

STATE OF SOUTH CAROLINA  
COUNTY OF LAURENS

Certus Bank, N.A.,

Plaintiff(s),

v.

Kenneth E. Bennett, Twin Rivers Resort,  
LLC and Bennett of Greenwood, LLC,

Defendant(s).

IN THE COURT OF COMMON PLEAS

CASE NO. 2011-CP-30-00583

**ORDER PARTIALLY GRANTING  
DEFENDANT TWIN RIVERS RESORT,  
LLC'S MOTION FOR SUMMARY  
JUDGMENT**

This matter is before me on Defendant Twin Rivers Resort, LLC's ("Twin Rivers") motion for summary judgment pursuant to SCRCP 56. Twin Rivers claims that there is no issue of material fact and that Plaintiff Certus Bank, N.A.'s ("Certus") three causes of action for equitable lien, reformation and ratification fail as a matter of law. Having reviewed the parties' briefs and heard the arguments of counsel, I deny Twin Rivers' motion as to Certus's causes of action for equitable lien and reformation, but grant the motion as to Certus's cause of action for ratification.

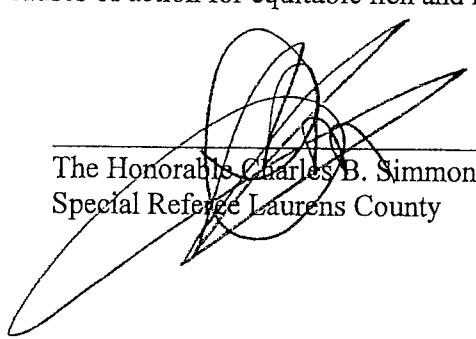
The equitable doctrine of ratification provides that "[a] defect in a mortgage may be cured by the subsequent act of the mortgagor in ratifying it and acknowledging its validity". 59 CJS § 160. Courts have applied the doctrine in a variety of settings finding that subsequent acts of its mortgager ratified technical defects such as lack of capacity and lack of authenticity. *Id.* (See, e.g. *Scottish-American Mortgage Co. v. Deas*, 35 S.C. 42, 14 S.E. 486 (1892)). I find and conclude that the doctrine has no application here. It is undisputed that the original borrower and mortgagor, Defendant Kenneth E. Bennett, was not the record owner of the mortgaged property at the time Bennett executed the note and mortgage involved herein. This defect in the original mortgage is more than a "technical" defect and I find and conclude that the doctrine of



ratification has no application given this undisputed fact. Neither the law nor the facts give rise to a cause of action for ratification against Twin Rivers Resort, LLC.

For the reasons set forth, I grant the motion as to Certus's third cause of action for ratification but deny the motion as to the causes of action for equitable lien and reformation.

IT IS SO ORDERED.



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The Honorable Charles B. Simmons, Jr.  
Special Referee Laurens County

Greenville, South Carolina  
April 14, 2014

STATE OF SOUTH CAROLINA  
COUNTY OF LAURENS

Certus Bank, N.A.,

Plaintiff(s),

v.

Kenneth E. Bennett, Twin Rivers Resort,  
LLC and Bennett of Greenwood, LLC,

Defendant(s).

IN THE COURT OF COMMON PLEAS

CASE NO. 2011-CP-30-00583

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the following document(s) were served on All Counsel of Record by depositing a true and correct copy of the same in the U.S. mail, with proper postage affixed thereto, on the 15<sup>th</sup> of April, 2014, addressed as follows:

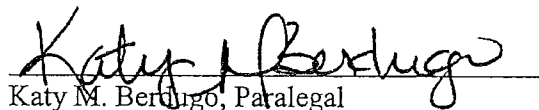
Document(s): **ORDER PARTIALLY GRANTING DEFENDANT TWIN RIVERS RESORT, LLC'S MOTION FOR SUMMARY JUDGMENT**

Addressee:

E. Zachary Horton, Esq.  
Brown, Massey, Evans, McLeod &  
Haynsworth, LLC  
P.O. Box 2464  
Greenville, SC 29602

W. Reid Cox, Jr., Esq.  
Cox & Ferguson  
P.O. Box 286  
Laurens, SC 29360

Louis H. Lang, Esq.  
Callison Tighe & Robinson, LLC  
P.O. Box 1390  
Columbia, SC 29202



Katy M. Berdugo, Paralegal  
COVINGTON, PATRICK, HAGINS,  
STERN & LEWIS, P.A.

