THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

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S.C. SUPREME COURT

Appellate Case No. 2022-000756

Debi Baker Brookshire,

Appellant,

v.

Community First Bank and
Benjamin Hiott,

Defendants,

Of Which, Community First
Bank is

Respondent.

APPENDIX
VOLUME I of III

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INDEX

Final Brief of Appellant 1
Final Brief of Respondent 42
Reply Brief of Appellant 102
Opinion from the Court of Appeals 115
Petition for Rehearing 119
Rehearing Order from Court of Appeals 132
Record on Appeal Volume I (through page 357) 134
VOLUME II
Record on Appeal Volume II 624
VOLUME III
Record on Appeal Volume III 1124

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 2014-CP-37-00526
Appellate Case No. 2019-000614

Debi Baker Brookshire,

Appellant,

v.

Community First Bank and Benjamin Hiott,

Defendants,

Of Which, Community First Bank is

Respondent.

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SC Court of Appeals

FINAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES..... iii

STATEMENT OF THE ISSUES ON APPEAL.....1

STATEMENT OF THE CASE.....2

STATEMENT OF THE FACTS.....3

STANDARD OF REVIEW.....14

ARGUMENT..... 15

I. The trial court erred in applying inconsistent analysis of the applicable statute of limitations.....15

II. The trial court erred in finding that appellant's claims are barred under the uniform commercial code. 17

III. The trial court erred in finding that appellant's claims are barred by the power of attorney she granted to Defendant Hiott, a senior vice president of respondent.....19

IV. The trial court erred in finding that S.C. Code Ann. §15-3-110 does not apply to this matter 21

V. The trial court erred in finding that neither equitable tolling or equitable estoppel apply to this matter 24

VI. The trial court erred in finding that respondent did not owe fiduciary duties to appellant 27

VII. The trial court erred in finding that respondent had no duty to exercise reasonable control over its employee 30

VIII. The trial court erred in granting summary judgment to respondent on appellant's cause of action for breach of contract accompanied by a fraudulent act 31

IX. The trial court erred in granting summary judgment to respondent on appellant's cause of action for conversion.....33

CONCLUSION..... 34

TABLE OF AUTHORITIES

CASES

Woodson v. DLI Properties, LLC,
406 S.C. 517, 528, 753 S.E.2d 428, 434 (2014).....14

Miller v. Blumenthal Mills, Inc.,
365 S.C. 204, 219, 616 S.E.2d 722, 729 (Ct. App. 2005).....14, 15

Hancock v. Mid-South Mgmt. Co.,
381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).....16

City of Newberry v. Newberry Electric Coop. Inc.,
387 S.C. 254, 692 S.E.2d 510, 513 (2010).....15,16

Moriarty v. Garden Sanctuary Church of God,
341 S.C. 320, 328-29, 534 S.E.2d 672, 676 (2000).....16

Loyd's Inc. by Richardson Const. Co. of Columbia, S.C. v. Good,
306 S.C. 450, 453, 412 S.E.2d 441, 443 (Ct. App. 1991).....22

Grice v. Anderson,
109 S.C. 388 (1918).....22, 23

Denman v. City of Columbia,
387 S.C. 131, 138, 691 S.E.2d 465, 468–69 (2010).....23

Hooper v. Ebemzer Senior Services and Rehabilitation Center,
386 S.C. 108, 687 S.E.2d 29 (2009).....24, 25

Black v. Lexington School Dist. 2,
327 S.C. 55, 488 S.E.2d 327)(1991).....25

Regions Bank v. Schmauch,
354 S.C. 648, 670, 582 S.E.2d 432, 444 (2003).....28

Fernander v. Thigpen,
278 S.C. 140, 143-44,293 S.E.2d 424,426-27 (1982).....28, 29, 30

Degenhart v. Knights of Columbus,
309 S.C. 114, 116, 420 S.E.2d 495, 496 (1992).....30, 31

Richardson's Restaurants, Inc. v. Nat'l Bank of S.C.,
304 S.C. 289, 294, 403 S.E.2d 669, 672 (Ct. App. 1991).....33

Gordon v. Busbee,
397 S.C. 199, 135, 723 E,E.2d 822, 831 (Ct. App. 2001).....34

OTHER AUTHORITIES

S.C. Code Ann. §36-4-406 (2003 & Supp. 2015).....18, 19

S.C. Code Ann. §36-1-201(43) (2003).....18

S.C. Code Ann. §62-5-501 (F)(2) (2009).....19, 21

S.C. Code Ann §15-3-110.....21, 22, 23, 24

Rule 5(e), SCRCP.....22

Rule 56(c), SCRCP.....22

S.C. Code Ann. § 15-3-30.....24

S.C. Code Ann. § 15-3-40.....24

S.C. Code Ann. § 15-3-80.....24

STATEMENT OF THE ISSUES ON APPEAL

I. DID THE TRIAL COURT ERR IN APPLYING INCONSISTENT ANALYSIS OF THE APPLICABLE STATUTE OF LIMITATIONS?

II. DID THE TRIAL COURT ERR IN FINDING THAT APPELLANT'S CLAIMS ARE BARRED UNDER THE UNIFORM COMMERCIAL CODE?

III. DID THE TRIAL COURT ERR IN FINDING THAT APPELLANT'S CLAIMS ARE BARRED BY THE POWER OF ATTORNEY SHE GRANTED TO DEFENDANT HIOTT, A SENIOR VICE PRESIDENT OF RESPONDENT?

IV. DID THE TRIAL COURT ERR IN FINDING THAT S.C. CODE ANN. §15-3-110 DOES NOT APPLY TO THIS MATTER?

V. DID THE TRIAL COURT ERR IN FINDING THAT NEITHER EQUITABLE TOLLING NOR EQUITABLE ESTOPPEL APPLY TO THIS MATTER?

VI. DID THE TRIAL COURT ERR IN FINDING THAT RESPONDENT DID NOT OWE FIDUCIARY DUTIES TO APPELLANT?

VII. DID THE TRIAL COURT ERR IN FINDING THAT RESPONDENT HAD NO DUTY TO EXERCISE REASONABLE CONTROL OVER ITS EMPLOYEE?

VIII. DID THE TRIAL COURT ERR IN GRANTING SUMMARY JUDGMENT TO RESPONDENT ON APPELLANT'S CAUSE OF ACTION FOR BREACH OF CONTRACT ACCOMPANIED BY A FRAUDULENT ACT?

IX. DID THE TRIAL COURT ERR IN GRANTING SUMMARY JUDGMENT TO RESPONDENT ON APPELLANT'S CAUSE OF ACTION FOR CONVERSION?

STATEMENT OF THE CASE

The Appellant filed a Summons and Complaint on September 8, 2014 alleging six (6) 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, SCRCP 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 superceding, 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), SCRCP 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.

STATEMENT OF FACTS

On May 25, 2007, Debi Baker Brookshiore signed a Power of Attorney with Benjamin Lee Hiot. 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 (R. pp. 866 – 881, p. 916, line 19 - p. 917, line 22; p. 918, line 15 - p. 919, line 20; p. 920, lines 5-10, 17-21; p. 921, lines 7-11; p. 922, lines 3-14; p. 923, lines 3-7; p. 923, line 12 - p. 924, line 6; p. 925, lines 13-24; p. 926, lines 19-25; p. 927, lines 18-20; p. 928, line 1 - p. 929, 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 fiances came from her own affairs, the account paperwork indicated that she was opening a trust with Respondent. (R. pp. 866 – 881). 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 assests from one account to another in order to avoid detecton 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 vicitim 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 tranferred to the Respondent. (R. p. 884, line 14 - p. 886, 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 discrepencies 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 account." (R. pp. 887 – 910, 911 – 914). 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

[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.

which the three owners benefitted. (R. pp. 1046 - 1048). 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. (R. pp. 1046 - 1048). 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. (R. p. 916, line 19 - p. 917, line 22; p. 918, line 15 - p. 919, line 20; p. 920, lines 5-10, 17-21; p. 921, lines 7-11; p. 922, lines 3-14; p. 923, lines 3-7; p. 923, line 12 - p. 924, line 6; p. 925, lines 13-24; p. 926, lines 19-25; p. 927, lines 18-20; p. 928, line 1 - p. 929, 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. (R. p. 934, 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. (R. p. 937, 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 (R. pp. 508 - 588), 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. (R. pp. 945 - 948). 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. (R, pp. 950 - 952). 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. (R. p. 947). 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. (R. p. 959). 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. (R. p. 962, lines 1 - 16). This, of course, was false information and a direct effort by Defendant Hiott and Respondent to mislead the Appellant and to conceil their malfeasence.

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. (R. p. 964). 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. (R. p. 966). 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. (R. pp. 968 - 970).

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. (R. p. 972). 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. (R. pp. 974 – 975).

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. (R. pp. 974 – 975). 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." (R. p. 977).

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. (R. pp. 974 – 975).

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'a 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. (R. p. 980). 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. (R. pp. 982 – 987). Having not heard from Respondent, Appellant sent a follow up letter on September 17, 2013. (R. p. 989). 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. (R. pp. 991 – 997).

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." (R. p. 1000, line 5 – p. 1001, 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 Reponses 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." (R. p. 1004, line 2 – p. 1005, 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." (R, p. 1008, line 2 – p. 1009, line 12)
    - This $310,510.75 transaction was marked as "Tax" on Appellant's bank statement. (R. pp. 521 – 522).
- 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. (R. p. 1012, line 18 – p. 1013, line 25; p. 1016, line 21 – p. 1017, 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 Respondentand 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. (R. pp. 1019 – 1040).
- 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 derivedirect 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. (R. pp. 1047 – 1048). 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. (R. p. 1042). 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 band stock using bank funds to purchase and then sell the stock, regarding Ms. Brookshire or otherwise. (R. p. 1045, 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. (R. pp. 1047 – 1048). Defendant Hiott was essentially serving two masters as he was an agent of each.

STANDARD OF REVIEW

"In reviewing a grant of summary judgment, our appellate courts have applied the same standard as the trial court under Rule 56(c), SCRCP." Woodson v. DLI Properties, LLC, 406 S.C. 517, 528, 753 S.E.2d 428, 434 (2014). "[S]ummary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Miller v. Blumenthal Mills, Inc., 365 S.C. 204, 219, 616 S.E.2d 722, 729 (Ct. App. 2005). "Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Id. "Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law." Id. At 220, 616 S.E.2d at 729. "Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferrences to be drawn from them, summary judgment should be denied." Id. "However, when plain, palpable, and indisputable facts exist on which no reasonable minds cannot differ, summary judgment should be granted." Id.

"In determining whether any triable issues of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party." Blumenthal Mills, 365 S.C. at 219, 616 S.E.2d at 729. "If triable issues exist, those issues must go to the jury." Id. Similarly, "[o]n appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferrences arising in and from the evidence in a light most favorable to the non-moving party below." Id.

"The party seeking summary judgment has the burden of clearly establishing the

absence of a genuine issue of material fact." Id. At 220, 616 S.E.2d at 730. "Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings." Id. "Rather the nonmoving party must come forward with specific facts showing there is a genuine issue for trial." Id.

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." Blumenthal Mills, 365 S.C. at 220, 616 S.E.2d at 730. "Because it is a drastic remedy, summary judgment should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues." Id. "In cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." Hancock v. Mid-South Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

ARGUMENTS

The trial court erroneously granted Summary Judgment in favor of Respondent for both its defense of Appellant's claims as well as Respondent's counterclaims against Appellant. The Order conflicts with existing precedent on both issues and in the analyses undertaken, creates novel issues for which no precedent exists. On each issue, the trial court's analysis is deeply flawed, and this Court after review of the issues should reverse.

I. The trial court erred in applying inconsistent analysis of the applicable statute of limitations.

"[A] statute of limitations begins to run when the party either knew or should have known that some legal right had been invaded," City of Newberry v. Newberry Electric Coop. Inc., 387 S.C. 254, 692 S.E.2d 510, 513 (2010). "[T]he discovery rule, in other words, applies

to discovery of facts, not to discovery of law." Id. at 694 n.4, 692 S.E.2d at 515 n.4. The discovery rule requires the plaintiff exercise due diligence.

> The exercise of reasonable diligence means simply that an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist. ...
>
> The important date under the discovery rule is the date that a plaintiff discovers the injury, not the date of the discovery of the identity of the wrongdoer.... [T]he statute of limitations is triggered not merely by knowledge of an injury but by knowledge of facts, diligently acquired, sufficient to put an injured person on notice of the existence of a cause of action against another.

Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 328-29, 534 S.E.2d 672, 676 (2000) (internal citations and quote marks deleted).

As the Order correctly points out, the statute of limitations begins to run when a party either knew or should have known of a cause of action, not when the party has consulted legal counsel or developed a theory of recovery. In the matter at hand, the trial court has found that the statute of limitations began to run when Appellant had actual possession of bank statements, showing not the details of transactions, but the transactions themselves. The court's Order, and by reference, Respondents Memorandum in Support of Summary Judgment hold that Appellant had actual possession of these statements either monthly beginning in 2007 or at the latest, March of 2011, when the entire account history was provided to Appellant's previous counsel. The court found that the knowledge that funds had been transferred from or to an account placed a duty on the account's owner to investigate and act within the applicable statute of limitations.

If the court placed such a duty and standard on Appellant, the same should apply to

Respondent. It is unquestioned that on December 31, 2007, Three Hundred Ten Thousand, Five Hudred Ten and 75/100 dollars ($310,510.75) were transferred from Appellant's account to an account owned and maintained by Respondent. The sudden influx of over $300,000 dollars should have alerted Respondent to further investigate.

Even if receiving Appellant's funds did not place Respondent on notice, on May 14, 2009, over five years prior to Respondent's filing of counterclaims, Ten Thousand dollars ($10,000) was transferred directly from Respondent's account #1222001 to Appellant's account. Further, Appellant's account was closed in October 2010, four years prior to Respondent's filing of any claims. For a federally accredited bank, who at various times has employed both internal and external independent auditors, maintains an audit committee, and whose president conducts daily review of the ledgers, to be held to a lower standard than one of its customers is completely inconsistent with precedent and constitutes an error of law abuse of discretion by the trial court. At the very minimum, Respondent was placed on notice by the very letter which it claims was evidence of Appellant's "serious, documented concerns about Hiott's behavior with regard to her account in mid-2010." (R. p. 136, pp. 506 – 507).

While Appellant contends that there is a material issue of fact as to when she knew or should have known about the activity in her accounts as she was reliant on Respondent to provide the necessary documentation, the bank, which excersized control of its own records at all times, cannot claim such. Respondent knew of should have known of that funds from its accounts were transferred to Appellant's account substantially longer more than three (3) years prior to the filing of Respondent's counterclaims. Therefore, the trial court erred in granting summary judgment for Respondent's counterclaims in spite of Appellant's raising of the statute of limitations as a defense.

II. **The trial court erred in finding that appellant's claims are barred**

under the uniform commercial code?

The trial court erroneously found that Appellant's claims are barred under a one-year[2] statute of repose created by the Uniform Commercial Code codified at S.C. Code Ann. §36-4-406 (2003 & Supp. 2015)[3] That code section places a responsibility on the account holder to "discover and report the customer's unauthorized signature on or any alteration of the item[4]," to the bank or be precluded from asserting that an item contained an unauthorized signature or alteration to the item. Section §36-4-406 is designed to protect both the bank and the customer from fraud or forgery, mainly of checks. In fact, "unauthorized signature" is defined by the UCC as a signature "made without actual, implied or apparent authority and includes a forgery." S.C. Code Ann. §36-1-201(43) (2003). South Carolina case law on the statute is almost exclusively focuses on forged or unauthorized signatures on checks and which party bears the responsibility when a check with a forged or unauthorized signature has been presented to or paid by a bank.

The court's Order, through reference to Respondent's Memorandum in Support of Summary Judgment, relies on a very small portion of of Appellant's approximately 14 hours of deposition testimony where Appellant testified that she contended that disbursements of $500,000 and $200,000 would be inappropriate and *unauthorized* for Defendant Hiott to make. (R. p. 225, lines 5 – 11). Appellant does not now, and has never, contended that Defendant Hiott did not have broad powers over her finances as granted by the POA. The transactions and transfers that occurred to and from Appellant's account were not unauthorized as

[2] Respondent, as allowed under S.C. Code Ann. §36-4-103(1) and S.C. Code Ann. §36-4-103(a) had reduced the statute of repose down to 60 days.

[3] South Carolina adopted Revised Article 4 of the Uniform Commercial Code effective July 1, 2008. Consequently, slightly different rules apply to pre-July 2008 Account statements versus post-July 2008 Account Statements.

[4] "Item" is a term defined in the UCC by S.C. Code Ann. 36-4-104(1)(g) (2003) as "any instrument for the payment of money even though it is not negotiable but does not include money" controlling pre-July 1, 2008 transactions and by S.C. Code Ann. §36-4-104(9) as "an instrument or a promise or order to pay money handled by a bank for collection or payment" after July 1, 2008.

contemplated by the UCC and, as such, the limitation period set forth in §36-4-406 does not apply. Therefore, the trial court's Order, through reference to Respondent's Memorandum, constitutes an error of law. Appellant respectfully requests this Court to reverse the Order of the trial court and remand the matter to the Circuit Court for further proceedings.

III. **The trial court erred in finding that appellant's claims are barred by the power of attorney she granted to Defendant Hiott, a senior vice president of respondent?**

The trial court's Order found that there is no material question of fact the Power of Attorney ("POA") absolved the Respondent of any liability at all regarding Appellant's account and the Respondent is entitled to judgment as a matter of law for the reasons stated in the Respondent's Memorandum in Support of Summary Judgment. Appellant respectfully alleges that questions of fact do in fact exist and the Respondent is not entitled to judgment as a matter of law.

The trial court's Order, through reference to Respondent's Memorandum cites §62-5-501 (F)(2) (2009) as authority for why the Respondent, as a third-party to the POA, had no duty to investigate whether the attorney-in-fact was acting within his power while making transactions to and from Appellant's account. However, Appellant's claims allege conduct on behalf of Respondent outside of the actual transactions themselves or the authority of Defendant Hiott to make them. While Defendant Hiott was given broad authority to conduct business on Appellant's behalf, he did so at the Bank, utilizing systems and practices that were contrary to accepted banking practice. (R. p. 1045, lines 1 – 23, pp. 1047 – 1048). In fact, the existence of the POA, coupled with Appellant's account at the institution where Hiott worked, was against Respondent's own policy. (R. pp. 888 – 910, pp. 1047 - 1048). The systems and practices at the Bank allowed Hiott to execute his scheme both with Plaintiff's funds and with

the Bank's funds as well.

Additionally, the trial court's Order, on its face and through reference to Respondent's Memorandum in Support of Summary Judgment, holds that because of the POA, Defendant Hiott, in making transactions involving Appellant's account, was acting as her agent only and not as an agent of Respondent. Appellant contends that substantial material questions of fact do exist regarding this issue and that Respondent is not entitled to summary judgment. While theoretically, Defendant Hiott could have maintained separation between his role as agent of Appellant and as agent of Respondent, in reality his actions showed that he was acting in such a manner as to be an agent of both parties simultaneously. It was his access to the Respondent's money, accounts, and transfer mechanisms that allowed the fraud to take place, not the POA.

Defendant Hiott was authorized to conduct business on Plaintiff's behalf, however, the business that he conducted "on her behalf" was also while he was a senior employee of the Bank. The ability to conduct business with Joseph Crosby, or any other person, was authorized by the POA. The transfers were made however, with direct knowledge that Crosby was also a customer of the bank who had significant outstanding loans as well as negative balances on checking accounts. (R. pp. 888 – 910). By providing Appellant's funds to a debtor of the Respondent, Defendant Hiott is conferring a benefit to Respondent, thus acting on behalf of Respondent. In fact, some of the transfers made from Appellant's account for the benefit of Crosby were made directly to Respondent in the form of loan payments. (R. pp. 888 – 910). Additionally, there were transfers made from Appellant's account directly into the accouts of Respondent, its senior officers, and the families of those officers. (R. pp. 1019 – 1040). To rule that no question of material fact exists and the POA eliminates any opportunity for Defendant Hiott to act as Respondent's agent in such situations is contrary to the evidence

in this matter.

Further, the POA granted Defendant Hiott the authority to conduct business on behalf of Appellant and he conducted this "business" in areas of the banking world where he was not authorized to act, but had the ability to do so because of the lack of internal controls and adherence to standard banking practice. For example, while the POA allowed Hiott to purchase and sell stock on Plaintiff's behalf, he was not authorized to do so, but was given the ability to do so, by his employer, the Respondent. In essence the Respondent was aiding Hiott in carrying out his scheme and the Respondent's conduct goes beyond a third-party honoring or not honoring the POA as contemplated by §62-5-501 (F)(2) (2009).

Finally, Appellant's claims and some causes of action go beyond the actual transfer of funds themselves. Appellant alleges causes of action for Breach of Contract Accompanied by Fraudulent Act, Negligent Supervision, Negligence/Gross Negligence and Accounting. To the extent that the Order relies on the Respondent's Memorandum for legal reasoning as to why the Respondent is entitled to Summary Judgment, Appellant contends that the legal reasoning set forth in the Respondent's Memorandum is incorrect for the reasons outlined. Appellant respectfully requests this Court to reverse the Order of the trial court and remand the matter to the Circuit Court for further proceedings.

IV. The trial court erred in finding that S.C. Code Ann. §15-3-110 does not apply to this matter.

The trial court's Order Granting Summary Judgment holds that "S.C. Code Ann §15-3-110 does not apply to this matter for the reasons outlined in Community First's Reply Memorandum."

As an initial issue Respondent's Reply Memorandum was not filed with the Oconee County Clerk of Court's Office until after the Order Granting Summary Judgment was filed

and therefore the memorandum was not part of the record in this case at the time of entry of the Order. None of the Orders in this matter, including the Order Denying Plaintiff's Motion to Alter or Amend Judgment, incorporates the Reply Memorandum after its filing.

> The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk.

Rule 5(e), SCRCP. As of the date of Plaintiff's Motion to Alter or Amend Judgment was filed, the Bank's "Reply Memorandum" was not on file with the Oconee County Clerk of Court. Accordingly, neither the unfiled memorandum nor anything argued therein should have been considered by the Court since it was not in the record. See, e.g., Loyd's Inc. by Richardson Const. Co. of Columbia, S.C. v. Good, 306 S.C. 450, 453, 412 S.E.2d 441, 443 (Ct. App. 1991) Rule 56(c), SCRCP, "requires summary judgment motions and, inferentially, supporting materials to be on file when they are to be relied upon at a summary judgment motion hearing. To be on file, we hold they ordinarily must have been filed.").

To the extent the Order relies upon unfiled documents and materials for support, Appellant respectfully asks the Court reverse the decision of the trial court, or in the alternative, to remand the Order with instruction to remove references to unfiled materials.

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.

Additionally, the dictionary definition of a "moneyed corporation" is "a corporation authorized to engage in the investment of moneyed capital." Merriam-Webster Dictionary. Respondent would fall within the Court's definition as well as this dictionary definition of "moneyed corporation."

When the Appellant deposited funds with Respondent, she became a creditor of the Bank and the Bank became indebted to her in the amount of the funds deposited. The Bank acknowledged as much in its Memorandum when it asserted that "the normal relationship between a bank and its customer is one of creditor-debtor and not fiduciary in nature." (R. p. 162). Giving the words of Section 15-3-110 their plain and ordinary meaning, the three-year statute of limitations applicable to most causes of action does not apply here because the more specific statute of limitations contained in § 15-3-110 applies. 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).

Should the Respondent's Reply Memorandum be considered, it erroneously interprets the clear language of the statute. According to the Memorandum only items "considered as

money" would apply to §15-3-110. The clear language of the statute is in direct contravertion of this interpretation. Appellant respectfully requests this Court to vacate and reverse outright the Order of the trial court or, in the alternative, to remand the Order with instruction to remove references to unfiled materials.

V. The trial court erred in finding that neither equitable tolling or equitable estoppel apply to this matter.

The trial court's Order, through reference to Respondent's Memorandum in Support of Summary Judgment, finds that Appellant's claims and the accompanying statutes of limitation are not subject to either equitable tolling or equitable estoppel. Respondent should not be permitted to avail themselves of the statute of limitations where Respondent's own actions equitably tolled the statute of limitations.

South Carolina law provides a number of statutory devices for tolling the statute of limitations. See, e.g., S.C. Code Ann. § 15-3-30 (stating exceptions to the running of the statute of [l]imitations when the defendant is out of the state); § 15-3-40 (providing exceptions for persons under a disability, including being underage or insane); § 15-3-80 (providing exceptions for suits by and against enemy aliens or citizens of countries at war with the United States). In addition to these statutory tolling mechanisms, "in order to serve the ends of justice where technical forfeitures would unjustifiably prevent a trial on the merits, the doctrine of equitable tolling may be applied to toll the running of the statute of limitations." Hooper v. Ebemzer Senior Services and Rehabilitation Center, 386 S.C. 108, 687 S.E.2d 29 (2009) (citing 54 C.J.S. Limitations of Actions § 115 (2005)).

> Equitable tolling is judicially created; it stems from the judiciary's inherent power to formulate rules of procedure where justice demands it. Where a statute sets a limitation period for action, courts have invoked the equitable tolling doctrine to suspend or extend the statutory period to ensure fundamental practicality and fairness.

Hooper, supra, at 115,687 S,E.2d at 32 (internal citations and quotation marks omitted).

The Court in Hooper described a number of circumstances in which the doctrine of equitable tolling would apply, including "where the defendant is shown to have actively misled or prevented the plaintiff in some extraordinary way from discovering the facts essential to the filing of a timely lawsuit[.]" Id. The Court did not limit application of the doctrine to only those examples set forth in Hooper. Instead, the Court explained,

> [t]he equitable power of a court is not bound by cast-iron rules but exists to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to sofier a gross wrong at the hands of the other. Equitable tolling may be applied where it is justified under all the circumstances.

Hooper, supra, at 116 - 117, 687 S.E,2d at 33 (emphasis added; internal citations and quotation marks omitted).

"Under South Carolina law, 'a defendant may be estopped from claiming the statute of limitations as a defense if the delay that otherwise would give operation to the statute had been induced by the defendant's conduct,'" Black v. Lexington School Dist. 2, 327 S.C. 55, 488 S.E.2d 327)(1991) (quoting Wiggins v, Edwards, 314 S.C. 126, 130,442 S.E.2d 169, 171 (1994)).

Here, Respondent argues the Appellant should have asked for an accounting, but she has been asking for an accounting for years and the Defendants refuse to provide it. These facts are particularly important as because of the POA, Appellant has to make further inquiry than just a review of bank statements to determine the validity of the transactions. Additionally, because of lack of specificity as to the details of the transactions contained in the reprinted statements, Appellant would have lacked the knowledge to determine whether a cause of action exists at all. As recently as May 7, 2013, Respondent, represented to the

Appellant that she had $500,000.00 in annuities that never existed. This is precisely the type of conduct that gives rise to equitable tolling: Respondent and Defendant Hiott, acting as Respondent's agent, misappropriated the Appellant's money, and then concealed the misappropriation by refusing to provide the Appellant and her representatives an accounting and affirmatively representing to her that she had valuable annuities that never existed. Now Respondent claims the statute of limitations bars the Appellant's suit because it took her too long to catch onto the theft. Particularly in light of Defendant Hiott's authority under the Power of Attorney, it was imperative that Plaintiff be able to discern, not only that funds had been removed from the account, but specifically what they had been removed for so she could determine whether a cause of action existed or not. In its counterclaims against the Appellant, the Respondent essentially admits that Defendant Hiott was deceiving bank customers. (R. p. 54). ("Upon information and belief, funds in the approximate amount of $788,855.00 ("Funds"), none of which belonged to Plaintiff were deposited in Plaintiffs Account by Defendant Hiott during the time the Account was held at the Bank."). The Respondent's statement acknowledges that Hiott was moving money through the Appellant's Account in order to avoid detection.

The Respondent's conduct is the very definition of injustice and unfairness. Respondent should be estopped from claiming the statute of limitations as a bar to the action.

Through the discovery process, the Appellant has discovered numerous instances of conduct on the part of Defendant Hiott and Respondent that should give rise to equitable tolling: (R. pp. 856 – 860). All of these allegations indicate a pattern and practice of intentional concealment and misrepresentation on the part of the Respondent and Defendant Hiott for the purpose of delaying the Appellant from discovering that her funds had been misappropriated and to delay her from filing suit. Appellant continued to press for an Accounting; or other

records of her accounts, and was only able to obtain complete records from a third-party following the filing of this action. These actions are especially egregious when the Court considers that Defendant Hiott was acting in a position of trust to the Appellant on behalf of Respondent. Respondent should not be permitted to profit from, or escape civil liability for, its unethical and in some cases, criminal activity. The Appellant respectfully asks the Court to not permit Respondent to do so. Appellant respectfully requests this Court to reverse the Order of the trial court and remand the matter to the Circuit Court for further proceedings.

VI. The trial court erred in finding that respondent did not owe fiduciary duties to appellant.

The trial court erroneously granted Respondent summary judgment on Appellant's breach of fiduciary duty cause of action. The court found that no fiduciary duty existed between Respondent and Appellant because Appellant's account was a normal checking account. Appellant's intention when moving her funds from her Trust account at BB&T was to create a trust account at Respondent bank. The deposit agreement indicates in numerous locations on the document that this is a trust account. (R. pp. 867 – 881). Describing just a few of the trust indicators on the paperwork, on one page, a bank employee writes "Trust Paperwork on file in vault." Moreover, the paperwork identifies a taxpayer I.D. for the trust. When the paperwork asks to describe your products and services below, the answer is written as 'Trust Acct." When the Respondent bank paperwork asks for the business type, the answer is "trust." When questioned as to why transactions were labeled with the generic terms "miscellaneous debit" and "investment counter withdrawal," Jeff Griffith represented to counsel that there was a limit on the transactions on a trust account. Lastly, on the account agreement, a new box is created to state "Trust Accounts." The numerous references to the account being a trust as well as Defendant Hiott's representations to Appellant constitute, at

minimum, a material question of fact regarding the relationship of Respondent to Appellant.

Additionally, Appellant signed a Power of Attorney granting Defendant Hiott, a Senior Vice President of Respondent, the power to manage her funds. "A fiduciary relationship exists when one reposes special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one reposing confidence." Regions Bank v. Schmauch. 354 S.C. 648, 670, 582 S.E.2d 432, 444 (2003) (internal citations omitted). "[A] bank may be held to a fiduciary duty if it undertakes to advise a depositor as part of services the bank offers. Such a relationship charges the bank with a duty to disclose material facts that may affect its customer's interests. Yet, no fiduciary relationship between a bank and its depositor exists when the bank is unaware of any special trust reposed in it." Id. at 671, 582 S.E.2d at 444 (2003) (internal citations omitted).

Through the power of attorney, a fiduciary relationship clearly existed between Defendant Hiott and Appellant. Appellant trusted Defendant Hiott with handling her money as a Senior Vice President of Respondent. Respondent had knowledge of this relationship because Defendant Hiott's knowledge is imputed to Respondent as its agent.

SOUTH CAROLINA LAW OF AGENCY/APPARENT AGENCY

> Generally agency may be implied or inferred and may be circumstantially proved by the conduct of the purported agent exhibiting a pretense of authority with the knowledge of the alleged principal. Fochtman v. Clanton's Auto Auction Sales, 233 S.C. 581, 106 S.E.2d 272 (1958).
>
> The doctrine of apparent authority provides that the principal is bound by the acts of its agent when it has placed the agent in such a position that persons of ordinary prudence, reasonably knowl^geable with business usages and customs, are led to believe the agent has certain authority and they in turn deal with the agent based on that assumption. Fochtman v. Clanton's Auto Auction Sales, supra. See generally. West's General Digest, Principal & Agent, Key # 99.

> A true agency relationship may be established by showing evidence of apparent or implied authority, even where the parties have entered an agreement to the contrary...
>
> The test to determine agency is whether or not the purported principal has the right to control the conduct of his alleged agent Id.

Fernander v. Thigpen, 278 S.C. 140, 143-44,293 S.E.2d 424,426-27 (1982) (emphasis added).

> Under South Carolina law, "[t]he elements which must be proven to establish apparent agency are: (I) that the purported principal consciously or impliedly represented another to be his agent; (2) that there was a reliance upon the representation; and (3) that there was a change of position to die relying party's detriment." Graves v. Serhin Farms. Inc., 306 S.C. 60, 63, 409 S.E.2d 769, 771 (1991). "Apparent authority to do an act Is created as to a third person by written or spoken words or any other conduct of the principal which, reasonably interpreted, causes the third person to believe the principal consents to have the act done on his behalf by the person purporting to act for him." Frasier v. Palmetto Homes of Florence. Inc., 323 S.C. 240, 244-45, 473 S.E.2d 865, 868 (Ct.App.l996). "Either the principal must intend to cause the third person to believe that the agent is authorized to act for him, or he should realize that his conduct is likely to create such belief." Id. at 245, 473 S,E.2d at 868. "Moreover, an agency may not be established solely by the declarations and conduct of an alleged agent." Id.
>
> The first element of apparent agency can be established by either: (1) affirmative conduct or (2) conscious and voluntary inaction. See Watkins v, Mobil Oil Corp., 291 S.C. 62, 67, 352 S.E.2d 284, 287 (CtApp.1986) (discussing the elements of apparent agency and finding the first element may be established "by either affirmative conduct or conscious and voluntary inaction"); Graves, 306 S.C. at 63, 409 S.E.2d at 771 (the first element of apparent agency requires "that the purported principal consciously or impliedly represented another to be his agent." (emphasis added)). Under die first of these two scenarios, the principal makes direct representations to a third party that another has authority to act on his behalf. See Frasier. 323 S.C. at 244, 473 S.E.2d at 868 (apparent agency is created by "written or spoken words or any other conduct of the principal" showing consent to allow another to act on a principal's behalf). Under the second, the principal implies authority by passively permitting another to appear to third parties to have authority to act on his

> behalf. See R & G Constr., Inc. v. Lowcomtry Reg'l Tramp. Auth., 343 S.C. 424, 434, 540 S.E.2d 113, 118 (Ct.App.2000) ("Such authority is implied where the principal passively permits the agent to appear to a third person to have the authority to act on his behalf."); Fernander v. Thigpen, 278 S.C, 140, 143, 293 S.E.2d 424, 426 (1982) ("[A]gency may be implied or inferred and may be circumstantially proved by the conduct of the purported agent exhibiting a pretense of authority with the knowledge of the alleged principal.").

Froneberger v. Smith, 406 S.C. 47-48, 748 S.E.2d 625, 630 (Ct. App. 2013).

Defendant Hiott was clearly acting as an agent of Respondent. He was employed as Senior Vice President of the Bank when he lured Appellant's money up to Seneca. He was using bank materials and resources to conduct the subsequent thievery. Respondent gave him the power, opportunity, and tools with which to conduct his concealment scheme, without such, he would not have been able to. Moreover, Respondent directly benefitted from Hiott's actions. Defendant Hiott was an agent of Respondent and his actions are Respondent's actions. Appellant respectfully requests this Court to reverse the Order of the trial court and remand the matter to the Circuit Court for further proceedings.

VII. **The trial court erred in finding that respondent had no duty to exercise reasonable control over its employee.**

To the extent the Order relies on the Respondent's Memorandum to grant Respondent summary judgment on Appellant's cause of action for Negligent Supervision, Appellant contends that the legal reasoning outlined in the Respondent's Memorandum is contrary to the facts and circumstances of the case at hand. The Respondent's Memorandum relays the duties of an employer to exercise reasonable care to control an employee when acting outside the scope of employment to prevent the employee from intentionally harming others on if:

a) [the employee]

> i. is upon the premises of the [employer] or upon which the [employee] is privileged to enter only as his [employee], or

ii. is using a chattel of the [employer], and

b) [the employer]

i. knows or has reason to know that he has the ability to control his [employee], and

ii. knows or should know of the necessity and opportunity for exercising such control.

Degenhart v. Knights of Columbus, 309 S.C. 114, 116, 420 S.E.2d 495, 496 (1992). While Defendant Hiott was operating under a POA, he was doing so using the Respondent's equipment and systems, on Respondent's property, and in a manner only available to him as a Senior VP of Respondent. Further, the unquestioned evidence is that Defendant Hiott was conducting his scheme in a similar manner using Respondent bank's funds and funds of MPS Incorporated as early as 2004. The question of whether the Respondent should have known about Defendant Hiott's conduct in 2004 and continuing through 2013 is one properly determined by a jury. A question of fact exists as to whether the Respondent knew or should have known about Defendant Hiott's conduct, from 2004 on, and by extension the necessity and opportunity for excersing control over him. Appellant respectfully requests the Court reverse the ruling of the trial court and remand the matter to the Circuit Court for further proceedings.

VIII. The trial court erred in granting summary judgment to respondent on appellant's cause of action for breach of contract accompanied by a fraudulent act.

To the extent the trial court's Order relies on the Respondent's Memorandum with regards to Appellant's cause of action for Breach of Contract Accompanied by Fraudulent Act, Appellant contends the legal reasoning outlined in the Respondent's Memorandum is likewise contrary to the facts and circumstances of the case. The Respondent's Memorandum assumes,

incorrectly, that the contract with Appellant in question is the POA, and any and all reasoning relied upon by the Court in incorporating the Respondent's Memorandum into its Order is therefore also making an incorrect assumption. Appellant only entered into one (1) contract solely with the Respondent: the "Account Agreement" as identified by Respondent at (R. pp. 315 – 394). In a footnote to the Respondent's Memorandum, the only mention of any potential breach of the Account Agreement by the Respondent is that "Community First has not breached the Account agreement." (R. p. 167 at footnote 32).

Inherent in each and every contract is a duty of good faith and fair dealing between the parties. On December 17, 2013, some ten (10) months prior to the filing of this action, the Respondent, at Appellant's request, provided her with what the Respondent represented to be a complete record of documents showing the activities of the account. Those documents were initially compiled by Donald Jones, an outside auditor working for the Respondent, and transferred by Mr. Jones to Fred Shepard, the Respondent's President. Mr. Jones overheard Fred Shepard and Jeff Griffith, another employee of Respondent, discussing removing records of transactions totaling over $500,000 from the "complete" set compiled by Mr. Jones. (R. p. 1000, line 3 – p. 1001, line 24). The incomplete and edited set was then produced on December 17, 2013 and held out as a complete set. These actions are the fraudulent act that Appellant contends the Respondent committed. These actions took place less than one (1) year prior to the filing of this action and thus would require a separate analysis as to the application of the Statute of Limitations as a bar to this claim. Appellant respectfully requests the Court reverse the ruling of the trial court and remand the matter to the Circuit Court for further proceedings.

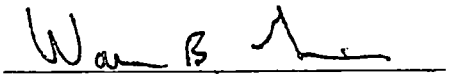
IX. The trial court erred in granting summary judgment to respondent on appellant's cause of action for conversion.

To the extent that the Order relies on the Respondent's Memorandum with regards to Appellant's cause of action for conversion, the Respondent's Memorandum is incomplete. The Respondent's Memorandum contends that "there can be no conversion of money unless there is an obligation on the defendant to deliver a specific identifiable fund to the plaintiff." Richardson's Restaurants, Inc. v. Nat'l Bank of S.C., 304 S.C. 289, 294, 403 S.E.2d 669, 672 (Ct. App. 1991). In the case at hand, however the alleged conversion concerns both funds as well as stock shares. Unbeknownst to Appellant, Defendant Hiott had purchased shares of Community First Bank stock in her name, as he was authorized to do by the POA, but against proper banking practice. (R. p. 1045, lines 1 – 23; pp 1047 – 1048). In February of 2011, the Appellant's account was closed. At the time it was closed, Appellant was not aware that her funds had been used to purchase 16,519 shares of Bank stock. The Bank's Proxy Mailing Address for Plaintiff was 449 ByPass 123, Seneca, SC 29678, which happens to be the address of a branch location of the Bank. Appellant did not know or have reason to know of her ownership of these shares of stock. Nothing on any of the statements produced by the Respondent in support of its summary judgment motion would have alerted Appellant to her ownership of any stock. (R. pp. 508 – 588). Subsequent to the account being closed and the POA revoked, the 16,518 shares of Bank stock were transferred from Appellant to a third-party. Appellant has contended that the retention and ultimate transfer of these shares of stock, in addition to other fund transfers, represent a cause of action for conversion against the Respondent. The Respondent's Memorandum, and as a consequence, the Order, is silent as to reasoning why the Respondent is entitled to Summary Judgment with respect to the shares of stock.

Respondent further contends that they are entitled to summary judgement on Appellant's conversion cause of action. As stated in Respondent's motion, "[conversion is the unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the exclusion of the owner's rights." Gordon v. Busbee, 397 S.C. 199, 135, 723 E,E.2d 822, 831 (Ct. App. 2001) (internal quotation omitted). Respondent contends that no evidence exists that Respondent assumed and exercised ownership rights over Appellant's funds at their disbursement such that Appellant suffered any loss. Appellant contends that all misappropriations from her account committed by Senior Vice President Defendant Hiott constitute acts of conversion by both Defendant Hiott and Respondent. Additionally, several sums of money were transferred directly from Appellant's account into Respondent's accounts receivable and for which the Appellant received nothing in return. Respondent clearly used the funds for their own benefit. Unbeknownst to Respondent, Defendant Hiott made direct payments for a large loan totaling $548,745.24 on behalf of Joseph Crosby, Jr. in which Respondent derived direct benefit.(R. pp. 887 - 910). In a similar fashion, Defendant Hiott transferred $85,000 to Chairman of the Board Jim McCoy's account. This $85,000 was directly offset to pay for a July 18, 2008 Official Check drawn off Respondent funds and payable to the Blue Ridge Bank of Walhalla, specifically the MPS Golf Operating Account. (R. pp. 1019 - 1040).

CONCLUSION

The findings and conclusions by the trial court should be reviewed by this Court. On all issues presented, the trial deviated from binding precedent and created novel issues and analyses. The Appellant therefore respectfully requests that this Court grant the relief sought herein, inquire further into these matters, and reverse the trial court.



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 2014-CP-37-00526
Appellate Case No. 2019-000614

Debi Baker Brookshire,

Appellant,

v.

Community First Bank and
Benjamin Hiott,

Defendants,

Of Which, Community First
Bank is

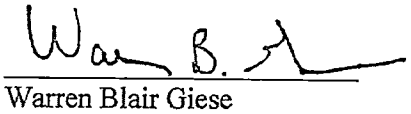
Respondent.

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SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

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TABLE OF CONTENTS

Page

STATEMENT OF ISSUES ON APPEAL 1

STATEMENT OF THE CASE 2

FACTS 3

A. Brookshire gave her old friend Hiott a sweeping power of attorney in Hiott's personal capacity only 3

B. Pursuant to the POA, Hiott managed Brookshire's financial affairs through a checking Account at Community First 7

C. Brookshire's relationship with Hiott unraveled no later than mid-2010 9

D. The POA authorized all disbursements from Brookshire's Account regardless of her present concerns about the propriety of Hiott's disbursement decisions. 11

STANDARD OF REVIEW 13

ARGUMENT 14

A. Brookshire has failed to appropriately raise or preserve certain arguments. 14

B. Brookshire has offered no evidence to create a genuine issue of material fact on multiple arguments 15

C. The trial court correctly found that Brookshire's POA to Hiott bars her claims against Community First. 15

1. The Account was never a trust account with Community First serving as a trustee for Brookshire 17

2. Hiott's employment at Community First does not give rise to any duties to Brookshire that dilute the authority Brookshire gave to Hiott in the POA. 19

3. Brookshire misrepresents Hiott's activities about which she complains. 21

D. The trial court correctly found that Brookshire's claims regarding the Account are time barred under the UCC because Brookshire failed to timely challenge the disbursements. 23

E. The trial court correctly found that all of Brookshire's claims are time barred pursuant to S.C. Code Ann. § 15-3-530(5). 29

1. Brookshire received statements for the Account more than three years prior to August 1, 2014 30

2. Brookshire believed that Hiott had misappropriated her funds or otherwise was untruthful with her about her affairs more than three years prior to August 1, 2014 31

F. Equitable doctrines do not save Brookshire's time-barred claims 32

1. Equitable tolling 32

TABLE OF CONTENTS

Page

2. Equitable estoppel. 34

3. Brookshire's claims to equitable relief fail. 35

G. The trial court correctly held that S.C. Code Ann. § 15-3-110 (2005) does not apply to this matter. 40

H. The trial court correctly granted summary judgment to Community First on Brookshire's breach of fiduciary duty cause of action. 42

I. The trial court correctly granted summary judgment to Community First on Brookshire's cause of action for conversion. 44

J. The trial court correctly granted summary judgment to Community First on Brookshire's cause of action for negligent supervision. 46

K. The trial court correctly granted summary judgment to Community First on Brookshire's cause of action for breach of contract accompanied by a fraudulent act. 47

L. The trial court correctly awarded summary judgment to Community First on its offset and counterclaims against Brookshire. 50

CONCLUSION 52

TABLE OF AUTHORITIES

CASES

Am. Airlines Emps. Fed. Credit Union v. Martin, 29 S.W.3d 86 (Tex. 2000) 24
Andrews v. von Elten & Walker, Inc., 315 S.C. 199, 432 S.E.2d 500 (Ct. App. 1993) 14
Bakala v. Bakala, 352 S.C. 612, 576 S.E.2d 156 (2003) 25
Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991) 13
Beale v. Hardy, 769 F.2d 213 (4th Cir. 1985) 21
Brockbank v. Best Capital Corp., 341 S.C. 372, 534 S.E.2d 688 (2000) 13
Burwell v. S.C. Nat'l Bank, 288 S.C. 34, 340 S.E.2d 786 (1986) 18
Butts v. Vicksburg & Meridian R.R. Co., 63 Miss. 462 (Miss. 1886) 40
Capco of Summerville, Inc. v. J.H. Gayle Constr. Co., Inc., 368 S.C. 137, 628 S.E.2d 38 (2006) 36, 41
Citizens & S. Nat'l Bank of S.C. v. Easton, 310 S.C. 458, 427 S.E.2d 640 (1993) 14
Citizens & S. Nat'l Bank v. Lanford, 313 S.C. 540, 443 S.E.2d 549 (1994) 22
Commercial Credit Loans, Inc. v. Riddle, 334 S.C 176, 512 S.E.2d 123 (Ct. App. 1999) 14
Cooley v. First Nat'l Bank of Little Rock, 635 S.W.2d 250 (Ark. 1982) 25
Coristo v. Twin City Bank, 520 S.W.2d 218 (Ark. 1975) 22
Dean v. Ruscon Corp., 321 S.C. 360, 468 S.E.2d 645 (1996) 36, 37
Degenhart v. Knights of Columbus, 309 S.C. 114, 420 S.E.2d 495 (1992) 46
Dilmar Oil Co., Inc. v. Fed. Mut. Ins. Co., 986 F. Supp. 959 (D.S.C. 1997) 34, 38
Doe v. Octapharma Plasma, Inc., No. 3:15-cv-01302, 2015 WL 3467027 (D.S.C. June 2, 2015) 46
Ennis v. Nat'l Ass'n of Bus. & Educ. Radio, Inc., 53 F.3d 55 (4th Cir. 1995) 21
Equitable Life Assur. Soc'y of U.S. v. Okey, 812 F.2d 906 (4th Cir. 1987) 44
Fernander v. Thigpen, 278 S.C. 140, 293 S.E.2d 424 (1982) 43
First Place Computers, Inc. v. Sec. Nat'l Bank of Omaha, 558 N.W.2d 57 (Neb. 1997) 27
Flavor-Inn, Inc. v. NCNB Nat'l Bank of S.C., 309 S.C. 508, 424 S.E.2d 534 (Ct. App. 1992) 44
Gaymon v. Richland Mem'l Hosp., 327 S.C. 66, 488 S.E.2d 332 (1997) 34
Gibson v. Bank of Am., N.A., 383 S.C. 399, 680 S.E.2d 778 (Ct. App. 2009) 30, 31, 36, 37
Gilmore v. Ivey, 290 S.C. 53, 348 S.E.2d 180 (Ct. App. 1986) 15, 50
Gordon v. Busbee, 397 S.C. 119, 723 S.E.2d 822 (Ct. App. 2011) 44
Greene v. Quest Diagnostics Clinical Labs., Inc., 455 F. Supp. 2d 483 (D.S.C. 2006) 48
Grillo v. Speedrite Prods., Inc., 340 S.C. 498, 532 S.E.2d 1 (Ct. App. 2000) 30, 31
Hansen v. DHL Labs., Inc., 316 S.C. 505, 450 S.E.2d 624 (Ct. App. 1994) 15
Hawkins v. Greenwood Development Corp., 328 S.C. 585, 493 S.E.2d 875 (Ct. App. 1997) 20
Higgins v. Med. Univ. of S.C., 326 S.C. 592, 486 S.E.2d 269 (Ct. App. 1997) 15
Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr., 386 S.C. 108, 687 S.E.2d 29 (2009) 32, 33
In re Parker, 363 B.R. 769 (Bankr. D.S.C. 2006) 25
In re Stotz Fredenhagen Indus., Inc., 554 B.R. 777 (Bankr. D.S.C. 2016) 33
Jackson v. Bermuda Sands, Inc., 383 S.C. 11, 677 S.E.2d 612 (Ct. App. 2009) 8, 18
Jay E. Hayden Found. v. First Neighbor Bank, N.A., 610 F.3d 382 (7th Cir. 2010) 35, 36
Langley v. Pierce, 313 S.C. 401, 438 S.E.2d 242 (1993) 36
Little v. Brown & Williamson Tobacco Corp., No. 2:98-1879-23, 2000 WL 33957172 (D.S.C. May 8, 2000) 35
Loyd's Inc. v. Good, 306 S.C. 450, 412 S.E.2d 441 (1991) 42

Lyons v. Fidelity Nat. Title Ins. Co., 415 S.C. 115, 781 S.E.2d 126 (Ct. App. 2015) 29
Magnolia N. Prop. Owners' Ass'n, Inc. v. Heritage Cmtys., Inc., 397 S.C. 348, 725 S.E.2d 112 (Ct. App. 2012) 32, 33
Mesnick v. Hempstead Bank, 434 N.Y.S.2d 579 (N.Y. Sup. Ct. 1980) 26
Moates v. Bobb, 322 S.C. 172, 470 S.E.2d 402 (Ct. App. 1996) 29, 39
Moore by Moore v. Berkeley Cnty. Sch. Dist., 326 S.C. 584, 486 S.E.2d 9 (Ct. App. 1997) 46
Myrick v. Nat'l Sav. & Trust Co., 268 A.2d 526 (D.C. 1970) 26
Owens v. Andrews Bank & Trust Co., 265 S.C. 490, 220 S.E.2d 116 (1975) 45
Pennell & Harley v. Hearon, 169 S.C. 16, 168 S.E. 188 (1933) 49
Peters v. Riggs Nat'l Bank, N.A., 942 A.2d 1163 (D.C. 2008) 27, 36
Quattrochi v. Farmer's & Merchants' Bank, 89 Mo. App. 500 (Mo. Ct. App. 1901) 40, 41
R&G Constr., Inc. v. Lowcountry Reg'l Transp. Auth., 343 S.C. 424, 540 S.E.2d 113 (Ct. App. 2000) 43
Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003) 18, 34, 39, 42
Republic Contracting Corp. v. S.C. Dep't of Highways & Pub. Transp., 332 S.C. 197, 503 S.E.2d 761 (Ct. App. 1998) 34, 35, 38
Richardson's Rests., Inc. v. Nat'l Bank of S.C., 304 S.C. 289, 403 S.E.2d 669 (Ct. App. 1991). 45
Roe v. Bibby, 410 S.C. 287, 763 S.E.2d 645 (Ct. App. 2014) 20
RoTec Servs., Inc. v. Encompass Servs., Inc., 359 S.C. 467, 597 S.E.2d 881 (Ct. App. 2004) 49
Sabatino v. Atl. Sav. Bank, F.S.B., 314 S.C. 402, 444 S.E.2d 537 (Ct. App. 1994) ..... passim
Siecinski v. First State Bank of E. Detroit, 531 N.W.2d 768 (Mich. Ct. App. 1995) 36
Smith v. Canal Ins. Co., 275 S.C. 256, 269 S.E.2d 348 (1980) 49
Stokes-Craven Holding Corp. v. Robinson, 416 S.C. 517, 787 S.E.2d 485 (2016) 30
Stone v. State (City of Orangeburg), 313 S.C. 533, 443 S.E.2d 544 (1994) 41
Stowell v. Cloquet Co-op Credit Union, 557 N.W.2d 567 (Minn. 1997) 26
Terry v. Puget Sound Nat'l Bank, 492 P.2d 534 (Wash. 1972) 26
Thomas v. Waters, 315 S.C. 524, 445 S.E.2d 659 (Ct. App. 1994) 13
Vieira v. Simpson, No. 2:13-cv-2610, 2015 WL 1299959 (D.S.C. March 23, 2015) 33
Villa Contracting Co., Inc. v. Summit Bancorporation, 695 A.2d 762 (N.J. Super. Ct. Law Div. 1996) 28
Watson v. Underwood, 407 S.C. 443, 756 S.E.2d 155 (Ct. App. 2014) 16
Westport Bank & Trust Co. v. Lodge, 325 A.2d 222 (Conn. 1973) 26
Whetstone v. Whetstone, 309 S.C. 227, 420 S.E.2d 877 (Ct. App. 1992) 17

STATUTES

2008 Act No. 204, § 4.A. 23
Miss. Code. Ann. § 15-1-79 (West) 40
Mo. Ann. Stat. § 516.310 (West) 40
N.D. Cent. Code Ann. § 28-01-35 (West) 40
S.C. Code Ann. § 15-3-110 (2005) 40
S.C. Code Ann. § 15-3-530(5) (2005) 29, 30
S.C. Code Ann. § 15-3-535 (2005) 29, 30
S.C. Code Ann. § 36-1-103, S.C. Reporter's Cmt. (Supp. 2019) 25
S.C. Code Ann. § 36-1-201 26
S.C. Code Ann. § 36-1-201(36)(A) 26
S.C. Code Ann. § 36-1-201(41) (Supp. 2019) 23, 28

S.C. Code Ann. § 36-1-201(43) (2003) 23, 28
S.C. Code Ann. § 36-1-201, Off. Cmt. 41 (Supp. 2019) 23
S.C. Code Ann. § 36-3-419 (2003) 44
S.C. Code Ann. § 36-3-420 (Supp. 2019) 44
S.C. Code Ann. § 36-4-103(1) (2003) 24
S.C. Code Ann. § 36-4-103(a) & S.C. Reporter's Cmt. (Supp. 2019) 24
S.C. Code Ann. § 36-4-104(1)(g) (2003) 24
S.C. Code Ann. § 36-4-104(a)(9) (Supp. 2019) 24
S.C. Code Ann. § 36-4-406 (2003 & Supp. 2019) 23, 26, 41
S.C. Code Ann. § 36-4-406 (2003), Off. Cmt. 3 24
S.C. Code Ann. § 36-4-406(4) (2003) 24
S.C. Code Ann. § 36-4-406(a) (Supp. 2019) 26
S.C. Code Ann. § 36-4-406(f) (Supp. 2019) 24
S.C. Code Ann. § 36-4-406, S.C. Rptr. Cmt. 28
S.C. Code Ann. § 62-5-501(F)(2) 15, 20
S.C. Code Ann. § 62-5-501(F)(2)(a) (2009) 16
S.C. Code Ann. § 62-5-501(F)(2)(b) 16
S.C. Code Ann. § 62-5-501(F)(2)(c) 16
S.D. Codified Laws § 15-2-18 40

OTHER AUTHORITIES

Rule 210(c), SCACR 42
Rule 5(e), SCRCP 42
Rule 56(c), SCRCP 13, 14
Rule 59(g), SCRCP 14
Rule 6(a), SCRCP 14
Rule 6(b), SCRCP 14
Rule 7(a), SCRCP 42
Rule 7(b), SCRCP 42

STATEMENT OF ISSUES ON APPEAL

I. Whether Appellant Debi Baker Brookshire ("Brookshire") has properly preserved certain issues or arguments on appeal.

II. Whether Brookshire has offered any evidence to create a genuine issue of material fact on multiple arguments.

III. Whether the trial court correctly granted summary judgment to Respondent Community First Bank, Inc. ("Community First")[1] by holding that Brookshire's power of attorney ("the POA") granted to Defendant Benjamin Lee Hiott ("Hiott") barred her claims against Community First.

IV. Whether the trial court correctly granted summary judgment to Community First by holding that Brookshire's claims against Community First are time barred under the Uniform Commercial Code ("UCC"), S.C. Code Ann. § 36-4-406 (2003 & Supp. 2019).

V. Whether the trial court correctly granted summary judgment to Community First by holding that Brookshire's claims against Community First are time barred under S.C. Code Ann. § 15-3-530(5) (2005), and are not subject to equitable estoppel or equitable tolling.

VI. Whether the trial court correctly held that S.C. Code Ann. § 15-3-110 (2005) does not apply to Brookshire's claims against Community First.

VII. Whether the trial court correctly granted summary judgment to Community First on Brookshire's breach of fiduciary cause of action.

VIII. Whether the trial court correctly granted summary judgment to Community First on Brookshire's conversion cause of action.

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[1] Brookshire improperly refers to Community First in the appellate caption as "Community First Bank." The correct name is Community First Bank, Inc.

IX. Whether the trial court correctly granted summary judgment to Community First on Brookshire's negligent supervision cause of action.

X. Whether the trial court correctly granted summary judgment to Community First on Brookshire's breach of contract accompanied by a fraudulent act cause of action.

XI. Whether the trial court correctly granted summary judgment to Community First on its offset and counterclaims against Brookshire.

XII. Whether the trial court properly considered Community First's reply memorandum in support of its motion for summary judgment.

XIII. Whether the trial court properly denied Brookshire's Rule 59(e) Motion when Brookshire failed to send a copy to the trial judge in the timeframe required by Rule 59(g), SCRCP.

STATEMENT OF THE CASE

On May 25, 2007, Brookshire executed the POA granting 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 Community First during the period from July 12, 2007, until the account was closed on February 23, 2011 (the "Account"). 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. Pursuant to the terms of the July 6, 2016

Second Consent Amended Scheduling Order, discovery ended on September 15, 2016. Thereafter, Community First and Hiott filed motions for summary judgment on October 11, 2016 (Community First), and October 17, 2016 (Hiott), respectively. The court heard the motions on December 13, 2016. On April 17, 2017, the court emailed all counsel announcing its decision to deny Hiott's motion and grant Community First's motion. On August 29, 2017, the court issued a Form 4 order denying "[a]ll Motions for Summary Judgment." On September 8, 2017, the court issued a Form 4 order replacing and superseding the August 29, 2017 Form 4 order, and denying Hiott's motion. The court issued an order on September 26, 2017, granting Community First's motion for summary judgment and directed the entry of final judgment in its favor pursuant to Rule 54(b), SCRCP.

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 motion to alter or amend the judgment. Brookshire filed a notice of appeal on April 9, 2019.

FACTS

Over the course of approximately 3.5 years, a total of $4,057,114.34 was deposited into and thereafter disbursed from the Account. Brookshire admits that the POA granted Hiott authority to make all of these disbursements. Initial Brief, pp. 19, 21. This critical admission alone demonstrates that summary judgment to Community First was entirely proper.

A. Brookshire gave her old friend Hiott a sweeping power of attorney in Hiott's personal capacity only.

Brookshire is a college educated former business owner. (R. p. 173, lines 1-22). She has been handling funds and bank accounts since at least her college days in the early 1970s. (R. p. 264, line 4 – p. 269, line 9). On February 2, 2005, Brookshire executed a Revocable Management Trust Agreement with BB&T acting as trustee. (R. pp. 287-290). BB&T was to manage

Brookshire's interest in Baker and Baker Real Estate Developers, LLC ("Baker and Baker"), a real estate development company founded by Brookshire's uncle and father, operated by other members of Brookshire's family (with whom she had recent legal disputes), and of which Brookshire owned approximately 10.8%, which was valued in May 2007 at $2,047,684. (R. pp. 292-293, 295-296, 298-305). In addition to managing the relationship with Baker and Baker, Brookshire directed BB&T to pay certain bills and make certain purchases with the cash portion of her Revocable Trust at BB&T, which was $1,178,437.06 as of May 31, 2007. (R. p. 207, line 22 – p. 203, line 23; 298-305; 307-314). Over the next two years, Brookshire experienced various conflicts with BB&T over her cash management priorities, especially with regard to her desired purchase of a $250,000 motor home and other tax and responsiveness issues. (R. p. 211, line 2 – p. 220, line 4; pp. 316-317). Brookshire revoked her Revocable Trust Agreement with BB&T on May 25, 2007. (R. p. 319).

That same day, Brookshire executed the POA, granting Hiott broad authority to handle her financial affairs. (*See* R. p. 189, line 19 – p. 190, line 11; pp. 321-323). The first sentence of the POA states: "I, Debi Baker Brookshire, residing at 1707 Devine Street, Columbia, SC 29201, hereby appoint Benjamin Lee Hiott of 9 Topsail Lane, Salem, SC 29676, as my Attorney-in-Fact ('Agent')." (R. p. 321). The Topsail Lane address is not an address for Community First and was Hiott's home address. The POA provides that "[m]y Agent shall have **full power and authority to act on my behalf.** This power and authority shall authorize my Agent to **manage and conduct all of my affairs and to exercise all of my legal rights and powers.**" (R. p. 321 (emphases added)). The POA contains a non-exclusive list of the Agent's powers, and includes the powers to "[o]pen, maintain or close bank accounts;" "[c]onduct any business with any banking or financial institution with respect to any of my accounts, including, but not limited to, making

deposits and withdrawals;" "[s]ell, exchange, buy[,] invest, or reinvest any assets or property owned by me;" and "[e]nter into binding contracts on my behalf." (R. p. 321). The POA recites that it was signed at "Branch Banking & Trust, Columbia, SC." (R. p. 323). Although not mentioned or even alluded to in the POA, Hiott was employed as a Senior Vice President at Community First during the operative time period. (*See* R. p. 326).

Brookshire and Hiott met in the 1980s and were friendly acquaintances in Columbia in the 1980s and 1990s. During that period, Hiott worked for several banks in the Columbia area. Brookshire was a customer at those banks and interacted with Hiott in the conduct of her banking business, but they also tailgated together at football games and socialized at bars in Columbia or at Hiott's house. (R. p. 177, line 3 – p. 179, line 25). Brookshire testified that her opinion of Hiott was that he was "[h]onorable and nice" and that she knew that "he worked for a bank." (R. p. 177, line 24). After Hiott moved to Oconee County around 2000, however, he and Brookshire did not keep in touch. (R. p. 180, lines 1-9). Around 2007, Brookshire reached out to mutual friends, Ron and Peg Craven, and asked Mr. Craven "to take care of her finances" and "handle all of [her] business." (R. p. 330, line 7 – p. 331, line 16). Mr. Craven is retired from Pillsbury Company where he was employed as a reset merchandiser in grocery stores. (R. p. 329, lines 8-25). The Cravens declined to help Brookshire in that capacity, and Hiott's name was brought up in the conversation as someone to potentially assist Brookshire with her finances. (R. p. 330, lines 2-13). The Cravens gave Brookshire Hiott's telephone number, and Brookshire thereafter contacted Hiott for the first time in many years. (R. p. 180, line 10 – p. 181, line 13). Brookshire testified that she asked Hiott "if he would be interested in protecting [her] interests" and stated that she was not with Hiott when she executed the POA. (R. p. 183, lines 13-15 – p. 184, line 5). She affirmed her signature on the POA, that she understood that she was transferring her money for Hiott to handle

her interests, that she understood what a power of attorney was and how they operated, and that she had previously both served as a power of attorney and had given others a power of attorney. (R. p. 183, line 20 – p. 184, line 22; p. 185, line 16 – p. 188, line 11).

By June 2007, Hiott was performing his duties under the POA, and he signed June 2007 correspondence to Baker and Baker and BB&T as "Benjamin L. Hiott, Power of Attorney." (R. pp. 339, 341-342). Brookshire also signed these communications. (R. pp. 339, 341-342). Over time, Hiott also handled Brookshire's taxes, various insurance matters, and signed residential leases for her. (R. pp. 344-354, 356, 358-361, 363-369). He paid her telephone and utility bills, car payments, storage unit fees, professional fees, insurance bills, medical bills, traffic tickets, childcare bills, and made charitable contributions on her behalf. (*See* R. pp. 371-383). Brookshire estimates that she was having Hiott pay "[m]aybe ten to twenty" monthly bills for her, although she could not provide a comprehensive list of his responsibilities. (R. p. 260, line 12 – p. 263, line 8). Hiott also regularly assisted Brookshire with the two children in the custody of Brookshire and her husband by arranging for their care on weekends and, on at least one occasion, Hiott kept the children for several days at Christmas. (R. p. 223, lines 21-25; p. 332, lines 14-25; p. 333 lines 9-25; p. 334, line 1 – p. 335, line 25; p. 336, line 1 – p. 337, line 26; pp. 385, 387, 389, 391). Hiott further arranged for the storage and maintenance of Brookshire's motor home and was entrusted with personal possession of about $500,000 worth of her jewelry and silver. (R. p. 191, lines 7-22; p. 195, line 1 – p. 196, line 17; p. 279, line 17 – p. 280, line 23). In short, Brookshire's relationship with Hiott while he held her POA was personal, close, and involved just about all aspects of her life.

B. Pursuant to the POA, Hiott managed Brookshire's financial affairs through a checking Account at Community First.

The primary way that Hiott handled Brookshire's financial affairs and paid her financial obligations was through the Account—a checking account held at Community First from June 2007 until February 23, 2011. (*See* R. p. 394, lines 19-21, 25). It is undisputed that Hiott handled deposits into and withdrawals from the Account, and that Brookshire knew about the Account and understood that Hiott was paying her obligations from it. (R. p. 226, line 4 – p. 227, line 25; p. 228, lines 7-11; p. 229, lines 10-15; p. 230, lines 5-17; pp. 341-342).

Community First mailed monthly statements for Brookshire's Account at Community First to the address where Brookshire was receiving her mail (R. p. 174, line 9 – p. 176, line 23; p. 182, lines 10-19; p. 271, lines 14-15) from the Account's inception in June 2007 until early 2010, when Community First received for the first time in April 2010 a statement addressed to Brookshire in return mail as "unable to forward." (R. p. 400, ¶¶ 17-18). Community First's account management system automatically generates and prints a periodic account statement for each of its more than 25,000 accounts. (R. pp. 396-397, ¶¶ 3, 8). These account statements are routinely, regularly, and automatically compiled, processed, and transmitted for mailing with the United States Postal Service, as detailed in the affidavit of Carol Wilson. (R. pp. 397-399, ¶¶ 9-12). At all times during the Account's existence, Community First followed its normal procedures with regard to the Account statements. (*See* R. p. 399, ¶ 14).

The extensive and undisputed evidence in the record of Community First's *sending* of the monthly Account statements to Brookshire is corroborated by her production of three original statements (November and December 2007 and January 2008) and a photocopy of another original statement (July 2007). (R. pp. 402, 404, ¶¶ 28, 29, 30, 34). Brookshire also testified that she

potentially discarded documents regarding Community First and Hiott after 2010. (R. p. 251, line 8 – p. 253, line 18).

Brookshire's former private investigator for a wide variety of matters, Billy Tabor, testified that he received the original July 2007 statement (or copy thereof) directly from Brookshire when she brought him several boxes of documents in or around 2012. (R. p. 439, line 15 – p. 441, line 20; p. 444, lines 1-25; pp. 448-458). The original statement (page Giese-CFB 1418) was in one of the boxes, although Brookshire directly gave Mr. Tabor a reprinted copy of the July 2007 statement (page Giese-CFB 1417). (R. p. 444, lines 3-25; pp. 449-450). The boxes Brookshire gave Mr. Tabor were unorganized and contained various items including "bank records," "things about the children," and "personal letters." (R. p. 442, line 7 – p. 443, line 14). Mr. Tabor affirmed that Brookshire also provided him with the original Account statements from November and December 2007 and January 2008. (R. p. 445, lines 5-25; pp., 460-463, 465-466, 468-471).[2] Mr. Tabor thereafter turned all of these documents over to the Giese Law Firm. (R. p. 446, lines 1-7).[3]

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[2] Brookshire argues that she received those statements when Hiott returned the motor home to her in the summer of 2010. Initial Brief p. 5. Although Brookshire cites the testimony of Ann Gell Hamiter for supposed support, Ms. Hamiter does not actually remember what "paperwork" Hiott brought back in the motor home. (R. p. 934, lines 21-25). Such speculative testimony is insufficient to raise a genuine issue of material fact to preclude summary judgment. *See Jackson v. Bermuda Sands, Inc.*, 383 S.C. 11, 17, 677 S.E.2d 612, 616 (Ct. App. 2009).

[3] Brookshire's former attorney, Michael Sgobbo, Esq., produced in discovery in 2016 a 2007 "Audit Confirmation" letter sent from J.W. Hunt and Company, LLP to Brookshire regarding the Account, and asking her to "please report any discrepancy by us[ing] the reverse side of this form and returning in t[he] enclosed envelope." (R. p. 473). The Audit Confirmation letter gave the "current balance" for the Account as $392,097.12 and the "balance last statement" for the Account as $296,587.54 on November 30, 2007. (R. p. 473). Despite repeated, specific inquiries into when and how she came into possession of this Audit Confirmation letter (including a written supplemental response made at court order), Brookshire failed to provide any information as to when she received this document, which is dated 2007 and is not found in Community First's files. (R. pp. 475-481).

Taken together, the undisputed evidence demonstrates that Community First mailed to Brookshire original Account statements in the normal course of the Account's existence from 2007 until early 2010, Brookshire provided at least some original statements to Mr. Tabor along with voluminous other documents in 2012, and that thereafter Mr. Tabor organized the Account statements in some fashion and transmitted them to Brookshire's counsel. The undisputed evidence also shows that Brookshire *never* notified Community First in 2007, 2008, 2009, or early 2010 that she was missing or had failed to receive any Account statements. (R. p. 192, line 8 – p. 193, line 10).

C. Brookshire's relationship with Hiott unraveled no later than mid-2010.

Brookshire testified that by the spring or summer of 2010 at the latest, she had become distrustful of Hiott and believed he was being untruthful with her about her assets, especially regarding the amount of money in the Account. (R. p. 194, lines 13-23; p. 199, line 4 – p. 200, line 14; p. 205, line 10 – p. 206, line 2). On July 19, 2010, she instructed Baker and Baker not to deposit any more funds into the Account. (R. p. 231, line 17 – p. 232, line 20). Over the course of the Account's existence, at least $1,307,706.43 was deposited there from Baker and Baker. (R. pp. 483-484). Brookshire entrusted another friend, Ann Gell Hamiter, with bill paying duties in the spring of 2010 and sought legal advice from Kathleen McDaniel, Esq. beginning in August 2010 due to her concerns about Hiott and the inconsistent information she and Ms. Hamiter were receiving from him. (R. p. 197, line 1 – p. 198, line 18; p. 202, lines 1-17; p. 235, line 3 – p. 236, line 18; p. 259, lines 1-23; p. 490, lines 6-19). As Ms. Hamiter testified, Brookshire "was totally put out" with Hiott in 2010 because Brookshire believed that Hiott "was stealing her money." (R. p. 502, lines 9-17). Ms. McDaniel wrote to Hiott on September 21, 2010:

> It is my understanding that on August 11, 2010, you transferred all of the cash remaining in the trust account, approximately $200,000.00 to Ms. Baker-Brookshire's account at BB&T. I spoke yesterday with Ann Gel Hammiter [sic],

> Ms. Baker-Brookshire's bookkeeper. Ms. Hammiter [sic] informs me that, when she last spoke to you about one month before the wire out to BB&T, you told her that there was approximately $900,000 remaining in the trust account. There appears to be some serious inconsistencies in this information.

(R. p. 506-507). Ms. Hamiter testified that Brookshire "was violently upset" and surprised when she received the $200,000 in August 2010 and believed she should have had more money in the Account. (R. p. 503, line 12 – p. 504, line 16). Consequently, Brookshire had serious, documented concerns about Hiott's behavior with regard to her Account in mid-2010.

In approximately December 2010, counsel for Community First, James Williams, Esq., sent a package of reprinted Account statements to date to Ms. McDaniel, which on their face were printed on November 18, 2010. (R. p. 493, line 1 – p. 494, line 24; pp. 509-588). Ms. McDaniel confirmed that she received the set of reprinted Account statements during her representation of Brookshire and that she sent the package of reprinted Account statements on to Brookshire. (R. p. 496, lines 4-10). Brookshire confirmed that she received this package no later than March or April 2011. (R. p. 244, line 18 – p. 248, line 14). On February 17, 2011, Ms. McDaniel instructed Community First to "close Ms. Baker-Brookshire's account with Community First Bank and prepare a check made out to Debi Baker-Brookshire for *all funds remaining in the account*." (R. p. 590 (emphasis added)). Ms. McDaniel met with Mr. Williams and Hiott on February 22, 2011, and received a Community First Bank "Official Check" for $285,233.34 made out to Debi Baker Brookshire. (R. p. 497, line 5 – p. 498, line 23; pp. 592-595). Both Ms. McDaniel and Brookshire testified that they understood that the $285,233.34 was all the money remaining in the Account as of February 2011. (R. p. 204, lines 3-18; p. 241, line 2 – p. 242, line 5; p. 498, line 3 – p. 499, line 7). Ms. McDaniel ceased representing Brookshire on March 11, 2011. (R. p. 499, lines 19-22). On April 6, 2011, Brookshire revoked the POA. (R. p. 597). Brookshire has not spoken with or directly communicated with Hiott since mid-2010. (R. p. 203, lines 8-23).

D. The POA authorized all disbursements from Brookshire's Account regardless of her present concerns about the propriety of Hiott's disbursement decisions.

Over the course of the Account's existence from June 2007 until February 2011, a total of $4,057,114.34 was deposited into and withdrawn from the Account. Brookshire initially claimed that essentially *all* of the disbursements from the Account were unauthorized or were allegedly "stolen or misappropriated." Complaint ¶¶ 102, 110. As discovery progressed, Brookshire eventually admitted that she does not dispute that Hiott disbursed $1,865,761.69 from the Account to her or for her benefit in payment of her obligations. (R. p. 249, line 12 – p. 250, line 25; p. 254, line 3 – p. 257, line 10; pp. 599-635; pp. 637-643). These payments represent payments by Hiott for Brookshire's taxes ($564,634.21); her various bills including rent, cable, utilities, daycare, insurance, traffic tickets, and medical bills ($115,488.96); transfers to her accounts at BB&T ($1,020,626.62); and payments to her husband ($51,208.15) among other various payments. (R. pp. 637-643).

Subtracting the undisputed amount leaves $2,191,352.65 that Brookshire still disputes, representing 115 disbursement transactions. (R. pp. 645-648); *see also* Initial Brief p. 3. While Brookshire admits that the POA authorized all of these disbursements (Initial Brief pp. 19, 21), to the extent Brookshire disputes the propriety of these 115 disbursements, the overall amount is subdivided into three core buckets: (1) $556,977.20, for which uncontroverted documentary evidence shows either no net loss to the Account or that the disbursements were for Brookshire's benefit;[4] (2) $880,855.58 of Community First funds that Hiott deposited into the Account on eight separate occasions, and which Brookshire has confirmed were inappropriate and to which she has

[4] *See* R. pp. 645-648, with the categories of BB&T, CFB (transaction reversals), Community First (credit card), Insurance, Logan Voxx, Car, and the CFB closing withdrawal of $0.01 on February 24, 2011, comprising the disbursements in this category. *See also* R. pp. 650-657, 659-711, 713-739, 741-753, 755-769, 771-776 for relevant backup documentation for such disbursements.

no valid claim (R. p. 243, line 14 – p. 244, line 14; p. 779, lines 16-20; p. 781); and (3) the amount remaining in dispute, which after applying the $880,855.58 offset of Community First funds, is, at most, $753,519.87.

The withdrawals from the Account that, after discovery, were remotely subject to dispute are far less than the total damages originally claimed. As discussed more fully below and as the trial court ruled, Brookshire's claims are fatally time barred. For example, Brookshire's problems are starkly obvious with regard to one category of transactions—disbursements made to Joseph Crosby or made for his benefit or for the benefit of a company he owned.[5] Mr. Crosby was an upstate restaurateur who developed a line of spice rubs and other food products that were sold in local stores, to the United States military, and on QVC. (R. p. 784, line 11 – p. 789, line 18; p. 790, lines 4-23). The only evidence is that in 2007 and 2008, this business was growing rapidly and was poised for great success. (R. p. 796, line 23 – p. 798, line 21). Mr. Crosby testified that his company collapsed during the financial crisis, and he could not repay his debts, including the debt to Brookshire. (R. p. 799, line 3 – p. 803, line 19; p. 804, line 1 – p. 806, line 18; p. 807, lines 5-25). The disbursements to Mr. Crosby represent the largest by amount ($1,053,437.39) and oldest by date (beginning July 12, 2007, and ending December 17, 2008) of the categories of payments that Brookshire could, after discovery, conceivably contest in any way. (*See* R. pp. 645-

[5] Brookshire has admitted that Hiott's "ability to conduct business with Joseph Crosby, or any other person, was authorized by the POA." Initial Brief, p. 21. Mr. Crosby testified that he understood that the July 12, 2007 $500,000.00 disbursement to him (made on an Official Check of Community First and endorsed by him) was a *loan* to him from Brookshire, as confirmed by the words "Brookshire Loan Advance" on the remitter line of the check. (R. p. 791, line 6 – p. 795, line 14; p. 809). Indeed, Mr. Crosby referred to Brookshire as a sort of "angel investor" in his company. (R. p. 794, lines 7-10). He considered the other advances of Brookshire's funds to be of the same category and nature. (R. p. 796, lines 1-12).

