

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM LAURENS COUNTY  
Court of Common Pleas

The Hon. Charles B. Simmons, Special Referee

Appellate Case No. 2014-001248  
Case No. 2011-CP-30-00583

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SEP 22 2014

SC Court of Appeals

Certus Bank, N. A., ..... Appellant,

v.

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

Of which Twin Rivers Resort, LLC is ..... Respondent.

APPELLANT’S PETITION FOR WRIT OF SUPERSEDEAS

Pursuant to SCACR, Rule 241, Appellant, Certus Bank, N.A. (Certus), petitions the Court for a writ of supersedeas staying trial of its first two causes of action during the pendency of its appeal from an order dismissing its third cause of action.

**A. Facts.**

Certus’ complaint had three causes of action – equitable lien, reformation, and ratification – by which Certus seeks to establish the validity and enforceability of a mortgage dated November 1, 2007, owned and held by Certus. Attached and marked as **Exhibit “A”** is a copy of the complaint (without exhibit).

Respondent, Twin Rivers Resort, LLC (Twin Rivers), is the owner of the property which Certus asserts is encumbered by its lien/mortgage. Twin Rivers answered the complaint and its answer is attached as **Exhibit “B.”**

Twin Rivers moved for summary judgment on Certus’ complaint. On April 16, 2014, the Special Referee granted partial summary judgment, dismissing Certus’ ratification claim. Attached as **Exhibit “C”** is a certified copy of the order granting Twin Rivers partial summary judgment.

Certus moved to alter or amend judgment on April 28, 2014, which was denied on May 12, 2014. On June 9, 2014, Certus filed its notice of appeal, a copy of which, including its proof of service, is attached as **Exhibit “D.”**

On September 8, 2014, following a status conference, the Special Referee set the case for trial beginning November 20, 2014. **Exhibit “E”** is a copy of the trial notice.

The Special Referee knows of the pending appeal and has indicated his intention to proceed with trial in accordance with the attached trial notice. Certus has not petitioned the Special Referee for a writ of supersedeas as it believes such a petition would be futile and this Court should consider this petition under SCACR, Rule 241(d)(1).

**B. Argument.**

SCACR, Rule 241(a) automatically stays matters decided in the appealed order, judgment or decision.

The purpose of a supersedeas is to suspend the proceedings and preserve the status quo pending appeal. *Melton v. Walker*, 209 S.C. 330, 336, 40 S.E.2d 161, 164 (1946) (citation omitted); *Graham v. Graham*, 301 S.C. 128, 130, 390 S.E.2d 469, 470 (Ct. App. 1990). (“The

purpose of a supersedeas ... is to ... stay proceedings in the trial court, to preserve the status quo pending the determination of the appeal ..., and to preserve to appellant the fruits of a meritorious appeal when they might otherwise be lost to him...,” quoting 4A C.J.S. *Appeal & Error* § 662, at 494-95 (1957)).

The grant of partial summary judgment is immediately appealable if it impacts the merits of the case or affects a substantial right of the appellant. S.C. Code Ann. §§ 14-3-330(1) and 14-3-330(2)(c). See also *Link v. Sch. Dist. of Pickens County*, 302 S.C. 1, 393 S.E.2d 176 (1990) and *Nauful v. Milligan*, 258 S.C. 139, 187 S.E. 2d 511 (1972).

Under section 14-3-330(1), “[a]n order involves the merits if it finally determines some substantial matter forming the whole or part of some cause of action or defense in the case.” *Green v. City of Columbia*, 311 S.C. 78, 80, 427 S.E.2d 685, 687 (Ct.App.1993).

Under section 14-3-330(2) a partial summary judgment grant impacts the substantial rights of a party if the absence of the issue or claim decided cannot be vindicated on appeal after a trial where the issue or claim is absent. *Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 93, 529 S.E.2d 11, 13 (2000) citing *Creed v. Stokes*, 285 S.C. 542, 331 S.E.2d 351 (1985).

If the circuit court errs in striking out any material allegations of a good cause of action or good defense, it is impossible to remedy it in the course of the trial, because the evidence and the issues submitted to the jury cannot be extended beyond the issues made by the pleading, and on appeal from the final judgment this court could not say there was error of law in confining the evidence and charge to the pleadings.

*Thornton v. SCE&G Corp.*, 391 S.C. 297, 303-304, 705 S.E.2d 475, 479, (Ct. App. 2011), citing *Bowden v. Powell*, 194 S.C. 482, 10 S.E.2d 8 (1940).

