

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

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Larry B. Hyman, Jr., Circuit Court Judge

SC Court of Appeals

Case No. 2012-CP-26-05546  
Appellate Case no. 2014-002571

Robert Shelley, a/k/a RDS Investments, LLC, a/k/a  
ROS Investments, LLC , ..... Appellant,

v.

Horry County State Bank and HCSB Financial  
Corporation, ..... Respondents.

**Initial Brief of Respondents**

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**Statement of Issues on Appeal**

- I. The trial court properly found the applicable statute of limitations applied to bar each of Shelley's claims as a matter of law.
  
- II. Even if not barred by the statutes of limitations, all of Shelley's claims against Respondents fail as a matter of law.

## Statement of the Case

Appellant Robert Shelley (“Shelley”) initiated this action against Respondents HCSB Financial Corporation (“HCSB Financial”) and its wholly-owned subsidiary, Horry County State Bank (the “Bank”), seeking reimbursement for the costs of Shelley’s July and October 2009 purchase of shares of HCSB Financial. {Amended Complaint, R. \_\_\_\_}. Shelley’s allegations against Respondents focus only on events surrounding the July 17, 2009 stock purchase. Shelly did not provide any evidence of any wrongful acts or omissions by Respondents or anyone else regarding his October 2009 stock purchase. {Shelley Dep. Trans. at 61:11-15; R. \_\_\_\_}. Shelley named HCSB Financial and the Bank in the action rather than suing the seller from whom he purchased his shares. {Id.}.<sup>1</sup>

Shelley asserted claims for breach of fiduciary duty, violation of South Carolina’s Uniform Securities Act of 2005 (the “Securities Act”), negligence, and civil conspiracy against HCSB Financial and the Bank. {Id., R. \_\_\_\_}. Shelley based each of these claims on the allegation that a Bank employee contacted Shelley to advise him that HCSB Financial stock was available for purchase in July 2009 but failed to advise him of the financial condition of the Bank or provide him the identity of the seller of the stock he purchased. {Amended Complaint ¶¶ 6, 8, 19-21, 28-29, 32, and 36, R. \_\_\_\_}. Shelley requested damages in the amount of \$63,456.00, the total amount paid for HCSB Financial stock he purchased in July 2009 (1,000 shares at \$24.00 per share for a total of \$24,000) and October 2009 (2,192 shares at \$18.00 per share for a total of

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<sup>1</sup> The Complaint was originally brought as a purported class action but a Consent Order Dismissing Class Action Claims and Allegations was filed on May 20, 2013. As part of the Order, Shelley’s request for certification of a class and any references or allegations related to a class action were dismissed with prejudice, leaving only Shelley’s individual claims.

\$39,456). {Exhibit 5 to Respondents' Motion for Summary Judgment, R. \_\_\_\_; Shelley's Amended Answers to Interrogatories at ¶ 5, R. \_\_\_\_}.

Respondents filed a motion for summary judgment as to each of Shelley's claims, arguing that no genuine issues of material fact existed and that they were entitled to judgment as matter of law on each of Shelley's claims. {Motion for Summary Judgment and Memorandum in Support, R. \_\_\_\_}. Respondents argued the applicable statute of limitations barred each of Shelley's claims. {Memorandum in Support p. \_\_\_\_, R. \_\_\_\_}. Even if the claims were not time-barred, each of them still failed as a matter of law.

First, the breach of fiduciary duty claim failed because Respondents did not owe a fiduciary duty to Shelley as a matter of law under well-settled South Carolina law. As a result, Respondents did not owe a duty to disclose the financial condition of the Bank or provide Shelley the identity of the seller of the stock at the time of purchase. {Id., R. \_\_\_\_}. Second, Shelley's negligence claim failed for the same reason, namely Respondents did not owe a duty to disclose the Bank's financial condition or provide Shelley the identity of the seller of the stock at the time of purchase. {Id., R. \_\_\_\_}. Third, Shelley's Securities Act claim failed as a matter of law because (1) Respondents were not sellers of securities under the act, (2) Respondents did not violate section 35-1-501 of the act, (3) no private right of action existed under section 35-1-504 of the act, and (4) sales of interest in a banking or depository institution are exempt from the act. {Id., R. \_\_\_\_}. Fourth, Shelley failed to establish the elements required to maintain the civil conspiracy claim. {Id., R. \_\_\_\_}.<sup>2</sup>

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<sup>2</sup> Shelley filed no memorandum in opposition to the Respondents' Motion for Summary Judgment.