648). The failure to timely challenge these payments renders Brookshire entirely upside down on her damages theories. (*See* R. p. 1334).

STANDARD OF REVIEW

Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to summary judgment as a matter of law. Rule 56(c), SCRCP. "An appellate court reviews the granting of summary judgment under the same standard applied by the trial court pursuant to Rule 56, SCRCP." *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 379, 534 S.E.2d 688, 692 (2000).

Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact; however, the moving party need not support its motion with affidavits or other materials negating the opponent's claims but must clearly establish by the record the absence of a triable issue of fact. *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). With respect to an issue upon which the non-moving party bears the burden of proof, the moving party may discharge his initial responsibility by pointing out to the court the absence of evidence to support the non-moving party's case. *Id.*

After the moving party has met his or her initial burden, Rule 56(e), SCRCP requires the opposing party to "do more than simply show that there is some metaphysical doubt as to the material facts." *Id.* In response to a properly supported motion for summary judgment, the opposing party "must come forward with specific facts showing there is a genuine issue of material fact." *Id.* Thus, "the non-moving party may not rest on the mere allegations or denial of pleadings, but must set forth or point to specific facts showing there is a genuine issue of material fact." *Thomas v. Waters*, 315 S.C. 524, 526, 445 S.E.2d 659, 661 (Ct. App. 1994) (quoting *Dickert v.*

Metropolitan Life Ins. Co., 306 S.C. 311, 313, 411 S.E.2d 672, 673 (Ct. App. 1993), *rev'd in part on other grounds*, 311 S.C. 218, 428 S.E.2d 700 (1993)); Rule 56(c), SCRCP.

ARGUMENT

A. Brookshire has failed to appropriately raise or preserve certain arguments.

Brookshire has advanced arguments on issues that are not part of any claim in this matter and have not been added to the case by consent. In addition, Brookshire raised certain arguments for the first time in her Rule 59(e) motion.[6] Consequently, these arguments are not preserved for appellate review. *Commercial Credit Loans, Inc. v. Riddle*, 334 S.C 176, 186, 512 S.E.2d 123, 129 (Ct. App. 1999); *Andrews v. von Elten & Walker, Inc.*, 315 S.C. 199, 201-02, 432 S.E.2d 500, 502 (Ct. App. 1993). In an abundance of caution, Community First will address these arguments substantively below, but the arguments at issue are as follows:

1. Brookshire argued for the first time at the December 13, 2016 summary judgment hearing that Hiott's transfer of stock held by Brookshire constituted "the actual bit of fraud" Community First "committed against Mrs. Brookshire." (R. p. 1289, line 15 – p. 1290, line 11). Counsel for Hiott and Community First thereafter informed the trial court that "the stock is not in the complaint." (R. p. 1291, lines 10-11, 19-20). Brookshire has never amended or even sought

[6] Pursuant to Rules 208(b)(2) and 220(c), SCACR, as an additional sustaining ground, the trial court's denial of Brookshire's October 6, 2017 59(e) Motion was proper because Brookshire failed to "provide a copy of the motion to the judge within ten (10) days after the filing of the motion," as required in Rule 59(g), SCRCP. Brookshire's deadline to provide a copy of the 59(e) Motion to the trial judge was October 16, 2017. *See* Rule 6(a), SCRCP. However, Brookshire did not provide a copy of the 59(e) Motion to the trial judge until October 19, 2017. (*See* R. pp. 1336-1338). The time limits for motions under Rule 59, SCRCP "may not be extended" unless provided in that rule. Rule 6(b), SCRCP. No mechanism exists in Rule 59 to so extend this time period. Consequently, Brookshire's 59(e) Motion fails in its entirety for failure to comply with the jurisdictional rules of Rule 59, SCRCP. *See, e.g. Citizens & S. Nat'l Bank of S.C. v. Easton*, 310 S.C. 458, 460, 427 S.E.2d 640, 641 (1993) (applying Rule 6(b)'s prohibition on time extension to order made under Rule 59(d) and setting aside such order).

to amend her Complaint to contain any allegations about stock transfers in reference to any of her causes of action.

2. Brookshire first argued in her 59(e) Motion that Hiott's position as a senior executive of Community First and the internal banking system that he was able to access in his employment capacity prevent or inhibit Community First from statutorily relying on the POA under S.C. Code Ann. § 62-5-501(F)(2). (R. pp. 1200-1201).

3. Brookshire first argued in her 59(e) Motion that her cause of action for conversion encompasses Hiott's purchases of stock. (R. pp. 1201-1202).

4. Brookshire first identified in her 59(e) Motion the alleged contract and the term allegedly breached in support of her cause of action for breach of contract accompanied by a fraudulent act. (R. pp. 1203-1204).

B. Brookshire has offered no evidence to create a genuine issue of material fact on multiple arguments.

Brookshire repeatedly fails to cite any admissible evidence for many of her claims. A genuine issue of material fact "can be created only by evidence which would be admissible at trial." *Hansen v. DHL Labs., Inc.*, 316 S.C. 505, 510, 450 S.E.2d 624, 627 (Ct. App. 1994). Arguments of counsel, whether made in oral argument or in written briefs or memoranda, "ordinarily may not be considered by the court in determining whether a genuine issue of material fact exists." *Higgins v. Med. Univ. of S.C.*, 326 S.C. 592, 599, 486 S.E.2d 269, 272 (Ct. App. 1997); *Gilmore v. Ivey*, 290 S.C. 53, 58, 348 S.E.2d 180, 183 (Ct. App. 1986). Community First will address these material deficiencies in the substantive areas in which they appear below.

C. The trial court correctly found that Brookshire's POA to Hiott bars her claims against Community First.

The trial court properly granted summary judgment to Community First on all of Brookshire's causes of action because she authorized Hiott to take all of the actions he did with

regard to the Account, and the law imposes no duty on Community First to monitor or regulate Hiott's activities and decisions undertaken pursuant to the POA. Brookshire gave Hiott the POA in his individual capacity to, among other things, conduct *all* of her financial affairs. The POA predated her Account at Community First and was not revoked until after the Account was finally closed. Brookshire authorized Hiott to make withdrawals from and deposits into the Account. She authorized him to open accounts, invest her assets, file her taxes, and "manage and conduct all of [her] affairs and to exercise all of [her] legal rights and powers." (R. pp. 321-323). The POA is unambiguous, and its interpretation is confined to the language used in the four corners of the document. *Watson v. Underwood*, 407 S.C. 443, 454-55, 756 S.E.2d 155, 161-62 (Ct. App. 2014).

Community First is not a party to the POA. (R. pp. 321-323). Community First, as a third party, has a statutory right to rely on powers of attorney and "does not incur liability to the principal or the principal's estate by reason of acting upon the authority of it or permitting the attorney-in-fact to exercise authority." S.C. Code Ann. § 62-5-501(F)(2)(a) (2009).[7] Further, Community First "is not required to inquire whether the attorney-in-fact has power to act or is properly exercising the power." *Id.* § 62-5-501(F)(2)(b). Nor is Community First "responsible to determine or ensure the proper application of assets, funds, or property belonging to the principal." *Id.* § 62-5-501(F)(2)(c). Further, Brookshire has conceded that the POA authorized *all* disbursements from the Account. Initial Brief, pp. 19, 21. This admission fully disposes of Brookshire's claims against Community First and confirms summary judgment to Community First.

Nevertheless, Brookshire advances several arguments on appeal that seek to obscure or dilute the actual contract-based relationships that govern the legal duties owed to Brookshire by

[7] The General Assembly comprehensively revised the statutory law regarding powers of attorney effective January 1, 2017. As this matter involves a power of attorney in effect from 2007 until 2011, the prior version of the statute is applicable and is the version referenced herein.

Hiott, on one hand, and by Community First, on the other hand. These arguments are untimely, devoid of evidence in support, or legally flawed, and are all premised on the erroneous assumption that Community First had some sort of duty to monitor Hiott's disbursements from the Account or inquire into the purpose behind the disbursements while Hiott was acting under the POA.

1. The Account was never a trust account with Community First serving as a trustee for Brookshire

Community First did not serve as a trustee for Brookshire. There is no documentary or testamentary evidence to support Brookshire's claim that the Account was a trust account. "[T]o prove the existence of a trust, the law requires the following elements to be shown: a declaration creating the trust, a trust *res*, and designated beneficiaries." *Whetstone v. Whetstone*, 309 S.C. 227, 231, 420 S.E.2d 877, 879 (Ct. App. 1992). Brookshire cannot show any of these with regard to her arrangement with Community First. Indeed, Brookshire knows how a trust is created—she created one in February 2005 with BB&T, with BB&T serving as trustee. (R. pp. 287-290). After expressing her dissatisfaction with BB&T's attempts to advise her on various financial matters (R. pp. 316-317, 821, 823-824), among other concerns, Brookshire revoked her trust with BB&T (R. p. 319), and *that very same day* decided to go a different direction with the management of her finances and gave the POA to Hiott. (R. pp. 321-323). Unlike the written affirmation and declaration by BB&T that it was serving as trustee for Brookshire (R. pp. 287-290), Community First has *never* represented in any way that Community First served as her trustee. Unlike with BB&T (R. p. 288, ¶ F; p. 304), Community First has never charged her trustee fees. (*See* R. pp. 417-420, 425-428). Unlike with BB&T (R. pp. 287, 304), Brookshire herself is the trustee. (*See* R. pp. 417, 422, 425, 430, 432). There is no evidence whatsoever that Brookshire and Community First entered into a trust arrangement with Community First serving as a trustee. Without evidence,

there cannot be a genuine issue of material fact to defeat summary judgment. *See Jackson*, 383 S.C. at 17, 677 S.E.2d at 616.

Ultimately, this is a case that boils down to what the contracts *actually say* that govern the relationships between Brookshire and Hiott on one hand and between Brookshire and Community First on the other. As a matter of public policy and law, Brookshire is charged with knowledge of and is bound by the terms of her written contracts. *Burwell v. S.C. Nat'l Bank*, 288 S.C. 34, 39, 340 S.E.2d 786, 789 (1986) ("One cannot complain of fraud and misrepresentation in the contents of a document if the truth could have been ascertained by reading it."); *Regions Bank v. Schmauch*, 354 S.C. 648, 663-64, 582 S.E.2d 432, 440 (Ct. App. 2003). Here, those terms are the unambiguous terms of the POA and Account Agreement. (R. pp. 321-323, 432-436). In addition, under the UCC, Brookshire has a duty to obtain and review her Account statements – in essence she is charged with knowledge of the contents of her statements. *See infra* pp. 23-27.

The Account Agreement clearly and unambiguously states that the Account description is "Business Premium Investment Checking" and the owner/signer of the Account is "Debi Baker Brookshire Trustee." (R. pp. 432-433; more legible copy at R. pp. 121-122). Brookshire contorts the plain language of the Account Agreement to argue that the typed words "Trust Accounts" somehow transforms the disclosed "Business Premium Investment Checking" Account into a trust account with Community First serving as trustee, yet completely fails to mention that the typed words "Trust Accounts" appears under the heading "Ownership of Account." (R. pp. 432-433; more legible copy at R. pp. 121-122). The plain language of the Account Agreement and other Account opening documentation (R. pp. 867-881) show exactly what Community First has always maintained: this was a checking account opened in the name of and owned by a trust. (*See* R. p. 1150, line 23 – p. 1151, line 13; p. 1152, line 13 – p. 1157, line 19; p. 1158, line 20 – p. 1162, line

19; p. 1169, line 5 – p. 1170, line 13). Brookshire's monthly Account statements that Community First sent to her show that Brookshire herself was serving as trustee of the trust—not Community First. (*See* R. pp. 417, 422, 425, 430).

Contract language matters and controls this case. The POA states that Hiott is Brookshire's attorney in fact. (R. p. 321). Community First is not mentioned or even impliedly referenced in the POA, nor is Hiott's profession as a banker. (R. pp. 321-323). Brookshire cannot create a trust account (or a genuine issue of material fact that she created a trust account) by assuming she had one. Brookshire's assumption is wholly inconsistent with the actual agreements, the monthly Account statements, and the *voluminous* other documents showing that Hiott was acting as her attorney in fact under the POA in disbursing her money from the Account (along with keeping children for her, storing her motor home, negotiating her lease, and personally keeping $500,000 worth of her jewelry and silver—hardly actions undertaken by someone acting as a banker). Not one document and not one piece of record evidence demonstrate that Community First was acting as a trustee for Brookshire. In fact, Brookshire's own expert testified that Brookshire did not have a "trust account at Community First with the bank serving as a trustee," nor is Brookshire's expert "aware of any agreement where [Community First] undertook any trustee duties for [her.]" (R. p. 1185, line 20 – p. 1186, line 2).

2. Hiott's employment at Community First does not give rise to any duties to Brookshire that dilute the authority Brookshire gave to Hiott in the POA.

Community First does not owe any duties to Brookshire by virtue of Hiott's employment there that dilute the authority Brookshire gave to Hiott in the POA. As it pertains to transactions from the Account and as the POA makes clear, Hiott was acting as *Brookshire's* agent—not as an agent of Community First. Brookshire, however, argues that the actions Hiott undertook with Brookshire's funds were motivated by a desire to benefit other Community First customers or

account holders and that such motivation makes Community First responsible for his actions with regard to the Account. Thus, reasons Brookshire, Community First cannot statutorily rely on the POA as a third party under S.C. Code Ann. § 62-5-501(F)(2). Brookshire cites no actual evidentiary or legal authority for this assertion, and, indeed, there is no causal relationship between Hiott's employment status and the disbursements Hiott was authorized to make from the Account. Under the plain language of the POA, Hiott could have made every transaction and payment from Brookshire's funds at any bank. The mechanics of how he did so are unrelated to the expansive grant of authority Brookshire voluntarily gave to Hiott in the POA and do not impact the ability of a third party (like Community First or any other bank, stock broker, or institution) to rely on the POA with the protections provided by South Carolina law. Under the plain terms of the POA, Brookshire—not Community First—was the master of the scope of authority she gave to Hiott.

Whether a given relationship gives rise to certain duties and the contours of those legal duties are questions of law for the court to decide. *Roe v. Bibby*, 410 S.C. 287, 293, 763 S.E.2d 645, 648 (Ct. App. 2014). As the POA and the Account Agreement are contracts, the court's role is to interpret these unambiguous contracts using the language found in the four corners of the respective documents to determine the duties owed to and by the parties to those contracts. *See Hawkins v. Greenwood Development Corp.*, 328 S.C. 585, 594, 493 S.E.2d 875, 879 (Ct. App. 1997). In the POA, Brookshire granted Hiott individually the authority to "[c]onduct any business with any banking or financial institution," including "making deposits and withdrawals." (R. p. 321). Under this grant of authority, Community First had no right to control Hiott's decisions about how to spend Brookshire's funds. Brookshire voluntarily and openly ceded that control to Hiott—and Hiott alone—on May 25, 2007. The Account Agreement unambiguously sets forth the terms governing the relationship between Brookshire and Community First and contains no

language to indicate that Community First is serving as a trustee for Brookshire or that Community First is exerting any control over the propriety of disbursements from the Account. (R. pp. 432-436).

3. Brookshire misrepresents Hiott's activities about which she complains.

Brookshire states that Hiott, in conducting authorized business on her behalf, "utilize[ed] systems and practices that were contrary to accepted banking practice" and that "the existence of the POA, coupled with [Brookshire's] account at the institution where Hiott worked, was against [Community First's] own policy." Initial Brief p. 20. She also alleges that Community First "lack[ed] internal controls" with regard to Hiott. *Id.* p. 21. No evidence exists to support these claims. Indeed, the "evidence" that Brookshire cites in support is nothing but improper speculation. *Beale v. Hardy*, 769 F.2d 213, 214 (4th Cir. 1985) (A party "cannot create a genuine issue of material fact through mere speculation or the building of one inference upon another."); *see also Ennis v. Nat'l Ass'n of Bus. & Educ. Radio, Inc.*, 53 F.3d 55, 62 (4th Cir. 1995) ("Mere unsupported speculation ... is not enough to defeat a summary judgment motion."). (*See* R. p. 1045, lines 17-23) (testimony of Don Jones that he was interested in whether or not certain activities at the bank were permitted or not but he "never did get a legal opinion on it or anything like that"); (R. p. 1048, ¶ 8) (written report of Kenneth Richey that "Hiott was conducting stock transactions on behalf of Brookshire and the Bank" thus creating "a conflict of interest"). Mr. Richey's report is pure speculation, as Mr. Richey testified in his deposition that he did not actually know what Hiott's role was in any buying and selling of stock. (R. p. 1186, lines 21-24). Mr. Richey further testified that he has never reviewed any Community First policies and procedures to actually know what they say. (R. p. 1179, lines 7-9). He further could not cite any published

industry standard that discusses whether it is appropriate for a bank officer to hold a power of attorney for a bank customer. (R. p. 1183, line 22 – p. 1184, line 2).[8]

Brookshire also untimely and inappropriately complains about Hiott's purchases of stock for her. *See supra* pp. 14-15. However, Brookshire concedes that "the POA allowed Hiott to purchase and sell stock on [Brookshire's] behalf." Initial Brief, pp. 21-22. It is undisputed that Hiott did, in fact, purchase and sell stock on Brookshire's behalf. (R. p. 1042). Brookshire, however, misrepresents the evidence in the record for how Hiott or Community First effected such transactions. She claims that Hiott was "not authorized [by Community First] to act" with regard to stock transactions (Initial Brief pp. 21-22) and that Hiott was "trading Respondent band [sic] stock." Initial Brief p. 14. The only evidence in the record shows that a company called Transfer Online, Inc. actually transferred stock from Brookshire. (R. p. 1042). As shown on this form, the owner of Community First Bancorporation stock can effect the transfer of that stock to another party through the transfer agent (Transfer Online, Inc.) without the participation of or input from Community First or its holding company, Community First Bancorporation. Based on the evidence in the record, Hiott's employment and duties at Community First are unconnected to his actions under the POA to effect a stock transfer for Brookshire through Transfer Online, Inc.

Brookshire also argues that the POA does not cover claims and causes of action that "go beyond the actual transfer of funds themselves." Initial Brief p. 22.[9] Brookshire, however, has

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[8] This is of no legal consequence, as the Supreme Court has squarely rejected the contention that a bank's policy manual creates a duty by the bank to its customer—the manual is for the bank's protection only. *Citizens & S. Nat'l Bank v. Lanford*, 313 S.C. 540, 545, 443 S.E.2d 549, 551 (1994); *see also Coristo v. Twin City Bank*, 520 S.W.2d 218, 221-22 (Ark. 1975) (finding bank policy enacted for "the convenience and protection of the bank, and, as such, may be waived by the bank").

[9] Brookshire identifies both her Negligence/Gross Negligence cause of action and her Accounting cause of action as claims not covered by the POA. The trial court granted summary

not alleged any claims or causes of action that go beyond the actual transfer of the funds in the Account. Her damages claims are for the amount of money she held in the Account, and the root of all of her claims is the Account. *See generally* Complaint. Indeed, it could not be otherwise because the relationship between Brookshire and Community First is defined in the Account Agreement (R. pp. 432-436), and her sole legal relationship with Community First is by virtue of the Account. As Brookshire has conceded, all of Hiott's disbursements from the Account were authorized by the POA. Consequently, summary judgment was warranted to Community First on all claims and causes of action due to the terms of the POA, Community First's statutory right to rely on the POA, and Community First's statutory *lack* of obligation to monitor or inquire about how Hiott undertook his authorized actions under the POA.

D. The trial court correctly found that Brookshire's claims regarding the Account are time barred under the UCC because Brookshire failed to timely challenge the disbursements.

Brookshire's claims regarding the propriety of certain disbursements from her Account are barred under the UCC because Brookshire utterly failed to promptly review the monthly statements for her Account and bring her concerns about Hiott allegedly exceeding the scope of his authorization in the conduct of her business to Community First's attention. *See* S.C. Code Ann. § 36-4-406 (2003 & Supp. 2019) as applicable.[10] Both versions of this section impose a strict one year maximum time limit for a customer to discover and report unauthorized signatures[11] on

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judgment to Community First on both of those causes of action, and Brookshire failed to appeal the granting of summary judgment on those specific causes of action. *See* Initial Brief, p. 1.

[10] South Carolina adopted Revised Article 4 of the UCC effective July 1, 2008. Consequently, slightly different rules apply to pre-July 1, 2008 Account statements versus post-July 1, 2008 Account statements. 2008 Act No. 204, § 4.A.

[11] "Unauthorized signature" is a defined term in the UCC and means one "made without actual, implied or apparent authority and includes a forgery." S.C. Code Ann. § 36-1-201(43) (2003); S.C. Code Ann. § 36-1-201(41) (Supp. 2019) (unchanged in meaning, though using slightly different phrasing); *see also* S.C. Code Ann. § 36-1-201, Off. Cmt. 41 (Supp. 2019).

items.[12] S.C. Code Ann. § 36-4-406(4) (2003); S.C. Code Ann. § 36-4-406(f) (Supp. 2019); *see also Sabatino v. Atl. Sav. Bank, F.S.B.*, 314 S.C. 402, 403, 444 S.E.2d 537, 538 (Ct. App. 1994). It is critically important for account holders to promptly review their bank statements because:

> One of the most serious consequences of failure of the customer to comply with the requirements [to review statements] is the opportunity presented to the wrongdoer to repeat his misdeeds. Conversely, one of the best ways to keep down losses in this type of situation is for the customer to promptly examine his statement and notify the bank of an unauthorized signature or alteration so that the bank will be alerted to stop paying further items.

S.C. Code Ann. § 36-4-406 (2003), Off. Cmt. 3. Brookshire's own expert agrees, as he testified that it is "absolutely" important for the bank's "customer to review the statements that are sent to the customer" and that "the customer bears the responsibility for keeping up with his or her bank accounts." (R. p. 814, lines 5-16). He further testified that the bank customer should notify the bank if a monthly statement does not arrive. (R. p. 814, lines 17-20).

In addition, South Carolina law specifically permits banks and their customers to vary by agreement the timeframe in which a customer must review and report unauthorized signatures or other concerns about transactions on the account. S.C. Code Ann. § 36-4-103(1) (2003); S.C. Code Ann. § 36-4-103(a) & S.C. Reporter's Cmt. (Supp. 2019). Brookshire's Account Agreement with Community First sets the timeframe for her to report unauthorized signatures or other Account errors to Community First as 60 days after Community First sends the monthly statement. The monthly statements reinforce this timeframe with the monthly reminder to "[p]lease examine

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[12] "Item" is a defined term in the UCC and meant "any instrument for the payment of money even though it is not negotiable but does not include money" before July 1, 2008. S.C. Code Ann. § 36-4-104(1)(g) (2003). After July 1, 2008, the definition of "item" changed slightly to "an instrument or a promise or order to pay money handled by a bank for collection or payment." S.C. Code Ann. § 36-4-104(a)(9) (Supp. 2019). Both definitions of "item" encompass a wide variety of instructions to pay beyond traditional checks, including journal vouchers, deposit slips, account withdrawal orders, and handwritten notes asking for cashiers' checks. *See, e.g. Am. Airlines Emps. Fed. Credit Union v. Martin*, 29 S.W.3d 86, 92-94 (Tex. 2000).

immediately and report if incorrect. If no reply is received within **60** days the account will be considered correct." (*See* R. pp. 410, 418, 423, 426) (emphasis in original).

Community First mailed monthly statements for the Account to the address where Brookshire was receiving her mail from the Account's inception in June 2007 until early 2010, when Community First received for the first time in April 2010 a statement addressed to Brookshire in return mail as "unable to forward." (R. p. 400, ¶¶ 17-18). Community First's account management system automatically generates and prints a periodic account statement for each of its more than 25,000 accounts. (R. pp. 396-397, ¶¶ 3, 8). These account statements are routinely, regularly, and automatically compiled, processed, and transmitted for mailing with the United States Postal Service. (R. pp. 397-399, ¶¶ 9-12). At all times during the Account's existence, Community First followed its normal procedures with regard to the Account statements. (*See* R. p. 399, ¶ 14). This evidence of Community First's "usage and custom ... in delivering statements" to its customers is competent proof of delivery. *Cooley v. First Nat'l Bank of Little Rock*, 635 S.W.2d 250, 252 (Ark. 1982);[13] *see also Bakala v. Bakala*, 352 S.C. 612, 625, 576 S.E.2d 156, 163 (2003) ("Evidence of mailing establishes a rebuttable presumption of receipt.").

Brookshire's testimony that she did not receive monthly statements from Community First is unavailing and fails to present a genuine issue of material fact to preclude summary judgment to Community First. First, ***Brookshire actually received at least four monthly statements, as she produced <u>original statements</u> in discovery.*** (R. pp. 402-404, ¶¶ 27-35). The only time original

[13] For the UCC, the General Assembly has provided "a statement of legislative direction to the courts of a tendency to imply an interpretation and construction of the Code sections which is consistent with the case law construction of those sections in other Code jurisdictions." S.C. Code Ann. § 36-1-103, S.C. Reporter's Cmt. (Supp. 2019); *see also In re Parker*, 363 B.R. 769, 774 (Bankr. D.S.C. 2006) ("Since South Carolina has adopted a uniform law, the Court is guided by decisions in other jurisdictions that have interpreted this provision of the UCC.").

statements are ever printed by Community First are when they are placed in the mail. (R. p. 401, ¶ 21). They are printed and mailed within a few days of the closing period represented in the respective Account statement. (*See* R. pp. 398-400, 404, ¶¶ 10, 12, 17, 35). Brookshire's *actual receipt* of statements is dispositive.

Second, the burden is on the bank customer—not the bank—to ensure receipt of account statements. S.C. Code Ann. §§ 36-1-201, 36-4-406 (2003), § 36-1-201(36)(A), 36-4-406(a) (Supp. 2019) (describing the bank's "sending" of statements to customers as the operative event giving rise to the customer's duty of examination and further defining "send" in part as "to deposit in the mail"). The UCC allocates the risk of loss or interception of bank statements to the bank customer. *Stowell v. Cloquet Co-op Credit Union*, 557 N.W.2d 567, 571-72 (Minn. 1997) (collecting cases). In other words, the bank customer has an affirmative duty to ensure that he or she is receiving account statements, and the customer's claims will be barred if the customer fails to timely discharge this duty. *Id.* at 569-70; *Mesnick v. Hempstead Bank*, 434 N.Y.S.2d 579, 580 (N.Y. Sup. Ct. 1980); *Westport Bank & Trust Co. v. Lodge*, 325 A.2d 222, 223-24 (Conn. 1973); *Terry v. Puget Sound Nat'l Bank*, 492 P.2d 534, 535 (Wash. 1972); *Myrick v. Nat'l Sav. & Trust Co.*, 268 A.2d 526, 528 (D.C. 1970) (all holding the claims are time barred when bank customers fail to timely notify the bank of missing statements regardless of reason).

Indeed, Brookshire's own expert opined that Brookshire, or any reasonable bank customer, could wait, at most, 90 days to notify Community First that she was not receiving Account statements. (R. p. 815, line 22 – p. 816, line 11; *see also* R. p. 282, line 24 – p. 285, line 10). Brookshire's failure to appropriately discharge her duties as a bank customer serves as an absolute bar to all of her claims against Community First. *Peters v. Riggs Nat'l Bank, N.A.*, 942 A.2d 1163,

1168-69 (D.C. 2008); *First Place Computers, Inc. v. Sec. Nat'l Bank of Omaha*, 558 N.W.2d 57, 60 (Neb. 1997) (both holding that 4-406 is a statute of repose that cannot be tolled).

Applying the UCC here, Community First sent and Brookshire received the July 2007 Account statement in or around early August 2007. (R. pp. 399-400, 403, ¶¶ 14, 16, 17, 32). Brookshire thereafter had *at most* one year to challenge any transactions reflected on that statement. Applying the Account Agreement reduces this timeframe from one year to 60 days. (*See* R. p. 435). Thus, the UCC statute of repose ran, at the latest, in August ***2008*** for every transaction reflected on the July 2007 statement. The same analysis applies to each and every monthly Account statement that Community First sent to Brookshire. Brookshire was on actual and/or constructive notice of her Account balance and the amount of the withdrawals and deposits that comprised that balance each month, and the corresponding maximum time limitation of one year would thus shift one month at a time. In other words, each monthly Account statement represents a separate timeframe for challenging the Account balance and transactions reflected therein. Brookshire's failure to timely do so with each passing month renders any challenge to the transactions time-barred.

It is insufficient at summary judgment for Brookshire to simply deny that she received statements from Community First (testimony that Brookshire's document production flatly contradicts). Instead, she must present evidence that raises a genuine issue of material fact that Community First did not "send" the statements. This she has not done and cannot do. Brookshire's failure to ensure receipt of and to review her statements and report any unauthorized signatures or other specific disbursement concerns to Community First within the requisite time period bars all her claims against Community First. *Sabatino*, 314 S.C. at 404, 444 S.E.2d at 538; *Villa Contracting Co., Inc. v. Summit Bancorporation*, 695 A.2d 762, 766 (N.J. Super. Ct. Law Div.

1996) ("[T]he customer must deal in specifics rather than generalities. In other words, in order to satisfy the statute, he must notify the bank of exactly which items" are unauthorized.) The trial court appropriately awarded summary judgment to Community First on all of Brookshire's claims.

Brookshire argues that the UCC's statute of repose does not apply to her claims because "[t]he transactions and transfers that occurred to and from [Brookshire's] account were not unauthorized as contemplated by the UCC." Initial Brief p. 19. Unauthorized is defined in the UCC as "without actual, implied or apparent authority." S.C. Code Ann. § 36-1-201(43) (2003); S.C. Code Ann. § 36-1-201(41) (Supp. 2019). If the disbursements from the Account were "not unauthorized," then they were made *with* actual, implied, or apparent authority. Consequently, Brookshire's entire case against Community First falls apart, and summary judgment on all of Brookshire's claims is fully warranted and should be affirmed in full.

Brookshire also argues that the UCC's statute of repose does not apply because she is not complaining about a forged signature. Brookshire reads the UCC too narrowly. The entire premise of Brookshire's lawsuit seeks to hold Community First liable for permitting Hiott to make disbursements from her Account. Brookshire testified that if she had seen the bank statement from July 2007 showing a $500,000 withdrawal several weeks after the Account was opened, she would have contested it and asked questions about it. (R. p. 275, lines 1-25; p. 278, lines 7-15). Further, the UCC's statute of repose is not just about forgeries. It is about bringing unauthorized or inappropriate account activity to the bank's attention in a timely manner so that losses may be stopped. *See* S.C. Code Ann. § 36-4-406, S.C. Rptr. Cmt. ("[I]f the customer should reasonably have discovered the unauthorized payment based upon the statement or items provided, Subsection (c) also requires the customer to notify the payor bank promptly of the relevant facts."). The Account Agreement reinforces this purpose: Brookshire "further agree[s] that if you fail to report

any unauthorized signatures, alterations, forgeries, *or any other errors in your account* within 60 days of when we first send or make the statement available, you cannot assert a claim against us on any items in that statement, and as between you and us the loss will be entirely yours." (R. p. 435) (emphasis added). Brookshire utterly failed in her duties as an Account holder at Community First, and her complaints about Account disbursements coming *years* after they occurred are time barred. The trial court correctly granted summary judgment to Community First on all of Brookshire's claims.

E. The trial court correctly found that all of Brookshire's claims are time barred pursuant to S.C. Code Ann. § 15-3-530(5).

Brookshire's claims are also barred by the three year statute of limitations applicable to all of Brookshire's causes of action. S.C. Code Ann. § 15-3-530(5) (2005).

> Statutes of limitations are not simply technicalities. On the contrary, they have long been respected as fundamental to a well-ordered judicial system. Statutes of limitation embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs. One purpose of a statute of limitations is to relieve courts of the burden of trying stale claims when a plaintiff has slept on his rights. Another purpose of a statute of limitations is to protect potential defendants from protracted fear of litigation.

Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996). "The cornerstone policy consideration underlying statutes of limitations is the laudable goal of law to promote and achieve finality in litigation." *Lyons v. Fidelity Nat. Title Ins. Co.*, 415 S.C. 115, 124, 781 S.E.2d 126, 131 (Ct. App. 2015).

The discovery rule applies to the running of the statute of limitations here, and Brookshire knew or should have known of the alleged harm more than three years before August 1, 2014, the date of the tolling agreement between Brookshire and Community First, that preceded the filing of her Complaint on September 8, 2014. *See* S.C. Code Ann. § 15-3-535 (2005). This is true for multiple reasons, as Brookshire both received the monthly statements for her Account and

suspected Hiott of misconduct with regard to her Account well over three years prior to August 1, 2014. *See* S.C. Code Ann. §§ 15-3-530(5), 15-3-535 (2005). The law is clear:

> Under the discovery rule, the limitations period commences when the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some claim against another party might exist. This standard as to when the limitations period begins to run is *objective* rather than *subjective*. Therefore, the statutory period of limitations begins to run when a person *could or should have known*, through the exercise of reasonable diligence, that a cause of action might exist in his favor ....

Stokes-Craven Holding Corp. v. Robinson, 416 S.C. 517, 787 S.E.2d 485, 489-90 (2016) (citations and quotations omitted). The statute of limitations begins running when "the exercise of reasonable diligence" puts one "on notice that some right of his has been invaded or that some claim against another party *might* exist and *not* when advice of counsel is sought or a full-blown theory developed." *Grillo v. Speedrite Prods., Inc.*, 340 S.C. 498, 503, 532 S.E.2d 1, 3 (Ct. App. 2000) (emphases added); *see also Gibson v. Bank of Am., N.A.*, 383 S.C. 399, 409-10, 680 S.E.2d 778, 783-84 (Ct. App. 2009) (holding that receipt of bank statements in June 2000 that disclosed account balances placed the account holder "on notice that she had some type of claim for any perceived discrepancy, even if she did not know the precise details behind the discrepancy" and barred lawsuit against bank brought in September 2003).

1. Brookshire received statements for the Account more than three years prior to August 1, 2014.

Community First sent and Brookshire actually or constructively received monthly Account statements from June 2007 through January 2010. *See supra* pp. 23-27; (R. pp. 396-436). Brookshire was on actual and/or constructive notice *every month* for the transactions found in each statement such that any claim as to those transactions would expire, at the *very* longest, three years and 60 days from when Community First sent each respective statement to Brookshire.

Brookshire's lawsuit is thus time-barred under the discovery rule. *Gibson*, 383 S.C. at 409-10, 680 S.E.2d at 783-84.

Further, Brookshire admits that she received a compiled copy of her Account statements for July 2007 through November 2010 in March or April 2011—well over three years before August 1, 2014. (R. p. 244, line 18 – p. 248, line 12). Brookshire testified that the first time she knew that the $500,000 disbursement of July 2007 had been made was when she reviewed a version of the July 2007 statement with "Lafayette, single premium annuity to children" written on it in blue ink. (R. p. 221, line 25 – p. 222, line 20). Ms. McDaniel wrote that information on a copy of the July 2007 statement and provided the Account statement packet to Brookshire no later than March or April 2011. (R. p. 248, lines 1-12; p. 495, lines 3-16). Brookshire's lawsuit is thus barred by the three year statute of limitations under the discovery rule. *Gibson*, 383 S.C. at 409-10, 680 S.E.2d at 783-84.

2. Brookshire believed that Hiott had misappropriated her funds or otherwise was untruthful with her about her affairs more than three years prior to August 1, 2014.

Brookshire testified that, by the spring and summer of 2010, she had become distrustful of Hiott, believed him to be lying to her about her affairs and her Account at Community First, and suspected that he had acted inappropriately with regard to her finances. (R. p. 199, line 4 – p. 200, line 12). She engaged Ms. McDaniel in August 2010 to investigate her concerns regarding Hiott and Community First. (R. p. 202, lines 14-16). Consequently, Brookshire *actually knew* in the summer of 2010 "that some claim ... might exist" with regard to the Account and her finances. *Grillo*, 340 S.C. at 503, 532 S.E.2d at 3. This actual knowledge is more than sufficient to begin

the running of the statute of limitations, and the trial court correctly found that Brookshire's lawsuit was barred.

F. Equitable doctrines do not save Brookshire's time-barred claims.

Two distinct, but related and potentially overlapping, equitable doctrines can apply in limited situations to toll or estop the statute of limitations defense: equitable tolling and equitable estoppel. *See, e.g. Magnolia N. Prop. Owners' Ass'n, Inc. v. Heritage Cmtys., Inc.*, 397 S.C. 348, 370, 725 S.E.2d 112, 124 (Ct. App. 2012). The doctrines "should be used sparingly and only when the interests of justice compel [their] use." *Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr.*, 386 S.C. 108, 116, 687 S.E.2d 29, 32 (2009). Contrary to Brookshire's arguments, neither doctrine saves her time-barred claims.

1. Equitable tolling.

Equitable tolling is a "judicially created" doctrine stemming "from the judiciary's inherent power to formulate rules of procedure where justice demands it." *Id.* at 115, 687 S.E.2d at 32. *Hooper* describes a non-exhaustive list of circumstances where equitable tolling might apply, with the common theme being "where a litigant was prevented from filing suit because of an extraordinary event beyond his or her control." *Id.* Equitable tolling may only be applied "where it is justified under *all* the circumstances." *Id.* "The party claiming the statute of limitations should be tolled bears the burden of establishing facts sufficient to justify its use." *Id.*

South Carolina courts discussing equitable tolling have applied it to toll the statute of limitations in extraordinary situations where—due to no fault of the plaintiff—an extraordinary event occurred to delay the proper commencement of a lawsuit. In *Hooper*, the plaintiff filed the lawsuit well within the statute of limitations. *Id.* at 111, 687 S.E.2d at 30. Yet due to the defendant's "failure to supply the correct information regarding its agent to the Secretary of State as required by law," the plaintiff "diligently pursued service on what turned out to be a nonexistent

agent," and was consequently only able to accomplish service "approximately one week past" the applicable time limits to effectuate service. *Id.* at 118-19, 687 S.E.2d at 34. In *Magnolia North*, the Court of Appeals found that equitable tolling was appropriate in a case brought by a property owner's association and filed after the statute of limitations expired because, until the date of "turnover," the association's board was controlled by the very defendants the association would need to sue. The court found "unpersuasive" the "claim that an organization [the defendants] controlled would have initiated an action against itself" prior to "turnover." *Magnolia N.*, 397 S.C. at 372, 725 S.E.2d at 125. Both cases emphasized that plaintiffs must be diligent in all of their endeavors to properly invoke equitable tolling. *Id.*; *Hooper*, 386 S.C. at 119, 687 S.E.2d at 34.

In contrast, courts applying South Carolina law do *not* apply equitable tolling if the facts and circumstances show that the plaintiff was on notice of potential problems *before* receiving misinformation from a defendant. *Vieira v. Simpson*, No. 2:13-cv-2610, 2015 WL 1299959, *6 (D.S.C. March 23, 2015) (applying *Hooper* and finding that a defendant attorney's provision of misinformation after plaintiffs became "suspicious" "was not an extraordinary event that kept the [plaintiffs] in the dark or prevented them from recognizing any impropriety"). Indeed, believing "that *perhaps* a lawsuit was unnecessary" is not sufficient to meet the plaintiff's burden on equitable tolling. *Id.*; *see also In re Stotz Fredenhagen Indus., Inc.*, 554 B.R. 777, 787 (Bankr. D.S.C. 2016) (applying *Hooper* and holding that "[t]he evidence and allegations of delay, withholding of information, or lack of cooperation by other parties here is not enough. The evidence must also support a finding that these things *caused* the requisite period of delay and also must support a finding that the period of delay was *beyond Plaintiff's control.*") (emphasis in original). Put simply, equitable tolling is an extraordinary remedy *only* applied when the plaintiff

has been diligent, and some outside force beyond plaintiff's control wholly prevents the commencement of a timely lawsuit.

2. Equitable estoppel.

Equitable estoppel is slightly different from equitable tolling and centers more on the plaintiff's reasonable reliance on specific conduct of a defendant. "A defendant is estopped to assert the statute of limitations defense against a plaintiff's claim if the *defendant's conduct* has induced the delay that otherwise would give operation to the statute. The conduct may involve inducing the plaintiff either to believe that an amicable adjustment of the claim will be made without suit or to otherwise forbear exercising the right to sue." *Republic Contracting Corp. v. S.C. Dep't of Highways & Pub. Transp.*, 332 S.C. 197, 211, 503 S.E.2d 761, 768 (Ct. App. 1998) (emphasis added). The determination of whether equitable estoppel is warranted is a matter for the court alone. *Gaymon v. Richland Mem'l Hosp.*, 327 S.C. 66, 68, 488 S.E.2d 332, 333 (1997). In order to establish equitable estoppel, a plaintiff must present evidence of her "(1) lack of knowledge and of means of knowledge of truth as to facts in question; (2) reliance upon conduct of the party estopped; and (3) prejudicial change in position." *Schmauch*, 354 S.C. at 675, 582 S.E.2d at 446. In addition, "[t]o prove equitable estoppel under South Carolina law, the aggrieved party must have 'reasonably relied on the words and conduct of the person to be estopped in allowing the limitations period to expire.'" *Dilmar Oil Co., Inc. v. Fed. Mut. Ins. Co.*, 986 F. Supp. 959, 975 (D.S.C. 1997) (quoting *Dillon Cnty. Sch. Dist. No. 2. v. Lewis Sheet Metal Works, Inc.*, 286 S.C. 207, 332 S.E.2d 555, 561 (Ct. App. 1985)). The gravamen of an estoppel showing refers to "lull[ing the plaintiff] into a sense of security, preventing [her] from filing suit before the running of the statute." *Republic Contracting*, 332 S.C. at 211, 503 S.E.2d at 769. However, "if the obstructive behavior occurs *after* the plaintiff's inquiry has reached the point at which he has discovered that he has a claim upon which to found a suit, the defendant's obstructionism has no

causal significance, and so is not a ground for estoppel." *Jay E. Hayden Found. v. First Neighbor Bank, N.A.*, 610 F.3d 382, 385 (7th Cir. 2010); *see also Little v. Brown & Williamson Tobacco Corp.*, No. 2:98-1879-23, 2000 WL 33957172, *6 (D.S.C. May 8, 2000) (applying South Carolina law on equitable estoppel and holding that equitable estoppel did not apply because Plaintiff failed to "offer any proof" that he relied on allegedly false statements by tobacco company executives in delaying his suit).

3. Brookshire's claims to equitable relief fail.

Brookshire argues that Community First is estopped from invoking the statute of limitations to bar her claims or that the statute should be equitably tolled for two reasons: first, Brookshire claims that she had a right to an "accounting" and that Community First's failure to provide her with her demanded "accounting" saves her otherwise time-barred claims. Second, Brookshire claims that Hiott misrepresented to her the nature and recipient of the $500,000 withdrawal of July 12, 2007. Brookshire claims that her representatives were told that the $500,000 withdrawal in July 2007 was made to purchase annuities for the children then in her custody when in fact the funds were actually sent to Mr. Crosby.

Brookshire's attempt to wiggle around her statute of limitations problems suffers from multiple flaws. First, and foundationally, Brookshire confuses the legal triggering of the statute of limitations with the level of proof necessary to win a lawsuit. In essence, Brookshire argues that because Hiott and Community First did not (allegedly) provide complete and open pre-suit discovery to her, the statute of limitations does not begin to run until all of her questions are answered. Not so. In South Carolina, "[t]he statute of limitations begins to run when a plaintiff knows or should know of a potential claim against another party, *not when the plaintiff develops a full-blown theory of recovery.*" *Republic Contracting*, 332 S.C. at 208, 503 S.E.2d at 767 (emphasis added). Indeed, "[a] plaintiff is not required to have collected, *before* he files suit, all

the evidence he needs in order to win the suit. Otherwise the civil procedure rules would have to authorize precomplaint discovery rather than just pretrial discovery." *Jay E. Hayden*, 610 F.3d at 386; *see also Dean v. Ruscon Corp.*, 321 S.C. 360, 364, 468 S.E.2d 645, 647 (1996) ("[T]he fact that the injured party may not comprehend the full extent of the damage is immaterial" to the statute of limitations inquiry.). In the specific context of a bank account, if a customer "disagreed with the bank's representation of [the account balance shown in a statement], she was then on notice that she had some type of claim for any perceived discrepancy, even if she did not know the precise details behind the discrepancy." *Gibson*, 383 S.C. at 409, 680 S.E.2d at 783-84.

Second, equitable doctrines do not apply to the UCC's one year maximum statute of repose. It cannot be tolled, and its running cannot be estopped—even when the result reached may appear harsh. *Peters*, 942 A.2d at 1169 (finding claims for breach of contract, negligence, and statutory violations to be time-barred under the UCC even when the bank customer had died); *Siecinski v. First State Bank of E. Detroit*, 531 N.W.2d 768, 769 (Mich. Ct. App. 1995) (finding claims for breach of contract, negligence, and conversion to be time-barred under the UCC when an account holder suffered a head injury, fell into a coma, and died soon after a woman presented the bank with a forged power of attorney and ultimately withdrew all funds in the account). This is in accord with South Carolina law. *See Langley v. Pierce*, 313 S.C. 401, 404, 438 S.E.2d 242, 244 (1993) ("Statutes of repose are based upon considerations of the economic best interests of the public as a whole and are substantive grants of immunity based upon a legislative balance of the respective rights of potential plaintiffs and defendants struck by determining a time limit beyond which *liability no longer exists*.") (emphasis added); *Capco of Summerville, Inc. v. J.H. Gayle Constr. Co., Inc.*, 368 S.C. 137, 142, 628 S.E.2d 38, 41 (2006) (describing how statutes of repose cannot be tolled or extended "for any reason because to do so would upset the economic balance

struck by the legislative body"). Brookshire's failure to challenge disbursements within the applicable UCC time limits renders her claims against Community First completely barred.

Third, the undisputed facts show that Brookshire was on notice "that a claim against another party might exist," *Dean*, 321 S.C. at 363-64, 468 S.E.2d at 647, well before August 2011. *See supra* pp. 9-10; (R. p. 194, lines 13-23; p. 199, line 4 – p. 201, line 16; p. 202, lines 1-22; p. 204, lines 3-25; p. 205, line 17 – p. 206, line 2; p. 225, lines 5-11; p. 233, line 2 – p. 234, line 24; p. 235, line 3 – p. 236, line 1; p. 237, line 4 – p. 239, line 25; p. 240, lines 2-22; p. 247, line 6 – p. 248, line 12; p. 259, lines 1-21; p. 270, lines 1-25; p. 274, line 15 – p. 275, line 25; p. 277, lines 2-4; p. 278, lines 7-15; p. 489, line 1 – p. 490, line 19; pp. 506-507). Despite all of these concerns, disputes, and contradictory information, no suit was filed for well over three more years.

Fourth, Brookshire's reasons for invoking equitable estoppel or equitable tolling are blatantly pretextual given the undisputed facts recited above. She claims that she is entitled to equitable relief because the defendants failed to provide her an "accounting." It is undisputed that Community First sent her monthly Account statements and further provided her attorney with a full set of statements to date no later than March 2011. Under South Carolina law, the receipt of bank statements is wholly sufficient on its own to trigger and begin the statute of limitations. *Gibson*, 383 S.C. at 409, 680 S.E.2d at 783-84; *Sabatino*, 314 S.C. at 404-05, 444 S.E.2d at 538. This is in addition to the legal presumption of bank statement receipt that the UCC imposes on bank customers. *See supra* pp. 25-27. Brookshire began seeking what she called a "full accounting" from Hiott no later than September 21, 2010—almost four years before she filed suit. (R. pp. 506-507).[14] Viewing the evidence in the light most favorable to Brookshire, the simple

[14] Brookshire failed to define what she means by a "full accounting" as it pertains to Community First. (*See* R. pp. 506-507; *see also* R. pp. 321-322 ("My Agent [defined as Hiott individually] shall provide an accounting for all funds handled and all acts performed as my Agent,

fact that her attorney began asking for a "full accounting" due to "serious inconsistencies" with regard to her Account in September 2010 is uncontroverted evidence that Brookshire was on *actual notice* that she had "a potential claim against another party" at that time. *Republic Contracting*, 332 S.C. at 208, 503 S.E.2d at 767. Brookshire has made no argument or advanced any evidence to show that any failure by Community First to provide her a "full accounting" "lulled" her into a sense of security that her perceived injury would be "righted" absent legal action. *See id.* at 211, 503 S.E.2d at 768-69. Indeed, Community First's alleged failure to provide something she began asking for in September 2010 would *confirm* her need to file suit within the requisite time period.

Brookshire also argues that Hiott's changing story on the recipient of the July 12, 2007 $500,000 disbursement estops Community First from defending on statute of limitations grounds or otherwise tolls the statute. Again, this is pretextual. Brookshire bears the burden of proving her *reasonable reliance* on Community First's words or conduct that *caused* her to file her lawsuit after the statute of limitations had expired. *Dilmar Oil*, 986 F. Supp. at 972-73. Brookshire must do more than suggest some sort of "cover-up"—instead, she must provide an evidentiary link between this alleged "cover-up" and "lulling" her into a sense of security such that she was prevented from filing suit before the statute of limitations expired. *Republic Contracting*, 332 S.C. at 211, 503 S.E.2d at 768-69. Brookshire has cited no evidence to meet this standard. The earliest time that a specific explanation for the July 2007 $500,000 disbursement was given to Brookshire or her representative was when Ms. McDaniel wrote "[a]nnuity for children" and "Lafayette Life Product Single premium annuity" on a copy of Brookshire's July 2007 Account statement that was reprinted on November 18, 2010. (R. p. 495, lines 3-16; p. 509). Ms. McDaniel received this

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if I so request ...."). It is undisputed that Brookshire or her prior counsel was provided with a reprinted set of Account statements in late 2010 or early 2011. (R. p. 244, line 18 – p. 248, line 12; p. 493, line 1 – p. 494, line 24; p. 496, lines 4-10).

information during her representation of Brookshire, which ended on March 11, 2011. (R. p. 499, lines 19-22). According to Brookshire, Hiott gave *different* stories about the disbursement on various later occasions, naming at various times Lafayette, Nationwide, and Holcombe Insurance Agency as recipients of these funds for the children's benefit before informing counsel for Community First that the $500,000 was actually used as an investment with Mr. Crosby. (*See* R. pp. 818-819). Counsel for Brookshire was informed of the Crosby investment on July 18, 2013. (R. pp. 818-819).

Brookshire's testimony belies any reasonable, causative reliance on Hiott's changing story. Brookshire testified that there was nothing that Hiott could have spent $500,000 on in July 2007 that would have been appropriate or authorized by her. (R. p. 225, lines 5-11). She testified that the children in her custody were well taken care of financially, did not need life insurance, and that she never directed Hiott to procure an annuity, life insurance policy, or trust for the children. (R. p. 225, lines 5-11; p. 237, line 17 – p. 239, line 25; p. 240, lines 2-22). In other words, Brookshire's unequivocal testimony is that *no matter what, no matter to whom, and no matter why*, the $500,000 disbursement of July 12, 2007, was unauthorized, inappropriate, and wrongful. Thus, Hiott's stories are of no legal consequence, and Brookshire did not actually rely on them to determine whether or not she needed to file suit. To her, the wrongful act is the disbursement of $500,000 itself. By waiting well over three years from March 2011 to file suit, Brookshire simply "slept on [her] rights." *Moates*, 322 S.C. at 176, 470 S.E.2d at 404. The trial court properly granted summary judgment to Community First. *See Schmauch*, 354 S.C. at 675, 582 S.E.2d at 446 ("[S]ummary judgment is proper where there is no evidence of conduct warranting estoppel.").

G. The trial court correctly held that S.C. Code Ann. § 15-3-110 (2005) does not apply to this matter.

Under South Carolina law, statutes of limitation do not apply to 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." S.C. Code Ann. § 15-3-110 (2005). Although it does not appear that South Carolina courts have construed this particular statute beyond defining "moneyed corporations," several other states have enacted similar statutes. *See* N.D. Cent. Code Ann. § 28-01-35 (West); S.D. Codified Laws § 15-2-18; Mo. Ann. Stat. § 516.310 (West); Miss. Code. Ann. § 15-1-79 (West). Both historical banking practice and cases from other jurisdictions with these 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.

In *Butts v. Vicksburg & Meridian R.R. Co.*, 63 Miss. 462 (Miss. 1886), the appellants argued that notes issued by a railroad company were substantially the same as bank notes to which the statute of limitation did not apply. The Supreme Court of Mississippi held that the statutory exception to the statute of limitation did not apply because the railroad-issued notes had ceased to circulate as currency and had ceased to be taken in and reissued by banks. *Id.* at 465. The court explained why bank notes were excepted from the statute of limitation:

> While the general rule is that statutes of limitation do not apply to bank bills, because they are by the consent of mankind and course of business *considered as money*, and that their date is no evidence of the time when they were issued, as they are being continually returned and reissued by the banks, yet if such bills have ceased to circulate as currency and have ceased to be taken in and reissued by the banks, they no longer have that distinctive character from other contracts which excepts them from the operation of the statutes of limitation.

Id. (emphasis added). In *Quattrochi v. Farmer's & Merchants' Bank*, 89 Mo. App. 500 (Mo. Ct. App. 1901), the court held that an action against a bank to recover the difference between a balance

shown and the balance that was actually due was not within the purview of Missouri's statute excepting actions to enforce bills, notes, and other evidences of debt from the general statute of limitations because the claim did not involve notes circulated as money. *Id.* at 508, 510. Thus, under *Butts* and *Quattrochi*, this type of statute applies only in situations where a moneyed corporation is circulating its own bills or notes intended to function as money.

Brookshire is not seeking to enforce any bill, note, or evidence of indebtedness *issued* by Community First that would be *considered as money*. Further, the cases applying this statute all arose in a pre-New Deal economic era where companies, including banks, would circulate their own bills and currency. (*See* R. pp. 1188-1190; 1192-1194). Community First is not issuing any specialized currency, and Brookshire has made no claim that it has. Thus, the statute does not apply.

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—limiting the maximum timeframe to one year. S.C. Code Ann. § 36-4-406 (2003 & Supp. 2019) as applicable; *see also Sabatino*, 314 S.C. at 403, 444 S.E.2d at 538. The statute of repose contained in the UCC, as a 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). Further, "[a] statute of limitations is a procedural device that operates as a defense to limit the remedy from an existing cause of action. A statute of repose creates a substantive right in those protected to be free from liability after a legislatively determined period of time." *Capco*, 368 S.C. at 142, 628 S.E.2d at 41. As §

15-3-110 only applies to bar statutes of limitation, it does not affect the UCC statute of repose. The trial court correctly held that S.C. Code Ann. § 15-3-110 does not apply to this matter.[15]

H. The trial court correctly granted summary judgment to Community First on Brookshire's breach of fiduciary duty cause of action.

The trial court correctly granted summary judgment to Community First on Brookshire's breach of fiduciary duty cause of action because Community First did not owe fiduciary duties to Brookshire with regard to the checking account at issue in this matter. "[T]he normal relationship between a bank and its customer is one of creditor-debtor and not fiduciary in nature." *Schmauch*, 354 S.C. at 671, 582 S.E.2d at 444. While a bank can take on fiduciary duties to its customers "if

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[15] With regard to this issue, Brookshire claims that the trial court's September 26, 2017 Order is flawed because it relies on Community First's Reply Memorandum it submitted in support of its Motion for Summary Judgment. Brookshire claims that the trial court was unable to consider the written arguments in Community First's Reply Memorandum because the Reply Memorandum was not contained in the clerk of court's file at the time of the Order and is therefore not a part of the record in this case. Brookshire is incorrect. Community First's Reply Memorandum was emailed to Judge Maddox, Judge Maddox's law clerk, and all counsel of record on December 13, 2016, the morning of the hearing on Community First's motion for summary judgment. A hard copy of the Reply Memorandum was also handed to the Court and all counsel present at the beginning of the hearing. (*See* R. pp. 1195-1196). It is thus appropriately contained in the record for this case. *See* Rule 210(c), SCACR (requiring the record to include only matter "presented" to the trial court).

Brookshire's arguments fail for additional reasons, as well. As an initial matter, there is no requirement to file a reply memorandum with the clerk of court, as it is not a "pleading [or] other paper" that is "required by these rules" to be filed with the clerk of court. Rule 5(e), SCRCP. A reply memorandum is not a pleading. Rule 7(a), SCRCP. Neither is it a motion or one of the "other papers provided for by these rules." Rule 7(b), SCRCP. There is no specific provision for supporting or opposing memoranda in the South Carolina Rules of Civil Procedure. Indeed, the case Brookshire relies on, *Loyd's Inc. v. Good*, 306 S.C. 450, 412 S.E.2d 441 (1991), did not concern supporting or opposing memoranda. Instead, it concerned the requirement to file original discovery responses with the clerk of court pursuant to Rule 26(g)(1) in order to rely on them during a summary judgment motion hearing. *Loyd's*, 306 S.C. at 452, 412 S.E.2d at 443. Even if *Loyd's* had some applicability here, the Court of Appeals found that the party objecting must show prejudice in order for the materials to be excluded. *Id.* at 453, 412 S.E.2d at 443. Brookshire here can show no prejudice, as the Court and all counsel received copies of the Reply Memorandum prior to and at the beginning of the hearing. Various arguments contained therein were also advanced at oral argument. (R. pp. 1208-1294). Finally, Brookshire has failed to properly present this issue to the Court of Appeals, as Brookshire failed to list this issue in her Statement of the Issues on Appeal for the Court's consideration. Initial Brief p. 1.

it undertakes to advise a depositor as part of the services the bank offers," *id.*, there is no genuine issue of material fact that Community First ever undertook to advise Brookshire as part of the services Community First offers. Indeed, Community First does not have, nor has it ever had, a trust department. (R. p. 394, lines 8-10).[16]

Even if Hiott owed Brookshire fiduciary duties by virtue of the POA, Brookshire's efforts to impute those duties to Community First by virtue of Hiott's employment fails. *See supra* pp. 19-21. Brookshire's general argument that the doctrine of apparent agency makes Community First liable to Brookshire based on Hiott's alleged breach of fiduciary duty similarly fails. "The doctrine of apparent agency provides that the principal is bound by the acts of its agent when it has placed the agent in such a position that persons of ordinary prudence, reasonable knowledgeable with business usages and customs, are led to believe the agent has certain authority and they in turn deal with the agent based on that assumption." *Fernander v. Thigpen*, 278 S.C. 140, 143, 293 S.E.2d 424, 426 (1982); *see also R&G Constr., Inc. v. Lowcountry Reg'l Transp. Auth.*, 343 S.C. 424, 433, 540 S.E.2d 113, 118 (Ct. App. 2000) (requiring evidence of the "third party reasonably rel[ying] on the representation [of agency] and of the "third party detrimentally chang[ing] his or her position in reliance on the representation" for apparent agency to apply).

There is no evidence in the record that Brookshire gave Hiott the POA because of his employment with Community First or that she intended Community First to assume the duties that she gave Hiott in the POA. In contrast to Brookshire's representations, Hiott did not "lure"

[16] Brookshire cites to pages 126 and 127 of Jeff Griffith's deposition testimony for support that Community First understood the Account to be a trust account. Initial Brief p. 28. These pages do not support Brookshire's argument and do not even discuss the type of account the Account was at Community First. Elsewhere in Mr. Griffith's deposition testimony, he testified that Community First has "many trusts – a checking account held by a trust. We don't offer trust services." He also testified that the Account was a checking account. (R. p. 1169, lines 5-7).

Brookshire to Community First. Initial Brief p. 31. Brookshire testified that she sought out Hiott, received his telephone number from some mutual friends, and then contacted him about handling her affairs. (R. p. 180, line 1 – p. 181, line 13). There is no evidence in the record that Brookshire dealt with Hiott *because* Community First held him out as its agent. By executing the POA, Brookshire made Hiott *her* agent weeks before ever beginning a relationship whatsoever with Community First. And, as Brookshire has conceded, all of Hiott's actions with regard to the Account were authorized. The trial court correctly granted summary judgment to Community First on this cause of action.

I. The trial court correctly granted summary judgment to Community First on Brookshire's cause of action for conversion.

The trial court correctly granted summary judgment to Community First on Brookshire's conversion cause of action. "Conversion is the unauthorized *assumption and exercise of the right of ownership* over goods or personal chattels belonging to another, to the exclusion of the owner's rights." *Gordon v. Busbee*, 397 S.C. 119, 135, 723 S.E.2d 822, 831 (Ct. App. 2011) (emphasis added). To be liable for conversion, Community First must have assumed and exercised the rights of ownership over goods or chattels belonging to Brookshire, which she identified as occurring upon the transfer of "large sums of money" from her Account. Compl. ¶ 114. No evidence exists that Community First assumed and exercised ownership rights over Brookshire's funds at their disbursement such that Brookshire suffered any loss.[17] In addition, "there can be no conversion of money unless there is an obligation on the defendant to deliver a specific, identifiable fund to the plaintiff." *Richardson's Rests., Inc. v. Nat'l Bank of S.C.*, 304 S.C. 289, 294, 403 S.E.2d 669,

[17] Further, the UCC has displaced common law "conversion and negligence claims based on payment over a forged or unauthorized indorsement." *Flavor-Inn, Inc. v. NCNB Nat'l Bank of S.C.*, 309 S.C. 508, 511, 424 S.E.2d 534, 536 (Ct. App. 1992); *see also* S.C. Code Ann. § 36-3-419 (2003); S.C. Code Ann. § 36-3-420 (Supp. 2019); *Equitable Life Assur. Soc'y of U.S. v. Okey*, 812 F.2d 906, 909 (4th Cir. 1987).

672 (Ct. App. 1991). No such obligation exists here, so no action for conversion of money can lie. Because Community First and Brookshire only had a debtor/creditor relationship, the funds in her Account were "in the nature of a general deposit and not subject to conversion." *Owens v. Andrews Bank & Trust Co.*, 265 S.C. 490, 497, 220 S.E.2d 116, 119 (1975). Consequently, "where there is merely the relationship of debtor and creditor, an action based on conversion of the funds representing the debt is improper." *Id.* (internal citation omitted).

Brookshire argued for the first time in her 59(e) Motion that Community First allegedly converted stock belonging to her and that this stock conversion forms part of her claim. As discussed above, this argument is untimely and has not been properly presented to the lower court. Substantively, Brookshire cites no evidence in the record for her assumption that Community First itself effectuated any such stock transfer, and, as discussed above, the only evidence in the record shows that a company called Transfer Online, Inc.—not Community First—transferred stock from Brookshire to Hilltop, Inc. (R. p. 1042). *See supra* p. 22. Brookshire's untimely and incorrect speculation that *Community First* effected the stock transfer is insufficient to raise a genuine issue of material fact to preclude summary judgment.

Brookshire also complains about how her Community First account statements did not alert her to the stock purchases. Brookshire misunderstands the responsibilities of a bank account holder under South Carolina law. If withdrawals "were reflected in the monthly statements," and they were truly unauthorized, such withdrawals "should have been sufficient to notify [the account holder] of the need to investigate the transactions." *Sabatino*, 314 S.C. at 404 n.2, 444 S.E.2d at 538 n.2. Here, the withdrawals from Brookshire's account at Community First that went to purchases of stock were disclosed as withdrawals from her account on her monthly account statements in 2007 and 2008. (*See* R. pp. 515, 525, 527, 529, 533, 535, 537, 541, 543, 647).

Brookshire utterly failed to timely undertake her duties as an account holder. The trial court correctly granted summary judgment to Community First on Brookshire's conversion cause of action.

J. The trial court correctly granted summary judgment to Community First on Brookshire's cause of action for negligent supervision.

The trial court correctly granted summary judgment to Community First on Brookshire's cause of action for negligent supervision. An employer has a duty in certain, limited circumstances to exercise reasonable care to control its employee when acting outside the scope of his or her employment. *Degenhart v. Knights of Columbus*, 309 S.C. 114, 116, 420 S.E.2d 495, 496 (1992). None of those limited circumstances apply here. Because Brookshire gave Hiott full authority to handle her affairs (including her bank accounts) in the POA (on which Community First was legally entitled to rely and for which the law insulates Community First from liability to Brookshire), Community First had no duty to control Hiott as he proceeded under the POA. Further, to show a genuine issue of material fact on this cause of action, Brookshire must put forward evidence that Community First had prior notice of the need to supervise Hiott to prevent him from intentionally harming her. In South Carolina, this requires proof that the employer knew about prior acts of similar misconduct in order for the need for supervision to arise. *Moore by Moore v. Berkeley Cnty. Sch. Dist.*, 326 S.C. 584, 591, 486 S.E.2d 9, 13 (Ct. App. 1997). "However, if an employer has no knowledge that their employee has been engaged in wrongdoing, they cannot be found negligent for failing to act on circumstances of which they were not aware." *Doe v. Octapharma Plasma, Inc.*, No. 3:15-cv-01302, 2015 WL 3467027, *4 (D.S.C. June 2, 2015) (citing *Brockington v. Pee Dee Mental Health Ctr.*, 315 S.C. 214, 433 S.E.2d 16, 18 (Ct. App. 1993)). Brookshire's claim that Hiott had misappropriated bank funds and the funds of MPS

Incorporated as early as 2004 without any evidence of contemporaneous notice by Community First of this alleged misconduct is insufficient to meet this standard.[18]

Substantively, Brookshire, without citing to *any evidence whatsoever*, claims that there is a genuine issue of material fact as to whether Community First knew or should have known about Hiott's alleged 2004 conduct. There is not. Not only has Brookshire cited no evidence at all to support her new claims, she earlier argued to the trial court that Community First "did not discover" Hiott's manipulation and misappropriation of both customer and bank funds "until the Brookshire investigation in 2013." (*See* R. pp. 826-827). Community First agrees with the timing contained in Brookshire's statements to the trial court, and all of the evidence in this matter reflects no notice or indication to Community First before 2013—and certainly nothing from 2004—that Hiott had misappropriated any funds belonging to the bank or anyone else. (*See* R. p. 897) (describing telephone call of September 3, 2013, as beginning the formal investigation by auditor Don Jones into Hiott's conduct). Consequently, Brookshire's cause of action for negligent supervision fails as a matter of law, and the trial court correctly granted summary judgment to Community First.

K. The trial court correctly granted summary judgment to Community First on Brookshire's cause of action for breach of contract accompanied by a fraudulent act.

The trial court correctly granted summary judgment to Community First on Brookshire's cause of action for breach of contract accompanied by a fraudulent act. In her Complaint, Brookshire identifies the "contract" that Community First allegedly breached as "set forth above."

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[18] Brookshire claims that Hiott's actions with regard to Brookshire are similar to or part of the same "scheme" that Hiott allegedly used on other accounts at Community First. Initial Brief pp. 4, 5, 32. This is incorrect. There is no evidence in the record that Hiott held a power of attorney for any other account holder at Community First other than Brookshire. There is also no evidence in the record that any other customer of Community First has ever made claims similar to those made by Brookshire. (*See, e.g.* R. p. 1084).

(R. p. 42, ¶ 134). The only documents named in the Complaint that Brookshire could conceivably argue are contracts are the POA (R. p. 16, ¶¶ 6-7) and a revocable trust claimed to be settled and created by Plaintiff on June 22, 2007. (R. p. 16, ¶ 10). As Community First was not a party to either of these contracts, the trial court correctly granted summary judgment to Community First on this cause of action. *See Greene v. Quest Diagnostics Clinical Labs., Inc.*, 455 F. Supp. 2d 483, 495 (D.S.C. 2006) (describing the prerequisite establishment of a contract to this cause of action).

In her 59(e) Motion, Brookshire asserted a brand new theory of relief for this cause of action. For the first time, Brookshire alleged that the contract that Community First breached was the Account Agreement (*see* R. pp. 432-436) and also for the first time identified the contract term allegedly breached as only the implied "duty of good faith and fair dealing between the parties." (R. p. 1204). She repeats these arguments on appeal. Initial Brief p. 33. Brookshire also now identifies the alleged fraudulent act to apply to this cause of action as Community First representing to her counsel in December 2013 that four binders of documents produced at that time were a "complete record of documents showing the activities of the account." (R. p. 1204); Initial Brief p. 31.

In addition to being barred because it was raised for the first time in the 59(e) Motion, Plaintiff's new claim fails as a matter of law for at least three independent reasons. First, under its own terms, the Account Agreement was "terminat[ed]" upon closure and "tender of the account balance" to the customer, which occurred in February 2011. (R. pp. 435, 590, 592-595). The conduct that Plaintiff alleges constitutes the "fraud" took place almost three years later in December 2013. This is too remote in time from the alleged breach "to be construed as accompanying that breach." *Smith v. Canal Ins. Co.*, 275 S.C. 256, 260, 269 S.E.2d 348, 350

(1980). There also can be no breach of contract arising from conduct after the contract has terminated. *See Pennell & Harley v. Hearon*, 169 S.C. 16, 168 S.E. 188, 189 (1933) ("[I]t is elementary that there can be no action for breach of a contract without a valid contract upon which to ground such action."). And, of course, there must be a valid contract in place for a breach of contract accompanied by a fraudulent act cause of action to lie. *See Smith*, 275 S.C. at 260, 269 S.E.2d at 350. Without a current, valid contract, Brookshire's claim fails.

Second, because Brookshire does not allege that Community First violated an explicit term of the Account Agreement, any claim that Community First violated *only* the implied covenant of good faith and fair dealing fails as a matter of law. *RoTec Servs., Inc. v. Encompass Servs., Inc.*, 359 S.C. 467, 471-73, 597 S.E.2d 881, 883-84 (Ct. App. 2004) (holding that "there is no separate cause of action for breach of th[e] implied covenant" of good faith and fair dealing). Because Brookshire has failed to allege a breach of an explicit contract term, there can be no cause of action alleged for breach of the implied covenant of good faith and fair dealing as a matter of law.

Third, Brookshire provides no evidence, cites no testimony, and submits no documentation whatsoever to show that, as Brookshire argues, "[Community First], at [Brookshire's] request, provided her with *what [Community First] represented* to be a complete record of documents showing the activities of the account" and that "[t]he incomplete and edited set was then produced on December 17, 2013 and held out as a complete set." (R. p. 1204); Initial Brief p. 33 (emphasis added). There is nothing whatsoever in the evidentiary record to provide a scintilla of evidence that Community First represented that the documentation produced in December 2013 was "a complete set." "[F]actual statements of counsel, whether made during oral argument or in written briefs or memoranda," unaccompanied by admissible evidence may not be considered by the court in determining whether a genuine issue of material fact exists. *Gilmore*, 290 S.C. at 58, 348 S.E.2d

at 183. The only "evidence" Brookshire cites is Mr. Jones's testimony that prior to December 17, 2013, he provided "copies of some of my research out of my work and binders" to Community First in order for those items to be provided to Brookshire's counsel. (R. p. 1000, lines 9-16; p. 1001, lines 21-23). Mr. Jones testified that he overheard Commuity First employees discussing what to include in general terms, but he "did not have anything to do with assembling those binders." (R. p. 1001, lines 21-22). Mr. Jones did *not* testify about any representations made by Community First to Brookshire's representatives—the critical evidence that Brookshire alleges constitutes the fraud element of her cause of action. No evidence exists to support Brookshire's claims about actual representations made by Community First to Brookshire's representatives. The Court's award of summary judgment to Community First on this cause of action was fully warranted.

L. The trial court correctly awarded summary judgment to Community First on its offset and counterclaims against Brookshire.

The trial court correctly awarded summary judgment to Community First on its offset and counterclaims against Brookshire for the funds belonging to Community First that Hiott transferred to Brookshire's Account and which were thereafter used to pay her obligations or to further her interests. Brookshire has admitted that it was inappropriate for any bank funds to be deposited into her Account and affirmed that she has no claim to that money. (*See* R. p. 243, line 14 – p. 244, line 14). Consequently, no genuine issue of material fact exists with regard to the offset and counterclaims, and the trial court correctly awarded summary judgment to Community First.

Brookshire, however, argues that summary judgment to Community First is improper because the trial court inconsistently applied the statute of limitations. Brookshire is incorrect. As discussed above, the trial court held that the one-year statute of repose found at S.C. Code Ann. §

36-4-406(4) (2003); § 36-4-406(f) (Supp. 2019), as applicable, barred Brookshire's claims against Community First because all of the transactions and withdrawals about which Brookshire complains were disclosed on her monthly account statements. In addition, the trial court further found that there is no question of material fact that Brookshire both suspected Hiott of wrongdoing with regard to her account at Community First and received a packet of monthly account statements well over three years before she filed her lawsuit. Thus, all of Brookshire's claims were also barred under the discovery rule. (*See* R. p. 6).

The circumstances of Brookshire's statutorily presumed knowledge and the knowledge she admits she had well over three years before she filed her Complaint are a far cry from the circumstances in which Community First first learned that Hiott may have misappropriated funds belonging to Community First. Brookshire's attempt to conflate the two situations is unavailing. First, the UCC's statute of repose—applicable to bar Brookshire's claims as a bank account holder against Community First—has no impact on any applicable statutes of limitation that could apply as a defense to Community First's claims against Brookshire. Second, Brookshire has conceded and argued affirmatively that Community First did not discover Hiott's alleged manipulation and misappropriation of both customer and bank funds until 2013. Under Brookshire's own theory, the statute of limitations as to Community First did not begin to run until 2013 under the discovery rule. The evidence in this case confirms this date. *See supra* p. 47. Community First filed its counterclaim against Plaintiff on October 9, 2014—well within the three-year statute of limitations under S.C. Code Ann. § 15-3-530(5).

Neither the appropriate legal framework nor the applicable underlying facts allow the court to impose the exact same analysis on Community First's counterclaims as found in the analysis of Brookshire's claims against Community First. There is nothing inconsistent in the trial court's

findings with regard to the statutes of limitations or repose on these various claims. The trial court correctly granted summary judgment to Community First on its offset and counterclaims.

CONCLUSION

For the reasons discussed above, the trial court's orders granting Community First summary judgment on all claims should be affirmed in all respects.

Respectfully submitted,

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January 22, 2020
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

The Honorable J. Cordell Maddox, Jr., Circuit Court Judge
Case No. 2014-CP-37-00526
Appellate Case No. 2019-000614

Debi Baker Brookshire,

Appellant,

v.

Community First Bank, Inc. and
Benjamin Hiott,

Defendants,

Of Which, Community First
Bank, Inc. is

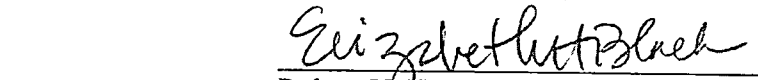
Respondent.

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SC Court of Appeals

CERTIFICATE OF COUNSEL

I hereby certify that the Respondent's Final Brief complies with Rule 211(b), SCACR.

Respectfully submitted,



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TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES.....ii

INTRODUCTION.....1

ARGUMENT..... 1

I. Appellant properly raised and preserved her arguments 1

II. The trial court incorrectly determined that no trust or fiduciary relationship existed between Appellant and Respondent 4

III. The trial court incorrectly granted summary judgment to Respondent for its claim for offset and counterclaims 4

IV. The trial court incorrectly found that equitable tolling or equitable estoppel do not apply to Appellant's claims.....6

V. The trial court erred by finding that Appellant's claims were both barred by the statute of repose contained in the UCC as well as a three-year statute of limitations 8

VI. Respondent mischaracterizes certain arguments and facts.....8

VII. CONCLUSION.....9

TABLE OF AUTHORITIES

CASES

Smith v. Fedor, 809 S.E.2d 612, 422 S.C. 118 (S.C. App., 2017).....1-2

National Time Share v. Maritime Ltd., 297 S.C. 43, 47, 374 S.E.2d 678, 680 (1988).....2

Sea Pines Plantation Co. v. Wells, 294 S.C. 266, 275, 363 S.E.2d 891, 896-97 (1987).....2

City of Newberry v. Newberry Electric Coop. Inc., 387 S.C. 254, 692 S.E.2d 510, 513 (2010).....5

OTHER AUTHORITIES

59(e), SCRCP 1-2

Rule 59(g), SCRCP 1

Rule 15(b), SCRCP 2

INTRODUCTION

Appellant's primary brief challenged numerous errors of law that occurred during the granting of summary judgment in favor of Respondent. The Respondent's brief, filed Novmber 4, 2019, does little to dispel these concerns or justify the errors committed by the court. This reply brief rebuts the Respondent's arguments and clarifies the legal issues, factual issues, and governing authorities.

ARGUMENTS

The trial court erroneously granted Summary Judgment in favor of Respondent for both its defense of Appellant's claims as well as Respondent's counterclaims against Appellant. The Order conflicts with existing precedent on both issues and in the analyses undertaken, creates novel issues for which no precedent exists. On each issue, the trial court's analysis is deeply flawed, and this Court after review of the issues should reverse.

