

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Marvin H. Dukes, III
Beaufort County
Trial Court Case No. 2011-CP-07-1933

RECEIVED

FEB 18 2014

Case No. 2013-002281

SC Court of Appeals

Deep Keel, LLC,

Respondent,

v.

Atlantic Private Equity Group, LLC, Terry L. Rohlfig,
Jerry T. Caldwell, and Bluffton Village Town Center
Property Owners' Association, Inc.,

Defendants,

Of Whom Atlantic Private Equity Group, LLC,
Terry L. Rohlfig, and Jerry T. Caldwell are the

Appellants.

**APPELLANTS' RETURN TO RESPONDENT'S
MOTION TO STRIKE**

Keating L. Simons, III
SIMONS & DEAN
147 Wappoo Creek Drive, Suite 604
Charleston, SC 29412
843-762-9132
Attorneys for Appellants

By its motion Respondent seeks to exclude from the record on appeal requests for admissions served by Respondent and the responses thereto served by Appellants.¹ The requests sought admissions that copies of various documents attached to the requests were “true and accurate” copies of originals that had been “signed by” the individuals named. Appellants denied these requests. At the hearing Judge Dukes inquired “is there somewhere in the pleadings where the Defendants have denied that they executed these documents?” [Tr. p. 15, l. 22] Appellants’ counsel replied:

We never admitted the execution of those documents. We were served, and I don't remember whether it was before or after the substitution of Deep Keel, but we were served with requests for admissions. We did not admit them at that time either. We have never admitted the execution of those documents. [Tr. p. 16, l. 2]²

In its initial brief Respondent has argued that the documents admitted into evidence over Appellants’ objections were “self-authenticating” and that the denials in Appellants’ pleadings were insufficient to create an issue for trial concerning the execution of the documents, citing *National Equipment, Ltd. v. David Jones Sales, Trucking Division, Inc.*, 268 S.C. 551, 555, 235 S.E.2d 125, 127 (1977). (Resp. Brief at 3, 4) However, as noted in that case, the purpose of requiring a specific denial is to put the plaintiff on notice so that he can investigate and obtain evidence. Appellants are entitled to argue here, as they did before the master at the hearing, that the combined effect of Appellants’ denials in their pleadings and in their responses to requests for admissions was sufficient to put Respondent on notice that he needed to properly prove the

¹ A copy of the challenged responses, which include the requests, is attached hereto.

²

Pages 14 through 16 of the hearing transcript are included to substantiate the quotations and to show the context of the quoted exchange.

documents at trial and establish the necessary predicates for their admission into evidence.

Appellants respectfully submit that the material sought to be excluded from the record is relevant to the appeal and that the substance of it was presented to the lower court.

Respectfully submitted,



Keating L. Simons, III

SIMONS & DEAN

147 Wappoo Creek Drive, Suite 604

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(843) 762-9132

ATTORNEYS FOR APPELLANTS

February 10, 2014

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2011-CP-07-1933

COMMUNITY FIRST BANK,)
Plaintiff,)

vs.)

**DEFENDANTS ATLANTIC PRIVATE
EQUITY GROUP, LLC, TERRY L.
ROHLFING AND JERRY T. CALDWELL'S
ANSWERS TO PLAINTIFF'S FIRST SET OF
REQUESTS FOR ADMISSION**

ATLANTIC PRIVATE EQUITY)
GROUP, LLC, TERRY L.)
ROHLFING, JERRY T.)
CALDWELL AND BLUFFTON)
VILLAGE TOWN CENTER)
PROPERTY OWNERS')
ASSOCIATION, INC.,)
Defendants.)

The Defendants, Atlantic Private Equity Group, LLC, Terry L. Rohlfling and Jerry T. Caldwell, answering the Requests for Admissions of the Plaintiff herein, state as follows:

1. Admit the copy of the Note ("Note") attached as Exhibit A is a true and accurate copy of the Note signed by Terry L. Rohlfling, President of Atlantic Private Equity Group, LLC, on or about March 27, 2008.

ANSWER: Denied, pending production and examination of the original.

2. Admit that the Note was for principal sum of Two Million and 00/100 Dollars (\$2,000,000.00) at the rate of 6.5%, with the principal due March 25, 2009.

ANSWER: Denied, pending production and examination of the original

3. Admit the copy of the Mortgage attached as Exhibit B is a true and accurate copy of the Mortgage signed by Terry L. Rohlfling as President of New Colony Holdings Corporation, as Manager of Atlantic Private Equity Group, LLC, on or about March 27, 2008.

ANSWER: Denied, pending production and examination of the original.

