THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Thomas A. Russo, Circuit Court Judge

Case No. 2010-CP-22-1233

Appellate Case No. 2012-213524

First South Bank,

Respondent,

v.

South Causeway, LLC,

Appellant,

APPELLANT'S FINAL REPLY BRIEF

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ARGUMENT

I. The Court Erred By Granting A Directed Verdict Against South Causeway On The Claim of Tortious Interference With Prospective Contract

Respondent First South ignores evidence in the record from which a reasonably jury could conclude that it should be held liable for intentionally interfering with prospective contractual relations. Initially, First South does not dispute that it was aware that Lincoln Harris was interested in purchasing the property and in fact knew that Lincoln Harris had previously entered a letter of intent to buy this land for $12 million. First South further does not deny that it disclosed to Lincoln Harris confidential documents and information regarding its loan to South Causeway, allowing Lincoln Harris to leverage this information and providing a cash offer of $8 million less than the 2008 letter of intent, and $800,000 less than the loan payoff. First South however ignores the testimony from South Causeway's expert that First South's disclosure to Lincoln Harris violated industry standards and was improper.

Rather, First South claims, without citation to any legal authority, that it had an absolute right to interfere with South Causeway's efforts to sell the property because it held a negotiable instrument. This is not the law. Rather, the fact that First South held a negotiable instrument is for the jury to consider when determining whether First South had an improper motive. There is more than sufficient evidence from which a jury could conclude with regard Lincoln Harris' interest in purchasing the property, that First South's "method of interference was improper under the circumstance."

In addition, in its brief First South ignores South Causeway's expert testimony that the disclosure of confidential loan information to the auction company violated industry standards. The auctioneer testified that because of First South's actions, the auction had to begin with an

attempt to sell the whole 19 acre parcel for $7 million, which was not the prefer method. Once there were no bidders at $7 million, then each of the four parcels had a $4.8 million reserve which adversely affected how the auction was conducted. A jury could conclude that as a result of First South's improper actions, South Causeway's efforts to auction the property were interfered with to the detriment of and injury to South Causeway.

II. The Court Erred By Refusing To Admit Emails Between Lincoln Harris and First South On The Basis of Hearsay When The Documents Were Being Offered to Prove Motive and Notice, and Were Not Being Offered for the Truth of the Matter Asserted.

Respondent First South continues to assert that the emails from Lincoln Harris' Greg Currie to First South's President Chip Lyerly discussing Lincoln Harris' interest in purchasing the 19 acre tract were hearsay. First South argues that counsel for South Causeway conceded that these emails were being offered for the truth of the matter asserted. This is not correct. South Causeway's counsel argued extensively that the emails were being offered for notice, rather than for the truth of the matter asserted. (R. 1132-1133)

Admittedly, counsel conceded during argument that the emails could be considered for the truth of the matter asserted for a very limited purpose. Immediately following this representation by counsel, the Court ruled that all the emails were inadmissible for any purpose. This was error. The trial should have allowed the introduction of the emails for the jury's consideration of notice, with a limiting instruction.

First South also argues that even if the lower court erred by excluding the emails, there was no prejudice to South Causeway. First South quotes at length from the trial testimony of its President who repeatedly denied having knowledge that Lincoln Harris was interested in developing the property. First South then asserts that South Causeway's counsel should have impeached the witness with the emails. Having failed to use the emails for impeachment

purposes, South Causeway cannot claim prejudice, according to Respondent.

Respondent's argument is misleading and incorrect. South Causeway's counsel specifically requested permission from the trial court to use the emails for impeachment purposes if the corporate officer refused to acknowledge that he was aware of Lincoln Harris' interest in the property. First South objected to the use of these emails for even impeachment purposes. The trial court then precluded South Causeway from using the emails for any purposes, stating "Miss Byrd, if it's hearsay we're not going to do an end run around it." (R. 1136)

The trial court's refusal to allow use of the emails for even impeachment purposes compounded the prejudice to South Causeway. First, South Causeway was precluded from affirmatively proving notice through the introduction of the emails. Secondly, First South's corporate officer testified that he was unaware of Lincoln Harris' interest in the property. Because of the trial court's evidentiary ruling, South Causeway was then simply stuck with this unimpeached denial.

III. The Court Erred By Not Granting South Causeway's Motion for JNOV or in the Alternative For A New Trial On The Breach of Contract Claim

First South Bank argues that even if the operative language in the contract is construed against it, as required by law, there is sufficient evidence from which a jury could have found for First South. Not so. The commitment letter to Peggy Wheeler-Cribb and Will Darwin Wheeler dated May 30, 2008, states that "$550,000 of the proceeds of the Loan shall be disbursed by Bank into the Interest Reserve Account to fund monthly interest payments due upon the Loan upon *the earlier to occur* of completion of the Infrastructure and six (6) months from the date of Loan closing." It is undisputed that the $550,000 was never deposited into the Interest Reserve Account. Furthermore, had First South deposited the funds in the interest reserve account as required, there would not have been a default for failure to make

the interest payments.

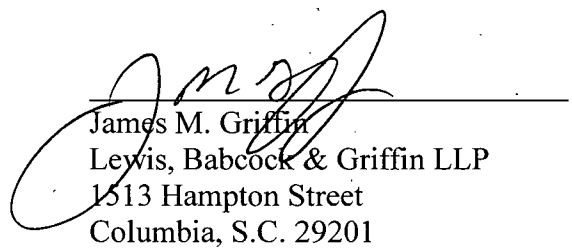
First South presents a circular argument to claim it was excused from making the $550,000 payment in the interest reserve account. Respondent claims South Causeway defaulted on the loan by failing to build out the infrastructure. As noted above, the obligation to deposit $500,000 in the interest reserve account was not conditioned on the completion or even the substantial completion of the infrastructure. Rather, the payment obligation was due within 60 days of the loan closing.

The Court should overturn the trial court's ruling and grant JNOV in South Causeway's favor as to its counterclaim. Alternatively, South Causeway is entitled to a new trial on its breach of contract counterclaim pursuant to the thirteenth juror doctrine because the jury's verdict is not justified by the evidence.

CONCLUSION

South Causeway respectfully requests that this Court vacate the foreclosure judgment, remand the case with instructions to enter judgment in favor of South Causeway on its claim for breach of contract and order a new trial on the claims for intentional interference with prospective contract.

Respectfully submitted.



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December 6, 2013

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CERTIFICATE OF COMPLIANCE

The undersigned counsel hereby certifies that Appellant's Final Reply Brief complies with Rule 211(b) SCACR, and the August 13, 2007, Order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Identifiers and Other Sensitive Information in the Appellate Court Filings."

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PROOF OF SERVICE

I, Jaime Harmon, the undersigned employee of Lewis Babcock & Griffin L.L.P, attorney for Appellant South Causeway, LLC, do hereby certify that I have served a copy of **Appellant's Final Reply Brief** on December 6, 2013, by causing a copy of same to be deposited in the U.S. Mail, proper postage prepaid addressed as follows:

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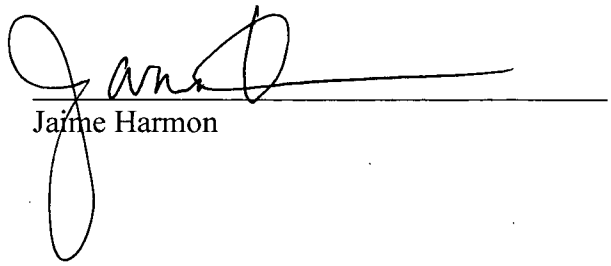

Jaime Harmon

Columbia, South Carolina
December 6, 2013