

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

RECEIVED

OCT 08 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 Resorts, LLC is the.....Respondent.

APPELLANT’S REPLY TO RESPONDENT’S RESPONSE TO
PETITION FOR WRIT OF SUPERSEDEAS

Pursuant to SCACR, Rule 241(f), Appellant, Certus Bank, N.A. (Certus), respectfully submits the following reply to the response of Respondent, Twin Rivers Resorts, LLC (Twin Rivers) to Certus’ petition 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. Argument.

Twin Rivers does not dispute the order of the Master granting it summary judgment and dismissing Certus’ ratification cause of action affects the merits of Certus’ case and Certus’ substantial rights. S.C. Code Ann. §§ 14-3-330(1) and 14-3-330(2)(c). Twin Rivers, however,

argues the grant of summary judgment against Certus is an interlocutory order and not immediately appealable.

This is incorrect. Sections 14-3-330(1) and 14-3-330(2)(c) are clear as is the South Carolina Supreme Court's holding in *Link v. Sch. Dist. of Pickens County*, 302 S.C. 1, 393 S.E.2d 176 (1990). The grant of partial summary judgment dismissing a party's cause of action is immediately appealable.

The two cases cited by Twin Rivers, *Mid-State Distributers Inc. v. Century Importers, Inc.*, 310 S.C. 330, 426 S.E.2d 777 (1993) and *Olson v. Faculty House of Carolina, Inc.*, 344 S.C. 194, 544 S.E.2d 38 (Ct. App. 1993), do not hold otherwise. *Mid-State Distributers, Inc.* dealt with an appeal of an order *denying* a SCRCP, Rule 12(b)(2) motion. The pertinent holding in *Olson* dealt with the *denial* of a motion for summary judgment. The South Carolina Supreme Court and this Court, respectively, held those appeals to be interlocutory.

This appeal does not deal with the denial of a motion; it concerns the *grant* of summary judgment dismissing Certus' ratification claim.

Twin Rivers' also suggests without citation of authority, Certus' appeal should be stayed so the trial of Certus' remaining two causes of action can go forward.

Twin Rivers' suggestion leaves Certus in the same predicament it would be in if supersedeas is denied. Certus would be forced to trial in November without its ratification claim. The facts underlying Certus three claims overlap and are interrelated. A November 2014 trial on the remaining causes of action would most likely result in findings of fact which would 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

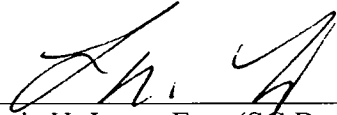
piecemeal litigation which is disfavored. *Cf. Oakwood Landfill, Inc. v. S.C. Dept. of Health and Environmental Control, et al.*, 381 S.C. 120, 129, 671 S.E.2d 646, 651 (Ct. App. 2009), *rev'd on other grounds, Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dept. of Health and Environmental Control*, 387 S.E. 265, 692 S.E.2d 894 (2010). ([P]iecemeal appeals are not favored....”).

Certus should not be forced to trial in November absent an appellate decision on its third cause of action. 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.

B. Conclusion.

For the reasons set forth in its petition and this reply, 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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October 6, 2014
Columbia, South Carolina

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Court of Common Pleas

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

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Of which Twin Rivers Resort, LLC is theRespondent.

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 Reply to the Respondent's Response to 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 October 6, 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)
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Counsel for Respondent, Twin Rivers Resort, LLC:

T. S. Stern, Jr., Esq.
V. Elizabeth Wright, Esq.
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PO Box 2343
Greenville SC 29602

A handwritten signature in cursive script, reading "Crystal Smith", is written over a horizontal line. The signature is fluid and stylized, with the first name "Crystal" and the last name "Smith" clearly legible.

October 6, 2014
Columbia, South Carolina

LOUIS H. LANG – Member

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October 6, 2014

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 Reply to Respondent's Response to 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

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SC Court of Appeals

LHL/cs

Enclosures

cc: W. Reid Cox, Jr., Esq. (w/ encls.)
Terence L. Morris, Esq. (w/ encls.)
T.S. Stern, Jr., Esq. (w/ encls.)
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