purposefully withheld from the four (4) binders provided to the Appellant. Mr. Jones testified "Mr. Shepherd was responsible for what was put in the binders or not. He was asking me for, you know, data to copy to respond to you. I knew he was doing that. And Jeff Griffith was working with him but it appeared to me, from the conversation that was going on right outside my door, that Mr. Shepherd was deciding what to put in the binders and what not to, not Jeff." (App. p. 1149, line 5 – p. 1150, line 24).

Moreover, Appellant subpoenaed Palmetto Consulting's entire file with relation to this investigation. Over 40,000 pages of documents were produced. Within these pages were the 4 binders (in scanned format) that had previously been produced by Respondent to Appellant. Within these binders, the paperwork associated with the approximately \$500,000 missing transactions was indeed present. These pages were intentionally withheld from the Appellant. The transactions revealed within the 40,000 pages produced by Palmetto Consulting, many of which were intentionally withheld by Respondent despite Appellant's repeated attempts to obtain this information, include the following:

- \$310,510.75 juggling:

- On 12/31/2007, \$310,510.75 went from Appellant's account into Respondent's account # 1002901 (Due From Bank - Banker's Bank).

- On January 7, 2008, \$310,510.75 was transferred from account #1052201 (State County Muni Securities - AFS) into Appellant's account, causing Appellant to lose the use of and interest for a full week.

- On March 31, 2008, \$310,510.75 was transferred from account 1029002 into account 1052201.

- Respondent represented in their Responses to Appellant's 1st set of interrogatories that this \$310,510.75 transaction in Appellant's account was a "reverse transaction." According to Jeff Griffith's testimony, this transaction was not a reverse transaction and he "would call it juggling." (App. p. 1153, line 2 – p. 1154, line 16). When posed with the question, "that's not a reverse transaction is it," Don Jones testified, "It's a juggling—no. He's moving, hiding money from one place to the other, juggling." (App. p. 1157, line 2 – p. 1158, line 12)

o This \$310,510.75 transaction was marked as "Tax" on Appellant's bank statement. (App. pp. 664 – 665).

- On 2/29/2008, \$8,500 was transferred from Appellant's account to Marc Hiott's (Defendant Hiott's brother) CFB account.
- On 3/13/2008, \$2,224 was transferred from Appellant's account to account 1222001 (Respondent's Miscellaneous Accounts Receivable). \$1,360 of this money was then transferred from Respondent's Miscellaneous Accounts Receivable into Ben Wilson's account at Respondent in exchange for some Respondent bank stock. Ben Wilson is the step-son of Fred Shepard, President of CFB. Fred Shepard's wife was also on this account. (App. p. 1161, line 18 – p. 1013, line 25; p. 1165, line 21 – p. 1166, line 25).
- On 8/29/2008, \$65,000 was transferred from Appellant account to CLCB, LLC's CFB account. CLCB, LLC stands for Coach's Low County Brand and was owned by Joseph C. Crosby, Jr. At this point in time, Joe Crosby's business was failing, which Respondent and Defendant Hiott knew, as he was running deficits in most of his accounts with Respondent. In fact, CLCB's balance on accounts with Respondent on July 22, 2008 was negative \$157,803.62.
- On 9/22/2008, \$1,000 was transferred from Appellant's account to Ben Hiott's account with Respondent.
- On 10/24/2008, \$3,500 was transferred from Appellant's account to Ben Hiott's account with Respondent.
- On 11/1/2008, \$85,000 was transferred from Appellant's account to Jim McCoy's account and was immediately offset to pay a debt owed by Mr. McCoy to Respondent. (App. pp. 1168 – 1189).

- On 6/5/2009, \$25,387.20 was transferred from Appellant's CFB account into Respondent's accounts receivable, in which Respondent was able to derive a direct benefit and control in exchange for nothing.
- On 6/15/2010, \$3,000 was transferred from Appellant's account to Defendant Hiott's account with Respondent.

Defendant Hiott was also purchasing stock shares of Respondent stock with funds from Appellant's account, which, according to Respondent's expert is a direct violation of banking regulations. (App. pp. 1196 – 1197). When Mrs. McDaniels closed the account in February of 2011, the check issued was represented to be all proceeds from the Trust account. Appellant was never notified of the 16,519 shares of Respondent bank stock owned by Appellant at the time the Trust proceeds were transferred. Unbeknownst to Appellant, she had an RBC account (an investment company) with 5,300 shares of Respondent bank stock. Defendant Hiott closed the RBC account on May 11, 2011 and the stock certificate was issued in Appellant's name and delivered to the address for Appellant's RBC account which happened to be PO Box 711, West Union, SC 29696. That address is the same address as Hilltop, Inc. Moreover, Respondent's Proxy Mailing Address for Appellant was 449 ByPass 123, Seneca, SC 29678, which also happens to be Respondent's address for one of its branches.