4. Admit the copy of the Loan Modification Agreement ("First Modification") attached as Exhibit C is a true and accurate copy of the Loan Modification Agreement signed by Terry L. Rohlring as President of New Colony Holdings Corporation, as Manager of Atlantic Private Equity Group, LLC, on or about April 23, 2009.

ANSWER: Denied, pending production and examination of the original.

5. Admit that First Modification was for the unpaid balance of indebtedness in the amount of One Million Five Hundred Fifty Thousand and 00/100 (\$1,550,000.00), with an interest rate of 5.50% and the principal amount due on April 16, 2010.

ANSWER: Denied, pending production and examination of the original.

6. Admit the copy of the Loan Modification Agreement ("Second Modification") attached as Exhibit D is a true and accurate copy of the Loan Modification Agreement signed by Terry L. Rohlring as President of New Colony Holdings Corporation, as Manager of Atlantic Private Equity Group, LLC, on or about May 24, 2010.

ANSWER: Denied, pending production and examination of the original.

7. Admit that the Second Modification was for the unpaid balance of indebtedness in the amount of Two Million and 00/100 Dollars (\$2,000,000.00), with an interest rate of 6.0% and the principal amount due on July 9, 2015.

ANSWER: Denied, pending production and examination of the original.

8. Admit that Atlantic Private Equity Group, LLC, has failed to make all payments as called for in the Second Modification.

ANSWER: Admitted.

9. Admit that Atlantic Private Equity Group, LLC, is in default under the Note, as modified by the Second Modification.

ANSWER: Denied.

10. Admit the copy of the Guaranty attached as Exhibit E is a true and accurate copy

of the Guaranty signed by Jerry T. Caldwell on or about March 27, 2008.

ANSWER: Denied, pending production and examination of the original.

11. Admit that Jerry T. Caldwell has failed to make payments under the Guaranty.

ANSWER: Admitted.

12. Admit that Jerry T. Caldwell is in default of his obligations under the Guaranty.

ANSWER: Denied.

13. Admit that the copy of the Guaranty attached as Exhibit F is a true and accurate copy of the Guaranty signed by Terry L. Rohlring on or about March 27, 2008.

ANSWER: Denied, pending production and examination of the original.

14. Admit that Terry L. Rohlring has failed to make payments under the Guaranty.

ANSWER: Admitted.

15. Admit that Terry L. Rohlring is in default of his obligations under the Guaranty.

ANSWER: Denied.



Keating L. Simons, III
SIMONS & DEAN
147 Wappoo Creek Drive, Suite 604
Charleston, SC 29412
klsimons@simonsanddean.com
(843) 762-9132
Attorney for Defendants
Atlantic Private Equity Group, LLC, Terry L.
Rohlring and Jerry T. Caldwell

May 16, 2012.

CERTIFICATE OF SERVICE

I, Debra F. Evans, a paralegal with Simons & Dean, do hereby certify that I have served a copy of the foregoing Defendants Atlantic Private Equity Group, LLC, Terry L. Rohlfing and Jerry T. Caldwell's Answers to Plaintiff's First Set of Requests for Admission upon the below named by mailing a copy of same via U.S. Mail, postage prepaid, and properly addressed as follows:

Meredith L. Coker, Esquire
Altman & Coker, LLC
575 King Street, Suite A
Charleston, SC 29403

This ^{11th}~~6~~ day of May, 2012.

SIMONS & DEAN

BY: 
Debra F. Evans

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

DEEP KEEL, LLC,,

Plaintiff,

vs.

CIVIL ACTION NUMBER
2011-CP-07-1933

ATLANTIC PRIVATE EQUITY
GROUP, LLC, TERRY L.
ROHLFING, JERRY T. CALDWELL,
AND BLUFFTON VILLAGE TOWN
CENTER PROPERTY OWNERS'
ASSOCIATION, INC.,

Defendants.

-----/

The Foreclosure hearing, in the
above-entitled cause, taken before the Honorable
Judge Marvin H. Dukes, III, Master-in-Equity,
taken by Ceil Weser, Certified Court Reporter
and Notary Public, at the Beaufort County
Courthouse, 102 Ribaut Road, Beaufort, South
Carolina on the 10th day of July, 2013,
commencing at or about the hour of 11:25 a.m.

1
2 question is it the original signature
3 on the document.

