

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

J. Earnest Kinard, Jr., Circuit Court Judge

Civil Action No. 2011-CP-07-5059
Court of Appeals Number:
2012-213154
Opinion # 5211

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MAR 04 2015

SC Court of Appeals

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CoastalStates Bank, Respondent,

v.

Hanover Homes of South Carolina, LLC; Hanover Homes, Inc. George Cosman,
Defendants,

Of Whom George Cosman is the Appellant.

George Cosman, Third-Party Plaintiff,

v.

Phillip Petruzzelli, Third-Party Defendant.

RESPONDENT'S MOTION FOR CLARIFICATION

Richard R. Gleissner
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Attorneys for Respondent

The Respondent, CoastalStates Bank (“Bank”), respectfully requests this Court issue an Order of Clarification in connection with its June 11, 2014 Opinion in this matter. Pursuant to said decision, the Court Affirmed in Part, Reversed in Part, and Remanded this action to the Trial Court.

The Bank and the Appellant, George Cosman (“Guarantor”), each interpret the Court’s decision differently as to the whether this Court ruled that the Guarantor was still potentially liable under the subject guaranties even though the Bank released the borrower, Hanover Homes of South Carolina, LLC (“Borrower”). This Court found that the guarantees created an ambiguity which would prevent the trial court from granting Summary Judgment (“Viewing the evidence in the light most favorable to Cosman, as we must do in reviewing the trial court’s grant of the Bank’s Motion for Summary Judgment, we find the guaranties create an ambiguity.”) Since the Court clearly found the guarantees ambiguous, it is the Bank’s position this Court did not grant Summary Judgment to either party.

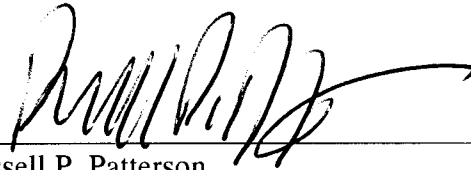
In addition, this Court cited what it termed the “general rule” that the release of the creditor releases a guarantor unless the guarantee’s right of recourse against the guarantor is expressly reserved in the contract or in the guaranty agreement, citing 38 CJS *Guaranty* 1/2/14 § 111, 720 – 21 (2008); *Poole v. Brabham*, 143 S.C. 156, 166, 141 S.E. 267, 270 – 71 (1927). As noted in the opinion, there is express language in all three (3) guarantees providing the Bank can release the Borrower and still retain its claims against the guarantor. In addition, the October 22, 2010 Agreement releasing the Borrower (R.pp. 250 – 252), as this Court quoted in its opinion, expressly provided the release of the Borrower did not release the other guarantors. Thus, the conclusion by the Bank that this Court did not rule the Grantor as a matter of law was

released from his guarantees on Summary Judgment is consistent with the applicable law, as cited by this Court. This issue must be determined by the Trial Court.

The Bank respectfully requests the Court clarify its original decision so the parties can proceed with this litigation in the Trial Court accordingly.

Respectfully submitted,

RUSSELL P. PATTERSON, P.A.

A handwritten signature in black ink, appearing to read 'Russell P. Patterson', written over a horizontal line.

Russell P. Patterson

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Attorney for Respondent

February 26, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

J. Earnest Kinard, Jr., Circuit Court Judge

Case No. 2011-CP-07-5059
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SC Court of Appeals

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Of Whom George Cosman is the Appellant.

George Cosman, Third-Party Plaintiff,

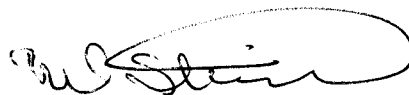
v.

Phillip Petruzzelli, Third-Party Defendant.

PROOF OF SERVICE

I certify that I have served the Respondent's Motion for Clarification on the Appellant by depositing a copy of it in the United States Mail, postage prepaid, on March 2, 2015, addressed to its attorney of record as follows:

Richard R. Gleissner
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Shelly Steinheibel, Paralegal to
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March 2, 2015

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February 24, 2015

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SC Court of Appeals

Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

Re: CoastalStates Bank v. Hanover Homes of South Carolina
Court of Appeals No.: 2012-213154

Dear Ms. Kitchings:

On behalf of Respondent, CoastalStates Bank, enclosed please find an original and six copies of its Motion for Clarification and Certificate of Service in connection with the above matter. Also enclosed is our firm's check in the amount of \$25.00 to cover the filing fee.

Thank you for your attention and consideration. With kind regards, I remain

Sincerely,
RUSSELL P. PATTERSON, P.A.

Russell P. Patterson

RPP:djt

Enclosures

cc: Randy Dolyniuk (w/encl.) – e-mail
Justin Perry (w/encl.) – e-mail
Richard R. Gleissner, Esq. (w/encl.)



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SC Court of Appeals

Honorable Jenny Abbott Kitchings
for the South Carolina Court of Appeals
Winter Street
Columbia, SC 29201