I. Appellant properly raised and preserved her arguments.

a. Appellant provided a copy of its Rule 59(e), SCRCP motion to the trial judge three (3) days beyond the deadline proscribed in Rule 59(g), SCRCP. The trial judge had the discretion to deny Appellant's motion based on the missed deadline solely, or it had the discretion to rule on the merits of the motion; the choice it made. Given the approximately fifteen (15) months between the service of the motion on the judge and the court's ruling, clearly the court did not find that Respondent was prejudiced by the three day delay. Had the court denied Appellant's motion solely on 59(g) grounds, the issues raised would not have been preserved for appeal. As the court exercised its discretion and issued a ruling on the merits, those arguments are indeed preserved for appellate review. *Smith v. Fedor, 809 S.E.2d 612, 422 S.C. 118 (S.C. App., 2017), Smith v. Fedor, 809 S.E.2d 612, 422 S.C. 118 (S.C. App.,*

2017), reh'g denied Feb. 26, 2018, citing Gallagher v. Evert , 353 S.C. 59, 63-64, 577 S.E.2d 217, 219 (Ct. App. 2002). It is concerning that Respondent would make such an argument without acknowledging established caselaw to the contrary. Further, the court clearly did not rule that the arguments made in the 59(e) motion were first made in the motion as its Order rules on the merits of the motion and makes no mention that any arguments had not been previously raised.

b. Appellant's claims regarding the stock purchases and transfers are not in the complaint. The stock transfer records were produced by Respondent in discovery and argued in Appellant's memorandum in opposition to summary judgment. (R. pp. 836 – 837).There is no prejudice to Respondent at this stage. While Respondent did not consent to the issue being "tried," the standard is different at the summary judgment stage as opposed to trial. Further, Rule 15(b), SCRCP allows "the amendment of the pleadings to conform with the proof where the opposing party is not prejudiced." *National Time Share v. Maritime Ltd., 297 S.C. 43, 47, 374 S.E.2d 678, 680 (1988).* While the stock transfers are not specified in the complaint, their inclusion does not change or prejudice Respondent's defense of the issues, only clarifies specifically what Appellant alleges was taken from her. Rule 15(b) "permits the presentation of evidence within the issues made by the pleadings...**Nevertheless,** any variance between the pleadings and the proof offered to sustain them will not be deemed material if the adverse party is not surprised or misled to prejudice in maintaining a defense on the merits." *Sea Pines Plantation Co. v. Wells, 294 S.C. 266, 275, 363 S.E.2d 891, 896-97 (1987)(emphasis added).* Respondent in paragraph A.1. quotes Appellant's counsel out of context by contending that Appellant intimated that the the only "fraud" committed against Appellant was related to stock transfers. Counsel was addressing the stock transfers specificially and in that portion that Respondent cites to,

counsel clarifies that the stock transfers were the "last bit of fraud" committed by Respondent against Appellant.

c. Appellant argued in the original memo in opposition for SJ that Hiott's position allowed him to conceal and manipulate the origin and purpose of the transfers, making "legitimate transfers to BB&T and other bills look exactly like the illegitimate transfers." (R. p. 828). 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. (R. p. 1062, line 10 – p. 1064, line 23).

d. Appellant has consistently maintained, since its discovery during the discovery phase of the underlying proceeding, that the transfer of stock is part of her cause of action for conversion. Unbeknownst to Appellant, Defendant Hiott purchased 16,518 shares of Respondent Corporation stock, which he was certainly authorized to do under the POA. After Appellant's account with Respondent was closed and the POA had been revoked, Defendant Hiott, acting in his postion as an agent and senior vice president of Respondent bank and with no authority under a POA transferred all of the shares of stock to a third party, without Appellant's authorization or knowledge. (R. p. 1042; p. 1289, line 15 – p. 1290, line 11; pp. 836 – 837). Respondent's own expert further opines that the purchase and transfer of stock, under these circumstances, represent a violation of banking rules and regulations as well as a violation of IRS code requirements. (R. pp. 888 – 910, p. 1045, lines 1 – 23).

e. Respondent has repeatedly and erroneously argued that Appellant claimed her cause of action for breach of contract accompanied by a fraudulent act stemmed from the POA. Appellant has never argued that Respondent bank was a party to the POA or had any duties

to Appellant that emanated from the actual provisions of the POA. On the contrary, Appellant only entered into one (1) contract in which Respondent was a party, the trust account agreement. Such agreement was Exhibit A of Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgment.

II. The trial court incorrectly determined that no trust or fiduciary relationship existed between Appellant and Respondent.

a. Respondent contends that there is NO evidence that Appellant and Respondent entered into any sort of trust agreement. The documentation for the account and the reports of the experts in this case is evidence that a trust relationship was created. (R. pp. 888 – 910; 1047 – 1048). Appellant previously was involved in the creation of one (1) trust with BB&T. Creation of one (1) trust hardly rises to the level of expert on the matter. Given the documents as well as Appellant's deposition testimony, it is a question of fact for the jury to determine whether a trust relationship existed. Further, Respondent's argument against a trust relationship seems to focus solely on its allegation that a trust wasn't created because Respondent wasn't acting as trustee.

III. The trial court incorrectly granted summary judgment to Respondent for its claim for offset and counterclaims.

a. Respondent in it's motion for summary judgment and subsequent arguments, has requested three (3) different amounts for its offset and counterclaim. Even at this stage, after a judgment has been entered in its favor, Respondent argues that it is owed a different amount than was awarded by the trial court. (P. 11, Respondent's Initial Brief.) Such discrepancy on its own raises a question of fact for a jury to make a determination of a "correct" amount and represents an abuse of discretion by the trial court in the granting of summary judgment.

b. Respondent contends that because it didn't discover Hiott's activities until 2013, its Statute of Limitations does not begin to run until then. However, the Respondent, either inadvertently or disingenuously, fails to acknowledge the remaining language of the "discovery rule." The Statute of Limitations begins to run when a party knew or **should have known** of a cause of action. *City of Newberry v. Newberry Electric Coop. Inc.*, 387 S.C. 254, 692 S.E.2d 510, 513 (2010). Is it reasonable to think that a federally regulated bank should not have had systems and internal checks in place in order to catch fraud occurring from within its walls? Hiott began his scheme, for which he was convicted and went to federal prison, in 2004. For a bank to claim that they should not have been able to discover such fraud for approximately 9 years is ridiculous. Even if the bank did not directly catch on to Hiott's scheme, the trial court still inconsistently applied analysis of the SOL. Respondent contends that funds were removed from its own accounts and placed in to Appellant's account. (R. pp. 1019 – 1040; 1071 – 1072). Respondent argues that in 2010 Appellant raised concerns to the Respondent about Hiott's actions. If Respondent can claim that Appellant was on notice at such time, the same reasoning that Respondent would have been made aware of the suspected issues in her account which would include transers from Respondent's accounts to Appellant. The report of Respondent's external auditor and expert represents that "[a]ccording to CEO Shepard, he became aware of Brookshire's dissatisfaction with, and attorney contact regarding, BLH's (Hiott) handling of the Brookshire account at CFB in the **latter months of 2010 or early 2011**. The CEO informed PCS that he retained the services of attorney Jim Williams and directed BLH to work with Williams to resolve Brookshire's concerns." (R. pp. 888 – 910). Mr. Williams had communication with counsel for Appellant no later than December 6, 2010 asking for details of transactions from Appellant's account. (R. p. 959). Those records would have

shown Respondent that its own funds went into the account of Appellant. Further, at the very least there remains a question of material fact whether a bank whose audit committee didn't meet for an entire year should have known that a cause of action exists. (R. p. 1095, lines 6 – 8). Given the same reasoning it attempts to apply to Appellant, should the Respondent not have a duty to review the records from its own account and take action on what were clearly "unauthorized" transfers. The account was closed in February of 2011, closed with funds directly transferred from Respondent to Appellant. If anyone "slept on their rights" it is Respondent.

IV. The trial court incorrectly found that equitable tolling or equitable estoppel do not apply to Appellant's claims.

a. When Hiott is conducting his business under the POA with lawyers and others, it is impossible to separate and determine whether he is acting pursuant to the POA or in his capacity as agent and senior vice president of Respondent. Had he taken steps to act as a complete third party when acting under the POA the Respondent may have an argument that it has no liability. However, such actions would have most assuredly led to discovery of Hiott's scheme as other members of the bank would have become aware of his actions. Instead, he acted in both capacities simultaneously, serving two masters (R. pp. 1047 – 1048), in a situation against normal banking practice (R. pp. 1047 – 1048; p. 1062, line 10 – p. 1064, line 23) but conducted in this instance with the knowledge and consent of the president of the bank. (R. p. 1101). Additionally, because of his position with Respondent, he was able to take advantage of the POA in a manner not available to other holders of a POA. (R. p. 1062, line 10 – p. 1064, line 23). Even within single transactions, such as when funds from Appellant's account were directly used to make loan payments of debtors to the bank (R. pp. 1103 – 1114). Hiott was acting as agent of both Appellant and

Respondent and such actions led to the direct benefit of Respondent. Respondent is correct that under a completely above-board transaction involving the holder of a POA it would have no duty to further investigate the authority granted under the POA. However, in a situation such as this, Respondent cannot hide behind the POA to excuse its own actions. The simple fact remains that Hiott perpetrated his scheme using his position at the bank, with the use of bank resources, and while exploiting the severe lack of normal banking practies by Respondent. (R. p. 1062, line 10 – p. 1064, line 23). Additionally, Respondent's contention that Appellant conceded that the POA authorized *all* dispersements from the account again mischaracterizes the facts and arguments. Respondent's Initial Brief, 15 (emphasis in original). Appellant has maintained that, under the POA, Hiott was authorized to make dispersements pursuant to the powers granted to him by the POA. While the distinction may be subtle, it is important to note that the Respondent again mischaracterizes the positions of the parties.

b. The Respondent argues that Appellant "slept on her rights" and because of such, should be barred from pursuing any claims. Respondent argues that a fully formed theory of recovery does not need to exist for a statute of limitations to begin to run, only the thought that wrongdoing may have occurred. In the instant case, $500,000 dollars was removed from Appellant's account mere days after being deposited with Respondent. The only notation that would provide any guidance as to the destination or purpose of those funds was listed as "miscellaneous debit" on a statement Appellant testified she did not receive at the time. Again, had Hiott been acting as a third party holder of a POA, he would have been authorized to dispurse those funds, but he would not be the one creating the notation of the purpose. Further, Appellant's inquiry into the ultimate destination of those specific funds began in 2010 when she hired Kathleen McDaniel to locate the destination. Both

Hiott and later other agents of Respondent represented to Appellant, through her representatives, that the funds were first used to purchase annuities for her children. (R. p. 945; p. 957; pp. 991 – 997; p. 1116; p. 1118). Until July of 2013 Appellant was told by agents of Respondent that $500,000 was transferred from her account to purchase an annuity. Given those undisputed facts, Appellant would have no cause of action against Respondent or Hiott or any other potential defendant.

V. The trial court erred by finding that Appellant's claims were both barred by the statute of repose contained in the UCC as well as a three-year statute of limitations.

a. Respondent consistently argues out of both sides of its mouth. At times it acknowledges that "Brookshire has conceded, all of Hiott's disbursements from the account were authorized by the POA." And then on the very same page of its Initial Brief argues that the statute of repose contained in the UCC controls because Appellant in her deposition stated that a $500,000 transfer would have not been authorized by her. (Respondent's Initial Brief at 21-22.)

VI. Respondent mischaracterizes certain arguments and facts.

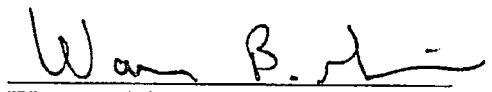
a. The Respondent alleges that no evidence supports the claims that Respondent lacked internal controls or failed to utilize accepted banking practices, only "imporoper speculation." In fact, Respondent's own expert, as well as Appellant's expert opine that Hiott's actions were made possible because of the lack of these controls and practices. (R. p. 1045, lines 1 – 23; pp. 1047 – 1048; p. 1062, line 10 – p. 1064, line 23; p. 1101, lines 6 – 25). As it relates to the stock purchases, Respondent's contention that because Hiott was authorized by Respondent to purchase stock absolves Respondent from liability is without merit and represents a mischaracterization of the evidence that Hiott effected such stock transfers utilizing his position and resources of Respondent. (R. p. 1045, lines 1 – 23; pp.

1047 – 1048; p. 1062, line 10 – p. 1064, line 23; p. 1101, lines 6 – 25).

b. Respondent argues that Respondent never represented to Appellant that the documentation supplied to counsel was a complete set. The numerous letters from multiple counsel to Respondent asking for documents and following up with the request for complete sets of documents are in fact evidence to the contrary. It further is concerning that Respondent now seems to be alleging that it didn't provide a complete set of records to Appellant; only that it never represented that the incomplete records were in fact, complete. (Respondent's Initial Brief at 47). Essentially, it seems that Respondent admits to acting in a manner contrary to good faith, but claims that such actions cannot be held against it. Appellant would point out that Respondent has not previously made such an argument and as such, using Respondent's own arguments, are untimely.

CONCLUSION

The findings and conclusions by the trial court should be reviewed by this Court. On all issues presented, the trial deviated from binding precedent and created novel issues and analyses. The Appellant therefore respectfully requests that this Court grant the relief sought herein, inquire further into these matters, and reverse the trial court.



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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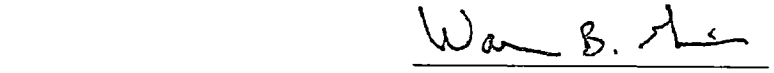
Respondent.

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The undersigned certified that this Final Reply Brief complies with Rule 211(b), SCACR.

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THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Debi Baker Brookshire, Appellant,

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Community First Bank and Benjamin Hiott, Defendants,

of which Community First Bank is the Respondent.

Appellate Case No. 2019-000614

Appeal From Oconee County
Cordell Maddox, Jr., Circuit Court Judge

Unpublished Opinion No. 2022-UP-163
Submitted February 1, 2022 – Filed April 6, 2022

AFFIRMED IN PART AND REVERSED IN PART

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Robert Yates Knowlton, Sr., and Elizabeth Halligan Black, both of Haynsworth Sinkler Boyd, PA, of Columbia, for Respondent.

PER CURIAM: Debi Brookshire appeals a summary judgment in favor of Community First Bank (Community First) on the claims she brought against it. Brookshire further appeals a summary judgment in favor of Community First on the counterclaims it brought against her. We affirm the summary judgment on Brookshire's claims but reverse the summary judgment on Community First's counterclaims.

As to Brookshire's argument the circuit court erred in finding the statute of limitations barred her claims, the record shows multiple points more than three years before she brought this action when Brookshire knew or should have known she had claims against Community First. *See* S.C. Code Ann. §§ 15-3-530(5), -535 (2005) (providing a three-year statute of limitations in civil actions for "any injury to the person or rights of another," which begins when the injured party "knew or by the exercise of reasonable diligence should have known that he had a cause of action"). Brookshire filed this suit in September 2014, yet she told someone in 2010 that Benjamin Hiott—a bank employee whom Brookshire empowered to handle her finances—was stealing her money. Brookshire retained a lawyer who (after considerable effort) obtained copies of Brookshire's bank statements in December 2010. The lawyer wrote Hiott in February 2011 about "serious inconsistencies" and "serious matters" related to Brookshire's finances, and Brookshire closed the Community First account in February 2011 at her lawyer's instruction. There is no dispute Brookshire knew throughout that Hiott was Community First's vice president and was handling her finances using an account at Community First. We agree with the circuit court that these events would lead a reasonable person to realize a claim against Community First might exist. *See Dean v. Ruscon Corp.*, 321 S.C. 360, 364, 468 S.E.2d 645, 647 (1996) (finding the statute of limitations triggering event is "notice that a claim against another party might exist" (emphasis omitted)).

As to Brookshire's argument the circuit court erred in finding equitable tolling did not suspend the limitations clock and that Community First was not estopped from asserting the statute of limitations, we agree with the circuit court that the circumstances here did not warrant the application of either doctrine. None of Community First's alleged deceitful acts prevented Brookshire from filing this action or have any bearing on the fact that grounds for a lawsuit were reasonably ascertainable more than three years before this suit was filed. *See Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr.*, 386 S.C. 108, 115-16, 687 S.E.2d 29, 32 (2009) (stating a court may apply equitable tolling to "serve the ends of justice where technical forfeitures would unjustifiably prevent a trial on the merits," which is "typically . . . where a litigant was prevented from filing suit because of an

extraordinary event beyond his or her control"). Nor did Hiott's repeated insistence until 2013 that he placed $500,000 of the funds in an annuity for the children in Brookshire's custody prevent her from filing or learning she had grounds to sue because, according to Brookshire's own testimony, no circumstances would have justified such a large withdrawal. *See id.* Further, the circumstances do not warrant equitable estoppel because Community First did not assure Brookshire that there were no problems with her account or that she did not need to sue, and as noted above, the circumstances gave reasonable notice a claim might exist. *Black v. Lexington Sch. Dist. No. 2*, 327 S.C. 55, 61, 488 S.E.2d 327, 330 (1997) (holding the court may apply equitable estoppel when the defendant induced the injured party's delay in filing by "suggest[ing] a lawsuit is not necessary").

As to Brookshire's argument section 15-3-110 of the South Carolina Code (2005) makes the statute of limitations inapplicable, we agree with Community First that this statute applies to bank instruments that are not at issue here. *See* S.C. Code Ann. § 15-3-110 (2005) (providing the statute of limitations is inapplicable in "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"). Based on the foregoing, we find the circuit court did not err in granting summary judgment on Brookshire's claims.

Brookshire argues the circuit court erred in finding the statute of limitations did not bar Community First's 2014 counterclaims. Community First counters that it did not discover Hiott's misconduct until 2013. We agree with Brookshire. Her lawyer alerted Community First to potential misconduct throughout the end of 2010. She wrote Hiott, wrote other officers of Community First, spoke with other officers of Community First, and spoke with counsel that Community First retained to resolve Brookshire's questions. At best, there is a jury question whether these communications would have caused a reasonable person in Community First's position to investigate and discover that a majority of the funds Hiott used to conceal his misconduct from Brookshire belonged to Community First. *See Dean*, 321 S.C. at 364, 468 S.E.2d at 647 (stating that notice "that a claim against another party might exist" is measured by whether the circumstances "place a reasonable person of common knowledge and experience on notice" rather than whether they placed the actual injured party on notice (emphasis omitted)). Accordingly, we find the circuit court erred in granting summary judgment to Community First on its own counterclaims.

In light of the reasons given above, we need not reach the remaining arguments. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court does not need to review

remaining issues when its determination of a prior issue is dispositive). The order of the circuit court is

AFFIRMED IN PART AND REVERSED IN PART.[1]

THOMAS, MCDONALD, and HEWITT, JJ., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

RECEIVED
Apr 21 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Appellate Case No. 2019-000614

Debi Baker Brookshire,

Appellant,

v.

Community First Bank and
Benjamin Hiott,

Defendants,

Of Which, Community First
Bank is

Respondent.

PETITION FOR REHEARING OF APPELLANT

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ATTORNEYS FOR APPELLANT

Appellant Debi Baker Brookshire ("Brookshire" or "Appellant"), pursuant to Rules 219 and 221 of the South Carolina Appellate Court Rules, request that this Honorable Court grant a rehearing in this matter. Respondent respectfully asserts that the issues set forth below warrant reconsideration by this Court.[1]

STANDARD FOR A PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR a properly drawn petition for rehearing must state "the points supposed to have been overlooked or misapprehended by the court." *See Kennedy v. S.C. Retirement Sys*, 349 S.C. 531, 564 S.E.2d 322 (2001); *see also* James A. Atkins, 16 S.C. JUR. APPEAL AND ERROR § 147 (2007). "The purpose of such a petition (for rehearing) is to aid the court in deciding correctly a case heard by it." *Arnold v. Carolina Power & Light Co.*, 168 S.C. 163, 167 S.E. 234 (1933).

In applying the aforementioned concept or articulating points and issued which were "overlooked or misapprehended" the South Carolina Supreme Court has suggested that rehearing can be appropriate where the court issued a decision without keeping a material principle "fully in mind." *Green v. E.B. Gresham Co.*, 168 S.C. 395, 167 S.E. 659 (1933) (implying that decision by a court "unmindful" of legal principle, such as the availability of an affirmative defense, can be candidate for rehearing).

STATEMENT OF THE CASE

The Appellant filed a Summons and Complaint on September 8, 2014 alleging six (6) causes of action against the Respondent and Benjamin Hiott, including Breach of Fiduciary Duty, Conversion, Negligent Supervision, Negligence/Gross Negligence,

[1] Appellant incorporates by reference her statement of facts and arguments set forth in her Final Brief on file with the Court.

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, SCRCP 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 superceding, 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), SCRCP 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 hereby petitions for rehearing of this Court's affirmation of the trial

court's summary judgment order dismissing all of Appellant's claims.

GROUNDS FOR PETITION

For the reasons set forth below, Appellant respectfully contends the Court misapprehended, misconstrued, or overlooked the laws and rules regarding the application of S.C. Code Ann. §15-3-110 and the statute of limitations impose upon the Appellant.

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.

It is necessary that the Court issues a ruling as to why the debts owed to the Appellant by the Respondent do not rise to the level of bank instrument as described 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." 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 addresses 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 caselaw, the question remains as to whether or not these transactions and the documents 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 to 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 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.

"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 E*st. 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).

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 become time-barred.

Like the cases above, 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.

Further, when Defendant Hiott removed funds from Appellant's account to purchase Respondent' 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. (R. p. 1042, 1047 – 1048).

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. Theses causes of action allege separate and distinct or continuing injuries and as such, have statutes of limitations that begin to run at different times.

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. (R. pp. 962, lines 1 – 16, 974 – 975, 980). 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. (R. p. 1000, line 5 – p. 1001, 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.

Appellant respectfully requests this Court for a rehearing and to 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 grant its Petition for Rehearing and reconsider its decision pursuant to oral argument as per the provisions of the South Carolina Appellate Court Rules.

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April 21, 2022
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RECEIVED
Apr 21 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 2014-CP-37-00526
Appellate Case No. 2019-000614

Debi Baker Brookshire,

Appellant,

v.

Community First Bank and
Benjamin Hiott,

Defendants,

Of Which, Community First
Bank is

Respondent.

CERTIFICATE OF COUNSEL

The undersigned certified that this Petition for Rehearing complies with Rule 221, SCAR.

April 21, 2022

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Community First Bank and
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Of Which, Community First
Bank is

Respondent.

PROOF OF SERVICE

I certify that I have served Appellant's Petition for Rehearing on the following recipients by electronic mail, pursuant to the Supreme Court's Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules:

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Good afternoon,

Attached please find Appellant's Petition for Rehearing filed electronically with the Court today in the above-referenced matter.

Thank you,

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Appellant's Petition for Rehearing .pdf
194K

The South Carolina Court of Appeals

Debi Baker Brookshire, Appellant,

v.

Community First Bank and Benjamin Hiott, Defendants,

Of Which Community First Bank is the Respondent.

Appellate Case No. 2019-000614

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Paula A. Thomas J.

Stephanie P. McDonald J.

J.

Columbia, South Carolina

cc:
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Robert Yates Knowlton, Sr., Esquire

FILED
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The Honorable J. Cordell Maddox, Jr.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 2014-CP-37-00526
Appellate Case No. 2019-000614

RECEIVED
JAN 22 2020
SC Court of Appeals

Debi Baker Brookshire,

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v.

Community First Bank and
Benjamin Hiott,

Defendants,

Of Which, Community First
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Respondent.

RECORD ON APPEAL
Volume I of III

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INDEX

Form 4 Order of August 29, 2017 1
Form 4 Order of September 8, 2017 3
Order of September 26, 2017 5
Form 4 Order of March 22, 2019 11

PLEADINGS

Complaint 12
Community First's Answer 45
Brookshire's Answer to Counterclaims 56
Community First's Motion for Summary Judgment 60
Exhibit A 80
Exhibit B 84
Community First's Memorandum in Support of Summary Judgment 126
Exhibit 1 170
Exhibit 2 286
Exhibit 3 291
Exhibit 4 294
Exhibit 5 297
Exhibit 6 306
Exhibit 7 315
Exhibit 8 318
Exhibit 9 320
Exhibit 10 324
Exhibit 11 327
Exhibit 12 338
Exhibit 13 340
Exhibit 14 343
Exhibit 15 355
Exhibit 16 357
Exhibit 17 362
Exhibit 18 370
Exhibit 19 384

Exhibit 20 386
Exhibit 21 388
Exhibit 22 390
Exhibit 23 392
Exhibit 24 395
Exhibit 25 437
Exhibit 26 447
Exhibit 27 459
Exhibit 28 464
Exhibit 29 467
Exhibit 30 472
Exhibit 31 474
Exhibit 32 482
VOLUME II
Exhibit 33 487
Exhibit 34 500
Exhibit 35 505
Exhibit 36 508
Exhibit 37 589
Exhibit 38 591
Exhibit 39 596
Exhibit 40 598
Exhibit 41 636
Exhibit 42 644
Exhibit 43 649
Exhibit 44 658
Exhibit 45 712
Exhibit 46 740
Exhibit 47 754
Exhibit 48 770
Exhibit 49 777
Exhibit 50 780
Exhibit 51 782

Exhibit 52 808
Exhibit 53 810
Exhibit 54 817
Exhibit 55 820
Exhibit 56 822
Brookshire's Memorandum in Opposition to Summary Judgment 825
Exhibit A 866
Exhibit B 882
Exhibit C 887
Exhibit D 911
Exhibit E 915
Exhibit F 932
Exhibit G 935
Exhibit H 938
Exhibit I 942
Exhibit J 944
Exhibit K 949
Exhibit L 953
Exhibit M 956
Exhibit N 958
Exhibit O 960
Exhibit P 963
Exhibit Q 965
Exhibit R 967
Exhibit S 971
Exhibit T 973
Exhibit U 976
Exhibit V 978
VOLUME III
Exhibit W 981
Exhibit X 988
Exhibit Y 990
Exhibit Z 998

Exhibit AA 1002
Exhibit BB 1006
Exhibit CC 1010
Exhibit DD 1014
Exhibit EE 1018
Exhibit FF 1041
Exhibit GG 1043
Exhibit HH 1046
Exhibit II 1056
Exhibit JJ 1060
Exhibit KK 1065
Exhibit LL 1087
Exhibit MM 1093
Exhibit NN 1096
Exhibit OO 1099
Exhibit PP 1102
Exhibit QQ 1107
Exhibit RR 1111
Exhibit SS 1115
Exhibit TT 1117
Exhibit UU 1119
Exhibit VV 1123
Exhibit WW 1131
Community First's Reply Memorandum in Further Support of Summary Judgment .. 1137
Exhibit 57 1148
Exhibit 58 1167
Exhibit 59 1171
Exhibit 60 1177
Exhibit 61 1187
Exhibit 62 1191
Brookshire's Motion to Alter or Amend the Judgment Pursuant to Rule 59(e), SCRCP and Support Memorandum 1197

TRANSCRIPTS

Summary Judgment Motion Hearing Transcript heard on December 13, 2016 1208

Motion to Alter or Amend Pursuant to 59(e) Hearing Transcript heard on December 6, 2017 1296

Court's Exhibit 1 from December 6, 2017 Hearing 1334

April 17, 2017 email from Law Clerk Courtney R. Huether to all counsel 1335

Brookshire's Email, Letter, and Certificate of Service of October 19, 2017 1336

Certificate of Appellant 1339

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Oconee
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2014-CP-37-00526

Debi Baker Brookshire
PLAINTIFF(S)

Community First Bank Inc.
Benjamin Lee Hiott
DEFENDANT(S)

Submitted by: The Honorable J. Cordell Maddox, Jr.	Attorney for : ☐ Plaintiff ☐ Defendant or ☒ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** *(CHECK REASON)*: ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other.

☐ **ACTION STRICKEN** *(CHECK REASON)*: ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other.

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other.

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk: All Motions for Summary Judgment are Denied.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

J. Maddox — 2131 — 8/29/17
Circuit Court Judge — Judge Code — Date

ELECTRONICALLY FILED - 2017 Aug 29 4:44 PM - OCONEE - COMMON PLEAS - CASE#2014CP370526

ELECTRONICALLY FILED - 2017 Aug 29 4:44 PM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2014 CP-37-00526

Debi Baker Brookshire
PLAINTIFF(S)

Community First Bank Inc.
Benjamin Lee Hiott
DEFENDANT(S)

Submitted by: The Honorable J. Cordell Maddox, Jr.

Attorney for: ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☒ See Page 2 for additional information.

☐ **ACTION DISMISSED** *(CHECK REASON)*: ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** *(CHECK REASON)*: ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court.

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk: Benjamin Lee Hiott's Motion for Summary Judgment is Denied. Formal Order to Follow.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order.

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

J. Cordell Maddox — 2134 — 9/7/17
Circuit Court Judge — Judge Code — Date

ELECTRONICALLY FILED - 2017 Sep 08 9:32 AM - OCONEE - COMMON PLEAS - CASE#2014CP370526

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge | Judge Code | Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

The Order entered and filed on August 29, 2017, at 4:44 PM contained an error in denying "all motions" for summary judgment. This Order replaces and supersedes in its entirety that August 29, 2017 Order.

ELECTRONICALLY FILED - 2017 Sep 08 9:32 AM - OCONEE - COMMON PLEAS - CASE#2014CP370526

ELECTRONICALLY FILED - 2017 Sep 26 11:30 AM - OCONEE - COMMON PLEAS - CASE#2014CP370526

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS

Debi Baker Brookshire,

Plaintiff,

v.

Community First Bank, Inc. and Benjamin Lee Hiott,

Defendants.

Case No. 2014-CP-37-526

ORDER GRANTING DEFENDANT COMMUNITY FIRST BANK, INC.'S MOTION FOR SUMMARY JUDGMENT AND DENYING DEFENDANT BENJAMIN LEE HIOTT'S MOTION FOR SUMMARY JUDGMENT

This matter is before the Court on Defendant Community First Bank, Inc.'s ("Community First") Motion for Summary Judgment on all claims ("Community First's Motion"), filed October 13, 2016, and Defendant Benjamin Lee Hiott's ("Hiott") Motion for Summary Judgment ("Hiott's Motion"), filed October 19, 2016. The Court heard oral argument on these Motions on December 13, 2016. Appearing for Plaintiff Debi Baker Brookshire ("Plaintiff") were W. Barney Giese, Esq. and M. David Scott, Esq. Appearing for Community First were Robert Y. Knowlton, Esq. and Elizabeth H. Black, Esq., and appearing for Hiott was Daryl G. Hawkins, Esq. Prior to or during the December 13, 2016 hearing, Community First submitted a Memorandum in Support of its Motion for Summary Judgment, a Reply Memorandum in Further Support of its Motion for Summary Judgment, a combined 61 exhibits, and presented two demonstrative exhibits during oral argument. Prior to or during the December 13, 2016 hearing, Plaintiff submitted a Memorandum in Opposition to Defendant CFB and Defendant Hiott's Motions for Summary Judgment along with 49 exhibits.

ELECTRONICALLY FILED - 2017 Sep 26 11:30 AM - OCONEE - COMMON PLEAS - CASE#2014CP370526

As to Community First's Motion, after considering these various submissions and the arguments of counsel, Community First's Motion for Summary Judgment is GRANTED as to all claims for the reasons set forth in its motion, memoranda, and arguments, as follows:

1. Plaintiff's power of attorney to Hiott bars her claims against Community First because there is no genuine issue of material fact that, by the power of attorney, Plaintiff authorized Hiott to take all of the actions he did with regard to Plaintiff's account at Community First, and the law imposes no duty on Community First to monitor or regulate Hiott's activities and decisions undertaken pursuant to the power of attorney.

2. Plaintiff's claims that Hiott's disbursements from Plaintiff's account at Community First were unauthorized are time barred under the Uniform Commercial Code because there is no genuine issue of material fact that Plaintiff failed to timely challenge the disbursements.

3. All of Plaintiff's claims are time barred pursuant to S.C. Code Ann. § 15-3-530(5) because there is no genuine issue of material fact that Plaintiff received statements for the subject account more than three years prior to August 1, 2014, and Plaintiff believed that Hiott had misappropriated her funds or otherwise was untruthful with her about her affairs more than three years prior to August 1, 2014.

4. S.C. Code Ann. § 15-3-110 does not apply to this matter for the reasons outlined in Community First's Reply Memorandum.

5. Neither equitable tolling nor equitable estoppel apply to save Plaintiff's time-barred claims for the reasons outlined in Community First's memoranda.

6. Community First is entitled to summary judgment on Plaintiff's breach of fiduciary duty cause of action because there is no genuine issue of material fact that Community First did not owe fiduciary duties to Plaintiff with regard to the checking account at issue in this matter. Further,

ELECTRONICALLY FILED - 2017 Sep 26 11:30 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

there is no genuine issue of material fact that Hiott was not serving as Community First's agent in making disbursements from Plaintiff's account at Community First, but was rather acting as Plaintiff's agent under the power of attorney Plaintiff gave to Hiott.

7. Community First is entitled to summary judgment on Plaintiff's cause of action for conversion for the reasons outlined in Community First's motion and memoranda.

8. Community First is entitled to summary judgment on Plaintiff's cause of action for negligent supervision for the reasons outlined in Community First's motion and memoranda.

9. Community First is entitled to summary judgment on Plaintiff's cause of action for negligence/gross negligence for the reasons outlined in Community First's motion and memoranda.

10. Community First is entitled to summary judgment on Plaintiff's cause of action for breach of contract accompanied by a fraudulent act for the reasons outlined in Community First's motion and memoranda.

11. Community First is entitled to summary judgment on Plaintiff's cause of action for an accounting for the reasons outlined in Community First's motion and memoranda.

12. Community First is entitled to summary judgment on its offset and counterclaims against Plaintiff in the total amount of $780,855.58 for the reasons outlined in Community First's motion and memoranda. Further, there is no genuine issue of material fact that the statute of limitations does not bar Community First's counterclaim.

As to Hiott's Motion for Summary Judgment, after considering these various submissions and the arguments of counsel, Hiott's Motion for Summary Judgment is DENIED.

This Order further replaces and supersedes in its entirety the Form 4 Order entered on August 29, 2017, as that August 29, 2017 Order contained an error in denying "all motions" for

summary judgment. This Order is supplemental to the Form 4 Order entered on September 8, 2017, and constitutes the forthcoming formal order referenced therein.

It is therefore ORDERED:

1. Community First is granted summary judgment in its favor on all claims asserted against it, and Plaintiff's claims against Community First are hereby dismissed with prejudice.

2. Community First is granted summary judgment in its favor on its counterclaims asserted against Plaintiff, and a judgment in the principal amount of $780,855.58 is hereby rendered in Community First's favor and against Plaintiff.

3. Pursuant to Rule 54(b), SCRCP, this Order is a final judgment as to all of Plaintiff's claims against Community First and as to all of Community First's claims against Plaintiff. There is no just reason for delay, and the Clerk is hereby directed to so enter such final judgment.

4. Hiott's motion for summary judgment is denied.

5. The Form 4 Order entered on August 29, 2017, is hereby replaced and superseded in in its entirety by this Order.

And it is so ordered.

_____
The Honorable J. Cordell Maddox, Jr.
Judge, Tenth Judicial Circuit

Dated: _____, 2017

ELECTRONICALLY FILED - 2017 Sep 26 11:30 AM - OCONEE - COMMON PLEAS - CASE#2014CP370526

ELECTRONICALLY FILED - 2017 Sep 26 11:30 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

Oconee Common Pleas

Case Caption: Debi Baker Brookshire VS Community First Bank Inc , defendant, et al

Case Number: 2014CP3700526

Type: Order/Other

So Ordered

s/ J. Cordell Maddox Jr.

Electronically signed on 2017-09-25 16:09:46 page 5 of 5

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TENTH JUDICIAL CIRCUIT
COUNTY OF OCONEE	)	
	)	CASE NO.: 2014-CP-37-00526
	)	
Debi Baker Brookshire,	)	
	)	
Plaintiff,	)	
	)	
v.	)	ORDER DENYING PLAINTIFF'S MOTION
	)	TO ALTER OR AMEND JUDGMENT
Community First Bank, Inc., et al.,	)	
	)	
Defendants.	)	
	)	

This matter came before the Court through the Plaintiff's Motion to Alter or Amend Judgment. After careful consideration and review, the Court finds that the Plaintiff's Motion to Alter or Amend Judgment should be denied.

It is hereby ordered that the Plaintiff's Motion to Alter or Amend Judgment is denied.

IT IS SO ORDERED.

The Honorable J. Cordell Maddox, Jr.
South Carolina Tenth Judicial Circuit Court Judge

Anderson, South Carolina

_____, 2019

ELECTRONICALLY FILED - 2019 Mar 22 4:01 PM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

ELECTRONICALLY FILED - 2019 Mar 22 4:01 PM - OCONEE - COMMON PLEAS - CASE#2014CP3700526



Oconee Common Pleas

Case Caption: Debi Baker Brookshire VS Community First Bank Inc , defendant, et al

Case Number: 2014CP3700526

Type: Order/Other

So Ordered

s/ J. Cordell Maddox Jr.

Electronically signed on 2019-03-22 14:02:45 page 2 of 2

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE)

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

DEBI BAKER BROOKSHIRE) CIVIL ACTION COVERSHEET
Plaintiff(s))

2014 SEP -8 P 3:21

2014-CP-37-526

vs.)

COMMUNITY FIRST BANK, INC. AND BENJAMIN LEE HIOTT)

Defendant(s))

Submitted By: W. Barney Giese
Address: The Giese Law Firm, LLC
1315 Blanding Street, Columbia, SC 29201

SC Bar #: 2219
Telephone #: (803)708-6767
Fax #: (803) 708-6769
Other:
E-mail: barneygiese@gmail.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (*Check all that apply*)

**If Action is Judgment/Settlement do not complete*

☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Other (199)

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20___-CP-___-_____
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

Torts – Personal Injury
- ☐ Assault/Slander/Libel (300)
- ☒ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Other (399)

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499)

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Administrative Law/Relief
- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture Consent Order (850)
- ☐ Other (899)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)
- ☐ Other (799)

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Comm. (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Sexual Predator (510)

Copies to: pd 150.00
Atty___(P)___(P)
DSS___other Courtesy
Mailed___Boxed___handed ✓

Submitting Party Signature: W. B. A. **Date:** 09/08/2014

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)

4. Cases are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF OCONEE	)	Case No.: 2014-CP-37-526
Debi Baker Brookshire,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**SUMMONS**
	)	**(JURY TRIAL DEMANDED)**
Community First Bank, Inc. and Benjamin Lee Hiott	)	
	)	
	)	
Defendants.	)	
	)	

FILED OCONEE,SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2014 SEP -8 P 3:21

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action of which a copy is herewith served upon you, and to serve a copy of your answer to said Complaint on the subscribed at 1315 Blanding Street, Columbia, South Carolina 29201 within thirty (30) days after the service hereof; exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

W. Barney Giese, Esquire
The Giese Law Firm, LLC
1315 Blanding Street
Columbia South Carolina 29201
(803) 708-6767

ATTORNEY FOR THE PLAINTIFF

Columbia, South Carolina
September 8, 2014

ENTERED
NJ

STATE OF SOUTH CAROLINA)
)
COUNTY OF OCONEE)

COURT OF COMMON PLEAS

Case No.: 2014-CP-37-526

Debi Baker Brookshire,)
)
Plaintiff,)
)
v.)
)
Community First Bank, Inc. and)
Benjamin Lee Hiott)
)
)
Defendants.)

COMPLAINT
(JURY TRIAL DEMANDED)

FILED OCONEE, SC
BEVERLY H. WILLIAMS
CLERK OF COURT
2014 SEP -8 P 3:21

TO: DEFENDANTS ABOVE NAMED:

The Plaintiff, Debi Baker Brookshire, by her undersigned attorneys, complains of the Defendants, Community First Bank, Inc. and Benjamin Lee Hiott as follows:

PARTIES

1. The Plaintiff Debi Baker Brookshire is a resident of Beaufort County, South Carolina.

2. Upon information and belief, Defendant Community First Bank, Inc., is a corporation organized pursuant to the laws of South Carolina and having its principal place of business in the State of South Carolina.

3. Upon information and belief, Defendant Benjamin Lee Hiott is a citizen and resident of Oconee County, South Carolina.

VENUE AND JURISDICTION

4. The Court of Common Pleas has jurisdiction over the subject matter of this action pursuant to the South Carolina Constitution, Article V, section 11.

5. Venue is proper in this county as Defendant Benjamin Lee Hiott resides in this county and the majority of acts and omissions giving rise to the claims set forth herein occurred in this

County.

FACTUAL BACKGROUND

6. On May 25, 2007, Mrs. Brookshire executed a General Power of Attorney naming Benjamin Hiott as her Power of Attorney, and granting Defendant Hiott broad powers to manage the Plaintiff's assets.

7. The Power of Attorney gave rise to a fiduciary duty owed to the Plaintiff by Defendant Hiott. However, the Power of Attorney provided that Defendant Hiott "shall be liable for willful misconduct or the failure to act in good faith while acting under the authority of this Power of Attorney."

8. Upon information and belief, Defendant Hiott was hired as the Senior Vice President at Defendant Community First Bank before June 26, 2007. He served as the Senior Vice President until late 2013.

9. Upon information and belief, Defendant Hiott recruited and convinced Plaintiff to sign the above-referenced Power of Attorney and transfer her money from BB&T in Trust to Defendant Community First Bank and but for Defendant Hiott's position as a Vice President at Defendant Community First Bank, Plaintiff would not have transferred the funds into Defendant Community First Bank.

10. Upon information and belief, the Plaintiff settled and created a revocable trust on June 22, 2007. The trust named the Plaintiff as the trustee and beneficiary of the trust (hereinafter, "the Trust").

11. On June 26, 2007, all Trust assets, $1,171,823.58 in cash or cash equivalents, were transferred from BB&T Bank to Defendant Community First Bank, Inc.

12. In addition to the initial amount placed into the Trust, Plaintiff received a monthly

payment from Baker & Baker, a business owned in part by the Plaintiff's family, in excess of $5,000. Each month between June 2007 and February 2011, this amount was remitted to Defendant Hiott by the Plaintiff to be deposited into the Trust. Plaintiff also received larger disbursements from Baker & Baker during this time which were also remitted to Defendant Hiott by the Plaintiff to be deposited into the Trust.

13. On July 12, 2007, Defendant Hiott, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc., withdrew $500,000 from the Trust and delivered this sum, via cashier's check issued by Defendant Community First Bank, Inc., to Joseph Crosby, Jr. Upon information and belief, the Trust received nothing of value in exchange for this withdrawal.

14. Upon information and belief, Defendant Hiott frequently withdrew sums of money from the Trust and used the funds for his personal benefit. Defendant Community First Bank participated and acquiesced in this scheme by granting Defendant Hiott access to the Plaintiff's accounts and to the accounts of other bank customers.

15. Upon information and belief, Defendant Hiott, by reason of his managerial position within the bank, could manipulate account balances electronically, and often altered account balances by transferring assets from one customer to another in order to avoid detection and to conceal his fraudulent actions. Plaintiff was a victim of Defendant Hiott's scheme, as set forth more fully herein.

16. Upon information and belief, Defendant Hiott, by reason of his managerial position within Defendant Community First Bank, Inc., could buy and sell bank stock shares by transferring assets from one customer to another via journal entries. Upon information and belief, Defendant Hiott was not licensed to buy and sell stock shares.

17. By August 24, 2010, the Trust balance, on deposit with Community First Bank, was at $0.00.

18. In addition to the $500,000 transferred to Joseph Crosby, Jr., as set forth in paragraph 13, above, Defendant Hiott transferred an additional sum of at least $300,000 to Joseph Crosby, Jr., from the Trust, and the Trust received nothing of value in return.

19. On October 31, 2007, Defendant Hiott, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc., withdrew $50,000 from the Trust and delivered this sum, via wire transfer, to Upstate Real Estate's account held at Defendant Community First Bank. Upstate Real Estate is incorporated in South Carolina and it is believed to be owned by Defendant Hiott's brother-in-law. Upon information and belief, the Trust received nothing of value in exchange for this withdrawal.

20. On November 9, 2007, Defendant Hiott, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc., withdrew $2,500 from the Trust and delivered this sum, via wire transfer into his and his wife's personal account at Defendant Community First Bank. Upon information and belief, the Trust received nothing of value in exchange for this withdrawal.

21. On November 14, 2007, Defendant Hiott, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc., withdrew $2,500 from the Trust and delivered this sum, via wire transfer, to Hilltop, Inc.'s account held at Defendant Community First Bank. Hilltop, Inc. is a commercial printing business incorporated in South Carolina and believed to be owned and operated by Marc Hiott, Defendant's Hiott's brother. According to the South Carolina Secretary of State, Defendant Hiott is the registered agent for this company. Upon information and belief, the Trust received nothing of value in

exchange for this withdrawal.

22. On November 19, 2007, Defendant Hiott, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc., withdrew $888.68 from the Trust and delivered this sum, via cashier's check issued by Defendant Community First Bank, Inc. to Litton Loan Servicing for "Robert's Loan 0014257190." Upon information and belief, the Trust received nothing of value in exchange for this withdrawal.

23. On November 28, 2007, Defendant Hiott, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc., withdrew $200,000 from the Trust and delivered this sum, via cashier's check issued by Defendant Community First Bank, Inc., to Joseph Crosby, Jr. Upon information and belief, the Trust received nothing of value in exchange for this withdrawal.

24. On December 31, 2007, Defendant Hiott or another employee of Defendant Community First Bank, at all times acting within the scope and course of their employment and agency with Defendant Community First Bank, Inc., withdrew $310,510.75 from the Trust. Upon information and belief, Defendant Community First Bank cannot provide any documentation as to where these funds went and how these funds were used. Upon information and belief, the Trust received nothing of value in exchange for this withdrawal.

25. On January 17, 2008, Defendant Hiott, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc., withdrew $5,000 from the Trust and delivered this sum, via wire transfer to Marc Hiott's (Defendant Hiott's brother) Community First Bank account for "invoice 121707". Upon information and belief, the Trust received nothing of value in exchange for this withdrawal.

26. On January 23, 2008, Defendant Hiott, at all times acting within the scope and course of

his employment and agency with Defendant Community First Bank, Inc., withdrew $4,275.16 from the Trust and delivered this sum, via cashier's check issued by Defendant Community First Bank, Inc. to Sue C. Hiott. Upon information and belief, the Trust received nothing of value in exchange for this withdrawal.

27. On February 13, 2008, Defendant Hiott, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc., withdrew $23,608.75 from the Trust and delivered this sum, via wire transfer to Ridge Clearing & Outsourcing Solutions' account at the Bank of New York. Upon information and belief, the Trust received nothing of value in exchange for this withdrawal.

28. On February 29, 2008, Defendant Hiott or another employee of Defendant Community First Bank, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc., made two separate withdrawals in the amounts of $4.00 and $8,500 from the Trust. Upon information and belief, Defendant Community First Bank cannot provide any documentation as to where these funds went and how these funds were used. Upon information and belief, the Trust received nothing of value in exchange for this withdrawal.

29. On March 3, 2008, Defendant Hiott, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc., withdrew $8,000 from the Trust and delivered this sum, via wire transfer into his and his wife's personal account at Defendant Community First Bank. Upon information and belief, the Trust received nothing of value in exchange for this withdrawal.

30. On March 13, 2008, Defendant Hiott, at all times acting within the scope and course of his employment and agency with the Defendant Community First Bank, Inc., withdrew $16,000

from the Trust and delivered this sum, via wire transfer into William Steele's account held at Defendant Community First Bank. William Steele is a Senior Vice President of Defendant Community First Bank. Upon information and belief, the Trust received nothing of value in exchange for this withdrawal.

31. On March 13, 2008, Defendant Hiott or another employee of Defendant Community First Bank, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc., withdrew $2,224 from the Trust. Upon information and belief, Defendant Community First Bank cannot provide any documentation as to where these funds went and how these funds were used. Upon information and belief, the Trust received nothing of value in exchange for this withdrawal.

32. Upon information and belief, the $14,686.31 withdrawal from the Trust on March 27, 2008 labeled "loan," with no documentation other than the monthly statement linked to it, was for the purpose of making a payment on a loan with Defendant Community First Bank. Upon information and belief, Defendant Hiott was making payments for Joseph C. Crosby's loan with Defendant Community First Bank from the Trust, thereby providing a financial benefit to Defendant Community First Bank. The Trust received nothing of value in exchange for this withdrawal.

33. On March 31, 2008, Defendant Hiott, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc., withdrew $550 from the Trust and delivered this sum, via wire transfer into his and his wife's personal account at Defendant Community First Bank. Upon information and belief, the Trust received nothing of value in exchange for this withdrawal.

34. On April 10, 2008, Defendant Hiott, at all times acting within the scope and course of

his employment and agency with Defendant Community First Bank, Inc., withdrew $15,000 from the Trust and delivered this sum, via wire transfer to Terry Russell's Bank of America account. Upon information and belief, the Trust received nothing of value in exchange for this withdrawal.

35. On April 25, 2008, Defendant Hiott, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc. withdrew $7,922 from the Trust and delivered this sum, believed to be via official check, to R T Harris, III in exchange for "466 S/S CFB". Upon information and belief, S/S CFB represents "shares sold Community First Bank". Upon information and belief, the Trust received nothing of value in exchange for this withdrawal and the Plaintiff never received any type of stock certificate representing these Community First Bank shares.

36. Furthermore, Plaintiff also believes that a $29,372.62 withdrawal from the Trust on April 29, 2008 labeled "loan payment," with no documentation other than the monthly statement linked to it, was for the purpose of making two payments on the above referenced loan (see Paragraph 32 of this Complaint) with Defendant Community First Bank. Upon information and belief, the Trust received nothing of value in exchange for this withdrawal.

37. On May 5, 2008, Defendant Hiott, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc., withdrew $150,000 from the Trust and delivered this sum, via wire transfer into Joseph C. Crosby, Jr.'s account held at Defendant Community First Bank, Inc. Upon information and belief, the Trust received nothing of value in exchange for this withdrawal.

38. On May 5, 2008, Defendant Hiott, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc. withdrew $7,922 from the

Trust and delivered this sum, believed to be via official check, to Amanda Harris in exchange for "466 S/S CFB". Upon information and belief, S/S CFB represents "shares sold Community First Bank". Upon information and belief, the Trust received nothing of value in exchange for this withdrawal and the Plaintiff never received any type of stock certificate representing these Community First Bank shares.

39. On July 22, 2008, Defendant Hiott, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc., withdrew $12,000 from the Trust and delivered this sum, via "journal entry" into Joseph C. Crosby, Jr. and Kristina Crosby's personal account held at Defendant Community First Bank, Inc. Upon information and belief, the Trust received nothing of value in exchange for this withdrawal.

40. On July 22, 2008, Defendant Hiott, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc. withdrew $756 from the Trust and delivered this sum, via official check, to Betty Padgett for "48 S/S CFB". Upon information and belief, S/S CFB represents "shares sold Community First Bank". Upon information and belief, the Trust received nothing of value in exchange for this withdrawal and the Plaintiff never received any type of stock certificate representing these Community First Bank shares.

41. On July 30, 2008, Defendant Hiott, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc., withdrew $888.68 from the Trust and delivered this sum, via cashier's check issued by Defendant Community First Bank, Inc. to Litton Loan Servicing for "Robert's Loan 0014257190." Upon information and belief, the Trust received nothing of value in exchange for this withdrawal.

42. On or about August 26, 2008, Defendant Hiott, at all times acting within the scope and

course of his employment and agency with Defendant Community First Bank, Inc. withdrew $10,240.29 from the Trust and delivered this sum, believed to be via official check, to Robert W. McCorkle for "621 S/S CFB". Upon information and belief, S/S CFB represents "shares sold Community First Bank". Upon information and belief, the Trust received nothing of value in exchange for this withdrawal and the Plaintiff never received any type of stock certificate representing these Community First Bank shares.

43. On August 28, 2008, Defendant Hiott, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc., withdrew $14,686.31 from the Trust and delivered this sum, via wire transfer into a Community First Bank account for the purpose of making a payment on loan number 27051, Joseph Crosby Jr.'s loan with Community First Bank (see Paragraph 32 of this Complaint). Upon information and belief, the Trust received nothing of value in exchange for this withdrawal.

44. On August 29, 2008, Defendant Hiott or another employee of Defendant Community First Bank, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc., withdrew $65,000 from the Trust. Upon information and belief, Defendant Community First Bank cannot provide any documentation as to where these funds went and how these funds were used. Upon information and belief, the Trust received nothing of value in exchange for this withdrawal.

45. On September 16, 2008, Defendant Hiott, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc., made two withdrawals, one in the amount of $2,103.36 and the other in the amount of $12,528.79 from the Trust and delivered these sums, via wire transfer to Cargill Meats. Defendant Hiott attempted to conceal these two transactions by originally charging the debits to CLCB, Inc.,

however, it was later discovered that the funds actually were withdrawn from the Trust. CLCB (Coach's Low County Brands) is incorporated in South Carolina and owned and operated by Joseph Crosby, Jr. Upon information and belief, the Trust received nothing of value in exchange for these withdrawals.

46. On September 17, 2008, Defendant Hiott, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc., withdrew $15,000 from the Trust and delivered this sum, via wire transfer to Naturally Fresh, Inc. Defendant Hiott attempted to conceal this transaction by originally charging the debit to CLCB, Inc., however, it was later discovered that the funds actually were withdrawn from the Trust. Upon information and belief, the Trust received nothing of value in exchange for this withdrawal.

47. On or around September 30, 2008, Defendant Hiott, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc. withdrew $30,195 from the Trust and delivered this sum, believed to be via official check, to Larry C. Brandt for "2013 S/S CFB". Upon information and belief, S/S CFB represents "shares sold Community First Bank". Upon information and belief, the Trust received nothing of value in exchange for this withdrawal and the Plaintiff never received any type of stock certificate representing these Community First Bank shares.

48. On October 21, 2008, Defendant Hiott or another employee of Defendant Community First Bank, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc., withdrew $2,500 from the Trust. Upon information and belief, Defendant Community First Bank cannot provide any documentation as to where these funds went and how these funds were used. Upon information and belief, the Trust received nothing of value in exchange for this withdrawal.

49. On October 24, 2008, Defendant Hiott or another employee of Defendant Community First Bank, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc., withdrew $3,500 from the Trust. Upon information and belief, Defendant Community First Bank cannot provide any documentation as to where these funds went and how these funds were used. Upon information and belief, the Trust received nothing of value in exchange for this withdrawal.

50. On November 1, 2008, Defendant Hiott or another employee of Defendant Community First Bank, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc., withdrew $85,000 from the Trust. Upon information and belief, Defendant Community First Bank cannot provide any documentation as to where these funds went and how these funds were used. Upon information and belief, the Trust received nothing of value in exchange for this withdrawal.

51. On November 3, 2008, Defendant Hiott, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc., withdrew $16,560 from the Trust and delivered this sum, via wire transfer to Rock Foods of Mississippi. Defendant Hiott attempted to conceal this transaction by originally charging the debits to CLCB, Inc., however, it was later discovered that the funds actually were withdrawn from the Trust. Upon information and belief, the Trust received nothing of value in exchange for this withdrawal.

52. On or about November 21, 2008, Defendant Hiott, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc. withdrew $27,573 from the Trust and delivered this sum, believed to be via official check, to William J. Zearley for "2,121 S/S CFB Purchase Stock". Upon information and belief, S/S CFB

represents "shares sold Community First Bank". Upon information and belief, the Trust received nothing of value in exchange for this withdrawal and the Plaintiff never received any type of stock certificate representing these Community First Bank shares.

53. On December 17, 2008, Defendant Hiott, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc., withdrew $16,500 from the Trust and delivered this sum, via cashier's check issued by Defendant Community First Bank, Inc. to Terry Russell. Upon information and belief, the Trust received nothing of value in exchange for this withdrawal.

54. Also on December 17, 2008, Defendant Hiott, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc., withdrew $21,500 from the Trust and delivered this sum, via wire transfer to CLCB, LLC's account held at Community First Bank. Upon information and belief, the Trust received nothing of value in exchange for this withdrawal.

55. On or around December 26, 2008, Defendant Hiott, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc. withdrew $40,000 from the Trust and delivered this sum, via journal entry, to account number 1222001 at Defendant Community First Bank for "stock sale". Upon information and belief, the Trust received nothing of value in exchange for this withdrawal and the Plaintiff never received any type of stock certificate representing these Community First Bank shares.

56. On or about December 26, 2008, Defendant Hiott, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc. withdrew $200 from the Trust and delivered this sum, via journal entry, to Betty and Hugh Able's account at Defendant Community First Bank for "stock sale". Upon information and

belief, the Trust received nothing of value in exchange for this withdrawal and the Plaintiff never received any type of stock certificate representing these Community First Bank shares.

57. On January 8, 2009, Defendant Hiott, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc., withdrew $17,000 from the Trust and delivered this sum, via wire transfer to Terry Russell's Bank of America account. Upon information and belief, the Trust received nothing of value in exchange for this withdrawal.

58. On January 15, 2009, Defendant Hiott, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc., withdrew $7,500 from the Trust and delivered this sum, via cashier's check to Terry Russell for "work on house". Upon information and belief, the Trust received nothing of value in exchange for this withdrawal.

59. On January 20, 2009, Defendant Hiott, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc., withdrew $12,000 from the Trust and delivered this sum, via wire transfer to Terry Russell's Bank of America account. Upon information and belief, the Trust received nothing of value in exchange for this withdrawal.

60. On January 29, 2009, Defendant Hiott, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc., withdrew $2,000 from the Trust and delivered this sum, via wire transfer into his and his wife's personal account at Defendant Community First Bank for "RV Repairs". Upon information and belief, the Trust received nothing of value in exchange for this withdrawal.

61. On May 14, 2009, Defendant Hiott or another employee of Defendant Community First

Bank, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc., withdrew $10,000 from the Trust. Upon information and belief, Defendant Community First Bank cannot provide any documentation as to where these funds went and how these funds were used. Upon information and belief, the Trust received nothing of value in exchange for this withdrawal.

62. On June 5, 2009, Defendant Hiott or another employee of Defendant Community First Bank, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc., withdrew $25,387.20 from the Trust. Upon information and belief, Defendant Community First Bank cannot provide any documentation as to where these funds went and how these funds were used. Upon information and belief, the Trust received nothing of value in exchange for this withdrawal.

63. On July 17, 2009, Defendant Hiott or another employee of Defendant Community First Bank, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc., withdrew $1,000 from the Trust. Upon information and belief, Defendant Community First Bank cannot provide any documentation as to where these funds went and how these funds were used. Upon information and belief, the Trust received nothing of value in exchange for this withdrawal.

64. On September 2, 2009, Defendant Hiott, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc., withdrew $151.00 from the Trust and delivered this sum, via wire transfer to Marc Hiott's (Defendant Hiott's brother) Community First Bank account. Upon information and belief, the Trust received nothing of value in exchange for this withdrawal.

65. On September 23, 2009, Defendant Hiott, at all times acting within the scope and course

of his employment and agency with Defendant Community First Bank, Inc., withdrew $5,000 from the Trust and delivered this sum, via wire transfer to Keith Norton's Community First Bank account. Upon information and belief, the Trust received nothing of value in exchange for this withdrawal.

66. On November 18, 2009, Defendant Hiott, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc., withdrew $500 from the Trust and delivered this sum, via journal entry transfer into his and his wife's personal account at Community First Bank. Upon information and belief, the Trust received nothing of value in exchange for this withdrawal.

67. On December 14, 2009, Defendant Hiott, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc., withdrew $5,000 from the Trust and delivered this sum, via wire transfer to Hilltop, Inc.'s account held at Community First Bank. Upon information and belief, the Trust received nothing of value in exchange for this withdrawal.

68. On December 21, 2009, Defendant Hiott, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc., withdrew $4,000 from the Trust and delivered this sum, via journal entry transfer into his and his wife's personal account at Community First Bank. Upon information and belief, the Trust received nothing of value in exchange for this withdrawal.

69. On December 28, 2009, Defendant Hiott, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc., withdrew $3,500 from the Trust and delivered this sum, via journal entry transfer into his and his wife's personal account at Community First Bank. Upon information and belief, the Trust received nothing of

value in exchange for this withdrawal.

70. On February 8, 2010, Defendant Hiott, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc., withdrew $4,000 from the Trust and delivered this sum, via journal entry transfer into Marc Hiott's (Defendant Hiott's brother) Community First Bank account. Upon information and belief, the Trust received nothing of value in exchange for this withdrawal.

71. On February 17, 2010, Defendant Hiott, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc., withdrew $5,000 from the Trust and delivered this sum, via journal entry transfer into his and his wife's personal account at Community First Bank. Upon information and belief, the Trust received nothing of value in exchange for this withdrawal.

72. On February 22, 2010, Defendant Hiott, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc., withdrew $500 from the Trust and delivered this sum, via journal entry transfer into his and his wife's personal account at Community First Bank. Upon information and belief, the Trust received nothing of value in exchange for this withdrawal.

73. On February 25, 2010, Defendant Hiott, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc., withdrew $500 from the Trust and delivered this sum, via journal entry transfer into his and his wife's personal account at Community First Bank. Upon information and belief, the Trust received nothing of value in exchange for this withdrawal.

74. On March 17, 2010, Defendant Hiott, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc., withdrew $2,000 from

the Trust and delivered this sum, via journal entry transfer into his and his wife's personal account at Community First Bank. Upon information and belief, the Trust received nothing of value in exchange for this withdrawal.

75. On April 13, 2010, Defendant Hiott, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc., withdrew $4,000 from the Trust and delivered this sum, via journal entry transfer into his and his wife's personal account at Community First Bank. Upon information and belief, the Trust received nothing of value in exchange for this withdrawal.

76. On April 14, 2010, Defendant Hiott, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc., withdrew $3,500 from the Trust and delivered this sum, via wire transfer to Hilltop, Inc.'s account held at Community First Bank. Upon information and belief, the Trust received nothing of value in exchange for this withdrawal.

77. On June 2, 2010, Defendant Hiott or another employee of Defendant Community First Bank, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc., withdrew $3,100 from the Trust. Upon information and belief, Defendant Community First Bank cannot provide any documentation as to where these funds went and how these funds were used. Upon information and belief, the Trust received nothing of value in exchange for this withdrawal.

78. On June 15, 2010, Defendant Hiott or another employee of Defendant Community First Bank, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc., withdrew $3,000 from the Trust. Upon information and belief, Defendant Community First Bank cannot provide any documentation as where these

funds went and how these funds were used. Upon information and belief, the Trust received nothing of value in exchange for this withdrawal.

79. On August 23, 2010, Plaintiff, through counsel, requested an accounting of the Trust assets from Defendant Community First Bank, Inc.

80. On September 7, 2010, Defendant Hiott sent via facsimile to Plaintiff's attorney a purported "accounting." This "accounting" consisted of a generic list of amounts withdrawn from the Trust with no explanation of the withdrawals, and with no accounting of the monthly deposits Plaintiff received from Baker & Baker and instructed Defendant Hiott to place into the Trust.

81. On September 21, 2010, Plaintiff Brookshire's attorney again requested a formal accounting of the Trust assets on deposit at Community First Bank. Plaintiff Brookshire's attorney never received a formal accounting.

82. Upon information and belief, Defendant Hiott, acting within the scope and course of his employment with Defendant Community First Bank, closed the Trust between October 1, 2010 and October 19, 2010 without informing the Plaintiff of this action as well as failing to disclose that the Trust had a balance of zero.

83. On or around October 21, 2010, Defendant Hiott sent Plaintiff's counsel a letter stating that he had set aside money for Plaintiff's two children. In the letter, Defendant Hiott indicated he would be glad to send documentation reflecting the whereabouts of this money. Upon information and belief, these documents do not exist.

84. On December 1, 2010, Plaintiff's previous attorney and counsel for Defendant Community First Bank, spoke on the phone. Defendant Community First Bank's counsel advised that he would send a full accounting of the Plaintiff's Trust account. Plaintiff

Brookshire's attorney never received a formal accounting.

85. On February 17, 2011, Plaintiff's previous attorney sent Defendant Community First Bank's counsel a letter requesting Plaintiff's Trust account at Defendant Community First Bank be closed and a check made out to Plaintiff for all the funds remaining in the account be issued and personally delivered to Plaintiff's previous attorney on February 22, 2011.

86. On February 22, 2011, Defendant Hiott, at all times acting within the scope and course of his employment and agency with Defendant Community First Bank, Inc., re-opened Plaintiff's Trust. Defendant Hiott, using his managerial position in Defendant Community First Bank, transferred $285,233.34 from account number 1171001 at Defendant Community First Bank, via journal entry, into the Trust.

87. On February 22, 2011, Plaintiff's previous attorney closed the account and received from Defendant Community First Bank a check in the amount of $285,233.34. This amount allegedly represented all of the assets of the Trust.

88. Upon information and belief, at no time during the existence of the Trust did Plaintiff receive monthly, quarterly or annual statements detailing the financial status of, or balance remaining in, the Trust account.

89. On March 11, 2011, Plaintiff's previous attorney sent a letter to counsel for Defendant Community First Bank notifying him of the termination of her representation with Plaintiff as well as requesting that he send the documents requested to Plaintiff at her home address. The letter requested copies of Plaintiff's monthly account statements for December 2010 through the date of the letter, copies of cancelled checks or wire transfer requests for all transfers out of Plaintiff's account $50,000 or greater, and copies of all documentation regarding the purchase and subsequent cashing out of a single-premium annuity purchased by Defendant Hiott for

Plaintiff.

90. On November 27, 2012, Tabor Investigative Services phoned Carol Wilson, an employee of Defendant Community First Bank, and requested documents from Plaintiff Brookshire's Trust account. Ms. Wilson requested that a signed "Authorization to Release Records" be faxed to her for her review and that she would contact Tabor when she received the authorization. Tabor Investigative Services faxed an executed Authorization and request the same day to Ms. Wilson.

91. As of the date this Complaint is filed, Tabor Investigative Services has yet to receive a response to this request from Ms. Wilson or any employee or representative of Defendant Community First Bank.

92. On March 19, 2013, Plaintiff, through 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., the President of Defendant Community First Bank; James E. McCoy, the Chairman of the Board of Directors of Community First Bank, and Carol Wilson, an employee of Defendant Community First Bank.

93. Sometime between March 19, 2013 and May 7, 2013, Defendant Hiott telephoned Plaintiff's counsel and represented that the $500,000 transfer described in paragraph 13, above, was put into two separate annuities for Plaintiff's two children and that the annuities were placed with Nationwide Insurance Agency.

94. However, Nationwide Insurance has no annuities payable to the Plaintiff or her children.

95. On May 7, 2013, Billy Tabor from Tabor Investigative Services met with Defendant Hiott in his office at Community First Bank. In this meeting, Defendant Hiott informed Tabor that he wrote a check for $500,000 to Mr. Holcolmbe 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 (Plaintiff's children) from Lafayette Insurance Company. Lafayette Insurance has no annuities payable to the Plaintiff or her children. At this time, Defendant Hiott and Defendant Community First Bank failed to provide Plaintiff Brookshire with a formal accounting of the Trust.

96. On June 14, 2013, Plaintiff's counsel sent a letter to Defendant Community First Bank's attorney informing him of the communications between counsel and Defendant Hiott. Plaintiff again requested a formal and complete accounting of the Trust.

97. On July 18, 2013, Defendant Community First Bank's attorney wrote a letter to Plaintiff's counsel in which he advised that Defendant Hiott indicated to him that the $500,000 described in paragraph 13 above was removed from the Trust, with Plaintiff's consent and knowledge, for an investment with Joseph C. Crosby, Jr., and that Plaintiff Brookshire was provided the promissory note signed by Mr. Crosby and that she was in possession of it. Plaintiff Brookshire does not and has never had this promissory note, nor had she ever heard of Joseph C. Crosby, Jr. or was she ever aware of this transaction. Defendant Community First Bank's attorney provided some documents related to the Trust at this time but did not provide a formal and complete accounting, or a copy of the alleged promissory note.

98. On August 19, 2013, Plaintiff's counsel sent a letter to Defendant Community First Bank's attorney requesting 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.

99. On September 17, 2013, Plaintiff's counsel sent a follow-up letter again requesting the

documents described in the August 19, 2013 letter.

100. Because Plaintiff's counsel still had yet to receive any correspondence from Defendant Community First Bank or their attorney, on October 17, 2013, Plaintiff's counsel sent another follow-up letter re-requesting the documents listed in the September 17, 2013 and August 19, 2013 letters as well as a full accounting and an entire copy of the Trust file from date of creation to date of termination.

101. On December 17, 2013, Defendant Community First Bank provided the Plaintiff with the documents showing the activities in the Trust account.

102. Upon receipt of these documents and after reviewing them, Plaintiff discovered that much of her money was stolen or misappropriated from the Trust.

103. Moreover, at the time this Complaint is filed Community First Bank is unable to account for over $500,000 withdrawn by Defendant Hiott or another employee at Defendant Community First Bank and missing from the Trust.

FOR A FIRST CAUSE OF ACTION
Breach of Fiduciary Duty
(All Defendants)

104. Plaintiff incorporates by reference paragraphs 1 through 103, above, as though fully set forth herein.

105. At all relevant times, the Defendants owed a fiduciary duty to Plaintiff to act in the best interests of the Plaintiff and to remain loyal to the Plaintiff.

106. Defendant Hiott's fiduciary duty to the Plaintiff arose out of his acceptance or agreement to act as her Power of Attorney.

107. Defendant Community First Bank's fiduciary duty arose out of its acceptance of Plaintiff's Trust account assets and its professional employment and retention of Defendant Hiott.

108. The Defendants owed a fiduciary duty to manage Plaintiff's Trust account in good faith and as a reasonably prudent financial investor would manage the Trust assets.

109. Defendants breached their fiduciary duties to Plaintiff by mismanaging her Trust account assets, including without limitation, transferring funds to Joseph Crosby, Jr., and receiving nothing of value in return, failing and refusing to provide Plaintiff with a true and accurate accounting of the assets in her Trust when she requested an accounting through counsel, by not depositing into Plaintiff's Trust account her monthly payments received from Baker and Baker, and by making other investment decisions that were in the Defendants' best interests but detrimental to the Plaintiff's interests.

110. As a direct and proximate result of the Defendants' breaches of fiduciary duty, Plaintiff has suffered and is continuing to suffer actual damages. She has lost almost all of the assets she deposited into her Trust account, a sum that exceeds $1,750,000.

111. As a result of the Defendants' breaches and willful misconduct, the Plaintiff is entitled to recover actual, compensatory, consequential, incidental damages and punitive damages in amounts to be determined by the jury at trial.

FOR A SECOND CAUSE OF ACTION
Conversion

112. The Plaintiff incorporates by reference paragraphs 1 through 111 as though fully set forth herein.

113. At all times relevant to the claims set forth herein, the plaintiff had an interest, both legal and equitable, in the assets and proceeds of her Trust account, and she had the right to immediate possession of all Trust assets.

114. By transferring large sums of money out of the Trust and receiving nothing of value in return, the Defendants converted the Plaintiff's Trust assets to themselves and for their own uses.

115. The Defendants' actions, set forth more fully above, were all undertaken without the Plaintiff's knowledge and without her permission.

116. Even after the Plaintiff demanded an accounting and return of the Trust account assets, the Defendants continued to use the assets for their own benefit without Plaintiff's permission. Substantial sums are still unaccounted for and have been converted by the Defendants to their own use.

117. As of the date this complaint is filed, the Defendants, acting in concert, have converted more than $1,750,000.

118. Based on the Defendants' unlawful conversion, Plaintiff is entitled to recover the full value of all sums converted, together with legal interest from the date of conversion.

119. Because the Defendants' acts were willful, reckless, and committed with conscious indifference to the Plaintiff's rights, she is further entitled to an award of punitive damages in an amount to be determined by a jury at trial.

FOR A THIRD CAUSE OF ACTION
AGAINST DEFENDANT COMMUNITY FIRST BANK
Negligent Supervision

120. Plaintiff incorporates by reference paragraphs 1 through 119, above, as though fully set forth herein, except those allegations that Defendant Hiott was acting within the scope and course of his employment and agency with Defendant Community First Bank.

121. At all times relevant to this Complaint, Defendant Hiott was the employee of Defendant Community First Bank; Further, he was on the premises of Defendant Community First Bank or he was using a chattel of Defendant Community First Bank, including computers and computer software or other electronic devices whereby he could access the Trust account and transfer funds into and out of the Trust account.

122. Defendant Community First Bank knew or should have known it had the ability to control the conduct of Defendant Hiott, either by disabling his electronic access to the Trust account or removing him from his position as Senior Vice President of the Bank.

123. Defendant Community First Bank knew or should have known as early as July 2007 that Defendant Hiott was mismanaging and misappropriating assets in the Plaintiff's Trust account. Defendant Hiott's misconduct began no later than July 12, 2007, when Defendant Hiott executed a cashier's check issued by Defendant Community First Bank, Inc. in the amount of $500,000 drawn on the Trust account and made payable to Joseph Crosby, Jr.

124. Defendant Community First Bank thus knew or should have known of the need to control the conduct of Defendant Hiott and had the opportunity to exercise sufficient control to prevent Defendant Hiott from committing further acts that were economically harmful to the Plaintiff.

125. Despite this knowledge and opportunity, Defendant Community First Bank failed to prevent Defendant Hiott, its senior vice president, from continuing to treat Plaintiff's Trust account assets as his own and making large and frequent withdrawals from the Trust; rather,

Defendant Community First Bank enabled Defendant Hiott to continue to raid the Trust by providing him with unfettered access to the funds in the Trust, and upon information and belief, by providing Defendant Hiott with similar access to the funds and accounts of other customers.

126. As a direct and proximate result of Defendant Community First Bank's failure to exercise due care in the supervision of Defendant Hiott, Plaintiff lost a sum in excess of $1,750,000.

127. Plaintiff is entitled to recover a sum equal to the amounts transferred out of her Trust account by Defendant Hiott, as well as interest at the legal rate from the date of each transfer; further, because Defendant Community First Bank's conduct was reckless, willful, and wanton, and undertaken with conscious indifference to the Plaintiff's rights, she is entitled to recover punitive damages in an amount to be determine by a jury at trial.

FOR A FOURTH CAUSE OF ACTION
Negligence/Gross Negligence
(All Defendants)

128. The Plaintiff incorporates by reference paragraphs 1 through 127 as though fully set forth herein.

129. The Defendants owed duties to the Plaintiff to act in good faith while acting under the authority of the Power of Attorney in place.

130. The Defendants negligently, wantonly, willfully and/or recklessly breached their duties to the Plaintiff.

131. As a proximate and direct consequence of the Defendants' breaches of their duties to the Plaintiff, the Plaintiff has been damaged.

132. As a result of the Defendants' negligence and gross negligence, the Plaintiff is entitled to recover actual, compensatory, consequential, incidental and punitive damages in amounts to be determined by the jury during the trial of this action.

FOR A FIFTH CAUSE OF ACTION
Breach of Contract Accompanied by Fraudulent Act
(All Defendants)

133. The allegations set forth in paragraphs 1 through 132 above are incorporated as if repeated herein.

134. The Defendant's actions in breaching the contract, as set forth above, involved deceit, dishonesty and false representations made by the Defendants and communicated to the Plaintiff.

135. Defendant Community First Bank actively concealed from the Plaintiff the fraudulent and tortious conduct of Community First Bank's agent, Defendant Hiott.

136. Despite her numerous and repeated requests for an accounting of her funds on deposit, Defendant Community First Bank failed and refused to provide an accounting and by so doing allowed, enabled and encouraged Defendant Hiott to continue to pilfer money from the Plaintiff's account.

137. The Defendant's conduct, in addition to breaching the plain terms of her contract with the Defendants, involved dishonesty, unfair dealing, and unlawful appropriation of the Plaintiff's property by design. These dishonest and unlawful acts accompanied the breach of contract alleged above.

FOR A SIXTH CAUSE OF ACTION
Accounting
(All Defendants)

138. The allegations set forth in paragraphs 1 through 137 above are incorporated as if repeated herein.

139. Plaintiff is entitled to an accounting of all sums and amounts deposited into the Trust from the date the Trust assets were transferred to Community First Bank, on or about June 26, 2007, to the present.

140. This accounting should include all funds or assets transferred into the trust, all funds or assets transferred out of the trust, the date of each deposit, the date of each withdrawal, the stated purpose for the withdrawal, and a running total of funds and assets held in trust for the time period covered by this request.

WHEREFORE, the Plaintiff demands a jury trial on all counts alleged in this complaint. In addition, Plaintiff prays that judgment be entered against all Defendants, jointly and severally, on all counts alleged herein. Further, Plaintiff prays for the following:

1. An accounting of all activities in the Trust account from June 26, 2007 to the present;
2. An award of damages sufficient to compensate her for stolen money withdrawn from the Trust account;
3. An award of punitive and exemplary damages in an amount to be determined at trial, and sufficient to impress upon the Defendants the seriousness of their conduct and to deter similar conduct in the future;
4. An award of damages sufficient to compensate her for all attorneys' fees and costs incurred;
5. An award of interest, as determined by South Carolina law, from the date of each unlawful transfer from the Trust account; and
6. For such other and further relief as this Court deems just and proper.

Respectfully submitted,



W. Barney Giese, Esquire
The Giese Law Firm, LLC
1315 Blanding Street
Columbia South Carolina 29201
(803) 708-6767

ATTORNEYS FOR THE PLAINTIFF

Columbia, South Carolina

September 8, 2014

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS

Debi Baker Brookshire,

Plaintiff,

v.

Community First Bank, Inc. and Benjamin Lee Hiott,

Defendants.

Civil Action No. 2014-CP-37-526

ANSWER AND COUNTERCLAIM OF DEFENDANT COMMUNITY FIRST BANK, INC.

Defendant Community First Bank, Inc. ("this Defendant" or "the Bank") answers the Complaint of Plaintiff Debi Baker Brookshire ("Plaintiff"), denying each and every allegation not specifically admitted, qualified, or explained herein, and asserts a counterclaim against Plaintiff as follows:

For a First Defense

1. Upon information and belief, this Defendant admits the allegations of Paragraph 1.

2. This Defendant admits the allegations of Paragraph 2.

3. This Defendant lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 3.

4. In response to the allegations of Paragraph 4, this Defendant admits, upon information and belief, that this Court has jurisdiction over the subject matter of this action.

5. In response to the allegations of Paragraph 5, this Defendant admits, upon information and belief, that venue of this action is proper in this Court. This Defendant lacks knowledge or information sufficient to form a belief as to whether Defendant Benjamin Lee Hiott ("Defendant Hiott") resides in Oconee County.