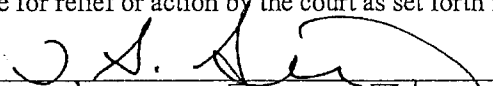
211 Pettigru Street  
P.O. Box 2343 (29602)  
Greenville, SC 29601  
(864) 240-4200

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF LAURENS )  
 )  
 Certus Bank, N.A. )  
 Plaintiff, )  
 vs. )  
 )  
 Kenneth E. Bennett, et al. )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 EIGHTH JUDICIAL CIRCUIT

CASE NO.: 2011-CP-30-00583

**MOTION AND ORDER INFORMATION  
 FORM AND COVERSHEET**

Plaintiff's Attorney: E. Zachary Horton, Bar No. 68436 Brown, Massey, Evans, McLeod & Haynsworth Address: P.O. Box 2464, Greenville, SC 29602 Phone: 864.271.7424 Fax 864.242.6469 E-mail: zhorton@bmemhlaw.com Other:	Defendant's Attorney: T.S. Stern, Jr., Bar No. 5337 Covington, Patrick, Hagins, Stern & Lewis, P.A. Address: P.O. Box 2343, Greenville, SC 29602 Phone: 864.242.9000 Fax 864.233.9777 E-mail: sstern@covpatlaw.com Other:
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
<b>SECTION I: Hearing Information</b>	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES/ <input type="checkbox"/> NO	
<b>SECTION II: Motion/Order Type</b>	
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order <b>ORDER PARTIALLY GRANTING DEFENDANT TWIN RIVERS RESORT, LLC'S MOTION FOR SUMMARY JUDGMENT</b> I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	April 15, 2014 Date submitted
<b>SECTION III: Motion Fee</b>	
<input type="checkbox"/> PAID - AMOUNT: \$ _____ <input checked="" type="checkbox"/> EXEMPT: (check reason)	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP) <input checked="" type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____	
<b>JUDGE'S SECTION</b> <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
<b>CLERK'S VERIFICATION</b>	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	

STATE OF SOUTH CAROLINA  
COUNTY OF LAURENS

Certus Bank, N.A.,

Plaintiff(s),

v.

Kenneth E. Bennett, Twin Rivers Resort,  
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IN THE COURT OF COMMON PLEAS

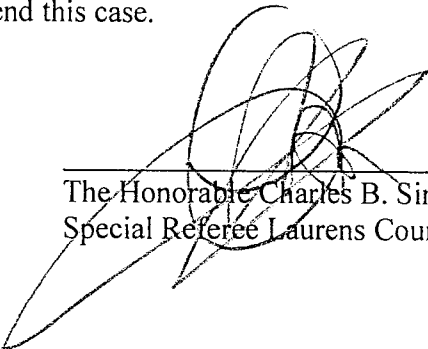
CASE NO. 2011-CP-30-00583

**ORDER**

This matter is before me on Plaintiff's Motion to Alter or Amend the Grant of Partial Summary Judgment in favor of Twin Rivers Resorts, LLC, Rule 59(e), SCRC. Plaintiff's motion is hereby denied. This Order does not end this case.

IT IS SO ORDERED.

Greenville, South Carolina  
May 8, 2014



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The Honorable Charles B. Simmons, Jr.  
Special Referee Laurens County

STATE OF SOUTH CAROLINA  
COUNTY OF LAURENS

IN THE COURT OF COMMON PLEAS

Certus Bank, N.A.,

CASE NO. 2011-CP-30-00583

Plaintiff(s),

v.

**CERTIFICATE OF SERVICE**

Kenneth E. Bennett, Twin Rivers Resort,  
LLC and Bennett of Greenwood, LLC,

Defendant(s).

I hereby certify that a copy of the following document(s) were served on All Counsel of Record by depositing a true and correct copy of the same in the U.S. mail, with proper postage affixed thereto, on the 8<sup>th</sup> of May, 2014, addressed as follows:

Document(s): **ORDER DENYING PLAINTIFF'S MOTION TO ALTER OR AMEND THE GRANT OF PARTIAL SUMMARY JUDGMENT IN FAVOR OF TWIN RIVERS RESORTS, LLC, RULE 59(3), SCRPC**

Addressee:

E. Zachary Horton, Esq.  
Brown, Massey, Evans, McLeod &  
Haynsworth, LLC  
P.O. Box 2464  
Greenville, SC 29602

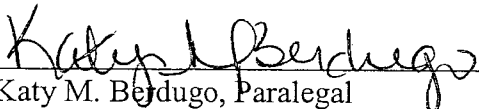
W. Reid Cox, Jr., Esq.  
Cox & Ferguson  
P.O. Box 286  
Laurens, SC 29360

Louis H. Lang, Esq.  
Callison Tighe & Robinson, LLC  
P.O. Box 1390  
Columbia, SC 29202

**RECEIVED**

JUN 09 2014

**SC Court of Appeals**



Katy M. Berdugo, Paralegal  
COVINGTON, PATRICK, HAGINS,  
STERN & LEWIS, P.A.