The appealed from order impacts the merits of Certus’ case – it dismissed Certus’ third cause of action, “finally [determining] ... the whole ....” of Certus’ ratification claim. *Green* at

79-80, 427 S.E.2d at 687. The appealed from order affects Certus' substantial rights. The November 20, 2014, trial would be limited to the evidence and issues relevant to the two remaining causes of action. An appeal from an adverse final judgment rendered at trial could not determine if there was error confining the evidence and issues to those two causes of action.

Supersedeas must be granted. The status quo must be preserved to allow Certus to pursue the merits of its ratification cause of action and preserve its substantial right to do so.

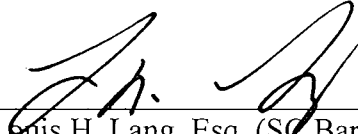
Certus should not be forced to trial in November absent an appellate decision on its third cause of action. A November trial on the remaining causes of action may result in findings of fact which could substantially affect Certus' ability to pursue its ratification claim if it succeeds on appeal. Even were that not the case, an unsuccessful November trial and a successful appeal would cause piecemeal litigation which is disfavored. *Cf. Oakwood Landfill, Inc. v. S.C. Dept. of Health and Environmental Control, et al.*, 381 S.C. 120, 129, 671 S.E.2d 646, 651 (Ct. App. 2009), *rev'd on other grounds, Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dept. of Health and Environmental Control*, 387 S.E. 265, 692 S.E.2d 894 (2010). ([P]iecemeal appeals are not favored....").

**C. Conclusion and relief sought.**

SCACR, Rule 241(a) applies to this petition and requires the requested stay.

Certus respectfully requests the Court grant supersedeas and stay the trial of its remaining two causes of action pending the appeal of the dismissal of its third cause of action.

CALLISON TIGHE & ROBINSON, LLC



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Counsel for the Appellant, *Certus Bank, N.A.*

September 22, 2014  
Columbia, South Carolina

**THE STATE OF SOUTH CAROLINA  
In the Court of Appeals**

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APPEAL FROM LAURENS COUNTY  
Court of Common Pleas

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The Hon. Charles B. Simmons, Special Referee

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Appellate Case No. 2014-001248  
Case No. 2011-CP-30-00583

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Certus Bank, N. A., .....Appellant,

v.

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

Of which Twin Rivers Resort, LLC is the .....Respondent.

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VERIFICATION OF PETITION FOR WRIT OF SUPERSEDEAS

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PERSONALLY APPEARED BEFORE ME, Amy G. Staggs, who being first duly sworn  
says and deposes that:

1. I am over the age of 18 years, competent to make this verification and authorized to  
do so by Appellant, Certus Bank, N.A.

2. I have read the foregoing Petition for Writ of Supersedeas and on information and  
belief, the matters set forth therein are true and correct.

Certus Bank, N.A.

By: *Amy Stagg*

Its: *SVP*

Subscribed and sworn to before me  
this *18* day of September 2014

*N. Faulker*  
Notary Public of South Carolina  
My commission expires: *6-8-15*

STATE OF SOUTH CAROLINA

LYNN W. LANCASTER

IN THE COURT OF COMMON PLEAS

COUNTY OF LAURENS

2011 JUN 16

A 10:31

2011-CP-30-583

Certus Bank, N.A.,

Plaintiff

LAURENS COUNTY  
CLERK OF COURT

COMPLAINT

vs.

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

Defendants.

The Plaintiff, herein, complaining of the above named Defendants, would respectfully show unto the Court as follows:

1. That the Plaintiff, Certus Bank, N.A., ("Certus") is a duly organized, validly existing South Carolina corporation that conduct business in Laurens County, South Carolina.

2. On information and belief, Defendant Kenneth E. Bennett ("Debtor") is a citizen and resident the State of Illinois and did enter into a contract to be performed all or in part in the State of South Carolina, County of Laurens regarding property in Laurens County, South Carolina.

3. On information and belief, Defendant Bennett of Greenwood, LLC ("Bennett of Greenwood") is a South Carolina limited liability company that conducts business in Laurens County, South Carolina.

4. Defendant Twin Rivers Resort, LLC ("Twin Rivers") is a South Carolina limited liability company that conducts business in Laurens County and is the

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*[Handwritten Signature]*

EXHIBIT "A"

current owner of record of the property at issue in this matter, which is located in Laurens County.