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6. This Defendant admits the allegations of Paragraph 6 and refers to the General Power of Attorney for its terms.

7. In response to the allegations of Paragraph 7, this Defendant refers to the General Power of Attorney for its terms and denies any inconsistent allegations. The remainder of Paragraph 7 does not require a response. To the extent a response is required, the allegations are denied.

8. This Defendant admits the allegations of Paragraph 8.

9. This Defendant denies the allegations of Paragraph 9.

10. In response to the allegations of Paragraph 10, this Defendant refers to the trust for its terms and denies inconsistent allegations.

11. In response to the allegations of Paragraph 11, this Defendant admits that on or about June 22, 2007, a deposit account was opened with this Defendant in the name of Debi Baker Brookshire Trust with Debi Baker Brookshire (and not this Defendant) serving as Trustee ("the Account") and that, on June 26, 2007, the amount of $1,171,823.58 was transferred into the Account from Branch Banking & Trust. This Defendant lacks knowledge or information sufficient to form a belief as to whether those funds constituted all assets of Plaintiff's trust.

12. In response to the allegations of Paragraph 12, this Defendant admits that various amounts from Baker & Baker were deposited into the Account, refers to the Account statements with regard to the timing and amounts of those deposits, and denies any inconsistent allegations.

13. In response to the allegations of Paragraph 13, this Defendant admits, upon information and belief, that Defendant Hiott, acting under authority of the General Power of Attorney and other authority, consent, or direction given by Plaintiff, caused the issuance of a cashier's check dated July 10, 2007 payable to Joseph C. Crosby, Jr. ("Crosby") in the amount of

$500,000.00 with the notation "Brookshire Loan Advance" set forth on the check and the corresponding withdrawal from the Account in that amount on or about July 12, 2007. This Defendant denies the remaining allegations of Paragraph 13.

14. In response to the allegations of Paragraph 14, this Defendant admits, upon information and belief, that Defendant Hiott, acting under authority of the General Power of Attorney and other authority, consent, or direction given by Plaintiff, caused or made withdrawals from the Account from time to time. This Defendant lacks sufficient knowledge or information to form a belief as to whether Defendant Hiott used any funds from the Account for his personal benefit. This Defendant denies the remaining allegations of Paragraph 14.

15. In response to the allegations of Paragraph 15, this Defendant admits that Defendant Hiott had access to certain electronic records of the Bank. This Defendant denies the remaining allegations of Paragraph 15 as stated and alleges further that Plaintiff granted Defendant Hiott authority to withdraw and handle all funds in the Account pursuant to the General Power of Attorney and otherwise and that Plaintiff failed to complain to the Bank about any transaction in the Account for several years.

16. This Defendant denies the allegations of the first sentence of Paragraph 16 as stated. This Defendant lacks knowledge or information sufficient to form a belief as to the allegations of the second sentence of Paragraph 16.

17. In response to the allegations of Paragraph 17, this Defendant refers to the statements for the Account and denies inconsistent allegations.

18. In response to the allegations of Paragraph 18, this Defendant admits, upon information and belief, that additional sums were paid from the Account to Crosby. This Defendant denies the remaining allegations of Paragraph 18 and alleges further that Plaintiff

granted Hiott authority to make or direct withdrawals from the Account pursuant to the General Power of Attorney and other authority, consent, or direction and that Plaintiff failed to complain to the Bank about any transaction in the Account for several years.

19. In response to the allegations of Paragraphs 19 through 78, this Defendant refers to the Account statements and the documents related to the transactions described in Paragraphs 19 through 78 and denies inconsistent allegations. This Defendant denies the remaining allegations of Paragraphs 19 through 78 and alleges further that Plaintiff granted Defendant Hiott authority to withdraw and handle all funds in the Account pursuant to the General Power of Attorney and otherwise and that Plaintiff failed to complain about any transaction in the Account for several years.

20. This Defendant lacks knowledge or information sufficient to form a belief as to the allegations of Paragraph 79.

21. In response to the allegations of Paragraph 80, this Defendant refers to the facsimile dated September 7, 2010, and denies inconsistent allegations.

22. In response to the allegations of Paragraph 81, this Defendant refers to the letter from prior counsel for Plaintiff to Defendant Hiott dated September 21, 2010, and denies inconsistent allegations.

23. In response to the allegations of Paragraph 82, this Defendant refers to the Account statements and the documents related to the transactions and events described in Paragraph 82 and denies inconsistent allegations.

24. In response to the allegations of Paragraph 83, this Defendant refers to the letter from Defendant Hiott to prior counsel for Plaintiff dated October 21, 2010, and denies inconsistent allegations.

25. In response to the allegations of Paragraph 84, this Defendant currently lacks knowledge or information sufficient to form a belief as to the allegations regarding oral statements and denies the remaining allegations.

26. In response to the allegations of Paragraph 85, this Defendant refers to the letter from prior counsel for Plaintiff to James L. Williams, Esquire, dated February 17, 2011, and denies inconsistent allegations.

27. In response to the allegations of Paragraph 86, this Defendant refers to the Account statements and the documents related to the transaction described in Paragraph 86 and denies inconsistent allegations. This Defendant denies the remaining allegations of Paragraph 86.

28. In response to the allegations of Paragraph 87, this Defendant refers to the Account statements and the documents related to the transaction described in Paragraph 87 and denies inconsistent allegations. This Defendant denies the remaining allegations of Paragraph 87.

29. In response to the allegations of Paragraph 88, this Defendant denies that Plaintiff or her authorized agent did not receive or have access to Account statements.

30. In response to the allegations of Paragraph 89, this Defendant refers to the letter from prior counsel for Plaintiff to James L. Williams, Esquire, dated March 11, 2011, and denies inconsistent allegations.

31. In response to the allegations of Paragraphs 90 and 91, this Defendant refers to the documents described for their contents and denies inconsistent allegations. This Defendant currently lacks knowledge or information sufficient to form a belief as to the allegations regarding oral statements, and denies the remaining allegations of Paragraphs 90 and 91.

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32. In response to the allegations of Paragraph 92, this Defendant refers to the letter from counsel for Plaintiff to Defendant Hiott, with a copy to others, dated March 19, 2013, and denies inconsistent allegations.

33. This Defendant lacks knowledge or information sufficient to form a belief as to the allegations of Paragraphs 93, 94, and 95, except that this Defendant denies that it has not provided an accounting of the Account to Plaintiff.

34. In response to the allegations of Paragraph 96, this Defendant refers to the letter from counsel for Plaintiff to James L. Williams, Esquire, dated June 14, 2013, and denies inconsistent allegations.

35. In response to the allegations of Paragraph 97, this Defendant refers to the subject letter for its terms and denies inconsistent allegations. This Defendant admits, upon information and belief, that it did not provide a copy of the referenced promissory note to Plaintiff and currently lacks knowledge or information as to whether Plaintiff has such a document. This Defendant further admits that it provided certain documents to Plaintiff and denies the remaining allegations of Paragraph 97.

36. In response to the allegations of Paragraph 98, this Defendant refers to the letter from counsel for Plaintiff to James L. Williams, Esquire, dated August 19, 2013, and denies inconsistent allegations.

37. In response to the allegations of Paragraphs 99 and 100, this Defendant refers to the subject letters for their terms and denies inconsistent allegations. This Defendant denies the remaining allegations of Paragraphs 99 and 100.

38. In response to the allegations of Paragraph 101, this Defendant admits that it provided certain documents to Plaintiff, refers to the subject documents for their contents and denies inconsistent allegations, and denies the remaining allegations of Paragraph 101.

39. This Defendant denies the allegations of Paragraphs 102 and 103.

40. In response to the allegations of Paragraph 104, this Defendant incorporates the allegations of the above paragraphs as if fully set forth herein.

41. This Defendant denies the allegations of Paragraphs 105, 106, 107, 108, 109, 110, and 111.

42. In response to the allegations of Paragraph 112, this Defendant incorporates the allegations of the above paragraphs as if fully set forth herein.

43. This Defendant denies the allegations of Paragraphs 113, 114, 115, 116, 117, 118, and 119.

44. In response to the allegations of Paragraph 120, this Defendant incorporates the allegations of the above paragraphs as if fully set forth herein.

45. In response to the allegations of Paragraphs 121 and 122, this Defendant admits that Defendant Hiott was previously an employee and had access to certain of the Bank's electronic records. This Defendant alleges further that Plaintiff granted Defendant Hiott authority to handle Plaintiff's assets, including all funds in the Account, pursuant to the General Power of Attorney and otherwise. This Defendant denies the remaining allegations of Paragraphs 121 and 122.

46. This Defendant denies the allegations of Paragraphs 123, 124, 125, 126, and 127.

47. In response to the allegations of Paragraph 128, this Defendant incorporates the allegations of the above paragraphs as if fully set forth herein.

48. This Defendant denies the allegations of Paragraphs 129, 130, 131, and 132.

49. In response to the allegations of Paragraph 133, this Defendant incorporates the allegations of the above paragraphs as if fully set forth herein.

50. This Defendant denies the allegations of Paragraphs 134, 135, 136, and 137 as relate to it.

51. In response to the allegations of Paragraph 138, this Defendant incorporates the allegations of the above paragraphs as if fully set forth herein.

52. This Defendant denies the allegations of Paragraphs 139 and 140.

53. This Defendant denies that Plaintiff is entitled to any relief set forth in the prayer for relief, including subparagraphs 1 through 6.

For a Second Defense

54. The Complaint fails to state facts sufficient to constitute a cause of action against this Defendant and should be dismissed pursuant to Rule 12(b)(6), SCRCP.

For a Third Defense

55. Plaintiff's claims are barred by any and all applicable statutes of limitation or statutes of repose.

For a Fourth Defense

56. Plaintiff's claims are barred, in whole or in part, by all equitable doctrines available to Defendant, including, but not limited to, waiver, estoppel, ratification, condonation, consent, and laches.

For a Fifth Defense

57. Plaintiff's claims are barred as to this Defendant because Plaintiff granted Defendant Hiott authority to handle all of her assets and financial affairs, including all of Plaintiff's funds deposited into the Account, pursuant to the General Power of Attorney.

For a Sixth Defense

58. Plaintiff's claims are barred because Plaintiff and her authorized agent did not report any unauthorized transaction in the Account or inappropriate action by a wrongdoer within the time allowed by the Uniform Commercial Code, and Plaintiff is now precluded from recovering on a claim with regard to such transactions or by such wrongdoers.

For a Seventh Defense

59. Plaintiff's claim for fraud fails to set forth sufficient facts to show all applicable elements of fraud with particularity in violation of Rule 9(b), SCRCP, and should therefore be dismissed.

For an Eighth Defense

60. Plaintiff's claims are barred in whole or in part by Plaintiff's own comparative negligence, and should therefore be dismissed or reduced.

For a Ninth Defense

61. Plaintiff's claims are barred in whole or in part by Plaintiff's failure to mitigate her alleged damages.

For a Tenth Defense

62. Plaintiff's complaint fails to state special damages with the specificity required by Rule 9(g), SCRCP.

For an Eleventh Defense

63. An award of punitive damages is not appropriate under the South Carolina and United States Constitutions and interpretive case law in the circumstances of this case.

For a Twelfth Defense

64. No punitive damages are available to Plaintiff because any claim should be brought under a breach of contract cause of action and not in tort.

For a Thirteenth Defense and First Counterclaim Against Plaintiff
(Conversion)

65. Defendant incorporates the allegations of the above paragraphs as if fully set forth herein.

66. Upon information and belief, funds in the approximate amount of $788,855.00 ("Funds"), none of which belonged to Plaintiff, were deposited in Plaintiff's Account by Defendant Hiott during the time the Account was held at the Bank.

67. The Funds belonged to this Defendant.

68. To the extent that Plaintiff received the Funds or any benefit from the Funds, such receipt constitutes the assumption and exercise of the right of ownership over the Funds.

69. Any assumption and exercise of the right of ownership over the Funds by Plaintiff was unauthorized by this Defendant.

70. This Defendant is entitled to judgment against Plaintiff for the conversion of the Funds.

For a Fourteenth Defense and Second Counterclaim Against Plaintiff
(Unjust Enrichment)

71. Defendant incorporates the allegations of the above paragraphs as if fully set forth herein.

72. Plaintiff's receipt of the Funds and Plaintiff's use of the Funds (or the use of the Funds on Plaintiff's behalf) constitute a benefit conferred upon Plaintiff by this Defendant.

73. Plaintiff realized the benefit of the Funds through their use by Plaintiff or their use on Plaintiff's behalf.

74. The Funds belonged to this Defendant.

75. Plaintiff's retention and use of the Funds is unjust.

76. This Defendant is entitled to judgment against Plaintiff for unjust enrichment.

Wherefore, having fully answered the Complaint of Plaintiff, this Defendant prays that the same be dismissed as to it with costs, that judgment be granted to this Defendant on its Counterclaims against Plaintiff, and such other relief as the Court deems just and proper.

HAYNSWORTH SINKLER BOYD, P.A.

By: _____

Robert Y. Knowlton, SC Bar No. 3589
Elizabeth H. Black, SC Bar No. 76067
1201 Main Street – 22nd Floor
PO Box 11889 (29211-1889)
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Attorneys for Defendant Community First Bank, Inc.

October 9, 2014
Columbia, South Carolina

DM 3832955 V.1

FILED OCONEE SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2014 NOV -7 P 2:18

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE) Case No.: 2014-CP-37-526

Debi Baker Brookshire,

Plaintiff,

v.

Community First Bank, Inc. and Benjamin Lee Hiott,

Defendants.

PLAINTIFF DEBI BROOKSHIRE'S ANSWER TO DEFENDANT COMMUNITY FIRST BANK, INC.'S COUNTERCLAIMS

The Plaintiff, Debi Baker Brookshire ("Plaintiff") answers the Counterclaims of Defendant Community First Bank, Inc., denying each and every allegation no specifically admitted, qualified, or explained herein as follows:

1. The allegations in Paragraph 65 of Defendant Community First Bank, Inc.'s Answer and Counterclaims require no response from the Plaintiff. To the extent a response is required, Plaintiff realleges every paragraph of her Complaint.
2. Plaintiff lacks sufficient information to respond to the allegations in Paragraph 66 of Defendant Community First Bank, Inc.'s Answer and Counterclaims, and therefore she denies the allegations and demands strict proof of them.
3. Plaintiff denies Paragraph 67 of Defendant Community First Bank, Inc.'s Answer and Counterclaims.
4. Plaintiff denies Paragraph 68 of Defendant Community First Bank, Inc.'s Answer and Counterclaims.
5. Plaintiff denies Paragraph 69 of Defendant Community First Bank, Inc.'s Answer and Counterclaims.

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6. Plaintiff denies Paragraph 70 of Defendant Community First Bank, Inc.'s Answer and Counterclaims.

7. The allegations in Paragraph 71 of Defendant Community First Bank, Inc.'s Answer and Counterclaims require no response from the Plaintiff. To the extent a response is required, Plaintiff realleges every paragraph of her Complaint.

8. Plaintiff denies Paragraph 72 of Defendant Community First Bank, Inc.'s Answer and Counterclaims.

9. Plaintiff denies Paragraph 73 of Defendant Community First Bank, Inc.'s Answer and Counterclaims.

10. Plaintiff denies Paragraph 74 of Defendant Community First Bank, Inc.'s Answer and Counterclaims.

11. Plaintiff denies Paragraph 75 of Defendant Community First Bank, Inc.'s Answer and Counterclaims.

12. Plaintiff denies Paragraph 76 of Defendant Community First Bank, Inc.'s Answer and Counterclaims.

FOR A SECOND DEFENSE

13. Defendant Community First Bank, Inc.'s Counterclaims fail to state facts sufficient to constitute a cause of action against the Plaintiff and should be dismissed pursuant to Rule 12(b)(6), SCRCP.

FOR A THIRD DEFENSE

14. Defendant Community First Bank, Inc.'s Counterclaims are barred by the applicable statute of limitations and by laches.

FOR A FOURTH DEFENSE:

15. Defendant Community First Bank, Inc.'s Counterclaims are barred by the equitable defenses of unclean hands, waiver, estoppel, consent, condonation and ratification.

16. Defendant Community First Bank, Inc. vested its agent Benjamin Lee Hiott with access to and authority over Community First Bank, Inc.'s property including the Plaintiff's funds, the Bank's funds, and the funds of other Bank customers. Further, Community First Bank, Inc., through some or all of its managers and board of directors expressly or impliedly ratified, permitted, encouraged, participated in and benefitted financially from Benjamin Lee Hiott's conduct, as alleged more fully in the complaint.

FOR A FIFTH DEFENSE:

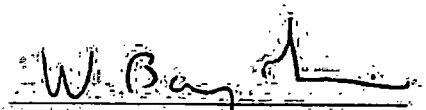
17. Defendant Community First Bank, Inc.'s Counterclaims are barred by its own failure to mitigate its damages.

FOR A SIXTH DEFENSE:

18. Defendant Community First Bank, Inc.'s Counterclaims are barred by its own comparative negligence and should be dismissed or reduced accordingly.

WHEREFORE, having fully responded to the allegations raised against her in Defendant Community First Bank, Inc.'s Answer and Counterclaims, Plaintiff prays that the counterclaims be dismissed with prejudice, and that judgment be entered in her favor, as set forth in her Complaint.

Respectfully submitted,



Barney Giese, Esquire
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Justin Kata, Esquire
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The Giese Law Firm, LLC
1315 Blanding Street
Columbia South Carolina 29201
(803) 708-6767

ATTORNEYS FOR THE PLAINTIFF

Columbia, South Carolina
November 7, 2014

STATE OF SOUTH CAROLINA

COUNTY OF Oconee

Debi Baker Brookshire

Plaintiff,

vs.

Community First Bank, Inc. and Benjamin Lee Hiott,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO. 2014-CP-37-526

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

Plaintiff's Attorney:	**Defendant's Attorney:**
W. Barney Giese, Esq. The Giese Law Firm 1315 Blanding Street Columbia, SC 29201 803-708-6767 barneygiese@gmail.com	Robert Y. Knowlton, Esq. Elizabeth H. Black, Esq. Haynsworth Sinkler Boyd, P.A. 1201 Main Street, Suite 2200 Columbia, SC 29201 803-779-3080 rknowlton@hsblawfirm.com eblack@hsblawfirm.com

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Def. Community First Bank, Inc.'s Motion for Summary Judgment
Estimated Time Needed: 1 hour Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Elizabeth H. Black
Signature of Attorney for ☐ Plaintiff / ☒ Defendant

October 11, 2016
Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ 25.00
☐ EXEMPT (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court, or reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order
☐ Other: _____

JUDGE CODE _____
Date: _____

FILED OCONEE COUNTY, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2016 OCT 13 P 1:

CLERK'S VERIFICATION

Collected by: AHughes Date Filed: _____
☑ MOTION FEE COLLECTED $ 25.00 ck# 74521
☐ CONTESTED – AMOUNT DUE: $ _____

Copies to:
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STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS

Debi Baker Brookshire,

Plaintiff,

v.

Community First Bank, Inc. and Benjamin Lee Hiott,

Defendants.

Case No. 2014-CP-37-526

FILED OCONEE COUNTY, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2014 OCT 13 P 1:15

DEFENDANT COMMUNITY FIRST BANK, INC.'S MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 56, SCRCP, Defendant Community First Bank, Inc. ("Community First") hereby moves the Court for entry of summary judgment in its favor on all claims.

On May 25, 2007, Plaintiff executed a power of attorney ("the POA") granting Defendant Benjamin Lee Hiott ("Hiott") the personal authority to handle virtually all aspects of her financial affairs. With Plaintiff's knowledge, Hiott exercised the authority granted under the POA by, among other things, making disbursements from Plaintiff's checking account at Community First during the period from July 12, 2007, until the account was closed on February 23, 2011 (the "Account"). Plaintiff filed this action against Community First and Hiott on September 8, 2014, based on the premise that certain disbursements Hiott made from the Account were unauthorized. Plaintiff asserts six causes of action in her Complaint for breach of fiduciary duty, conversion, negligent supervision, negligence/gross negligence, breach of contract accompanied by fraudulent act, and for an accounting.

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The grounds of this motion are that there is no genuine issue of material fact and Community First is entitled to judgment as a matter of law because the POA granted Hiott the authority to make all of the subject disbursements, and Community First was entitled to rely on the authority granted by the POA and had no duty to inquire into the purpose of the disbursements; Plaintiff's claims are time-barred; and Plaintiff has failed as a matter of law to establish the elements of any of the causes of action asserted against Community First. In addition, no genuine issue of material fact exists with regard to the funds belonging to Community First that Hiott misappropriated from Community First, deposited into the Account, and that were thereafter used for Plaintiff's benefit. Community First is thus entitled to summary judgment on its counterclaims against Plaintiff. This motion is based on the pleadings and discovery in this action, the attached Affidavit of Carol Wilson, and such additional affidavits, evidence, and a memorandum of law that may be filed prior to the hearing on this motion.

Brief Factual Background

As noted above, Plaintiff executed the POA granting Hiott broad authority to handle Plaintiff's financial affairs on May 25, 2007. A copy of the POA is attached hereto as **Exhibit A**. Although not mentioned or even alluded to in the POA, Hiott was employed as a Senior Vice President at Community First during the operative time period.[1]

Plaintiff's Account was a checking account held at Community First from June 2007 until February 23, 2011.[2] It is undisputed that Hiott handled deposits into and withdrawals from

[1] The POA was a personal matter between Hiott and Plaintiff. The POA lists Hiott's home address only, does not mention Community First at all, was executed by Plaintiff while she had no account at Community First whatsoever, and was actually executed at a BB&T branch in Columbia. Ex. A.

[2] Plaintiff had a trust account with BB&T Wealth Management, which she revoked on May 23, 2007, approximately one month before opening her checking account with Community First. She did ***not*** establish a trust account with Community First.

Plaintiff's Account. It is undisputed that Plaintiff knew about the Account and understood that Hiott was paying her obligations from the Account with her funds.[3] It is also undisputed that Hiott acted pursuant to the POA as Plaintiff's attorney-in-fact for her legal and financial dealings with other third parties, such as Baker and Baker Real Estate Developers (a development company run by other members of Plaintiff's family and in which she held a significant number of shares), BB&T, various insurance companies, and BB&B Builders for a residential lease for Plaintiff. Hiott also regularly assisted Plaintiff with the two children in the custody of Plaintiff and her husband by arranging for their care on weekends and, on at least one occasion, Hiott kept the children for several days at Christmas. Hiott further arranged for the storage and maintenance of Plaintiff's $250,000 motor home for at least one year and was entrusted with personal possession of about $500,000 worth of Plaintiff's jewelry and silver. In short, Plaintiff's relationship with Hiott while he held her POA was personal, close, and involved just about all aspects of her life.

Plaintiff testified that by the spring or summer of 2010, she had become distrustful of Hiott and believed he was being untruthful with her about her assets, especially regarding the amount of money in the Account. She decided to entrust another friend, Ann Gell Hamiter, with bill paying duties in the spring of 2010 and sought legal advice from Kathleen McDaniel, Esq. beginning in August 2010 due to her concerns about Hiott and the inconsistent information she

[3] Plaintiff admits that she got the benefit of at least $1,839,695.21 in disbursements made by Hiott from her Account for a wide variety of obligations, including her rent, transfers to her other accounts at BB&T, tax payments, telephone and utility payments, car payments, storage unit fees, attorney and accountant fees, various insurance premiums, payments to medical providers, charitable contributions, payments for traffic tickets, and payments for the care of the children in Plaintiff's custody. Despite her early claims in this litigation challenging all transactions on the Account, she now concedes that Hiott was authorized to and did in fact make disbursements for her benefit. As explained further below, however, the POA authorizes *all* of Hiott's disbursements from Plaintiff's Account—not just the ones that she now blesses in hindsight.

and Ms. Hamiter were receiving from him. Despite expressing serious concerns about Hiott's behavior with regard to her Account in mid-2010, Plaintiff failed to file this lawsuit until September 8, 2014.

Summary of Grounds for Motion

A. Plaintiff's POA to Hiott bars her claims against Community First.

Community First is entitled to summary judgment on all of Plaintiff's causes of action because Plaintiff authorized Hiott to take all of the actions he did with regard to the Account, and the law imposes no duty on Community First to monitor or regulate Hiott's activities and decisions undertaken pursuant to the POA. Plaintiff gave Hiott the POA in his individual capacity to, among other things, conduct *all* of her financial affairs. This POA predated her Account at Community First, and was not revoked until after the Account was finally closed. Specifically, the POA states in pertinent part:

> **My Agent [Hiott] shall have full power and authority to act on my behalf.** This power and authority shall authorize my Agent to **manage and conduct all of my affairs and to exercise all of my legal rights and powers**, including all rights and powers that I may acquire in the future. **My Agent's powers shall include, but not be limited to, the power to:**
>
> 1. **Open, maintain or close bank accounts** (including, but not limited to, checking accounts, savings accounts, and certificates of deposit), brokerage accounts, and other similar accounts with financial institutions.
>
> > a. **Conduct any business with any banking or financial institution with respect to any of my accounts, including, but not limited to, making deposits and withdrawals**, obtaining bank statements, passbooks, drafts, money orders, warrants, and certificates or vouchers payable to me by any person, firm, corporation or political entity.
>
> ...
>
> 2. **Sell, exchange, buy[,] invest, or reinvest any assets or property owned by me.** Such assets or property may include income producing or non-income producing assets and property.

3. Purchase and/or maintain insurance, including life insurance upon my life or the life of any other appropriate person.

...

5. **Enter into binding contracts on my behalf.**

6. Exercise all stock rights on my behalf as my proxy, including all rights with respect to stocks, bonds, debentures, or there [sic] investments.

...

10. Prepare, sign, and file documents with any governmental body or agency, including, but not limited to, authorization to:

a. Prepare, sign and file income and other tax returns with federal, state, local, and other governmental bodies.

b. Obtain information or documents from any government or its agencies, and negotiate[,] comprise [sic], or settle any matter with such government or agency (including tax matters).

c. Prepare applications, provide information, and perform any other act reasonably requested by any government or its agencies in connection with governmental benefits (including military and social security benefits).

11. Make gifts from my assets to members of my family and to such other persons or charitable organizations with whom I have an established pattern of giving. However, my Agent may not make gifts of my property to the Agent.

...

The Power of Attorney shall be construed broadly as a General Power of Attorney. The listing of specific powers is not intended to limit or restrict the general powers granted in this Power of Attorney in any manner.

Ex. A (emphasis added). The POA is unambiguous, and its interpretation is confined to the language used in the four corners of the document. *Watson v. Underwood*, 407 S.C. 443, 454-55, 756 S.E.2d 155, 161-162 (Ct. App. 2014) (internal citation omitted). Plaintiff authorized Hiott to

make withdrawals from and deposits into the Account. She authorized him to open accounts, invest her assets, purchase insurance, file her taxes, and "manage and conduct all of [her] affairs and to exercise all of [her] legal rights and powers." Ex. A. Whether she now agrees or disagrees with the decisions Hiott made is immaterial as it pertains to her claims against Community First.

Community First, as a third party, has a statutory right to rely on powers of attorney and "does not incur liability to the principal or the principal's estate by reason of acting upon the authority of it or permitting the attorney-in-fact to exercise authority." S.C. Code Ann. § 62-5-501(F)(2)(a) (2009). Further, Community First "is not required to inquire whether the attorney-in-fact has power to act or is properly exercising the power." *Id.* § 62-5-501(F)(2)(b). Nor is Community First "responsible to determine or ensure the proper application of assets, funds, or property belonging to the principal." *Id.* § 62-5-501(F)(2)(c). The existence of and terms of Plaintiff's POA that she granted to Hiott thus bar all of her claims against Community First because all of Plaintiff's claims against Community First are premised on the (erroneous) assumption that Community First had some sort of duty to monitor Hiott's disbursements from the Account or inquire into the purpose behind the disbursements while Hiott was acting under the POA.

B. Plaintiff's claims that Hiott's disbursements from the Account were unauthorized are time barred under the Uniform Commercial Code because Plaintiff failed to timely challenge the disbursements.

Plaintiff's claims that certain disbursements from her Account were unauthorized are barred under the South Carolina Uniform Commercial Code because Plaintiff utterly failed to promptly review the monthly statements for her Account and bring her concerns about Hiott allegedly exceeding the scope of his authorization in the conduct of her business to Community

First's attention. *See* S.C. Code Ann. § 36-4-406 (2003 & Supp. 2015) as applicable.[4] Both versions of this section impose a strict one year time limit for a customer to discover and report unauthorized signatures on items. S.C. Code Ann. § 36-4-406(4) (2003); S.C. Code Ann. § 36-4-406(f) (Supp. 2015); *see also Sabatino v. Atl. Sav. Bank, F.S.B.*, 314 S.C. 402, 403, 444 S.E.2d 537, 538 (Ct. App. 1994). In addition, South Carolina law specifically permits banks and their customers to vary by agreement the timeframe in which a customer must review and report unauthorized signatures or other concerns about transactions on the account. S.C. Code Ann. § 36-4-103(1) (2003); S.C. Code Ann. § 36-4-103(a) & S.C. Reporter's Cmt. (citing *Nat'l Title Ins. Corp. Agency v. First Union Nat'l Bank*, 559 S.E.2d 668, 671 (Va. 2002) & *Freese v. Regions Bank, N.A.*, 644 S.E.2d 549, 552 (Ga. App. 2007)) (Supp. 2015).[5] Plaintiff's Account agreement with Community First sets the timeframe for Plaintiff to report unauthorized signatures or other Account errors to Community First as 60 days after Community First sends the monthly statement. The monthly statements reinforce this timeframe with the monthly reminder to "[p]lease examine immediately and report if incorrect. If no reply is received within **60** days the account will be considered correct." *See* Affidavit of Carol Wilson, attached hereto as **Exhibit B** and Exhibits 1, 3, 5, and 7 thereto (emphasis in original).

[4] South Carolina adopted Revised Article 4 of the Uniform Commercial Code effective July 1, 2008. Consequently, slightly different rules apply to pre-July 1, 2008 Account statements versus post-July 1, 2008 Account statements. 2008 Act No. 204, § 4.A ("This act applies to a transaction occurring on or after the effective date [July 1, 2008] of this act. This act does not apply to a transaction or event, or obligation or duty arising out of or associated with a transaction or event before the effective date of this act.").

[5] With respect to the Uniform Commercial Code, the South Carolina legislature has provided "a statement of legislative direction to the courts of a tendency to imply an interpretation and construction of the Code sections which is consistent with the case law construction of those sections in other Code jurisdictions." S.C. Code Ann. § 36-1-103, S.C. Reporter's Cmt. (Supp. 2015); *see also In re Parker*, 363 B.R. 769, 774 (Bankr. D.S.C. Sept. 14, 2006) ("Since South Carolina has adopted a uniform law, the Court is guided by decisions in other jurisdictions that have interpreted this provision of the UCC.").

Community First mailed monthly statements for Plaintiff's Account at Community First to the address where Plaintiff was receiving her mail from the Account's inception in June 2007 until early 2010, when Community First received for the first time in April 2010 a statement addressed to Plaintiff in return mail as "unable to forward." Ex. B, ¶¶ 17-18. Community First's account management system automatically generates and prints a periodic account statement for each of its more than 25,000 accounts. *Id.* ¶¶ 3, 8. These account statements are routinely, regularly, and automatically compiled, processed, and transmitted for mailing with the United States Postal Service, as detailed in Ms. Wilson's affidavit. *Id.* ¶¶ 9-12. At all times during the Account's existence, Community First followed its normal procedures with regard to the Account statements. *See id.* ¶ 14. This evidence of Community First's "usage and custom . . . in delivering statements" to its customers is competent proof of delivery. *Cooley v. First Nat'l Bank of Little Rock*, 635 S.W.2d 250, 252 (Ark. 1982) (internal citation omitted); *see also Bakala v. Bakala*, 352 S.C. 612, 625, 576 S.E.2d 156, 163 (2003) ("Evidence of mailing establishes a rebuttable presumption of receipt.") (internal citation omitted).

Plaintiff's testimony that she did not receive monthly statements from Community First is unavailing and fails to present a genuine issue of material fact to preclude summary judgment to Community First. First, ***Plaintiff actually received at least four monthly statements, as she has produced original statements in discovery.***[6] Ex. B, ¶¶ 27-35. The only time original statements are ever printed by Community First are when they are placed in the mail. *Id.* ¶ 21. They are printed and mailed within a few days of the closing period represented in the respective Account statement. *See id.* ¶¶ 10, 12, 17, 35. Plaintiff's *actual receipt* of statements is dispositive.

[6] Plaintiff presumably received the other monthly statements, but, as she admitted during her deposition, she threw away documents regarding Community First and Hiott after 2010.

Second, the burden is on the bank customer—not the bank—to ensure receipt of account statements. S.C. Code Ann. §§ 36-1-201, 36-4-406 (2003), §§ 36-1-201(36)(A), 36-4-406(a) (Supp. 2015) (describing the bank's "sending" of statements to customers as the operative event giving rise to the customer's duty of examination and further defining "send" in part as "to deposit in the mail"). The UCC allocates the risk of loss or interception of bank statements to the bank customer. *Stowell v. Cloquet Co-op Credit Union*, 557 N.W.2d 567, 571-72 (Minn. 1997) (collecting cases). In other words, the bank customer has an affirmative duty to ensure that he or she is receiving account statements, and the customer's claims will be barred if the customer fails to timely discharge this duty. *Id.* at 569-70;[7] *Mesnick v. Hempstead Bank*, 434 N.Y.S.2d 579, 580 (N.Y. Sup. Ct. 1980) (describing a bank customer's failure to ensure receipt of statements when such statements were intercepted by her husband as an "unreasonable lack of concern"); *Westport Bank & Trust Co. v. Lodge*, 325 A.2d 222, 223-24 (Conn. 1973) (failure of account holder to notify bank when account statements stopped arriving at her house due to her housekeeper forging a change of address form did not relieve account holder of duty to ensure receipt of statements, thus barring claims under UCC); *Terry v. Puget Sound Nat'l Bank*, 492 P.2d 534, 535 (Wash. 1972) (failure to notify bank of three months of missing statements part of finding of "substantial evidence of negligence on the part of the plaintiffs"); *Myrick v. Nat'l Sav. & Trust Co.*, 268 A.2d 526, 528 (D.C. App. 1970) (account holder "was negligent as a matter of law" due to her "failure to inquire of the bank as to her lack of receipt of monthly statements" for

[7] The Court in *Stowell* found that the plaintiff's several phone calls from December 1992 through September 1993 to the bank to inform them that the plaintiff had not received various statements and correspondence from the bank was insufficient to discharge his customer duties of receiving and reviewing his statements when he failed to follow up in person when the re-mailed statements did not arrive. *Stowell*, 557 N.W.2d at 569-70. Plaintiff's complete and utter failure to notify Community First for *years* that she (allegedly) did not receive her statements is far more egregious than the plaintiff's conduct the Minnesota court found to be preclusive.

five months). Indeed, Plaintiff's own expert opined that a reasonable bank customer—even given Plaintiff's POA relationship with Hiott—could wait, at most, 90 days to notify Community First that she was not receiving Account statements. Plaintiff's failure to appropriately discharge her duties as a bank customer serves as an absolute bar to all of her claims against Community First. *Peters v. Riggs Nat'l Bank, N.A.*, 942 A.2d 1163, 1168-69 (D.C. App. 2008) (finding that section 4-406 is a statute of repose, and "equitable tolling cannot apply to statutes of repose"); *First Place Computers, Inc. v. Security Nat'l Bank of Omaha*, 558 N.W.2d 57, 60 (Neb. 1997) (holding that section 4-406 "establishes a condition precedent to an action which, unlike a statute of limitations, may not be tolled") (internal citations omitted).

It is insufficient at the summary judgment stage for Plaintiff to simply deny that she received statements (testimony that Plaintiff's document production flatly contradicts). Instead, she must present evidence that raises a genuine issue of material fact that Community First did not "send" the statements. This she cannot do, especially in the wake of her actual receipt of Account statements. Plaintiff's failure to review her statements and report any unauthorized signatures or other specific disbursement concerns to Community First within the requisite time period bars all of her claims against Community First. *Sabatino*, 314 S.C. at 404, 444 S.E.2d at 538; *Villa Contracting Co., Inc. v. Summit Bancorporation*, 695 A.2d 762, 766 (N.J. Super. 1996) ("[T]he customer must deal in specifics rather than generalities. In other words, in order to satisfy the statute, he must notify the bank of exactly which items" are unauthorized.) Community First is entitled to summary judgment on all of Plaintiff's claims.

C. In the alternative, all of Plaintiff's claims are time barred pursuant to S.C. Code Ann. § 15-3-530(5).

Plaintiff's claims are also barred by the three year statute of limitations applicable to all of Plaintiff's causes of action because Plaintiff knew or should have known of the alleged harm

more than three years before August 1, 2014, the date of the tolling agreement between Plaintiff and Community First, that preceded the filing of her Complaint on September 8, 2014. This is true for multiple reasons, as Plaintiff both received the monthly statements for her Account and suspected Hiott of misconduct with regard to her Account well over three years prior to August 1, 2014. *See* S.C. Code Ann. §§ 15-3-530(5), 15-3-535 (2005); *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 787 S.E.2d 485, 489-90 (2016) ("Under the discovery rule, the limitations period commences when the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some claim against another party might exist. This standard as to when the limitations period begins to run is *objective* rather than *subjective*. Therefore, the statutory period of limitations begins to run when a person *could or should have known*, through the exercise of reasonable diligence, that a cause of action might exist in his or her favor, rather than when a person obtains actual knowledge of either the potential claim or of the facts giving rise thereto.") (citations and quotations omitted); *Grillo v. Speedrite Prods., Inc.*, 340 S.C. 498, 503, 532 S.E.2d 1, 3 (Ct. App. 2000) ("The exercise of reasonable diligence means simply that an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist. The statute of limitations begins to run from this point and not when advice of counsel is sought or a full-blown theory developed.") (citation omitted); *Gibson v. Bank of Am., N.A.*, 383 S.C. 399, 409-10, 680 S.E.2d 778, 783-84 (Ct. App. 2009) (holding that receipt of bank statements in June 2000 that disclosed account balances placed the account holder "on notice that she had some type of claim for any perceived discrepancy, even if she did not know

the precise details behind the discrepancy" and barred lawsuit against bank brought in September 2003).

1. Plaintiff received statements for the Account more than three years prior to August 1, 2014.

As described above in section B and as detailed in Ms. Wilson's affidavit (Exhibit B), Community First sent and Plaintiff received monthly Account statements from June 2007 through January 2010. Plaintiff was on actual and constructive notice *every month* for the transactions found in each statement such that any claim as to those transactions would expire, at the very longest, three years and 60 days from when Community First sent each respective statement to Plaintiff. Plaintiff's lawsuit is thus barred by the statute of limitations under the discovery rule. *Gibson*, 383 S.C. at 409-10, 680 S.E.2d at 783-84.

Further, Plaintiff admits that she received a compiled copy of her Account statements for July 2007 through November 2010 in March or April 2011—well over three years before August 1, 2014. Plaintiff testified that she herself received this compilation of Community First bank statements for her Account from her then-attorney Kathleen McDaniel no later than March or April of 2011.[8] Plaintiff's lawsuit is thus barred by the statute of limitations under the discovery rule. *Id.*

2. Plaintiff believed that Hiott had misappropriated her funds or otherwise was untruthful with her about her affairs more than three years prior to August 1, 2014.

Plaintiff testified that, in the spring and summer of 2010, she had become distrustful of Hiott, believed him to be lying to her about her affairs and her Account at Community First, and suspected that he had acted inappropriately with regard to her finances. She engaged Ms.

[8] Ms. McDaniel received the compiled set of Account statements from James Williams, Esq., counsel for Community First, in December 2010.

McDaniel in August 2010 to investigate her concerns regarding Hiott and Community First. Consequently, Plaintiff *actually knew* in the summer of 2010 "that some claim ... might exist" with regard to the Account and her finances. *Grillo*, 340 S.C. at 503, 532 S.E.2d at 3. This actual knowledge is more than sufficient to begin the running of the statute of limitations, and Plaintiff's lawsuit is thus barred.

D. Community First is entitled to summary judgment on Plaintiff's breach of fiduciary duty cause of action.

Community First is entitled to summary judgment on Plaintiff's breach of fiduciary duty cause of action because Community First did not owe fiduciary duties to Plaintiff with regard to the checking account at issue in this matter. "[T]he normal relationship between a bank and its customer is one of creditor-debtor and not fiduciary in nature." *Regions Bank v. Schmauch*, 354 S.C. 648, 671, 582 S.E.2d 432, 444 (2003) (internal citations omitted). While a bank can take on fiduciary duties to its customers "if it undertakes to advise a depositor as part of the services the bank offers," *id.*, there is no genuine issue of material fact that Community First ever undertook to advise Plaintiff as part of the services Community First offers. Indeed, Community First does not have, nor has it ever had, a trust department.[9] Consequently, Community First owed no fiduciary duties to Plaintiff and is entitled to summary judgment on this cause of action.

[9] Plaintiff repeatedly refers to her Account at Community First as a "trust" account. To the extent Plaintiff takes the position that Community First undertook to serve as a trustee with regard to her Account, no documentary evidence or testimony supports this position (and all such evidence actually directly refutes this position). *See* Ex. B, ¶¶ 16, 36 and Ex. 7 thereto. Further, as reflected in the monthly Account statements, Community First did not charge trustee fees, and Plaintiff herself was the named trustee of her trust. Plaintiff's bald allegation is devoid of evidentiary support and cannot create a genuine issue of material fact. *Jackson v. Bermuda Sands, Inc.*, 383 S.C. 11, 17, 677 S.E.2d 612, 616 (Ct. App. 2009).

E. Community First is entitled to summary judgment on Plaintiff's cause of action for conversion.

Community First is entitled to summary judgment on Plaintiff's cause of action for conversion. "Conversion is the unauthorized *assumption and exercise of the right of ownership* over goods or personal chattels belonging to another, to the exclusion of the owner's rights." *Gordon v. Busbee*, 397 S.C. 119, 135, 723 S.E.2d 822, 831 (Ct. App. 2011) (internal quotation omitted) (emphasis added). In order to be liable for common law conversion, Community First must have assumed and exercised the rights of ownership over goods or chattels belonging to Plaintiff, which she identifies as occurring upon the transfer of "large sums of money" from her Account. Compl. ¶ 114. No evidence exists that Community First assumed and exercised ownership rights over Plaintiff's funds at their disbursement such that Plaintiff suffered any loss. Further, the UCC has displaced common law "conversion and negligence claims based on payment over a forged or unauthorized indorsement." *Flavor-Inn, Inc. v. NCNB Nat'l Bank of S.C.*, 309 S.C. 508, 511, 424 S.E.2d 534, 536 (Ct. App. 1992) (internal quotation omitted); *see also* S.C. Code Ann. § 36-3-419 (2005); S.C. Code Ann. § 36-3-420 (Supp. 2015); *Equitable Life Assur. Soc. of U.S. v. Okey*, 812 F.2d 906, 909 (4th Cir. 1987) (applying South Carolina law and finding that the Uniform Commercial "Code cause of action comprehensively covers the field of legal theories available when a check is paid over an unauthorized indorsement.").

In addition, "there can be no conversion of money unless there is an obligation on the defendant to deliver a specific, identifiable fund to the plaintiff." *Richardson's Restaurants, Inc. v. Nat'l Bank of S.C.*, 304 S.C. 289, 294, 403 S.E.2d 669, 672 (Ct. App. 1991) (internal citation omitted). No such obligation exists here, so no action for conversion of money can lie. Because Community First and Plaintiff only had a debtor/creditor relationship as represented by Plaintiff's checking account at Community First, the funds in Plaintiff's Account were "in the

nature of a general deposit and not subject to conversion." *Owens v. Andrews Bank & Trust Co.*, 265 S.C. 490, 497, 220 S.E.2d 116, 119 (1975). Consequently, "where there is merely the relationship of debtor and creditor, an action based on conversion of the funds representing the debt is improper." *Id.* (internal citation omitted). Community First is entitled to summary judgment on Plaintiff's conversion cause of action.

F. Community First is entitled to summary judgment on Plaintiff's cause of action for negligent supervision.

Community First is entitled to summary judgment on Plaintiff's cause of action for negligent supervision. As recognized in South Carolina, an employer has a duty in certain, limited circumstances to exercise reasonable care to control its employee when acting outside the scope of his or her employment. *Degenhart v. Knights of Columbus*, 309 S.C. 114, 116, 420 S.E.2d 495, 496 (1992). None of those limited circumstances apply here, as an employer is under a duty to exercise reasonable care to control his employee when acting outside the scope of employment to prevent him from intentionally harming others only if:

> (a) [the employee]
> (i) is upon the premises in possession of the [employer] or upon which the [employee] is privileged to enter only as his [employee], or
> (ii) is using a chattel of the [employer], and
> (b) [the employer]
> (i) knows or has reason to know that he has the ability to control his [employee], and
> (ii) knows or should know of the necessity and opportunity for exercising such control.

Id. at 116-17, 420 S.E.2d at 496 (quoting with approval *Restatement (Second) of Torts* § 317 (1965)). Here, because Plaintiff gave Hiott full authority to handle her affairs (including her bank accounts) in the POA (on which Community First was legally entitled to rely and for which the law insulates Community First from liability to Plaintiff), Community First had no duty to control Hiott as he proceeded under the POA. Further, Community First had no evidence or

information that Hiott had engaged in prior acts similar to Plaintiff's complaints here. *See, e.g., Hollins v. Wal-Mart Stores, Inc.*, 381 S.C. 245, 252-53, 672 S.E.2d 805, 808-09 (Ct. App. 2008) (finding that a master may subject himself to liability by retaining employees who, to the master's knowledge, are in the habit of misconducting themselves in a manner dangerous to others) (internal citations and quotations omitted); *Brockington v. Pee Dee Mental Health Ctr.*, 315 S.C. 214, 218, 433 S.E.2d 16, 18 (Ct. App. 1993) (holding that no evidence existed to support the conclusion that defendant knew or should have known of the necessity to exercise control over its employee prior to the time he assaulted a patient). Community First is thus entitled to summary judgment on Plaintiff's cause of action for negligent supervision.

G. Community First is entitled to summary judgment on Plaintiff's cause of action for negligence/gross negligence.

Community First is entitled to summary judgment on Plaintiff's cause of action for negligence/gross negligence. Plaintiff alleges that the "Defendants owed duties to the Plaintiff to act in good faith while acting under the authority of the Power of Attorney in place." Complaint ¶ 129. This is the sole duty that Plaintiff alleges "the Defendants" negligently breached. Plaintiff appears to have pulled this language directly from the POA she gave to Hiott, which states in pertinent part: "My Agent shall not be liable for any loss that results from a judgment error that was made in good faith. However, my Agent shall be liable for willful misconduct or the failure to act in good faith while acting under the authority of this Power of Attorney." Ex. A. Consequently, such a duty sounds in contract and not in tort, and a claim for negligence cannot lie.[10] *Foxfire Vill., Inc. v. Black & Veatch, Inc.*, 304 S.C. 366, 375, 404 S.E.2d 912, 918-19 (Ct. App. 1991) ("As a matter of law, if the duty owed arises merely from agreement of the parties,

[10] It thus follows that this contractual duty cannot form the basis of a claim for gross negligence either. *See, e.g. Clyburn v. Sumter Cnty. School Dist. No. 17*, 317 S.C. 50, 53, 451 S.E.2d 885, 887 (1994) (describing gross negligence).

breach of the duty does not create a cause of action for negligent conduct.") (internal citation omitted).

Further, as detailed above in Footnote 1, Section A, and the POA itself (Ex. A), any such duty of "good faith" is, by its unambiguous language, held only by "my agent"—Ben Hiott. Community First is not and never has been designated as Plaintiff's agent in her POA. Community First is thus entitled to summary judgment on Plaintiff's claims for negligence/gross negligence.[11]

H. Community First is entitled to summary judgment on Plaintiff's cause of action for breach of contract accompanied by a fraudulent act.

Community First is entitled to summary judgment on Plaintiff's cause of action for breach of contract accompanied by a fraudulent act. In her Complaint, Plaintiff identifies the "contract" that Community First allegedly breached as "set forth above." Compl. ¶ 134. Assuming that Plaintiff has alleged that Community First breached the POA,[12] summary judgment is warranted for Community First because the POA does not represent a contract between Plaintiff and Community First. *See Greene v. Quest Diagnostics Clinical Labs., Inc.*, 455 F. Supp. 2d 483, 495 (D.S.C. 2006) (describing the prerequisite establishment of a contract to this cause of action). There is also no evidence that Community First "actively concealed from the Plaintiff the fraudulent and tortious conduct" of Hiott, nor is there any evidence that

[11] *See also* Section E, above, regarding the UCC displacement of common law negligence causes of action for unauthorized signatures and forged endorsements.

[12] The only documents remotely named in the Complaint that Plaintiff could conceivably argue are contracts are the POA (Compl. ¶¶ 6-7) and a revocable trust claimed to be settled and created by Plaintiff on June 22, 2007. Compl. ¶ 10. Plaintiff has not produced a copy of the revocable trust documentation to which her Complaint refers. Unmentioned in the Complaint is the Account agreement establishing Plaintiff's Account at Community First. Because the Complaint alleges that the contract that forms the basis of Plaintiff's cause of action for breach of contract accompanied by a fraudulent act was "set forth above," Plaintiff apparently does not allege that Community First breached the Account agreement. Even if Plaintiff does so claim, Community First has not breached the Account agreement. *See* Ex. B and Ex. 7 thereto.

Hiott continued handling *Plaintiff's* funds in the Account after Plaintiff notified Community First of her concerns in the fall of 2010. *See* Compl. ¶¶ 135-136. Consequently, Plaintiff can show no genuine issue of material fact with respect to the remaining prongs of this cause of action, and Community First is entitled to summary judgment. *See Greene*, 455 F. Supp. 2d at 495.

I. Community First is entitled to summary judgment on Plaintiff's cause of action for an accounting.

Community First is entitled to summary judgment on Plaintiff's cause of action for an accounting. An accounting is an equitable remedy "designed to prevent unjust enrichment by disclosing and requiring the relinquishment of profits received as the result of a breach of a confidential or fiduciary duty." *Rogers v. Salisbury Brick Corp.*, 299 S.C. 141, 144, 382 S.E.2d 915, 917 (1989) (internal citation omitted). As no confidential or fiduciary duty existed between Plaintiff and Community First, an accounting is unwarranted. Further, Plaintiff's claim for an accounting is now moot because all Account statements and supporting documentation have been produced to Plaintiff. There is no need for discovery, and all available information is now before all parties. Summary judgment is thus appropriate to Community First on this cause of action.

J. Community First is entitled to summary judgment on its offset and counterclaims against Plaintiff.

Community First is entitled to summary judgment on its offset and counterclaims against Plaintiff for the funds belonging to Community First that Hiott transferred to Plaintiff's Account totaling $880,855.58 and which were thereafter used to pay Plaintiff's obligations or to further her interests. Plaintiff has admitted that it was inappropriate for any bank funds to be deposited into her Account and has no claim to that money. Consequently, no genuine issue of material

fact exists with regard to this offset and counterclaims, and summary judgment to Community First is warranted.

CONCLUSION

For the reasons contained in this motion, Ms. Wilson's affidavit (Ex. B), and in any further materials to be submitted to the Court, Community First is entitled to summary judgment in its favor on all claims advanced against or by it in this matter.

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.

By: _____

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October 11, 2016
Columbia, South Carolina

DM: 4470708 v.4

EXHIBIT A

General Power of Attorney

I, Debi Baker Brookshire, residing at 1707 Devine Street, Columbia, SC 29201, hereby appoint Benjamin Lee Hjort of 9 Topsail Lane, Salem, SC 29676, as my Attorney-in-Fact ("Agent").

I hereby revoke any and all general powers of attorney that previously have been signed by me. However, the preceding sentence shall not have the effect of revoking any powers of attorney that are directly related to my health care that previously have been signed by me.

My Agent shall have full power and authority to act on my behalf. This power and authority shall authorize my Agent to manage and conduct all of my affairs and to exercise all of my legal rights and powers, including all rights and powers that I may acquire in the future. My Agent's powers shall include, but not be limited to, the power to:

1. Open, maintain or close bank accounts (including, but not limited to, checking accounts, savings accounts, and certificates of deposit), brokerage accounts, and other similar accounts with financial institutions.

   a. Conduct any business with any banking or financial institution with respect to any of my accounts, including, but not limited to, making deposits and withdrawals, obtaining bank statements, passbooks, drafts, money orders, warrants, and certificates or vouchers payable to me by any person, firm, corporation or political entity.

   b. Perform any act necessary to deposit, negotiate, sell or transfer any note, security, or draft of the United States of America, including U.S. Treasury Securities.

   c. Have access to any safe deposit box that I might own, including its contents.

2. Sell, exchange, buy invest, or reinvest any assets or property owned by me. Such assets or property may include income producing or non-income producing assets and property.

3. Purchase and/or maintain insurance, including life insurance upon my life or the life of any other appropriate person.

4. Take any and all legal steps necessary to collect any amount of debt owned to me, or to settle any claim, whether made against me or asserted on my behalf against any other person or entity.

5. Enter into binding contracts on my behalf.

6. Exercise all stock rights on my behalf as my proxy, including all rights with respect to stocks, bonds, debentures, or there investments.

7. Maintain and/or operate any business that I may own.

8. Employ professional and business assistance as may be appropriate, including attorneys, accountants, and real estate agents.

9. Sell, convey, lease, mortgage, manage, insure, improve, repair, or perform another act with respect to any of my property (now owned or later acquired) including, but not limited to, real estate and real estate rights (including the right to remove tenants and to recover possession). This includes the right to sell or encumber any homestead that I now own or may own in the future.

10. Prepare, sign, and file documents with any governmental body or agency, including, but not limited to, authorization to:

a. Prepare, sign and file income and other tax returns with federal, state, local, and other governmental bodies.

b. Obtain information or documents from any government or its agencies, and negotiate comprise, or settle any matter with such government or agency (including tax matters).

c. Prepare applications, provide information, and perform any other act reasonably requested by any government or its agencies in connection with governmental benefits (including military and social security benefits).

11. Make gifts from my assets to members of my family and to such other persons or charitable organizations with whom I have an established pattern of giving. However, my Agent may not make gifts of my property to the Agent.

12. Transfer any of my assets to the trustee of any revocable trust created by me, if such trust is in existence at the time of such transfer.

13. Disclaim any interest which might otherwise be transferred or distributed to me from any other person, estate, trust, or other entity, as may be appropriate.

The Power of Attorney shall be construed broadly as a General Power of Attorney. The listing of specific powers is not intended to limit or restrict the general powers granted in this Power of Attorney in any manner.

Any power of authority granted to my Agent under this document shall be limited to the extent necessary to prevent this Power of Attorney from causing: (i) my income to be taxable to my Agent, (ii) my assets to be subject to general power of appointment by my Agent, and (iii) my Agent to have any incidents of ownership with respect to any life insurance polices that may own on the life of my Agent.

My Agent shall not be liable for any loss that results from a judgment error that was made in good faith. However, my Agent shall be liable for willful misconduct or the failure to act in good faith while acting under the authority of this Power of Attorney.

I authorize my Agent to indemnify and hold harmless any third party who accepts and acts under this document.

My Agent shall be entitled to reasonable compensation of any services provided as my Agent. My Agent shall be entitled to reimbursement for all reasonable expenses incurred in connection with this Power of Attorney.

My Agent shall provide an accounting for all funds handled and all acts performed as my Agent, if I so request or if such request is made by any authorized personal representative of fiduciary acting on my behalf.

This Power of Attorney shall become effective immediately and shall not be affected by my disability or lack of mental competence, except as may be provided otherwise by an application state statue. This is a Durable Power of Attorney. This Power of Attorney shall continue effective until my death. This power of Attorney may be revoked by me at any time by providing a written notice to my Agent.

Dated May 25 2007 at Branch Banking & Trust Columbia, SC

YOUR SIGNATURE:

Dilsie Bain Brooks

WITNESS' SIGNATURE:

Allison L Brackett

WITNESS' PRINTED FULL LEGAL NAME:

Allison L Brackett

WITNESS' SIGNATURE:

Shawanna Sturghill

WITNESS' PRINTED FULL LEGAL NAME:

Shawanna Sturghill

Acknowledgement:

STATE OF South Carolina

COUNTY OF Richland

The foregoing instrument was acknowledged before me this 25 day of May 2007 by Lucas Askins who is personally known to me or who was produced South Carolina Drivers License as identification.

Signature of person taking acknowledgement

Lucas Askins

Name typed, printed, or stamped

CFB001353

EXHIBIT B

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS

Case No: 2014-CP-37-526

Debi Baker Brookshire,

Plaintiff,

vs.

Community First Bank, Inc. and Benjamin Lee Hiott,

Defendant.

AFFIDAVIT OF CAROL WILSON

Personally appeared before me, Carol Wilson, who, being duly sworn, deposes and states as follows:

1. My name is Carol Wilson. I am over the age of 18 and make this affidavit upon my own personal knowledge and upon the records kept in the ordinary course of business by my employer, Community First Bank ("Community First"), and to which I have access to in the regular performance of my duties.

2. I am currently the Senior Vice President of Deposit Operations for Community First, a position I have held since January 2016. I previously served as the Vice President of Deposit Operations for Community First (including during the time period from 2007 through 2011) and have worked at Community First since January 1990.

3. The deposit operations department of Community First is responsible for, among other things, the preparation, processing, and mailing of the periodic (typically, monthly) account statements for the more than 25,000 accounts held by Community First customers. The operations department also processes, organizes, and archives the periodic account statements

1

that are returned to Community First by the United States Postal Service ("USPS") when they are unable to be delivered to the addressee for one reason or another.

4. My office, as well as the deposit operations department itself, is located at the Walhalla branch of Community First, 3685 Blue Ridge Boulevard, Walhalla, South Carolina 29691. My office and the deposit operations department are located on the second floor of the Walhalla branch. A small staff of 1-2 people, who report directly to me, is in charge of account statement mailing. The statement preparation work area is small, and those of us who work there can easily observe all activity in the statement preparation work area.

5. Benjamin L. Hiott's office was at the Walhalla branch until April 2006, when he moved to an office located at 449 Highway 123 Bypass, Seneca, South Carolina 29678 ("Seneca-North"). The Seneca-North branch is approximately eight miles from the Walhalla branch.

6. After Mr. Hiott's office moved to the Seneca-North branch, it was very uncommon for him to personally visit the Walhalla branch. Most of my personal interactions with Mr. Hiott occurred at the Seneca-North branch after his office moved. Even when I saw him in the Walhalla branch after he moved, I did not see him in the statement preparation work area on the second floor.

7. Among other information provided, the periodic account statement recites all deposits into and withdrawals from the account for the given time period.

8. The periodic account statement is automatically generated and printed for each account held at Community First. A process to suppress the auto-generation and printing does not exist.

9. Community First holds a permit with the USPS for purposes of mailing the periodic account statements and other bank correspondence. Pursuant to this permit, the

operations department prepares trays of account statements for mailing by the USPS. There are 10-15 cycles of mail each month, and each account that receives a monthly account statement is part of a specific cycle. The month-end cycle is the largest cycle by volume of mail, and the statements printed during this cycle fill between 10-15 trays. Each tray is 11.25 inches wide and either 13.5 inches (small) or 24 inches (large) long.

10. Until approximately mid to late 2009, the preparation of account statements for mailing was relatively manual following the auto-generation and printing of each statement, which printed based on and in order of ZIP Code. Account statements prior to this time were hand-folded and hand-stuffed into envelopes by my staff. My staff then placed the statements in ZIP Code order into the mailing trays. When the cycle of statements was completed, my staff would physically transport the trays of statements to the USPS for mailing via car. At all times during this process, the statements were in the physical custody and control of the members of my staff. On certain limited occasions when the cycle did not finish printing until late in the work day, the statements would be folded, stuffed into envelopes, and placed into the mailing trays. These mailing trays would then be locked in the Walhalla branch vault until the following work day when they would be retrieved by a member of my staff and transported via car to the USPS for mailing.

11. The Walhalla branch vault is only accessible via a combination lock known to approximately five people, including my 1-2 person staff and me. To my knowledge, Mr. Hiott did not know the combination to the Walhalla branch vault from June 2007 through February 2011.

12. In mid to late 2009, the deposit operations department began using an inserter to fold the auto-generated and printed statements and stuff them into envelopes. The inserter would

automatically generate a count of how many statements were in each group. My staff would place the envelopes in the mailing trays and transport them to the USPS as before (see ¶ 10, above) but would also transport to the USPS the count of statements generated by the inserter. If the number of pieces of mail the USPS received did not match the statement count, the USPS would return the entire tray until the discrepancy was resolved.

13. The account held by Ms. Brookshire at Community First (ending in the number 1950) (the "Account") was opened in June 2007, closed for the first time at the end of October 2010, and was both reopened and closed for the final time in February 2011.

14. For each month of the Account's existence, a monthly Account statement was automatically generated, printed, and prepared for mailing as set forth in paragraphs 10 and 12 above.

15. To my knowledge, Mr. Hiott never asked to see, review, or pull from the printed statements any of the Account statements or statements for any other account at Community First. Given the small size of the statement preparation work area and the fact that I or a member of my staff is physically present with the printed and stuffed statements at all times until they are transported to the USPS (with the exception of certain, limited, and unpredictable occasions when the trays of statements are locked in the Walhalla branch vault as described in paragraph 10 above), it would have been nearly impossible for Mr. Hiott to access the statements during an individual month, much less on a regular basis.

16. As a money market checking account for the vast majority of its existence (until April 22, 2010, which it was changed to a different kind of checking account), the Account was on the month-end cycle for each given month.

17. For each monthly Account statement representing June 2007 through January 2010, the monthly Account statement was transmitted by Community First to the USPS for mailing to Ms. Brookshire and was not returned by the USPS to Community First.

18. The February 2010 monthly Account statement was transmitted to the USPS for mailing to Ms. Brookshire, but returned to Community First on or about April 19, 2010, with the USPS label attached stating "Return to Sender, Attempted - Not Known, Unable to Forward" and dated April 6, 2010. A true and correct color copy of the envelope and statement contained therein are attached hereto as Exhibit 1. A true and correct copy of Community First's mail log showing the date this Account statement was returned to Community First is attached hereto as Exhibit 2.

19. Subsequent monthly Account statements were either mailed out and returned to Community First in the same manner as the February 2010 statement or were not actually mailed due to the application of an "R" code in Community First's account management system, which directs the system to apply an "EXCLUDE-DoNotMailAddr" code to the auto-generated and printed statement. Statements coded "R" are printed and filed in a locked room until such time as the account owner directs their delivery via a change of address form or other request to Community First. Plaintiff's returned and "R"-coded monthly Account statements were kept in this manner, and were retrieved at my direction during the course of this litigation.

20. The account management system records every change, modification, or entry regarding an account's address, type, or other coding for handling of the statements, such as the "R" code. If a change is made in the system, the system maintains a record of that change. No mechanism exists to delete records showing that changes occurred.

21. As a matter of Community First's normal business practices, only one original statement is ever generated and printed. The single original is mailed to the account holder, or, if the account holder chooses a different delivery method, delivered to the account holder pursuant to his or her instructions to Community First.

22. Any reprints of account statements are recreated from a print file stored on Community First's computer servers.

23. Any reprint of an account statement contains the same address and financial transaction information as the original statement. While the operative information is the same when the statement is reprinted, Community First does not, as a matter of cost efficiency and regular practice, reprint statements onto statement paper (colored, watermarked, and heavier-grade paper). Instead, reprints are printed onto plain white printer paper.

24. There have been a few isolated events where the customer asks for a reprint onto statement paper for presentation to the United States government or for some official purpose. These reprints onto statement paper are not a common practice and occur only at the customer's specific request.

25. I have provided reprints of Ms. Brookshire's Account statements several times since 2010 to my supervisors and attorneys for Community First. Each time, I have reprinted the statements from the print files onto plain white printer paper. I have never reprinted Ms. Brookshire's Account statements onto statement paper.

26. Depending on the computer system on which the print files are archived (a determination based on date), the reprint may have a "CheckQuest Web-Research: Print Statement" header. Such a header does not appear on the original statement.

27. On May 20, 2016, I traveled to Columbia, South Carolina from my office in Walhalla, South Carolina for the purpose of reviewing several original documents produced by Plaintiff in this lawsuit. I reviewed these original documents at the Giese Law Firm, one of the firms representing Plaintiff in this lawsuit. Copies of the original documents I reviewed are attached as Exhibits 3 (Giese-CFB 1724-27), 4 (Giese-CFB 1728-29), and 5 (Giese-CFB 1731-34) hereto.

28. The original documents in the possession of Plaintiff's counsel and represented in copy form at Exhibit 3 is the entire original monthly statement for the Account dated November 30, 2007.

29. The original documents in the possession of Plaintiff's counsel and represented in copy form at Exhibit 4 is the first page only (front and back) of the original monthly statement for the Account dated December 31, 2007.

30. The original documents in the possession of Plaintiff's counsel and represented in copy form at Exhibit 5 is the entire original monthly statement for the Account dated January 31, 2008.

31. The original documents at Exhibits 3, 4, and 5 all have the following characteristics demonstrating that they are the original statements:

a. The first page (front and back) of Exhibits 3, 4, and 5 is statement paper.

i. The front of each first page is light blue in color with a dark/royal blue double border and a white Community First watermark in the middle.

ii. The letterhead on Exhibits 3, 4, and 5 is printed in dark/royal blue ink and contains only six Community First branch locations. By January 2010, any statement paper in use by Community First had seven Community

First branch locations listed on the letterhead. *Compare* Ex. 1 *with* Exs. 3, 4, 5.

iii. There are noticeable creases in the middle of these pages where it has been folded consistent with mailing in an envelope.

iv. It is 3-hole punched on the left side of the page.

v. The back side of each first page is a preprinted gray form on a white back.

b. The remaining pages of Exhibits 3 and 5 are also 3-hole punched and not on the light blue statement paper. They are also noticeably creased in the middle of the page where they have been folded consistent with mailing in an envelope.

c. The print quality of Exhibits 3, 4, and 5 is very good and better than any reprint would be.

d. The text of the statement (including address, list of transactions, etc.) is larger on the original; on any reprint/reprint file, everything would be condensed/shrunk down with the font slightly smaller. I compared the originals to known reprints by holding them up to the light together, and the printing files are distinctly different. The margins are very different, thus leading me to believe the statements Plaintiff produced are the originals mailed to her by Community First.

32. The original documents at Exhibits 3, 4, and 5 hereto are the original statements mailed to Plaintiff within a few days of the closing date of each respective statement period.

33. I also reviewed the document in Plaintiff's counsel's possession that was produced at Giese-CFB 1418. A copy of this document is attached hereto as Exhibit 6.

34. The document in Plaintiff's counsel's possession attached as Exhibit 6 is a photocopy of the first page (front only) of the original monthly statement for the Account dated July 31, 2007. This is a photocopy of the original for the following reasons:

a. It is on letterhead with a double border.

b. The letterhead contains only six Community First branch locations (see ¶ 31(a)(ii), above and *compare* Ex. 1 with Ex. 6).

c. The 3-hole punches on the left side are visible.

d. The photocopy picks up on the crease in the middle of the page because the printing is slightly smudged.

e. The font size is not shrunk down (see ¶ 31(d), above).

f. Due to the older computer system on which the reprint file for the July 31, 2007 statement is kept, all reprints of this particular statement would have a CheckQuest header at the top (see ¶ 26, above). This statement does not have such a header.

35. The document in Plaintiff's counsel's files represented in copy form as Exhibit 6 hereto is a photocopy of the original statement mailed to Plaintiff within a few days of the July 31, 2007.

36. A true and correct copy of Community First's account agreement for the Account with Plaintiff is attached hereto as Exhibit 7.

[signature on following page]

Carol Wilson

SWORN TO AND SUBSCRIBED BEFORE ME
This 7 day of October, 2016.

Notary Public for South Carolina
My Commission Expires: 9-25-18

DM: 4680434 v.1

Exhibit 1



P.O. Box 1097
Walhalla, S.C. 29691

RETURN SERVICE REQUESTED

FIRST-CLASS MAIL
U.S. POSTAGE
PAID
WALHALLA, SC
PERMIT NO. 7

**********AUTO**MIXED AADC 296
3666 0 8280 MB 0.382 17 13 3
DEBI BAKER BROOKSHIRE TRUST
DEBI BAKER BROOKSHIRE TRUSTEE
1707 DEVINE ST
COLUMBIA SC 29201-4011

NIXIE 292 DE 1 00 04/08/10
RETURN TO SENDER
ATTEMPTED - NOT KNOWN
UNABLE TO FORWARD
BC: 29691109797 *2460-08417-08-35

29691@1097

CFB006822

96

Putting Our Customers First!



Seven Locations To Serve You.

3685 Blue Ridge Blvd. Walhalla, SC 29691	1600 Sandifer Blvd. Seneca, SC 29678	449 Hwy. 123 By-Pass Seneca, SC 29678	1101 East Main St. Westminster, SC 29693

FDIC

4002 Clemson Blvd. Anderson, SC 29621	208 East Main St. Williamston, SC 29697	2007 E. Greenville St. Anderson, SC 29621

CFB006823

97

COMMUNITY FIRST BANK

3865 Blue Ridge Blvd.
P.O. Box 1097
Walhalla, S.C. 29691
(864) 638-2105

1600 Sandifer Blvd.
P.O. Box 450
Seneca, S.C. 29678
(864) 882-2575

4002 Clemson Blvd.
P.O. Box 5106
Anderson, S.C. 29623
(864) 222-2440

208 East Main St.
P.O. Box 247
Williamston, S.C. 29697
(864) 847-5109

1101 East Main St.
P.O. Box 1050
Westminster, S.C. 29693
(864) 647-9564

449 Hwy. 123 By-Pass
P.O. Box 459
Seneca, SC 29679
(864) 888-0206

2007 E. Greenville St.
P.O. Box 5106
Anderson, SC 29621
(864) 224-0178

000 00007 03
ACCOUNT: [redacted]1950
DOCUMENTS: 15

**********AUTO**MIXED AADC 296
3666 0.8280 MB 0.382 17 13 3

DEBI BAKER BROOKSHIRE TRUST
DEBI BAKER BROOKSHIRE TRUSTEE
1707 DEVINE ST
COLUMBIA SC 29201-4011

30-0
2
13

****

* AS PART OF THE ECONOMIC STABILIZATION BILL, A TEMPORARY INCREASE IN FDIC INSURACE COVERAGE IS EFFECTIVE IMMEDIATELY. COVERAGE RAISES TO $250,000 PER DEPOSITOR THROUGH DECEMBER 31,2013 *

****

AS OF SEPTEMBER 18, 2009, ALL INTERNATIONAL ACH TRANSACTIONS MUST BE VERIFIED AGAINST THE LIST OF SPECIALLY DESIGNATED NATIONALS. THIS ACTION MAY CAUSE A DELAY IN THE SETTLEMENT OF SUCH FUNDS TO YOUR ACCOUNT.

****

PERFORMANCE INVESTMT ACCOUNT [redacted]1950

DESCRIPTION	DEBITS	CREDITS	DATE	BALANCE
BALANCE LAST STATEMENT			01/29/10	17,559.48
INVESTMENT COUNTER WITHDRAWAL	2,500.00		02/01/10	15,059.48
DEPOSIT		31,261.76	02/05/10	46,321.24
MISCELLANEOUS DEBIT	3,407.26		02/05/10	42,913.98
INVESTMENT COUNTER WITHDRAWAL	3,000.00		02/05/10	39,913.98
INVESTMENT COUNTER WITHDRAWAL	4,000.00		02/08/10	35,913.98
INVESTMENT COUNTER WITHDRAWAL	2,500.00		02/09/10	33,413.98
INVESTMENT COUNTER WITHDRAWAL	2,500.00		02/12/10	30,913.98
BAKERANDBAKEROP BOPER		5,433.76	02/16/10	36,347.74
INVESTMENT COUNTER WITHDRAWAL	5,000.00		02/17/10	31,347.74
INVESTMENT COUNTER WITHDRAWAL	2,500.00		02/18/10	28,847.74
MISCELLANEOUS DEBIT	1,065.00		02/19/10	27,782.74
INVESTMENT COUNTER WITHDRAWAL	500.00		02/22/10	27,282.74
INVESTMENT COUNTER WITHDRAWAL	3,000.00		02/23/10	24,282.74
INVESTMENT COUNTER WITHDRAWAL	500.00		02/25/10	23,782.74
DEPOSIT		43.49	02/26/10	23,826.23
INVESTMENT COUNTER WITHDRAWAL	5,000.00		02/26/10	18,826.23
INTEREST		10.99	02/26/10	18,837.22
BALANCE THIS STATEMENT			02/26/10	18,837.22

TOTAL CREDITS	(4)	36,750.00	AVG AVAILABLE BALANCE	24,265.37
TOTAL DEBITS	(13)	35,472.26	AVERAGE BALANCE	27,616.40

* * * C O N T I N U E D * * *

NOTICE: SEE REVERSE SIDE FOR IMPORTANT INFORMATION.

THIS FORM IS PROVIDED TO HELP YOU BALANCE YOUR STATEMENT

WITHDRAWALS OUTSTANDING NOT CHARGED TO ACCOUNT

No.	$

DEBI BAKER BROOKSHIRE TRUST

PERFORMANCE INVESTMI ACCOUNT [redacted]1950

I N T E R E S T

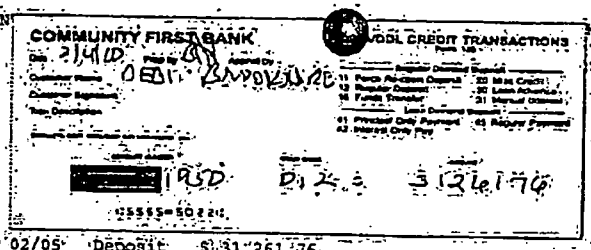
AVERAGE LEDGER BALANCE:	27,616.40	INTEREST EARNED:	10.99
AVERAGE AVAILABLE BALANCE:	24,265.37	DAYS IN PERIOD:	28
INTEREST PAID THIS PERIOD:	10.99	ANNUAL PERCENTAGE YIELD EARNED:	.59%
INTEREST PAID 2010:	36.47		
INTEREST PAID 2009:	108.01		

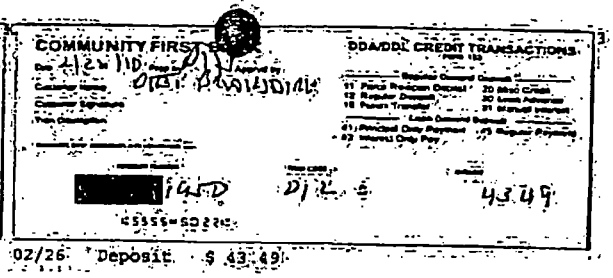
ITEMIZATION OF OVERDRAFT AND RETURNED ITEM FEES

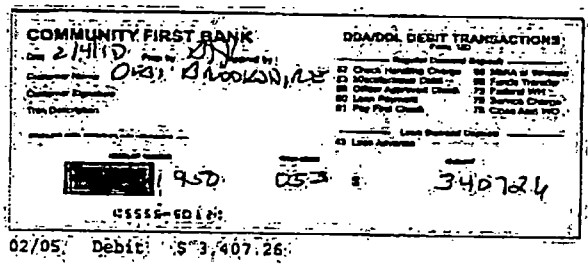
	TOTAL FOR THIS PERIOD	TOTAL YEAR TO DATE
TOTAL OVERDRAFT FEES:	.00	.00
TOTAL RETURNED ITEM FEES:	.00	.00

CFB006810

P-ACCOUN


COMMUNITY FIRST BANK
DDA/DDL CREDIT TRANSACTIONS
[redacted] 195D D12 $ 31261.76
02/05 Deposit $ 31,261.76


COMMUNITY FIRST BANK
DDA/DDL CREDIT TRANSACTIONS
[redacted] 145D D12 $ 43.49
02/26 Deposit $ 43.49


COMMUNITY FIRST BANK
DDA/DDL DEBIT TRANSACTIONS
[redacted] 195D 053 $ 3407.26
02/05 Debit $ 3,407.26

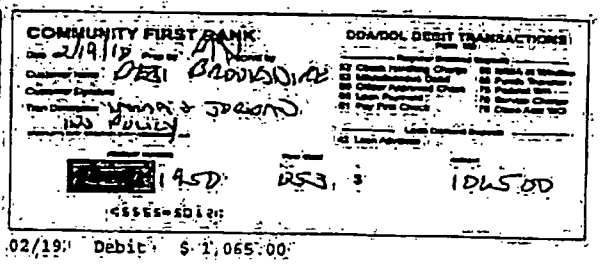

COMMUNITY FIRST BANK
DDA/DDL DEBIT TRANSACTIONS
[redacted] 195D 053 $ 1065.00
02/19 Debit $ 1,065.00

Exhibit 2

COMMERCE FIRST BANK

HOLD, POST OFFICE RETURN AND UNDELIVERABLE STATEMENT MAIL OR DEBIT CARD DISPOSITION LOG

Branch 105

Retain copy in branch. Send a copy along with items to Operations at 30-day intervals for items without disposition other than delivance which are destroyed. This log is used for all POR mail including mail of the Loan Department based on ID Theft Red Flags.

