

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM OCONEE COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

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.

REPLY BRIEF OF PETITIONER/APPELLANT

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## INTRODUCTION

Appellant's primary brief challenged three specific issues in the Court of Appeals decision. The Respondent's brief does little to dispel these concerns or justify these errors committed by the court. This reply brief rebuts the Respondent's arguments and clarifies the legal issues, factual issues, and governing authorities.

## ARGUMENTS

### **a. Respondent incorrectly attempts to raise "additional sustaining grounds" as "the law of the case."**

Respondent attempts to apply the same standards of issue preservation to Appellant's Petition for Certiorari from the Court of Appeals as would be applicable from the trial court level to the first level of appeal. Specifically, Respondent argues that by not asking the Court of Appeals to reconsider (rehear) its decision not to rule on the "remaining arguments" after determining that prior issues were dispositive, that the "remaining arguments" are unpreserved. Brookshire v. Community First Bank, 2022-UP-163 (April 6, 2022). While the case law regarding issue preservation from the trial level is extensive, Respondent relies on a footnote to an Opinion in an heirs property dispute, of which other similar cases involving the same parties had already been litigated and appealed (Robinson v. Estate of Harris) and dicta of an Opinion where it is unclear what issues were actually raised in the initial appeal (Sloan v. Department of Transportation). Robinson v Estate of Harris, 698 S.E.2d 214, (S.C. 2010); Sloan v Department of Transportation, 618 S.E.2d 876, (S.C. 2005).

Coincidentally, both of the cited portions of the above cases involve a discussion of the affirmative defense of laches. In Robinson, the Court saw that "this case presents a unique set of circumstances," Robinson, at 220, and presented the Court with "an

opportunity to address the applicability of the doctrine of laches to section 15-67-90.” Robinson, at fn8. In Sloan, the Court was asked to review the standing of an individual to bring (multiple) actions, rendered moot at the time of appeal, regarding state procurement procedures. The Court again, makes note that the Circuit Court’s ruling on laches in 2 of 3 cases consolidated into this case, was not raised in the Petition for Rehearing or Petition for Certiorari after the Court of Appeals specifically declined to address the laches issue. The Court discusses the procedural history in an effort to discuss the complete picture in its analysis of the overall merits of the action.

The issues not before this Court are not “additional sustaining grounds” nor do they involve issues whose analysis does not go to the merits of a case, instead relying on analysis of time and prejudice to parties and others to determine whether a case may proceed from the outset. Further, the citations in which Respondent relies are mere dicta in these two opinions; therefore there are no preservation issues.

**b. Petitioner does not make “brand new argument” on the statute of limitations.**

Respondent argues that Appellant attempts to make a “brand new argument” that the applicable statute of limitations for the various alleged tortious claims is dependent on the specific tortious activity of Respondent, and therefore there are multiple triggering dates for when the statute of limitations begins to run. In fact, this very argument has been argued repeatedly, especially with respect to the equitable tolling defense. Respondent has maintained that because of Respondent’s tortious conduct, each instance of which is a triggering event for the statute of limitations to begin to run, conduct which may be separate and distinct from the transfer/withdraws from Appellants account. Further, because of the many instances of tortious conduct by Respondent and its agents, there was no way for Appellant to discover the malfeasance as supported by the Appellant’s fact

section of the initial brief. Respondent repeatedly failed to provide requested documents that were requested by the Appellant and Appellant's attorneys. And when deciding to actually comply, the Respondent's President removed crucial documents to further hide Respondent's misconduct. These specific actions, of which there are others outlined in the Appellant's Brief, constitute specific triggers for the statute of limitations, and are separate and apart from any actionable activity which Appellant's bank statements would have shown.

Moreover, Respondent contends that the claims against the Respondent cannot post-date the sole relationship between Appellant and Respondent. The account agreement, which has always been presented as a trust agreement to the Appellant, only limits the relationship when it is a purely contractual relationship. The tortious activity of CFB does not allow it to hide behind the agreement. The final transfer of the funds in her account does not terminate the relationship with CFB when CFB is actively engaging with Appellant and her counsel to provide information and clarification regarding an account and a CFB employee's involvement. Whether she had funds on deposit with Respondent (not to mention being an unknowing shareholder) does give CFB license to intentionally misrepresent and manipulate the information it provides to her.

