

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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SC Court of Appeals

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 TO RECALL THE REMITTITUR

Richard R. Gleissner
Gleissner Law Firm, LLC
1237 Gadsden Street, Suite 200A
Columbia, SC 29201
(803) 787-0505
Attorneys for Appellants

Russell P. Patterson
Russell P. Patterson, P.A.
P.O. Drawer 8047
Hilton Head Island, SC 29938
(843) 341-9300
russell@russellpattersonlaw.com
Attorneys for Respondent

The Respondent, CoastalStates Bank (“Bank”), respectfully requests this Court issue an Order recalling the Remittitur 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 Remittitur was issued on July 18, 2014.

The Bank and the Appellant, George Cosman (“Guarantor”), each interpret the Court’s decision differently as to the whether the Guarantor is still potentially liable under the subject guaranties, even though the Bank released the borrower, Hanover Homes of South Carolina, LLC (“Borrower”).

Guarantor asserts this Court granted its Motion for Summary Judgment on this issue. The Bank asserts this Court denied the Guarantor’s Motion for Summary Judgment. This Court found that the three (3) subject guaranties created an ambiguity which would prevent the trial court from granting the Bank’s 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 created an ambiguity.”) Since the Court found the guaranties 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 a 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 C.J.S. *Guaranty* , 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) guaranties stating the Bank can release the Borrower and still retain its claims against the Guarantor. This Court also noted that the October 22, 2010 Agreement releasing the Borrower (R.pp. 250 – 252) expressly provided the

release of the Borrower did not release the other guarantors. This Court thus appeared to conclude the trier-in-fact must determine the intent of the parties on this issue. The Court stated as follows:

We agree the guaranties in this case can reasonably be read to limit Cosman's liability to "all liabilities and obligation of the Borrower to the Bank." Because the Bank has accepted full and final payment from the Borrower, the guaranties can reasonably be interpreted to conclude there is no longer any liability of the Borrower to the Bank. (emphasis added).

It is clear the Court simply confirmed the underlying ambiguity in the documents and did not find as a matter of law the Guarantor is no longer liable.

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

Respectfully submitted,

RUSSELL P. PATTERSON, P.A.



Russell P. Patterson
P.O. Box 8047
Hilton Head Island, SC 29938
(843) 341-9300
russell@russellpattersonlaw.com
Attorney for Respondent

March 18, 2015

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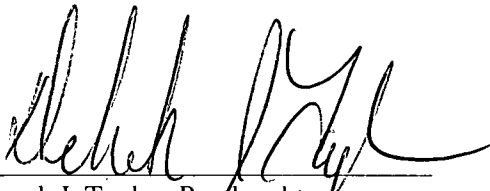
v.

Phillip Petruzzelli, Third-Party Defendant.

PROOF OF SERVICE

I certify that I have served the Respondent's Motion to Recall the Remittitur on the Appellant by depositing a copy of it in the United States Mail, postage prepaid, on March 18, 2015, addressed to its attorney of record as follows:

Richard R. Gleissner
Gleissner Law Firm, LLC
1237 Gadsden Street, Suite 200A
Columbia, SC 29201



Deborah J. Taylor, Paralegal to
Russell P. Patterson
Russell P. Patterson, P.A.
P.O. Drawer 8047
Hilton Head Island, SC 29938
(843) 341-9300
Attorneys for Respondent

March 18, 2015

Russell P. Patterson, P.A.



21 Office Park Road
Carolina Bldg. Suite 104
Hilton Head, SC 29928
russell@russellpattersonlaw.com

Serving the Lowcountry for over 25 years

P.O. Box 8047
Hilton Head, SC 29938
(843) 341-9300
(843) 341-9301 fax

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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 to Recall the Remittitur 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.

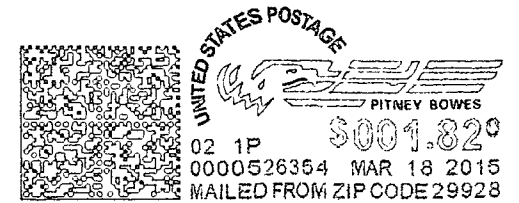
Russell P. Patterson

RPP:djt

Enclosures

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

Russell P. Patterson, Esq.
Russell P. Patterson, P.A.
P.O. Drawer 8047
Hilton Head Island, SC 29938



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