Debit Card or Account Number or PIN Returned*	Type of Correspondence Hold, Post Office Return **	Branch Follow-up Action Taken	Branch Date Received	Mail Received From Operations Logged and Placed in Dual Custody and	Date POR Item Mailed to Customer or Returned to Central Location or Destroyed (Debit Cards Only)	Hold Mail Delivered by	Hold Mail Customer Signature Upon Receipt
Redacted	stmt	filed in ret mail	4-19-10	[illegible] and [illegible]	4-19-10	Sylvia	filed in ret mail [illegible]
1950				and			
with Bob Burchette				with			
Redacted				and			
				and			
				and			

* Debit Cards received must be noted on this Log under dual control and placed under dual control upon receipt by branch.

** POR return items such as statements or Thank You letters (for Thank you letters which are PBR accounts opened within the past 30 days – contact the ID Theft Red Flag or BSA/Customer Due Diligence Office IMMEDIATELY).

104

CFB006854

Exhibit 3

COMMUNITY FIRST BANK FDIC

3685 Blue Ridge Blvd.
P.O. Box 1097
Walhalla, S.C. 29691
(864) 638-2105

1600 Sandifer Blvd.
P.O. Box 453
Seneca, S.C. 29679
(864) 882-2575

4002 Clemson Blvd.
P.O. Box 5106
Anderson, S.C. 29623
(864) 222-2440

208 East Main Str.
P.O. Box 247
Williamston, S.C. 29697
(864) 847-5100

1101 East Main St.
P.O. Box 1050
Westminster, S.C. 29693
(864) 647-9554

349 Hwy. 123 By-Pass
P.O. Box 456
Seneca, SC 29679
(864) 886-0205

000 00007 03
ACCOUNT: [redacted]1950
DOCUMENTS: 10

DEBI BAKER, BROOKSHIRE TRUST
DEBI BAKER, BROOKSHIRE TRUSTEE
1707 DEVINE ST

COLUMBIA SC 29205

30-0
4
6

****

PLEASE VISIT OUR NEW OFFICE NOW OPEN AT 2007 EAST GREENVILLE ST, ANDERSON, SC. (ACROSS FROM AHMED HEALTH, CAMPUS ON HIGHWAY 81). PHONE (864)224-0178.

****

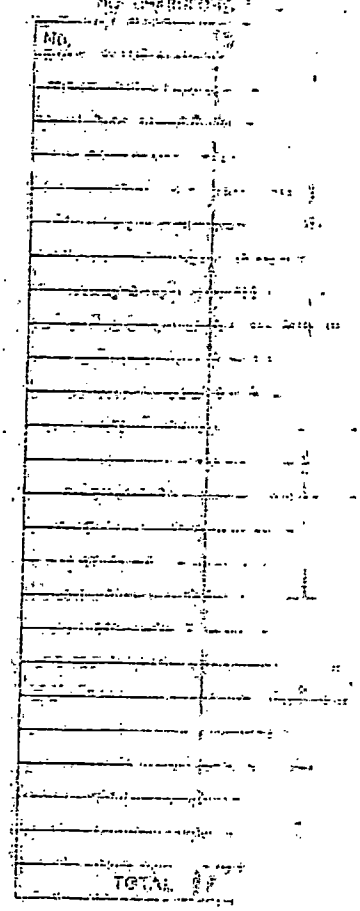
PERFORMANCE INVESTMT ACCOUNT [redacted]1950

DESCRIPTION	DEBITS	CREDITS	DATE	BALANCE
BALANCE LAST STATEMENT			10/31/07	398,925.25
DEPOSIT		88,527.85	11/02/07	487,453.10
DEPOSIT		11,066.72	11/05/07	498,519.82
TRF TO 100252360	2,500.00		11/09/07	496,019.82
TRF TO 500213467	2,500.00		11/14/07	493,519.82
INVESTMENT COUNTER WITHDRAWAL	11,235.51		11/14/07	482,284.31
INVESTMENT COUNTER WITHDRAWAL	15,000.00		11/14/07	467,284.31
CHECK	1,147.61		11/14/07	466,136.70
DEPOSIT		5,433.76	11/19/07	471,570.46
DEPOSIT		25,000.00	11/19/07	496,570.46
MISCELLANEOUS DEBIT	748.48		11/19/07	495,821.98
MISCELLANEOUS DEBIT	888.68		11/19/07	494,933.30
MISCELLANEOUS DEBIT	200,000.00		11/28/07	294,933.30
INTEREST		1,654.24	11/30/07	296,587.54
BALANCE THIS STATEMENT			11/30/07	296,587.54

TOTAL CREDITS	(5)	131,682.57	AVG AVAILABLE BALANCE	456,608.73
TOTAL DEBITS	(8)	234,020.28	AVERAGE BALANCE	466,844.86

* * * C O N T I N U E D * * *

Giese-CFB 1724



Telephone or write to us at the telephone number or address shown on your statement if you need more information about transfers on your statement or receipt or if you think there is a problem or error.

(1) Tell us your name and account number.
(2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
(3) Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than ten business days to do this, we will credit your account for the amount you think is in error, so that you will have use of the money during the time it takes us to complete our investigation.

There is a summary of your rights in the case of errors or questions about your electronic transfers in response to a billing error notice.

Your Demand Deposit Loan Account is governed by the Agreement and Disclosure of the Demand Deposit Account and they will be used to determine the amount of the finance charge. The following information thus applies only to the Demand Deposit Loan Account.

If you think your bill is wrong or if you need more information about a transaction on your bill, write us on a separate sheet at the address listed on your bill as soon as possible. We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights. In your letter, give us the following information:

(1) Your name and account number.
(2) The dollar amount of the suspected error.
(3) Describe the error and explain if you can why you believe there is an error. If you need more information, describe the item you are unsure about.

You do not have to pay any amount in question while we are investigating, but you are still obligated to pay the parts of your bill that are not in question. While we investigate your question, we cannot report you as delinquent or take any action to collect the amount you question.

We figure a portion of the FINANCE CHARGE on your account by applying the periodic rate to the "Daily Balance" we take the beginning balance of your account each day, add any new purchases, and subtract any payments or credits that apply. This gives us the daily balance.

The minimum periodic finance charge, if any, is the smallest finance charge that will be imposed during a billing cycle. It shall be applied to each account for each billing cycle for which a finance charge is imposed. It is disclosed at the end of each billing cycle.

Send payments and inquiries to:

NOTE: Payments received after 5:00 p.m. on any business day will be credited on the next business day.

DEBI BAKER BROOKSHIRE TRUST

PERFORMANCE INVESTMT ACCOUNT [redacted]1950

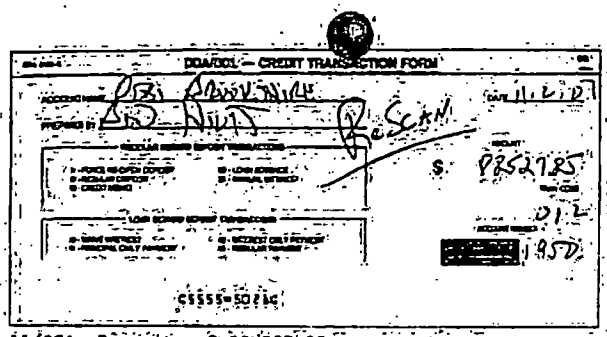
I N T E R E S T

AVERAGE LEDGER BALANCE:	466,844.86	INTEREST EARNED:	1,654.24
AVERAGE AVAILABLE BALANCE:	456,608.73	DAYS IN PERIOD:	30
INTEREST PAID THIS PERIOD:	1,654.24	ANNUAL PERCENTAGE YIELD EARNED:	4.50%
INTEREST PAID 2007:	13,000.17		

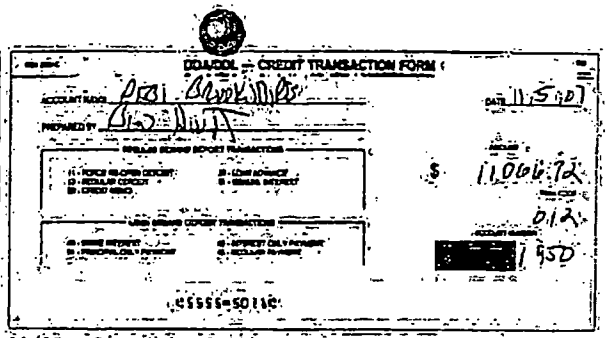
ITEMIZATION OF NSF PAID AND RETURNED ITEM FEES

	THIS PERIOD	YEAR TO DATE
NSF PAID ITEM FEE:	.00	.00
NSF RETURNED ITEM FEE:	.00	.00
OVERDRAFT FEES:	.00	.00

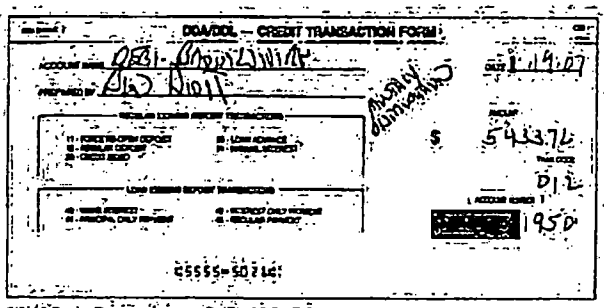
Giese-CFB 1726



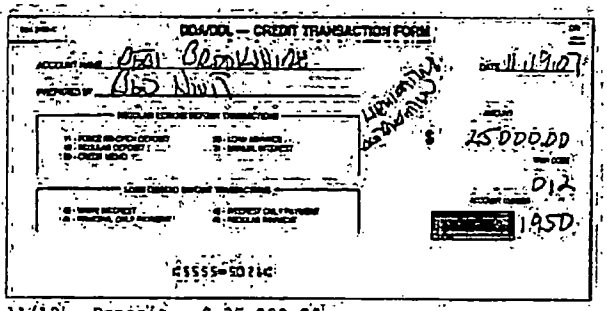
11/02 Deposit $ 88,527.85



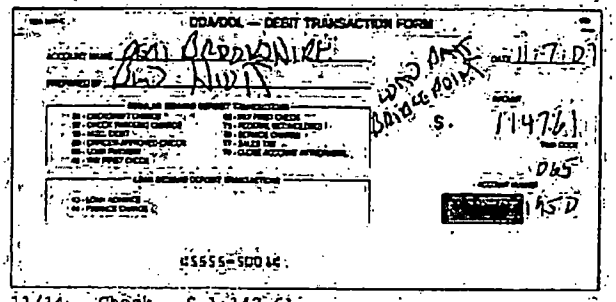
11/05 Deposit $ 11,066.72



11/19 Deposit $ 5,433.76



11/19 Deposit $ 25,000.00



11/14 Check $ 1,147.61

Giese-CFB 1727

Exhibit 4

DEBI BAKER BROOKSHIRE TRUST
DEBI BAKER BROOKSHIRE TRUSTEE
1707 DEVINE ST

COLUMBIA SC 29205

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1
3

****

PLEASE VISIT OUR NEW OFFICE NOW OPEN AT 2007 EAST GREENVILLE ST, ANDERSON, SC. (ACROSS FROM ANMED HEALTH CAMPUS ON HIGHWAY 81). PHONE (864)224-0178.

****

PERFORMANCE INVESTMT ACCOUNT [redacted]1950

DESCRIPTION	DEBITS	CREDITS	DATE	BALANCE
BALANCE LAST STATEMENT			11/30/07	296,587.54
INVESTMENT COUNTER WITHDRAWAL	1,146.98		12/12/07	295,440.56
INVESTMENT COUNTER WITHDRAWAL	173.02		12/17/07	295,267.54
DEPOSIT		136,829.58	12/18/07	432,097.12
MISCELLANEOUS DEBIT	40,000.00		12/18/07	392,097.12
TAX	310,510.75		12/31/07	81,586.37
INTEREST		1,215.23	12/31/07	82,801.60
BALANCE THIS STATEMENT			12/31/07	82,801.60

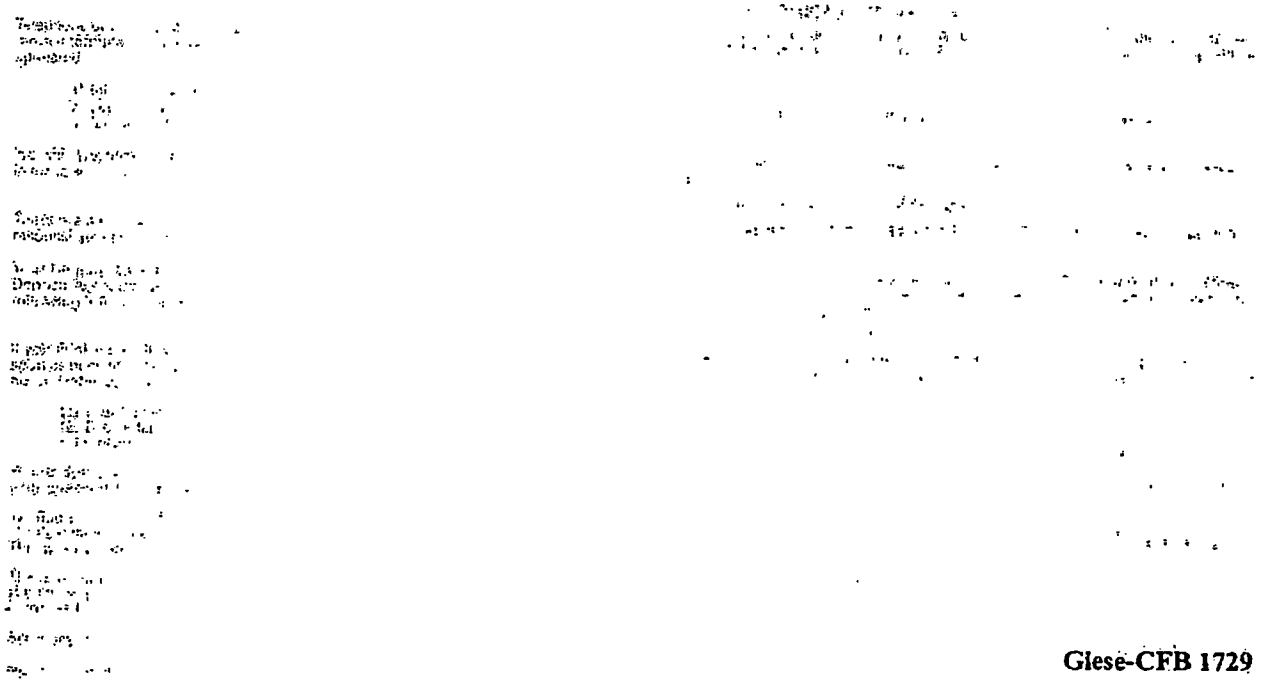
TOTAL CREDITS (2)	138,044.81	AVG AVAILABLE BALANCE	325,062.98
TOTAL DEBITS (4)	351,830.75	AVERAGE BALANCE	329,476.84

I N T E R E S T

AVERAGE LEDGER BALANCE:	329,476.84	INTEREST EARNED:	1,215.23
AVERAGE AVAILABLE BALANCE:	325,062.98	DAYS IN PERIOD:	31
INTEREST PAID THIS PERIOD:	1,215.23	ANNUAL PERCENTAGE YIELD EARNED:	4.49%
INTEREST PAID 2007:	14,215.40		

* * * C O N T I N U E D * * *

Giese-CFB 1728



Glese-CFB 1729

Exhibit 5

2692 Blue Ridge Blvd.
P.O. Box 1597
Walhalla, S.C. 29691
(864) 639-2195

1600 Sandifer Blvd.
P.O. Box 4598
Seneca, S.C. 29679
(864) 882-2525

4005 Clemson Blvd.
P.O. Box 5106
Anderson, S.C. 29623
(864) 222-2440

208 E. Main St.
P.O. Box 247
Williamston, S.C. 29697
(864) 847-2103

1101 East Main St.
P.O. Box 1450
Westminster, S.C. 29693
(864) 647-9355

648 Hwy. 123 Bus. East
P.O. Box 159
Seneca, SC 29678
(864) 886-9202

DEBI BAKER BROOKSHIRE TRUST
DEBI BAKER BROOKSHIRE TRUSTEE
1707 DEVINE ST.

COLUMBIA SC 29205

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2
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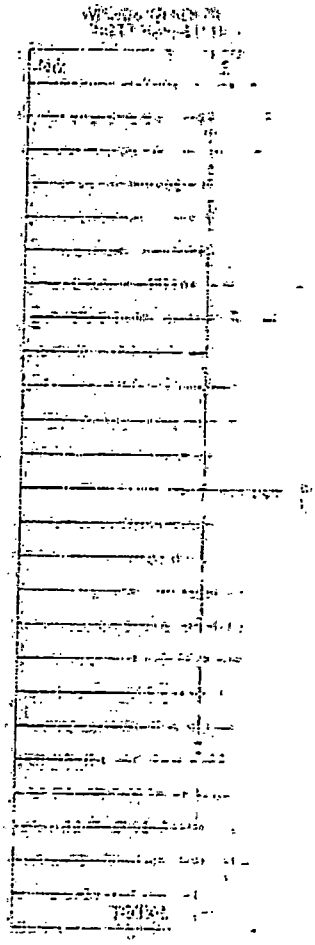
PLEASE VISIT OUR NEW OFFICE NOW OPEN AT 2007 EAST GREENVILLE ST.
ANDERSON, SC. (ACROSS FROM ANMED HEALTH CAMPUS ON HIGHWAY 81)
PHONE (864)224-0178.

PERFORMANCE INVESTMT ACCOUNT [redacted]1950

DESCRIPTION	DEBITS	CREDITS	DATE	BALANCE
BALANCE LAST STATEMENT			12/31/07	22,801.60
DEPOSIT		12,400.00	01/07/08	95,201.60
TAX		310,510.75	01/07/08	405,712.35
INVESTMENT COUNTER WITHDRAWAL	20,000.00		01/14/08	385,712.35
MISCELLANEOUS DEBIT	850.00		01/16/08	384,862.35
MISCELLANEOUS DEBIT	1,525.00		01/16/08	383,337.35
INVESTMENT COUNTER WITHDRAWAL	5,000.00		01/17/08	378,337.35
DEPOSIT		5,433.76	01/18/08	383,771.11
INVESTMENT COUNTER WITHDRAWAL	4,275.16		01/23/08	379,495.95
INTEREST		1,218.06	01/31/08	380,714.01
BALANCE THIS STATEMENT			01/31/08	380,714.01
TOTAL CREDITS (4)	329,562.57	AVG AVAILABLE BALANCE		328,067.08
TOTAL DEBITS (5)	31,650.16	AVERAGE BALANCE		329,168.21

* * * C O N T I N U E D * * *

Giese-CFB 1731



Giese-CFB 1732

DEBI BAKER BROOKSHIRE TRUST

PERFORMANCE INVESTMT ACCOUNT [redacted]1950

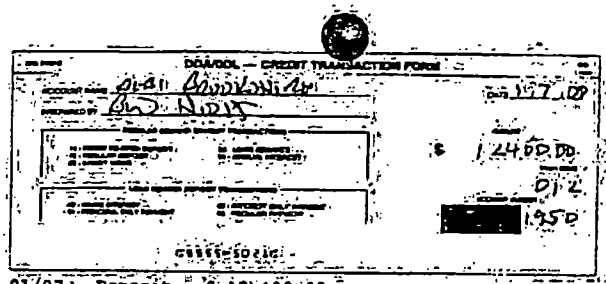
INTEREST

AVERAGE LEDGER BALANCE:	329,168.21	INTEREST EARNED:	1,218.06
AVERAGE AVAILABLE BALANCE:	328,067.08	DAYS IN PERIOD:	31
INTEREST PAID THIS PERIOD:	1,218.06	ANNUAL PERCENTAGE YIELD EARNED:	4.46%
INTEREST PAID 2008:	1,218.06		
INTEREST PAID 2007:	14,215.40		

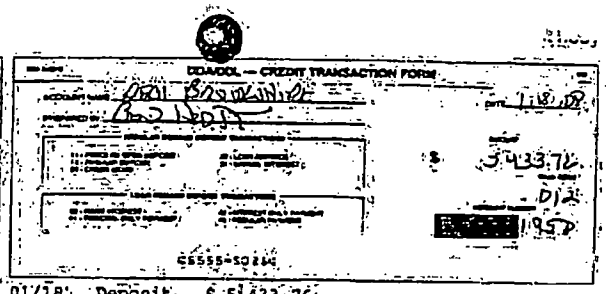
ITEMIZATION OF NSF PAID AND RETURNED ITEM FEES

	THIS PERIOD	YEAR TO DATE
NSF PAID ITEM FEE:	.00	.00
NSF RETURNED ITEM FEE:	.00	.00
OVERDRAFT FEES:	.00	.00

Giese CFB 1733

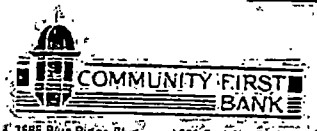


01/07 Deposit $ 12,400.00



01/18 Deposit $ 5,433.76

Giese-CFB 1734



COMMUNITY FIRST BANK FDIC

3685 Blue Ridge Blvd.
P.O. Box 1097
Walhalla, S.C. 29691
(864) 638-2105

1600 Sandifer Blvd.
P.O. Box 459
Seneca, S.C. 29679
(864) 882-2575

4002 Clemson Blvd.
P.O. Box 5186
Anderson, S.C. 29623
(864) 222-2410

208 East Main St.
P.O. Box 247
Williamston, S.C. 29697
(864) 847-5109

1101 East Main St.
P.O. Box 1050
Westminster, S.C. 29693
(864) 847-9554

443 Hwy. 123 By-Pass
P.O. Box 459
Seneca, SC 29679
(864) 886-0206

000 00007
ACCOUNT: [redacted]1950
DOCUMENTS: 2

07/31/2007

DEBI BAKER BROOKSHIRE TRUST
DEBI BAKER BROOKSHIRE TRUSTEE
1707 DEVINE ST

COLUMBIA SC 29205

30-0
1
1

****
* SHOULD YOU BE A BORROWER, COBORROWER, OR GUARANTOR ON A CONSUMER *
* PURPOSE LOAN WITH COMMUNITY FIRST BANK, WE MAY REPORT INFORMATION *
* ABOUT YOUR ACCOUNT TO CREDIT BUREAUS. LATE PAYMENTS, MISSED PAYMENTS, *
* OR OTHER DEFAULTS ON YOUR ACCOUNT MAY BE REFLECTED IN YOUR CREDIT *
* BUREAU REPORT. *
****

********** NOTIFICATION OF CHANGE IN TERMS **********

ON JUNE 15, 2007, THE FOLLOWING FEES WILL TAKE EFFECT:
$30.00 PER ITEM FEE FOR RETURNING OVERDRAFTS
$30.00 PER ITEM FEE FOR PAYING OVERDRAFTS
$30.00 PER ITEM FOR STOP PAYMENT (ALL ITEMS, CHECKS, ACH PAYMENTS)

PERFORMANCE INVESTMT ACCOUNT [redacted]1950

DESCRIPTION	DEBITS	CREDITS	DATE	BALANCE
BALANCE LAST STATEMENT			06/29/07	1172,450.39
MISCELLANEOUS DEBIT	500,000.00		07/12/07	672,450.39
FUNDS TRANSFER		4,294.92	07/16/07	676,745.31
INTEREST		3,697.08	07/31/07	680,442.39
BALANCE THIS STATEMENT			07/31/07	680,442.39

TOTAL CREDITS	(2)	7,992.00	AVG AVAILABLE BALANCE	862,097.85
TOTAL DEBITS	(1)	500,000.00	AVERAGE BALANCE	862,097.85

I N T E R E S T

AVERAGE LEDGER BALANCE:	862,097.85	INTEREST EARNED:	3,697.08
AVERAGE AVAILABLE BALANCE:	862,097.85	DAYS IN PERIOD:	32
INTEREST PAID THIS PERIOD:	3,697.08	ANNUAL PERCENTAGE YIELD EARNED:	5.00%
INTEREST PAID 2007:	4,323.89		

* * * C O N T I N U E D * * *

Giese-CFB 1418

NOTICE: SEE REVERSE SIDE FOR IMPORTANT INFORMATION

Exhibit 7

Account Agreement

Date: June 22, 2007

Institution Name & Address

Community First Bank, member FDIC
49 Hwy 123 By-Pass
Seneca, SC 29678
(864)886-0206

Rep: LR

Internal Use

Account Title & Address

DEBI BAKER BROOKSHIRE TRUST
DEBI BAKER BROOKSHIRE TRUSTEE
1707 DEVINE ST
COLUMBIA, SC 29205

950

IMPORTANT ACCOUNT OPENING INFORMATION: Federal law requires us to obtain sufficient information to verify your identity. You may be asked several questions and to provide one or more forms of identification to fulfill this requirement. In some instances we may use outside sources to confirm the information. The information you provide is protected by our privacy policy and federal law.

Enter Non-Individual Owner information on page 2. There is additional Owner/Signer information space on page 2.

Owner/Signer Information 1

Name	DEBI BAKER BROOKSHIRE TRUSTEE
Relationship to Account (Owner and/or Signer, etc.)	
Address	1707 DEVINE ST, COLUMBIA, SC 29205
Mailing Address (if different)	
Home Phone	(803)790-7440
Work Phone	
Mobile Phone	
E-Mail	
Birth Date	[redacted]
SSN/TIN	[redacted]
Gov't Issued Photo ID: Type, Number, State, Issue Date, Exp. Date	DL#: [redacted] St: SC Issued: 09/06/2006 Exp: 08/04/2011
Other ID (Description, Details)	Issued: Exp:
Employer's Name & Address	
Previous Financial Inst.	

Owner/Signer Information 2

Name	
Relationship to Account (Owner and/or Signer, etc.)	
Address	
Mailing Address (if different)	
Home Phone	
Work Phone	
Mobile Phone	
E-Mail	
Birth Date	
SSN/TIN	
Gov't Issued Photo ID: Type, Number, State, Issue Date, Exp. Date	
Other ID (Description, Details)	
Employer's Name & Address	
Previous Financial Inst.	

Ownership of Account

The specified ownership will remain the same for all accounts.

- ☐ Individual
- ☐ Joint with Survivorship (not as tenants in common)
- ☐ Joint with No Survivorship (as tenants in common)
- ☐ Trust-Separate Agreement Dated:
- ☒ Trust Accounts
- ☐ Corporation - For Profit
- ☐ Corporation - Nonprofit
- ☐ Partnership
- ☐ Sole Proprietorship
- ☐ Limited Liability Company

Beneficiary Designation

(Check appropriate ownership above.)

- ☐ Revocable Trust
- ☐ Pay-On-Death (POD)
- ☐

Beneficiary Name(s)/Address(es)/and SSN(s)

(Check appropriate beneficiary designation above.)

☐ If checked, this is a temporary account agreement.

Number of signatures required for withdrawal: 1

Signature(s)

The undersigned authorize the financial institution to investigate credit and employment history and obtain reports from consumer reporting agency(ies) on them as individuals. Except as otherwise provided by law or other documents, each of the undersigned is authorized to make withdrawals from the account(s), provided the required number of signatures indicated above is satisfied. The undersigned personally and as, or on behalf of, the account owner(s) agree to the terms of, and acknowledge receipt of copy(ies) of, this document and the following:

- ☒ Terms and Conditions
- ☒ Electronic Fund Transfers
- ☐ Substitute Checks
- ☒ Common Features
- ☐ Privacy
- ☒ Truth in Savings
- ☒ Funds Availability
- ☐

[x] Debi Baker Brookshire
DEBI BAKER BROOKSHIRE TRUSTEE

[x]

[x]

[x]

☒ Authorized Signer (If checked and account is individual and consumer purpose, the last of the above signers is an Authorized Signer.)

Expere © 2003 Bankers Systems, Inc., St. Cloud, MN Form MPMP-LAZ-SC 4/19/2004

CFB002357

Owner/Signer Information 3

Name	
Relationship to Account (Owner and/or Signer, etc.)	
Title	
Mailing Address (If different)	
Home Phone	
Work Phone	
Mobile Phone	
E-Mail	
Birth Date	
SSN/TIN	
Gov't Issued Photo ID, Type, Number, State, Issue Date, Exp. Date	
Other ID (Description, Details)	
Employer's Name & Address	
Previous Financial Inst.	

Owner/Signer Information 4

Name	
Relationship to Account (Owner and/or Signer, etc.)	
Address	
Mailing Address (If different)	
Home Phone	
Work Phone	
Mobile Phone	
E-Mail	
Birth Date	
SSN/TIN	
Gov't Issued Photo ID, Type, Number, State, Issue Date, Exp. Date	
Other ID (Description, Details)	
Employer's Name & Address	
Previous Financial Inst.	

Backup Withholding Certification

(If not a "U.S. Person," certify foreign status separately.)

TIN [redacted]

☒ **Taxpayer I.D. Number (TIN)** - The number shown above is my correct taxpayer identification number.

☒ **Backup Withholding** - I am not subject to backup withholding either because I have not been notified that I am subject to backup withholding as a result of a failure to report all interest or dividends, or the Internal Revenue Service has notified me that I am no longer subject to backup withholding.

☐ **Exempt Recipients** - I am an exempt recipient under the Internal Revenue Service Regulations.

I certify under penalties of perjury the statements checked in this section and that I am a U.S. person (including a U.S. resident alien).

x Debi Baker Brookshire (Date) 4/29/07

Non-Individual Owner Information

Name	DEBI BAKER BROOKSHIRE TRUST
EIN	[redacted]
Phone	(803)790-7440
Mobile Phone	
E-Mail	
Type of Entity	
State/Country & Date of Organization	
Nature of Business	
Address	1707 DEVINE ST, COLUMBIA, SC 29205
Mailing Address (If different)	
Authorization/ Resolution Date	
Previous Financial Inst.	

Account Description/Account #s / Initial Deposit Source

Business Premium Investment Checking	1950	$ 1,171,833.58 ☐ Cash ☐ Check ☒ WIRE
		$ ☐ Cash ☐ Check ☐
		$ ☐ Cash ☐ Check ☐

Services Requested

☐ ATM ☐ Debit/Check Cards (No. Requested:)

☐ ☐

☐ ☐

Other Terms Information

BEB ADDENDUM

DBB

TERMS AND CONDITIONS OF YOUR ACCOUNT

AGREEMENT - This document, along with any other documents we give you pertaining to your account(s), is a contract that establishes rules which control your account(s) with us. Please read this carefully. If you sign the signature card or open or continue to have your account with us, you agree to these rules. You will receive a separate schedule of rates, qualifying balances, and fees if they are not included in this document. If you have any questions, please call us.

This agreement is subject to applicable federal laws and the laws of the state of South Carolina (except to the extent that this agreement can and does vary such rules or laws). The body of state and federal law that governs our relationship with you, however, is too large and complex to be reproduced here. The purpose of this document is to:

(1) summarize some laws that apply to common transactions;
(2) establish rules to cover transactions or events which the law does not regulate;
(3) establish rules for certain transactions or events which the law regulates but permits variation by agreement; and
(4) give you disclosures of some of our policies to which you may be entitled or in which you may be interested.

If any provision of this document is found to be unenforceable according to its terms, all remaining provisions will continue in full force and effect. We may permit some variations from our standard agreement, but we must agree to any variation in writing either on the signature card for your account or in some other document.

As used in this document the words "we," "our," and "us" mean the financial institution and the words "you" and "your" mean the account holder(s) and anyone else with the authority to deposit, withdraw, or exercise control over the funds in the account. The headings in this document are for convenience or reference only and will not govern the interpretation of the provisions. Unless it would be inconsistent to do so, words and phrases used in this document should be construed so the singular includes the plural and the plural includes the singular.

LIABILITY - You agree, for yourself (and the person or entity you represent if you sign as a representative of another) to the terms of this account and the schedule of charges. You authorize us to deduct these charges directly from the account balance as accrued. You will pay any additional reasonable charges for services you request which are not covered by this agreement.

Each of you also agrees to be jointly and severally (individually) liable for any account shortage resulting from charges or overdrafts, whether caused by you or another with access to this account. This liability is due immediately, and can be deducted directly from the account balance whenever sufficient funds are available. You have no right to defer payment of this liability, and you are liable regardless of whether you signed the item or benefited from the charge or overdraft. This includes liability for our costs to collect the deficit including, to the extent permitted by law, our reasonable attorneys' fees.

DEPOSITS - We will give only provisional credit until collection is final for any items, other than cash, we accept for deposit (including items drawn "on us"). Actual credit for deposits of, or payable in, foreign currency will be at the exchange rate in effect on final collection in U.S. dollars. We are not responsible for transactions by mail or outside depository until we actually record them. We will treat and record all transactions received after our "daily cutoff time" on a business day we are open, or received on a day we are not open for business, as if initiated on the next following business day that we are open.

WITHDRAWALS - Unless clearly indicated otherwise on the account records, any of you, acting alone, who signs in the space designated for signatures on the signature card may withdraw or transfer all or any part of the account balance at any time. Each of you (until we receive written notice to the contrary) authorizes each other person signing the signature card to indorse any item payable to you or your order for deposit to this account or any other transaction with us. We may charge your account for a check even though payment was made before the date of the check, unless we have received written notice of the postdating in time to have a reasonable opportunity to act. We may refuse any withdrawal or transfer request which you attempt on forms not approved by us, by any method we do not specifically permit, which is greater in number than the frequency permitted, or which is for an amount greater or less than any withdrawal limitations. Even if we honor a nonconforming request, we may treat continued abuse of the stated limitations (if any) as your act of closing the account. We will use the date the transaction is completed by us (as opposed to the date you initiate it) to apply the frequency limitations. The fact that we may honor withdrawal requests that overdraw the available account balance does not obligate us to do so later. See the funds availability policy disclosure for information about when you can withdraw funds you deposit. For those accounts for which our funds availability policy disclosure does not apply, you can ask us when you make a deposit when those funds will be available for withdrawal.

We may require not less than 7 days' notice in writing before each withdrawal from an interest-bearing account other than a time deposit, or from any other savings account as defined by Regulation D. Withdrawals from a time account prior to maturity or prior to any notice period may be restricted and may be subject to penalty. See your notice of penalty for early withdrawal.

OWNERSHIP OF ACCOUNT AND BENEFICIARY DESIGNATION - These rules apply to this account depending on the form of ownership and beneficiary designation, if any, specified on the account records. We make no representations as to the appropriateness or effect of the ownership and beneficiary designations, except as they determine to whom we pay the account funds. **Individual Account** - is an account in the name of one person. **Joint Account - With Survivorship (And Not As Tenants In Common)** - is an account in the name of two or more persons. Each of you intend that when you die the balance in the account (subject to any previous pledge to which we have agreed) will belong to the survivor(s). If two or more of you survive, you will own the balance in the account as joint tenants with survivorship and not as tenants in common. **Joint Account - No Survivorship (As Tenants In Common)** - is owned by two or more persons, but none of you intend (merely by opening this account) to create any right of survivorship in any other person. We encourage you to agree and tell us in writing of the percentage of the deposit contributed by each of you. This information will not, however, effect the "number of signatures" necessary for withdrawal. **Revocable Trust or Pay-On-Death Account** - If two or more of you create this type of account, you own the account jointly with survivorship. Beneficiaries cannot withdraw unless: (1) all persons creating the account die, and (2) the beneficiary is then living. If two or more beneficiaries are named and survive the death of all persons creating the account, beneficiaries will own this account in equal shares, without right of survivorship. The person(s) creating either of these account types may: (1) change beneficiaries, (2) change account types, and (3) withdraw all or part of the account funds at any time.

BUSINESS ACCOUNTS - Earnings in the form of interest, dividends, or credits will be paid only on collected funds, unless otherwise provided by law or our policy. We may require the governing body of the legal entity opening the account to give us a separate authorization telling us who is authorized to act on its behalf. We will honor the authorization until we actually receive written notice of a change from the governing body of the legal entity.

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STOP PAYMENTS - A stop-payment order must be given in the manner required by law, must be received in time to give us a reasonable opportunity to act on it, and must precisely identify the number, date and amount of the item, and the payee. We will honor a stop-payment request by the person who signed the particular item, and, by any other person, even though such other person did not sign the item, if such other person has an equal or greater right to withdraw from this account than the person who signed the item in question. A release of the stop-payment request may be made only by the person who initiated the stop-payment order.

TELEPHONE TRANSFERS - A telephone transfer of funds from this account to another account with us, if otherwise arranged for or permitted, may be made by the same persons and under the same conditions generally applicable to withdrawals made in writing. Unless a different limitation is disclosed in writing, we restrict the number of transfers from a savings account to another account or to third parties, to a maximum of six per month (less the number of "preauthorized transfers" during the month). Other account transfer restrictions may be described elsewhere.

AMENDMENTS AND TERMINATION - We may change any term of this agreement. Rules governing changes in interest rates are provided separately. For other changes, we will give you reasonable notice in writing or by any other method permitted by law. We may also close this account at any time upon reasonable notice to you and tender of the account balance personally or by mail. Notice from us to any one of you is notice to all of you.

STATEMENTS - You must examine your statement of account with "reasonable care and promptness." If you discover (or reasonably should have discovered) any unauthorized signatures or alterations, you must promptly notify us of the relevant facts. As between you and us, if you fail to do either of these duties, you will have to bear the entire loss. Your loss could be not only with respect to items on the statement but other items with unauthorized signatures or alterations by the same wrongdoer. We lose these protections if you establish that we failed to exercise ordinary care in paying an item with an unauthorized signature or alteration.

You agree that the time you have to examine your statement and report to us will depend on the circumstances, but will not, in any circumstance, exceed a total of 14 days from when the statement is first sent or made available to you.

You further agree that if you fail to report any unauthorized signatures, alterations, forgeries, or any other errors in your account within 60 days of when we first send or make the statement available, you cannot assert a claim against us on any items in that statement, and as between you and us the loss will be entirely yours. This 60-day limitation is without regard to whether we used ordinary care. The limitation in this paragraph is in addition to that contained in the first paragraph of this section.

ACCOUNT TRANSFER - This account may not be transferred or assigned without our prior written consent.

DIRECT DEPOSITS - If, in connection with a direct deposit plan, we deposit any amount in an account which should have been returned to the Federal Government for any reason, you authorize us to deduct the amount of our liability to the Federal Government from the account or from any other account you have with us, without prior notice and at any time, except as prohibited by law. We may also use any other legal remedy to recover the amount of our liability.

TEMPORARY ACCOUNT AGREEMENT - If this option is selected, this is a temporary account agreement. Each person who signs in the space designated for signatures on the signature card (except as indicated to the contrary) may transact business on this account. However, we may at some time in the future restrict or prohibit further use of this account if you fail to comply with the requirements we have imposed within a reasonable time.

SETOFF - We may (without prior notice and when permitted by law) set off the funds in this account against any due and payable debt you owe us now or in the future, by any of you having the right of withdrawal, to the extent of such persons' or legal entity's right to withdraw. If the debt arises from a note, "any due and payable debt" includes the total amount of which we are entitled to demand payment under the terms of the note at the time we set off, including any balance the due date for which we properly accelerate under the note.

This right of setoff does not apply to this account if: (a) it is an IRA or other tax-deferred retirement account, or (b) the debt is created by a consumer credit transaction under a credit card plan (but this does not affect our rights under any consensual security interest), or (c) the debtor's right of withdrawal only arises in a representative capacity. We will not be liable for the dishonor of any check when the dishonor occurs because we set off a debt against this account. You agree to hold us harmless from any claim arising as a result of our exercise of our right of setoff.

AUTHORIZED SIGNER (Individual Accounts only) - A single individual is the owner. The authorized signer is merely designated to conduct transactions on the owner's behalf. We undertake no obligation to monitor transactions to determine that they are on the owner's behalf.

RESTRICTIVE LEGENDS - We are not required to honor any restrictive legend on checks you write unless we have agreed in writing to the restriction. Examples of restrictive legends are "must be presented within 90 days" or "not valid for more than $1,000.00."

ACH AND WIRE TRANSFERS - This agreement is subject to Article 4A of the Uniform Commercial Code - Fund Transfers as adopted in the state in which you have your account with us. If you originate a fund transfer for which Fedwire is used, and you identify by name and number a beneficiary financial institution, an intermediary financial institution or a beneficiary, we and every receiving or beneficiary financial institution may rely on the identifying number to make payment. We may rely on the number even if it identifies a financial institution, person or account other than the one named. You agree to be bound by automated clearing house association rules. These rules provide, among other things, that payments made to you, or originated by you, are provisional until final settlement is made through a Federal Reserve Bank or payment is otherwise made as provided in Article 4A-403(a) of the Uniform Commercial Code. If we do not receive such, we are entitled to a refund from you in the amount credited to your account and the party originating such payment will not be considered to have paid the amount so credited. If we receive a credit to an account you have with us by wire or ACH, we are not required to give you any notice of the payment order or credit.

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Community First Bank, member FDIC
Seneca, SC 39678

ADDENDUM: This account agreement addendum is incorporated into and made a part of the accompanying account agreement for all purposes.

J. BAKER BROOKSHIRE TRUST
DEBI BAKER BROOKSHIRE TRUSTEE
1707 DEVINE ST
COLUMBIA, SC 29205

Account Agreement Dated: 06/22/07

Additional Terms and Conditions of Your Account:

PAYMENT ORDER OF ITEMS - The law permits us to pay items (such as checks or drafts) drawn on your account in any order. To assist you in handling your account with us, we are providing you with the following information regarding how we process the items that you write. When processing items drawn on your account, our policy is to pay them according to the dollar amount. We pay the smallest items first. The order in which items are paid is important if there is not enough money in your account to pay all the items that are presented. Our payment policy minimizes the number of items that may result in an overdraft or NSF fee. If an item is presented without sufficient funds in your account to pay it, we may, at our discretion, pay the item (creating an overdraft) or return the item (NSF). The amount of the overdraft and NSF fees are disclosed elsewhere. We encourage you to make careful records and practice good account management. This will help you to avoid writing checks or drafts without sufficient funds and incurring the resulting fees.

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS

Debi Baker Brookshire,

Plaintiff,

v.

Community First Bank, Inc. and Benjamin Lee Hiott,

Defendants.

Case No. 2014-CP-37-526

DEFENDANT COMMUNITY FIRST BANK, INC.'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

Defendant Community First Bank, Inc. ("Community First") herein submits its Memorandum in Support of its Motion for Summary Judgment, dated October 11, 2016, and filed October 13, 2016. For the reasons discussed below, there is no genuine issue of material fact, and Community First is entitled to summary judgment as a matter of law on all claims pursuant to Rule 56, SCRCP.

Introduction

On May 25, 2007, Plaintiff Debi Baker Brookshire ("Plaintiff") executed a power of attorney ("the POA") granting Defendant Benjamin Lee Hiott ("Hiott") the personal authority to handle virtually all aspects of her financial affairs. With Plaintiff's knowledge, Hiott exercised the authority granted by the POA by, among other things, making disbursements from Plaintiff's checking account at Community First during the period from July 12, 2007, until the account was closed on February 23, 2011 (the "Account"). Plaintiff filed this action against Community First and Hiott on September 8, 2014, based on the premise that certain disbursements Hiott

made from the Account were unauthorized. Plaintiff asserts six causes of action in her Complaint for breach of fiduciary duty, conversion, negligent supervision, negligence/gross negligence, breach of contract accompanied by fraudulent act, and for an accounting.

As discussed below, there is no genuine issue of material fact, and Community First is entitled to judgment as a matter of law because, pursuant to the unambiguous terms of the POA, Brookshire granted Hiott the authority to make all of the subject disbursements. By statute, Community First is absolved from liability because it was entitled to rely on the authority granted by the POA and had no duty to inquire into the purpose of the disbursements.

Plaintiff's claims are also time-barred as a matter of law. Pursuant to South Carolina statutes and applicable case law, Plaintiff has a duty to inspect and is on notice of the contents of her monthly Account statements. The undisputed evidence demonstrates the monthly Account statements were mailed to Plaintiff, and even if she did not receive them (which the evidence demonstrates that she did), she had a duty to promptly request them from Community First. The undisputed evidence also demonstrates that the contents of the statements constituted sufficient notice to Plaintiff as to her claim that certain disbursements were not appropriate—particularly the disbursements of $500,000 and $200,000 in 2007 reflected on the *original* Account statements produced by Plaintiff in discovery in this case. Any claim with regard to these disbursements—as with all other disbursements from the Account—expired long before this action was filed in 2014 pursuant to the Uniform Commercial Code, the Account agreement, and the general statute of limitations.

Plaintiff has also failed as a matter of law to establish the elements of any of the causes of action asserted against Community First. Although all of Plaintiff's claims are barred pursuant to the provisions of the POA, the expiration of the applicable statutes of limitation or repose, and

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

certain defenses raised by Community First's motion for summary judgment, the claims as to many of the items challenged by Plaintiff in this case also fail as a matter of law for the additional reason that the undisputed evidence demonstrates that Plaintiff either received the funds from the Account (*e.g.*, by direct transfer to accounts at another bank where Hiott played no role regarding any disbursements), the funds went to her direct benefit (*e.g.*, payment of her rent, car payments, credit card payments, insurance payments, taxes, and other obligations), and in three instances, where disbursements were deposited back into her Account within a few days.

In addition, no genuine issue of material fact exists with regard to the funds belonging to Community First that Hiott misappropriated from Community First, deposited into the Account, and that were thereafter used for Plaintiff's benefit in the total amount of $880,855.58. Community First is thus entitled to summary judgment on its offset and counterclaims against Plaintiff.

In order to consolidate all applicable materials for the court in one place and in one document, this Memorandum restates all of the material facts and arguments contained in Community First's motion for summary judgment and further provides additional factual and legal support for the grounds stated in the motion.

Undisputed Facts

A. Plaintiff's Background and her Personal Relationship with Hiott.

Plaintiff is a college educated former business owner. Exhibit 1, p. 17 (Brookshire Dep. Excerpts). She has been handling funds and bank accounts since at least her college days in the early 1970s. Ex. 1, pp. 539-544. Following extensive and protracted litigation in the early 2000s with her siblings over her parents' estates and a lawsuit Plaintiff brought against two of her brothers for the wrongful death of her father, Plaintiff executed a Revocable Management Trust Agreement with BB&T acting as trustee on February 2, 2005. Exhibit 2 (BB&T Revocable

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

Management Trust Agreement). BB&T was to manage Plaintiff's interest in Baker and Baker Real Estate Developers, LLC ("Baker and Baker"), a real estate development company founded by Plaintiff's uncle and father, operated by other members of Plaintiff's family, and of which Plaintiff owned approximately 10.8% of the company. Exhibit 3 (Communications to John Baker); Exhibit 4 (Assignment of Interest in Baker and Baker). In addition to managing the relationship with Baker and Baker, Plaintiff directed BB&T to pay certain bills and make certain purchases with the cash portion of her Revocable Trust at BB&T.[1] Ex. 1, pp. 199-203; Exhibit 6 (Documents from Brookshire to BB&T). Over the next two years, Plaintiff experienced various conflicts with BB&T over her cash management priorities, especially with regard to Plaintiff's desired purchase of a $250,000 motor home and other tax and responsiveness issues. Ex. 1, pp. 203-10, 213-14; Exhibit 7 (BB&T Letter to Brookshire). Plaintiff revoked her Revocable Trust Agreement with BB&T on May 25, 2007. Exhibit 8 (Revocation of BB&T Revocable Trust Agreement).

That same day, Plaintiff executed the POA, granting Hiott broad authority to handle her financial affairs. *See* Ex. 1, pp. 46-47; Exhibit 9 (General Power of Attorney). The first sentence of the POA states: "I, Debi Baker Brookshire, residing at 1707 Devine Street, Columbia, SC 29201, hereby appoint Benjamin Lee Hiott of 9 Topsail Lane, Salem, SC 29676,[2] as my Attorney-in-Fact ('Agent')." Ex. 9. The POA continues in pertinent part:

> **My Agent shall have full power and authority to act on my behalf.** This power and authority shall authorize my Agent to **manage and conduct all of my affairs and to exercise all of my legal rights and**

[1] As of her May 31, 2007 statement with BB&T, the cash portion of Plaintiff's Revocable Trust at BB&T was $1,178,437.06, and her ownership interest in Baker and Baker was valued at $2,047,684.00. Exhibit 5, p. CFB000347 (Documents from Brookshire to Hiott).

[2] 9 Topsail Lane, Salem, SC 29676 is not an address for Community First, and based on Community First's personnel records, was or is Hiott's home address.

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

powers, including all rights and powers that I may acquire in the future. **My Agent's powers shall include, but not be limited to, the power to:**

1. **Open, maintain or close bank accounts** (including, but not limited to, checking accounts, savings accounts, and certificates of deposit), brokerage accounts, and other similar accounts with financial institutions.

> a. **Conduct any business with any banking or financial institution with respect to any of my accounts, including, but not limited to, making deposits and withdrawals**, obtaining bank statements, passbooks, drafts, money orders, warrants, and certificates or vouchers payable to me by any person, firm, corporation or political entity.

...

2. **Sell, exchange, buy[,] invest, or reinvest any assets or property owned by me.** Such assets or property may include income producing or non-income producing assets and property.

3. Purchase and/or maintain insurance, including life insurance upon my life or the life of any other appropriate person.

...

5. **Enter into binding contracts on my behalf.**

6. Exercise all stock rights on my behalf as my proxy, including all rights with respect to stocks, bonds, debentures, or there [sic] investments.

...

10. Prepare, sign, and file documents with any governmental body or agency, including, but not limited to, authorization to:

> a. Prepare, sign and file income and other tax returns with federal, state, local, and other governmental bodies.
>
> b. Obtain information or documents from any government or its agencies, and negotiate[,] comprise [sic], or settle any matter with such government or agency (including tax matters).
>
> c. Prepare applications, provide information, and perform any other act reasonably requested by any government or its agencies in connection with governmental benefits (including military and social security benefits).

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

> 11. Make gifts from my assets to members of my family and to such other persons or charitable organizations with whom I have an established pattern of giving. However, my Agent may not make gifts of my property to the Agent.
>
> ...
>
> **The Power of Attorney shall be construed broadly as a General Power of Attorney. The listing of specific powers is not intended to limit or restrict the general powers granted in this Power of Attorney in any manner.**

Ex. 9 (emphasis added). The POA recites that it was signed at "Branch Banking & Trust, Columbia, SC," was witnessed by Allison L. Brackett and Shawanna Sturghill, and was acknowledged by Lucas Askins on May 25, 2007, who mentioned that Plaintiff produced her South Carolina drivers' license as identification. Ex. 9. Although not mentioned or even alluded to in the POA, Hiott was employed as a Senior Vice President at Community First during the operative time period. *See* Exhibit 10, p. 54 (Shepherd Dep. Excerpts).

Plaintiff and Hiott met in the 1980s, and were friendly acquaintances in Columbia in the 1980s and 1990s. At that time, Hiott worked for Lexington State Bank and later BB&T in the Columbia area. Plaintiff was a customer at those banks and interacted with Hiott in the conduct of her banking business, but they also tailgated together at football games and socialized at bars in Columbia or at Hiott's house. Ex. 1, pp. 27-29. Plaintiff testified that her opinion of Hiott was that he was "[h]onorable and nice" and that she knew that "he worked for a bank." Ex. 1, p. 27. After Hiott moved to Oconee County around 2000, however, he and Plaintiff did not keep in touch. Ex. 1, p. 30. In around 2007, Plaintiff reached out to mutual friends, Ron and Peg Craven, and asked Ron Craven "to take care of her finances" and "handle all of [her] business."

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP370526

Exhibit 11, pp. 14, 17 (Craven Dep. Excerpts).[3] The Cravens declined to help Plaintiff in that capacity, and Hiott's name was brought up in the conversation as someone to potentially assist Plaintiff with her finances. Ex. 11, p. 14. The Cravens gave Plaintiff Hiott's telephone number, and Plaintiff thereafter contacted Hiott for the first time in many years. Ex. 1, pp. 30-31. Plaintiff testified that she asked Hiott "if he would be interested in protecting [her] interests," but failed to recall any details about who prepared the POA, the circumstances of its execution, or any discussion of its terms, though Plaintiff affirms that she was not with Hiott when she executed the POA. Ex. 1, pp. 36-37.[4] She affirmed her signature on the POA and further affirmed that she understood that she was transferring her money for Hiott to handle her interests. Ex. 1, pp. 40-42. She further affirmed that she understood what a power of attorney was and how they operated and also testified that she had both served as a power of attorney and had given others a power of attorney, as well. Ex. 1, pp. 42-43.

By June 2007, Hiott was performing his duties under the POA, and he signed June 2007 correspondence to Baker and Baker and BB&T as "Benjamin L. Hiott, Power of Attorney." Exhibit 12 (Letter to Baker and Baker); Exhibit 13 (Letter to BB&T). Plaintiff also signed these communications. Exs. 12, 13. Over time, Hiott also handled Plaintiff's taxes, various insurance matters, and signed residential leases for Plaintiff. Exhibit 14 (Tax Payment Records); Exhibit 15 (Brookshire Note to Hiott); Exhibit 16 (Brookshire Note to Hiott); Exhibit 17 (Rent Payments and Lease). He paid her telephone and utility bills, her car payments, her storage unit fees, her attorney and accountant fees, her insurance bills, her medical bills, her traffic tickets, her

[3] Mr. Craven is retired from Pillsbury Company where he was employed as a reset merchandiser in grocery stores. Ex. 11, p. 7.

[4] Plaintiff also testified that "it all started" with Hiott because she was thinking about moving to Seneca, South Carolina and "getting a patio home" and thought Hiott would help with that process. Ex. 1, p. 466.

childcare bills, and made charitable contributions on her behalf. *See* Exhibit 18 (Summary Chart of All Disbursements). Plaintiff estimates that she was having Hiott pay "[m]aybe ten to twenty" monthly bills on her behalf, although she could not provide a comprehensive list of his responsibilities. Ex. 1, pp. 531-534. Hiott also regularly assisted Plaintiff with the two children in the custody of Plaintiff and her husband by arranging for their care on weekends and, on at least one occasion, Hiott kept the children for several days at Christmas. Ex. 1, p. 248; Ex. 11, pp. 43, 50, 53-54, 59-60; Exhibits 19, 20, 21, 22 (Emails). Hiott further arranged for the storage and maintenance of Plaintiff's motor home and was entrusted with personal possession of about $500,000 worth of Plaintiff's jewelry and silver. Ex. 1, pp. 56, 95-96, 626-27. In short, Plaintiff's relationship with Hiott while he held her POA was personal, close, and involved just about all aspects of her life.

B. Plaintiff's Account at Community First.

The primary way that Hiott handled Plaintiff's financial affairs and paid Plaintiff's financial obligations was through Plaintiff's Account—a checking account held at Community First from June 2007 until February 23, 2011. *See* Exhibit 23, p. 40 (Wilson Dep. Excerpts).[5] It is undisputed that Hiott handled deposits into and withdrawals from Plaintiff's Account. Ex. 1, pp. 319-320, 325. It is undisputed that Plaintiff knew about the Account and understood that Hiott was paying her obligations from the Account with her funds. Ex. 1, pp. 319-320, 325, 346, 348; Ex. 13.

[5] Plaintiff repeatedly refers to her Account at Community First as a "trust" account. *See, e.g.* Ex. 1, pp. 65, 264, 565-66. To the extent Plaintiff takes the position that Community First undertook to serve as a trustee with regard to her Account, no documentary evidence or testimony supports this position (and all such evidence actually directly refutes this position). *See* Exhibit 24 (Wilson Affidavit), ¶¶ 16, 36 and Ex. 7 thereto. Further, as reflected in the monthly Account statements, Community First did not charge trustee fees, and the statements state that Plaintiff herself (and not Community First) was the trustee of her own trust. *See, e.g.* Ex. 24, Exs. 3, 5, 7 thereto.

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

Community First mailed monthly statements for Plaintiff's Account at Community First to the address where Plaintiff was receiving her mail (Ex. 1, pp. 23-25, 35, 553) from the Account's inception in June 2007 until early 2010, when Community First received for the first time in April 2010 a statement addressed to Plaintiff in return mail as "unable to forward." Ex. 24, ¶¶ 17-18. Community First's account management system automatically generates and prints a periodic account statement for each of its more than 25,000 accounts. Ex. 24, ¶¶ 3, 8. These account statements are routinely, regularly, and automatically compiled, processed, and transmitted for mailing with the United States Postal Service, as detailed in Ms. Wilson's affidavit. Ex. 24, ¶¶ 9-12. At all times during the Account's existence, Community First followed its normal procedures with regard to the Account statements. *See* Ex. 24, ¶ 14.

The extensive and undisputed evidence in the record of Community First's *sending* of the monthly Account statements to Plaintiff is corroborated by Plaintiff's document production of three original statements on statement paper (November and December 2007 and January 2008) and the photocopy of another original statement (July 2007). Ex. 24, ¶¶ 28, 29, 30, 34. Plaintiff also testified that she potentially discarded documents regarding Community First and Hiott after 2010. Ex. 1, pp. 425-427.

Plaintiff's former private investigator, Billy Tabor, testified that he received the original July 2007 statement (or copy thereof) directly from Plaintiff when she brought him several boxes of documents in or around 2012. Exhibit 25, p. 51 (Tabor Dep. Excerpts); Exhibit 26 (July 2007 Statement Packet). The original statement (page Giese-CFB 1418) was in one of the boxes, although Plaintiff directly gave Mr. Tabor a reprinted copy of the July 2007 statement (page Giese-CFB 1417). Ex. 25, p. 51; Ex. 26. The boxes Plaintiff gave Mr. Tabor were unorganized and contained various items including "bank records," "things about the children," and "personal

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

letters." Ex. 25, pp. 47-48.[6] Mr. Tabor affirmed that Plaintiff also provided him with the original Account statements from November and December 2007 and January 2008. Ex. 25, p. 54; Exhibit 27 (November 2007 Statement); Exhibit 28 (December 2007 Statement); Exhibit 29 (January 2008 Statement). Mr. Tabor thereafter turned all of these documents over to the Giese Law Firm. Ex. 25, p. 55.[7]

Taken together, the undisputed evidence demonstrates that Community First mailed to Plaintiff original Account statements in the normal course of the Account's existence from 2007 until early 2010, Plaintiff provided at least some original statements to Mr. Tabor along with voluminous other documents in 2012, and that thereafter Mr. Tabor organized the Account statements in some fashion and transmitted them to Plaintiff's counsel. The undisputed evidence also shows that Plaintiff *never* notified Community First in 2007, 2008, 2009, or early 2010 that she was missing or had failed to receive any Account statements. Ex. 1, pp. 64-65, 578.

C. Plaintiff's Relationship with Hiott Unravels.

Plaintiff testified that by the spring or summer of 2010, she had become distrustful of Hiott and believed he was being untruthful with her about her assets, especially regarding the amount of money in the Account. Ex. 1, pp. 119-20. Indeed, Plaintiff testified that her concerns

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[6] Mr. Tabor further testified that Plaintiff originally hired him in 2012 to do investigative work into a theft of her jewelry and that "Miss Brookshire had all kind of things that she wanted me to look into for her." Ex. 25, pp. 13-15.

[7] Plaintiff's former attorney, Michael Sgobbo, Esq., produced in discovery in 2016 a 2007 "Audit Confirmation" letter sent from J.W. Hunt and Company, LLP to Plaintiff regarding the Account, and asking Plaintiff to "please report any discrepancy by us[ing] the reverse side of this form and returning in t[he] enclosed envelope." Exhibit 30 (J.W. Hunt Audit Confirmation Letter). The Audit Confirmation letter gave the "current balance" for the Account as $392,097.12 and the "balance last statement" for the Account as $296,587.54 on November 30, 2007. Ex. 30. Despite repeated, specific inquiries into when and how Plaintiff came into possession of this Audit Confirmation letter (including a written supplemental response made at court order), Plaintiff cannot provide any information as to when she received this document which, on its face, was dated in 2007 and is not found in Community First's files. A compilation of Plaintiff's discovery responses regarding this document is attached as Exhibit 31.

about Hiott's behavior with regard to her finances and the Account dated back to 2008. Ex. 1, pp. 81, 139-40. On or about July 19, 2010, she instructed Baker and Baker not to deposit any more funds into the Account. Ex. 1, p. 368-69.[8] Plaintiff decided to entrust another friend, Ann Gell Hamiter, with bill paying duties in the spring of 2010 and sought legal advice from Kathleen McDaniel, Esq. beginning in August 2010 due to her concerns about Hiott and the inconsistent information she and Ms. Hamiter were receiving from him. Ex. 1, pp. 116-17, 123, 374-75, 512; Exhibit 33, p. 7 (McDaniel Dep. Excerpts). As Ms. Hamiter testified, Plaintiff "was totally put out" with Hiott in 2010 because Plaintiff believed that Hiott "was stealing her money." Exhibit 34, p. 38 (Hamiter Dep. Excerpts). Ms. McDaniel wrote to Hiott on September 21, 2010:

> It is my understanding that on August 11, 2010, you transferred all of the cash remaining in the trust account, approximately $200,000.00 to Ms. Baker-Brookshire's account at BB&T. I spoke yesterday with Ann Gel Hammiter [sic], Ms. Baker-Brookshire's bookkeeper. Ms. Hammiter [sic] informs me that, when she last spoke to you about one month before the wire out to BB&T, you told her that there was approximately $900,000 remaining in the trust account. There appears to be some serious inconsistencies in this information.

Exhibit 35 (McDaniel Letter to Hiott). Ms. Hamiter testified that Plaintiff "was violently upset" and surprised when she received the $200,000 in August 2010 and believed she should have had more money in the Account. Ex. 34, pp. 49-50. Consequently, Plaintiff had serious, documented concerns about Hiott's behavior with regard to her Account in mid-2010.

In approximately December 2010, counsel for Community First, James Williams, Esq., sent a package of reprinted Account statements to date to Ms. McDaniel, which on their face were printed on November 18, 2010. Ex. 33, pp. 30-31; Exhibit 36 (Account Statement Compilation Packet). Ms. McDaniel confirmed that she received the set of reprinted Account

[8] Over the course of the Account's existence, at least $1,307,706.43 was deposited into the Account from Baker and Baker. Exhibit 32 (Summary Chart of Deposits from Baker and Baker).

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP370526

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

statements during her representation of Plaintiff and that she sent the package of reprinted Account statements on to Plaintiff. Ex. 33, p. 33. Plaintiff confirmed that she received this package no later than March or April 2011. Ex. 1, pp. 394-98. On February 17, 2011, Ms. McDaniel instructed Community First through counsel to "close Ms. Baker-Brookshire's account with Community First Bank and prepare a check made out to Debi Baker-Brookshire for *all funds remaining in the account*." Exhibit 37 (McDaniel Letter to Williams) (emphasis added). Ms. McDaniel met with Mr. Williams and Hiott on February 22, 2011, and received a Community First Bank "Official Check" for $285,233.34 made out to Debi Baker Brookshire. Ex. 33, pp. 38-39, Exhibit 38 (Check Packet). Both Ms. McDaniel and Plaintiff testified that they understood that the $285,233.34 was all the money remaining in the Account as of February 2011. Ex. 1, pp. 129, 391-92; Ex. 33, pp. 39-40.

Ms. McDaniel ceased representing Plaintiff on March 11, 2011. Ex. 33, p. 40. On April 6, 2011, Plaintiff revoked the POA. Exhibit 39 (Revocation of Power of Attorney). Plaintiff has not spoken with or directly communicated with Hiott since mid-2010. Ex. 1, p. 124.

D. Plaintiff's Claimed Damages.

Over the course of the Account's existence from June 2007 until February 2011, a total of $4,057,114.34 was deposited into and withdrawn from the Account. Plaintiff initially claimed that essentially *all* of the disbursements from the Account were unauthorized or were allegedly "stolen or misappropriated." Complaint ¶¶ 102, 110. As discovery progressed, Plaintiff eventually admitted that she does not dispute that Hiott disbursed $1,865,761.69 from the Account to her or for her benefit in payment of her obligations. Ex. 1, pp. 412-413, 429-432; Exhibit 40 (Compilation Exhibit of Discovery Responses Regarding Disbursements in Dispute); Exhibit 41 (Summary Chart of Undisputed Disbursements). These payments represent payments

by Hiott for Plaintiff's taxes ($564,634.21); Plaintiff's various bills including rent, cable, utilities, daycare, insurance, traffic tickets, and medical bills ($115,488.96); transfers to Plaintiff's accounts at BB&T ($1,020,626.62); and payments to Plaintiff's husband ($51,208.15) among other various payments. Ex. 41.

Subtracting the undisputed amount leaves $2,191,352.65 in dispute, representing 115 disbursement transactions. Exhibit 42, (Summary Chart of Disputed Disbursements).[9] Despite concrete documentary evidence establishing the recipient and validity of such payments,[10] Plaintiff unreasonably persists in disputing the following categories of transactions, representing $556,977.20:

Transaction reversals[11]	$351,246.57
Transfers to Plaintiff's accounts at BB&T[12]	$182,998.57

[9] As discussed more fully below at pp. 17-18, given the language of the POA Plaintiff chose to give Hiott, Hiott had the actual authority to conduct *every* transaction on the Account. Ex. 9. Community First's discussion here of the transactions that *Plaintiff* does and does not dispute in no way detracts from Community First's fundamental argument that the POA authorized all transactions on the Account and that, as a third party, Community First had a right to rely on the POA with no duty to inquire into the purpose behind a given transaction.

[10] Some of this information was gleaned from a box of Brookshire materials stored in Hiott's former office at Community First and which Community First produced in the course of this litigation. Plaintiff admitted during her deposition that she threw away documents regarding Community First and Hiott after 2010 and thereafter challenged disbursements as inappropriate or unauthorized. Ex. 1, pp. 425-27, 656.

[11] This money represents withdrawals from the Account where funds in an identical amount were returned to the Account within a few days of the withdrawals. In other words, there was no net loss to the Account. A compilation exhibit of the backup documentation showing these transactions is attached as Exhibit 43.

[12] The majority of the still-disputed disbursements to BB&T are wire transfers to Plaintiff's accounts at BB&T in 2007 and 2008. Plaintiff has refused to acknowledge that these disbursements were for her benefit because the only documentary evidence produced in this case to corroborate those disbursements came from Community First. Brookshire apparently failed to retain her BB&T statements confirming these transactions, and by the time she requested them from BB&T in connection with this matter, BB&T no longer retained the documentation. *See* Ex. 40. Given the only available evidence regarding these transactions—Community First's documentation and the established pattern of 130 admitted disbursements to BB&T that Plaintiff

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP370526

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

Car payments - Lexus/Toyota[13]	$ 7,823.14
Community First Credit Card Payments[14]	$ 7,229.74
Insurance[15]	$ 6,079.17
Logan Voxx[16]	$ 1,600.00
CFB (closing withdrawal)	$ .01
Subtotal	**$556,977.20**

Given the documentary evidence in support of the authorization of or appropriateness of these disbursements, there is no genuine issue of material fact that the above-described $556,977.20 can be a matter of dispute, thus reducing the amount in controversy to $1,634,375.45.

On eight different occasions from July 2008 until February 2011, it is undisputed that Hiott deposited a total of $880,855.58 of funds belonging to Community First into the Account. Exhibit 49, p. 158 (Jones Dep. Excerpts); Exhibit 50 (Palmetto Consulting Chart). Plaintiff has confirmed that Hiott's deposit of those funds into her account was not appropriate (Ex. 1, pp. 393-94), and she consequently has no claim to those funds. Community First is thus entitled to a credit of $880,855.58 against any amount remaining in controversy (and further seeks recovery

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does *not* dispute—there is no genuine issue of material fact as to whether Plaintiff received these funds. A compilation exhibit of the backup documentation for the 20 disbursements to BB&T that Plaintiff still disputes is attached as Exhibit 44. *See also* Ex. 42.

[13] A compilation exhibit of the backup documentation showing these transactions is attached as Exhibit 45.

[14] A compilation exhibit of the backup documentation showing these transactions is attached as Exhibit 46.

[15] A compilation exhibit of the backup documentation showing these transactions is attached as Exhibit 47.

[16] Plaintiff has objected to one disbursement to Mr. Voxx, a child care provider for the children in her custody, yet has ratified multiple disbursements from the Account to Mr. Voxx on other occasions. A compilation exhibit of the single transaction to which she is objecting (CFB003667) and other transactions to which she is not objecting (CFB003453, CFB003467, CFB003576) is attached as Exhibit 48.

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

of this amount in its counterclaims against Plaintiff), thus reducing the amount that Plaintiff could conceivably seek to $753,519.87.

The withdrawals from the Account that are now remotely subject to dispute are far less than the total damages Plaintiff has claimed in this lawsuit. As will be discussed more fully below, Plaintiff faces fatal statute of limitations and statute of repose issues with regard to all of her claims (among many other flaws in Plaintiff's case against Community First). By way of example, Plaintiff's problems are starkly obvious with regard to one category of transactions that Plaintiff still disputes—disbursements made to Joseph Crosby or made for his benefit or for the benefit of a company owned by Mr. Crosby. Mr. Crosby was a local restaurateur who developed a line of spice rubs and other food products that were sold in local Bi-Los, Walmarts, and other retail outlets, to the United States military, and on QVC. Exhibit 51, pp. 9-14, 25 (Crosby Dep. Excerpts). The only evidence in the record is that in 2007 and 2008, Mr. Crosby's business interests were growing rapidly and poised for great success. Ex. 51, pp. 41-43.[17] The disbursements to Mr. Crosby represent the largest by amount ($1,053,437.39) and oldest by date (beginning July 12, 2007, and ending December 17, 2008) of those categories of disbursements that Plaintiff could conceivably contest as inappropriate or unauthorized. *See* Ex. 42. Plaintiff's failure to timely challenge those disbursements renders her entirely upside down on her damages theories.

[17] Mr. Crosby testified that he understood that he understood that the July 12, 2007 $500,000.00 disbursement to him (made on an Official Check of Community First and endorsed by him) was a loan to him from Plaintiff, as confirmed by the words "Brookshire Loan Advance" on the remitter line of the check. Ex. 51, pp. 34-38; Exhibit 52 (Check to Crosby for $500,000.00). Indeed, Mr. Crosby referred to Plaintiff as a sort of "angel investor" in his company. Ex. 51, p. 37. He considered the other advances of Plaintiff's funds to be of the same category and nature. Ex. 51, p. 41. He testified that his company collapsed during the financial crisis and he could not repay his debts, including the debt to Plaintiff. Ex. 51, pp. 46-50, 57-59, 117.

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

Legal Standard

Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to summary judgment as a matter of law. Rule 56(c), SCRCP. Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact; however, the moving party need not support its motion with affidavits or other similar materials negating the opponent's claims but must clearly establish by the record the absence of a triable issue of fact. *Baughman v. American Tel & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). With respect to an issue upon which the non-moving party bears the burden of proof, the moving party may discharge his initial responsibility by pointing out to the Court the absence of evidence to support the non-moving party's case. *Id.*

After the moving party has met his initial burden, Rule 56(e), SCRCP requires the opposing party to "do more than simply show that there is some metaphysical doubt as to the material facts." *Id.* In response to a properly supported motion for summary judgment, the opposing party "must come forward with specific facts showing there is a genuine issue of material fact." *Id.* Thus, "the non-moving party may not rest on the mere allegations or denial of pleadings, but must set forth or point to specific facts showing there is a genuine issue of material fact." *Thomas v. Waters*, 315 S.C. 524, 526, 445 S.E. 2d 659, 661 (Ct. App. 1994) (quoting *Dickert v. Metropolitan Life Ins. Co.*, 306 S.C.311, 313, 411 S.E.2d 672, 673 (Ct. App. 1993), *rev'd in part on other grounds*, 311 S.C. 218, 428 S.E.2d 700 (1993)); Rule 56(c), SCRCP.

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

Argument

A. Plaintiff's POA to Hiott bars her claims against Community First.

Community First is entitled to summary judgment on all of Plaintiff's causes of action because Plaintiff authorized Hiott to take all of the actions he did with regard to the Account, and the law imposes no duty on Community First to monitor or regulate Hiott's activities and decisions undertaken pursuant to the POA. Plaintiff gave Hiott the POA in his individual capacity to, among other things, conduct *all* of her financial affairs. This POA predated her Account at Community First, and was not revoked until after the Account was finally closed. Plaintiff authorized Hiott to make withdrawals from and deposits into the Account. She authorized him to open accounts, invest her assets, purchase insurance, file her taxes, and "manage and conduct all of [her] affairs and to exercise all of [her] legal rights and powers." Ex. 9. The POA is unambiguous, and its interpretation is confined to the language used in the four corners of the document. *Watson v. Underwood*, 407 S.C. 443, 454-55, 756 S.E.2d 155, 161-162 (Ct. App. 2014) (internal citation omitted). Whether Plaintiff now agrees or disagrees with the decisions Hiott made is immaterial as it pertains to her claims against Community First.

Community First, as a third party, has a statutory right to rely on powers of attorney and "does not incur liability to the principal or the principal's estate by reason of acting upon the authority of it or permitting the attorney-in-fact to exercise authority." S.C. Code Ann. § 62-5-501(F)(2)(a) (2009). Further, Community First "is not required to inquire whether the attorney-in-fact has power to act or is properly exercising the power." *Id.* § 62-5-501(F)(2)(b). Nor is Community First "responsible to determine or ensure the proper application of assets, funds, or property belonging to the principal." *Id.* § 62-5-501(F)(2)(c). The existence of and terms of Plaintiff's POA that she granted to Hiott thus bar all of her claims against Community First

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

because all of Plaintiff's claims against Community First are premised on the (erroneous) assumption that Community First had some sort of duty to monitor Hiott's disbursements from the Account or inquire into the purpose behind the disbursements while Hiott was acting under the POA.

B. Plaintiff's claims that Hiott's disbursements from the Account were unauthorized are time barred under the Uniform Commercial Code because Plaintiff failed to timely challenge the disbursements.

Plaintiff's claims that certain disbursements from her Account were unauthorized are barred under the South Carolina Uniform Commercial Code because Plaintiff utterly failed to promptly review the monthly statements for her Account and bring her concerns about Hiott allegedly exceeding the scope of his authorization in the conduct of her business to Community First's attention. *See* S.C. Code Ann. § 36-4-406 (2003 & Supp. 2015) as applicable.[18] Both versions of this section impose a strict one year maximum time limit for a customer to discover and report unauthorized signatures[19] on items.[20] S.C. Code Ann. § 36-4-406(4) (2003); S.C.

[18] South Carolina adopted Revised Article 4 of the Uniform Commercial Code effective July 1, 2008. Consequently, slightly different rules apply to pre-July 1, 2008 Account statements versus post-July 1, 2008 Account statements. 2008 Act No. 204, § 4.A ("This act applies to a transaction occurring on or after the effective date [July 1, 2008] of this act. This act does not apply to a transaction or event, or obligation or duty arising out of or associated with a transaction or event before the effective date of this act.").

[19] "Unauthorized signature" is a defined term in the UCC and means one "made without actual, implied or apparent authority and includes a forgery." S.C. Code Ann. § 36-1-201(43) (2003); S.C. Code Ann. § 36-1-201(41) (Supp. 2015) (unchanged in meaning, though using slightly different phrasing); *see also* S.C. Code Ann. § 36-1-201, Off. Cmt. 41 (Supp. 2015) (noting that the definition of "unauthorized signature" is "[u]nchanged" from the former section).

[20] "Item" is also a defined term in the UCC and meant "any instrument for the payment of money even though it is not negotiable but does not include money" before July 1, 2008. S.C. Code Ann. § 36-4-104(1)(g) (2003). After July 1, 2008, the definition of "item" changed slightly to "an instrument or a promise or order to pay money handled by a bank for collection or payment." S.C. Code Ann. § 36-4-104(a)(9) (Supp. 2015). "Promise" is defined as "a written undertaking to pay money signed by the person undertaking to pay." *Id.* § 36-3-103(a)(12) (Supp. 2015). "Order" is defined as "a written instruction to pay money signed by the person giving the instruction." *Id.* § 36-3-103(a)(8) (Supp. 2015). Both definitions of "item"

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

Code Ann. § 36-4-406(f) (Supp. 2015); *see also Sabatino v. Atl. Sav. Bank, F.S.B.*, 314 S.C. 402, 403, 444 S.E.2d 537, 538 (Ct. App. 1994). It is of critical importance for account holders to promptly review their bank statements, especially because "[o]ne of the most serious consequences of failure of the customer to comply with the requirements [to review her statements] is the opportunity presented to the wrongdoer to repeat his misdeeds. Conversely, one of the best ways to keep down losses in this type of situation is for the customer to promptly examine his statement and notify the bank of an unauthorized signature or alteration so that the bank will be alerted to stop paying further items." S.C. Code Ann. § 36-4-406 (2003), Off. Cmt. 3. Plaintiff's own expert agrees, as he testified that it is "absolutely" important for the bank's "customer to review the statements that are sent to the customer" and that "the customer bears the responsibility for keeping up with his or her bank accounts." Exhibit 53, p. 125 (Richey Dep. Excerpts). He further testified that the bank customer should notify the bank if a monthly statement does not arrive. Ex. 53, p. 125.

In addition, South Carolina law specifically permits banks and their customers to vary by agreement the timeframe in which a customer must review and report unauthorized signatures or other concerns about transactions on the account. S.C. Code Ann. § 36-4-103(1) (2003); S.C. Code Ann. § 36-4-103(a) & S.C. Reporter's Cmt. (citing *Nat'l Title Ins. Corp. Agency v. First Union Nat'l Bank*, 559 S.E.2d 668, 671 (Va. 2002) & *Freese v. Regions Bank, N.A.*, 644 S.E.2d 549, 552 (Ga. App. 2007)) (Supp. 2015).[21] Plaintiff's Account agreement with Community First

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encompass a wide variety of instructions to pay beyond traditional checks, including journal vouchers, deposit slips, account withdrawal orders, and handwritten notes asking for cashiers' checks. *See, e.g. Am. Airlines Employees Fed. Credit Union v. Martin*, 29 S.W.3d 86, 92-94 (Tex. 2000).