211 Pettigru Street  
P.O. Box 2343 (29602)  
Greenville, SC 29601  
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STATE OF SOUTH CAROLINA )  
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 Defendant. )

IN THE COURT OF COMMON PLEAS  
 EIGHTH JUDICIAL CIRCUIT  
 CASE NO.: 2011-CP-30-00583

**MOTION AND ORDER INFORMATION  
 FORM AND COVERSHEET**

Plaintiff's Attorney: E. Zachary Horton, Bar No. 68436 Brown, Massey, Evans, McLeod & Haynsworth Address: P.O. Box 2464, Greenville, SC 29602 Phone: 864.271.7424 Fax 864.242.6469 E-mail: zhorton@bmemhlaw.com Other:	Defendant's Attorney: T.S. Stern, Jr., Bar No. 5337 Covington, Patrick, Hagins, Stern & Lewis, P.A. Address: P.O. Box 2343, Greenville, SC 29602 Phone: 864.242.9000 Fax 864.233.9777 E-mail: sstern@covpatlaw.com Other:
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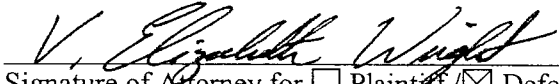
- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)  
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)  
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

**SECTION I: Hearing Information**

Nature of Motion: \_\_\_\_\_  
 Estimated Time Needed: \_\_\_\_\_ Court Reporter Needed:  YES/ NO

**SECTION II: Motion/Order Type**

- Written motion attached  
 Form Motion/Order **ORDER DENYING PLAINTIFF'S MOTION TO ALTER OR AMEND THE GRANT OF PARTIAL SUMMARY JUDGMENT IN FAVOR OF TWIN RIVERS RESORT, LLC, RULE 59(E), SCRPC.**  
 I hereby move for relief or action by the court as set forth in the attached proposed order.

  
 Signature of Attorney for  Plaintiff /  Defendant

May 8, 2014  
 Date submitted

**SECTION III: Motion Fee**

- PAID – AMOUNT: \$ \_\_\_\_\_  
 EXEMPT:
- Rule to Show Cause in Child or Spousal Support
  - Domestic Abuse or Abuse and Neglect
  - Indigent Status  State Agency v. Indigent Party
  - Sexually Violent Predator Act  Post-Conviction Relief
  - Motion for Stay in Bankruptcy
  - Motion for Publication  Motion for Execution (Rule 69, SCRPC)
  - Proposed order submitted at request of the court; or,  
 reduced to writing from motion made in open court per judge's instructions  
 Name of Court Reporter: \_\_\_\_\_
  - Other: \_\_\_\_\_

**JUDGE'S SECTION**

- Motion Fee to be paid upon filing of the attached order.  
 Other: \_\_\_\_\_

JUDGE CODE \_\_\_\_\_  
 Date: \_\_\_\_\_

**RECEIVED**

**CLERK'S VERIFICATION**

JUN 09 2014

- Collected by: \_\_\_\_\_ Date Filed: \_\_\_\_\_  
 MOTION FEE COLLECTED: \$ \_\_\_\_\_  
 CONTESTED – AMOUNT DUE: \$ \_\_\_\_\_

