

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Circuit Court Judge

Case No. 2009-CP-07-6054
Appellate Case No. 2013-001407

Cynthia Griffis,		Plaintiff,
	v.	
Cherry Hill Estates, LLC, Eugene O'Neil and and Ronald Faulkner,		Defendants,
Of whom Cherry Hill Estates, LLC and Ronald Faulkner are		Appellants.
Cherry Hill Estates, LLC and Ronald Faulkner,		Third Party Plaintiffs,
	v.	
Anthony E. Griffis,		Respondent.

SUPPLEMENTAL RECORD ON APPEAL

Michael W. Mogil
Mogil Law Firm
2 Corpus Christie Place, Ste. 303
Hilton Head Island, SC 29928
(843)785-8110
Attorney for Appellants

Anthony E. Griffis
355 Park Avenue SW
Aiken, SC 29801
(843)368-5013
Respondent *Pro Se*

RECEIVED

FEB 05 2014

SC Court of Appeals

Index to Supplemental Record on Appeal

Griffis v. Cherry Hills, et al

Case No. 2009-CP-07-6054

Appellate Case No. 2013-001407

Index	A1
Deposition Transcript of Eugene O'Neil at p. 13	A2
Deposition Transcript of John P. Qualey, at pp. 48-49, 55-56 and 58	A3
Deposition Transcript of Ronald T. Faulkner at pp. 124, 128	A6
Certificate of Counsel	A8

2 A Mine and I think at that point Ron's.

3 Q Why was Ron Faulkner's financial's
4 involved?

5 A By myself I would not have been able to
6 sustain that loan.

7 Q Why would you not have been able to
8 sustain the loan?

9 A Financially my debt to ratios would not
10 have been correct, and he suggested Ron. I
11 talked to Ron and he agreed to at least take it
12 that far.

13 Q Who suggested Ron?

14 A Mr. Griffis.

15 Q How was Mr. Griffis involved at the
16 hypothetical stage of this?

17 A He wasn't. He just suggested as a
18 financial -- to have the financial means to do
19 the transaction. He knew I was working with
20 Woodlands, because Low Country wouldn't deal
21 with it. They got tired.

22 Q Let us go back if you recall --

23 A There is like four different
24 transactions here, but go ahead.

25 Q Let us go back. Now I will ask you

1 HALE - QUALEY (DIRECT EXAMINATION)
 2 yours?
 3 A I didn't know anything about it.
 4 Q Well, I mean, had you known about it,
 5 would you have acted or operated any differently
 6 than the way you did relative to this
 7 transaction?
 8 A If I had known that Tony Griffis was
 9 going to become a member of Cherry Hill Estates
 10 at some point in the future, after the
 11 transaction?
 12 Q Yes.
 13 A I don't think it would have affected my
 14 handling of the transaction any differently, no.
 15 Q If there had been a commitment made
 16 prior to the transaction for that particular
 17 type arrangement, would that have impacted the
 18 manner in which you handled the transaction in
 19 any fashion?
 20 A Not if the commitment was for something
 21 to be implemented post closing.
 22 Q Do you have any knowledge as to whether
 23 this bill of sale, one-third membership, was
 24 post closing or pre closing?
 25 A I've never seen it, so I don't know

1 HALE - QUALEY (DIRECT EXAMINATION)
 2 A Yes. It should have, yes.
 3 Q Which one is the last disbursement
 4 statement?
 5 A This one dated October 16th, 2007, at
 6 2:36 p.m.
 7 MR. HALE: And it is my intention
 8 to introduce that as well once we have
 9 the copy.
 10 MR. GRIFFIS: What is that?
 11 MR. HALE: That is the
 12 disbursement statement.
 13 BY MR. HALE:
 14 Q I'll now hand you a document that is
 15 Bate stamped 86. It shows copies of checks.
 16 Have you seen any of those checks?
 17 A No. No, I've never seen these.
 18 Q And I'll hand you what has been marked
 19 as Bate stamp 87 and ask you if you have seen
 20 that?
 21 A Yes, I have seen it.
 22 Q And what does Bate stamp 87 represent
 23 to you?
 24 A It is instructions from Tony Griffis to
 25 Brooke in our office. He says, "Please put the

1 HALE - QUALEY (DIRECT EXAMINATION)
 2 anything about it. I don't know when it was
 3 entered into.
 4 Q Now, in your file, do you have a
 5 disbursement sheet for the disbursements that
 6 were made?
 7 A What we would have, yes, we have --
 8 there are actually three different check
 9 disbursement statements, but they all relate to
 10 the same transaction.
 11 Q How do they differ?
 12 A They differ just in the checks that
 13 were voided. One shows a check to the Clerk of
 14 Court as being voided, and another shows another
 15 check to the Clerk of Court as being voided.
 16 That would be because they were initially made
 17 out to the Clerk of Court and should have been
 18 made out to the Register of Deeds for Jasper
 19 County. Because Jasper County didn't have a
 20 Register of Deeds until 2005 or something, so
 21 she probably entered it as Clerk of Court and
 22 then changed it to Register of Deeds.
 23 Q Would the last disbursement statement
 24 be complete as to all of your disbursements?
 25 Would it have all the changes and the voiding?