[21] With respect to the Uniform Commercial Code, the South Carolina legislature has provided "a statement of legislative direction to the courts of a tendency to imply an interpretation and construction of the Code sections which is consistent with the case law

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

sets the timeframe for Plaintiff to report unauthorized signatures or other Account errors to Community First as 60 days after Community First sends the monthly statement. The monthly statements reinforce this timeframe with the monthly reminder to "[p]lease examine immediately and report if incorrect. If no reply is received within 60 days the account will be considered correct." *See* Exs. 1, 3, 5, and 7 to Ex. 24 (emphasis in original).

Community First mailed monthly statements for Plaintiff's Account to the address where Plaintiff was receiving her mail from the Account's inception in June 2007 until early 2010, when Community First received for the first time in April 2010 a statement addressed to Plaintiff in return mail as "unable to forward." Ex. 24, ¶¶ 17-18. Community First's account management system automatically generates and prints a periodic account statement for each of its more than 25,000 accounts. Ex. 24, ¶¶ 3, 8. These account statements are routinely, regularly, and automatically compiled, processed, and transmitted for mailing with the United States Postal Service, as detailed in Ms. Wilson's affidavit. Ex. 24, ¶¶ 9-12. At all times during the Account's existence, Community First followed its normal procedures with regard to the Account statements. *See* Ex. 24, ¶ 14. This evidence of Community First's "usage and custom ... in delivering statements" to its customers is competent proof of delivery. *Cooley v. First Nat'l Bank of Little Rock*, 635 S.W.2d 250, 252 (Ark. 1982) (internal citation omitted); *see also Bakala v. Bakala*, 352 S.C. 612, 625, 576 S.E.2d 156, 163 (2003) ("Evidence of mailing establishes a rebuttable presumption of receipt.") (internal citation omitted).

Plaintiff's testimony that she did not receive monthly statements from Community First is unavailing and fails to present a genuine issue of material fact to preclude summary judgment to

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construction of those sections in other Code jurisdictions." S.C. Code Ann. § 36-1-103, S.C. Reporter's Cmt. (Supp. 2015); *see also In re Parker*, 363 B.R. 769, 774 (Bankr. D.S.C. Sept. 14, 2006) ("Since South Carolina has adopted a uniform law, the Court is guided by decisions in other jurisdictions that have interpreted this provision of the UCC.").

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

Community First. First, ***Plaintiff actually received at least four monthly statements, as she has produced original statements in discovery.*** Ex. 24, ¶¶ 27-35. The only time original statements are ever printed by Community First are when they are placed in the mail. Ex. 24, ¶ 21. They are printed and mailed within a few days of the closing period represented in the respective Account statement. *See* Ex. 24, ¶¶ 10, 12, 17, 35. Plaintiff's *actual receipt* of statements is dispositive.

Second, the burden is on the bank customer—not the bank—to ensure receipt of account statements. S.C. Code Ann. §§ 36-1-201, 36-4-406 (2003), §§ 36-1-201(36)(A), 36-4-406(a) (Supp. 2015) (describing the bank's "sending" of statements to customers as the operative event giving rise to the customer's duty of examination and further defining "send" in part as "to deposit in the mail"). The UCC allocates the risk of loss or interception of bank statements to the bank customer. *Stowell v. Cloquet Co-op Credit Union*, 557 N.W.2d 567, 571-72 (Minn. 1997) (collecting cases). In other words, the bank customer has an affirmative duty to ensure that he or she is receiving account statements, and the customer's claims will be barred if the customer fails to timely discharge this duty. *Id.* at 569-70;[22] *Mesnick v. Hempstead Bank*, 434 N.Y.S.2d 579, 580 (N.Y. Sup. Ct. 1980) (describing a bank customer's failure to ensure receipt of statements when such statements were intercepted by her husband as an "unreasonable lack of concern"); *Westport Bank & Trust Co. v. Lodge*, 325 A.2d 222, 223-24 (Conn. 1973) (failure of account holder to notify bank when account statements stopped arriving at her house due to her

[22] The Court in *Stowell* found that the plaintiff's several phone calls from December 1992 through September 1993 to the bank to inform them that the plaintiff had not received various statements and correspondence from the bank was insufficient to discharge his customer duties of receiving and reviewing his statements when he failed to follow up in person when the re-mailed statements did not arrive. *Stowell*, 557 N.W.2d at 569-70. Plaintiff's complete and utter failure to notify Community First for *years* that she (allegedly) did not receive her statements is far more egregious than the plaintiff's conduct the Minnesota court found to be preclusive.

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

housekeeper forging a change of address form did not relieve account holder of duty to ensure receipt of statements, thus barring claims under UCC); *Terry v. Puget Sound Nat'l Bank*, 492 P.2d 534, 535 (Wash. 1972) (failure to notify bank of three months of missing statements part of finding of "substantial evidence of negligence on the part of the plaintiffs"); *Myrick v. Nat'l Sav. & Trust Co.*, 268 A.2d 526, 528 (D.C. App. 1970) (account holder "was negligent as a matter of law" due to her "failure to inquire of the bank as to her lack of receipt of monthly statements" for five months).

Indeed, Plaintiff's own expert opined that Plaintiff, or any reasonable bank customer, could wait, at most, 90 days to notify Community First that she was not receiving Account statements. Ex. 53, pp. 132-33.[23] Plaintiff's failure to appropriately discharge her duties as a bank customer serves as an absolute bar to all of her claims against Community First. *Peters v. Riggs Nat'l Bank, N.A.*, 942 A.2d 1163, 1168-69 (D.C. App. 2008) (finding that section 4-406 is a statute of repose, and "equitable tolling cannot apply to statutes of repose"); *First Place Computers, Inc. v. Security Nat'l Bank of Omaha*, 558 N.W.2d 57, 60 (Neb. 1997) (holding that section 4-406 "establishes a condition precedent to an action which, unlike a statute of limitations, may not be tolled") (internal citations omitted).

Applying the UCC provisions to the facts of this case, Community First sent and Plaintiff received the July 2007 Account statement in or around early August 2007. Ex. 24, ¶¶ 14, 16, 17, 32. Plaintiff thereafter had *at most* one year to challenge any transactions reflected on that statement.[24] Consequently, the UCC statute of repose ran, at the latest, in August ***2008*** for every

[23] Plaintiff testified that she understands that it was a reasonable thing for her to review her monthly statements for her Revocable Trust with BB&T because "[w]ell, you know, that's where [her] money was." Ex. 1, pp. 691-94.

[24] An item accompanies a statement if it is actually attached to the statement or if it was made available to the customer in a reasonable manner. *Sabatino*, 314 S.C.at 404, 444 S.E.2d at

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

transaction reflected on the July 2007 statement. The same analysis applies to each and every monthly Account statement that was sent by Community First to Plaintiff. Plaintiff was on actual and/or constructive notice of her Account balance and the amount of the withdrawals and deposits that comprised that balance with every month that passed, and the corresponding maximum time limitation of one year would thus shift one month at a time. In other words, each monthly Account statement represents a separate timeframe for challenging the Account balance and transactions reflected therein. Plaintiff's failure to timely do so with each passing month renders any challenge to the transactions time-barred.

It is insufficient at the summary judgment stage for Plaintiff to simply deny that she received statements from Community First (testimony that Plaintiff's document production flatly contradicts). Instead, she must present evidence that raises a genuine issue of material fact that Community First did not "send" the statements. This she has not done and cannot do, especially in the wake of her actual receipt of Account statements. Plaintiff's failure to ensure receipt of and to review her statements and report any unauthorized signatures or other specific disbursement concerns to Community First within the requisite time period bars all of her claims against Community First. *Sabatino*, 314 S.C. at 404, 444 S.E.2d at 538; *Villa Contracting Co., Inc. v. Summit Bancorporation*, 695 A.2d 762, 766 (N.J. Super. 1996) ("[T]he customer must deal in specifics rather than generalities. In other words, in order to satisfy the statute, he must

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538 (interpreting S.C. Code Ann. § 36-4-406 (2003)). An item is made available to the customer in a reasonable manner if it would be available upon inquiry, especially if the item is a bank draft or something not routinely attached to a monthly statement. *Id.* Plaintiff here confirmed that she understood and believed that Community First would have given her information if she had asked for it. Ex. 1, p. 576, 578. However, with or without items or full information, the Court of Appeals in *Sabatino* found that the "withdrawals from [Sabatino's] account to pay for the checks, however, were reflected in the monthly statements" and that "the withdrawals were relatively large compared to other transactions in these accounts and, if they were unauthorized, should have been sufficient to notify Sabatino of the need to investigate the transactions." *Sabatino*, 314 S.C. at 404 n.2, 444 S.E.2d at 538 n.2.

notify the bank of exactly which items" are unauthorized.) Community First is entitled to summary judgment on all of Plaintiff's claims.

C. In the alternative, all of Plaintiff's claims are time barred pursuant to S.C. Code Ann. § 15-3-530(5).

Plaintiff's claims are also barred by the three year statute of limitations applicable to all of Plaintiff's causes of action. S.C. Code Ann. §§ 15-3-530(5) (2005).

> Statutes of limitations are not simply technicalities. On the contrary, they have long been respected as fundamental to a well-ordered judicial system. Statutes of limitation embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs. One purpose of a statute of limitations is to relieve courts of the burden of trying stale claims when a plaintiff has slept on his rights. Another purpose of a statute of limitations is to protect potential defendants from protracted fear of litigation.

Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996) (internal citations and quotations omitted). "The cornerstone policy consideration underlying statutes of limitations is the laudable goal of law to promote and achieve finality in litigation." *Lyons v. Fidelity Nat. Title Ins. Co.*, 415 S.C. 115, 124, 781 S.E.2d 126, 131 (Ct. App. 2015) (quotation omitted).

The discovery rule applies to the running of the statute of limitations here, and Plaintiff knew or should have known of the alleged harm more than three years before August 1, 2014, the date of the tolling agreement between Plaintiff and Community First, that preceded the filing of her Complaint on September 8, 2014. *See* S.C. Code Ann. § 15-3-535 (2005). This is true for multiple reasons, as Plaintiff both received the monthly statements for her Account and suspected Hiott of misconduct with regard to her Account well over three years prior to August 1, 2014. *See* S.C. Code Ann. §§ 15-3-530(5), 15-3-535 (2005); *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 787 S.E.2d 485, 489-90 (2016) ("Under the discovery rule, the limitations period commences when the facts and circumstances of an injury would put a person

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

of common knowledge and experience on notice that some claim against another party might exist. This standard as to when the limitations period begins to run is *objective* rather than *subjective*. Therefore, the statutory period of limitations begins to run when a person *could or should have known*, through the exercise of reasonable diligence, that a cause of action might exist in his or her favor, rather than when a person obtains actual knowledge of either the potential claim or of the facts giving rise thereto.") (citations and quotations omitted); *Grillo v. Speedrite Prods., Inc.*, 340 S.C. 498, 503, 532 S.E.2d 1, 3 (Ct. App. 2000) ("The exercise of reasonable diligence means simply that an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist. The statute of limitations begins to run from this point and not when advice of counsel is sought or a full-blown theory developed.") (citation omitted); *Gibson v. Bank of Am., N.A.*, 383 S.C. 399, 409-10, 680 S.E.2d 778, 783-84 (Ct. App. 2009) (holding that receipt of bank statements in June 2000 that disclosed account balances placed the account holder "on notice that she had some type of claim for any perceived discrepancy, even if she did not know the precise details behind the discrepancy" and barred lawsuit against bank brought in September 2003).

1. **Plaintiff received statements for the Account more than three years prior to August 1, 2014.**

As described above at pages 20-24 and as detailed in Ms. Wilson's affidavit (Ex. 24), Community First sent and Plaintiff actually or constructively received monthly Account statements from June 2007 through January 2010.[25] Plaintiff was on actual and/or constructive

[25] Although beginning with the February 2010 Account statement, the Account statements were either returned to Community First by the United States Postal Service or were

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

notice *every month* for the transactions found in each statement such that any claim as to those transactions would expire, at the *very* longest, three years and 60 days from when Community First sent each respective statement to Plaintiff. Plaintiff's lawsuit is thus barred by the statute of limitations under the discovery rule. *Gibson*, 383 S.C. at 409-10, 680 S.E.2d at 783-84.

Further, Plaintiff admits that she received a compiled copy of her Account statements for July 2007 through November 2010 in March or April 2011—well over three years before August 1, 2014. Ex. 1, pp. 394-98.[26] Plaintiff testified that the first time she knew that the $500,000 disbursement of July 2007 had been made was when she reviewed a version of the July 2007 statement with "Lafayette, single premium annuity to children" written on it in blue ink. Ex. 1, pp. 229-230. Ms. McDaniel wrote that information on a copy of the July 2007 statement and provided the Account statement packet to Plaintiff no later than March or April 2011. Ex. 33, p. 32; Ex. 1, p. 398. Plaintiff's lawsuit is thus barred by the three year statute of limitations under the discovery rule. *Gibson*, 383 S.C. at 409-10, 680 S.E.2d at 783-84.

2. Plaintiff believed that Hiott had misappropriated her funds or otherwise was untruthful with her about her affairs more than three years prior to August 1, 2014.

Plaintiff testified that, by the spring and summer of 2010, she had become distrustful of Hiott, believed him to be lying to her about her affairs and her Account at Community First, and suspected that he had acted inappropriately with regard to her finances. Ex. 1, pp. 119-120. She

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held at the bank in accordance with Community First's established policies (Ex. 24, ¶¶ 14, 17-19), the UCC places the bank customer on constructive notice of the contents of her bank statements and places the burden on the bank customer to ensure receipt of the statements. *See* pp. 21-24 above. Plaintiff failed to contact Community First with regard to "missing" or unreceived Account statements until August 2010, at the earliest. *See* Ex. 35. Hiott notified her attorney by letter of October 21, 2010, that Plaintiff should have received monthly Account statements. Ex. 33, pp. 25-26. Plaintiff's delay beyond 90 days is patently unreasonable, per Plaintiff's own expert. Ex. 53, pp. 32-33.

[26] Ms. McDaniel received the compiled set of Account statements from James Williams, Esq., counsel for Community First, in approximately December 2010. Ex. 33, pp. 30-31.

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

engaged Ms. McDaniel in August 2010 to investigate her concerns regarding Hiott and Community First. Ex. 1, p. 123. Consequently, Plaintiff *actually knew* in the summer of 2010 "that some claim ... might exist" with regard to the Account and her finances. *Grillo*, 340 S.C. at 503, 532 S.E.2d at 3. This actual knowledge is more than sufficient to begin the running of the statute of limitations, and Plaintiff's lawsuit is thus barred.

D. Equitable doctrines do not apply to save Plaintiff's time-barred claims.

Two distinct, but related and potentially overlapping, equitable doctrines can apply in limited situations to toll or estop the statute of limitations defense: equitable tolling and equitable estoppel. *See, e.g. Magnolia N. Prop. Owners' Ass'n, Inc. v. Heritage Communities, Inc.*, 397 S.C. 348, 370, 725 S.E.2d 112, 124 (Ct. App. 2012). The doctrines "should be used sparingly and only when the interests of justice compel [their] use." *Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr.*, 386 S.C. 108, 116, 687 S.E.2d 29, 32 (2009) (quotation omitted). Neither doctrine saves Plaintiff's time-barred claims under the facts of this case.

1. Equitable tolling.

Equitable tolling is a "judicially created" doctrine and "stems from the judiciary's inherent power to formulate rules of procedure where justice demands it." *Id.* at 115, 687 S.E.2d at 32. *Hooper* further describes a non-exhaustive list of circumstances where equitable tolling might apply, with the common theme being "where a litigant was prevented from filing suit because of an extraordinary event beyond his or her control." *Id.* *Hooper* emphasizes that equitable tolling may only be applied "where it is justified under *all* the circumstances." *Id.* "The party claiming the statute of limitations should be tolled bears the burden of establishing facts sufficient to justify its use." *Id.*

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP370526

South Carolina courts discussing equitable tolling have applied it to toll the statute of limitations in extraordinary situations where—due to no fault of the plaintiff—an extraordinary event occurred to delay the proper commencement of a lawsuit. In *Hooper*, the plaintiff filed the lawsuit well within the statute of limitations. *Id.* at 111, 687 S.E.2d at 30. Yet due to the defendant's "failure to supply the correct information regarding its agent to the Secretary of State as required by law," the plaintiff "diligently pursued service on what turned out to be a nonexistent agent," and was consequently only able to accomplish service "approximately one week past" the Rule 3(a)(2), SCRCP time limits to effectuate service. *Id.* at 118-19, 687 S.E.2d at 34. In *Magnolia North*, the Court of Appeals found that equitable tolling was appropriately used in a case brought by a property owner's association and filed after the statute of limitations expired because, until the date of "turnover," the association's board was controlled by the very defendants the association would need to sue, and the court found "unpersuasive" the "claim that an organization [the defendants] controlled would have initiated an action against itself" prior to "turnover." *Magnolia N.*, 397 S.C. at 372, 725 S.E.2d at 125. Both *Magnolia North* and *Hooper* emphasized that plaintiffs must be diligent in all of their endeavors in order to properly invoke equitable tolling. *Id.*; *Hooper*, 386 S.C. at 119, 687 S.E.2d at 34.

In contrast, courts applying South Carolina law do *not* apply equitable tolling if the facts and circumstances show that the plaintiff was on notice of potential problems *before* receiving misinformation from a defendant. *Vieira v. Simpson*, 2015 WL 1299959, *6 (D.S.C. March 23, 2015) (applying *Hooper* and finding that a defendant attorney's provision of misinformation after plaintiffs became "suspicious" "was not an extraordinary event that kept the [plaintiffs] in the dark or prevented them from recognizing any impropriety"). Indeed, believing "that *perhaps* a lawsuit was unnecessary" is not sufficient to meet the plaintiff's burden on equitable tolling.

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

Id.; *see also In re Stotz Fredenhagen Indus., Inc.*, 554 B.R. 777, 787 (Bankr. D.S.C. 2016) (applying *Hooper* and holding that "[t]he evidence and allegations of delay, withholding of information, or lack of cooperation by other parties here is not enough. The evidence must also support a finding that these things *caused* the requisite period of delay and also must support a finding that the period of delay was *beyond Plaintiff's control.*") (emphasis in original).

Put simply, equitable tolling is an extraordinary remedy *only* applied when the plaintiff has been diligent, and some outside force beyond plaintiff's control wholly prevents the commencement of a timely lawsuit. As discussed in detail below, no facts exist that warrant its application here.

2. Equitable estoppel.

Equitable estoppel is slightly different from equitable tolling and centers more on the plaintiff's reasonable reliance on specific, specific conduct of a defendant. "A defendant is estopped to assert the statute of limitations defense against a plaintiff's claim if the *defendant's conduct* has induced the delay that otherwise would give operation to the statute. The conduct may involve inducing the plaintiff either to believe that an amicable adjustment of the claim will be made without suit or to otherwise forbear exercising the right to sue." *Republic Contracting Corp. v. S.C. Dep't of Highways & Pub. Transp.*, 322 S.C. 197, 211, 503 S.E.2d 761, 768 (Ct. App. 1998) (emphasis added). The determination of whether equitable estoppel is warranted is a matter for the Court alone. *Gaymon v. Richland Mem'l Hosp.*, 327 S.C. 66, 68, 488 S.E.2d 332, 333 (1997). In order to establish equitable estoppel, Plaintiff must present evidence of her "(1) lack of knowledge and of means of knowledge of truth as to facts in question; (2) reliance upon conduct of the party estopped; and (3) prejudicial change in position." *Regions Bank v. Schmauch*, 354 S.C. 648, 675, 582 S.E.2d 432, 446 (Ct. App. 2003) (quoting *Zabinski v. Bright*

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

Acres Assocs., 346 S.C. 580, 589, 553 S.E.2d 110, 114 (2001)). In addition, "[t]o prove equitable estoppel under South Carolina law, the aggrieved party must have 'reasonably relied on the words and conduct of the person to be estopped in allowing the limitations period to expire.'" *Dilmar Oil Co., Inc. v. Fed. Mut. Ins. Co.*, 986 F. Supp. 959, 975 (D.S.C. 1997) (quoting *Dillon County Sch. Dist. No. 2. v. Lewis Sheet Metal Works, Inc.*, 286 S.C. 207, 332 S.E.2d 555, 561 (Ct. App. 1985)). The gravamen of an estoppel showing refers to "lull[ing the plaintiff] into a sense of security, preventing [her] from filing suit before the running of the statute." *Republic Contracting*, 332 S.C. at 211, 605 S.E.2d at 769 (internal quotation omitted). However, "if the obstructive behavior occurs *after* the plaintiff's inquiry has reached the point at which he has discovered that he has a claim upon which to found a suit, the defendant's obstructionism has no causal significance, and so is not a ground for estoppel." *Jay E. Hayden Found. v. First Neighbor Bank, N.A.*, 610 F.3d 382, 385 (7th Cir. 2010) (internal citations omitted); *see also Little v. Brown & Williamson Tobacco Corp.*, 2000 WL 33957172, *6 (D.S.C. May 8, 2000) (applying South Carolina law on equitable estoppel and holding that equitable estoppel did not apply because Plaintiff failed to "offer any proof" that he relied on allegedly false statements by tobacco company executives in delaying his suit).

Here, Plaintiff has failed to allege or provide *any* evidence of any such reasonable reliance nor does any evidence exist that Community First "lulled" Plaintiff into any sense of security. Summary judgment is thus appropriate. *Regions Bank*, 354 S.C. at 675, 582 S.E.2d at 446 ("[S]ummary judgment is proper where there is no evidence of conduct warranting estoppel.").

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

3. Plaintiff's claims to equitable relief fail.

Plaintiff's prior briefing argues that Community First is estopped from invoking the statute of limitations to bar Plaintiff's claims or that the statute should be equitably tolled for two reasons: first, Plaintiff claims that she had a right to an "accounting" and that Community First's failure to provide her with her demanded "accounting" saves her otherwise time-barred claims. Second, Plaintiff claims that Hiott misrepresented to her the nature and recipient of the $500,000 withdrawal of July 12, 2007. Plaintiff claims that her representatives were told that the $500,000 withdrawal in July 2007 was made to purchase annuities for the children then in her custody when in fact the funds were actually sent to Mr. Crosby.

Plaintiff's attempt to wiggle around her statute of limitations problems suffers from multiple flaws. First, and foundationally, Plaintiff confuses the legal triggering of the statute of limitations with the level of proof necessary to win a lawsuit. In essence, Plaintiff argues that because the defendants did not (allegedly) provide complete and open pre-suit discovery to her, the statute of limitations does not begin to run until all of her questions are answered. Not so. In South Carolina, "[t]he statute of limitations begins to run when a plaintiff knows or should know of a potential claim against another party, *not when the plaintiff develops a full-blown theory of recovery*." *Republic Contracting*, 332 S.C. at 208, 503 S.E.2d at 767 (emphasis added). Indeed, "[a] plaintiff is not required to have collected, *before* he files suit, all the evidence he needs in order to win the suit. Otherwise the civil procedure rules would have to authorize precomplaint discovery rather than just pretrial discovery." *Jay E. Hayden Found.*, 610 F.3d at 386; *see also Dean v. Ruscon Corp.*, 321 S.C. 360, 364, 468 S.E.2d 645, 647 (1996) ("[T]he fact that the injured party may not comprehend the full extent of the damage is immaterial" to the statute of limitations inquiry.). In the specific context of a bank account, if a customer "disagreed with the

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

bank's representation of [the account balance shown in a statement], she was then on notice that she had some type of claim for any perceived discrepancy, even if she did not know the precise details behind the discrepancy." *Gibson*, 383 S.C. at 409, 680 S.E.2d at 783-84.

Second, equitable doctrines do not apply to the UCC's one year maximum statute of repose. It cannot be tolled, and its running cannot be estopped—even when the result reached may appear harsh. *Peters*, 942 A.2d at 1169 (finding claims for breach of contract, negligence, and violations of the Electronic Funds Transfer Act to be time-barred under the UCC even when the bank customer had died); *Siecinski v. First State Bank of E. Detroit*, 531 N.W.2d 768, 769 (Mich. 1995) (finding claims for breach of contract, negligence, and conversion to be time-barred under the UCC when an account holder suffered a head injury, fell into a coma, and died soon after a woman presented the bank with a forged power of attorney and ultimately withdrew all funds in the account after the account holder died). This is in accord with South Carolina law. *See Langley v. Pierce*, 313 S.C. 401, 404, 438 S.E.2d 242, 244 (1993) ("Statutes of repose are based upon considerations of the economic best interests of the public as a whole and are substantive grants of immunity based upon a legislative balance of the respective rights of potential plaintiffs and defendants struck by determining a time limit beyond which *liability no longer exists*.") (emphasis added); *Capco of Summerville, Inc. v. J.H. Gayle Constr. Co., Inc.*, 368 S.C. 137, 142, 628 S.E.2d 38, 41 (2006) (describing how statutes of repose cannot be tolled or extended "for any reason because to do so would upset the economic balance struck by the legislative body"). Plaintiff's failure to challenge disbursements within the applicable UCC time limits renders her claims against Community First completely barred.

Third, and beyond the applicable legal framework for reviewing the operation of any statute of limitation or repose, the following undisputed facts demonstrate that Plaintiff was on

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

notice "that a claim against another party might exist," *Dean*, 321 S.C. at 364, 468 S.E.2d at 647, well before August 2011:

- In or around **early August 2007,** Plaintiff *actually received* the July 2007 statement that disclosed the $500,000 withdrawal. *See supra* pp. 9-10.

    - Plaintiff testified that there was nothing that Hiott could have spent $500,000 on in July 2007 that would have been appropriate or authorized by her. Ex. 1, p. 271.

    - Plaintiff testified that she would have challenged the $500,000 disbursement as soon as she saw it, as her balance would have fallen from approximately $1.1 million to approximately $600,000 soon after the Account was opened. Ex. 1, pp. 550, 576-77, 582.[27]

    - Plaintiff testified that the children in her custody were well taken of financially and did not need an additional life insurance policy. Ex. 1, pp. 271, 379-381. Plaintiff further testified that she never directed Hiott to procure an annuity, life insurance policy, or trust for the two children. Ex. 1, p. 388.

- Plaintiff testified that she terminated her relationship with Hiott because he was not telling her the truth about her bills or the money in the Account in **"April, May, June" 2010.** Ex. 1, pp. 119-120. Indeed, Plaintiff testified that her problems with Hiott arose "much earlier" than the date of termination and even that she experienced problems with Hiott in 2008. Ex. 1, pp. 81, 139-140.

- Plaintiff acknowledged that she received $202,000 from the Account on or about **August 11, 2010**, and that Hiott had represented that this was all the money remaining in her Account. Ex. 1, p. 121, 371-372. At that time, she "couldn't imagine" $202,000 was all the money in the Account. Ex. 1, p. 121.

- Plaintiff hired Ms. McDaniel on or about **August 16, 2010**, because she was "getting mixed vibes from Ben [Hiott], basically. I couldn't quite get the truth on what was going on. He was telling Angel Hamiter one thing, telling me another thing." Ex. 1, p. 123; *see also* Ex. 33, pp. 6-7. Indeed, Plaintiff sought legal counsel regarding Hiott because "something didn't seem right. The money wasn't adding up. I wasn't getting the correct answers." Ex. 1, p. 512.

- Ms. McDaniel wrote to Hiott on **September 21, 2010**: "It is my understanding that on August 11, 2010, you transferred all of the cash remaining in the trust account, approximately $200,000.00, to Ms. Baker-Brookshire's account at BB&T. I spoke yesterday with Ann Gel Hammiter, Ms. Baker-Brookshire's bookkeeper. Ms. Hammiter

[27] Plaintiff expressed her outrage at the $500,000 disbursement within several weeks of opening the Account: "But the first 15 days that I had my money and that's half of what I had in there? I mean, give me a break." Ex. 1, p. 581.

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

informs me that, when she last spoke to you about one month before the wire out to BB&T, you told her that there was approximately $900,000 remaining in the trust account. *There appears to be some serious inconsistencies in this information.*" (emphasis added). Ex. 35. Plaintiff agrees that "[d]efinitely, most assured" were there "serious inconsistencies" in the information she and her representatives were receiving from Hiott in August and September 2010. Ex. 1, pp. 374-375.

- Through Ms. McDaniel, Plaintiff received a check for $285,233.34 on **February 23, 2011**, which Plaintiff understood to be "what the bank represented to be all of [her] funds at the bank." Ex. 1, p. 129.

- Ms. McDaniel received a set of reprinted Account statements during her representation of Plaintiff, and Plaintiff herself received a copy of the set of reprinted Account statements **no later than March or April 2011.** Ex. 1, p. 397-398.

Despite these volumes of concerns, disputes, and contradictory information, Plaintiff failed to file suit for well over three more years.

Fourth, Plaintiff's reasons for invoking equitable estoppel or equitable tolling are blatantly pretextual given the undisputed facts recited above. She claims that she is entitled to equitable relief because the defendants failed to provide her an "accounting." As recited above, Community First sent Plaintiff monthly Account statements and further provided her attorney with a full set of statements to date most likely in late 2010 but certainly by March 2011. Under South Carolina law, the simple receipt of bank statements is wholly sufficient on its own to trigger and begin the statute of limitations. *Gibson*, 383 S.C. at 409, 680 S.E.2d at 783-84; *Sabatino*, 314 S.C. at 404-05, 444 S.E.2d at 538.[28] Plaintiff began seeking what she called a "full accounting" from Hiott no later than September 21, 2010—almost four years before she filed suit. Ex. 35.[29] Viewing the evidence in the light most favorable to Plaintiff, the simple fact

[28] This is in addition to the legal presumption of bank statement receipt that the UCC imposes on bank customers, discussed above at pp. 21-24.

[29] Plaintiff failed to define what she means by a "full accounting," especially as it pertains to Community First. *See* Ex. 35; *see also* Ex. 9 ("My Agent [defined as Hiott individually] shall provide an accounting for all funds handled and all acts performed as my Agent, if I so request ...."). It is undisputed that Plaintiff or her prior counsel was subsequently provided with

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

that Plaintiff's attorney began asking for a "full accounting" due to "serious inconsistencies" with regard to Plaintiff's Account in September 2010 is uncontroverted evidence that Plaintiff was on *actual notice* that she had "a potential claim against another party" at that time. *Republic Contracting*, 332 S.C. at 208, 503 S.E.2d at 767.

It further strains credibility to claim that any alleged failure by Community First to provide the unadjudicated remedy of an accounting "lulled" Plaintiff into a sense of security that her perceived injury would be "righted" absent legal action. *See id.* at 211, 503 S.E.2d at 768-69. If anything, Community First's alleged failure to provide her something she began asking for in September 2010 would confirm her need to file suit within the requisite time period. Plaintiff cannot have it both ways—she cannot both seek adjudication of her entitlement to an accounting (*see* Complaint ¶¶ 138-40) and also claim that Community First's failure to voluntarily give her the relief she seeks *from the court* equitably estops Community First from invoking the statute of limitations. The court should reject this effort to circumvent Community First's statute of limitations defenses.

Plaintiff also argues that Hiott's changing story on the recipient of the July 12, 2007 $500,000 disbursement estops Community First from claiming the defense of the statute of limitations or otherwise tolls the statute. Again, this is pretextual. Plaintiff bears the burden of proving her *reasonable reliance* on Community First's words or conduct that *caused* her to file her lawsuit after the statute of limitations had expired. *Dilmar Oil*, 986 F. Supp. at 972-73. Plaintiff must do more than suggest some sort of "cover-up"—instead, Plaintiff must link this alleged "cover-up" with "lulling" Plaintiff into a sense of security such that Plaintiff was

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a reprinted set of Account statements in late 2010 or early 2011. Ex. 33, pp. 30-31, 33; Ex. 1, pp. 394-98.

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

prevented from filing suit before the statute of limitations expired. *Republic Contracting*, 332 S.C. at 211, 503 S.E.2d at 768-69. No evidence exists to meet this standard.

The evidence shows that the earliest time that a specific explanation for the July 2007 $500,000 disbursement was given to Plaintiff or her representative was when Ms. McDaniel handwrote "[a]nnuity for children" and "Lafayette Life Product Single premium annuity" on a copy of Plaintiff's July 2007 Account statement that, on its face, was reprinted on November 18, 2010. Ex. 33, p. 32, Ex. 36, p. CTR 0199. Ms. McDaniel ceased representing Plaintiff on March 11, 2011, and while the exact date of when Ms. McDaniel received this information is unknown, it was during her representation of Plaintiff. Ex. 33, p. 40. According to Plaintiff, Hiott gave *different* stories about the disbursement on various later occasions, naming at various times Lafayette, Nationwide, and Holcombe Insurance Agency as recipients of these funds for the children's benefit before informing counsel for Community First that the $500,000 was actually used as an investment with Mr. Crosby. *See* Exhibit 54 (Williams Letter to Giese). Counsel for Plaintiff was informed of the Crosby investment on July 18, 2013. Ex. 54.

Plaintiff's testimony belies any reasonable, causative reliance on Hiott's changing story. Plaintiff testified that there was nothing that Hiott could have spent $500,000 on in July 2007 that would have been appropriate or authorized by her. Ex. 1, p. 271. Indeed, Plaintiff further testified that the children in her custody were well taken care of financially and did not need additional life insurance products. Ex. 1, pp. 271, 379-381. Further, she testified that she never directed Hiott to procure an annuity, life insurance policy, or trust for the two children. Ex. 1, p. 388. In other words, Plaintiff's unequivocal testimony is that *no matter what, no matter to whom, and no matter why*, the $500,000 disbursement of July 12, 2007, was unauthorized, inappropriate, and wrongful. Thus, Hiott's stories are of no legal consequence, and Plaintiff did

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

not actually rely on them to determine whether or not she needed to file suit. To her, the wrongful act is the disbursement of $500,000 itself—a disbursement of which she knew in early August 2007 and which was reconfirmed for her in writing no later than March 2011. By waiting well over three years from March 2011 to file suit, Plaintiff simply "slept on [her] rights." *Moates*, 322 S.C. at 176, 470 S.E.2d at 404.

Plaintiff can offer no evidence to show that Community First lulled her into a sense of security that prevented her from filing her lawsuit within the applicable statute of limitations. Plaintiff actually believed and understood *no later than mid-2010* that she was harmed. Plaintiff testified that there was nothing—*nothing*—that Hiott could have spent $500,000 on in July 2007 that she would have authorized. Not having full and complete information is no excuse under the law for not filing a lawsuit within the applicable statute of limitations. Plaintiff's entire case is time barred.

E. Community First is entitled to summary judgment on Plaintiff's breach of fiduciary duty cause of action.

Community First is entitled to summary judgment on Plaintiff's breach of fiduciary duty cause of action because Community First did not owe fiduciary duties to Plaintiff with regard to the checking account at issue in this matter. "[T]he normal relationship between a bank and its customer is one of creditor-debtor and not fiduciary in nature." *Schmauch*, 354 S.C. at 671, 582 S.E.2d at 444 (internal citations omitted). While a bank can take on fiduciary duties to its customers "if it undertakes to advise a depositor as part of the services the bank offers," *id.*, there is no genuine issue of material fact that Community First ever undertook to advise Plaintiff as part of the services Community First offers. Indeed, Community First does not have, nor has it ever had, a trust department. Ex. 23, p. 40.

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

As discussed at footnote 5 above, Plaintiff continues to erroneously claim that she held a "trust account" at Community First, presumably with Community First serving as trustee. Not so. "To prove the existence of a trust, one must show (1) a declaration creating the trust, (2) a trust res, and (3) designated beneficiaries." *Patterson v. Witter*, ___ S.C. ___, 791 S.E.2d 294, 300-01 (Ct. App. 2016). Plaintiff cannot show any of these with regard to her arrangement with Community First. Indeed, Plaintiff knows how a trust is created—she created one in February 2005 with BB&T, with BB&T serving as trustee. Ex. 2. After expressing her dissatisfaction with BB&T's attempts to advise her on various financial matters (Ex. 7; Exhibits 55, 56 (BB&T Letters to Brookshire), among other concerns, Plaintiff revoked her trust with BB&T (Ex. 8), and *that very same day* decided to go a different direction with the management of her finances and gave the POA to Hiott. Ex. 9. Unlike the written affirmation and declaration by BB&T that it was serving as trustee for Plaintiff (Ex. 2), Community First has *never* represented in any way that Community First served as trustee for Plaintiff. Unlike with BB&T (Exs. 2, 5, p. CFB000347), Community First has never charged her trustee fees. *See* Exs. 3, 5 to Ex. 24. Unlike with BB&T (Exs. 2, 5, p. CFB000347), Plaintiff herself is the trustee. *See* Exs. 3, 4, 5, 6, 7 to Ex. 24. In sum, there is no evidence that Plaintiff and Community First entered into a trust arrangement that would give rise to fiduciary duties from Community First to Plaintiff. Plaintiff's bald allegation is devoid of evidentiary support and cannot create a genuine issue of material fact. *Jackson v. Bermuda Sands, Inc.*, 383 S.C. 11, 17, 677 S.E.2d 612, 616 (Ct. App. 2009). Consequently, Community First owed no fiduciary duties to Plaintiff and is entitled to summary judgment on this cause of action.

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP370526

F. Community First is entitled to summary judgment on Plaintiff's cause of action for conversion.

Community First is entitled to summary judgment on Plaintiff's cause of action for conversion. "Conversion is the unauthorized *assumption and exercise of the right of ownership* over goods or personal chattels belonging to another, to the exclusion of the owner's rights." *Gordon v. Busbee*, 397 S.C. 119, 135, 723 S.E.2d 822, 831 (Ct. App. 2011) (internal quotation omitted) (emphasis added). In order to be liable for common law conversion, Community First must have assumed and exercised the rights of ownership over goods or chattels belonging to Plaintiff, which she identifies as occurring upon the transfer of "large sums of money" from her Account. Compl. ¶ 114. No evidence exists that Community First assumed and exercised ownership rights over Plaintiff's funds at their disbursement such that Plaintiff suffered any loss. Further, the UCC has displaced common law "conversion and negligence claims based on payment over a forged or unauthorized indorsement." *Flavor-Inn, Inc. v. NCNB Nat'l Bank of S.C.*, 309 S.C. 508, 511, 424 S.E.2d 534, 536 (Ct. App. 1992) (internal quotation omitted); *see also* S.C. Code Ann. § 36-3-419 (2005); S.C. Code Ann. § 36-3-420 (Supp. 2015); *Equitable Life Assur. Soc'y of U.S. v. Okey*, 812 F.2d 906, 909 (4th Cir. 1987) (applying South Carolina law and finding that the Uniform Commercial "Code cause of action comprehensively covers the field of legal theories available when a check is paid over an unauthorized indorsement.")

In addition, "there can be no conversion of money unless there is an obligation on the defendant to deliver a specific, identifiable fund to the plaintiff." *Richardson's Restaurants, Inc. v. Nat'l Bank of S.C.*, 304 S.C. 289, 294, 403 S.E.2d 669, 672 (Ct. App. 1991) (internal citation omitted). No such obligation exists here, so no action for conversion of money can lie. Because Community First and Plaintiff only had a debtor/creditor relationship as represented by Plaintiff's checking account at Community First, the funds in Plaintiff's Account were "in the

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

nature of a general deposit and not subject to conversion." *Owens v. Andrews Bank & Trust Co.*, 265 S.C. 490, 497, 220 S.E.2d 116, 119 (1975). Consequently, "where there is merely the relationship of debtor and creditor, an action based on conversion of the funds representing the debt is improper." *Id.* (internal citation omitted). Community First is entitled to summary judgment on Plaintiff's conversion cause of action.

G. Community First is entitled to summary judgment on Plaintiff's cause of action for negligent supervision.

Community First is entitled to summary judgment on Plaintiff's cause of action for negligent supervision. As recognized in South Carolina, an employer has a duty in certain, limited circumstances to exercise reasonable care to control its employee when acting outside the scope of his or her employment. *Degenhart v. Knights of Columbus*, 309 S.C. 114, 116, 420 S.E.2d 495, 496 (1992). None of those limited circumstances apply here, as an employer is under a duty to exercise reasonable care to control his employee when acting outside the scope of employment to prevent him from intentionally harming others only if:

> (a) [the employee]
> (i) is upon the premises in possession of the [employer] or upon which the [employee] is privileged to enter only as his [employee], or
> (ii) is using a chattel of the [employer], and
> (b) [the employer]
> (i) knows or has reason to know that he has the ability to control his [employee], and
> (ii) knows or should know of the necessity and opportunity for exercising such control.

Id. at 116-17, 420 S.E.2d at 496 (quoting with approval *Restatement (Second) of Torts* § 317 (1965)). Here, because Plaintiff gave Hiott full authority to handle her affairs (including her bank accounts) in the POA (on which Community First was legally entitled to rely and for which the law insulates Community First from liability to Plaintiff), Community First had no duty to control Hiott as he proceeded under the POA. Further, Community First had no evidence or

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP370526

information that Hiott had engaged in prior acts similar to Plaintiff's complaints here. *See, e.g., Hollins v. Wal-Mart Stores, Inc.*, 381 S.C. 245, 252-53, 672 S.E.2d 805, 808-09 (Ct. App. 2008) (finding that a master may subject himself to liability by retaining employees who, to the master's knowledge, are in the habit of misconducting themselves in a manner dangerous to others) (internal citations and quotations omitted); *Brockington v. Pee Dee Mental Health Ctr.*, 315 S.C. 214, 218, 433 S.E.2d 16, 18 (Ct. App. 1993) (holding that no evidence existed to support the conclusion that defendant knew or should have known of the necessity to exercise control over its employee prior to the time he assaulted a patient). Community First is thus entitled to summary judgment on Plaintiff's cause of action for negligent supervision.

H. Community First is entitled to summary judgment on Plaintiff's cause of action for negligence/gross negligence.

Community First is entitled to summary judgment on Plaintiff's cause of action for negligence/gross negligence. Plaintiff alleges that the "Defendants owed duties to the Plaintiff to act in good faith while acting under the authority of the Power of Attorney in place." Complaint ¶ 129. This is the sole duty that Plaintiff alleges "the Defendants" negligently breached. Plaintiff appears to have pulled this language directly from the POA she gave to Hiott, which states in pertinent part: "My Agent shall not be liable for any loss that results from a judgment error that was made in good faith. However, my Agent shall be liable for willful misconduct or the failure to act in good faith while acting under the authority of this Power of Attorney." Ex. 9. Consequently, such a duty sounds in contract and not in tort, and a claim for negligence cannot lie.[30] *Foxfire Vill., Inc. v. Black & Veatch, Inc.*, 304 S.C. 366, 375, 404 S.E.2d 912, 918-19 (Ct. App. 1991) ("As a matter of law, if the duty owed arises merely from agreement of the parties,

[30] It thus follows that this contractual duty cannot form the basis of a claim for gross negligence either. *See, e.g. Clyburn v. Sumter County Sch. Dist. No. 17*, 317 S.C. 50, 53, 451 S.E.2d 885, 887 (1994) (describing gross negligence).

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

breach of the duty does not create a cause of action for negligent conduct.") (internal citation omitted).

Further, any such duty of "good faith" is, by its unambiguous language, held only by "my agent"—Ben Hiott. Community First is not and never has been designated as Plaintiff's agent in her POA. Community First is thus entitled to summary judgment on Plaintiff's claims for negligence/gross negligence.[31]

I. Community First is entitled to summary judgment on Plaintiff's cause of action for breach of contract accompanied by a fraudulent act.

Community First is entitled to summary judgment on Plaintiff's cause of action for breach of contract accompanied by a fraudulent act. In her Complaint, Plaintiff identifies the "contract" that Community First allegedly breached as "set forth above." Compl. ¶ 134. Assuming that Plaintiff has alleged that Community First breached the POA,[32] summary judgment is warranted for Community First because the POA does not represent a contract between Plaintiff and Community First. *See Greene v. Quest Diagnostics Clinical Labs., Inc.*, 455 F. Supp. 2d 483, 495 (D.S.C. 2006) (describing the prerequisite establishment of a contract to this cause of action). There is also no evidence that Community First "actively concealed from the Plaintiff the fraudulent and tortious conduct" of Hiott, nor is there any evidence that Hiott continued handling *Plaintiff's* funds in the Account after Plaintiff notified Community First

[31] *See also* p. 39, above, regarding the UCC displacement of common law negligence causes of action for unauthorized signatures and forged endorsements.

[32] The only documents remotely named in the Complaint that Plaintiff could conceivably argue are contracts are the POA (Compl. ¶¶ 6-7) and a revocable trust claimed to be settled and created by Plaintiff on June 22, 2007. Compl. ¶ 10. Plaintiff has not produced a copy of the revocable trust documentation to which her Complaint refers. Unmentioned in the Complaint is the Account agreement establishing Plaintiff's Account at Community First. Because the Complaint alleges that the contract that forms the basis of Plaintiff's cause of action for breach of contract accompanied by a fraudulent act was "set forth above," Plaintiff apparently does not allege that Community First breached the Account agreement. Even if Plaintiff does so claim, Community First has not breached the Account agreement. *See* Ex. 7 to Ex. 24.

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

of her concerns in the fall of 2010. *See* Compl. ¶¶ 135-136. Consequently, Plaintiff can show no genuine issue of material fact with respect to the remaining prongs of this cause of action, and Community First is entitled to summary judgment. *See Greene*, 455 F. Supp. 2d at 495.

J. Community First is entitled to summary judgment on Plaintiff's cause of action for an accounting.

Community First is entitled to summary judgment on Plaintiff's cause of action for an accounting. An accounting is an equitable remedy "designed to prevent unjust enrichment by disclosing and requiring the relinquishment of profits received as the result of a breach of a confidential or fiduciary duty." *Rogers v. Salisbury Brick Corp.*, 299 S.C. 141, 144, 382 S.E.2d 915, 917 (1989) (internal citation omitted). As no confidential or fiduciary duty existed between Plaintiff and Community First, Plaintiff's cause of action for an accounting fails as a matter of law. Further, Plaintiff's claim for an accounting is now moot because all Account statements and supporting documentation have been produced to Plaintiff. There is no need for discovery, and all available information is now before all parties. Summary judgment is thus appropriate to Community First on this cause of action.

K. Community First is entitled to summary judgment on its offset and counterclaims against Plaintiff.

Community First is entitled to summary judgment on its offset and counterclaims against Plaintiff for the funds belonging to Community First that Hiott transferred to Plaintiff's Account totaling $880,855.58 and which were thereafter used to pay Plaintiff's obligations or to further her interests. Plaintiff has admitted that it was inappropriate for any bank funds to be deposited into her Account and has no claim to that money. *See* Ex. 1, pp. 393-94. Consequently, no genuine issue of material fact exists with regard to this offset and counterclaims, and summary judgment to Community First is warranted.

CONCLUSION

For the reasons contained in Community First's motion, this memorandum in support, Ms. Wilson's affidavit, the exhibits attached to this motion, and any further items presented to the Court, Community First is entitled to summary judgment in its favor on all claims advanced against or by it in this matter.

Respectfully submitted,

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December 8, 2016
Columbia, South Carolina

DM: 4749691 v.6

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3705261

EXHIBIT 1

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS
C.A. NO.: 2014-CP-37-526

DEBI BAKER BROOKSHIRE,
PLAINTIFF,
VS.
COMMUNITY FIRST BANK AND BENJAMIN LEE HIOTT,
DEFENDANTS.

DEPOSITION OF
DEBORAH A. BAKER BROOKSHIRE
MARCH 3, 2016

Deposition on oral examination of Deborah A. Baker Brookshire, reported by Laura S. DeCillis, Certified Court Reporter and Notary Public in and for the State of South Carolina, said deposition taken at The Giese Law Firm, 1315 Blanding Street, Columbia, South Carolina, on Thursday, the 3rd day of March 2016, commencing at the hour of 10:08 a.m.

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS
C.A. NO.: 2014-CP-37-526

DEBI BAKER BROOKSHIRE,
PLAINTIFF,
VS.
COMMUNITY FIRST BANK AND BENJAMIN LEE HIOTT,
DEFENDANTS.

DEPOSITION OF
DEBORAH A. BAKER BROOKSHIRE
APRIL 20, 2016
VOLUME II

Continued Deposition on oral examination of Deborah A. Baker Brookshire, reported by Laura S. DeCillis, Certified Court Reporter and Notary Public in and for the State of South Carolina, said deposition taken at The Giese Law Firm, 1315 Blanding Street, Columbia, South Carolina, on Wednesday, the 20th day of April 2016, scheduled for 10:00 a.m. and commencing at the hour of 10:20 a.m.

two-year Associate program. But I'd been to college for about three and a half years.

Q. Your degree was an Associate's degree in retail management --

A. Yes.

Q. -- from the University of South Carolina?

A. Yes.

Q. Okay. And have you been to any other formal school since 1973 to four?

A. I started my business around that time, so I was in business for about 25 years.

Q. All right. Tell me about your business.

A. I had a commercial interior design business. started with -- in Columbia. We were doing -- at the time, we were doing residential homes for Mr. Mike Mungo. I expanded to work for commercial buildings, went into law offices, banks, family businesses, family businesses as far as carpets and draperies. And I did hotels. I did many things to that effect. I've extended my portfolio.

Q. What was the name of your business?

A. I started off with Contractors Decorating, ended up with Fine Designs and then I Designs.

Q. As in --

A. As in I. Like just I. Not e-y-e, but I.

Q. Were you the sole owner of all three of those

ELECTRONICALLY FILED - 2016-Dec-09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

A. Yes.

Q. Okay. So are you saying that you haven't lived in the Devine Street home since 2005?

A. The house was being repaired. And we were trying to sell it to the doctor next door. He was in the reserves and we were waiting for him to get approved. And the same real estate agent handled both cases and it did not get completely closed till 2007.

Q. You sold the Devine Street home in 2007?

A. Yes.

Q. Was it vacant from a flood in 2005 until 2007?

A. Yes.

Q. Did you give the Post Office a forwarding address?

A. We were -- the house had not been cleared out at the time when we had sold it and we had re-leased it from the doctor until about 2009, and so we were still getting -- we were getting our mail over there.

Q. So nobody lived in the home?

A. Nobody lived in the house until --

Q. But you would go over there and get the mail?

A. Yeah. We would get the mail. Since we were re-leasing it, we still had -- we were trying to figure out whether we were going to keep custody of those children and whether we wanted to stay in Columbia or whether we wanted

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE #2014CP3700526

to move or whether we wanted to purchase or whether we were going to lease, so we were in the middle of those decisions. But we still got our mail there and we went by to pick it up. And we got most -- I mean, people called that we received all of our mail. I don't remember missing anything.

There might have been a couple of things that we might have missed but there was not anything that I can really recall. I knew what bills I had to pay. I knew what statements were supposed to be coming in. I knew what income I had coming in. So I knew what I was supposed to receive.

Q. So you went there -- all right. Let me back up. You said something about re-leasing your house. I didn't follow that.

A. We thought we sold the house in 2007 to the doctor which was next door. And so we had not moved out all of our things out of that house yet. We were -- we still had lots of furniture. Most of the valuable things, like little things or whatever, we had already packed those up. We still had lots of things to get out, decide whether we were going to move the furniture to another location or whether we were going to move it to a storage room. So we re-leased for a couple of years while we were -- from the doctor. So we paid him a rent check each month.

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

Q. Okay. So you sold the house to -- what was the doctor's name?

A. Dr. Hans Oliver.

Q. You sold the house to Dr. Hans Oliver --

A. Yes.

Q. -- in 2007, but you leased it from him?

A. Yes. I leased it from him.

Q. From 2007 until sometime in 2009?

A. Yeah. Possibly.

Q. And during that period of time you would go to the house to pick up your mail?

A. Uh-huh.

Q. Okay. And in 2009, what happened after that with regard to the Devine Street house?

A. Well, we just -- we moved -- we moved all the things out. Basically just dissolved the lease around that time if I can recall. It's been a long time.

Q. Did you provide the Post Office a forwarding address?

A. Yes.

Q. And what forwarding address was that?

A. It was to Irmo, South Carolina, the house in Irmo.

Q. All right. What's your best guess as to when you provided the Post Office a forwarding address?

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

paid by the job, or how were you paid?

A. By the job.

Q. How did you meet Ben Hiott?

A. Through my first husband back in the late 1980s.

Q. He knew your first husband?

A. Yes.

Q. Okay. And where did you meet him?

A. Socially.

Q. Here in Columbia?

A. Yes.

Q. Tell me what you remember about meeting him.

A. Just socially at -- out at a bar. Hanging out at a bar, you know, socially in a crowd. Like at football games and just, you know -- it's just really that I know that he worked for Lexington State Bank, BB&T Bank, which is the banks that I had banked with.

Q. Lexington State Bank and what other bank did you say?

A. BB&T.

Q. Okay. And how would you describe your relationship with Mr. Hiott? And I'm sure it probably may have changed over the years, but if you would, just take us through it.

A. Honorable. Honorable and nice. I didn't really know -- I knew that he worked for a bank. I knew that he --

I knew his wife and -- but it was all socially, really. More socially. And I think that I had done some -- I might have did some banking with him at BB&T or maybe at Lexington State Bank. I don't know when it changed over, the name changed over from Lexington State to BB&T. But as long as I've known him he's worked for a bank. And then we would see him socially at -- usually at a bar or at a football game or possibly at his house.

Q. So you and your husband --

A. My first husband and my second husband.

Q. Oh, okay. So did you consider him a friend?

A. Yeah. I considered him a friend. But, you know, not -- a friend in the sense that, you know, that if I saw him out I would say hello to him, or if we were together, we were together. But not to the point where it was every day or I'd pick up the phone and call him. I mean, it was not that type of friendship. He's just an acquaintance, basically an acquaintance.

Q. Well, the social activities you've described, going to his house or seeing him in a bar or a football game, are those prearranged meetings? I assume going to his house would have been prearranged.

MR. SCOTT: Object to the form.

THE WITNESS: Sir?

MR. SCOTT: You can answer it if you know.

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

BY MR. KNOWLTON:

A. I don't, you know -- it's just -- it's been a long time ago. That goes way back into when he lived in Columbia. I remember the street he was on. He was doing -- he was trying to get his accounting license. And I don't know really what you would call that, you know. It's a CPA. He was practicing for that.

He was -- there was just occasions that we were at his house or, you know, I would see him sitting in a particular bar playing poker machines or whatever and having a drink. So I mean, I would, you know -- that's the type of relationship it was that, you know, I'd say hello to him. He did some -- I think he did some accounting work for some of his friends on the side.

Q. Would he charge them for that accounting work?

A. You know, I really don't know. It wasn't my work.

Q. You said you would see him at football games. Would you go to the game together?

A. You know, we would meet like in a -- we didn't have seats probably together. We'd meet in the parking lot.

Q. Like tailgate together?

A. Yes.

Q. How big of a crowd would tailgate together?

A. You know, six or eight, something like that.

ELECTRONICALLY FILED - 2016-Dec-09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

ELECTRONICALLY FILED - 2016 Dec 09 1:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

Q. And did there come a time when he moved to the upstate?

A. Yes. I remember that because his wife didn't want to move at the time. And I didn't see him for years after that. Maybe I saw him -- maybe I'd seen him once or twice but I really had no contact with him.

Q. When was the first time you had contact with him when he began working for Community First Bank?

A. 2007.

Q. And how did that come about?

A. I got his number and I picked up the phone and called him.

Q. Where did you get his number and what inspired you to call him?

A. Probably from some mutual friends that knew him that had a -- I think that knew him more than I did.

Q. And do you recall who that would have been?

A. The Cravens.

Q. And who are the Cravens?

A. Some friends of Ben's that he went to school with.

Q. Okay. And are they also friends of yours?

A. Yes.

Q. All right. And what are their first names?

A. Ben and Ron Craven.

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CR3700526

Q. Is there also a Peg Craven?

A. Repeat that?

Q. Is Peg Craven --

A. Yeah. That's Peggy. Yeah, Peggy Craven. Ron and Peggy Craven.

Q. Peggy is married to Ron?

A. Yes.

Q. And they live here in Columbia?

A. Yes.

Q. Okay. And why were you asking for Ben's phone number?

A. I wanted to transfer my trust out of BB&T Wealth Management.

Q. And why was that?

A. I wasn't happy with what they were -- I wasn't happy with the way they were handling my trust.

Q. What were they doing that you didn't like?

A. They gave me -- they told me to sell out of my family Baker & Baker busines for a minimum amount of money just to get away from the family, which was absolutely uncalled for. They didn't go to a stockholder meeting which I had asked them to go to. I asked them to pay certain bills which were monthly bills. I asked that they -- there were things that were not going on that I was not happy with. The money that was coming in for my family that was

Q. It says at Branch Banking & Trust, Columbia, SC. Does that refresh your memory as to where you signed this document?

A. You know, it says Branch Banking & Trust. Okay. BB&T. There's many BB&T banks. I had an account out in Chapin, I had one in Irmo, I had one downtown. So, no, I just -- I don't really recall where I would have signed it. And I don't recognize any of the names on it or who I signed it in front of.

Q. On the first page it says you reside at 1707 Devine Street, Columbia, SC; do you see that?

A. Yes.

Q. Was that your address at the time that you signed this?

A. Yes.

Q. And my understanding is, you've received mail there for at least two years from the date that you signed this; is that correct?

A. Yes.

Q. In paragraph numbered one, do you see where you authorized Mr. Hiott to open, maintain, or close bank accounts?

MR. SCOTT: Object to the form.

BY MR. KNOWLTON:

Q. Do you see that?

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

A. Uh-huh.

Q. Do you agree that you authorized Mr. Hiott to open, maintain, and close bank accounts on your behalf?

A. I don't remember.

Q. Do you see under A that it says, Mr. Hiott could conduct any business with any banking or financial institution with respect to any of your accounts?

MR. SCOTT: Object to the form.

BY MR. KNOWLTON:

A. I really don't recall that.

Q. Do you recall giving him authority to handle all of your banking and financial affairs with any instrument?

A. I asked -- I called him and asked him to -- if he would be -- if he would be interested in protecting my interests. That was the words I used. And in that sense, the thing was, is that -- so I really can't recall exactly what all this, you know -- what this means, you know. Because it looks like that I gave him full power to do everything, which I really don't recall.

Q. But you admit that you signed this document?

A. That is my signature.

Q. Well, did you have knowledge that you had authorized him to handle all of your financial affairs?

A. I was --

MR. SCOTT: Object to the form.

BY MR. KNOWLTON:

A. I transferred from BB&T Wealth Management to him, which was the trust, which I thought was the trust and asked him to protect my interests. So I don't really remember -- I know I wasn't with him when I signed this. I don't know who I was with when I signed it. Because I only saw Mr. Hiott very, very few times within this last eight and-a-half years since 2007.

Q. Do you remember terminating the arrangement you had with BB&T?

A. Yes.

Q. And in connection with that, did they help you prepare this Power of Attorney?

A. I don't really recall.

Q. You don't recall who prepared this?

A. I really don't. I really don't. I don't remember signing -- I know that's my signature but I don't remember signing this.

Q. Other than this Power of Attorney, do you remember signing any other agreement with Mr. Hiott or, for that matter, Community First Bank?

A. No.

Q. All right. So this is the only document that you know of that you signed, authorizing Mr. Hiott to deal with your financial affairs?

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

the one that I had spoken with.

Q. And you said something about, if you wanted to put money on the card --

A. Meaning that after I had charged, you know, for the month, if I wanted to pay it off -- which I always liked to do, you know, pay it off and put the balance on the card -- I would call her and make sure that it got on there immediately.

Q. What would you ask her to do?

A. Was to make sure that I had some money transferred from a certain, you know, from a certain bank account that I had with BB&T to that particular credit card.

Q. So you would arrange a transfer from BB&T to pay the credit card --

A. Yes. Yes. Yes.

Q. All right. Let me back up. With regard to Mr. Hiott, are you aware of any writing authorizing Mr. Hiott or obligating the bank to do anything other than the General Power of Attorney that you signed?

MR. SCOTT: Object to the form.

BY MR. KNOWLTON:

A. Like I said, I really don't remember where or how I would have signed the Power of Attorney. I don't remember. I don't remember -- that is my signature, but I don't remember what bank or when it was signed and that's

all I can recall.

Q. All right. And I understand you've admitted that had you signed this document and --

A. I did sign -- well, there's my signature. It's my signature.

Q. Right.

A. Okay.

Q. And you were competent to sign it at that time --

A. Yes. Yes. Yes.

Q. Okay. And you revoked it -- we can look at the written document -- you revoked it writing sometime in, I'm not certain, 2011 maybe?

A. Possibly.

Q. And do you understand that Mr. Hiott was operating with the authority that you granted him with this Power of Attorney between the time you signed it and the time you revoked it?

MR. SCOTT: Object to the form.

BY MR. KNOWLTON:

A. I really don't know how to answer that. I don't know how to answer it. I feel like that -- I don't know how to answer that. I'm sorry if I haven't really answered it. I just can't recall when I signed it or where I signed it and that word being brought up as Power of Attorney. I just

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

know that he was supposed to be handling my -- taking care of my interests or protecting my interests. And I don't remember how he took over the Power of Attorney. I just really don't recall how that got transferred from BB&T or from whateyer.

I know that the money -- I told him that I was transferring money over there to them. And I do know that -- but I really can't recall how the word -- but, now, Power of Attorney was not really ever, you know, an issue brought up in the sense that, you know, I've got the Power of Attorney to do what I want. It was never brought up to me that I recall.

The thing is that maybe it was the way the money had to be transferred or whether it was that the bank wanted it. All I know is that I trusted him and I asked him to please protect my interests. And that was the phone call I had with him and that's how we, you know -- I talked to BB&T Wealth Management that I was, you know, taking my trust out of their bank. But I really don't remember where I signed this. I know it was not with Ben and I don't know which bank it was and I don't know who was there with me. So I just -- I really don't know.

Q. You've seen Powers of Attorney before, right?

A. There's many different types of Powers of Attorney, yes.

ELECTRONICALLY FILED: 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

Q. And you've been given a Power of Attorney before?

A. I've been given a Power of Attorney before.

Q. And you've given Powers of Attorney to others --

A. Yes.

Q. -- besides Mr. Hiott?

A. Yes.

Q. So you are generally aware of how they operate, are you not?

A. Yes. There's durable, limited, general, probably others.

Q. Okay. Would you agree this is a very broad Power of Attorney?

MR. SCOTT: Object to the form.

BY MR. KNOWLTON:

A. I don't really know how to compare it.

Q. And that's fine. It speaks for itself.

A. Okay.

Q. Look at paragraph numbered five. Do you see where it says, Mr. Hiott was authorized to enter into binding contracts on your behalf?

MR. SCOTT: Object to the form.

BY MR. KNOWLTON:

A. I see it.

Q. Do you remember ever asking him to do that on

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

ELECTRONICALLY FILED - 2016-Dec-09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

that you had with BB&T?

A. Obviously, yeah. I think so.

Q. And did you revoke --

A. There was a -- there was a, you know -- if I signed it, I was thinking that they were basically a wealth management trust company that was reliable. So I don't remember if I really went from word to word to cross out something or question something about that the money was going to them as a trust and that they would handle my principal and interest and I would -- they would receive money from being wired to them. There was -- I think even probably taxes were going to them to it.

Q. They were what?

A. Tax documents might have been going to them at the time. So, yes, I was letting them receive everything that I had that would go into a trust and, you know, hopefully that I would be able to -- but this looks -- I don't think there's anything out of order in this.

Q. And did you revoke that agreement at the same time you appointed Ben Hiott as Power of Attorney? Do you see what's been marked as Exhibit 2?

MR. SCOTT: Object to the form.

BY MR. KNOWLTON:

A. You know, I -- I don't remember the exact dates. I remember that it was sometime in 2007 when I wanted the

money, like I said, to be transferred over to Ben.

Q. And are these the steps you took to accomplish that?

MR. SCOTT: Object to the form.

BY MR. KNOWLTON:

Q. Take a look, if you would, compare Exhibit 1 to Exhibit 2. Do you see at the top that it has a transmittal spray at the top --

A. Yes, I do.

Q. -- with the same day and time?

A. Yes.

Q. And they are both witnessed by -- at least the notary looks like the same person on the same day?

MR. SCOTT: Object to the form.

BY MR. KNOWLTON:

A. You know, I -- what are you asking me?

Q. I'm asking you if that refreshes your memory. Do you remember terminating the trust with BB&T at the same time that you appointed Ben Hiott as Power of Attorney?

A. I don't remember appointing Ben as Power of Attorney. As I told you before, I don't really remember signing a Power of Attorney. Even though I see my signature, I don't believe -- I'm not aware I would have signed it. I don't remember going up to BB&T Wealth Management and signing any paperwork.

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

send them and they cancelled all my insurance. And I was real upset about it and Ben came to Columbia to try and settle the situation. He told me to pay it anyway rather than try to report her for -- and they made me pay the insurance on everything like a year in advance. And Ben came to my house.

Then the next time was when he had brought our motor home back to Columbia and it had been wrecked. And Ben admitted that he had wrecked it, tore apart. And he -- I had to -- then the next time was -- I think that was it. That was probably the only times I saw him.

Q. All right. What was Ben doing? How did he get your motor home?

A. He said he knew someone that could -- he said that he could, -- that he could take the motor home back to Seneca and get it stored at a lesser price and that he could also have some things fixed on it and he knew someone in that area. I do not know really -- remember how the motor home got down there. It might have been through my husband. And obviously, he used it. The miles were different on it, there was damage to it. And he offered to pay 4,000 and it was 20,000.

We got him off the golf course -- his wife got him off the golf course and made him pay me the money out of an American Express card. And then at a later time, there

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

with Ben Hiott, or anybody else?

MR. SCOTT: Not counting your lawyers.

BY MR. KNOWLTON:

A. Repeat that?

Q. And I'm never asking you what you talked about with your lawyers.

A. Okay. Let's just repeat it.

Q. Did you discuss with anybody not receiving statements from Community First Bank before 2010?

A. No.

Q. Weren't you curious why you weren't getting statements?

A. Well, they weren't, you know -- no. I mean, I just -- everything, I thought, was going through, you know -- that if Ben was paying some bills, that they were being wired. Maybe the bills were being wired from the bank out of my account or which account ever it was, whether it was through the trust. I never saw a checking account with all the bills that were supposed to have been paid out of there.

I knew that some of them were being paid. I knew some of them were being paid, you know. Ben and I had many discussions about certain things that weren't getting paid and certain things that were going on in my account, but it was all through BB&T, nothing through Community

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

First. I only remember seeing the account set up with a certain number. I want to think it ends in 1950 or something like that, which was a trust account.

But there wasn't anything else for me to look at and I didn't have anything. I mean, I really did not have anything. And as far as thinking I was supposed to get something, now that you mention it, you know, I probably should have been aware of that. But I did not even -- that just wasn't for me to -- I didn't think about it. I didn't think about it, really.

Q. Well, let me ask you, I'm still at a loss to understand why Ben Hiott would pay your bills. If you asked me to pay your bills, I'd say no. Why would he do it?

MR. SCOTT: Object to the form.

BY MR. KNOWLTON:

Q. Did you agree to pay him for these services?

MR. SCOTT: Object to the form.

BY MR. KNOWLTON:

A. He talked, you know, -- he said he was not taking money out of my account because I had such a large trust account set up with the bank and that was good enough. But, I mean, you know, I've heard that there were banks in other places that will help pay some of your bills. You can pay them a fee I think or, you know, they can do that. But I didn't think, you know -- I didn't think twice about it.

paid and they were -- finally contacted me and saying that they're not getting paid. And so I was just, you know -- I mean, even a rent that I owed the doctor next door, I think it ended up being that Ben had said, well, you know, I think that caretaker's been living with that doctor and, you know, he's taking advantage of you so I'm not going to pay this doctor the money. It was like $19,000. He wasn't taking care of that either.

So I didn't have any records to show for it. It wasn't coming out of my BB&T account. If it was coming out of bills that he was supposed to be paying out of Community First, I didn't have anything to show for it.

Q. All right. When did your problems with Ben arise?

A. (Pauses).

Q. You terminated in 2010?

A. 2010, 2011, somewhere in that neighborhood.

Q. Is that the timeframe you were just talking about?

A. It was much earlier than that. I mean, I was arguing with him about why I was getting some NSFs on my account and why he did this on what was his, you know, agreement with --

Q. On what account?

A. Everything was through BB&T. I didn't have

ELECTRONICALLY FILED - 2016-Dec-09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700528

ELECTRONICALLY FILED - 2016-Dec-09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CR3700526

something. Tell me again when you got the jewelry back, what year?

A. When I got it back from whom?

Q. Mr. Hiott.

A. It was when he brought the motor home back to us, which was in -- I want to say I was living in Columbia. We were thinking of taking a trip in that motor home, but it was wrecked. And he just said, don't worry about it. And I said, well, you know, I am not going to take a trip in this motor home when I've got -- we're thinking of, you know, maybe consider moving out of the rental property we were in in Irmo. I thought that was more important, to get that area cleaned out and where I was going with that before I would think of taking a trip and then come back in September and not knowing where those kids were going to go to school or where my stuff was going to be and getting out of that Irmo property.

Q. Irmo was about 2010?

A. Yeah. It was around 2010.

Q. All right. Was this at the time you were closing the account?

A. This is when he brought back -- he said he brought back everything that he had of mine from the bank, everything I had given him. And that's when those boxes came back in the motor home. He brought it back when he was

on the way somewhere, to some game or something, I don't know, here in Columbia.

Q. Did you ever go to a football game together with Ben in the motor home?

A. No.

Q. All right. With the --

A. I didn't even know he'd even used it.

Q. Was the jewelry the same jewelry that Ken stole?

A. Uh-huh.

Q. And do you think it was worth a half a million dollars when he stole it?

A. It was valued at that. It was valued at that.

Q. For insurance purposes or --

A. Yeah -- well, you know, when my -- my mother had the insurance on the rings that -- the values that she had given me. There was -- we had had everything valued at the time. I had explicit pictures of everything.

Q. All right. Now, I'm trying to -- let me understand, how did Ken get possession of your jewelry?

A. Obviously, you know, he went to Angel and told her that it was okay for her to meet him at the bank and give him the jewelry so he could come back and bring it back to me.

Q. Did you ask him to do that?

A. Yes.

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

story. Later on, you hired an attorney, Kathleen McDaniel; is that right?

A. Yes. Uh-huh.

Q. Was that sometime after Ben had returned the RV and given you the $212,000?

A. When I was having problems getting some correct answers with Ben and getting my money to pay for certain things, I had called my brother and he said for me to get Mike Thye to take care of it for me.

MR. SCOTT: All right. And, I apologize. Don't talk about anything that you talked to a lawyer about, whether it be Mike Thye or Kathleen McDaniel.

THE WITNESS: I didn't talk to any of them.

MR. SCOTT: The question is, do you know when you retained Kathleen McDaniel, right?

MR. KNOWLTON: Yes. I'll re-ask the question.

BY MR. KNOWLTON:

Q. My question is, did you retain Kathleen McDaniel some several months after Ben had returned the mobile home and gave you the $212,000 and the jewelry?

A. I don't know. I don't know. It sounds like that's probably afterwards, but I really don't know. There was a lot going on, I just don't know. I don't know -- what I needed was some help and I didn't know what to do.

Q. Well, let me see if this helps your memory at

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

all. There was a time in February of 2011 after which you had hired Kathleen McDaniel --

A. Yes. I remember this.

Q. -- and you were given a check for $285,000. Do you remember that?

A. Yes, I do. I do remember that.

Q. Does that help you contextually remember when you --

A. I don't know if I retained her for a whole -- it looks like it was over -- let's see. I don't know how many months it was. It looks like it was about six months. I probably had her -- I probably hired her for about six months, yes. But I can't tell you whether we had the motor home back. I would have thought possibly that that's where the pressure was coming from and that Ben was being pressured into bringing the stuff back to me and that's when I think I'd hired another attorney to maybe take a look at what was going on. So, I mean, that's --

Q. And when you said another attorney --

A. I'm talking about Kathleen McDaniel.

Q. All right. Did you have a lawyer hired before her?

A. I don't think so. Only in Alabama, you know.

Q. Okay.

A. So, no, there wasn't one. That's what I meant.

ELECTRONICALLY FILED - 2016-Dec-09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

Q. Was that at about the same time?

MR. SCOTT: Object to the form.

BY MR. KNOWLTON:

Q. Let me ask you this. There was a wire transfer into your account at BB&T of $202,000 on August 11, 2010.

MR. SCOTT: Object to the form.

BY MR. KNOWLTON:

Q. And my question to you is, do you think that was before or after the RV was returned with the jewelry?

A. The RV and the jewelry was returned so we could take a trip during that summer, so it had to have been -- I forgot what you were asking me. It had to be -- if we wanted to take a trip when the children were still in school, it had to have been -- the RV had to have been returned before we were going to take the trip so we could pack everything up, okay?

Q. Okay. Well, at that point -- and maybe I misunderstood you -- but at that point, were you not terminating the relationship with Mr. Hiott?

A. That's why I was trying -- I was trying to terminate the relationship with him. I asked him to bring everything back.

Q. Okay.

A. And when we got it back, we had found that it was damaged. So we had to go back to Alabama. He owed us

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

the money for it, so we were trying to get back the money for the motor home that had been damaged. So it was, you know, when you say terminated, I was terminating him, you know. But he needed to fix that motor home since he had left it and he didn't tell us until we brought it back up and set it up in front of the house.

So it had to have been -- it had to have been before -- it had to have been sometime in April, May, June. Probably, you know, somewhere maybe May or June. Because the kids had to go back to school in September.

Q. Of 2010 --

A. Yes.

Q. -- when you said bring everything back?

A. Bring everything back.

Q. So then you had to --

A. Then we had to go back down to -- had to go to Alabama to take the motor home back to Alabama to get it fixed. So we took up the whole summer. We weren't able to take the trip, you know, to use the motor home and all. So there was -- so that's my story. I don't know what to tell you.

Q. All right. So there was a transfer of $202,000 in August of 2010.

A. Uh-huh.

Q. Did you suspect all of your money had not been

given to you at that point?

A. You know, I really can't recall. You know, Ben kept saying it was like, you know -- there was like another million dollars or another $900,000 somewhere, you know. I really don't know. He couldn't quite keep his stories straight, you know.

We got letters saying that this was going -- I mean, we got letters, you know, that he had -- or a letter that he had written saying that the money was going to a Lafayette single life insurance policy, you know. And then he was saying that he transferred it over to somebody else. I mean, it just really was -- and I don't think he could keep his stories straight. I didn't think about that being all my money. I couldn't imagine how it could be all my money, you know, because I didn't spend it. It wasn't my -- I mean, it was my money.

Obviously, he had cleaned out the account. I didn't know. I did not have any paperwork from Community First to be able to know.

Q. Is that why you hired an attorney?

MR. SCOTT: I'm going to object to the question, sought legal counsel, as being confidential.

MR. KNOWLTON: Well, I don't see that, David. I'm not asking what the communications were. I'm just asking --

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

A. I was getting, you know, getting mixed vibes from Ben, basically. I couldn't quite get the truth on what was going on. He was telling Angel Hamiter one thing, telling me another thing. I mean, I didn't have any paperwork to go by with him, you know. I didn't know -- I was, you know -- I couldn't imagine that being all of my money. He was --

Q. Did he tell you that it was all of it?

MR. SCOTT: And if we're going to continue this path, I'm going to instruct her not to answer any more about talking with Kathleen McDaniel, just so we're clear. She's told you why. Let's move on.

BY MR. KNOWLTON:

Q. Did Ben Hiott tell you that he had given you all of the money in your account?

A. Again, that was going through the attorney. I didn't talk to Ben, you know. After he brought the motor home up there with that and it was damaged, he was not willing -- I had to put my husband and children on a bus to get them back home. The motor home wasn't ready. It needed $20,000 worth of work. He was not willing to -- he wasn't paying it. His wife -- I called his home and talked to his wife and I got a complete different story from her. And she was crying and she didn't want me to call and get him in trouble and she was telling me some stuff that was going on:

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

So she got him off the golf course and somehow the money was taken off of his American Express so that the motor home could be fixed and he transferred it back to -- back here back to us. And then we found out that Ben took it out of my trust. And I had not talked to him about any of that. It was -- obviously, he was going through something, I don't know.

Q. Well, obviously, you talked to Ben when he delivered the RV?

A. Yeah. That was one time.

Q. Did you talk to him after that?

A. I don't think so. I think it was all going through, you know -- we had damage on that motor home and I was -- he wasn't clearing it up.

Q. Did you talk to him when he got off the golf course to pay for that damage?

A. He instructed somebody at the bank to take the money off of American Express I think after his wife called him and said, you know, she needs to settle this. And then we found out he was lying about some stuff we didn't know that was -- that had been used and damaged and all that. I think she had told us some stuff. He just wasn't real clear. So, no, I didn't talk to him after that at all.

Q. What is his wife's name?

A. Vickie.

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

A. That's all that I remember, you know, McDaniel getting. If there was anything more, I don't recall.

Q. When you were given a check for $285,233.34, was it represented to you at that time that that was all of your money?

A. That's what Ms. McDaniel told me.

MR. SCOTT: Don't say what your lawyer said.

THE WITNESS: Well, I don't know how to say it without it coming from anybody else.

MR. SCOTT: It's just going to have to come out of your own mouth, then.

THE WITNESS: All right.

BY MR. KNOWLTON:

A. No. I don't know then.

Q. Was it your understanding at that time that that was what the bank represented to be all of your funds at the bank?

A. That's what I was told.

Q. Did you suspect that you had additional funds at the bank?

A. Yes.

Q. And why did you think that?

A. Because Ben had said there was another 990-something thousand dollars that was an annuity, or there was more money, you know -- there was just more money there.