5. Venue is proper before this court.

6. On or about November 1, 2007, Debtor executed and delivered a promissory note (the "Note") in the original principal amount of \$497,450.00, to CommunitySouth Bank and Trust ("CommunitySouth") evidencing the indebtedness of Debtor to Borrower, the terms and conditions of the Note being incorporated herein by reference.

7. Debtor thereafter executed and delivered to CommunitySouth certain renewals and modifications of the Note evidenced by (i) a renewal note dated April 1, 2009, and (ii) a second renewal note dated September 29, 2010 (each a "Renewal Note" and collectively the "Renewal Notes", which are included in and are part of the "Note"), the terms and conditions of which are incorporated herein by reference.

8. Also on November 1, 2007, and as required by CommunitySouth under the terms of its loan to Debtor, Debtor executed and delivered to CommunitySouth that certain Real Estate Mortgage (the "Mortgage") in the original amount of \$497,450.00 as collateral security for the indebtedness evidenced by the Note, which Mortgage was recorded December 10, 2007, in the Laurens County Clerk of Court's Office in Book M 1727 at Page 1, a copy of said Mortgage being attached hereto as Exhibit A and incorporated herein by reference.

9. The legal description of the properties contained in the Mortgage includes tracts of land with improvements thereon containing 1.43 acres ("Parcel 1") and 2.22 acres ("Parcel 2"), more or less, respectively, which is more particularly

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described on Exhibit B attached hereto and incorporated herein by reference.

10. The Mortgage contains language by which Debtor warrants to CommunitySouth that Debtor is lawfully seized of the properties described in the Mortgage and has the right to mortgage the property to CommunitySouth. Further, the Note and Renewal Notes contain language reciting that the Note is to be secured by the Mortgage. Such documentation evidences the express intent of Debtor to mortgage the properties to CommunitySouth.

11. Also on November 1, 2007, and as required by CommunitySouth under the terms of its loan to Debtor, Debtor executed and delivered to CommunitySouth that certain Assignment of Leases and Rents (the "Assignment of Leases") as additional collateral for the indebtedness evidenced by the Note, which Assignment of Leases was recorded December 10, 2007, in the Laurens County Clerk of Court's Office in Book M 1727 at Page 17, the terms and conditions of which are incorporated herein by reference. The Assignment of Leases also contains language by which Debtor warrants to CommunitySouth that Debtor is lawfully seized of the properties described in the Assignment of Leases (Parcel 1 and Parcel 2) and has the right to assign the leases and rents derived from said properties to CommunitySouth.

12. Certus Bank, N.A. ("Certus") is the current owner and holder of the Note and Mortgage pursuant to that certain Purchase and Assumption Agreement - Whole Bank dated as of January 21, 2011, between the Federal Deposit Insurance Corporation ("FDIC"), as Receiver, and Certus, which agreement provides that Certus acquired from the FDIC certain assets of CommunitySouth, including but not limited to the Note and Mortgage.

13. During certain negotiations with Debtor for an additional renewal of the loan evidenced by the Note, Certus became aware that Debtor was not and had never been the owner of Parcel 1 and Parcel 2. On the date the Mortgage and Assignment of Leases were executed and delivered by Debtor, Certus is informed and believes that the properties described in the Mortgage were owned by JKR Development, LLC ("JKR") as set forth in a deed from Crescent Lake, LLC, dated January 31, 2006, and recorded February 1, 2006, in the Laurens County Clerk of Court's Office in Book D 768 at Page 312.

14. Certus further expected to receive and Debtor intended to give, as part of the properties described in the Mortgage, a mortgage on certain property contiguous or adjacent to Parcel 1 and Parcel 2 containing 0.027 acres, more or less, ("Parcel 3"), which is more particularly described on Exhibit C attached hereto and incorporated herein by reference, but which parcel was inadvertently omitted from the legal description contained in the Mortgage and Assignment of Leases.

15. Certus is informed and believes that Parcel 3, which was omitted from the Mortgage and Assignment of Leases, was also owned at that time by JKR as set forth in a deed from David D. Dillard dated July 31, 2007, and recorded August 6, 2007, in the Laurens County Clerk of Court's Office in Book D 844 at Page 149.

16. Certus is informed and believes that Debtor was a member and a manager of JKR on the date that the Note, Mortgage and Assignment of Leases were executed and delivered by Debtor.