1 HALE - QUALEY (DIRECT EXAMINATION)
 2 \$200,000 second mortgage and note only in
 3 Cynthia Griffis' name" and then specifies the
 4 terms of the note, 5 percent annual interest,
 5 two year balloon, for a total interest and
 6 principal from Cherry Hill Estates, LLC,
 7 personally guaranteed by both Eugene O'Neil and
 8 Ronald Faulkner, signed Anthony E. Griffis.
 9 Q And you received that, the date
 10 indicates, October 9th, 2007?
 11 A I recall seeing a copy of that in my
 12 file, yes.
 13 Q And did you comply with this request?
 14 A Yes, we did.
 15 MR. HALE: And again, this is now
 16 an exhibit by reference; correct, Mike?
 17 MR. MOGIL: Correct.
 18 MR. HALE: Tony?
 19 MR. GRIFFIS: What reference would
 20 that be?
 21 THE WITNESS: The Bate stamp.
 22 MR. GRIFFIS: Okay, I got you.
 23 BY MR. HALE:
 24 Q Now, do you recall having any
 25 discussions with Tony Griffis pertaining to this

1 HALE - QUALEY (DIRECT EXAMINATION)
2 disbursements, who provided you information as
3 to how the funds were to be disbursed?

4 A I would assume that was addressed
5 directly between Brooke and Tony Griffis. And
6 this is a copy of our wire transfer wiring the
7 money to Tony's account.

8 MR. HALE: I'd like to put that in-
9 as an exhibit, so if you'll make a
10 copy. If we can take a brief break
11 while she's making the copy, and we can
12 talk.

13 (Whereupon, an off-the-record
14 discussion was held.)

15 (Whereupon, Plaintiff's Exhibit
16 Number 9 was marked for
17 identification.)

18 BY MR. HALE:

19 Q Back on the record. The documents that
20 you prepared, the note, the second mortgage,
21 guarantee and so forth, did you send them to
22 Woodlands Bank to be reviewed?

23 A On the second mortgage?

24 Q Yes.

25 A I don't believe so. I don't think they

1 GRIFFIS - QUALEY (CROSS EXAMINATION)

2 A Well, there was just one purchaser,
3 Cherry Hill Estates, but I represented them and
4 their two principals who were guarantors of the
5 two loans that were involved.

6 Q No question that you also acted as the
7 attorney in fact for Ronald Faulkner in the
8 execution of the documents?

9 A Correct.

10 Q No question that you prepared all the
11 closing documents on behalf of Woodlands Bank as
12 well as the personal guarantees to Cynthia
13 Griffis as well as to Woodlands Bank?

14 A You said did I prepare the loan
15 documents on behalf of Woodlands Bank.
16 Typically, we get loan documents from them and
17 don't actually prepare them for the bank, so
18 their guarantee form was their form. I didn't
19 prepare them.

20 Q Okay. I understand. Now, on the
21 guarantee that you prepared and executed,
22 there's a separate guarantee, and there's also
23 guarantee language attached to the promissory
24 note.

25 A Right.

1 GRIFFIS - QUALEY (CROSS EXAMINATION)
2 requested to see them. They just informed us
3 that they were aware of the secondary financing.

4 There's nothing in here to indicate
5 that the loan documents for the secondary
6 financing were sent to Woodlands Bank for
7 review, and I don't think they requested them to
8 review. All they wanted to know was that it was
9 a junior loan, and that was all they cared
10 about. So, as I said, to the best of my
11 knowledge, we did not send them to Woodlands
12 Bank, because they didn't request them.

13 MR. HALE: I have no further
14 questions at this time.

15 MR. GRIFFIS: I've got a couple
16 just for clarification.

17 MR. HALE: And I'll let you keep
18 your file so you can use your file.

19 CROSS EXAMINATION

20 BY MR. GRIFFIS:

21 Q Jack, just by way of clarification,
22 there's no doubt in your mind that you were
23 acting as attorney for the three purchasers in
24 this transaction, Cherry Hill Estates, LLC,
25 Ronald Faulkner, and Eugene O'Neil?