ELECTRONICALLY FILED - 2016 Dec 09 1:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

know. I haven't really thought about all of that stuff. But, you know, like it's hard for me to, you know -- and I'm not dwelling on all this stuff. But this is -- I didn't think that I was going to have to sit down and write down all these things that I could remember. I'm trying. I just don't really remember. It's been since 2007.

Q. I understand. And I don't have Ben available to talk to either so I'm just trying to recreate what you remember.

A. Well, I don't think that you're going to be able to believe Ben, unfortunately. Because, you know, he couldn't shoot straight with, you know, saying where the beginning of the money went. He put me in some Lafayette Life Insurance or annuity or something. That was not true. And that was written down. And he kept dwelling on that the whole time. So, obviously, he had a lot to hide.

Q. When did you first suspect he had done something with your money that you didn't agree with?

A. About every month. I don't really recall. I don't know. There was just so much. There was just, you know -- every time I turned around and get a bank statement from BB&T, I was calling him and I was just not -- I wasn't happy with what was going on. I don't know. I can't really tell when it began.

Obviously, I think a lot of it was in 2008, you

know. It seemed like to me there was a lot of withdrawals and things that were going on. There was some sort of a -- I didn't know that there was, you know -- I didn't know there was a -- I only knew a couple of friends of Ben's. I had not seen him in years, you know, but I knew him from before. But, you know, his friends had changed and I didn't see him, I didn't know.

But he was a banker, you know, supposed to be a banker. He seemed to be an honorable man. He's worked for BB&T and Lexington and was doing some accounting work. I couldn't imagine what, you know -- how he would do that. I gave him a couple of gifts, you know, just out of the kindness of my heart. I gave him a Gamecock chair and I gave him a painting that had a, you know, an oil painting of a Gamecock on it out of the goodness of my heart for, you know, for helping me out, you know. I did not know that he was taking from me. So, anyway --

Q. And this was during the 2007 timeframe?

A. Yeah. I think that's when I gave him a couple of gifts, you know, just out of the kindness of my heart.

Q. Let me go through some documents with you.

A. Okay.

MR. KNOWLTON: You can mark these.

(Exhibit No. 6, Handwritten Note, was marked for identification.)

ELECTRONICALLY FILED: 2016-Dec-09 1:22 AM OCONEE COMMON PLEAS - CASE#2014CP3700526

A. I read it.

Q. Does that refresh your memory of what you were asking BB&T to do?

A. No, sir.

Q. All right. Did you purchase -- first of all, do you recall -- and I think you may have already said no -- but do you remember owning stock at that time?

A. No.

Q. Did you have a securities account anywhere?

A. No.

Q. Did you purchase an annuity as suggested by that paragraph?

A. Not that I know of.

Q. Have you ever purchased an annuity?

A. No.

(Exhibit No. 17, Fax - 1/17/06, was marked for identification.)

BY MR. KNOWLTON:

Q. Okay. I'm going to ask you to take a look at Exhibit 17. Is that your handwriting on the front?

A. Yes, sir.

Q. Is this a fax that you sent to BB&T Wealth in 2006?

A. Yes, sir.

Q. All right. And in your message on the cover,

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

are you asking BB&T to pay certain bills that are attached ASAP?

A. Let's see. (Views document.) That's what it says.

Q. And then you request 10,000 into your account?

A. Yes.

Q. Would that be your checking account, or what account?

A. That's the only account I had.

Q. Where were they transferring it from?

A. From BB&T Wealth Management.

Q. Is it from the trust account to a checking account?

A. Yes.

Q. All right. And part of this exhibit is BB&T 1968. Do you see that page?

A. I'm seeing it now, yes.

Q. All right. And this is a page from a statement. Can you tell me what account this was?

A. Constant credit is a -- is money that you have in your checking account, that if you get overdrawn, that the checks will be paid out of your constant credit so you will not have the check sent back.

Q. And were you overdrawn and did you incur NSF charges?

ELECTRONICALLY FILED - 2016-Dec-09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

A. I don't recall. It's been a long time ago.

(Exhibit No. 18, Letter - 2/23/07, was marked for identification.)

BY MR. KNOWLTON:

Q. Let me ask you to refer to Exhibit 18.

A. Okay.

Q. Is that a letter to you that you received from BB&T in August of 2006?

A. 2007, maybe?

Q. Well, it says August 7, 2006 on the cover.

A. Oh. Wait a minute.

MR. SCOTT: Wait. We might be looking at different ones because the one I've got says February 23rd 107.

THE WITNESS: That's what I've got.

MR. KNOWLTON: Well, that's why I pulled out the wrong document on my end. Sorry.

BY MR. KNOWLTON:

Q. All right. I'm sorry. Let me start over.

A. Okay.

Q. Is this a letter you received from Missy Brown at BB&T in February of 2007?

MR. SCOTT: Are we talking about BB&T 004033 --

MR. KNOWLTON: We are.

MR. SCOTT: -- and 34?

ELECTRONICALLY FILED - 2016-Dec-09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

MR. KNOWLTON: Yes.

MR. SCOTT: All right. Is that what you've got, 4033 and 34?

THE WITNESS: Yeah.

MR. SCOTT: A letter from Missy Brown dated February 23rd?

THE WITNESS: Okay.

BY MR. KNOWLTON:

A. (Views document.) All right. Exactly what I said. (Continues to view document.) Okay.

Q. Okay. Did you receive this letter from Missy Brown at BB&T in February of 2007?

A. Yes.

Q. Does it accurately reflect the disagreement that you had or dispute that you had with regard to your desire to purchase a $250,000 motor home?

A. Yes.

Q. And did BB&T suggest and strongly believe that you should not purchase that motor home?

A. Yes.

(Exhibit No. 19, Handwritten Note - 2/23/07, was marked for identification.)

BY MR. KNOWLTON:

Q. And then let me ask you to go ahead and take a look while we're here at Exhibit 19.

A. Okay.

Q. Is that your follow-up where you directed them to go ahead and purchase that motor home?

A. This is my handwriting.

Q. Okay.

A. And this showed that I was interested in purchasing the motor home out of the -- the money that I needed out of the trust.

Q. So against the strong advice of BB&T, you directed them to, in fact, purchase the motor home, and did they in fact purchase the motor home?

MR. SCOTT: Object to the form.

BY MR. KNOWLTON:

Q. Did you in fact purchase a $250,000 motor home out of your trust assets?

A. Yes, I did.

Q. Is that disagreement one of reasons you terminated the trust at BB&T?

A. It was the tax liens and the way that they were handling the account. The thing was, is that I was disappointed that, you know, that no one -- that no one could tell me where those tax liens came from that was on my credit report. I didn't know that -- I could not mortgage that motor home. And I was very uncomfortable with them not knowing whether the tax liens were my husband's or mine and

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

no one could go to the courthouse and tell me what needed to be done. I just wasn't happy with the whole situation.

So it wasn't because of the motor -- it wasn't just the motor home. It was the way the account had been handled, you know, that I wasn't getting advice in a proper situation.

Q. What liens are you talking about? This is before you purchased the motor home.

A. There was a 2004 -- it looks like there was two tax liens that looked like they came from the same -- they were the same amounts, two different numbers and they weren't paid until 2007. And then you extend how long it takes when you have a tax lien that shows on your -- it was showing on my credit report.

I did not -- I would have never allowed taxes not to be paid. And no one seemed to be able to know. Jeff Nates at the accounting office and Mark Hobbs said, we're not sure whether it was a tax lien on Devine Street or it was a tax lien on your purchase of Dan's condo. They were mixed up. They didn't know. They had told my estate attorney -- or my tax attorney at the time, they didn't know what it was.

Q. Who was your attorney?

A. I wish you wouldn't have asked me her name.

MR. SCOTT: You can tell him her name but don't

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

tell him what you talked about with --

THE WITNESS: I don't remember her name right offhand.

BY MR. KNOWLTON:

A. She was a tax attorney. But it was a letter written from Jeff Nates to her saying that -- something about these tax liens and they didn't know where they came from or what they were and why they were on there and why no one took care of them and why I, you know -- if there was any type of notice, why weren't they paid and why would they have allowed that to have happened. And the thing is, it showed the same amount, the same thing, but it had two different numbers on it.

No one could tell me what they were. It was just -- we just didn't know, you know. And that kept me from being able to buy that motor home on a mortgage or be able to, you know, get money. That was on my credit reports and no one seemed to know what they were. And there were letters coming through that said, we don't know what they are. It could be Dan's, it could be yours.

But, see, you know, I had a flood on Devine Street. So we were thinking maybe it could have been the mortgage company, you know, putting a lien on it until, you know, we got the thing fixed or, you know, whatever they do. They were not going to allow money to come out until the

mortgage is cleared. So we didn't know if it was that. And then there was the purchase of, you know, the condominium that was at Bridge Point, that Dan had maybe not paid taxes on and maybe had not paid some payments on. We weren't sure. And then Dan's --

MR. SCOTT: I'm sorry. He asked you the name of the tax attorney.

THE WITNESS: I don't know her name.

MR. SCOTT: Okay.

BY MR. KNOWLTON:

A. I thought maybe it would come to me.

Q. Are you saying that part of your dispute was that you couldn't buy the motor home because you had some kind of real estate tax lien out there that you couldn't identify?

A. Well, when I was looking at my credit report, the thing was, is that if I could have gotten a mortgage on that motor home, you know, which is what I wanted to do -- I didn't want to pay cash for that -- and they were disputing that, that the thing is they didn't want me to do it. But, you know, there was also a large sum of money that went into the account because they sold a Kmart, I think, at one time. So there was like another million dollars put in the account.

Q. I may have missed it, but do they mention

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3760526

ELECTRONICALLY FILED - 2016-Dec-09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

anything about the tax lien in here?

A. They didn't mention it, not in that letter. But there were some other letters and my credit report --

Q. Well, this is suggesting that if you want to mortgage your motor home, you do it at the time you buy it, not after you buy it.

A. Well, that's true. But I couldn't do that. I couldn't do it before I bought it. I couldn't do it before I bought it because there was, you know -- I didn't have the credit.

Q. All right. And you say you couldn't like check the local real estate records to see what kind of lien you were talking about?

A. No one seemed to be able to figure out what it was. Even to this day they couldn't figure out what it is.

Q. And you blame BB&T on that?

MR. SCOTT: Object to the form.

BY MR. KNOWLTON:

A. I'm not, you know -- I'd had good credit. I had good accounts, you know. There was some reason that those were -- I think that my -- everything was going downhill, you know. I was receiving all my mail, you know. We just were -- I could not -- we couldn't figure it out. And I don't think that the accountants knew and I don't think that the tax attorney could put her hand on it either. The

records were showing it was there but they could not recall where it came from other than it just wasn't paid. So there you go.

Q. All right. Let me make sure I've covered this.

A. Okay.

Q. The reason you terminated the account with BB&T --

A. Yeah. With Wealth Management, yes.

Q. -- one was the dispute about the motor home?

A. Uh-huh. I mean -- well, you know --

Q. Well, let me just rephrase the question.

A. Okay.

Q. Tell me why you terminated your trust agreement that you had, revocable trust agreement, at BB&T.

A. Well, I'll tell you, it was numerous things. Starting off was that they wanted me to sell out of Baker & Baker for a million dollars. That would be $500,000 in taxes. I was worth a lot more than that. My interest was worth a lot more than that. They knew that I was having disputes with the family. Baker & Baker owned investments and stock in BB&T Wealth -- in BB&T, in the banks and mostly all out of banks.

They were holding my distribution money that would come in on the 15th of the month that I'd asked BB&T to just make sure that it goes into my personal account.

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014GP3700526

They were holding it for about four or five days and not putting it in my account when it was being distributed from Baker & Baker to BB&T Wealth Management.

The next thing is, is that they were -- I wanted my -- allotted some of my principal on my line of credit and on anything else that needed to be paid down. I had the money to pay it down. I didn't want just the interest to be paid. So I was not really getting anything established. It was not fruitful for my credit, you know. I wanted to get some -- I had the money to pay it down. They weren't paying it.

I asked them to please appear at a stockholder meeting so they would be able to know what was going on with Baker & Baker and what to do and what my interests were. They called over there and Baker & Baker said, well, you don't have to come, so they didn't go.

The other thing was, is that they were pushing for me to not transfer that IRA into my husband's name or not to pursue any interest in Baker & Baker through my husband. And they were -- there were just numbers of things. There were just some things that were going to -- I had a life insurance policy, that I had told them that it named -- It was named when it was received from my family. It was received in 1984 and under the name Baker. And when I got it back after the estate, it was in the name of

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

Brookshire. So I questioned the -- again, my brother's Power of Attorney and taking over what was in those safe deposit boxes of those things.

That was when BB&T Wealth Management had it. They did not -- it didn't get to Ben Hiott or Ben said he didn't receive it. There was a premium missed on it. I don't miss premiums. I mean, I know this would have been paid. I didn't get it. They sent it back later. Just numerous things like that that were just non-issues that I was not happy with.

So that, again, is telling you what was going on that I was not happy. Maybe I did not know, you know, how a trust was supposed to be run or this, that, and the other. I thought that I was, you know, ahead of my game in knowing what to do and where my money was going. But I was a little bit -- I was upset when they said, we'll just wait till the lien gets off or wait till this -- don't take the money out.

I knew that that was probably wrong because they wanted me to have a limit of money in there. I just said, let's get out. And I was trying to use that motor home maybe as a second home at the time and be able to use it for home schooling and be able to get, you know, some type of, you know, write-off as a second home. So, anyway, that's kind of the story behind all that. I don't really know that it has anything to do with Ben.

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

information from the, I guess the Israel Bond Investment Company or whatever. And I know that my family did some of that and I wanted to mirror what they were doing and I wanted to find out if that was possible for me to do something proper by doing that, okay? So I was asking about that.

I realized that there was -- that this was -- they were saying basically that this was not an investment that they normally do and that I needed to contact -- they wanted to contact somebody else to see exactly what I wanted to do. But, again, they were -- they had wanted to call Baker & Baker about it, you know. So there was a lot of -- a lot of questions that were coming in from BB&T going to Baker & Baker.

Q. They also wanted to sit down with you and discuss a proper investment plan, did they not?

A. Yes, they did. And I did --

Q. Did you ever do that?

A. No.

Q. Why not?

A. I don't know, I don't know. Maybe this is because that I, you know -- the day that this situation was -- like I said, after that, I had said that I was having some questions about the way they were handling my account. So I think I probably did not go and call them and set up an

appointment with them, you know. I just -- I think this time, I was really thinking of doing something different, I don't know. But, no, I did not sit down with them, but this is a true letter and I did have a copy of it.

MR. KNOWLTON: Let's mark this one.

(Exhibit No. 23, Letter - 5/31/07, was marked for identification.)

BY MR. KNOWLTON:

A. (Views document) Okay. What do you want to ask me about this?

(Exhibit No. 24, Letter - 6/12/07, was marked for identification.)

BY MR. KNOWLTON:

Q. Let me ask you also to look at Exhibit 24 while we're at it.

A. All right. (Views document) Okay.

Q. All right. First of all, Exhibit 23 is a letter that indicates that a copy was sent to you. Did you receive a copy of it?

A. Probably. I mean, I can't really recall right offhand. But, you know, this is --

Q. Well, they simply wanted written instructions if you wanted --

A. Yeah. I understand that. I understand that.

Q. Okay. And you remember that?

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

BY MR. KNOWLTON:

A. I'm just looking at what the statement shows.

Q. Take a look at CFB 6933, the last page of that exhibit.

A. All right.

Q. Did you see that document, that page?

MR. SCOTT: Does she see it now?

MR. KNOWLTON: Well, no, sir.

BY MR. KNOWLTON:

Q. My question really was, did you see that in 2007?

A. No. I haven't seen this. (Views document.) What did you ask me? Have I seen that document? No, I haven't.

Q. All right. Do you have any explanation of why Mr. Hiott would have sent a cashier's check representing funds from this account in the amount of $500,000, indicating it was a Brookshire loan advance to Mr. Crosby in July of 2007?

MR. SCOTT: Object to the form.

BY MR. KNOWLTON:

A. I don't know nothing about Mr. Crosby or the money or giving anybody permission. I don't know anything about that and that's the God's honest truth.

Q. When was the first information that you had that

ELECTRONICALLY FILED - 2016 Dec 09 1:22 PM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

this $500,000 disbursement had been made?

A. You already asked me that.

Q. And I don't want you to mention what any attorney told you, but I want the best date you can give me.

A. Well, I haven't had any documents from Community First, so the first time I got to see any documents was at this office. And then my husband and I took the documents and he had looked at that particular document and saw the -- saw the, you know, some of the interest and where the money that was interest being transferred over from BB&T Wealth Management or the interest on it and saw the miscellaneous debit. And next to that miscellaneous debit was written Lafayette, single premium annuity to children, in blue, in blue ink, was written on that paper on the --

Q. You're not referring to Exhibit 29, are you? You're talking about some other document that you saw?

A. I'm saying the document that I saw with -- this, right here, the same exact one that I saw here, had single premium annuity Lafayette trust, or something like that. It was written next -- in blue, next to the $500,000.

Q. Was that something Mr. Hiott wrote?

A. I thought it was Lisa Reed, but I don't know who wrote it. It wasn't my handwriting, it was somebody from the bank. It didn't look like Ben Hiott's handwriting. But it was written on there and that's what it said. That's

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

and his wife offered, you know, to take them for Christmas for a couple of days because he knew that you didn't have a Christmas tree or a home to be able to have one in, he said, and I'm the one that took them up there. So that's what he said. He said, they asked for them. So that was really nice for them to do that. And, I mean, I'm sure I paid Ben

Q. How did you pay him?

A. Probably, you know, just through a check. I'm sure it wasn't cash. But it wasn't that much money. It was just something maybe like traveling for them to be picked up and maybe an airplane for my son and maybe a gingerbread house under my daughter's name, you know, just -- and a little crown or something like that. They were young children at the time.

Q. Did you agree to have him reimburse himself out of your account?

A. I always offered. I always offered to pay something. And if I did, it wasn't a whole lot. If he didn't want a whole lot, we wouldn't spend a whole lot of money. So the thing is, that's how it was.

Q. And you mentioned in the first day of your deposition that he kept the kids over two Christmases?

A. To be honest with you, I know of one Christmas, I don't know about the second one. But maybe -- I don't think -- I don't know if it was one Christmas or two. I do

Q. All right. I'm just trying to get you to agree on some terminology.

A. Okay.

Q. Why don't we just call it the Community First Bank account, all right?

A. Okay.

Q. I mean, because you knew that he had money that you had --

A. That was in the trust, yeah.

Q. Well, you said two things --

A. The account ended up in -- the numbers are 1950, I think.

Q. All right.

A. That was the trust account.

Q. All right. Account 1950. And you knew you had an account that ended with the numbers 1950 for your benefit at Community First Bank?

A. Right. Yeah. That's what I remember.

Q. Okay. And --

A. Because that's where the money was being wired from to go to my BB&T account.

Q. Right. And you were aware of those wires?

A. Yes.

Q. And when you asked him to send money, he would send it to BB&T?

ELECTRONICALLY FILED - 2016 Dec 09 1:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

given any money, why would he be lying to me? And, first of all, there's no way I would have done something like that. The children didn't need any life insurance policies. They had their own trust. And I didn't even own the children.

Q. Well, let me ask you a little broader question. Do you contend that it was inappropriate for Mr. Hiott to make any form of investment, loan, gift, or other disbursement of your funds in your account at Community First Bank in the amount of $500,000 in July of 2007 and $200,000 in November of 2007?

A. Yes.

Q. All right. Let me ask you a couple of questions about your BB&T account.

MR. KNOWLTON: Let me get that marked.

(Exhibit No. 31, Summary of Overdrafts, was marked for identification.)

BY MR. KNOWLTON:

Q. Take a look, if you would, at what's been marked as Exhibit 31. And this is a summary exhibit that we prepared --

A. Are you talking about this page?

Q. No, ma'am. What she just handed you.

A. Okay.

Q. And I know you've not seen this before, but let me just ask you this question. Attached to the three-page

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

A. All right. Let me go back. Are you saying BB&T to Community First?

Q. Yes, ma'am.

A. How -- well, Ben was receiving all of my income and all the money, okay? That's where it was all coming from. So the money would have been --

Q. From Baker & Baker?

A. From Baker & Baker. Or if there was something that maybe --

Q. And at your direction, monies were transferred from BB&T to Community First Bank, were they not?

A. You'd better recall that because I can't -- I don't remember -- to 1950? I mean, maybe the closing of the house, maybe?

Q. No.

A. Ben had all of it.

Q. When you opened this account at BB&T, there was a termination of the trust.

A. Okay. You're talking about to Wealth Management?

Q. Right.

A. Okay. Now I understand. Yes.

Q. You terminated your trust at BB&T Wealth Management --

A. Yes. Okay. That went to --

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

Q. -- and you transferred, at your direction, approximately 1.7 million to Community First Bank, did you not?

A. Yes, that's right.

Q. Okay. And did you also not, at your direction, have income and certain monies received over time from Baker & Baker sent directly to Community First Bank?

A. Yes. Yes. There you go.

MR. CIESE: Bob, I hate to object but you misstated. It was 1.1 million and you said 1.7 was transferred from BB&T.

MR. KNOWLTON: Okay. And whatever the account statement reflects. I obviously don't recall the amount accurately off the top of my head.

BY MR. KNOWLTON:

Q. All right. Take a look at, if you would, in this document it's the third page. It says, I'll be sending you faxes of my daily mail and notes every day until I get there. Did you in fact do that? Did you fax him copies of the mail that you got every day?

A. (Views document) Let me see if I can maybe try and see if I can clarify this. (Continues to view document) It says, I'm sending you faxes of my daily mail and notes every day until I get there. You're asking me if I did that, huh?

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

$50,000 in wires in the amounts of 15, 15, 10 and $10,000, did you not, totalling $50,000 from Community First Bank?

A. The statement says so. But, you know, I mean, I couldn't recall the exact amounts. I'm sure that they -- it was, you know, right, unless somebody doctored up something. But, you know, no, I'm sure it's probably right.

Q. But you were routinely asking Mr. Hiott to wire funds to your account, were you not?

A. Exactly, yes.

Q. Okay.

A. Yes.

Q. Let me ask you to take a look at what will be marked as another exhibit, Exhibit 40.

(Exhibit No. 40, Handwritten Notes, was marked for identification.)

MR. GIESE: Look at 40, Debi.

THE WITNESS: Okay.

MR. GIESE: Look at 40.

THE WITNESS: Okay. Okay.

BY MR. KNOWLTON:

A. (Views document).

Q. If you'll look at Exhibit 40, is that your handwriting on the front page and the second page?

A. (Views document). That first page, that's my handwriting.

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

was sneaking off somewhere. (Views document.)

Q. First of all, let me ask you, is that your handwriting?

A. Yes, sir.

Q. Is that a direction from you to Ben Hiott?

A. If I wrote it to Ben, it's from me.

Q. Do you acknowledge that you had an insurance policy with Mass Mutual?

A. Yes.

Q. Do you acknowledge that you asked Mr. Hiott to pay premiums to Mass Mutual on your behalf?

A. I'm sure I did. Why wouldn't he? He was paying all the rest of my bills.

Q. Well, you --

A. He did. He did. I mean, I did ask him.

Q. All right.

MR. KNOWLTON: And, Barney, again, maybe there's some confusion, but I think you all challenged some of the payments to Mass Mutual.

MR. GIESE: I'll check.

MR. KOWLTON: Okay.

MR. GIESE: I'll check. There were a couple that we had a question about, yeah. But I'll check.

MR. KNOWLTON: To Mass Mutual?

THE WITNESS: Yes.

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

Q. Well, I don't want to play word games with you.
A. Okay.
Q. We've already dealt with this multiple times.
A. All right.
Q. There was an account at Community First Bank.
A. Yes.
Q. You had your funds transferred from BB&T --
A. Yes.
Q. -- into that account.
A. Yes.
Q. You had Baker & Baker's funds directed to that account --
A. Yes.
Q. -- and you asked Ben Hiott on numerous occasions to pay amounts on your behalf out of that account, did you not?
A. Yes.
Q. Okay. So you knew you had an account at Community First Bank of some sort?
A. Yes. The 1950 account, right.
Q. And do you contend that any payment to Mass Mutual out of that account was inappropriate?
A. Yes.
Q. And which amount and why do you contend it was inappropriate?

ELECTRONICALLY FILED - 2016-Dec-09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

some other stuff that had happened that Ben didn't admit. So she called him and he ended up taking the money off of his American Express card on the golf course and then he ended up taking it out of my trust. And it ended up being about twenty thousand.

Q. And that's an invoice sent by Dan Brookshire to Ben, is that what you're saying?

A. This looks like it was Madison RV Center that was -- there was four thousand dollars or something, you know, of some of the work or whatever that was done on it that Ben, I think, agreed to pay. To be honest with you, this looks like it came from Madison RV Center and it looks like it's the Holiday Inn --

(Exhibit No. 54, Memo - 7/19/10, was marked for identification.)

BY MR. KNOWLTON:

Q. Let's turn to another exhibit here, what's been marked as Exhibit 54, if I can ask you to look at that.

A. (Views document.) All right. What do we need to do here?

Q. On Exhibit 54, there is a statement here from Vickie Schermbeck. Do you know who she is?

A. Yes, I do.

Q. And was she instructed not to deposit any more money into the bank at Community First Bank? Did you advise

her to do that?

A. (Views document) Yes.

Q. All right. Was there any particular event that gave rise to that conversation? Any culminating event or anything specific that you can recall?

A. This is when we were -- I'm pretty much letting -- pretty much taking everything away from Ben, because I told her do not send anything more over to Ben or any more monies over to Ben, that we were going to be able to make -- to change the account number, that we're not dealing with him anymore.

Q. Well, I understand that.

A. Right.

Q. Was there anything that culminated in that conversation, any event that we haven't already talked about?

A. No. Not that I would have said anything to her. I just told her that we were not going to be working with Ben or Community First Bank anymore. That's what it was. I either called them or I wrote them a letter, okay?

Q. Well, I understand that.

A. Okay.

Q. But to make sure we're clear --

A. Okay.

Q. -- did you have any particular interaction with

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

remember this one.

Q. And let me ask you a couple of specific questions about the letter.

A. Okay.

Q. First of all, do you see the paragraph that begins with the word obtaining?

A. Yes.

Q. Take a look at the front page.

A. Yes. Yes.

Q. The second sentence of that paragraph says, it is my understanding that on August 11th, 2010, you transferred all the cash remaining in the trust account, approximately 200,000, to Mrs. Baker-Brookshire's account at BB&T. Do you see that?

A. Yes.

Q. Was that what you were informed?

A. That is what I was told, that I may have put the remaining money that was in the trust into that account accordingly so that we had -- and this was in August. Let me make sure it's in August. Yes, I had told him to put the money into that account because we were -- that was the time that we were talking about trying to do something with the motor home and the children and moving and getting all the stuff out.

Q. Had you directed Ben to transfer all of the

ELECTRONICALLY FILED - 2016-Dec-09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

remaining funds into your BB&T account?

A. I think so, yes.

Q. And what was previously marked as Exhibit 4 reflects a transfer to your BB&T account in the amount of $202,928 dollars. Do you see that?

A. Let me see where that it.

Q. It's right here.

A. Oh.

Q. We had talked about this in the first day of your deposition. Do you see that now?

A. Okay. Yes. Yes.

Q. And was that what you understood to be what Hiott represented to be all of the funds in your account?

A. Pretty close to that, about the same thing. The thing is, they're saying 200,000 and he was saying 238. So the thing was, I was thinking that he put some money into my account so we could be able to go ahead and get all the rental paid and get all the stuff done so we could get the children and get on the trip and the people traveling with us and all that. And he said that that was all. But the thing was, but he told someone else it was different than that. And then that figure, to me, I think, was what was supposed to be the balance of what he was going to give Kathleen McDaniel and told her that was all he had left. Is that correct? I mean, is that the same date or is it a

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

A. It had to have been her because no one else was talking to him that I know of.

Q. All right. And here you mention Ann Gell Hamiter?

A. Uh-huh.

Q. Was she considered your bookkeeper?

A. Well, you know, the thing is, is that at the time is when she was paying all the bills and she had been talking to Ben about trying to get, you know, certain money, you know, into my personal account to be able to pay bills. And also, too, to put some other money we could do for tax purposes so we could put that aside because we have taxes to pay. So we were trying to figure out exactly how much money was in there was what we were doing. So I don't think she was my bookkeeper. It was, you know --

Q. Okay. This letter reflects that Ms. Hamiter --

A. Yes.

Q. -- spoke to Mr. Hiott and was told about a month before August 11th, 2010 that there was about 900,000 remaining in the account.

A. Yes. And I do remember that.

Q. Okay.

A. I do remember him saying that.

Q. Okay. And would you agree there appear to be serious inconsistencies in those two versions of events?

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

A. Oh, yeah. Definitely, most assured.

(Exhibit No. 56, BB&T Signature Card, was marked for identification.)

(Exhibit No. 57, Letter - 10/19/10, was marked for identification.)

BY MR. KNOWLTON:

Q. Mrs. Brookshire, let me ask you first a very simple question about Exhibit 56. Is that your signature?

A. Yes.

Q. All right. And were you giving Ann Gell Hamiter signature authority for another account at BB&T?

A. (Views document.) No. The only account that she was supposed to be -- only supposed to have had was where she was, you know -- you know, it was that one account that she could take care of those bills, and the other thing was, if it was anything, it had to have been maybe that safe deposit box, wasn't it? That's the only thing I can think of.

Q. You know, we looked earlier at a signature card where the account number ended in 2408, and there the address was to the two of you at 37 Palmetto Wood Parkway in Irmo.

A. Yeah. That's exactly where I had given her the --

Q. Whose address is that?

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

A. Okay. Go ahead.

Q. -- ask you a question.

A. Okay.

Q. Is that a document that Mr. Hiott sent you or your lawyer?

A. Yes.

Q. Okay. In September of 2010?

A. Yes.

Q. Okay. The letter that was marked as Exhibit 55, on the second page it says, you noted on the report you faxed to me, talking to Ben Hiott, are amounts of 150,000 allocated to each of the two children of whom Mrs. Baker-Brookshire has custody. In talking with Mrs. Baker-Brookshire, she has no recollection of setting up such trusts.

Did you ever give Mr. Hiott -- well, let me ask you this. Had he set up a trust for those two children with $150,000, would you have considered that inappropriate?

A. Yes. Because the children were already set up with a trust in Alabama and there was not supposed to be another trust set up. The thing was is I had pretty much set up a Nationwide life insurance of 50,000 just in case something happened to me at a certain particular time, something that somebody would be able to have a little bit of money to get them back to Alabama. But the thing is

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

that -- but the children already had their own trust and they still do, so there was no reason to do a trust.

Q. Had you ever asked Ben Riott to set up any form of annuity or trust or insurance policy or anything else for those two children?

A. I asked Ben to try to protect my interest. That's what I asked him to do. And he knew that I had those two children, but the thing was, it was protecting my interest. And I told him, when we took a trip in 2005, that I wanted to make sure that my unsecured halfway deed line would be like another 50,000 to make sure if something happens, at least that they would not be sitting out in the open and did not -- had nowhere to go. So that's what it was. But it wasn't any money. I mean, no one wanted me to set anything up because my husband said, Debi, they've already got their own trusts set up with their grandmother.

Q. Who set up the trust for them?

A. Their grandmother, their great grandmother, and --

Q. And who is that?

A. In Jasper, Alabama. And it's still set up. The thing is that she left -- so the thing is that he said, Debi, there's no reason to leave them any money.

Q. Did you ever set up a trust for them?

A. No.

ELECTRONICALLY FILED: 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

ELECTRONICALLY FILED: 2016 Dec 09 11:22 AM OCONEE COMMON PLEAS CASE#2014CP3700526

Q. Did you ever buy them an annuity?

A. No.

Q. You said you had some life insurance on your life? Is that what you --

A. It was a $300,000 policy that my dad bought me in 1984 and I was the insured and the owner, okay?

Q. Okay.

A. And because I didn't have children and things were done -- the thing was, they said, Deb, there's no reason for you to have it. So I transferred it over to a long-term health care insurance.

Q. All right. You had the indication that there was a trust set up for each of those two children, did you consider that an inappropriate use of your funds?

A. It was -- I'd only paid on it for a couple of years and it was 50,000 through Nationwide.

Q. No. I'm talking about this.

A. Okay.

Q. And when you got this report from Ben Hiott --

A. Oh, yeah. We couldn't understand it. It didn't make any sense.

Q. Did you consider that to be an inappropriate use of your funds?

A. Yes. I mean, it didn't make any sense. I wonder where it came from. I mean, the thing is that, you

A. Uh-huh.

Q. You had asked that Ben pay the premium or something and that didn't happen, but Ben was not involved in procuring those policies?

A. No. I did them.

Q. Okay.

A. The thing was is that -- now, what we did was, he was just supposed to make, you know, a payment when she sent him a bill.

Q. All right. To your knowledge -- well, let me rephrase it.

A. Okay.

Q. Did you ever direct Ben Hiott to procure an annuity or a life insurance policy or trust for either of the two children we've been discussing?

A. Not at all. As a matter of fact, I didn't even know what an annuity was at the time, you know. I thought possibly that, you know -- I would think I looked it up and found out that an annuity is something if you keep for so many years, ten or twelve, fifteen years, that obviously can be a tax -- or tax-free payments out to whoever you want to make it out to or even to yourself. But absolutely not.

(Exhibit No. 59, Letter - 2/11/11, was marked for identification.)

BY MR. KNOWLTON:

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

ELECTRONICALLY FILED - 2016-Dec-09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

BY MR. KNOWLTON:

Q. Okay. And if you'll look at 61, let's turn to the second page at the bottom, it says close account; do you see that?

A. Yes.

Q. At that time, what did you understand the $285,000 to represent?

A. That something was wrong. I mean, to be honest with you, I really don't know. I just know that he was saying that that is all the money that she's got left in her account. And he said that the thing is, is that the annuity for those two children, that because Debi needed more money so I had to go into that and I spent it -- or she spent it. That's what I heard. So that was his excuse.

Q. Okay. Well, did you have any conversations with Ben Hiott at all during that period?

A. Not at all. I wasn't talking to him at all. As a matter of fact --

Q. Where did you understand these monies came from?

A. Which monies? This money?

Q. The 285 thousand and some odd dollars.

A. He said that that came -- that was the rest of the money that came out of the 1950 account that I had with him and that was all. And so the thing is, they were trying to ask him to explain about where the annuities were and he

said, oh, you know, well, Debi needed more money and so I, you know, closed those and I went ahead and, you know, funded that money to her so there's nothing left, is what I heard. Well, he didn't take this out of my personal -- he didn't take it out of my 1950 account, did he? Okay.

(Exhibit No. 62, General Ledger, was marked for identification.)

BY MR. KNOWLTON:

Q. All right. Let me ask you a question. And I can tell you what this is. It's a summary document from a forensic accountant who looked at some of this material. Let me ask you, did you have any interest in the bank's Federal Securities pursuant to which you would get accrued interest?

A. What is that?

MR. GIESE: I don't think she understands.

BY MR. KNOWLTON:

Q. To your knowledge, did you have any ownership in securities purportedly in the name of the bank?

A. No, there wasn't. I didn't have any. He told me there was none. As a matter of fact, because I gave him a couple of gifts because he said he was -- that he didn't need any money -- he didn't need anything from me, just putting the money in the bank. But I had no securities and no stock that I knew of.

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

ELECTRONICALLY FILED: 2016-Dec-09 11:22 AM: OCONEE COMMON PLEAS: CASE#2014CP3700526

Q. And we've got some other general ledger documents, but do you have any reason to think you owned the funds that were transferred into your account as reflected in Exhibit 62?

MR. GIESE: And I object to the form.

MR. KNOWLTON: I'd like to try to fix that question, Barney.

MR. GIESE: Yeah. Can I go off the record?

(Discussion off the record)

MR. GIESE: Back on the record.

BY MR. KNOWLTON:

Q. All right, Mrs. Brookshire.

A. Yes.

Q. I'm going to represent to you that this is an accounting summary from a forensic accountant who looked at certain deposits that were made into your account and there were net deposits here reflective of $780,855.58.

A. All right. Where are you?

Q. I'm at the very bottom of the document.

A. Okay. Okay.

Q. And my question to you is, do you have any reason to think that these deposits into your account were appropriate or that they were funds that you owned?

A. There's just no way for me to be able to know. When you give me a bottom figure like that, there's no way

for me to be able to know whether that has got my tax money in it or whether it's got somebody's stocks in it or whether it had, you know, other monies that I didn't know about. I just do not know. I have no idea.

Q. Do you have any reason to think you had an ownership interest in amounts due from the Federal Reserve?

A. What Federal Reserve?

Q. Well, let me just ask you this: Do you have any explanation -- and this is what you found on the bank's general ledger -- do you have any explanation as to why any of these deposits into your account would have been appropriate?

A. Definitely not. I don't think they're appropriate.

(Exhibit No. 63, Letter - 3/11/11, was marked for identification.)

BY MR. KNOWLTON:

Q. Mrs. Brookshire, let me ask you to take a look at what's been marked Exhibit 63.

A. Okay. (Views document.) Okay. All right.

Q. All right. My question is, Ms. McDaniel notified Mr. Williams on March 11th that she no longer represented you.

A. Right.

Q. Is it fair to say that she represented you until

ELECTRONICALLY FILED - 2016-Dec-09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

March 11th, 2011?

A. I would say so, yeah.

Q. All right.

A. I mean, you know, for a short time.

Q. And you'll see in item one, numbered one in that letter, that requests monthly account statements for December 10 through current?

A. Yes.

Q. Does that refresh your memory that you had copies of the account statements from prior periods before December 2010?

MR. GIESE: Object to the form.

BY MR. KNOWLTON:

A. You know, I really don't know. I think probably maybe the reason is that she said December 10th through current is because -- I don't really know.

(Exhibit No. 64, Performance Investment Account, was marked for identification.)

BY MR. KNOWLTON:

Q. Well, take a look at Exhibit 64.

A. Okay. Yeah.

Q. These are from her files.

A. Lafayette, finally.

Q. Okay. And, first, take a look. You'll see these account statements begin July 31, 2007; do you see

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

that, the first one?

A. Yes. Yes. Okay.

Q. And it looks like the last one is October of 29, 2010; do you see that?

A. This last page?

Q. The next to the last page.

A. Okay. The next to the last page, which is -- what am I looking for again? Oh, here it is. I forgot what page you wanted me to look at here. The next to the last page. You asked me to look at which --

Q. And my question is, were these statements provided to you while Ms. McDaniel was representing you?

A. At the very end, the thing was is that she got some of these, but we did not get all of them that I can recall. I don't remember getting all of them. I mean, I do know that this is --

Q. Well, she asked for the ones just from December 10 through March, I guess the date of her letter.

A. Yeah, I guess so. The thing was is that --

Q. Were you saying that she got some of what's marked as this exhibit? And these all were in her files.

A. Okay.

MR. GIESE: And I just object to the form.

BY MR. KNOWLTON:

Q. Mrs. Brookshire, do you agree that you received

ELECTRONICALLY FILED - 2016-Dec-09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

these statements while Ms. McDaniel represented you or not?

A. You know, as a matter of fact, I do remember this one, this very one right here because --

Q. We're talking about the --

A. The whole package?

Q. -- whole package right now. Did you get a copy of these statements?

A. You know, I really -- I can't really remember. The thing was is that I do know that we ended up receiving the very first one and I know there were several other ones we did. But there was a lot of other things that were not even listed on here, you know, that I do know that I wondered where the withdrawals came from, you know. But I can't tell you exactly every single one, but I do know that we did go through as many of them as we possibly could. But when you've got --

Q. When you say we, are you talking about you and Ms. McDaniel?

A. Yeah. And my husband. No, me and my husband went through them. We're talking about -- and also Michael Sgobbo. We went through these things trying to see what the difference was and wire transfers --

Q. All right. Well, first, I'm just trying to get a date. Roughly, when did you first see this package of statements?

A. She sent them to us or she -- I think she sent them to us, is what happened.

Q. Ms. McDaniel?

A. Yes.

Q. Before the termination of the relationship, I assume?

A. No. Afterwards.

Q. It was shortly afterwards?

A. Yes. It was afterwards, definitely.

Q. Within a month or so after or --

A. I would say probably within, you know, within a few weeks or something or whatever. The thing was is that she was asking for them or whatever, so as soon as she got them I think she got them delivered to us. I mean, I really can't recall. I didn't know that we went through them all --

Q. Well, if you don't recall --

A. Yeah.

Q. -- don't speculate on something like that.

A. Yeah.

Q. Let me ask you this. You wanted to talk about the first one. Do you see the handwriting on there?

A. Yes.

Q. Whose handwriting is that?

A. (Pauses).

ELECTRONICALLY FILED - 2016-Dec-09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

from Community First Bank? I'm not asking why you got them.

A. Are you saying how did Ben get them to go from Community First to go to BB&T?

Q. No.

MR. GIESE: He's asking you about that specific 15,000 dollar credit that he pointed out to you.

THE WITNESS: Okay. Let's see.

MR. GIESE: That credit right there on 11/14.

THE WITNESS: Okay. A deposit.

MR. GIESE: He's asking you --

BY MR. KNOWLTON:

Q. Is there any reason to think that money did not come from Community First Bank?

MR. KNOWLTON: Again, this was trying to get a Request to Admit and --

MR. GIESE: Yeah, I understand. But, honestly, I don't -- off the record. Can we go off for a second?

MR. KNOWLTON: Yes.

(Discussion off the record)

BY MR. KNOWLTON:

Q. All right. Mrs. Brookshire, I don't want to belabor the point, but you don't have any independent recollection of $15,000 going into your account from any other source, do you?

A. (Views document)

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

MR. GIESE: Answer the question.

BY MR. KNOWLTON:

A. I mean, really, honestly, you know, I mean, I feel like it's probably a good reason. I just can't place what it is now, you know, that I would ask him --

Q. No, ma'am.

A. I mean --

MR. GIESE: He's talking about $15,000.

BY MR. KNOWLTON:

Q. I'm just asking for the source of that money. Do you have any reason to think the source of that money was coming from Community First Bank?

A. Well, didn't it say that? An investment counter withdrawal was --

Q. Well, we show that offsetting withdrawal from your account --

A. Yeah. At the same time.

Q. And then we show money arriving in the same amount in the BB&T account.

A. Okay.

Q. And my question to you is, do you have any reason to think that was not a transfer of funds from the Community First Bank into your BB&T account?

A. No. I mean, I think it's probably legit but I can't tell you what it is.

ELECTRONICALLY FILED - 2016-Dec-09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

A. Yeah. Some stuff here and things are showing -- you're showing some letters that I wrote that had to do with my dad's will, that had to do with some of the things that my -- Baker & Baker had taken care of and some things that were --

Q. All right.

A. Okay.

Q. Did you comingle anything with the documents you received back from Ben Hiott?

A. Comingle?

Q. Did you put anything else into the boxes with it?

A. Those boxes probably were thrown away because they weren't regular size good boxes. And so we wanted to put everything in a proper order and what we didn't need I threw away. The thing is, I pretty much threw -- I mean, I saved every gum wrapper, okay? So all that stuff started getting thrown away.

Q. When did you throw away materials that you received from Ben Hiott?

A. When I was giving him all the stuff that he needed. He wanted everything from Ben Hiott's statements, tax returns, anything that I had. So that's when I had to go through everything in the storage room and take boxes out. What I did was I decided to go ahead and redo boxes

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

and put them in and get rid of some of those old boxes. Because we'd had a flood and it was a -- and some of this stuff was just smushed and damp and -- I mean, it was just some stuff I didn't even need to keep. So thank you for keeping all this. Now I've got copies again.

Q. Did you review and keep anything dealing with your BB&T account?

A. No. All this stuff went to them, even -- everything good. There was nothing left. The only BB&T stuff, I would have would have gone back to probably Lexington State Bank and --

Q. Well, you gave Mr. Hiott stuff dealing with your BB&T account, did you not? You gave him all sorts of bills and invoices to pay, did you not?

A. But that didn't have anything to do with the BB&T account. The thing is, I gave him stuff that had to do with the electric bill and the AT&T bill and the, you know, and the water bill and all that stuff. That's what he was paying. I didn't give him any BB&T stuff. The thing is, is that he was transferring money into those accounts. So the thing was, there was no reason to give him those BB&T statements, so I didn't give those to him.

Q. Were there any documents you received from Ben Hiott that you threw away?

A. The invoices had to do with the utility bills

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

and the, you know, electric bills and AT&T, that kind of stuff. Things that, you know, weren't normal for me to be able to be keep, okay?

Q. Well, the problem we've got is disbursements were made from your account and now they're being challenged. And if there were invoices and things related to why those expenses were being paid -- I've just shown you a handful of them. Some of them are --

MR. GIESE: I object to the form.

BY MR. KNOWLTON:

Q. And my question to you is, did you keep any such receipts or invoices that dealt with the handling of the funds in the account?

A. These don't seem to be the same type of thing that had to do with the everyday accounts. I mean, those were like things that you would, you know -- that you just pretty much pay, you know, your electric bill, your water bill, grocery bill. That's the stuff I threw away. Anything that had to do with any of this big stuff or any of these monies -- to be honest with you, I still seem to be wanting to know about a couple of things and I haven't seen them.

He was supposed to be paying the doctor that I lived next door to, he was paying while we were living over there. For some reason, I don't know which account that

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

ELECTRONICALLY FILED - 2016-Dec-09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

A. I --

Q. Look at the last page.

A. All right. (Views document) Well, I think we probably needed to have some type of a credit situation, so that's probably why he signed for it, you know. And I would imagine that what he did was he --

Q. Well, the Power of Attorney gave him that authority, did it not?

A. (Pauses).

Q. The bottom line is, you lived there, right?

A. Yeah. I lived there, okay?

Q. All right. Let's look at the front page.

A. Okay.

Q. That reflects a payment out of your account of $1600 to Security Federal Bank for --

A. Uh-huh.

Q. It refers to 37 Palmetto Wood Parkway.

A. Uh-huh.

Q. And, if you would, turn to the fourth page of this document and you'll see that lease payments are being made to the Security Federal Bank.

A. Good. Thank you.

Q. And you have disputed in this case --

A. I'm not disputing it.

Q. -- that you've paid rent to Security Federal

Bank. How can you dispute that?

A. I'm not disputing it. I'm just saying is that, you know, it got paid and I see it.

Q. Well, you've not admitted it.

MR. GIESE: She just did, Bob.

MR. KNOWLTON: She did?

MR. GIESE: She just did.

MR. KNOWLTON: Okay.

BY MR. KNOWLTON:

Q. Well, was this an example of one the types of documents that would have been in the box that you discarded?

A. You got this. It didn't get discarded. This has something to do with Ben and --

Q. Because it happened to be at the bank.

A. Well, the thing was, that was something I gave him, didn't I?

Q. Well, we've gotten virtually nothing from those boxes.

A. But I don't see -- the thing is, what boxes are you talking about?

Q. That Ben Hiott gave back to you.

A. Okay. The boxes he gave back to me -- first of all, the boxes that he -- 2007, okay? He got boxes of bank statements, estate stuff which is what you've got, he got

ELECTRONICALLY FILED - 2016-Dec-09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

jewelry and he got some Wall Street Journals. And the thing is that --

Q. And you sent him documents throughout that four-year period that he was dealing with your account.

A. Only of things that you -- or just that were just -- they weren't things like this. It would have been stuff that had to do with, you know, your regular water bill. I mean, the things -- I didn't send him all that small stuff to pay. I took care of that out of my personal BB&T account, okay? And so that was, you know -- I did that. But stuff like this, you know, I mean, this was great. At least we're now showing that this did get paid and it got paid through, you know, Community First Bank.

But you know what? The thing is, is that that is exactly, you know, what I saved, okay? And, obviously, it's good because you've got it, you know? That is exactly what he returned. Or if he didn't return it, I don't know -- why would he have left it sitting in his office? If it has to do with me, why, you know, leave that sitting in the office and then yet return this stuff?

(Exhibit No. 76, Check No. 70009996, was marked for identification.)

BY MR. KNOWLTON:

Q. Let me ask you about that. Do you dispute that the amount of $9,086 was paid for Miller Long-Term Rentals

ELECTRONICALLY FILED - 2016-Dec-09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

on your behalf in 2010?

A. Okay. I probably asked him to pay a couple of months of a few months in advance. I like to do that. To me, that's the safest way to handle some of your accounts --

Q. Is 573 Colonial Drive a place where you lived for a period of time?

A. Yes. That was in Hilton Head.

Q. Okay. And do you dispute that this amount was paid on your behalf out of this account?

A. I'm not disputing it, no. Okay. Find one more for me.

MR. KNOWLTON: Let me, if you don't mind, take a brief break.

(Recess from 4:40 p.m. to 4:50 p.m.)

BY MR. KNOWLTON:

Q. All right. I have a lot more questions but I'm only going to ask a few more.

A. Yah.

(Exhibit No. 77, Statement - 7/30/10, was marked for identification.)

BY MR. KNOWLTON:

Q. Take a look at what's been marked as Exhibit 77.

A. Okay.

Q. On the front page you'll see a 33,000 dollar deposit. Do you see that, on 7/27?

ELECTRONICALLY FILED - 2016-Dec-09 1:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

A. Yeah. I mean, after I have him Power of Attorney because I was planning on moving down there. I wanted to take all my stuff, all of my, you know -- everything that I owned. And I was thinking about getting a patio home and a place that was an honorable person, that he'd get me a patio home and I had the children and everybody would -- we'd all be down there. So that's how it all started.

Q. When you say down there, you're meaning the Seneca area?

A. Seneca, yes. Seneca, yeah.

Q. All right. And where were you living at the time?

A. I was living --

Q. We've talked about being at the brother's estate --

A. Yeah.

Q. -- but then you said this was after that:

A. Yeah. It was pretty much at that time. Well, I had to have a place to live, you know.

Q. We get it.

A. Okay.

Q. I'm just trying to get a grip on the timeline.

A. Yeah. We had --

Q. You indicated that you were staying in your

ELECTRONICALLY FILED - 2016 Dec 09 1:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

thought he would take care of me. But, I said, I'm having a hard time getting my money. And he said, call Mike Tighe. I didn't really -- Mike Tighe was -- is their -- he just said, Mike will give you some advice as to what to do.

Mike was -- well, anyway, the thing was is that maybe that wasn't the way to go but I could not -- I didn't know where to turn. I just -- all I know is that something didn't seem right. The money wasn't adding up. I wasn't getting the correct answers. And I just -- I think that it might have caught up with Ben because he seemed to not be able to remember what he was saying and I know that I didn't -- I really didn't want to have to call him at home, but I did know his wife and she just begged me not to call the -- she said he was having some problems at the bank and that there were some things going on and that she said, please, please, don't go -- don't call somebody on him. I said, I won't. So she called him for me.

Q. When was that?

A. It was at the very, very last when Dan had the -- when Ben had wrecked the motor home, he didn't tel us that he had -- other than scraping it, that was wrecked. And when he brought it back, Dan took it down to Alabama, took the children with him. And Ben -- she had to get Ben off the golf course and he didn't want to send -- he didn't send enough money to get them home to get it fixed and so

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

bills?

A. (Pauses).

Q. Earlier, I thought I heard you say that.

A. We started off getting Ben just to pay some of the major bills that I had, such as --

Q. I'm asking you, now --

A. Okay. Okay. About what --

Q. -- about the point in history when he was being asked by you to make payments to Dr. Oliver.

A. All right. So what are you asking me now, again?

Q. I'm trying to get a grip on what were all the payments you wanted him to make at that time. You wanted him to pay Dr. Oliver once a month. You wanted him to make your car payment once a month.

A. Yeah.

Q. You wanted him to pay your utility bill once a month for electricity, correct?

A. My mail was still going to 1707 Devine Street which is owned by Dr. Oliver. And since I did not have a home at the time, except I was still having -- I still had things over at that house as we were paying rent, and so I was asking Ben if he would help with me to make sure that my bills were getting paid, you know, at that house since we were not sure where we were going to live. I didn't -- I

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

had not moved to Irmo and not moved to Hilton Head and I was not getting mail on Blossom Street. So I wanted Ben to try and help me get my bills paid.

Q. Does that mean you wanted him to pay the utility bill or not pay the utility bill?

A. Well, you know, I asked him and he said he'd be glad to pay my bills.

Q. And so did you want him to pay the utility bill for the Devine Street house at the same time you were wanting him to make the payments to Dr. Oliver or not?

A. At that very time, I was paying the bills. I didn't get Ben to --

Q. Okay. So you did not want him to make the utility bill payment; is that fair to say?

A. I didn't get him to pay the bills until later, until I moved out to Irmo.

Q. Is there any point in time when you can tell me what the bills were on a monthly basis that you wanted Ben Hiott to pay on your behalf? Now, if you can't tell me, then please explain to us how the heck you thought Ben was going to know.

MR. GIESE: Objection.

BY MR. HAWKINS:

A. How could he have been paying the bills if I had sent him copies of the bills so he could pay them?

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

ELECTRONICALLY FILED - 2016-Dec-09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

Q. Okay. So how often were you sending Ben copies of bills?

A. I think he's decided to put them in his -- change the address so they'd come to him.

Q. Pardon?

A. I think Ben changed the address of the bills so they'd come to him.

Q. You mean, you believe that some bills were not sent by you, as you've just testified to, but went directly to Ben?

A. It had to have been. Because the thing is that he had -- I was showing that the bills had his address on it.

Q. All right. And do you know, for any month in any year at any time, how many bills there were that you wanted Ben Hiott to pay on your behalf?

A. Ten. Ten or fifteen. Maybe ten to twenty, something like that.

Q. And what were they?

A. Oh, gosh, let's see here. Okay. The alarm bill, the AT&T bill, a land line, cell phone, electric bill, the property tax on the -- well, you know, property tax on the car, insurance -- accounting bill. You know, I just want to say is that your usual -- your setup, you know, generally bills that need to -- the gas bill if there was

one. I didn't have a gas credit card. Oh, boy, you know. The safe deposit box -- no. It was being paid by the bank. You know, to be honest with you, I don't know. Just sort of the, you know -- most of the bills like that.

I wouldn't have asked him to do that if he didn't think that he could. But, again, I was thinking of moving down there and also I, too, thought that we could accumulate getting everything in one place, okay?

Q. What did you do to fulfill your own duties as the trustee to your trust?

A. With Ben?

Q. With you. You agree you were the trustee, do you not?

A. Yes. Okay. Yes.

Q. So as the trustee, what did you do to fulfill your own obligations to yourself as trustee of the trust?

A. What are you supposed to do?

Q. Did you believe that you, as the trustee, had any duties to the trust?

A. Yes. I think I had a duty to make sure that my -- that the bills were being received properly, that I was able to get copies to be able to know exactly if my children's Social Security numbers were listed properly, my stuff was done, if it was done on time, if there's any question about it. I got my donations and things that maybe

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

better start at one. Were you less than five years old?

A. I don't think that we were practicing writing checks at that time.

Q. When do you believe, just your best memory, is the first time you're conscience of yourself having a bank account where there was money in the bank and you could write a check on that money in that bank, paper checks.

A. Probably at 16.

Q. And did you get a bank statement in the mail?

A. I would think that probably it was Joanne or David Baker in care of Debi Baker.

Q. Okay. Are you telling me that someone else took care of your bank account for you and you didn't have to be bothered with that?

A. I worked at --

MR. GIESE: Object to the form.

MR. HAWKINS: I'll rephrase it.

BY MR. HAWKINS:

Q. Are you telling me that somebody else took care of your bank account and not you? You had checks and you could write checks but you never had to worry about how much money was in the account?

A. I was working at J. B. White at 15 years old so I was getting my own money.

Q. What does that mean?

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

A. But I wasn't able to drive over to the bank and be able to, you know -- I think my parents probably set up an account for me and made sure that they were the custodian of an account so I could save some money.

Q. Has there ever been a time in your entire life, from the day you were born until today, when you had a checking account in a bank and a statement came somewhere in the mail from the bank that showed you the deposits and the withdrawals --

A. Oh, of course.

Q. -- and you had to open it up yourself, nobody opened it for you, you had to open it and look in it and see what the statement said?

A. Uh-huh.

Q. Is that a yes?

A. Yes.

Q. All right. How old were you when that happened?

A. When you get a savings bond or maybe you would get something free or somebody was giving you something like that, you'd open it up.

Q. You would open the envelope that had the savings bond in it?

A. I mean, I would open up something that was maybe left for me or something that maybe was supposed to be a savings bond or something. It was a gift when you turned a

ELECTRONICALLY FILED, 2016 Dec 09 11:22 AM, OCONEE, COMMON PLEAS, CASE#2014CR3700526

certain age or possibly that you would check and see -- you sort of play with those, you know, those little greenback stamps and the checks that you get and see what your shoes cost in Reuben's for four dollars. You would see what, you know, Mama had written you a check for $25 and how much she put in your account.

I mean, you know, we were all very open to be able to do things. To be honest with you, you know, I knew what checks were, but I don't think that I personally opened up something and was able to -- it was very easy to balance back then, you know. And so you had your change that you could be able to add up and say how much do you have and save that penny and whatever it can be, you know.

So there's all kinds of things and ways that you could see to do things. But as far as having -- going to a bank and doing something like that, I don't think that, you know -- I can't remember how old I was. Maybe that we were doing that when I got my first car or TV or I was able to present something to somebody.

Q. I'm just looking for a general time. You don't have to tell me it was when you were 16 years and three months.

A: Well, you know, the thing is --

Q. I mean, when you were you in college, when you were out of college --

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

A. Okay.

Q. Was there ever a time in your life when you balanced a checkbook with a bank statement?

A. Well, I was going to give you an answer.

Q. Pardon?

A. It might not be true but I'm going to go ahead and satisfy you so you won't ask me again. I really don't know.

Q. So you don't know whether you've ever done that or not?

A. Have I ever done that?

Q. That was my question.

A. Oh, my God.

Q. My question was, have you ever balanced a checkbook with a bank statement?

A. Most definitely. I had my own interior design business since I was --

Q. There you go.

A. -- 20-something years old, okay?

Q. All right. That wasn't so hard, was it?

A. No.

Q. Okay. Now, when you were running your interior design business -- let's go there.

A. Okay. Well, that's what I'm talking about.

Q. Did somebody else balance the checkbook for you

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

and do the accounting functions to tell you whether or not you had enough money in the account to write checks for things when you --

A. You're really insulting me now, okay?

Q. Well, I wish you were sitting over here where I am.

A. I mean, you want to know, but I want to know -- okay. All right. Look, before I got out of college, I went to go work for Mike Mungo with a friend of mine and we borrowed ninety dollars for ninety days so we could be able to buy something so we could do work for builders and we had our own checkbook.

Q. So you knew how to balance a checkbook then?

A. Yes.

Q. And how old do you think you were then? Just guess. Within five years, how old were you?

A. I was 22 or three.

Q. Okay. Let's go with 23. Do you agree that by age 23, you knew how to balance a checkbook?

A. Yes. But in college I did, too.

Q. And from then until when did you have checking accounts where you would get a statement every month and you would look to see whether the statement was correct and that the amount of money that you have in your checkbook matched what was in the bank statement?

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

A. Do you remember going to college and buying all those albums when you were supposed to buy books?

Q. Well, I'm asking you when did you stop doing that. I understood you did it at age 22.

A. I had to stop. No. To be honest with you --

Q. Yes?

A. -- I know how to balance my account and I do know how to look at other people's accounts and be able to have to balance them. I mean, I'm pretty good with that.

Q. Have you ever seen a mistake?

A. From a bank or from myself?

Q. Both, either one.

A. Well, you know, I'm sure I've seen a mistake, you know. But usually it's not coming from the bank. It might be something that might have been maybe overdraft twice or maybe charged twice or it was sent back or this, that and the other, so you want to be able to maybe straighten that out.

Q. Do you think --

A. That's one important thing that --

Q. I'm sorry. I didn't mean to interrupt you.

A. You know, you really have to be able to do that. Because when you take -- you take certain things back to certain accounts and then, all of a sudden, you get your statement in, you've got to be able to know if you get

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

Q. Did you ever see a bank statement on your account at Community First Bank?

A. Yes.

Q. When?

A. I don't remember. But I did not receive them --

Q. Did you see one in 2007?

A. I think I saw some Power of Attorney papers or saw something where Ben had some communications with Baker & Baker or had some communications with BB&T. I did not see a Community First Bank statement at all. If I did, don't you think I would -- let me tell you something. If I did, first of all, I know how much money came from BB&T to go to Ben. And don't you think a miscellaneous debit for 500,000 within 15 days and that, all of a sudden, my balance is 600 and something thousand? I mean, don't you think that I would have -- especially the first statement, noticed that?

Q. Well, if you had asked to see that bank statement you would have known that, wouldn't you?

MR. GIESE: Objection to the form.

BY MR. HAWKINS:

Q. Ma'am? Can you answer the question?

A. Why didn't y'all get -- why didn't you make sure I got a bank statement? Why? Because somebody was cheating on me, right? They took the money out, miscellaneous debit, and then wrote down Lafayette single life insurance policy,

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

distribution check from Baker & Baker, you know, they'll say, well, oh, you know, they didn't, you know -- make sure it wasn't cash, it wasn't sent or something like that. Or, oh, Debi, we -- it was, you know -- or something happened or possibly again with banks changing -- or even letters, say, I didn't receive that particular letter saying that y'all have now tried to, you know, change your account or changed the name of the account or we are no longer doing checks or we're doing -- there's a lot of times things get lost.

But I'm going to tell you something. The Post Offices and even the mail is really and truly -- they are not perfect. As much as you try to make sure things get done right, it doesn't happen. And I'm going to tell you, when I was at 1707 Devine Street, I'd been getting my mail there all the time, okay? Now, when you tell your Postman that you're going to be going out of town either to hold the mail or to make sure -- or we would also tell someone else and make sure and pick it up. Many, many times it doesn't happen quite the way that you want it to. And also, too, when I sold that house to Hance, he still lived next door, but he started getting his mail over there, too, okay?

Some of the bills would say something, like his bill, when he tried to send me a bill, even though I was living right next door to him, they said, we didn't have a forwarding address. There was no forwarding address, but it

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

Q. Can you tell me any automatic draft that you are confident is done each month from any checking account that has your name on it?

A. I think my -- I think the Lexus. I think the Lexus is on automatic.

Q. The monthly payments?

A. Yeah. The monthly payments. I think that I did that with that. And I'll tell you what other one is on there --

Q. What would be the difference in you having an automatic draft on the Community First account pay your car bill and any other bill that you could designate on there and having Ben Hiott write a check every month?

A. Why didn't he suggest that? First of all, it was under a trust account. It was a trust account which was -- 1950 was the trust account. I did not have -- if Ben was taking money out of those accounts -- out of that account, that's fine. But, you know, I had a credit card, you know. He could have done it out of that.

Q. I mean, do you believe that the trust account at Community First was not capable of having automatic drafts set up on that account?

A. I was -- I pretty much was thinking that you would have a trust account as being a trust account and maybe that you would have another account that would be more

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

like a checking or another account that you would be able to have it automatically set up so you would not -- that you wouldn't interfere with the two, you know.

Because, I mean, the thing is you've got -- I have automatically wired my tax -- the tax money goes out at a certain time. The thing is, I think it's better that, you know, sometimes you don't mix those things. I think it automatically would be good to have your wired taxes come out and, yet, maybe that you would have had a separate checking account so that maybe some of the checks would come out. But I never received any.

Q. Well, when did you want the car payment to be made by Mr. Hiott from your Community First trust account? I mean, tell me if it was the beginning of the month, the middle of the month, the end of the month. Just an estimate.

A. It was coming out of the BB&T account.

Q. Well, Mr. Hiott didn't control the BB&T account, did he?

A. He wasn't taking any -- if he was taking money out of the trust account, you know -- I told you what he did was he took -- that was -- he told BB&T that he was the one -- that he had approved for me to be able to have that money -- or that he was going to put the money into that account and -- the BB&T checking account and that he was

record during your deposition?

THE WITNESS: Yeah. Yes. Yes. Yes.

BY MR. HAWKINS:

A. Because we -- I kind of -- all right. Again, I asked him, well, you know, why didn't Ben call me? He said, well, he said, you know, did you not tell the Post Office that your mail had been changed? And I said, well, there wasn't any reason to because I was still getting my mail at Devine Street.

Q. Well, the record will speak for itself on that.

A. Yeah. But really and truly --

MR. GIESE: He didn't ask you a question.

THE WITNESS: Okay.

BY MR. HAWKINS:

A. But, you know, I'm just as much at fault as he is. But, you know, --

Q. For not asking for the statements, you mean?

A. Yeah. He should have told me.

Q. And if you had requested the statements, if you had driven to the bank in Seneca and said, I want a copy of my statement for last month, I don't know where it is --

A. Yes. Okay.

Q. -- do you have any reason to believe you would not have gotten a copy of the statement?

A. No. I wouldn't have thought that.

ELECTRONICALLY FILED: 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

Q. And if you had seen that there was only a hundred thousand dollars in your account, would that have bothered you?

A. Yes.

Q. And what would you have then done?

A. I would say --

Q. Let's assume that you went and looked three weeks after you opened the account.

A. Okay.

Q. Whenever the first day was, whenever that was.

A. All right.

Q. And we know today that there would be a five hundred thousand dollar withdrawal, correct?

A. Uh-huh.

Q. You're aware of that?

A. Uh-huh.

Q. So if you had seen that bank statement that showed that five hundred thousand dollars having been withdrawn, what would you have done?

A. Exactly what we have done right now. The thing is, is that where is that -- I mean, how is it that BB&T Wealth Management transferred one million, one hundred and something thousand dollars and then in 15 days, it showed a miscellaneous debit of 500,000? Where is the rest of my money? That's where it was.

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

Q. Is there anything that stopped you from going to the bank and asking for a copy of a bank statement at any time after the account was opened?

A. At Community First?

Q. At Community First Bank, yes, ma'am. I apologize. Bad question.

A. I always talked to Ben. He handled the account. I wouldn't talk to anybody else there.

Q. And you never asked Ben to send you a copy of a bank statement, correct?

A. No. I talked to him over --

Q. I mean, if you wanted a statement in 2007 or 2008, do you have any reason to believe you could not have gotten one?

A. No. I think I could have gotten one if I asked for it.

Q. And it would have been $800,000 short, at least, after the two loans were made to Mr. Crosby, correct?

MR. GIESE: Objection to the form of that question.

MR. HAWKINS: Thank you.

BY MR. HAWKINS:

Q. You may answer.

A. You don't want me to exaggerate on something, do you? Mr. Crosby, did he patent some sort of a bay leaf?

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

I mean, my God. I mean, it's not just a promissory note that they've lost. I mean, who witnessed it? Who also decided to do it that way? Just, I'm going to do something like that? But the first 15 days that I had my money and that's half of what I had in there? I mean, give me a break.

I mean, I'm going to tell you right now, you know, you do not go and buy a car unless you maybe check this, that and the other on it or make sure what the -- how people treat certain things, whether it's going to work, whether it can be used a certain way, how's it going to be packed, who's going to sell it and how is it getting there. Come on, you know. Nobody's been able to present anything. Well, we've lost the promissory note. But what about the rest of the stuff? Where's all the paperwork? Where's all the stuff showing that that's -- he needed it, you know? And that I was going to be able to do something like that, you know? I mean, come on, you know?

MR. HAWKINS: I move to strike as non-responsive.

BY MR. HAWKINS:

A. I want a piece of that McCormick bay leaf can. I want to see what's on it.

Q. There's no question pending at this time.

A. What I'm just saying is --

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

MR. GIESE: Debi, answer his questions.

THE WITNESS: I'm answering but I'm also saying --

MR. GIESE: No. Answer his questions.

THE WITNESS: Okay. Okay.

BY MR. HAWKINS:

Q. Do you agree that had you gotten a bank statement from the first three months --

A. Okay.

Q. -- you would have noticed that a half a million of more dollars were missing out of your account?

A. Yes.

Q. And would you have asked questions about where it went?

A. Yes. Can I -- well, go ahead. But it's something that goes with this, okay? It's something that really goes with this.

Q. Well, if you want to volunteer some information, your attorney will have the opportunity to ask you questions --

A. Well, if y'all don't pull it up --

MR. GIESE: Debi, no. Just answer his questions.

THE WITNESS: Okay.

BY MR. HAWKINS:

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

Q. Did the payment ever get made to your knowledge?

A. I haven't seen it on my bank statements or anybody's bank statements, so I don't know. But I would think that -- I don't think that Hance Oliver would have let it go. I don't think he would have let it go.

Q. So what do you believe the status of those payments are --

A. I think that they worked out some sort of a deal and got it paid.

Q. You think that Ben gave Hance some amount of money --

A. Yes.

Q. -- that satisfied Hance?

A. Yes. But I haven't been able to find where it came from or where it is because I haven't seen anything on any statements at all.

Q. Did you give Ben some boxes at some point in time?

A. Yes.

Q. And what were those boxes?

A. I had given -- back in 2007 when Ben came to Columbia, we had -- my house had had a flood on Devine Street. I salvaged a few boxes. I felt like that might be something that I could -- that would be of interest to give to Ben. And they were, you know -- they weren't probably in

ELECTRONICALLY FILED - 2016-Dec-09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

any --

Q. Whatever they were, you were giving them to him for him to then to have them and own it, whatever was in it?

A. Well, pretty much so he could understand what was going on with my family and why I was not giving the trust --

Q. So it was documentation?

A. Yeah. Documentation, taxes, my jewelry and silver and --

Q. You mean, it was all documentation of jewelry and silver?

A. No, no, no. The real jewelry.

Q. The real jewelry and the real silver?

A. Yes.

Q. Okay. Anything else?

A. I think there was a box of Wall Street Journals.

Q. All right. And I don't need to know anything about them. Did you get the jewelry back that you gave to Ben?

A. Yes.

Q. Was it in the same condition when you got it back as it was when you gave it to him?

A. Yes.

Q. And did you get back the silver that you gave to Ben?

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

you who it's against.

A. Uh-huh. It has all the numbers --

Q. If you and your husband don't file jointly, then it's probably only going to be against one of you unless you own the property jointly.

A. The thing was is that it was in my name, it had the numbers on it. We down to Beaufort. We called. I even got some people -- I even got Michael Sgobbo to try and check on it for me to find out. And he said, Debi, there was a tax lien, and he said, and they needed to make sure it got to you so they filed it in Beaufort County because they found that you were here. And he said, but it doesn't mean that you owned anything here. Because I was trying to think maybe it was, you know, somebody else's or it was Dan's old -- over in Harbour Island down there in Beaufort.

Q. Do you know whether it was a real property tax lien --

A. Yes, it was. It was not -- yes. It was -- it wasn't -- it was, yes, a property tax lien.

Q. Do you have copies of any of the correspondence that you sent to Ben where you were saying, here's bills I need for you to pay?

A. No. That's one thing that I've been asked about before. The thing is, those things I threw away. I wouldn't have kep those things. But I did keep as much of

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE COMMON PLEAS - CASE#2014CP3700526

A. On what kind of funds?

Q. Cash money in 2007.

A. Cash? With any type of security?

Q. Unsecured. If you lend $100,000 and twelve months later you get back $120,000, do you believe that's a reasonable return on that investment?

A. No.

Q. What do you think would be a reasonable return?

A. You had a hundred thousand dollars in cash, I think he could probably put it in something else where he could be able to make more than that.

Q. Okay. Tell us what you ever put money in that did better than that.

A. I watch a lot of Law and Order and CIS and -- Miami CIS and I'll let you know, I've never been able to do something like that. I mean, I've only charged 10 percent even when I did commercial work for my family. But I've never had something like that. And so I would say in today's market that there is --

Q. Just look at 2007 to 2010, not today.

A. Okay. Yeah. Okay. I mean, you know, that's just -- I can't even relate to that. I've never had that kind of money to be able to even make that kind of money.

Q. Okay. Well, right before this money that was in your trust was transferred to Community First Bank, you had

over a million dollars, did you not?

A. Yes, I think so.

Q. And it was in a trust account with BB&T?

A. Uh-huh.

Q. And that's a yes for the record?

A. Yes, sir. Yes, sir.

Q. And what sort of return did it earn?

A. I really don't know. I think that what happened was that I heard that there was -- because of the way it was signed or whatever that they ended up -- I think that what happened was that they ended up coming and taking an interest in Baker & Baker and it ended up being that I lost instead of gained and it would have probably taken me a while to even get it back.

Q. So you think you had a loss while the fund was being managed by somebody at BB&T?

A. Yeah. And I wouldn't have known why. I wouldn't have known how to be able to question that. Thank God somebody knew it.

Q. Did you pay attention to that trust to see what it was doing?

A. No.

Q. Did you look at monthly statements on that trust?

A. Yes. Because I wanted to make sure that when

ELECTRONICALLY FILED - 2016-Dec-09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

money was being put in that there was -- that they were not holding it or make sure that it was going into my account and make sure that there were certain things that -- what I expected, you know. So that's what it was. I really kind of wanted -- they were more interested in keeping up than keeping the percentage of what a trust was supposed to have in it and I was more interested in getting some of the principal paid so I could have a better --

Q. Did you think that was prudent for you to monitor the account in that fashion?

A. You know, I did the best I could, you know. I just did the best -- and I really didn't know -- and I didn't know to question them. But, you know, I don't know that -- I just wasn't ready to jump into -- I just, you know, I was a little paranoid about letting stuff go, you know? Because I was afraid that it was going to get -- that it was gone and I wasn't sure what to do. So I just absolutely -- I don't know. I just sat back on it, you know?

Q. So you weren't sure and what you did was look at the monthly statements --

A. I looked at it --

Q. -- and studied them to make sure that --

A. -- and I looked at it --

Q. Excuse me, ma'am. Let me finish my question.

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

A. Okay.

Q. And what you did was look at the monthly statements to make sure that the deposits were going where you thought they should go?

A. Oh, I did do that. I did do that.

Q. You did do that?

A. Yes.

Q. And you thought it was a reasonable thing for you to do?

A. Well, you know, that's where my money was. The thing was is that, you know, you've got -- I was seeing when there was, you know, readings of certain types of investments and certain types of pie things. So whenever they tell you certain ways to be able to spread yourself, you know, to certain ways to be able to go, that maybe that you shouldn't do this. But, you know, I have not -- I have not quite felt like I had been in a position to know how to do that, you know.

I've kind of felt like -- to me, I would love to be able to do something. I wish I could mirror what my parents had done, you know? I'd like to have done that.

Q. Did you have any conversations with Mr. Hiott ever about how he intended to invest these monies?

A. Not right -- no. You know, right at first when I got him, I had had that flood in the home, I had the house

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EXHIBIT 2

ELECTRONICALLY FILED - 2016-Dec-09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2016CP3700526

REVOCABLE MANAGEMENT TRUST AGREEMENT

THIS REVOCABLE MANAGEMENT TRUST AGREEMENT is entered into this 2nd day of February, 20 05, by and between DEBBIE ANN BROOKSHIRE of Columbia, South Carolina, as Grantor, who is referred to in this trust instrument in the first person; and BRANCH BANKING AND TRUST COMPANY, as Trustee, which is referred to in this trust instrument as the "Trustee."

A. **Trust Property.** I have delivered to the Trustee the original trust property listed on Schedule A attached, receipt of which the Trustee acknowledges. I or any other person may make additions to the principal of any trust under this trust instrument by lifetime gift, will, designation of the Trustee as beneficiary or otherwise, subject to acceptance by the Trustee.

B. **Distribution of Trust Property During Grantor's Lifetime.** During my lifetime the Trustee is directed as follows:

1. The Trustee shall distribute all or any portion of the trust property as I may direct from time to time. The Trustee will comply with my directions whether received in writing, by facsimile transmission, by electronic transmission, by telephone, in person or by any other means reasonably believed by the Trustee to be from me.

2. During such periods as I am incapacitated, the Trustee may distribute all or any portion of the trust property to me in such amounts and at such times as the Trustee, in its discretion, may determine regardless of any previous directions of mine.

3. The Trustee, in its discretion, may add any income not required to be distributed to principal from time to time.

C. **Disposition of Trust Property Upon Grantor's Death.** Upon my death the remaining trust property shall be distributed to my estate.

D. **Administrative Powers of Trustee.** In addition to the powers conferred by law or elsewhere in this trust instrument, I grant to the Trustee with respect to the trust property the discretionary powers set forth below to be exercised without court order for any purpose that the Trustee may deem advisable.

1. All the powers set forth in Section 62-7-704 of the Code of Laws of South Carolina, 1976, as they exist at the time that I sign this trust instrument, and such powers are incorporated by reference with the same effect as though set forth verbatim in it.

2. The power to acquire and retain for any period of time as investments, without diversification as to kind or amount, any real or personal property or interest in such property (including an undivided, temporary or remainder interest), whether or not originally received by the trust or subsequently acquired, income or non-income producing, or located within or outside the United States, and including, but not limited to, notes, bonds, debentures, mortgages and other obligations, secured or unsecured, common and preferred stocks, mutual funds (including mutual funds or investment trusts administered or advised by the Trustee or affiliate of the Trustee and for which it will receive compensation), common trust funds, general and limited partnership interests, membership interests in limited liability companies and leases.

3. The power (i) to retain for any period or periods of time securities forming part of the trust which are securities of the Trustee or of any corporation owning stock of the Trustee or of any subsidiary or affiliate of or successor to such corporation, and (ii) to acquire such securities by purchase, exchange or otherwise.