**SC Court of Appeals**



# Laurens County Eighth Judicial Circuit Public Index



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Switch View

<b>Certus Bank NA VS Kenneth E Bennett , defendant, et al</b>					
Case Number:	2011CP3000583	Court Agency:	Common Pleas	Filed Date:	06/16/2011
Case Type:	Common Pleas	Case Sub Type:	Real Prop/Other 499	File Type:	Non-Jury
Status:	Referred To Master	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:		Disposition Date:		Disposition Judge:	
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties    Judgments    Tax Map Information    Associated Cases    Actions    Financials						
Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Twin Rivers Resort LLC	Service/Certificate Of Service	Filing		06/06/2014 -10:30		
Twin Rivers Resort LLC	Order Denying Plaintiff's Motion to Amend Complaint	Order		06/06/2014 -10:29		
Twin Rivers Resort LLC	Order/Form 4 (Denying PLT Motion to Amend)	Order		06/06/2014 -10:28		
Certus Bank NA	Memo/Memo in Support	Filing		05/23/2014 -12:31		
Twin Rivers Resort LLC	Memo/Memo in Opposition	Filing		05/21/2014 -15:46		
Certus Bank NA	Service/Certificate Of Service	Filing		05/12/2014 -09:52		
Certus Bank NA	Order/Amend Denied	Order		05/12/2014 -09:31		
Certus Bank NA	Motion/Alter and/or Amend	Motion		04/30/2014 -14:05		
Certus Bank NA	Service/Certificate Of Mailing	Filing		04/30/2014 -13:51		
Twin Rivers Resort LLC	Service/Certificate Of Service	Filing		04/16/2014 -16:47		
		Order				

Twin Rivers Resort LLC	Order Partially Granting Twin Rivers Motion for Sum Judgment			04/16/2014 -16:45		
Certus Bank NA	Notice of Motion/Motion to Amend Complaint	Filing		04/15/2014 -11:27		
Certus Bank NA	Service/Certificate Of Mailing	Filing		04/15/2014 -11:27		
Certus Bank NA	Motion/Alter and/or Amend	Motion		04/15/2014 -11:26		
Certus Bank NA	Memo/Memo in Opposition	Filing		04/08/2014 -11:47		
Certus Bank NA	Service/Certificate Of Service	Filing		04/08/2014 -11:47		
Twin Rivers Resort LLC	Service/Certificate Of Service	Filing		04/07/2014 -11:01		
Twin Rivers Resort LLC	Memo in Support of Its Motion for Summary Judgment	Filing		04/07/2014 -11:00		
Certus Bank NA	Notice of Appearance	Filing		04/03/2014 -12:32		
Certus Bank NA	Service/Certificate Of Mailing x2	Filing		04/03/2014 -12:31		
Certus Bank NA	Motion/Continuance	Motion		04/03/2014 -12:31		
Twin Rivers Resort LLC	Service/Certificate Of Service	Filing		02/25/2014 -13:29		
Twin Rivers Resort LLC	Motion/Summary Judgment	Motion		02/25/2014 -13:27		
Certus Bank NA	Order/Substitution Of Counsel (Consent)	Order		05/16/2013 -12:58		
Certus Bank NA	Service/Certificate Of Service	Filing		05/16/2013 -00:00		
Twin Rivers Resort LLC	Motion/Consent Order to Substitute Counsel	Motion		05/09/2013 -13:16		
Certus Bank NA	Order/Consent Order Ref (Hon. Chas B Simmons, Grvl Co M in E	Order		09/06/2012 -14:31		
Certus Bank NA	Motion/Order of Reference (Reid Cox)	Motion		09/06/2012 -10:22	09/06/2012 -10:22	
Horton, Edward Zachary	Notice of Case Roster Publication Sent	Action		07/30/2012 -16:00		
Cox, W. Reid Jr.	Notice of Case Roster Publication Sent	Action		07/30/2012 -16:00		
Cox, W. Reid Jr.		Action		06/15/2012 -11:03		

	<b>Notice of Case Roster Publication Sent</b>				
<b>Horton, Edward Zachary</b>	<b>Notice of Case Roster Publication Sent</b>	<b>Action</b>		<b>06/15/2012 -11:03</b>	
<b>Twin Rivers Resort LLC</b>	<b>Answer/Answer</b>	<b>Filing</b>		<b>08/22/2011 -15:47</b>	
<b>Bennett of Greenwood, LLC</b>	<b>Answer/Answer</b>	<b>Filing</b>		<b>08/22/2011 -15:47</b>	
<b>Certus Bank NA</b>	<b>Service/Affidavit Of Service (2)</b>	<b>Filing</b>		<b>07/13/2011 -12:28</b>	
<b>Certus Bank NA</b>	<b>Service/Affidavit Of Service S/C (Kenneth Bennett)</b>	<b>Filing</b>		<b>07/01/2011 -09:36</b>	
<b>Certus Bank NA</b>	<b>Prop Des: TMS#309 -00-00-040 &amp; 309-00-00-028 (.027A)</b>	<b>Filing</b>		<b>06/16/2011 -10:24</b>	
<b>Certus Bank NA</b>	<b>Lis Pendens, Summons &amp; Complaint</b>	<b>Filing</b>		<b>06/16/2011 -10:22</b>	

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