The trial court granted Respondents' motion in full. {Order Granting Respondents' Motion for Summary Judgment, R. \_\_\_\_}. The trial court found that no genuine issues of facts existed as to any claim and, as a result, Respondents were entitled to judgment as a matter of law. {Id., R. \_\_\_\_}. Specifically, the trial court found that: (1) the applicable statute of limitations barred each of Shelley's claims; (2) the breach of fiduciary duty and negligence claims failed as a matter of law because Respondents did not owe a fiduciary duty to Shelley; (3) Shelley failed to establish the elements required to maintain his civil conspiracy claim; and (4) the Securities Act claim failed as a matter of law because Respondents were not sellers of securities under the Securities Act. {Id., R. \_\_\_\_}. The trial court further found that even if Respondents were sellers under the act, the claims still failed as a matter of law because (1) Respondents did not violate section 35-1-501 of the Securities Act, (2) no private right of action existed under section 35-1-504 of the Securities Act, and (3) the Securities Act exempts sales of interest in a banking or depository institution. {Id., R. \_\_\_\_}.

Shelley filed a motion to reconsider. {Motion to Reconsider, R. \_\_\_\_}. The trial court denied the motion. {Order Denying Motion to Reconsider, R. \_\_\_\_}. This appeal followed. {Notice of Appeal, R. \_\_\_\_}.

#### **Statement of Facts**

Shelley voluntarily elected to purchase shares of stock in HCSB Financial in July 2009 and October 2009. {Amended Complaint, R. \_\_\_\_}. When those shares declined in value, Shelley initiated this action against HCSB Financial and the Bank, seeking reimbursement for the costs of those stock purchases. {Amended Complaint,

R. \_\_\_\_}. These 2009 purchases, however, were not Shelley's first purchase of stock in HCSB Financial. {Shelley Dep. Trans. at 25:24-28:7, R. \_\_\_\_}. Shelley first purchased stock in 2005. {Id., R. \_\_\_\_}. As a shareholder, Shelley began receiving the annual reports of HCSB Financial and the Bank in 2005. {Affidavit ¶ 7, R. \_\_\_\_; Shelley Dep. Trans. at 66:18-67:9, R. \_\_\_\_}.

As a long-time customer of the Bank, Shelley's interest in purchasing stock in HCSB Financial arose in the mid-2000s. {Shelley Dep. Trans. at 24:11-25:23, R. \_\_\_\_}. At that time, Shelley contacted the Bank and asked Debbie Guyette, a Bank employee, if "anybody [had] any stock for sale." {Shelley Dep. Trans. at 24:11-25:23, R. \_\_\_\_; Guyette Dep. Trans. at 39:24-40:4 and 41:13-24, R. \_\_\_\_; Cannon Dep. Trans. at 42:5-15, R. \_\_\_\_}. Guyette informed Shelley that "no, that she didn't know of anyone, but if she did, she'd let me know." {Shelley Dep. Trans. at 24:11-25:23, R. \_\_\_\_}.