1 GRIFFIS - QUALEY (CROSS EXAMINATION)

2 Q You don't know whether Woodlands Bank
3 reviewed that, except that it's -- I think your
4 position was it made -- because you just said,
5 it made no difference to them so long as it was
6 a junior mortgage.

7 A Right.

8 Q How about the Power of Attorney?

9 A It was sent to them for review and
10 approval.

11 Q So that was done in advance of the
12 closing, the Power of Attorney you had from
13 Ronald Faulkner that was executed on
14 October 10th, the date of the closing?

15 A Yes. That was sent to the bank for
16 approval.

17 Q Under that Power of Attorney, and can
18 you get a copy out, just for my clarification
19 one more time --

20 MR. HALE: If you'll hold on Tony,
21 I will give you what has been Bate
22 stamped Number 23 and 24 as the Power
23 of Attorney.

24 THE WITNESS: I have the original
25 here actually.

1 GRIFFIS - QUALEY (CROSS EXAMINATION)
 2 MR. HALE: Well, I'm assuming
 3 though, for purposes of the record --
 4 THE WITNESS: Okay, I'll refer to
 5 the Bate stamp. Bate stamps Number 23
 6 and 24, this is the Power of Attorney
 7 signed by Mr. Faulkner.
 8 BY MR. GRIFFIS:
 9 Q Is there any doubt in your mind from
 10 that Power of Attorney that was executed by
 11 Ronald Faulkner that you had express authority
 12 to execute the guarantees to Cynthia Griffis and
 13 to Woodlands Bank on his behalf, you acting as
 14 his attorney in fact?
 15 A No, there is no question in my mind
 16 that I had that authorization.
 17 Q Now, the document that's referenced
 18 Bate stamp 87, which is the memo from me to
 19 Brooke dated October 9th, '07, there's a fax
 20 memo that we just had a minute ago, Exhibit Bate
 21 stamp 87 and 88, I think 88 was the e-mail she
 22 sent to you, is there any doubt in your mind
 23 that as of October 9, 2007, you as the attorney
 24 and later as the attorney in fact had notice
 25 that there were personal guarantees required for

1 MOGIL - QUALEY (CROSS EXAMINATION)
 2 the \$200,000 note given to Cynthia Griffis?
 3 A You put me on notice of that
 4 requirement.
 5 Q On October 9, 2007?
 6 A Correct.
 7 MR. GRIFFIS: Thanks. I don't
 8 have any more questions.
 9 MR. MOGIL: Michael Mogil for
 10 Defendant Faulkner and Cherry Hill
 11 Estates, not for Mr. O'Neil.
 12 CROSS EXAMINATION
 13 BY MR. MOGIL:
 14 Q Mr. Griffis just asked you about when
 15 you became on notice that there was a personal
 16 guarantee required on the secondary financing
 17 and the implication. And your answer was that
 18 it was on October 9th, which was the day before
 19 closing.
 20 You've also testified that you don't
 21 recall any specific conversations with
 22 Mr. Faulkner.
 23 In your mind, whom else might have or
 24 would have been the person that explained to
 25 Mr. Faulkner about the change in circumstances

1 MOGIL - QUALEY (CROSS EXAMINATION)
 2 and what that Power of Attorney meant?
 3 MR. HALE: I object to the form.
 4 THE WITNESS: My paralegal Brooke
 5 Brown would have discussed it with him
 6 when she was making arrangements for
 7 him to sign the Power of Attorney.
 8 BY MR. MOGIL:
 9 Q Do you recall how you came to have
 10 Cherry Hill Estates, O'Neil, and Faulkner as
 11 clients? Were they referred to you by somebody?
 12 A I assume that they were referred to me,
 13 but I honestly can't tell you who would have
 14 referred them to me.
 15 Q You have no personal recollection of
 16 how they came to your office?
 17 A No.
 18 Q Does the file reflect how they came to
 19 the office?
 20 A No.
 21 Q You don't recall doing any work for
 22 Mr. O'Neil in the immediate future prior to
 23 this?
 24 A No.
 25 Q You testified a few minutes ago that

1 MOGIL - QUALEY (CROSS EXAMINATION)
 2 Woodlands Bank would have approved the Power of
 3 Attorney and had approved the secondary
 4 financing, which is actually referenced on the
 5 contract itself. Did you have any personal
 6 communications with Woodlands Bank?
 7 A No. Brooke would have had all those
 8 communications.
 9 Q So when you say that they approved it,
 10 is that based on the transmissions that are
 11 going back and forth from Brooke to Woodlands?
 12 A Yes.
 13 Q When you looked at your file a minute
 14 ago, is there any transmission that involves the
 15 personal guarantee on the second mortgage
 16 financing that you could see that went to
 17 Woodlands?
 18 A No. I just answered Jim saying that
 19 they never asked us to see any information about
 20 the second mortgage.
 21 Q Do you have any knowledge of any
 22 requests made by Woodlands relating to this
 23 transaction, any personal knowledge, meaning
 24 anything that was made to you directly?
 25 A In what regard? What are you --

2 Q. You do have a problem comprehending
3 what you read, okay. Did you have a problem
4 comprehending this particular document?