17. Certus is informed and believes that Parcel 1, Parcel 2 and Parcel 3 were transferred by JKR to Bennett of Greenwood by deed dated February 22, 2008, and

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recorded February 28, 2008, in the Laurens County Clerk of Court's Office in Book D 873 at Page 258 (the "Bennett of Greenwood Deed").

18. That in conjunction with the Bennett of Greenwood Deed, the parties to the transfer acknowledged that the property being transferred was subject to debt.

19. Certus is informed and believes that Parcel 1, Parcel 2 and Parcel 3 are currently owned by Twin Rivers, with Twin Rivers having acquired said parcels by deed from Bennett of Greenwood dated September 14, 2010, and recorded December 14, 2010, in the Laurens County Clerk of Court's Office in Book D 1002 at Page 171 (the "Twin Rivers Deed").

20. Certus is informed and believes that Debtor is the sole member and manager of Twin Rivers and has exclusive control over Parcel 1, Parcel 2 and Parcel 3 (collectively the "Subject Property") by virtue of the conveyance of the property to Twin Rivers pursuant to the Twin Rivers Deed. Certus is further informed and believes that Debtor is the sole member of Bennett of Greenwood and had, during the period of time in which Bennett of Greenwood owned the Subject Property, exclusive control over such properties.

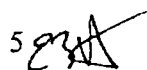
**FOR A FIRST CAUSE OF ACTION**  
**(Equitable Lien)**

21. Each and every allegation contained in this Complaint is incorporated herein as if set forth verbatim.

22. That the Debtor borrowed \$497,450.00 from CommunitySouth expecting and intending to give a mortgage on the Subject Property to CommunitySouth.

23. The Debtor received the benefit of the money loaned by CommunitySouth.

24. That the Subject Property is now owned by Twin Rivers, which upon

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information and belief is a single-member limited liability company owned by the Debtor.

25. That prior to the Subject Property being owned by Twin Rivers, it was owned by Bennett of Greenwood, which upon information and belief is also a single member limited liability company owned by the Debtor.

26. That the parties intended, expressly and impliedly, that the Subject Property would serve as security for the payment of the Debtor's obligation.

27. That the Debtor has at all times represented and warranted that he was lawfully seized of the properties described in the Mortgage and had the right and/or authority to mortgage the Subject Property.

28. That the aforesaid established an equitable lien in favor of the Plaintiff upon the Defendants' interest in the Subject Property.

29. Plaintiff is informed and believes that it is entitled to the imposition of an equitable lien against the Subject Property in the original principal amount of the Note and Mortgage, which is superior to any and all other liens.

**FOR A SECOND CAUSE OF ACTION**  
**(Mortgage Modification/Reformation Nunc Pro Tunc)**

30. Each and every allegation contained in this Complaint is incorporated herein as if set forth verbatim.

31. When Debtor went into default on his obligation under the Note and Mortgage, the Plaintiff begin to pursue enforcement of the Note and Mortgage and discovered that the Subject Property was not owned by the Debtor in his individual name, but at the time of the closing was owned by JKR, an entity in which the Debtor was a principal. JKR subsequently conveyed the property to Bennett of Greenwood,

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an entity in which the Debtor is the sole principal. The property was further conveyed to Twin Rivers, which is another entity in which the Debtor is the sole principal.

32. At all relevant times, CommunitySouth intended and contractually agreed to receive a mortgage lien on all of the Subject Property (including Parcel 3) as collateral security for the \$497,450.00 loan to the Debtor.

33. Debtor and his wholly owned business entities (Twin Rivers and Bennett of Greenwood) obtained the benefit of the use of the proceeds of the loan and ownership of the Subject Property free of a record lien in favor of the Plaintiff.

34. That the Mortgage should be reformed to reflect the intent of the parties to include Parcel 3 and to reflect that the Mortgage represents a valid lien on the Subject Property in the hand of Twin Rivers, the Debtor's single-member limited liability company.

35. That the Plaintiff is entitled to an order adjudicating that the Plaintiff has an equitable mortgage lien nunc pro tunc from the date of recording of the Mortgage on the Subject Property.

**FOR A THIRD CAUSE OF ACTION**  
**(Mortgage Ratification)**

36. Each and every allegation contained in this Complaint is incorporated herein as if set forth verbatim.

37. That although the Subject Property was not in the Debtor's individual name at the time of the execution of the Mortgage, all Defendants had full knowledge of the situation and intended to confirm the Mortgage.