As a result of Shelley's request, someone from the Bank alerted Shelley in July 2005 that an owner of HCSB Financial stock was selling shares. {Shelley Dep. Trans. at 29:6-30:23, R. \_\_\_\_}. Shelley purchased 1,285 shares at \$35.00 per share from the individual selling the stock. {Shelley Dep. Trans. at 25:24-28:7, R. \_\_\_\_}.<sup>3</sup> Shelly became a shareholder in HCSB Financial at that time. {Shelley Dep. Trans. at 25:24-28:7, R. \_\_\_\_}. As a shareholder, Shelley received HCSB Financial's annual reports from that point forward. {Affidavit at ¶ 7, R. \_\_\_\_; Shelley Dep. Trans. at 66:18-67:9, R. \_\_\_\_}. Shelley admitted that he received the Bank's financial reports from 2005

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<sup>3</sup> Shelley made no claims in this litigation related to this initial 2005 purchase of HCSB Financial stock. {Amended Complaint; Shelley Dep. Trans. at 27:24-28:7; R. \_\_\_\_}. Only the stock purchases in July 2009 and October 2009 are subject to Shelley's claims against Respondents. {Id.}.

through the time Shelley purchased the shares at issue in this appeal in 2009. {Id., R. \_\_\_\_}.

In July 2009, an employee of the Bank, Jane Cannon, the head teller at Shelley's branch, advised Shelley that HCSB Financial stock was again available for purchase. {Shelley Dep. Trans. at 39:12-40:16, R. \_\_\_\_}. Shelley testified that Cannon called him "and said that there was some stock for sale and how much—how much stock was for sale and was I interested in buying it." {Shelley Dep. Trans. at 40:9-12, R. \_\_\_\_; Cannon Dep. Trans. at 8:16-19, 37:14-24, 42:16-23, R. \_\_\_\_}. Cannon advised Shelley that 2,000 shares were available for purchase. {Shelley Dep. Trans. at 40:17-41:2, R. \_\_\_\_; Cannon Dep. Trans. at 42:23, 44:18-22, R. \_\_\_\_}. Shelley had an interest in purchasing 1,000 shares and advised that he would come into the Bank in the next couple of days to arrange the purchase. {Id.}.

On the date of purchase, Shelley asked Cannon who owned the stock being sold. {Shelley Dep. Trans. at 41:21-42:3, R. \_\_\_\_; Cannon Dep. Trans. at 9:22-24, 37:2-6, R. \_\_\_\_}. Cannon advised that she did not know. {Id.}. Shelley admitted that he did not know if Cannon knew who the owner of the shares was at that time. {Shelley Dep. Trans. 48:14-16, 49:5-10, 79:15-23; R. \_\_\_\_}. Shelley further admitted that he had no idea who owned the stock himself. {Shelley Dep. Trans. 48:14-16, 49:5-10, 79:15-23; R. \_\_\_\_}. Importantly, Shelley admitted that the identity of the seller of the stock did not matter to him or his decision to purchase the shares. {Shelley Dep. Trans. at 42:1-21, R. \_\_\_\_}.

Shelley never requested any information about the financial condition of HCSB Financial or the Bank prior to the July 2009 stock purchase. {Shelley Dep. Trans. at

48:17-22, 51:18-22, R. \_\_\_; Cannon Dep. Trans. at 11:13-12:2, 14:22-24, R. \_\_\_}.

Had Shelley asked for any such information, he would have received that which he already had as a shareholder—the annual reports. {Guyette Dep. Trans. at 20:9-15, R. \_\_\_; Shelley Dep. Trans. at 66:18-67:9, R. \_\_\_}.

Shelley elected to move forward with the transaction and purchased 1,000 shares of HCSB Financial stock at \$24.00 per share. {Amended Complaint ¶ 7, R. \_\_\_; Shelley Dep. Trans. at 36:17-38:10, R. \_\_\_}. Shelley paid for the purchase by directing Cannon to draft the purchase amount from his account with the Bank. {Shelley Dep. Trans. at 42:1-21, R. \_\_\_}. Shelley admitted that he had no issues with the purchase price. {Shelley Dep. Trans. at 38:11-13, 42:15-17, R. \_\_\_}.