4 THE JUDGE: Okay.

5 Did you have an opportunity to
6 look at the original?

7 MR. SIMONS: No, I have not seen
8 that.

9 THE JUDGE: Just let Mr. Simons
10 look at it real quick.

11 MR. ALTMAN: I will let you look
12 at all of it real quick. These are the
13 original and the assignment.

14 MR. SIMONS: Thank you, Mr.
15 Altman.

16 To sort of cut to the chase, your
17 Honor, my position on these
18 documents --

19 Yeah, that one he can talk about.

20 THE JUDGE: What is your position?
21 I'm sorry.

22 MR. SIMONS: With respect to the
23 bank documents I can only surmise he is
24 going to testify that he received those
25 from the bank as part of the

1
2 transaction by which he purchased this
3 alleged loan.

4 He is not in a position to say
5 that these are bank records. He is not
6 in a position to say what the bank does
7 in terms of its business records
8 policy, and most importantly and most
9 significantly he is not in a position
10 to say that the Defendant signed those
11 documents.

12 He can say the bank gave me these
13 pieces of paper, and I don't know who
14 created them, why they were created,
15 when they were created, or whose
16 signature this is. I can testify --
17 this would be him -- that there is blue
18 ink on this paper, and that is all he
19 can testify to.

20 THE JUDGE: Now I have just had a
21 brief opportunity to look at the
22 Pleadings, but is there somewhere in
23 the Pleadings where the Defendants have
24 denied that they executed these
25 documents?

1
2 MR. SIMONS: We never admitted the
3 execution of those documents. We were
4 served, and I don't remember whether it
5 was before or after the substitution of
6 Deep Keel, but we were served with
7 Requests For Admissions. We did not
8 admit them at that time either.

9 We have never admitted the
10 execution of those documents. And I
11 know that because that is the way I
12 handle these cases. I never admit it
13 and I require the Plaintiff,
14 particularly in a successor situation
15 to come in and prove it. And there
16 isn't any evidence in the record of
17 Mr. Rohlfing having signed those
18 documents as having authority to do so
19 on behalf of New Colony Holdings,
20 whoever that is, and so forth.

21 MR. ALTMAN: Your Honor, I would
22 point out, number 1, that again in
23 paragraph 9 of their Answer admits that
24 they borrowed money as alleged in the
25 Complaint. As to the amounts which are

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Marvin H. Dukes, III
Beaufort County
Trial Court Case No. 2011CP0701933

Case No. 2013-002281

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SC Court of Appeals

Deep Keel, LLC,

Respondent,

v.

Atlantic Private Equity Group, LLC, Terry L. Rohlfig,
Jerry T. Caldwell, and Bluffton Village Town Center
Property Owners' Association, Inc.,

Defendants,

Of Whom Atlantic Private Equity Group, LLC,
Terry L. Rohlfig, and Jerry T. Caldwell are the

Appellants.

PROOF OF SERVICE

I, Debra Y. Coffey, a paralegal with the Law Offices of Simons & Dean, do hereby certify that I have served counsel in this action with a copy of the foregoing Appellants' Return to Respondent's Motion to Strike upon the below named by mailing a copy of same via U.S. Mail, postage prepaid, and properly addressed as follows:

Charles Altman, Esquire
Altman & Coker, LLC
575 King Street, Suite A
Charleston, South Carolina 29403
Attorneys for Respondent

This 10th day of February, 2014.

LAW OFFICES OF SIMONS & DEAN

BY: 

Debra Y. Coffey, Paralegal

SIMONS & DEAN

ATTORNEYS AT LAW

147 WAPPOO CREEK DRIVE, SUITE 604 | CHARLESTON, SC 29412 | 843.762.9132 | FAX: 843.406.9913

Keating L. Simons, III klsimons@simonsanddean.com

Derek F. Dean dfdean@simonsanddean.com

February 10, 2014

The Honorable Jenny Abbott Kitchings
The South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RECEIVED

FEB 18 2014

SC Court of Appeals

RE: *Deep Keel, LLC, Respondent v. Atlantic Private Equity Group, LLC, Terry L. Rohlfig, Jerry T. Caldwell, and Bluffton Village Town Center Property Owners' Association, Inc., Defendants, of Whom Atlantic Private Equity Group, LLC, Terry L. Rohlfig and Jerry T. Caldwell are the Appellants*
Civil Action No.: 2011-CP-07-1933
Appellate Case No. 2013-002281


Dear Ms. Kitchings:

In connection with the above referenced, please find enclosed the original and six (6) copies of Appellants' Return to Respondent's Motion to Strike and Proof of Service. I have included an additional copy of the aforementioned document for the return of the time-stamped copy in the enclosed self addressed and stamped envelope.

Please be advised that by copy of this letter, I am serving Respondent's counsel with aforementioned Appellants' Return to Respondent's Motion to Strike and Proof of Service.

With best regards, I am

Your very truly,


for Keating L. Simons, III

KLS,III/dc

Enclosures

cc: Charles Altman, Esquire (w/enclosures)