

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM Horry COUNTY  
Court of Common Pleas

The Honorable William H. Seals, Jr.

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Appellate Case No. 2012-213439

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TD Bank, N.A., successor by merger to Carolina First  
Bank

Respondent-Appellant,

v.

Grande Crescent Corporation, Larry D. Silver, and  
Edward O. Minniear, Jr.,

Appellants-Respondents.

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JOINT MOTION FOR FURTHER CONTINUANCE OF STAY OF APPEAL

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**I. Introduction**

Respondent-Appellant TD Bank, National Association, successor by merger to Carolina First Bank and Appellants-Respondents Grande Crescent Corporation, Larry D. Silver, and Edward O. Minniear, Jr., hereby jointly move for a further stay of this appeal, including the deadline for filing initial briefs and designations of matter, for an additional period of 90 days up to and including December 19, 2013.

The basis for the request is the execution of a contract for sale of the collateral real property underlying this dispute. The parties have reached an agreement that would settle this litigation if that sale of real property closes. This Court has previously approved a similar stay of

this case pending such a sale, and we believe and submit that the additional stay is warranted, given the current circumstances and the existence of a signed contract for sale.

## **II. Summary of the Case, Negotiating History, and Prior Stay**

TD Bank commenced this action to foreclose on certain real property pledged as collateral for a loan to Grande Crescent, and to collect personal guarantees signed by Mr. Silver and Mr. Minniear. The Grande Crescent parties counterclaimed, alleging TD Bank had breached certain duties to facilitate sale of the collateral. This is an interlocutory appeal of certain issues addressed in an order by the Circuit Court.

Because of the nature of the dispute, a sale of the collateral property to a third party at an acceptable price would enable the parties to settle. Indeed, on May 1, 2013, the parties filed a joint motion requesting 90-day stay of this appeal to allow the parties to pursue a possible sale of the collateral real property underlying portions of the dispute. The parties informed the Court that they had reached a settlement agreement in principle that would resolve the case, if and only if a sale similar to the one proposed were concluded.

By order dated May 3, 2013, the Court granted the motion to stay and directed the parties to provide updates to the Court at 30-day intervals, which the parties have done.

On May 29, 2013, Appellant/Respondent Grande Crescent and the third-party purchaser entered into a written agreement for sale of the collateral property. That agreement provided for a 45-day due diligence period, and gave the purchaser the right to terminate the agreement at any time during the due diligence period. On or about July 9, 2013, that purchaser exercised its right to terminate.

While this termination was unfortunate, other potential purchasers almost immediately expressed an interest in the property. Indeed, a new buyer has appeared and there is an executed

contract for sale. That contract was executed only last week – on September 19, 2013. The parties have again agreed to settle if that contract closes. In light of these recent developments, we believe that a further stay of this matter makes good sense for the Court and for the parties.

One aspect of the current posture of this appeal does require some elaboration. As noted above, the original buyer terminated its contract, but there were immediate expressions of additional interest (including by the new buyer that has now signed a contract. Consequently, the parties filed a Joint Motion for Continued Stay of Appeal on August 1, 2013, requesting an additional 30 days to pursue those new expressions of interest and to try and reach a settlement agreement.

In response to this motion, the Court issued an August 13, 2013 Order dismissing the appeal on the basis that the parties had reported that the case was settled. While the parties have been working continually and diligently to settle the case, and while we believe that the current contract for sale provides an excellent prospect that the case will settle, until the sale of the property actually closes the matter will not be settled. Consequently, the August 13 Order misapprehends the status of the case. Accordingly, we believe that the appropriate action is to treat the appeal as reinstated, but to stay it for an additional 90 days in light of the signed contract for sale described above.

As before, we believe that allowing time for this contract to be consummated is a better use of the time and energy of the parties and this Court, when compared to restarting the appeals process.

### **III. Requested Relief**

Accordingly, the parties respectfully submit this joint motion to further extend the stay of appeal until December 19. The new contract gives the buyer 45 days to conduct due diligence

and 30 days to close, with some contingencies for extension. Thus, the requested 90-day stay should provide time for a closing which, if it occurs as contemplated in the signed contract, will result in settlement of this case. Needless to say, we would of course continue to provide periodic updates to the Court.

If we can provide any further information to the Court in connection with this motion, we would be happy to do so.

Respectfully submitted,

September 23, 2013

*Keith Babcock (by JTG, by permission)* *J. Theodore Gentry*

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AFFIDAVIT OF SERVICE

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This is to certify that Lynda T. Romanstine, an employee of the firm of Wyche, P.A., Attorneys for Respondent-Appellant, did cause this day copies of the within Joint Motion for Further Continuance of Stay of Appeal to be served upon opposing counsel, by mailing copies of same, postage prepaid to the following addresses:

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Lynda T. Romanstine  
Lynda T. Romanstine

SWORN to before me this  
23rd day of September, 2013.

Joanne Mable  
Notary Public for South Carolina  
My Commission Expires: 1-16-2018

W Y C H E

Attorneys at Law

September 23, 2013

Via U. S. Mail

Jenny Abbott Kitchings  
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Re: *TD Bank, N.A., successor-by-merger to Carolina First Bank v. Grande Crescent Corporation; Larry D. Silver; Edward O. Minniear, Jr.*  
Appellate Case No: 2012-213439

Dear Ms. Kitchings:

Please find enclosed for filing the Joint Motion for Further Continuance of Stay of Appeal with regard to the above-referenced matter. We would appreciate it if you would return a file-stamped copy to us in the envelope provided.

Thank you.

Sincerely,



Lynda T. Romanstine  
Litigation Paralegal

Enclosures

cc: Keith M. Babcock  
Michael W. Tighe  
J. Theodore Gentry

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SEP 25 2013

SC Court of Appeals

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