In October 2009, additional shares of HCSB Financial became available for purchase from a shareholder. {Shelley Dep. Trans. at 58:2-15, 59:5-11, R. \_\_\_}. Either Guyette or Cannon informed Shelley of the available shares. {Id.}: Shelley did not recall whether he asked who was selling these shares prior to his purchase. {Shelley Dep. Trans. at 58:25-59:4, 61:5-9, R. \_\_\_}. Shelley neither asked for nor was given any information about the financial condition of HCSB Financial or the Bank condition in connection with his October 2009 purchase. {Shelley Dep. Trans. at 59:12-19; R. \_\_\_}.<sup>4</sup> According to Shelley, “the condition of the bank was not in bad shape at all” at that time. {Shelley Dep. Trans. at 62:1-2, R. \_\_\_}.

As a result, Shelley decided to purchase 2,192 shares of HCSB Financial stock at \$18.00 per share. {Amended Complaint ¶ 7, R. \_\_\_; Shelley Dep. Trans. at 56:25-

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<sup>4</sup> Again, had Appellant asked for any information about the financial condition, he would have been provided with the annual report, which he had already received as a shareholder. {Guyette Dep. Trans. at 20:9-15, R. \_\_\_; Shelley Dep. Trans. at 66:18-67:9, R. \_\_\_}.

57:3, R. \_\_\_\_}. Shelley again directed the Bank to debit his account for the purchase. {Id.}. Shelley admitted that he did not know how the purchase price was determined. {Shelley Dep. Trans. at 58:16-20, R. \_\_\_\_}. Shelley further admitted that it sounded “like a good deal” based on his recent purchase of stock at \$24 per share, but “did not go out—go about checking the price of the stock out, blah, blah, blah, the condition of the bank at that time.” {Shelley Dep. Trans. at 61:16-62:1; R. \_\_\_\_}. As with his July 2009 stock purchase, Shelley did not try to determine the value of any shares prior to making purchases. {Shelley Dep. Trans. at 62:3-7, R. \_\_\_\_}.

Thereafter, the shares of HCSB Financial declined in price, and Shelley initiated this action against HCSB Financial and the Bank. {Amended Complaint, R. \_\_\_\_}. Shelley asserted claims for breach of fiduciary duty, violation of South Carolina’s Uniform Securities Act of 2005, negligence, and civil conspiracy against HCSB Financial and the Bank. {Id., R. \_\_\_\_}. Importantly, Shelley did not bring any claims against the person from whom he purchased the stock. {Amended Complaint, R. \_\_\_\_}.

Notably, Shelley did not allege that any wrongdoing by the Bank caused the decline in the stock price. {Amended Complaint, R. \_\_\_\_}. Instead, Shelley alleged he later learned that the shares he purchased in July 2009 had been owned by Guyette.<sup>5</sup> {Shelley Dep. Trans. 83:1-15; R. \_\_\_\_}. Shelley alleged that at some point after he purchased the shares, he asked Guyette if she knew who owned the shares sold to him, and she said she did not know. {Shelley Dep. Trans. at 44:21-45:3, 53:5-9, 78:1-3; R. \_\_\_\_}. Shelley claimed that he felt misled by Guyette’s alleged statement—made after

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<sup>5</sup> The shares that Shelley purchased in October 2009 were not owned by Guyette or by anyone else employed by Respondents, and Shelley does not allege any misleading statements were made to him regarding the ownership of those shares. {Shelley Dep. Trans. at 61:11-15, R. \_\_\_\_}.

his stock purchase—that she did not know from whom he was purchasing stock.<sup>6</sup> {Shelley Dep. Trans. 48:23-6; R. \_\_\_\_}. This information led Shelley to base each of his claims against Respondents on the allegation that they failed to advise him of the financial condition of the Bank or provide him the identity of the seller of the stock he purchased.<sup>7</sup> {Amended Complaint ¶¶ 6, 8, 19-21, 28-29, 32, and 36, R. \_\_\_\_}.