**c. Respondent continues to incorrectly rely on the UCC statute of repose.**

Respondent relies on one line from Appellant's fourteen-hour deposition to establish this argument. Appellant's claims are not about "unauthorized" withdrawals therefore the UCC is not the proper controlling legal authority. Appellant has consistently maintained that because of the POA, not in spite of it as Respondent contends, that Hiott's position with the bank allowed him to perpetrate his scheme against Appellant and the Respondent itself. Hiott was able to sit in his office and generate transactions with no enforced

oversight. (App. p. 1211, line 10 – p. 1213, line 23). Unknown to Appellant, she was the owner of significant amounts of stock at CFB, which were later transferred out of her name into others without compensation. Respondent has, ironically for the first time in its brief to this Court, provided the third parties whose systems ultimately allowed Hiott to facilitate the transfer of Appellant's stock to other third parties. Respondent does so in an attempt to distance itself from involvement or liability for the stock transfers. However, CFB's actions in misleading Appellant and withholding information regarding the true nature of where Appellant's funds went, only bolster Appellant's entitlement to equitable tolling and equitable estoppel. If Respondent believes that third parties were ultimately responsible and liable, then its actions delayed Appellant from discovering who they were and to what extent they were.

**d. The Respondent is incorrect in their application of S.C. Code Ann. §15-3-110 as it applies to this case.**

Respondent contends Appellant only addresses that Community First Bank is a "moneyed corporation" as defined in S.C. Code Ann. §15-3-110. 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."

As argued in Appellant's brief, the Respondent is a "moneyed corporation" by definition. Respondent relies on obscure case law outside of this jurisdiction to argue that this statute is meant to protect any bill, note or indebtedness issued by Community First that would be considered as money. (Respondent's Brief, p. 20).. Appellant disagrees with this analysis and maintains that the claims asserted by Appellant are evidences of debt and should be protected by S.C. Code Ann. § 15-3-110. Respondent argues that

ruling in Appellant's favor would ruin the banking industry. If Respondent has an issue with the statute, then they need to take it up with the legislature. It is up to the legislature to write the law and the Courts to interpret it.

When someone deposits money into a bank, that person expects to be able to withdraw the money evidenced in the account by bank statements whenever he would like. Respondent argues that these bank statements could clearly rise to the level of "evidences of debt" that are meant to be protected by this statute. 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.

**e. Respondent is incorrectly applying the three-year statute of limitations to Appellant's causes of action as well as equitable estoppel.**

As argued in Appellant's Brief, 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 which allege separate and distinct or continuing injuries and as such, have statutes of limitations that begin to run at different times. The repeated thefts coupled with 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.

"Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law and should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts." Holmes v. E. Cooper Cmty. Hosp., Inc., 408 S.C. 138, 154, 758 S.E.2d 483, 492 (2014) (internal citations omitted). "[G]enerally, statute of limitations issues are for the jury, rather than the court,

to resolve. Dunbar v. Carlson, 341 S.C. 261, 269, 533 S.E.2d 913, 917 (Ct. App. 2000).

If this statute of limitations applies to these causes of actions, at the very least, a genuine issue of material fact exists with regards to when the Appellant knew or should have known with each questioned theft. Respondent attempts to show within the record that the Appellant knew of the transgressions. This is misstated as the Appellant did take actions to try and understand the odd transactions in her account, and she was repeatedly fed misinformation. As stated in the Appellant's brief, the Respondent repeatedly represented to the Appellant that the questioned transactions were legitimate uses of the funds – investments, life insurance policies, etc. Appellant's attorneys were also given that same information. There maintains a question as to whether or not a reasonable person repeatedly receiving this information from a *financial institution* would believe something is wrong, especially when the bank executives feeding this information are receiving money out of said person's account. They went to the extent of *removing* key documents requested by counsel for Appellant in a further attempt to deprive Appellant the knowledge of the malfeasance. They have a clear motive to keep the Appellant from learning of these transgressions – basically, keep lying to her until she goes away. These are all questions for a jury to hear, weigh the evidence and decide. Summary Judgment is inappropriate.

To prove the state of limitations has run and equitable tolling does not apply, Respondent tried to rely on the fact that Appellant was receiving bank statements and therefore should have known. Again, there is conflicting evidence as to (1) whether or not the Appellant was ever receiving these; (2) whether Defendant Hiott was taking them out of the mail at the Bank; (3) when Appellant received the few statements that she did; as well as (4) whether or not a reasonable person would have been able to decipher said

statements the way they were printed with the numerous “investment counter withdrawals” and “miscellaneous debits.” These types of transactions allowed all of the malfeasance to be covered up.

**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.

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