

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

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Griffis v. Cherry Hills, et al

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1 MOGIL - O'NEIL (DIRECT EXAMINATION)

13

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

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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 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 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 \$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

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

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

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

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

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

BY MR. HALE:

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

A On the second mortgage?

Q Yes.

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

GRIFFIS - QUALEY (CROSS EXAMINATION)

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

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

A Correct.

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

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

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

A Right.

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

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

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

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

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

CROSS EXAMINATION

BY MR. GRIFFIS:

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

GRIFFIS - QUALEY (CROSS EXAMINATION)

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

A Right.

Q How about the Power of Attorney?

A It was sent to them for review and approval.

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

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

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

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

THE WITNESS: I have the original 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 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 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 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 --

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

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

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

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

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

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