In his Amended Complaint, Shelley sought damages in the amount of \$63,456.00, the total amount he paid for HCSB Financial stock in July 2009 (1,000 shares at \$24.00 per share for a total of \$24,000) and October 2009 (2,192 shares at \$18.00 per share for a total of \$39,456). {Exhibit 5 to Respondents' Motion for Summary Judgment, R. \_\_\_\_; Shelley's Amended Answers to Interrogatories at ¶ 5, R. \_\_\_\_}.

Respondents filed a motion for summary judgment as to each of Shelley's claims, arguing that no genuine issues of material fact existed and that they were entitled to judgment as matter of law on each of Shelley's claims. {Motion for Summary Judgment and Memorandum in Support, R. \_\_\_\_}. The trial court granted Respondents' motion in full. {Order Granting Respondents' Motion for Summary Judgment, R. \_\_\_\_}. After denial of Shelley's motion to reconsider, this appeal followed.

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<sup>6</sup> Guyette denies that Shelley ever asked who owned the shares that were sold to him and asserts that she would have told him had he asked. {Guyette Dep. Trans. at 45:4-12; R. \_\_\_\_}.

<sup>7</sup> Importantly, Shelley could not say how or if knowing Guyette was the seller would have affected his course of action had he known it before he purchased the shares. {Shelley Dep. Trans. 83:22-84:5, R. \_\_\_\_}.

### Scope of Review

Summary judgment is appropriate where it is clear there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Hamiter v. Retirement Division of the South Carolina Budget and Control Board, 326 S.C. 93, 484 S.E.2d 586 (1997). In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. Id.

### Argument

**I. The trial court properly found the applicable statute of limitations applied to bar each of Shelley's claims as a matter of law.**

In the Amended Complaint, Shelley sought damages allegedly stemming from the July 17, 2009 stock purchase. While Shelly sought refund of the purchase price of the October 2009 transaction, Shelly failed to introduce any evidence of wrongful acts or omissions by Respondents or anyone else regarding his October 2009 stock purchase.<sup>8</sup> Instead, Shelley based each of his claims on the sole allegation that at the time of the July 17, 2009 purchase a Bank employee failed to advise him of the financial condition of the Bank or provide him the identity of the seller of the stock. {Amended Complaint ¶¶ 6; 8; 19-21; 28-29; 32; and 36; R. \_\_\_\_}. Despite his allegations arising at the time of purchase, Shelley did not file this action until July 19, 2012. Thus, the statute of limitations applicable to each cause of action had expired prior to Shelley initiating this action. The trial court properly granted summary judgment on this basis. This Court should affirm.

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<sup>8</sup> See also Shelley Dep. Trans. at 61:11-15; R. \_\_\_\_.

A three-year statute of limitations applies to Shelley's claims for breach of fiduciary duty, violation of South Carolina's Uniform Securities Act of 2005, negligence, and civil conspiracy against HCSB Financial and the Bank. See S.C. Code Ann. § 15-3-530(5) (providing the statute of limitations for an action sounding in tort is three years); S.C. Code Ann. § 35-1-509(j) (setting forth a three-year statute of limitations for actions brought under the Uniform Securities Act); see also Moore v. Benson, 390 S.C. 153, 700 S.E.2d 273 (Ct. App. 2010) (acknowledging the three-year statute of limitations on a breach of fiduciary duty claim); Gibson v. Bank of Am., N.A., 383 S.C. 399, 680 S.E.2d 778 (Ct. App. 2009) (applying a three-year statute of limitations on a negligence claim). Importantly, the limitations period begins to run when the plaintiff "knew or by the exercise of reasonable diligence should have known that he had a cause of action." S.C. Code Ann. § 15-3-535 (2005). The discovery rule provides that:

The standard as to when the limitations period begins to run is objective rather than subjective. Therefore, the limitations period begins to run when a person **could or should have known**, through the exercise of reasonable diligence, that a cause of action might exist in his or her favor, rather than when a person obtains actual knowledge of either the potential claim or of the facts giving rise thereto.