On August 5, 2011, five months after the Trust account was closed and at least three months after the revocation of the Power of Attorney was executed and filed, 16,518 shares in Appellant's name were transferred to Hilltop, Inc. Appellant received no funds or compensation from this transfer. (App. p. 1191). On August 5, 2011, Respondent bank's stock was worth \$4.55 a share. In exchange for nothing, Hilltop received 16,518 shares of stock, at a value of \$75,156.90, for free; these stock shares, and the value thereof, rightfully

belonged to the Appellant as Defendant Hiott was only able to orchestrate such a transfer using the tools provided to him by Respondent.

Respondent did not have investment brokerage powers. It was improper for Defendant Hiott to be trading Respondent bank stock using bank funds to purchase and then sell the stock, regarding Ms. Brookshire or otherwise. (App. p. 1194, lines 1 - 23). Kenneth Richey, Plaintiff's Expert, explained, "[s]ince Hiott was conducting stock transactions on behalf of Brookshire and the Bank he was essentially representing both the Bank and Brookshire, which created a conflict of interest. Senior Officers of the Bank and Internal Affairs failed to monitor Hiott. (App. pp. 1196 – 1197). Defendant Hiott was essentially serving two masters as he was an agent of each.

ARGUMENTS

a. The Court failed to issue a ruling as to why the debts owed to the Appellant are not considered governed by S.C. Code Ann. § 15-3-110.

The Court of Appeals failed to issue a ruling as to why the debts owed to the Appellant are not considered governed by S.C. Code Ann. §15-3-110, which Appellant contends is an indispensable ruling in this case given that the trial court's Order Granting Summary Judgment relied on unfiled materials not properly before the court for consideration. S.C. Code Ann. § 15-3-110 provides that "[l]imitations are not applicable to bills, notes or other evidence of debt issued by moneyed corporations. This chapter 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." The South Carolina Supreme Court addressed this issue and its definitions in *Grice v. Anderson*, 109 S.C. 388 (1918) holding:

If a corporation shall make it a business to lend money, to borrow money, to deal in negotiable paper, bonds, stocks, and other securities, it is a moneyed corporation. See *Platt v.*

Wilmot, 103 U. S. 602, 24 Sup. Ct. 542, 48 L. Ed. 809. If, moreover, attention be directed to the very words of section 156, it will be observed that it refers to moneyed corporations or banking associations, and the preposition “or” was manifestly intended to be conjunctive, rather than disjunctive; so that the section has reference to other moneyed corporations than banks, for banks are confessedly moneyed corporations.

South Carolina law is clear that:

[W]here there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect. Specific statutes are not to be considered repealed by a later general statute unless there is a direct reference to the earlier statute or the intent of the legislature to do so is explicitly implied.

Denman v. City of Columbia, 387 S.C. 131, 138, 691 S.E.2d 465, 468–69 (2010) (internal citations omitted).

The Court of Appeals addressed the statute of limitations and equitable tolling arguments without providing a ruling as to why these debts do not rise to the level of “bank instruments” that this statute is meant to protect. As stated in *Grice*, banks, like the Respondent, are moneyed corporations. According to Section 15-3-110, when dealing with bills, notes and other evidence of debt issued by moneyed corporations, no statute of limitation applies. When giving the words of Section 15-3-110 their plain and ordinary meaning, the three-year statute of limitations does not apply because the more specific statute of limitations contained in § 15-3-110 applies. Moreover, given the lack of case law, the question remains as to whether these transactions and the documents in the record evidencing debts owed rise to the type of bank instruments that are described in §15-3-110.

Appellant respectfully requests this Court to reconsider this issue and vacate and

reverse outright the Order of the trial court or, in the alternative, to remand the Order with instruction to remove references and consideration of unfiled materials.

- b. **The Court erred in finding that a single triggering date for the statute of limitations applies to all occurrences of malfeasance and deceit, even though there were multiple and continuing injuries to the Appellant.**

Appellant alleged causes of action for Breach of Fiduciary Duty, Conversion, Negligent Supervision, Negligence/Gross Negligence, Breach of Contract Accompanied by Fraudulent Act and Accounting. These causes of action allege separate and distinct or continuing injuries and as such, have statutes of limitations that begin to run at different times. Appellant asserts that her monetary loss was ongoing, not one single theft, but multiple thefts over a multi-year period by a bank employee. Moreover, the dishonest actions by the Respondent and Defendant Hiott continued well after the account was closed and were in both causation and damage from the thefts.

“The [S]upreme [C]ourt has held that when a nuisance is continuing and the injury is abatable, the statute of limitations does not run merely from the time of the original intrusion on the property and cannot be a complete bar.” *Silvester v. Spring Valley Country Club*, 344 S.C. 280, 287, 543 S.E.2d 563, 567 (Ct.App.2001). “Rather, a new statute of limitations begins to run after each separate invasion of the property.” *Id.*; see *Cutchin v. S.C. Dep't of Highways & Pub. Transp.*, 301 S.C. 35, 37, 389 S.E.2d 646, 648 (1990) (stating if the injury is permanent, the plaintiff has a single cause of action that cannot be split; however, if the cause of the injury is abatable, each injury gives rise to a new cause of action (citing *Webb v. Greenwood Cnty.*, 229 S.C. 267, 277, 92 S.E.2d 688, 692 (1956))).

