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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

ON APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable Joe M. Crosby
Master-in-Equity

Appellate Case No. 2025-001557

South Carolina Board of Financial Institutions ..... Respondent,

v.

CDM Corporation, Inc., and Guardian Fiduciary Services, LLC ..... Petitioners.

PETITIONERS' RETURN TO RESPONDENT'S MOTION FOR JUDICIAL NOTICE AND TO SUPPLEMENT RECORD

The Court should deny the Bank Board's motion, as it runs directly contrary to the standard of appellate law that this Court does not consider purported factual matters that are outside of the record. Rule 210(h), SCACR.

In addition to breaching appellate protocol, the agency's motion is transparently designed to tempt the Court into expanding the two-word phrase "trust business" in South Carolina Code § 34-21-10 to mean something far more than the business of administering trusts and, in effect, is an unauthorized sur reply brief.

At most, the motion reiterates that Petitioners provide a host of fiduciary services in a variety of contexts—a point that the Petitioners have never denied and most certainly embrace. But the agency then suggests that because the Petitioners provide fiduciary services other than those of a trustee, there must be ***some*** regulatory role for the state agency that was created to oversee banks to play.

This is exactly the "judicially rewrite the statute to change 'trust business' into 'fiduciary business'" argument that the agency put forth in its Respondent's Brief, and it is exactly the same argument the Petitioners fully rebutted in their reply brief. The Court should reject the agency's attempt to induce a judicial rewrite of a statute through the smokescreen of a motion to supplement the record. *See, e.g.*, *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) ("Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute.").

Not only is the premise of the agency's motion legally faulty, so too are the "facts" it claims to present.

Legislative Testimony. Testimony presented by the Petitioners to a legislative subcommittee during its first consideration of a bill is not a "legislative fact," as the General Assembly itself has made no findings about anything. *Cf.* S.C. Code Ann. § 30-4-15 (stating a number of "findings" that supported the General Assembly's passage of FOIA).

Nevertheless, the Petitioners do not dispute what they stated before the legislative subcommittee. They do indeed manage the "health, wealth, and well-being" of their clients, even making decisions regarding life support. That testimony outlined the non-trustee fiduciary services the Petitioners provide, specifically to vulnerable persons with limited financial means, persons suffering from physical or mental disabilities, or for those with no relative or family member that is willing, capable, or qualified to serve.

This goes to the heart of the Petitioners' argument before this Court: The Board of Financial Institutions has no business overseeing or regulating companies on matters concerning the health and wellbeing of vulnerable or incapacitated South Carolina citizens, as the General Assembly has given the agency no such jurisdiction (precisely as the circuit court held).

Moreover, if the Court chooses to consider any of the remarks provided to that legislative subcommittee, then—in fairness—the Court should consider everything that was presented. That includes:

1. Correspondence, attached hereto, from Family Services, Inc., d/b/a Origin SC. Family Services is another private entity that provides fiduciary services to a number of in-need South Carolinians, which the Bank Board is threatening to regulate as a "trust business" despite the company's operation for over 125 years without "regulation" by the agency.

2. Testimony from the Bank Board's representative that there is only a single entity in the entire state that the agency has licensed as a "trust business" agency—Colonial Trust Company—but that he doesn't "purport to know how their business works." https://video.scstatehouse.gov/mp4/20260326SJudiciarySubcommitteeonS16243_1.mp4 (discussion beginning at 12:52).[1]

The Court should not miss the upshot of this latter point.

Throughout this litigation, the Bank Board's repeated refrain has been that the statutory term "trust business" must include all companies providing any fiduciary services "[t]o ensure comprehensive oversight" by a state agency in order to fill "a need for oversight which the probate courts cannot provide." (*E.g.*, Respondent's Brief at 13, 20.)[2] Yet, the Board is simply unaware of how the ***only*** state-chartered trust company's "business works." If the Bank Board doesn't know what its only licensed "trust business" does, it is incredible that the agency would ask this Court to judicially expand the agency's limited jurisdiction to reach even more businesses that have nothing to do with administering trusts.

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[1] Colonial Trust's website states that it works with "ultra high-net worth families," that is serves as a "corporate trustee" for families, and that it "builds portfolios tailored to the unique investment goals of each client." *See generally* https://colonialtrust.com/. This is decidedly different than the fiduciary services that the Petitioners and Family Services provide.

[2] As the Petitioners have explained, the common law fills any such "need for oversight." It is antithetical in American democracy to suggest that nothing can happen in commerce or society at large without being subject to the "comprehensive oversight" of the Fourth Branch of Government.

Grier Affidavit. The agency's submission of testimony from someone named Dearlyn Grier is puzzling. Not only is Ms. Grier's untested "testimony" inadmissible hearsay, it is irrelevant.

The Bank Board seems to think an affidavit from a non-party indicating the Petitioners serve as powers of attorney for their clients is some kind of gotcha. It obviously isn't. At no point have the Petitioners denied serving as power of attorney; it is one of the several non-trustee fiduciary services for which Petitioners are relied upon. Serving as a power of attorney does not equate to serving as a trustee or conducting trust business, as the Petitioners have reiterated throughout this lawsuit—and as the Bank Board confirmed to the Petitioners years before filing this lawsuit. (Appx. 203.)

There is no reason to bypass Rule 210(h) and appellate norms to add this untested, irrelevant non-party hearsay to the record of this case. The Court should deny the agency's motion to take judicial notice of the same.

CONCLUSION

The Bank Board's eve-of-oral argument motion appears to be an attempt to distract the Court from the simple issue on appeal. It should be denied in whole. But if the Court considers anything related to the testimony supplied to a legislative subcommittee, it should consider the entirety of those proceedings, including the attached correspondence from Family Services and the agency's own testimony.

Respectfully submitted,

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