Gibson, 383 S.C. at 406, 680 S.E.2d at 782 (emphasis in original). In other words, the clock starts running when the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some claim against another party might exist. Burgess v. Am. Cancer Soc'y, S.C. Div., Inc., 300 S.C. 182, 186, 386 S.E.2d 798, 800 (Ct. App. 1989). Moreover, the Securities Act requires an action

to be initiated “within three years after the violation occurred.” S.C. Code Ann. § 35-1-509(j)(1).

In this action, Shelley claimed that, at the time he purchased the stock on July 17, 2009, a Bank employee failed to advise him of the financial condition of the Bank or provide him the identity of the seller of the stock. Shelley knew or should have known at that time of this alleged violation. Thus, the statute of limitations for each cause of action began to run on July 17, 2009. Shelley failed to file this action until July 19, 2012, after the statute of limitations had expired.

In his brief, Shelley alleges he “did not discover the omission as to who the seller of the stock was until sometime after July 17, 2009.” {App. Br. p. 12}. However, such an argument lacks merit and does not impact the fact that the statute of limitations began to run at the time of purchase on July 17, 2009. Such subjective knowledge is immaterial. This Court has held that:

The exercise of reasonable diligence means simply that an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist. The statute of limitations begins to run from this point and not when advice of counsel is sought or a full-blown theory developed.

Grillo v. Speedrite Products, Inc., 340 S.C. 498, 503, 532 S.E.2d 1, 3 (Ct. App. 2000) (quoting Snell v. Columbia Gun Exch. Inc., 276 S.C. 301, 303, 278 S.E.2d 333, 334 (1981)). Moreover, “[t]he fact that an injured party may not comprehend the full extent of the damage is immaterial . . . . The statute of limitations is triggered not merely by knowledge of an injury, but by knowledge of facts, diligently acquired,

sufficient to put a person on notice of the existence of a cause of action against another. This is an objective, not a subjective, determination. Id. (citations omitted) (emphasis added). Therefore, Shelley's subjective knowledge was immaterial. The statute of limitations began to run on July 17, 2009, when Shelley knew that he was not advised of the Bank's financial status or the identity of the seller.

The trial court properly applied the statutes of limitations and granted summary judgment on each claim on this basis. This Court should affirm. Affirmance on this basis renders unnecessary Shelley's appellate arguments as to each cause of action. See, e.g., Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not review remaining arguments when the determination of a prior issue is dispositive of the appeal).

**II. Even if not barred by the statutes of limitations, all of Shelley's claims against Respondents fail as a matter of law.**

As discussed in section I above, the trial court was correct in granting summary judgment based on the applicable statutes of limitations. However, even if Shelley's claims were not time-barred, summary judgment as to each cause of action was proper because the Amended Complaint fails to state a claim upon which relief can be granted.

**A. The trial court properly granted summary judgment on Shelley's breach of fiduciary duty claim because Respondents owed no duty to Shelley as a matter of law.**

Even if the statute of limitations did not bar Shelley's breach of fiduciary duty claim, the trial court correctly granted summary judgment to Respondents. Shelley claims the trial court improperly granted summary judgment because the Bank failed to advise Shelley of the name of the seller of shares prior to his purchase in July 2009.

{App. Br. p. 2-4; 10}.<sup>9</sup> Specifically, Shelley claims a genuine issue of fact existed as to whether the Bank owed Shelley a fiduciary duty. {App. Br. p. 3-4; 10}. This argument lacks merit. Under well-settled South Carolina law, the Bank did not owe any fiduciary duty to Shelley as a matter of law. Thus, the trial court correctly found that no genuine issue of material fact existed as to Shelley's breach of fiduciary duty claim. This Court should affirm.