38. The actions by the Defendants that ratified the Mortgage include, but are not

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limited to, the following:

- a. JKR transferred the Subject Property to Bennett of Greenwood, and entity for which the Debtor is the sole principal, acknowledging that the property being transferred was subject to debt.
- b. That while the Subject Property was titled in the name of Bennett of Greenwood, the Debtor, the sole member of Bennett of Greenwood, executed and delivered to CommunitySouth a Renewal Note dated April 1, 2009 for the purpose of refinancing commercial property and acknowledged that the debt was secured by the Mortgage on the Subject Property.
- c. That within two weeks after the Debtor, as the sole member of Bennett of Greenwood, executed a deed to transfer the Subject Property to Twin Rivers, another business entity wholly owned by the Debtor; the Debtor on September 29, 2010, executed another Renewal Note, again acknowledging that the debt was secured by the Mortgage.

39. That the Defendants accepted the benefits of the mortgage loan, made payments thereon, sought renewals and extensions of the obligations, and with full knowledge of the status of the title to the Subject Property, acknowledged that the renewed obligations were secured by the Mortgage.

40. That the Plaintiff is entitled to adjudication that the Defendants have ratified the Mortgage and that the Plaintiff be declared to have a first priority mortgage lien on the Subject Property as of the date of the original recording of the Mortgage.

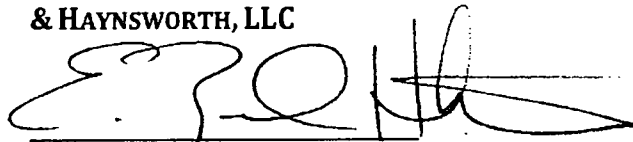
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**WHEREFORE**, Plaintiff prays for judgment as follows:

1. The that Plaintiff be declared to have equitable lien/mortgage against the Subject Property in the original principal amount of the Note and Mortgage, which is superior to any and all other liens;
2. That the Mortgage should be reformed to reflect the intent of the parties to include Parcel 3 and to reflect that the Mortgage represents a valid lien on the Subject Property in the hand of the current owner of record;
3. That the Plaintiff shall have an equitable mortgage lien *nunc pro tunc* from the date of recording of the Mortgage on the Subject Property;
4. That the Defendants have ratified the Mortgage, and that the Plaintiff is declared to have a first priority mortgage lien on the Subject Property as of the date of the original recording of the Mortgage;
5. For such other and further relief as the Court deems just and proper.

Respectfully submitted this 15 day of June, 2011.

**BROWN, MASSEY, EVANS, MCLEOD  
& HAYNSWORTH, LLC**



E. Zachary Horton (S.C. Bar # 68436)  
P.O. Box 2464  
Greenville, SC 29602  
(864) 271-7424  
Fax: (864) 242-6469  
Attorneys for Plaintiff

STATE OF SOUTH CAROLINA )

COUNTY OF LAURENS )

FILED IN THE COURT OF COMMON PLEAS

Case No. 2011-CP-30-583

AUG 22 P 3:37

Certus Bank, N.A., )

vs. )

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

Defendants. )

LAURENS COUNTY  
CLERK OF COURT

ANSWER

of

TWIN RIVERS RESORT, LLC

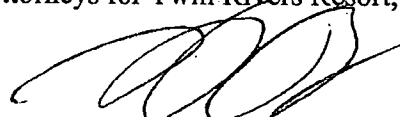
The Defendant Twin Rivers Resort, LLC, would respectfully show the Court as follows:

1. All allegations of the Complaint not specifically admitted here are denied.
2. Paragraphs 1, 2, 3, 4, & 5 are admitted.
3. As to Paragraphs 6 through 40, inclusive, this Defendant admits so much thereof as alleges that certain documents were recorded in the public records of Laurens County but denies the effectiveness or validity thereof; specifically denies that Kenneth E. Bennett is a member of or has an interest in Twin Rivers Resort, LLC; and lacks information as to the remaining allegations and therefore denies same.

WHEREFORE, having fully Answered, this Defendant prays that the Complaint be dismissed with prejudice.