EXHIBIT 37 Brookshire 2/8/16

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4. Whenever authorized or directed to distribute property to me or any other beneficiary, whether or not under a legal disability, the power to distribute such property, unless otherwise directed, (i) directly to such beneficiary, including the transfer of property into such beneficiary's name as by depositing cash or registering securities in his or her name, (ii) to a custodian or a custodial trustee for such beneficiary under a uniform gifts or transfers to minors act or uniform custodial trust act, including a custodian or custodial trustee designated by the Trustee, which may be the Trustee, (iii) to the guardian or conservator of such beneficiary's estate or (iv) to any other person, firm or institution for the benefit of such beneficiary, and the receipt of any of the foregoing shall constitute a full acquittance of the Trustee to the extent of the distribution so made.

E. **Successor Trustee.** The procedure for the resignation of the then acting Trustee without court order and the appointment of a successor Trustee without court order shall be as follows:

1. The Trustee shall have the right to resign at any time by giving written notice to the successor Trustee designated below or, if none, to the person or persons designated below who are authorized to appoint a successor Trustee. Such resignation shall be effective upon the acceptance of the trusteeship by a successor Trustee.

2. If a Trustee gives notice of resignation, becomes incapacitated, dies or otherwise ceases to act as Trustee (the "retiring Trustee"), I shall have the right to appoint a successor Trustee. If I am not living and competent, my spouse shall have such right and if my spouse is not living and competent, the retiring Trustee shall have such right.

3. Any successor Trustee may exercise all the powers and authority conferred upon the original Trustee, including the right to resign, and shall not be liable for any acts or omissions of any predecessor Trustee.

F. **Trustee Compensation.** The Trustee shall receive compensation for its services in accordance with its published schedule of fees in effect at the time the services under this trust instrument are rendered.

G. **Waiver of Bond and Court Supervision.** No bond or other security shall be required from the Trustee. The Trustee may act without qualifying before any court or filing with any court any inventory, appraisal, accounting, annual return or other report relating to the administration of the trust.

H. **Accounting to Grantor.** The Trustee shall furnish upon request, at least annually, accounts of receipts and disbursements of trust property to me.

I. **Definitions.** For purposes of this trust instrument,

1. An individual shall be deemed "incapacitated" under any one or more of the following circumstances: (i) during any period that the individual is legally incompetent as determined by a court of competent jurisdiction; (ii) during any period beginning when two physicians licensed to practice medicine certify in writing that, in their opinion, the individual, as a result of illness, age or other cause, no longer has the capacity to act prudently or effectively in financial affairs and continuing until two such physicians (whether or not those making the initial determination) certify in writing that, in their opinion, the individual's capacity is restored; or (iii) during any period that the Trustee has evidence that the individual is absent without explanation or is being detained against his or her will under circumstances in which he or she does not have the capacity to act prudently or effectively in financial affairs.

2. Unless the context indicates otherwise, references to "trust property" mean the net undistributed income and principal of the trust.

J. **Applicable Law.** This trust has been accepted by the Trustee in South Carolina, and all questions pertaining to the validity and construction of this instrument and to the administration of the trust shall be determined in accordance with the laws of that State.

K. **Amendment and Revocation.** I reserve the right at any time to amend or revoke this trust instrument in whole or in part by an instrument delivered to the Trustee.

The Trustee and I have signed and sealed this instrument on the 2nd day of February, 20 05.

GRANTOR:

Witness

Witness

(SEAL)

TRUSTEE:

BRANCH BANKING AND TRUST COMPANY

Witness

By
Vice President

Witness

ATTEST:

[Title of Person Attesting]

[Corporate Seal]

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STATE OF South Carolina

COUNTY OF Richland

I, Carolyn J. Jackson, a Notary Public for said County and State, do hereby certify that Debi Beth Scarbrough personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal, this the 2nd day of February, 20 05

Carolyn J. Jackson
Notary Public

My Commission Expires:

6-9-09

[NOTARIAL SEAL]

STATE OF South Carolina

COUNTY OF Richland

I, Carolyn J. Jackson, a Notary Public, certify that John Hudgens II personally came before me this day and acknowledged that he or she is Secretary of BRANCH BANKING AND TRUST COMPANY, a corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Vice President, sealed with its corporate seal, and attested by himself or herself as its Secretary.

WITNESS my hand and official seal, this the 2nd day of February, 20 05

Carolyn J. Jackson
Notary Public

My Commission Expires:

6-9-09

[NOTARIAL SEAL]

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EXHIBIT 3

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February 23, 2005

Mr. John Baker
Baker and Baker
P. O. Box 12397
Columbia, SC 29211-2397

Mr. Baker:

Enclosed please find Ms. Brookshire's written request to transfer her ownership interest in Baker and Baker to her Revocable Trust Account at BB&T. Under the provisions of this revocable trust, Mr. Brookshire retains full control of her interests but desires BB&T to assist with the management of her interests in Baker and Baker.

Please provide BB&T with information on the additional documentation, if any, you request to effect this ownership transfer. The name, account number, and address of the revocable trust are:

BB&T Trust, Trustee
Debi Baker Brookshire Revocable Trust
P. O. Box 687
Columbia, South Carolina 29202-0687
Account # [redacted]1689

You may contact Jerry Lane at 251-1377 or myself at 251-1317, with your questions.

I am,

With kindest regards,

John H. Hudgens, III
Senior Vice President

EXHIBIT 14 Brookshire 21

BB&T WEALTH MANAGEMENT
1901 Assembly Street, 3rd Floor (29201) P. O. Box 687 Columbia, S.C. 29202
(803) 251-1344 FAX (803) 251-1774

BB&T 004182

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Debi Baker Brookshire
1707 Devine Street
Columbia, South Carolina 29201

February 8, 2005

John D. Baker
Baker & Baker, LLC
1400 Pickens Street
Columbia, South Carolina 29201

John:

This is to confirm that I desire my interest in Baker & Baker, LLC to be recorded on the books of my Revocable Trust with BB&T as Trustee. I wish to authorize BB&T to take whatever steps that you deem necessary to complete the re-registration of my ownership interest. Please be advised that under the terms of my Revocable Trust that I retain sole beneficial interest of my ownership in Baker & Baker, LLC and further that at my death the interest will revert to my estate.

Debi Baker Brookshire

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EXHIBIT 4

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STATE OF SOUTH CAROLINA)
) ASSIGNMENT OF INTEREST IN
COUNTY OF RICHLAND) BAKER AND BAKER REAL ESTATE
DEVELOPERS, LLC

FOR VALUE RECEIVED, the undersigned Debi Baker Brookshire hereby transfers and assigns a ten and eight-tenths percent (10.8%) interest in Baker and Baker Real Estate Developers, LLC to BB&T Trust, Trustee of the Debi Baker Brookshire Revocable Trust (Account [redacted]689).

The transfer to be made effective as of February 28, 2005. The transferee to be a fully substituted member of Baker and Baker Real Estate Developers, LLC, with all rights and privileges therein.

By signing below the undersigned who are the Managers of Baker and Baker Real Estate Developers, LLC, hereby consent to the above transferee being a full substituted member of Baker and Baker Real Estate Developers, LLC.

TRANSFEROR:

Debi Baker Brookshire

We Consent to this Assignment

BAKER AND BAKER REAL ESTATE DEVELOPERS, LLC

By:
JOHN D. BAKER
Manager

By:
STEVEN M. ANASTASION
Manager

EXHIBIT
15
Brookshire 3/31/16

BB&T_001813

The undersigned Trustee of the Debi Baker Brookshire Revocable Trust (Account # [redacted]689) hereby agrees to be bound by all the terms and contributions of the Baker and Baker Real Estate Developers, LLC Operating Agreement as amended.

TRANSFEREE:

BB&T TRUST
Trustee of the Debi Baker Brookshire
Revocable Trust (Account # [redacted]689)

By: _____
Its: Senior Vice President

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EXHIBIT 5

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6/13/07

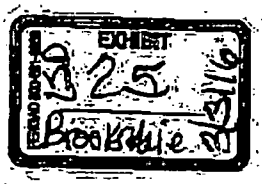
To: Community 1st Bank

To Mr Ben Holt

From Brooklyn Tolliver

Fax 864/886-0934

Ben - you'll get a 'kick' out of what I added to John's message - you won't need compensation - you won't need a California Coffee break after lunch ☺ this -



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Managers' Compensation
1/1/01 - 12/31/02

John Baker
Effective Date

1/1/85	140,000.00
1/1/86	135,000.00
1/1/87	147,500.00
1/1/88	160,000.00
1/1/89	174,500.00
1/1/00	182,000.00
1/1/01	200,000.00
1/1/02	210,000.00

Look Emp. P.O.A. & manage my DAM stocks securities firms

Steven M. Aceszalan
Effective Date

2/1/95	112,884.84
1/1/96	135,000.00
1/1/97	147,500.00
1/1/98	160,000.00
1/1/99	174,500.00
1/1/00	182,000.00
1/1/01	200,000.00
1/1/02	210,000.00

$ + Trustees
$ + Bonus
$ + Broker Fees
$ + Pension Rep (2 Estates)
$ + Partnership(s) (outside)
$ + Executive (B-B)
+ + Board Foundation salary
$ + Interest stock (Share holder)
$ + Rentals of 2 Estates

Item # 16

CFB000342

6/13/07 Fax 251 1774

To: B B&T Wealth Mgmt 2nd Fax see correction
Missy Brau / John Hatch telephone #

From: Debi B Brokaw

Re: Termination of Revocable Trust
& Distribution 15th & Estimated June 15th Taxes

Missy -

Time to reach you on your voice mail several times - I know that you're waiting for further direction/signature b/4 further Releasing. Usually, your transfer my distributions only take about 2 days & the mgr Jeff told me that you had the tax extensions - he did not know the amounts. The Baker Bank said the distributions were to come to me, & need the tax Extension amounts & my 15th distribution. Since I have not received the cks as of today, you are asked to take it out of my trust acct & pay the estimates by 14th & Hand deliver to me by 14th.

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Cont.

6/13/07

BBT Wealth Mgmt
To: Missy Baw / John Hiott
Fax: Deb Blakely

The Balance of the Trust Acc should be wired to Ben Hiott @ his bank.
He is expecting a call for you for directions at that transfer.

The Partnership interest in D7, which is also released as of the recap letter date w/ you directed also by Ben Hiott.

Please call him ASAP for directions.

Community 1st Bank
449 Hwy 123 Bypass
Seneca, S.C. 29678

Bank 864/638-2105 864 886 0206
Fax 864/8860934

Thank you
Deb Blakely

cc: BBT w/ signature
Ben Hiott

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Daniel K. Brookshire/Debi B. Brookshire
[redacted], Columbia, S. Carolina 29201
Phone 803-779-7688 Fax 803-799-5942

= 1907440

Date: 6/13/07

To: Vicki Schumbeck / BBET Trust Co

Of: Bank of Bank

2511774

c/o Missy Bl...

Note: Plse send back the cop(s) sent @ 8:20 AM 6/13/07 (fax) = this is for each in the dist is wrong

Fax #: 254050

Message: Vicki

Did mail you the corresponding I gave also have the original signature.

I have received the distributions for the E Estate due Jun 15. (the 15th distribution)

* Plse form a copy of the ck & any copies of the letter notes etc.

BB&T Trust Co is waiting for my signature direction to how to handle the partnership interest cash balance in the Smith acct.

Do like to loan some of the balance to the co (Bank) loan for an need of expenses for a month or two

Do also need to pay back my personal note to you & any Operating cost you incurred for me.

Debi

We are transmitting 2 page(s) including this cover page. If the transmission is not complete, please call 803-779-7688, or advise by return fax.

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ACCOUNT STATEMENT

MAY 01, 2007 TO MAY 31, 2007

ACCOUNT NAME: BROOKSHIRE DEBI
ACCOUNT NUMBER: [redacted] 689

TRANSACTION SUMMARY

	CURRENT PERIOD			YEAR TO DATE		
	PRINCIPAL CASH	INCOME CASH	COST	PRINCIPAL CASH	INCOME CASH	COST
BEGINNING BALANCE	0.00	0.00	3,202,756.81	0.00	0.00	3,421,976.51
INCOME						
INTEREST		4,861.70			11,068.34	
TOTAL INCOME	0.00	4,861.70	0.00	0.00	11,068.34	0.00
SALES/MATURITIES						
NET CASH MGT SALES	41,081.14	1,344.31	42,425.45			
TOTAL SALES/MATURITIES	41,081.14	1,344.31	42,425.45	0.00	0.00	0.00
PURCHASES						
NET CASH MGT PURCH				824,251.53	1,146.98	803,144.51
TOTAL PURCHASES	0.00	0.00	0.00	824,251.53	1,146.98	803,144.51
DISBURSEMENTS						
DISBURSEMENTS	43,644.82	6,310.74		410,507.88	34,357.06	
TOTAL DISBURSEMENTS	43,644.82	6,310.74	0.00	410,507.88	34,357.06	0.00
CASH RECEIPTS						
CASH RECEIVED	5,433.76			1,243,443.56	5,433.76	
TOTAL CASH RECEIPTS	5,433.76	0.00	0.00	1,243,443.56	5,433.76	0.00
FEES						
FEES	2,607.73			11,716.39		
TOTAL FEES	2,607.73	0.00	0.00	11,716.39	0.00	0.00
MISCELLANEOUS	177.65	177.65	0.00	16,997.76	16,997.76	0.00
ENDING BALANCE	0.00	0.00	3,228,121.05	0.00	0.00	3,226,121.05

TRANSACTION STATEMENT

DATE	DESCRIPTION	PRINCIPAL CASH	INCOME CASH	COST	GAIN / LOSS
05/01/07	BEGINNING BALANCE [redacted] 685	0.00	0.00	3,202,756.81	
05/01/07	BB&T PRIME MONEY MARKET CL I FUND # 0350 INTEREST ON BB&T PRIME MONEY MARKET CL I FUND # 0350 PAYABLE 04/30/2007		4,861.70		
05/02/07	NET CASH MANAGEMENT	41,081.14	1,344.31	42,425.45	
05/02/07	REMITTANCE TO BRANCH BANKING AND TRUST RETAIL LOAN [redacted] 689 DEBI BROOKSHIRE		1,146.98		
05/09/07	REMITTANCE TO BRANCH BANKING AND TRUST FOR PAYOFF ON CONSUMER LOAN DEBI BROOKSHIRE	43,644.82			

0607 - 002107 045507 004 00001 0001 P2PEPARIA 8.173000 689 D080107 0X1207

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BB&T WEALTH MANAGEMENT

ACCOUNT STATEMENT

MAY 01, 2007 TO MAY 31, 2007

ACCOUNT NAME: BROOKSHIRE DEBI
ACCOUNT NUMBER: [redacted] 629

BRANCH BANKING AND TRUST CO - SC
PO BOX 2887
WILSON, NC 27894-2887

DEBI BAKER BROOKSHIRE
1707 DEVINE STREET
COLUMBIA, SC 29201

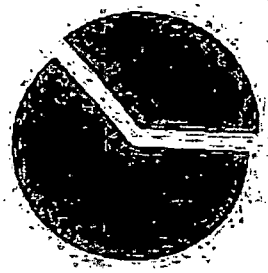
ACCOUNT NAME:	BRANCH BANKING AND TRUST COMPANY TRUSTEE DEBI BAKER BROOKSHIRE REVOCABLE TRUST
WEALTH MGMT ADVISOR:	JOHN BUDGENS 803-251-1317 JHBudgens@bbandt.com
PERSONAL TRUST SPECIALIST:	MISSY BROWN 803-251-1314 MLBROWN@BBANDT.COM
PORTFOLIO MANAGER:	MISSY BROWN 803-251-1314 MLBROWN@BBANDT.COM

BB&T WEALTH MANAGEMENT

ENHANCING AND PRESERVING WEALTH FOR GENERATIONS. PLEASE CONTACT YOUR WEALTH MANAGEMENT ADVISOR TO LEARN OF OTHER INTERESTING WAYS WE CAN HELP YOU ACHIEVE ECONOMIC SUCCESS AND FINANCIAL SECURITY.

INVESTMENT PORTFOLIO SUMMARY

MARKET VALUE AS OF	05/01/2007	05/31/2007	% OF ACCOUNT
CASH AND CASH EQUIVALENTS	1,221,064.61	1,178,431.06	36.5%
OTHER ASSETS	2,047,684.00	2,047,684.00	63.5%
Total	3,268,748.61	3,226,221.06	100.0%



ACCOUNT ACTIVITY SUMMARY

	THIS PERIOD	YEAR TO DATE
BEGINNING MARKET VALUE	3,268,748.61	2,422,976.51
INCOME	4,861.78	11,068.56
DISBURSEMENTS	50,225.16	445,064.94
CASH RECEIPTS	5,433.76	1,248,877.12
FEES	2,697.73	11,736.39
ENDING MARKET VALUE	3,226,121.06	3,226,121.06

REALIZED CAPITAL GAINS / LOSSES

	THIS PERIOD	YEAR TO DATE
TOTAL GAINS / LOSSES	0.00	0.00

SET 051607 045407 1004 00000 00000 P2PSPAPABLE 173000 888 D0001070041207

CFB000347

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ACCOUNT STATEMENT

MAY 01, 2007 TO MAY 31, 2007

ACCOUNT NAME: BROOKSHIRE DEBI

ACCOUNT NUMBER: [redacted] 6/09

TRANSACTION SUMMARY

	CURRENT PERIOD			YEAR TO DATE		
	PRINCIPAL CASH	INCOME CASH	COST	PRINCIPAL CASH	INCOME CASH	COST
BEGINNING BALANCE	0.00	0.00	5,293,748.61	0.00	0.00	5,427,176.51
INCOME						
INTEREST		4,551.78			11,068.56	
TOTAL INCOME	0.00	4,551.78	0.00	0.00	11,068.56	0.00
SALES/MATURITIES						

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EXHIBIT 6

Daniel K. Brookshire/Debi B. Brookshire
[redacted] Columbia, S. Carolina 29201
Phone 803-779-7688 Fax 803-799-5062

JSD-7440

Date: 1/16/04

To: John H

Of: BB T Neab

Fax #: 251 1774

Message: Please pay these bills ASAP

Also - Request $1900 wth my acct.

Deb

We are transmitting ___ page(s) including this cover page. If the transmission is not complete, please call 803-779-7688, or advise or return fax.

EXHIBIT 17 Brookshire 9/13/11

BB&T_001964

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BERRY, QUACKENBUSH & STUART P.A.
1122 Lady Street, 6th floor
PO BOX 394
COLUMBIA, SC 29202-0394
Telephone # (803) 779-2850
Fax # (803) 799-3854
Tax I.D. # 57-0787770

Debi B. Brookshire
[redacted]
Columbia SC 29201

November 23, 2005
Client Matter #: 8471-2091A
Invoice No: 110835

General Business Matter

PROFESSIONAL FEES

			Rate	Hours	
11/03/2005	BCC	Telephone conferences with Jeff Nates; letter to Alan Reyner	110.00	1.00	110.00
11/09/2005	BCC	Telephone conference with Johnny Hudgens; review of file	110.00	0.50	55.00
		FOR CURRENT SERVICES RENDERED		1.50	165.00

Recapitulation

Timekeeper	Title	Hours	Rate	Total
Blakely C. Cahoon	Associate	1.50	$110.00	$165.00

DISBURSEMENTS

	Postage	1.34
	TOTAL DISBURSEMENTS	1.34
	AMOUNT DUE THIS INVOICE	166.34
11/23/2005	Payment of Invoice	-166.34
	TOTAL AMOUNT DUE	$0.00

Your trust account balance is:

	Opening Balance	$11,157.66
11/23/2005	fees/costs	-166.34
	PAYEE: Berry, Quackenbush & Stuart, PA	
	Closing Balance	$10,991.32

Credit remainder to client

BB&T_001965

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The Hobbs Group, PA

1704 Laurel Street
Columbia, SC 29201
803-799-0555

Debbie Baker Brookshire
[redacted]
Columbia, SC 29205

Invoice No. 8473
Date 11/30/2005
Client No. 5087

Professional services rendered in connection with gathering information for 2003, updating tax return for missing information, additional payment items, additional K-1 information, completing returns, and phone calls to Johnnie Hudges about dollars due.

Current Amount Due	$ 750.00
Prior Balance	1,706.00
Total Amount Due	$ 2,456.00

0 - 30	31 - 60	61 - 90	91 - 120	Over 120	Balance
750.00	750.00	456.00	225.00	259.00	2,456.00

For your convenience, The Hobbs Group, P.A. accepts VISA, MASTER CARD, AMERICAN EXPRESS AND DISCOVER.

Please cut along line and return bottom portion with your remittance.

Check # _____ Check Amount _____

American Express ____ Master Card ____ Visa ____ Discover

Card # _____ Expiration Date _____

Card Holder Zip Code _____

Signature _____

Invoice Number: 8473
Invoice Date: 11/30/2005

Client Number: 5087
Debbie Baker Brookshire

BB&T 001966

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ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

1) Send repayment back to: Dana Baker (Creditor Claim) $17,000.00 (Appears to be pd out of life Ins Policy)

David Baker
C/O Baker, Baker
P.O. Box 12397
Columbia, SC 29211
$17,984.77

2) Send 2yrs Bonus Dist Back to my Capital Acc in Baker & Baker 2004, 2005 $81,000.00

BB&T_001967

BB&T

BB&T - SOUTH CAROLINA

STATEMENT DATE
12-28-05

542-07-81-00 25287 0 C 001 18 50 02 [redacted]7509
DEBI BAKER BROOKSHIRE
[redacted]
COLUMBIA SC 29201-4011

BB&T CHECK CARD IS THE CONVENIENT WAY TO PAY FOR HOLIDAY GIFTS AT A STORE OR ONLINE. BB&T GIVES LIABILITY PROTECTION AGAINST UNAUTHORIZED CHARGES IF THE CARD OR NUMBER IS LOST OR STOLEN.

CONSTANT CREDIT ACCOUNT NUMBER [redacted]7509

ACCOUNT SUMMARY

PREVIOUS BALANCE AS OF 11-29-05	2,132.78	AVERAGE DAILY BALANCE	2,095.23
0 ADVANCES/DEBITS	.00+	DAYS IN BILLING CYCLE	29
1 PAYMENTS/CREDITS	42.80-	DAILY PERIODIC RATE	0.0004951
FINANCE CHARGE	29.96+	ANNUAL PERCENTAGE RATE	18.000%
NEW BALANCE AS OF 12-28-05	2,120.74	CREDIT LIMIT	2,050.00
		AVAILABLE CREDIT	129.26-

2005 FINANCE CHARGES BILLED YEAR-TO-DATE 309.45

PAYMENT INFORMATION

-	PAST DUE AMOUNT	.00
+	CURRENT PAYMENT DUE	41.01
	TOTAL PAYMENT DUE	41.01

CURRENT PAYMENT DUE ON 01-12-06

IF MAILING A PAYMENT SUBMIT TO: BB&T CONSTANT CREDIT, PO BOX 200, WILSON NC 27894-0200

ADVANCES/OTHER DEBITS

DATE	AMOUNT	DESCRIPTION	REFERENCE NUMBER
12-28	29.96	FINANCE CHARGE	

PAYMENTS/OTHER CREDITS

DATE	AMOUNT	DESCRIPTION	REFERENCE NUMBER
12-14	42.00	DUE DATE 12-14-05	2005348 5124445290
		AUTOMATIC PAYMENT	2005348 5124445290
		ACCOUNT NUMBER [redacted]5298	2005348 5124445290

FOR ASSISTANCE, CALL YOUR LOCAL BB&T BRANCH OR FOR BB&T PHONEBANK, CALL 1-800-226-5228.

BB&T_001968

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ACCORDING TO OUR RECORDS YOUR TAXES ARE PAID BY YOUR MORTGAGE COMPANY. THE COPY PROVIDED BELOW IS FOR YOUR INFORMATION ONLY. IF THIS IS IN ERROR, AND YOU ARE SUPPOSED TO PAY THIS BILL YOURSELF, YOU MAY USE THIS COPY TO PAY IT.

IF THERE WERE ANY CHANGES IN YOUR MORTGAGE IN THE PAST YEAR PLEASE CONTACT YOUR PRESENT MORTGAGE COMPANY.

2005 RICHLAND COUNTY REAL PROPERTY TAX NOTICE

AFTER DECEMBER 31, 2005	AFTER JANUARY 17, 2006	AFTER FEBRUARY 1, 2006	AFTER MARCH 15, 2006	INDICATE AMOUNT PAID
2,063.77	2,125.68	2,270.15	2,373.34	

TAX MAP / PARCEL NUMBER: 11308-14-17 — PROPERTY LOCATION: LOT 2 40.2X98.0X22.4X19.1X13.4X DEVINE ST — PRIOR YEAR TAX: 2,763.37

OWNER	NOTICE NUMBER	CLASS	PROPERTY DESCRIPTION
EB	R-2005-026541	1CO	DEVINE ST

ACRES	ASSESSED VALUE TAXABLE		RATIO		ASSESSED VALUE
	187.100	X	.04	=	7,480
		X		=	

TAXING AUTHORITY	TOTAL ASSESSED VALUE		MILLS		TAX
COUNTY	7,480	X	344.0	=	2,573.12
COLUMBIA	7,480	X	83.4	=	625.33
			HOMESTEAD EXEMPTION		.00
			[illegible]		460.00-
			LOCAL OPTION SALES TAX CREDIT		674.68-
			[illegible]		2,063.77

02-615

1,013.57		49.0
365.52	[illegible]	17.8
114.85	COUNTY T	5.6
78.54	COUNTY BONDS	3.8
110.70	[illegible]	5.4
95.74	PUBLIC LIBRARY	4.6
.00	RECREATION	.0
13.71	RIVERBANKS ZOO	.6
21.69	MIDLANDS TECH	1.1
8.23	MENTAL HEALTH	.4
.00	EAST RICH. FD.	.0
238.22	CITY T	11.5
.00		.0
2,063.77	[illegible]	

COUNTY INCLUDES - OPERATIONS, LANDFILL, CAPITAL REPLACEMENTS, CONSERVATION COMMISSION AND NEIGHBORHOOD REDEVELOPMENT.

LOCAL OPTION SALES TAX CREDIT HAS BEEN APPLIED TO YOUR COUNTY AND CITY TAX DISTRIBUTION.

BB&T_001969

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COUNTY OF LEXINGTON, SOUTH CAROLINA

CLASSIFICATION	CURRENT TAX YEAR ACRES/LOTS	MARKET VALUE	X RATIO	= ASSMT	PREVIOUS TAX YEAR ACRES/LOTS	MARKET VALUE	X RATIO	= ASSMT
OWNER OCCUPIED		0		0		0		0
OTHER PROPERTY		300,000	.06	18,000		155,000	.06	9,100
MARKET VALUE AG.		0		0		0		0
USE VALUE EXC.		0		0		0		0

83351 1 AV 0.278 ****AUTO**5-DIGIT 29201

BROOKSHIRE, DEBI BAKER
[redacted]
COLUMBIA SC 29201-4011

83351
858

ORDER MADE.....: BROOKSHIRE, DEBI BAKER
DECEMBER 31,2004 OWNER: BROOKSHIRE, DANIEL K
LEGAL DESCRIPTION...: BRIDGEPOINTE UNIT 9D
LEGAL DESCRIPTION cont:
PROPERTY LOCATION...: [redacted]
TAX DISTRICT.....: DISTRICT 2 City W.Columbia TIF
PROPERTY TYPE.....: REAL ESTATE
TAX YEAR.....: 2005
RECEIPT NUMBER.....: 2005-043093-107
TMS NUMBER.....: 004579-09-004
LEGAL RESIDENCE.....: No

	CURRENT TAX YEAR					PREVIOUS TAX YEAR				
2005 Assessment:	18,000	Reserved Assmt:	0	Tax Relief:	0	2004 Assmt:	9,100	0/65	0	Tax Relief: 0
TAXING AGENCY	2005 MILLAGE	2005 TAXES	M/O EXEMPT	SC TAX RELIEF	NET TAXES	2004 MILLAGE	2004 TAXES	M/O EXEMPT	SC TAX RELIEF	NET TAXES
SCHOOL										
SCHOOL 5 OPERATIONS	143.400	774.60	0.00	0.00	774.60	157.100	648.86	0.00	0.00	648.86
SALES TAX CREDIT	0.000	0.00	0.00	-99.40	-99.40	0.000	0.00	0.00	0.00	0.00
SCHOOL 5 DEBT	25.200	136.08	0.00	0.00	136.08	25.000	140.40	0.00	0.00	140.40
SALES TAX CREDIT	0.000	0.00	0.00	-136.08	-136.08	0.000	0.00	0.00	0.00	0.00
SUBTOTAL SCHOOL	168.600	910.68	0.00	-194.48	714.20	182.100	989.26	0.00	0.00	833.26
PERCENT OF TOTAL BILL	65.20%				26.63%	54.77%				37.15%
COUNTY										
COUNTY ORDINARY	10.528	189.42	0.00	0.00	189.42	21.084	116.71	0.00	0.00	116.71
LAW ENFORCEMENT	25.519	140.74	0.00	0.00	140.74	25.574	141.68	0.00	0.00	141.68
INDIGENT CARE	1.000	0.42	0.00	0.00	0.42	0.722	4.27	0.00	0.00	4.27
LIBRARY OPERATIONS	5.023	33.69	0.00	0.00	33.69	6.023	33.65	0.00	0.00	33.65
SOLID WASTE	5.574	36.60	0.00	0.00	36.60	7.438	33.03	0.00	0.00	33.03
COUNTY NOTES & BONDS	4.120	22.03	0.00	0.00	22.03	1.057	25.16	0.00	0.00	25.16
LIBRARY BONDS	1.250	5.67	0.00	0.00	5.67	1.102	6.35	0.00	0.00	6.35
SUBTOTAL COUNTY	54.020	348.04	0.00	0.00	348.04	72.220	330.01	0.00	0.00	330.01
PERCENT OF TOTAL BILL	21.94%				13.04%	21.90%				14.45%
AGENCY										
FIRE & ACIDS CODE CPC	10.000	69.01	0.00	0.00	69.01	12.037	69.02	0.00	0.00	69.02
FIRE & ACIDS CODE BONDS	2.000	13.80	0.00	0.00	13.80	2.000	15.62	0.00	0.00	15.62
MIDLAND TECH OPERATIONS	2.524	16.78	0.00	0.00	16.78	3.053	17.74	0.00	0.00	17.74
MIDLAND TECH CAPITAL	1.000	7.40	0.00	0.00	7.40	0.581	3.33	0.00	0.00	3.33
RIVERBANK PARK BONDS	0.600	4.02	0.00	0.00	4.02	0.700	3.76	0.00	0.00	3.76
RIVERBANK PARK OPERATION	1.053	6.59	0.00	0.00	6.59	1.165	6.60	0.00	0.00	6.60
MENTAL HEALTH	0.600	3.54	0.00	0.00	3.54	0.720	3.83	0.00	0.00	3.83
SUBTOTAL AGENCY	20.031	130.78	0.00	0.00	130.78	22.000	118.88	0.00	0.00	118.88
PERCENT OF TOTAL BILL	8.00%				5.17%	6.79%				4.47%
MUNICIPAL										
CITY OF WEST COLUMBIA	51.000	278.40	0.00	0.00	278.40	51.000	278.40	0.00	0.00	278.40
CITY OF W. COLUMBIA TIF	0.000	2,026.82	0.00	0.00	2,026.82	0.000	885.88	0.00	0.00	885.88
SUBTOTAL MUNICIPAL	51.000	2,304.82	0.00	0.00	2,304.82	51.000	1,164.28	0.00	0.00	1,164.28
PERCENT OF TOTAL BILL	19.79%				90.69%	15.57%				43.82%
BILLING TOTALS	294.370	3,692.44	0.00	-194.48	3,444.04	326.320	2,602.75	0.00	0.00	2,653.75

THE SALES TAX CREDIT REFLECTS A HALF YEAR OF COLLECTIONS. TAX YEAR 2005 WILL CONTAIN AN EXTRA YEAR.

THIS BILL REFLECTS OWNERSHIP AS OF 12/31/2004.
IF TAXES ARE PAID FROM YOUR ESCROW, PLEASE FORWARD THIS NOTICE TO MORTGAGE COMPANY.
IF THIS IS YOUR FULL TIME LEGAL RESIDENCE, YOU MAY QUALIFY FOR PROPERTY TAX RELIEF. FOR MORE INFORMATION, CONTACT THE ASSESSOR'S OFFICE AT (803) 785-8150.
IF YOU ARE OVER AGE 65, 100% DISABLED, OR LEGALLY BLIND, AND THIS IS YOUR LEGAL RESIDENCE, YOU MAY QUALIFY FOR HOMESTEAD TAX EXEMPTION. FOR MORE INFORMATION, CONTACT THE OFFICE OF THE COUNTY AUDITOR.
RETURN BOTTOM PORTION OF THIS BILL WITH YOUR PAYMENT. PLEASE USE THE ENCLOSED RETURN ENVELOPE OR MAIL TO THE TREASURER'S ADDRESS SHOWN ON THE BACK OF THIS BILL.
DISCOVER, MASTERCARD, AND VISA ACCEPTED FOR ONLINE PAYMENT ON LEXINGTON COUNTY'S WEB SITE WWW.LEXINGTONCOUNTY.COM. CREDIT CARD PAYMENTS CANNOT BE MADE BY MAIL, AT THE COUNTER, OR BY PHONE.

BB&T 001970

Jan 14 06 04:28p

7864 5062

*** CREDIT CARD PAYMENT FOR TAX YEAR 2004 ONLY ***

RECEIPT NUMBER R-2004-025093 YOU CAN PAY BY CREDIT CARD AT WWW.RICHLANDONLINE.COM OR CALL 803-576-2282. THERE IS A 2% PROCESSING FEE.

MAP, BLOCK, PARCEL 13607-04-10

AMOUNT DUE $ 4,060.41

AMOUNT DUE AFTER 5/20/2005 $ 4,138.41

[redacted] JOSEF O JR

[redacted]

COLUMBIA SC 29201

OVER PAYMENTS TO:

RICHLAND COUNTY TREASURER
PO Box 11947
Columbia SC 29211-1947

R

BB&T_001974

314

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EXHIBIT 7

ELECTRONICALLY FILED - 2016-Dec-09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

February 23, 2007



Mrs. Debi Baker Brookshire
1707 Devine Street
Columbia, SC 29201

RE: Purchase of Motor Home

Dear Debi:

Please find this letter as a follow up to our numerous conversations regarding the purchase of the motor home. I want to express our sincere concern regarding your intent to purchase a motor home. I realize that you have expressed an interest in traveling the country for the next year and a desire to "get away" from Columbia, but we do not feel that purchasing a $250,000+ motor home is a prudent decision, based on several factors nor has the appropriate time been spent to evaluate certain matters. Those matters that need further examination and clarification are numerous, including:

*Paying for the motor home in full with the available cash in your trust will result in an extraordinary depletion of your available liquid assets, leaving less than $80,000 in cash in your Revocable Trust.

*You mentioned having the motor home refinanced or obtaining a line of credit after you have purchased the motor home and it is paid in full. We have tried to explain to you that the motor home will significantly depreciate once titled in your name and have explained that if you want to finance the motor home at any time, that the best time to seek financing arrangements is prior to the motor home being titled in your name.

*The terms of the custody arrangement regarding the children and if you are legally allowed to take the children out of South Carolina at your leisure. Does their medical coverage extend outside South Carolina, including necessary prescriptions, etc? We have strongly suggested you seek the guidance of your adoption attorney regarding this matter.

*Additional expenses and logistics of owning the motor home including where to park/store the motor home, maintenance, upkeep, insurance, taxes, satellite subscription, travel memberships, etc

BB&T WEALTH MANAGEMENT
1901 Assembly Street, 3rd Floor (29201) P. O. Box 687, Columbia, S. C. 29202
(803) 251-1333 FAX: (803) 251-1771

BB&T 004033

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As Jordan reaches "school age" this year, you mentioned home schooling while traveling. We have suggested that you ensure that the program is an accredited curriculum.

We have also suggested that you seek some tax guidance from Mark Hobbs or Jeff Nates on the impact of owning the motor home.

We have also recommended that you title the motor home in your name since you will be using your assets to purchase the motor home.

We have suggested and strongly believe that you should put more thought into this purchase before depleting your assets in such a manner without the above items being settled. We believe that you should at least wait until you have sold your home on Devine Street so that your liquid assets will not be depleted as greatly and have confirmed the custody arrangement. I understand that ultimately this is your decision but as trustee of this trust we have strongly advised against this purchase, at this time.

Finally, as we have discussed, if you choose to move forward on this purchase, we require that you submit something to BB&T in writing expressing your intent.

Johnny Hudgens and I are available to discuss this with you at anytime.

With kindest regards,

Melissa "Missy" L. Brown
Vice President
Wealth Management

MLB/m

BB&T_004034

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EXHIBIT 8

ELECTRONICALLY FILED 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

REVOCATION OF THE DEBRA BAKER BROOKSHIRE TRUST AGREEMENT

TO: BB&T, care of Johnny Hudgins, Trustee
P.O. Box 687
Columbia, SC 29202-0687

I, Debra Baker Brookshire, as Settlor in a Revocable Trust Agreement wherein you, as BB&T, are designated as Trustee, do hereby revoke the powers and trusts created and conferred by Settlor in that Revocable Trust Agreement, pursuant to the terms thereof.

I hereby direct you, as trustee, to turn over and deliver to me all property held by you subject to the terms and provisions of the Revocable Living Trust Agreement, together with all accumulations of interest and income.

THIS REVOCATION OF THE BROOKSHIRE REVOCABLE TRUST AGREEMENT is made this the 23 day of MAY, 2007.

Debra Baker Brookshire, Settlor

Sworn to and subscribed before me this the 25 day of May, 2007.
Witness my hand and official seal.

Notary Public
My commission expires: 07/10/2012

EXHIBIT 230 2 3/3/16 Brookshire 3

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EXHIBIT 9

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

General Power of Attorney

I, Debi Baker Brooksbire, residing at 1707 Devine Street, Columbia, SC 29201, hereby appoint Benjamin Lee Hiott of 9 Topsail Lane, Salem, SC 29676, as my Attorney-in-Fact ("Agent").

I hereby revoke any and all general powers of attorney that previously have been signed by me. However, the preceding sentence shall not have the effect of revoking any powers of attorney that are directly related to my health care that previously have been signed by me.

My Agent shall have full power and authority to act on my behalf. This power and authority shall authorize my Agent to manage and conduct all of my affairs and to exercise all of my legal rights and powers, including all rights and powers that I may acquire in the future. My Agent's powers shall include, but not be limited to, the power to:

1. Open, maintain or close bank accounts (including, but not limited to, checking accounts, savings accounts, and certificates of deposit), brokerage accounts, and other similar accounts with financial institutions.

   a. Conduct any business with any banking or financial institution with respect to any of my accounts, including, but not limited to, making deposits and withdrawals, obtaining bank statements, passbooks, drafts, money orders, warrants, and certificates or vouchers payable to me by any person, firm, corporation or political entity.

   b. Perform any act necessary to deposit, negotiate, sell or transfer any note, security, or draft of the United States of America, including U.S. Treasury Securities.

   c. Have access to any safe deposit box that I might own, including its contents.

2. Sell, exchange, buy, invest, or reinvest any assets or property owned by me. Such assets or property may include income producing or non-income producing assets and property.

3. Purchase and/or maintain insurance, including life insurance upon my life or the life of any other appropriate person.

4. Take any and all legal steps necessary to collect any amount of debt owned to me, or to settle any claim, whether made against me or asserted on my behalf against any other person or entity.

5. Enter into binding contracts on my behalf.

6. Exercise all stock rights on my behalf as my proxy, including all rights with respect to stocks, bonds, debentures, or other investments.

7. Maintain and/or operate any business that I may own.

8. Employ professional and business assistance as may be appropriate, including attorneys, accountants, and real estate agents.

9. Sell, convey, lease, mortgage, manage, insure, improve, repair, or perform another act with respect to any of my property (now owned or later acquired) including, but not limited to, real estate and real estate rights (including the right to remove tenants and to recover possession). This includes the right to sell or encumber any homestead that I now own or may own in the future.

EXHIBIT 1 5/16 Brooksbire

CFB001351

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10. Prepare, sign, and file documents with any governmental body or agency, including, but not limited to, authorization to:

a. Prepare, sign and file income and other tax returns with federal, state, local, and other governmental bodies.

b. Obtain information or documents from any government or its agencies, and negotiate, compromise, or settle any matter with such government or agency (including tax matters).

c. Prepare applications, provide information, and perform any other act reasonably requested by any government or its agencies in connection with governmental benefits (including military and social security benefits).

11. Make gifts from my assets to members of my family and to such other persons or charitable organizations with whom I have an established pattern of giving. However, my Agent may not make gifts of my property to the Agent.

12. Transfer any of my assets to the trustee of any revocable trust created by me, if such trust is in existence at the time of such transfer.

13. Disclaim any interest which might otherwise be transferred or distributed to me from any other person, estate, trust, or other entity, as may be appropriate.

The Power of Attorney shall be construed broadly as a General Power of Attorney. The listing of specific powers is not intended to limit or restrict the general powers granted in this Power of Attorney in any manner.

Any power of authority granted to my Agent under this document shall be limited to the extent necessary to prevent this Power of Attorney from causing: (i) my income to be taxable to my Agent, (ii) my assets to be subject to general power of appointment by my Agent, and (iii) my Agent to have any incidents of ownership with respect to any life insurance policies that may own on the life of my Agent.

My Agent shall not be liable for any loss that results from a judgment error that was made in good faith. However, my Agent shall be liable for willful misconduct or the failure to act in good faith while acting under the authority of this Power of Attorney.

I authorize my Agent to indemnify and hold harmless any third party who accepts and acts under this document.

My Agent shall be entitled to reasonable compensation of any services provided as my Agent. My Agent shall be entitled to reimbursement for all reasonable expenses incurred in connection with this Power of Attorney.

My Agent shall provide an accounting for all funds handled and all acts performed as my Agent, if I so request or if such request is made by any authorized personal representative or fiduciary acting on my behalf.

This Power of Attorney shall become effective immediately and shall not be affected by my disability or lack of mental competence, except as may be provided otherwise by an application state statute. This is a Durable Power of Attorney. This Power of Attorney shall continue effective until my death. This power of Attorney may be revoked by me at any time by providing a written notice to my Agent.

Dated May 25, 2007 at Branch Banking & Trust Co. Walhalla, SC

YOUR SIGNATURE:

Dillon Ben Brooks

WITNESS' SIGNATURE:

Allison L Brackett

WITNESS' PRINTED FULL LEGAL NAME:

Allison L Brackett

WITNESS' SIGNATURE:

Shawanna Sturgill

WITNESS' PRINTED FULL LEGAL NAME:

Shawanna Sturgill

Acknowledgement:

STATE OF South Carolina

COUNTY OF Pickens

The foregoing instrument was acknowledged before me this 25 day of May 2007 by Lucas Askins who is personally known to me or who was produced South Carolina Drivers License as identification.

Signature of person taking acknowledgement

Lucas Askins

Name typed, printed, or stamped

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EXHIBIT 10

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF OCONEE

DEBI BAKER BROOKSHIRE,

Plaintiff,

vs. CASE NO. 2014-CP-37-529

COMMUNITY FIRST BANK, INC., and
BENJAMIN LEE HIOTT,

Defendants.

REDACTED TRANSCRIPT

DEPOSITION OF: FREDERICK D. SHEPHERD, JR.

DATE: June 27, 2016

TIME: 9:30 AM

LOCATION: Haynsworth Sinkler Boyd
One North Main Street
2nd Floor
Greenville, SC

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: AMY R. COPE,
Court Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

Fast, Accurate & Friendly

Charleston, SC (843) 722-8414
Hilton Head, SC (843) 785-3263
Columbia, SC (803) 731-5224
Greenville, SC (864) 234-7030
Myrtle Beach, SC (843) 839-3376
Charlotte, NC (704) 573-3919

ELECTRONICALLY FILED - 2016-Dec-09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

Q. Every single one of them had stock?
A. Yes.
Q. All right. So 2007 to 2011, at that time Ben Hiott is senior vice president, CFO, you were the CEO. You've testified earlier that you had direct supervisory role or direct supervision over Ben Hiott, correct?
A. Correct.
Q. During this time or even prior to 2007, did you ever discuss MPS's finances with Mr. Hiott?
A. I'm sure I did, I don't know. I mean, I don't recall specifics, but I'm sure I did.
Q. Well, you testified earlier that you didn't know that Mr. Hiott had signatory power over your account. Why would you talk to Ben Hiott about it if you didn't know?
A. I don't remember the dates, but I was not aware of him signing on the signature card. I was aware of his assisting with or advising or whatever you want to call it, at the golf course. He lived near there, that was on the way home or whatever you want to call it. I knew he liked golf and I know he was out there, so I knew, but I don't know that I -- I didn't discuss as much of the golf course with him.

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ELECTRONICALLY FILED, 2016 Dec 09 01:22 AM, OCONEE - COMMON PLEAS, CASE#2014CP370526

EXHIBIT 11

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF OCONEE

DEBI BAKER BROOKSHIRE,

Plaintiff,

vs.

CASE NO: 2014-CP-37-529

COMMUNITY FIRST BANK, INC., AND BENJAMIN LEE HIOTT,

Defendants.

DEPOSITION OF: PEG CRAVEN

DATE: June 15, 2016

TIME: 11:03 A.M.

LOCATION: Lexington County Public Library
Irmo Branch
6251 St. Andrews Road
Columbia, SC

TAKEN BY: Counsel for the Defendant
Community First Bank, Inc.

REPORTED BY: LORI S. MORTGE,
Certified Court
Reporter, CCR

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

Q. Okay. Are you currently married?
A. Yes.
Q. And is your husband Ron?
A. Ron.
Q. What is his full name?
A. Ronald, R-O-N-A-L-D, Owens, O-W-E-N-S, Craven.
Q. Okay. What does Mr. Craven do for a living -- or did for a living?
A. He did. He retired from Pillsbury, the company, doing resets in grocery stores.
Q. When you say resets in grocery stores, what does that mean?
A. Change everything around, make you confused when you go in. If you're used to working in a store and you know where everything is, or shopping in it, it's moved -- resets.
Q. Okay. And so he worked for Pillsbury --
A. Pillsbury Company as a reset merchandiser.
Q. Okay. So was he responsible for where -- what the Pillsbury setup --
A. That --
Q. -- in various stores?
A. Yes. Sorry.

in around 2007 and 2008?

A. I think that's the time when Debi had asked my husband to take care of her finances and we said absolutely not. You know, I have enough on my plate, because I knew I would be the one doing it. If you're a wife you're a secretary, you're an accountant -- you're everything. He knew that they knew Ben and Ben worked at the bank and Ben had been doing our income taxes, you know, when they were simple income taxes. And I think my husband maybe said, well, see, you know, Ben -- or Debi mentioned Ben's name and we either said yes, I think he's a good person to do it. He's not a CPA but he's an accountant, certified maybe -- not a certified public accountant, but he -- he didn't pass the Bar. He almost did, I think he took it or whatever it is you pass.

Q. The CPA exam?

A. The CPA exam. He didn't pass that, but he's very knowledgeable.

Q. Okay. Why would Debi be asking Ron to take over her financial affairs?

MR. GIESE: Object to the form.

BY MS. BLACK:

Q. You can answer the question.

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

Q. And I think you said that you all said no --

A. Right.

Q. -- to her request?

A. Immediately.

Q. Why did you say no to that request?

A. We just -- my husband and I are pretty -- have a lot of common sense. We don't mess with other people's money. We barely had our own at the time with home equity line and all. It's just -- it would be too much to handle. We had no -- I mean, my husband didn't do well in math in college, so...

Q. Did she offer to pay Ron anything?

A. I think she did say that I will pay you something to handle all of my business.

Q. Do you remember what that was?

A. Huh-uh.

Q. Did it just not get to that level?

A. It never got that far. He's like, oh, no, no, no.

Q. How did Ben Hiott's name come up?

A. Maybe Ron, you know, said, you want to try Ben? But I'm not sure. Since we all knew him or she asked do you think he would be trustworthy.

ELECTRONICALLY FILED 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

(DFT. EXH. 8, Two E-mails, dated December 22 and 23, 2009, Bates Stamp Number CFB005707, was marked for identification.)

BY MS. BLACK:

Q. Ms. Craven, I'm going to hand you what has been marked as Exhibit 8 to your deposition. Is this your e-mail exchange with Mr. Hiott from December 22nd and 23rd, 2009?

A. Yes, it is.

Q. Okay. I'll give you a second to read through it.

A. (Reading.) Okay.

Q. Is it your understanding that Ben and Vickie Hiott drove to Columbia to pick up the children and take them back up to their home for Christmas?

MR. GIESE: Object to the form.

THE WITNESS: I can't remember other than what I'm reading here.

BY MS. BLACK:

Q. Okay. Why did the children spend Christmas with the Hiotts?

MR. GIESE: Object.

THE WITNESS: I think they just offered.

ELECTRONICALLY FILED: 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

get paid for it.

(DFT. EXH. 11, Two E-mails, dated March 16, 2010, Bates Stamp Number CFB005597, was marked for identification.)

BY MS. BLACK:

Q. Ms. Craven, I'm going to hand you what's been marked as Exhibit 11 to your deposition.

A. Mm-hmm.

Q. Is this another e-mail exchange, I guess from you to Ben Hiott and the Russells, on March 16th, 2010 and then I guess at the top Ben replies only to you?

A. Yes.

Q. Okay. Take a second to read through that.

A. (Reading.) Okay.

Q. Did you have any -- we can see the e-mail exchange. Did you have any phone conversations with Mr. Hiott at this time frame about what was going on with Debi and Dan and the children?

A. Probably not.

Q. Okay. Mostly just an e-mail --

A. Yeah.

Q. -- conversation?

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

to this but that you took the kids out to Terry's house?

A. Mm-hmm.

Q. Is that just the one time that you did that?

A. I think it was once.

Q. Okay.

A. It's hard for me to recall, but I think it was one time.

Q. Okay. How did the children do at the Russells?

A. I think they did well. I mean, even at my house Jordan was good, you know. And with us taking the pizza there and him playing and all that he got along fine.

(DFT. EXH. 12, E-mail, dated March 22, 2010, Bates Stamp Number CFB004757, was marked for identification.)

BY MS. BLACK:

Q. I'm going to hand you what has been marked as Exhibit 21 --

THE COURT REPORTER: 12.

BY MS. BLACK:

Q. 12, sorry. Getting mixed up here, thank you. Is this your e-mail exchange with Mr. Hiott

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

and I guess also with the Russells?

A. I think it's from the Russell Ranch --

Q. Right.

A. -- to Ben and I.

Q. Right. And then I see below it says, Love you guys, Terry; and then it looks like --

A. They might have added.

Q. Or that yours came first, perhaps, and that -- and Mr. Russell was replying to you. That is the way I read it, but tell me if you see it --

A. That's true.

Q. -- differently. So is that the e-mail exchange of March 22nd, 2010?

A. Yes.

Q. Okay. I'll give you a chance to read through it.

A. (Reading.) Okay.

Q. In your e-mail in the first paragraph you say: Hi Ben, all went well with Jordan and Macaw visiting with the Russells. Ron talked with Debi on the phone and he said she sounded bad and did not want anyone coming to her house to see her in that shape.

Do you recall what that was all about?

A. Maybe. Sounds like she was drinking. I

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

Q. Okay. We make it too easy for her?
A. Yes.
Q. Can you tell me what you meant by we make it too easy for her?
A. Probably we just helped her so much with picking kids up and taxiing them out there and picking them up and bringing them here.
Q. Okay.
A. Just made her life easy.
MS. BLACK: Okay.
(DFT. EXH. 14, E-mail, dated April 5, 2010, Bates Stamp Number CFB005754, was marked for identification.)
BY MS. BLACK:
Q. Ms. Craven, I'm handing you what has been marked Exhibit 14 to your deposition.
A. Mm-hmm.
Q. And I will tell you that I think that very top e-mail you were not on; that's a Ben Hiott and Russell's e-mail. At the very top of the page.
A. Yes.
Q. But I think you are on either as the author or recipient of the e-mails below.
A. Yes.
Q. Probably we should have taken that out

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

but, anyway. Can you -- are the two e-mails, not the top e-mail but the others, your e-mail chain with the Russells and Mr. Hiott in early April -- April 5th or so of 2010?

A. Yes.

Q. Okay. I'll give you a chance to read through, and then I'll have a couple of questions about your e-mail that's kind of at the bottom.

A. Okay.

Q. Well, the second half of the page.

A. (Reading.) Okay.

Q. Again, I'm kind of in the middle of the page here, but do you see the paragraph that begins -- in your e-mail that begins "How's it going with both kids?"

A. Yes.

Q. On the fifth page -- fifth line, excuse me, of that e-mail you write the phrase "For her being a mindless addict."

A. Yes, I see that --

Q. Do you see that? Can you tell me what you meant by that?

MR. GIESE: I object.

THE WITNESS: Probably with her drinking and I think the doctor had her on medications. That

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

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EXHIBIT 12

To: Baker and Baker Real Estate Developers
Attn: Vickie L. Schermbeck
1400 Pickens Street, 5th floor
Columbia, SC 29201

Dear Ms. Schermbeck:

I appreciate you mailing me the package of the annual meeting that was held on May 31, 2007 and the accompanying letter. I regret I was not allowed at the meeting but the information is helpful.

So that there are no misunderstandings of Mrs. Brookshire's intention we have both signed this statement asking that you forward her distributions in the form of a check to her residence at the address you have in your letter until you receive instructions from her when or if a change will be made by her.

Thanking you in advance for your help in this matter.

Respectfully,

Benjamin Lee Hiott
Power of Attorney

Debra Baker Brookshire

EXHIBIT 37 Brookshire 20

BB&T 002530

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EXHIBIT 13

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

COMMUNITY FIRST BANK

June 14, 2007

BB&T Wealth Management
Attn: Ms. Missy Brown
1901 Assembly Street
Columbia, SC 29201

Originally transmitted via facsimile at 803-251-1332

Missy:

Please send Mrs. Brookshire's cash account via fedline wire transfer to:

Community First Bank
449 Highway 123 By Pass
Seneca, SC 29678
ABA routing number: 053202130

For further credit to:

Mrs. Debra Baker Brookshire
1707 Devine Street
Columbia, SC 29205
Account: [redacted]1950
ATTN: Ben Hiott

Respectfully,

Benjamin L. Hiott
Power of Attorney

Debra Baker Brookshire

Postal Box 1697
Walhalla, SC 29691-1697
(864) 638-2183

Postal Box 459
Seneca, SC 29679
(864) 882-2575

Postal Box 5106
Anderson, SC 29623
(864) 232-2440

Postal Box 247
Williamston, SC 29697-0247
(864) 847-8109

Postal Box 1059
Westminster, SC 29693
(864) 647-9554

MEMBER F.D.I.C.

EXHIBIT 26 3/31/16 Brookshire

BB&T_002545

ELECTRONICALLY FILED - 2016 Dec 09 1:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

June 14, 2007

COMMUNITY FIRST BANK

BB&T Wealth Management
Attn: Ms. Missy Brown
1901 Assembly Street
Columbia, SC 29201

Originally transmitted via facsimile at 803-251-1332

Missy:

Please send Mrs. Brookshire's cash account via fedline wire transfer to:

Community First Bank
449 Highway 123 ByPass
Seneca, SC 29678
ABA routing number: 053202130

For further credit to:

Mrs. Debra Baker Brookshire
1707 Devine Street
Columbia, SC 29205
Account: [redacted]1950
ATTN: Ben Hiott

Respectfully,

Benjamin L. Hiott
Power of Attorney

Debra Baker Brookshire

Postal Box 1897
Walhalla, SC 29691-1897
(864) 638-2185

Postal Box 459
Seneca, SC 29679
(864) 882-2575

Postal Box 5106
Anderson, SC 29623
(864) 222-2460

Postal Box 247
Williamston, SC 29697-0247
(864) 847-5109

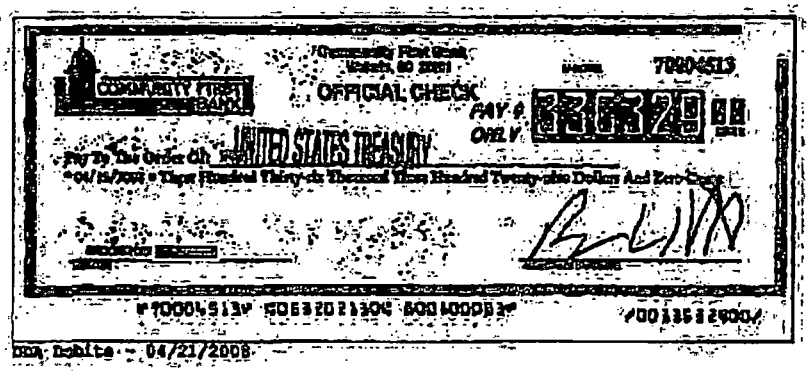
Postal Box 1050
Westminster, SC 29693
(864) 647-9554

MEMBER F.D.I.C

ELECTRONICALLY FILED, 2016 Dec 09, 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3760526

EXHIBIT 14

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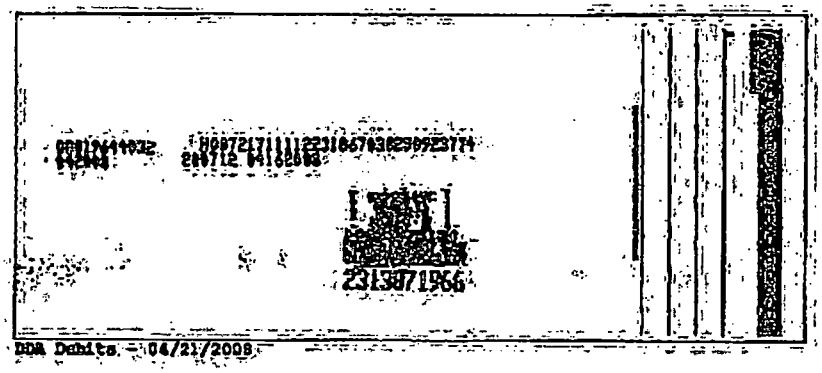
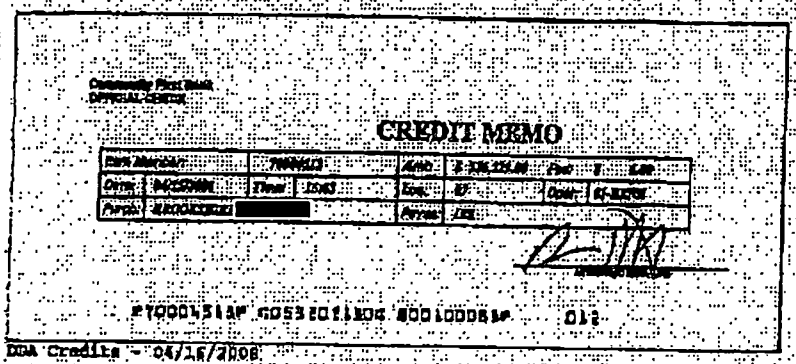


EXHIBIT
32
Brookshire

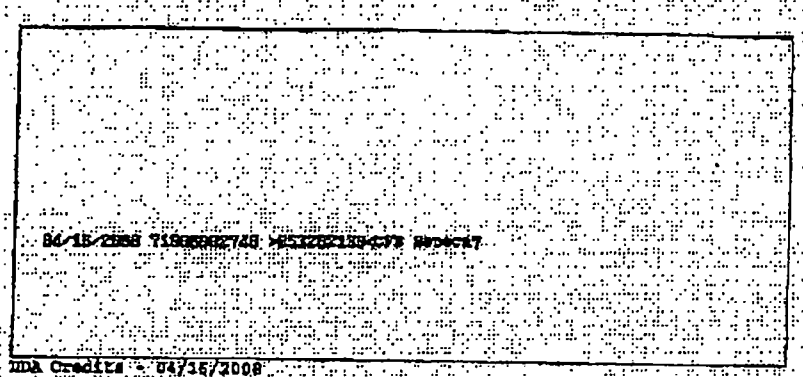
ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526



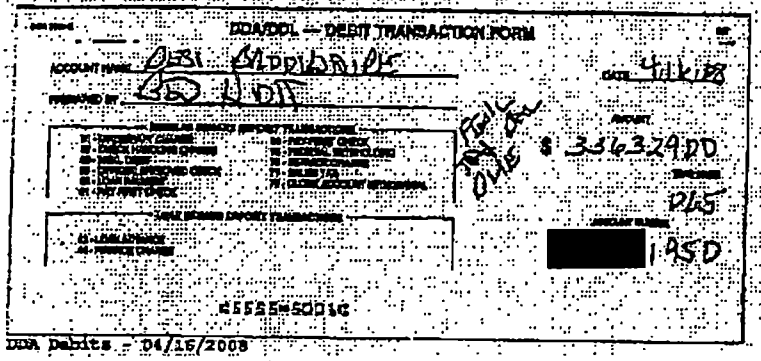
Community First Bank
OFFICIAL CHECK

CREDIT MEMO

DDA Credits - 04/16/2008



DDA Credits - 04/16/2008



DDA/DDL — DEBIT TRANSACTION FORM

ACCOUNT NAME Osbi Supply Drive

PREPARED BY SD UDT

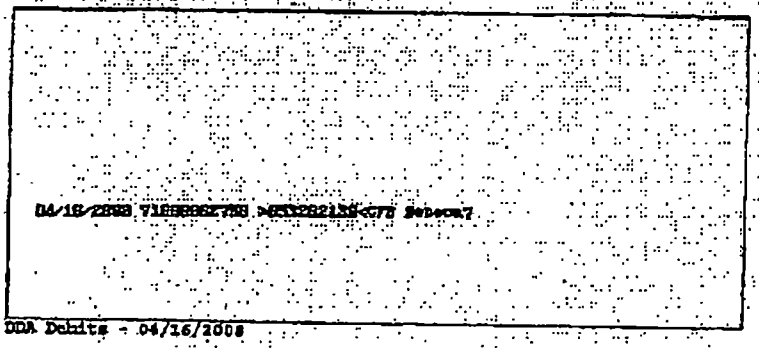
DATE 4/16/08

AMOUNT $ 3463290

DLS

[redacted] 1950

DDA Debits - 04/16/2008



DDA Debits - 04/16/2008

Giese-CFB 0101

Community First Bank
OFFICIAL CHECK

GENERAL LEDGER FEE

Item Number:	70004512			Amt:	$ 57,000.00	Fee:	$ 0.00
Date:	04/15/2008	Time:	15:03	Loc:	07	Oper:	01-BENH
Purch:	TAX [redacted] BROOKSHIRE			Payee:	SC DEPARTMENT OF REVENUE		

⑈70004512⑈ ⑆053202130⑆ 3/4 2000?⑈ 462

Community First Bank
OFFICIAL CHECK

CUSTOMER COPY

Item Number:	70004512			Amt:	$ 57,000.00	Fee:	$ 0.00
Date:	04/15/2008	Time:	15:03	Loc:	07	Oper:	01-BENH
Purch:	TAX [redacted] BROOKSHIRE			Payee:	SC DEPARTMENT OF REVENUE		

CFB000946

346

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

Community First Bank
OFFICIAL CHECK

GENERAL LEDGER FEE

Item Number:		70094513		Amt:	$ 336,329.00	Fee:	$ 0.00
Date:	04/15/2008	Time:	15:03	Loc:	07	Oper:	01-BRNH
Purch:	BROOKSHIRE [redacted]			Payee:	IRS		

Community First Bank
OFFICIAL CHECK

CUSTOMER COPY

Item Number:		70094513		Amt:	$ 336,329.00	Fee:	$ 0.00
Date:	04/15/2008	Time:	15:03	Loc:	07	Oper:	01-BRNH
Purch:	BROOKSHIRE [redacted]			Payee:	IRS		

ELECTRONICALLY FILED 2016 Dec 09 11:22 AM OCONEE COMMON PLEAS CASE#2014CP3700526

CFB000947

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

1030

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

REQUEST FOR EXTENSION OF TIME TO FILE South Carolina Individual Income Tax Return

SC4868
(Rev 9/18/07)
3505

File Electronically www.sctax.org

File a South Carolina extension through SCnetFile. Zero and balance due extensions are accepted. Pay any balance due by credit card or Electronic Funds Withdrawal (EFW). We accept Visa and MasterCard. There is no additional charge for paying your balance due by credit card.

If you pay your balance due by Electronic Funds Withdrawal (EFW), funds are automatically withdrawn from your checking or savings account based on the payment date you select. EFW is also a FREE service to taxpayers.

Who May File:
Use SC4868 to request an extension of time to file SC1040 Individual Income Tax return for:
(1) individual income taxpayers, or
(2) nonresident shareholders of an S corporation, or
(3) nonresident partners of a partnership or LLC.

When to File:
File this request ON OR BEFORE April 15th, or before the original due date of your fiscal year return. If the due date for filing your return falls on a Saturday, Sunday, or legal holiday, substitute the next regular working day. This extension will allow you an additional six months to file your return.

If You Filed a Federal Extension:
If no income tax is anticipated to be due and you have been granted a federal extension of time to file a federal income tax return, the department will accept a copy of the federal extension. In this case, you do not need to send SC a copy of the federal form by the due date of the tax return.

How To File:
File your extension and pay your balance due on-line at www.sctax.org. Or file a paper form SC4868. Mail the original with payment if any. Keep two copies; one copy should be attached to the back of your return when it is filed, and the other should be retained for your records.

This extension cannot be processed without proper Social Security Number(s) for individuals or Employer Identification Number for S corporations or partnerships.

052013 10/27/07

State of South Carolina
DEPARTMENT OF REVENUE
Request for Extension of Time to File
South Carolina Individual Income Tax Return

SC4868
(Rev 9/18/07)
3505
Year 20

Or other fiscal year beginning _____ and ending _____

1 Your Name (Type or Print) DEBRA B BROOKSHIRE	3 Your Social Security number/EIN [redacted]
Spouse Name	Spouse's Social Security number
2 Home Address 1707 DEVINE STREET	4 New Filer or Change of Address, check here ☐
	5 Composite Filer, check here ☐
City, State and Zip Code COLUMBIA SC 29205	Do not write in this space — OFFICE USE
Make check or money order payable to: SC DEPARTMENT OF REVENUE Mail to: SC DEPARTMENT OF REVENUE INCOME TAX COLUMBIA SC 29214-0018	6 Balance Due from Worksheet ► 6 57,000.

14-0501

35061027

CFB000948

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

Form SC4868 Debra B Brookshire [redacted] Page 2

Complete the following worksheet to calculate the amount to be paid with this form if any.
Tax Computation Worksheet (Keep for your records.)

A	Total state income tax	A	$ 100,862.
B	Use Tax (Tax on Out-of-State Purchases)	B	$
C	Total Tax (Add lines A and B)	C	$ 100,862.
D	South Carolina income tax withheld	D	$
E	Payments on Declaration of Estimated Tax (including last year's overpayment transferred)	E	$ 38,916.
F	Tax credits	F	$ 4,946.
G	Total credits (add lines D, E, F)	G	$ 43,862.
H	Balance Due (subtract line G from line C). Enter this amount on Line 6 of the SC4868	H	$ 57,000.

SC4868 1607M3

35062025

CFB000949

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

D-410 (50)
10-10-05

Application for Extension for Filing Individual Income Tax Return

North Carolina Department of Revenue

Instructions

Purpose — Use Form D-410 to ask for 6 more months to file the North Carolina Individual Income Tax Return, Form D-400.

Even if you do not expect to owe additional tax, you must still apply for an extension and file the return by the extended due date for the return to be considered timely filed. You do not have to explain why you are asking for the extension. You do not have to attach this form to your return.

You cannot use this form to apply for an extension of time to file Form D-409, Application for Tax Credit for Qualified Business Investments. To apply for an extension of time to file Form D-409, you must submit a written statement by April 15 requesting additional time. However, the date for filing Form D-409 cannot be extended beyond September 15.

To receive the extra time you MUST:

1. Properly estimate your tax liability using the information available to you, and enter that amount on Line 1 of Form D-410.
2. File Form D-410 by the regular due date of your tax return. You are not required to send a payment of the tax you anticipate as due. However, because an extension of time to file the return does not extend the time for paying the tax, it will benefit you to pay as much as you can.

If you already had 4 extra months to file because you were out of the country (explained below) when your return was due, then use this form to ask for an additional 2 months to file.

Filing Your Tax Return — You may file the income tax return at any time before the extended due date. But remember, Form D-410 does not extend the time to pay the tax. If you do not pay the amount due by the original due date, you will owe interest. You may also be charged penalties.

Interest — You will owe interest on tax not paid by the original due date of the return, even if you had a good reason not to pay on time, you still will owe interest.

Late Payment Penalty — The late payment penalty is 10 percent (minimum $5) of the tax not paid by the due date of the return. The penalty will apply on any remaining balance due if the tax paid by the original due date of the return is less than 90 percent of the total amount of tax due. If the 90 percent rule is met, any remaining balance due, including interest, must be paid with the income tax return on or before the expiration of the extension period to avoid the late payment penalty.

Late Filing Penalty — A penalty is usually charged if your return is filed after the due date (including extensions). It is 5 percent of the tax not paid by the due date for each month, or part of a month, that your return is late (minimum $5, maximum 25 percent).

If you do not file the application for extension by the original due date of the return, you are subject to both the 5 percent per month late filing penalty and the 10 percent late payment penalty on the remaining tax due.

How To Claim Credit For Payments Made With This Form - When you file your return, include the amount paid with this extension on Line 20b of Form D-400. If you and your spouse each file a separate Form D-410, but file a joint return, enter the total paid with the two Forms D-410 on Line 20b of your return.

If you and your spouse jointly filed Form D-410, but file separate returns, you may enter the total amount paid with Form D-410 on either of your separate returns. Or, you and your spouse may divide the payment in any agreed amounts. Be sure each separate return has the social security numbers of both spouses.

Specific Instructions

Line 1 — Enter on this line the amount you expect to enter as Line 14 of Form D-400. If you do not expect to owe tax, enter zero.

Line 2 — Enter on this line any North Carolina income tax withheld, estimated tax payments (including any extra payment applied from the previous year), and any other payments and credits you expect to show on your return.

Out of the Country — If you were a U.S. citizen or resident and were out of the country on the due date of your return, you are granted an automatic 4-month extension to file your return. You do not have to file this form on April 15. Instead, mark the 'Out of the Country' box on page 1 of Form D-400 to indicate you were out of the country on April 15. If you need an additional two months to file your return, select 'yes' for the 'Out of country on due date' indicator located on this form and file this form on or before August 15. For this purpose, 'Out of the Country' means either (1) you live outside the United States and Puerto Rico, AND your main place of work is outside the United States and Puerto Rico, or (2) you are in military or naval service outside the United States and Puerto Rico.

Important: Do not use this form to request extensions of time for filing partnership, estate, trust, gift, corporate income, or franchise tax returns.

Cut Here

D-410 (50)
6-26-02

Application for Extension for Filing Individual Income Tax Return

North Carolina Department of Revenue

[redacted]

Calendar year 2007 or tax year starting

DEBRA B BROOKSHIRE N

Out of country on due date? and ending

1707 DEVINE STREET

COLUMBIA SC 29205

1	Tax Liability for Year	3667.00
2	Payments for Year	7024.00
3	Balance Due $	0.00

7130150104

Mail to: NCDOR, P.O. Box 25000, Raleigh, NC 27640-0015

20079 [redacted] 5 0000000 06491

[redacted] Indiana

CFB000950

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

WHERE TO FILE YOUR EXTENSION
MAIL FORM 4868 (WITH PAYMENT IF APPLICABLE) TO THE ADDRESS LISTED BELOW

INTERNAL REVENUE SERVICE CENTER
DEPARTMENT OF THE TREASURY
ATLANTA GA 39901

Detach Here

Form 4868 — Application for Automatic Extension of Time To File U.S. Individual Income Tax Return — 2007

Department of the Treasury
Internal Revenue Service

For calendar year 2007, or other tax year beginning ____, 2007, ending ____

OMB No. 1545-0074

Part I Identification

1 DEBRA B BROOKSHIRE
1707 DEVINE STREET
COLUMBIA SC 29205

2 [redacted]

3

Part II Individual Income Tax

4	Estimate of total tax liability for 2007	4 446,041.
5	Total 2007 payments	109,712.
6	Balance due. Subtract line 5 from line 4 (see instructions)	336,329.
7	Amount you are paying (see instructions)	►

8 Check here if you are 'out of the country' and a U.S. citizen or resident (see instructions) ► ☐

9 Check here if you file Form 1040NR or 1040NR-EZ and did not receive wages as an employee subject to U.S. income tax withholding ► ☐

[redacted] H0 BR00 30 0 200712 L70

CFB000951

ELECTRONICALLY FILED - 2016 Dec 09 11:22 AM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

Two-Year Comparison 2007

Name(s) Shown on Return: Debra B Brookshire

Social Security Number:

Income	2006	2007	Difference	%
Wages, salaries, tips, etc				
Interest and dividend income	52,072.	29,674.	-22,398.	-43.01
State tax refund	105.	24,426.	24,321.	999.00
Business income (loss)				
Capital and other gains (losses)	132,072.	1,431,039.	1,298,967.	983.53
IRA distributions				
Pensions and annuities				
Rents and royalties				
Partnerships, Scorps, etc	604,996.	622,437.	17,441.	2.88
Farm income (loss)				
Social security benefits				
Income other than the above				
Total Income	789,245.	2,107,576.	1,318,331.	167.04
Adjustments to Income				
Adjusted Gross Income	789,245.	2,107,576.	1,318,331.	167.04
Itemized Deductions				
Medical and dental				
Income or sales tax	116,037.	51,763.	-64,274.	-55.39
Real estate taxes	9,479.	0.	-9,479.	-100.00
Personal property and other taxes	1,644.		-1,644.	-100.00
Interest paid	18,897.		-18,897.	-100.00
Gifts to charity	9,156.	10,856.	1,700.	18.57
Casualty and theft losses				
Miscellaneous	22,355.	159.	-22,196.	-99.29
Phaseout of itemized deductions	14,280.	33,481.	19,201.	134.46
Total Itemized Deductions	163,288.	29,297.	-133,991.	-82.06
Standard or Itemized Deduction	163,288.	29,297.	-133,991.	-82.06
Exemption Amount	3,300.	3,399.	99.	3.00
Taxable Income	622,657.	2,074,880.	1,452,223.	233.23
Income tax	182,983.	447,836.	264,853.	144.74
Additional income taxes				
Alternative minimum tax	31,687.	0.	-31,687.	-100.00
Total Income Taxes	214,670.	447,836.	293,166.	108.62
Nonbusiness credits				
Business credits		1,795.	1,795.	
Total Credits		1,795.	1,795.	
Self-employment tax				
Other taxes	5,430.		-5,430.	-100.00
Total Tax After Credits	220,100.	446,041.	225,941.	102.65
Withholding				
Estimated and extension payments	281,200.	109,712.	-171,488.	-60.98
Earned income credit				
Additional child tax credit				
Other payments	50.		-50.	-100.00
Total Payments	281,250.	109,712.	-171,538.	-60.99
Form 2210 penalty	5,896.	5,444.	-152.	-2.72
Applied to next year's estimated tax				
Refund	55,554.		-55,554.	-100.00
Balance Due		341,773.	341,773.	

Current year effective tax rate ..... 21.16 %

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2007 **Payments** **FDI-80**

Debra B Brookshire

Estimated Tax Payments for 2007

Federal		State			Local		
Amount	Date	Amount	Date	ID	Amount	Date	ID
59,712.	04/17/07		04/16/07			04/16/07	
	06/15/07		06/15/07			06/15/07	
50,000.	09/17/07	10,000.	09/17/07	SC		09/17/07	
	01/15/08		01/15/08			01/15/08	

Other Tax Payments for 2007

	Federal	State	ID	Local	ID
1 Applied to 2007		28,916.	SC		
2 K-1 estates and trusts (estimates)					
3 2007 extensions					
4 Form 1099-B					
5a Other withholding					
b Other withholding					
c Other withholding					

Tax Payments Paid in 2007 for Prior Years

(a) State or Local ID	(b) Paid with Extension	(c) Estimates Paid After 12/31/06	(d) Total Withheld/ Payments	(e) Paid with Return	(f) Total Overpayment	(g) Applied Amount
SC		10,000.	64,600.		28,916.	28,916.
SC			11,212.	504.		
GA				2,839.		
See Additional Prior Year State and Local Taxes Paid						
6 Totals	43.	10,000.	76,605.	3,081.	28,916.	28,916.

7 Other taxes paid during 2007 for prior years	State	ID	State	ID

Form 4868 Extension

8a Update and automatically calculate extension ☐

b Fiscal year beginning /2007 Ending /20

9 Amount paid with extension for individual income tax

10 Enter an 'X' here if you are 'out of the country' and a U.S. citizen or resident ☐

FDI3401 09/16/07

CFB000953

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Debra B Brookshire

FDI-80 Payments
Additional Prior Year State and Local Taxes Paid

(a) State or Local ID	(b) Paid With Extension	(c) Estimates Pd After 12/31	(d) Total Withheld/Paid	(e) Paid With Return	(f) Total Overpayment	(g) Applied Amount
VA	43.		43.	1.		
NJ			950.	237.		

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EXHIBIT 15

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10/14/09

To: Ben
From: Deb B

Ben:

1) Change Benificary on the Mass Mutual Life Ins. (also, should we pay more towards the Pol. or ADD any other Life Ins to this) such as Disability, marine Rider (business), IRA, stocks, Estate, trustee, POA, social security, medicare, partnerships, or dependents or dpts, 3rd partys

2) Reinstate AARP thru with transf of I Designs & BBT Bank
(See if you can add the ins. protection of any risk to hold harmless so that my IRA is part of the group health for AARP

3) One the IRS questio about S.S. being over chrgd (10,000) this might be the 10,000 gift that I gave Hubs (we corrected back in (2006?) that Hubbs might have added to their pay ck & stated as payroll instead of indep contractor



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EXHIBIT 16