Shelley's argument misapprehends the fact that "[t]he determination of whether a fiduciary relationship exists is an equitable issue to be determined by the court." Cowburn v. Leventis, 366 S.C. 20, 37, 619 S.E.2d 437, 447 (Ct. App. 2005) (citing Hendricks v. Clemson Univ., 353 S.C. 449, 458, 578 S.E.2d 711, 715 (2003)). Moreover, this Court recognized that "South Carolina holds the normal relationship between a bank and its customer is . . . not fiduciary in nature." Regions Bank v. Schmauch, 354 S.C. 648, 670-71, 582 S.E.2d 432, 444 (Ct. App. 2003). In contrast, "[a] fiduciary relationship exists when one reposes special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one reposing confidence." Regions Bank, 354 S.C. at 670, 582 S.E.2d at 444 (internal citations omitted). "[A] fiduciary relationship cannot be established by the unilateral action of one party . . . . The other party must have

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<sup>9</sup> This court should also affirm based on the two-issue rule. To the trial court, Shelley argued that the Bank owed him a duty for two reasons—the Bank had to advise him of the identity of the seller and to disclose its fiscal condition at time of sale. {Hearing Trans.; R. \_\_\_\_}. The trial court rejected the argument that either basis created a duty owed by Respondents. {Order Granting Summary Judgment; R. \_\_\_\_}. However, Shelley failed to appeal the trial court's ruling that the Bank did not owe him a duty to disclose the fiscal condition. Thus, the two-issue rule requires affirmance. See Atl. Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 328, 730 S.E.2d 282, 284 (2012) ("Under the two issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become law of the case.") (quoting Jones v. Lott, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010)).

actually accepted or induced the confidence placed in him.” Id. at 670-71, 582 S.E.2d at 444 (internal citations omitted). Notably, a bank does not—as a matter of law—owe a customer a fiduciary duty when the customer never requested that the bank advise the customer on the transaction at issue, and the bank did not undertake to offer any advice in connection with the transaction. Id.

In this matter, Shelley failed to establish the existence of a fiduciary duty as a matter of law. Shelley failed to introduce any evidence that (1) he placed “special confidence” in the Bank in regards to his stock purchases or (2) the Bank “accepted or induced confidence” from Shelley. In fact, the record belies any such a finding.

First, Shelley never asked for any financial information regarding information in connection with his purchases of stock from private shareholders. {Shelley Dep. Trans. at 48:17-22, 51:18-22; R. \_\_\_\_}. Second, Shelley never asked the Bank to advise him on the stock purchase. {Shelley Dep. Trans. at 51:18-22; R. \_\_\_\_}. Third, although Shelley asked about the ownership of the shares he purchased, Cannon did not know who owned them and informed Shelley of that fact. {Shelley Dep. Trans. at 42:1-6, 42:21-42:3; Cannon Dep. Trans. at 9:22-24, 37:2-6 R. \_\_\_\_}. Fourth, Shelley chose to proceed with his purchase despite the lack of information on identity of the seller. {Shelley Dep. Trans. at 42:1-6; R. \_\_\_\_}. Fifth, Shelley admitted he did not care who owned the stock at the time he purchased. {Shelley Dep. Trans. at 42:18-21; R. \_\_\_\_}. Sixth, Shelley admitted the identity of the seller made no difference in his decision to purchase the stock. {Shelley Dep. Trans. at 42:1-21, 84:1-5; R. \_\_\_\_}. Seventh, Shelley introduced no evidence that the Bank offered to advise him on either the financial condition of the Bank or the identity of the seller. {Hearing Trans.; R.

\_\_\_}.<sup>10</sup> Lastly, Shelley admitted that he had received the HCSB Financial's annual reports since 2005 (after he became a shareholder) and that "the condition of the bank was not in bad shape at all" when he made his purchase in October 2009. {Shelley Dep. Trans. at 62:1-2; R. \_\_\_}.

The above evidence established that Shelley failed to show that he placed any "special confidence" in the Bank for his stock purchases or that the Bank "accepted or induced confidence" from Shelley. Because the Bank did not undertake to advise Shelley on either of the claimed violations, Shelley could not have relied on Respondents in making the stock purchase. See Regions Bank, 354 S.C. at 670-71, 582 at 444 (holding that no fiduciary relationship existed as a matter of law where a bank's customer never asked questions about the transaction at issue and the bank did not undertake to advise her in connection with the transaction). Thus, no fiduciary relationship or duty existed as a matter of law. The trial court correctly granted summary judgment on the breach of fiduciary duty claim. This Court should affirm.