Cox & Ferguson  
Attorneys for Twin Rivers Resort, LLC

Aug 22, 20 11



W. Reid Cox, Jr.  
SC Bar # 1443  
PO Box 286; Laurens, SC 29360  
(864) 984-2126



STATE OF SOUTH CAROLINA  
COUNTY OF LAURENS

LAURENS COUNTY

IN THE COURT OF COMMON PLEAS

Certus Bank, N.A.,

2011 APR 16 P 4:44

CASE NO. 2011-CP-30-00583

Plaintiff(s),

LAURENS COUNTY

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

v.

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

Defendant(s).

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.

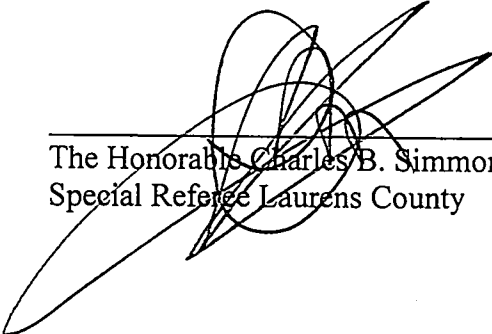
The equitable doctrine of ratification provides that "[a] defect in a mortgage may be cured by the subsequent act of the mortgagor in ratifying it and acknowledging its validity". 59 CJS § 160. Courts have applied the doctrine in a variety of settings finding that subsequent acts of its mortgagor ratified 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

  
EXHIBIT "C"

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.

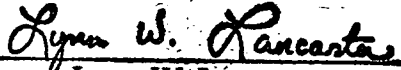


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The Honorable Charles B. Simmons, Jr.  
Special Referee Laurens County

Greenville, South Carolina  
April 14, 2014

**A TRUE COPY OF ORIGINAL**



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Lynn W. Lancaster  
Laurens County CCCP & GS

LYNN W. LANCASTER

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LAURENS COUNTY  
CLERK OF COURT

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM LAURENS COUNTY  
Court of Common Pleas

The Hon. Charles B. Simmons, Special Referee

Case No. 2011-CP-30-00583

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SC Court of Appeals

Certus Bank, N. A., .....Appellant,

v.

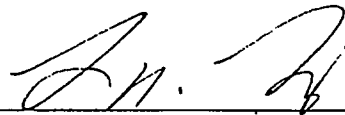
Kenneth E. Bennett, Twin Rivers Resort, LLC and  
Bennett of Greenwood, LLC, ..... Defendants,

Of whom Twin Rivers Resort, LLC is .....Respondent.

Notice of Appeal

Certus Bank, N.A., by and through its undersigned counsel, hereby appeals the Order of the Honorable Charles B. Simmons, Jr., Special Referee for Laurens County, dated April 14, 2014, entered April 16, 2014, which granted in part Respondent's motion for summary judgment by dismissing Appellant's ratification cause of action and Judge Simmons' Order dated May 8, 2014, entered May 12, 2014 denying Appellant's motion pursuant to SCRCP 59(e) to alter or amend the Court's partial grant of summary judgment.

Appellant timely filed its SCRCP 59(e) motion on April 28, 2014 and the Order denying it's Rule 59(e) motion was entered May 12, 2014.



CALLISON TIGHE & ROBINSON, LLC

Louis H. Lang, Esq. (SC Bar #03127)

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Counsel for the Appellant

June 9, 2014

Columbia, South Carolina

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM LAURENS COUNTY  
Court of Common Pleas

The Hon. Charles B. Simmons, Special Referee

Case No. 2011-CP-30-00583

LAURENS COUNTY  
CLERK OF COURT

2014 JUN 13 P 4:18

LYNN W. LANCASTER

Certus Bank, N. A.,.....Appellant,

v.

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

Of whom Twin Rivers Resort, LLC is.....Respondent.

PROOF OF SERVICE

I, Crystal Smith, an employee of Callison Tighe & Robinson LLC, Attorneys for the Appellant, do certify I have served a copy of the **Notice of Appeal**, on counsel for defendants and respondent by depositing a copy of it in the United States Mail, postage prepaid, on June 9, 2014, addressed to their attorneys of record, at the following addresses:

*Counsel for Defendants, Kenneth E. Bennett  
and Bennett of Greenwood, LLC:*

W. Reid Cox, Jr., Esq. (SCBAR#1443)  
COX & FERGUSON  
PO Box 286  
Laurens SC 29360

*Counsel for Respondent, Twin Rivers Resort, LLC:*

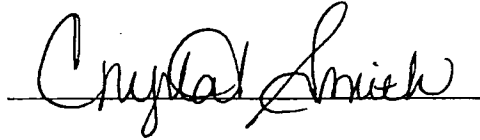
T. S. Stern, Jr., Esq.