5 A Well, what I entrusted at the time was
6 that my judgment on Anthony Griffis and Gene
7 O'Neil, and myself, to put my trust in their
8 judgment, and to the point that, number one, I
9 would not agree to a two-year note if I knew
10 that was in there and it wasn't part of a real
11 estate transaction.

12 And I would think under the
13 circumstances that Anthony Griffis, who was
14 involved in the LLC with us also, would have me
15 seek advice from another attorney.

16 Q Why would you think that he would have
17 you seek advice from another attorney?

18 A Well, number one, he was involved in a
19 transaction with me; and also being an attorney
20 that I have used many times over, that I just
21 feel it would have been appropriate to advise me
22 better rather than being so involved in getting
23 his divorce resolved to lock me into something
24 that I would not agree to, even though I did
25 sign it.

1 HALE - FAULKNER (DIRECT EXAMINATION)

128

2 Q Well, let's ask that question. Was
3 Mr. Qualey your attorney?

4 A Was he my attorney?

5 Q Yes.

6 A He was the closing attorney, but he was
7 not somebody that I picked.

8 Q So he was the closing attorney. Who
9 did Mr. Qualey represent?

10 A He -- most likely -- I recall that he
11 was picked by Anthony Griffis.

12 Q But who did Mr. Qualey represent?

13 A As a closing attorney?

14 Q Yes.

15 A I don't recall him representing me. I
16 had to leave town.

17 Q But you appointed him as your attorney
18 in fact; correct?

19 A Yes, by -- by recommendation, yes.

20 Q And you spoke with Mr. Qualey?

21 A Correct.

22 Q And you say that Mr. Qualey was the
23 closing attorney; correct?

24 A Correct.

25 MR. HALE: Enter this as an

A7

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Circuit Court Judge


Case No. 2009-CP-07-6054
Appellate Case No. 2013-001407

Cynthia Griffis, Plaintiff,
v.
Cherry Hill Estates, LLC, Eugene
O'Neil and and Ronald Faulkner, Defendants,
Of whom Cherry Hill Estates, LLC
and Ronald Faulkner are Appellants.
Cherry Hill Estates, LLC and
Ronald Faulkner, Third Party Plaintiffs,
v.
Anthony E. Griffis, Respondent.

CERTIFICATE OF COUNSEL

I, Michael W. Mogil, the undersigned counsel to the Appellants Cherry Hill Estates, LLC and Ronald Faulkner, hereby certify that the Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material. One item proposed by the Respondent – the Affidavit of Service of Third Party Complaint – is not contained in the Supplemental Record on Appeal because upon further review of Beaufort County Court records, it appears that no such document was filed.

February 1, 2013
Hilton Head Island, SC



Michael W. Mogil (SC Bar #11933)
Mogil Law Firm
2 Corpus Christie Place, Ste. 303
Hilton Head Island, SC 29928
Tel. (843)785-8110
Attorney for Appellants

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Circuit Court Judge

Case No. 2009-CP-07-6054
Appellate Case No. 2013-001407

Cynthia Griffis, Plaintiff,
v.
Cherry Hill Estates, LLC, Eugene
O'Neil and and Ronald Faulkner, Defendants,
Of whom Cherry Hill Estates, LLC
and Ronald Faulkner are Appellants.
Cherry Hill Estates, LLC and
Ronald Faulkner, Third Party Plaintiffs,
v.
Anthony E. Griffis, Respondent.

CERTIFICATE OF SERVICE

I, Michael W. Mogil, the undersigned counsel to the Appellants Cherry Hill Estates, LLC and Ronald Faulkner, hereby certify that on February 2, 2014, I served true and accurate copy of the corrected Supplemental Record on Appeal in the above matter by depositing same with the U.S. Postal Service, addressed to: Anthony E. Griffis, 355 Park Avenue SW, Aiken, SC 29801.

February 3, 2014
Hilton Head Island, SC


Michael W. Mogil (SC Bar #11933)
Mogil Law Firm
2 Corpus Christie Place, Ste. 303
Hilton Head Island, SC 29928
Tel. (843)785-8110
Attorney for Appellants

RECEIVED

FEB 05 2014

SC Court of Appeals