In *Est. of Livingston v. Livingston*, the Court equates a continuing nuisance injury to a contract. That Court ruled “the master properly determined the statute of

limitations was not a complete bar on the USDA benefits. Similar to the Supreme Court and this court's rulings in other statute of limitations cases, because each application with the USDA was for a fixed duration, it required a separate renewal each year and the benefit was contingent upon an offer and acceptance by the USDA. *Est. of Livingston v. Livingston*, 404 S.C. 137, 147, 744 S.E.2d 203, 209 (Ct. App. 2013).

Like the cases cited in this section, each event in this case should be treated as an isolated event, thus triggering its own statute of limitations. For example, because Defendant Hiott had Power of Attorney over Appellant's finances, being made aware of the removal of funds from her account, authorized or not, may trigger the running of a statute of limitations against Hiott as it would put Appellant on notice to further investigate the destination of those funds. Unknown to the Appellant though, and the reason a separate and distinct statute of limitations does not begin to run at the same time, are the actions of Appellant. Because of the POA bestowed upon Hiott, the specific facts of this case require deeper analysis into when causes of action against Respondent were known or should have been known. The Court's analysis that the fact that Hiott was a bank employee with POA powers over her account at the same bank would lead a reasonable person to realize a claim against Community First might exist fails to consider that an individual could reasonably assume that a federally regulated bank should have had systems and internal checks in place in order to catch fraud occurring from within its walls. The discovery of the lack of such systems and controls, in violation of standard banking practice, should be the triggering event with regards to Respondent as the injuries caused by Defendant Hiott and Respondent are different.

In *Benton v. Roger C. Peace Hospital*, 313 S.C. 520, 443 S.E.2d 537 (S.C. 1992), the Court held that a single event, causing separate and distinct injuries discovered at

different times, could sustain multiple dates in which claims would start the clock on an applicable statute of limitation.

When Defendant Hiott removed funds from Appellant's account to purchase Respondent's Stock, in Appellant's name, he did so under the authority granted to him by the POA, but using the tools and systems only available to him because Respondent lacked institutional controls. The purchase of stock for market value would not trigger a cause of action against Defendant Hiott as he would be acting within his authority. The transfer of stock shares from Appellant to a third party, after the revocation of the POA and the closing of the account with Respondent, for no value, and when using Respondent's systems and licenses would trigger the running of a statute of limitations for a separate and distinct cause of action, including the necessary analysis regarding when discovery of a stock sale, by an individual with no authority to do so from a bank where Appellant had no account, was made. (App. p. 1191, 1196 – 1197).

- c. The court erred in affirming the circuit court's determination that equitable tolling did not suspend the limitations clock and that Community First was not estopped from asserting the statute of limitations.**

The court, in determining that equitable tolling did not suspend the statute of limitations clock relies on a very small portion from Appellant's approximately 14-hour deposition in which she responded that disbursements of \$500,000 and \$200,000 would be inappropriate and unauthorized for Defendant Hiott to make. That statement is in opposition to **all** argument made by both Appellant and Respondent, who states in its Final Brief, "Brookshire has conceded, all of Hiott's disbursements from the account were authorized by the POA." The fact that it was represented repeatedly to Appellant, not only by Defendant Hiott, but by officers of Respondent and counsel for Respondent, that the

funds were used to purchase annuities with multiple companies and agencies or that they were used to make a properly documented loan to a business would allow her to ascertain those grounds for a suit existed. (App. pp. 1105, lines 1 – 16, 1117-1118, 1123). Respondent took other deceitful actions in an attempt to hide it's culpability such as removing selected records from documents requested by counsel for Appellant in a further attempt to deprive Appellant the knowledge that a claim may exist. (App. p. 1149, line 5 – p. 1150, line 24).

Further, Appellant contends that the court misapprehended the facts regarding the applicability of equitable estoppel. By providing Appellant with explanation as to where her funds were, including details such as dollar amounts which coincided with withdrawals, documents supposedly signed, and names of insurance agencies, Respondent was assuring Appellant that there were no problems with her account and that she didn't need to sue because her funds were secure, just in a different format than when they were deposited. Such repeated conduct, not only by Defendant Hiott who remained employed despite the allegations, but by officers and agents of Respondent induced Appellant to delay filing as it suggested a lawsuit is not necessary. The Respondent should not be rewarded for this continual dishonest conduct.

Appellant respectfully requests this Court reverse the Order of the trial court and remand the matter to the Circuit Court for further proceedings.

CONCLUSION

Based on the foregoing arguments, Appellant respectfully requests this Court reverse the Court of Appeals' decision as per the provisions of the South Carolina Appellate Court Rules.

s/ Warren Giese

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May 1, 2023
Columbia, SC

THE STATE OF SOUTH CAROLINA In
In The 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,

Appellant,

v.

Community First Bank and
Benjamin Hiott,

Defendants,

Of Which, Community First
Bank is

Respondent.

PROOF OF SERVICE

I certify that I have served the Petitioner's Brief (via electronic mail and hand delivery) and Appendix (via hand delivery only) on the following recipients pursuant to the Supreme Court's Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules:

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