V. Elizabeth Wright, Esq.

COVINGTON PATRICK HAGINS STERN & LEWIS, P.A.

PO Box 2343

Greenville SC 29602

A handwritten signature in cursive script, reading "Crystal Smith", written over a horizontal line.

June 9, 2014

Columbia, South Carolina



# Laurens County Eighth Judicial Circuit Public Index



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[South Carolina Judicial Department Home Page](#)
[SC.GOV Home Page](#)

Switch View

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

[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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JUN 09 2014

SC Court of Appeals

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.

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

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

Defendant(s).

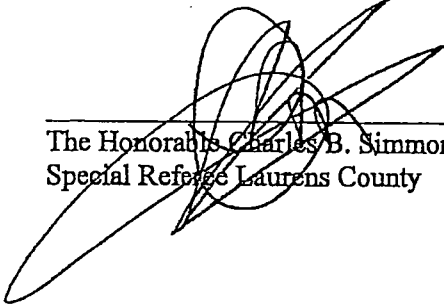
This matter is before me on Defendant Twin Rivers Resort, LLC's ("Twin Rivers") motion for summary judgment pursuant to SCRCP 56. Twin Rivers claims that there is no issue of material fact and that Plaintiff Certus Bank, N.A.'s ("Certus") three causes of action for equitable lien, reformation and ratification 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 mortgagor 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.



---

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:

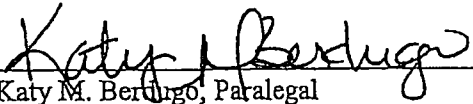
Document(s): **ORDER PARTIALLY GRANTING DEFENDANT TWIN RIVERS RESORT,  
LLC'S MOTION FOR SUMMARY JUDGMENT**

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(s),

v.

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

Defendant(s).

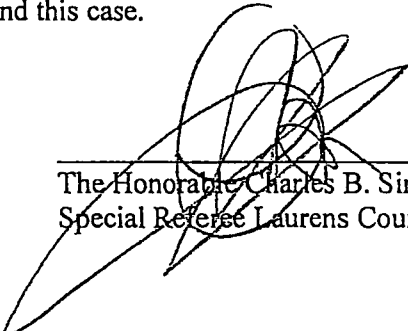
IN THE COURT OF COMMON PLEAS

CASE NO. 2011-CP-30-00583

**ORDER**

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), SCRCP. Plaintiff's motion is hereby denied. This Order does not end this case.

IT IS SO ORDERED.



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

Greenville, South Carolina  
May 8, 2014

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).

LAURENS COUNTY  
CLERK OF COURT

2014 JUN 13 P 4: 19

LYNN W. LANCASTER

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), SCRCP

Addressee:

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

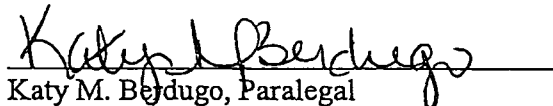
W. Reid Cox, Jr., Esq.  
Cox & Ferguson  
P.O. Box 286  
Laurens, SC 29360

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

**RECEIVED**

JUN 09 2014

SC Court of Appeals



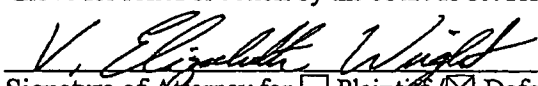
Katy M. Berdugo, Paralegal  
COVINGTON, PATRICK, HAGINS,  
STERN & LEWIS, P.A.

211 Pettigru Street  
P.O. Box 2343 (29602)  
Greenville, SC 29601  
(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: <a href="mailto:zhorton@bmemhlaw.com">zhorton@bmemhlaw.com</a> 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: <a href="mailto:sstern@covpatlaw.com">sstern@covpatlaw.com</a> 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 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), SCRCPP. I hereby move for relief or action by the court as set forth in the attached proposed order.	
<div style="display: flex; justify-content: space-between; align-items: center;"> <div style="text-align: center;">             Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant         </div> <div style="text-align: center;">           May 8, 2014            Date submitted         </div> </div>	
<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, SCRCPP) <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**  
**Equity Court**

County Courthouse  
September 8, 2014  
S.C. 29601

Suite 313,  
Greenville,

**CHARLES B. SIMMONS, JR.**

Judge

(864) 467-8556

(864) 467-8401

Telephone

FAX

RE: CertusBank, N.A.  
vs. Kenneth E. Bennett Twin Rivers Resorts, LLC  
**C.A. No.: 2011-CP-30-00583**

Good morning,

This is to confirm that Judge Simmons has **scheduled** the above-referenced matter for a 2 day trial on November **20<sup>th</sup> and 21st 2014 at 9:00 am in Laurens County**. Mr. Lang is requested to provide a court reporter, and secure a courtroom. I have also scheduled a fifteen-minute conference call for **November 17th, 2014 at 9:00 a.m.** I would appreciate it if Mr. Lang would initiate this conference call and have it ring in as close to 9:00 a.m. as possible. The number to call in on is (864) 467-8258.

Also, each of you should furnish to Judge Simmons a pretrial Brief on or before **November 10th 2014**. This Brief may be in letterform, outlining the issues, applicable law, anticipated witnesses and the substance of their testimony. At the time you submit your Brief to Judge Simmons, please also submit a copy to opposing counsel.

If you have any questions or changes, please do not hesitate to give me a call.

Yours truly,

*Karen K. Kimbrell*

Karen K. Kimbrell  
Administrative Docketing Clerk

EXHIBIT "E"

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM LAURENS COUNTY  
Court of Common Pleas

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SEP 22 2014

The Hon. Charles B. Simmons, Special Referee

SC Court of Appeals

Appellate Case No. 2014-001248

Case No. 2011-CP-30-00583

Certus Bank, N. A.,.....Appellant,

v.

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

Of which Twin Rivers Resort, LLC is the .....Respondent.

CERTIFICATE OF SERVICE

I, Crystal Smith, an employee of Callison Tighe & Robinson LLC, Attorneys for the Appellant, do certify I have served a copy of the **Appellant's Petition for Writ of Supersedeas**, on counsel for defendants and respondent by depositing a copy of it in the United States Mail, postage prepaid, on September 22, 2014, addressed to their attorneys of record, at the following addresses:

*Counsel for Defendants, Kenneth E. Bennett  
and Bennett of Greenwood, LLC:*

W. Reid Cox, Jr., Esq. (SCBAR#1443)  
COX & FERGUSON  
PO Box 286  
Laurens SC 29360

*Counsel for Respondent, Twin Rivers Resort, LLC:*

T. S. Stern, Jr., Esq.

V. Elizabeth Wright, Esq.

COVINGTON PATRICK HAGINS STERN & LEWIS, P.A.

PO Box 2343

Greenville SC 29602

A handwritten signature in black ink, reading "Crystal Amick", is written over a horizontal line. The signature is cursive and includes a large initial "C".

September 22, 2014

Columbia, South Carolina

**LOUIS H. LANG** – Member

Direct Dial: 803-404-6963

[LouisLang@callisontighe.com](mailto:LouisLang@callisontighe.com)

September 22, 2014  
VIA HAND DELIVERY

RECEIVED

SEP 22 2014

SC Court of Appeals

Hon. Jenny Abbott Kitchings  
Clerk, S.C. Court of Appeals  
PO Box 11629  
Columbia SC 29211

Re: CertusBank, N.A., Appellant v. Kenneth E. Bennett, Twin Rivers Resort, LLC and Bennett of Greenwood, LLC, Defendants, of which Twin Rivers Resort, LLC, is the Respondent  
Appellate No: 2014-001248  
Case No: 2011-CP-30-00583  
CTR No: 1026.024

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of the following document concerning this matter:

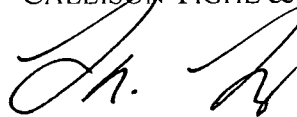
1. Appellant's Petition for Writ of Supersedeas; and
2. Certificate of Service

Please file the originals and return a clocked copy of each to me. Should you have any questions regarding the foregoing, please do not hesitate to contact me.

With kind regards, I am

Sincerely yours,

CALLISON TIGHE & ROBINSON, LLC



Louis H. Lang

LHL/cs

Enclosures

cc: W. Reid Cox, Jr., Esq. (w/ encls.)  
Terence L. Morris, Esq. (w/ encls.)  
T.S. Stern, Jr., Esq. (w/ encls.)  
G:\1000\1026.024\APPEAL\Clerk.005.doc