Even if a duty existed, Respondents would not have been required to disclose unknown information to Shelley. Even a broker or dealer of securities<sup>11</sup> who does owe fiduciary duties to a stock purchaser does not have a fiduciary duty to "investigate for any unknown potential risks of investment." Cowburn, 366 S.C. at 37-38, 619 S.E.2d at 447; see also Moore v. Moore, 360 S.C. 241, 251, 599 S.E.2d 467, 472 (Ct. App.

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<sup>10</sup> In his brief, Shelley maintains that he asked Guyette "whose stock it was and she did not answer." {App. Br. p. 4}. Shelley claims such was evidence of the creation of duty owed by the Bank at the time of the sale. {Id.}. Such a contention misconstrues the evidence before the trial court. Shelley did not speak to Guyette, the seller of the stock, until **after** Shelley purchased the stock. Thus, such evidence has no bearing on the grant of summary judgment because it occurred after the sale.

<sup>11</sup> Respondents are not brokers or dealers of securities.

2004) (“Parties in a fiduciary relationship must fully disclose to each other all **known** information that is significant and material . . . .”) (emphasis added).

In this matter, Respondents had no knowledge of the information on which Shelley based his claim, namely that a Bank employee failed to advise him of the financial condition of the Bank or provide him the identity of the seller of the stock. The undisputed evidence established that the Bank employee, Cannon, with whom Shelley spoke, did not know the Bank’s financial condition at the time of Shelley’s stock purchase. {Cannon Dep. Trans. at 13:7-14:7; R. \_\_\_\_}. Cannon also did not know the identity of the seller of the shares at the time of Shelley’s purchase. {Cannon Dep. Trans. at 9:22-24 and 37:2-6; R. \_\_\_\_}. Therefore, no duty existed to provide Shelley with this unknown information for this reason, as well. This Court should affirm.

**B. The trial court properly granted summary judgment on Shelley’s negligence claim because the Bank owed no duty to Shelley as a matter of law.**

Even if the statute of limitations did not bar Shelley’s negligence claim, the trial court correctly granted summary judgment to Respondents. Shelley argues the Bank “was liable for negligence of its employees failing to advise Shelley as to who was offering stock.” {App. Br. p. 10}. This argument lacks merit for two reasons. First, Shelley fails to cite any authority for the proposition that the Bank owed such a duty. {App. Br. p. 10}. As such, the argument is abandoned on appeal. First Sav. Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (noting an issue is deemed abandoned where appellant fails to provide arguments or supporting authority for his assertion).

Second, even if not abandoned, the claim fails because the Bank owed no such duty to Shelley as a matter of law. “Negligence is the breach of a duty of care owed to the plaintiff by the defendant.” Regions Bank, 354 S.C. at 668, 582 S.E.2d at 443 (internal citations omitted). For Shelley to be successful on his negligence claim, he must show that Respondents owed him some duty to advise him of the Bank’s financial condition or the identity of the seller of the shares he purchased.

As set forth in section II.A, supra, Shelley cannot establish such a duty owed by Respondents. The normal relationship between a bank and its customer is not fiduciary in nature. Regions Bank, 354 S.C. at 670-71, 582 S.E.2d at 444. As a matter of law, a bank does not owe a customer a duty when the customer never requests the bank advise the customer on the transaction at issue, and the bank did not undertake to offer any advice in connection with the transaction. Id.

Moreover, Shelley admitted that he voluntarily chose to proceed with the stock purchase despite the lack of information regarding the identity of the seller. {Shelley Dep. Trans. at 36:17-38:10; R. \_\_\_\_}. In fact, Shelley acknowledged that he did not care who owned the stock at the time of the purchase. {Shelley Dep. Trans. at 42:1-21; R. \_\_\_\_}. Notably, Shelley also admitted it made no difference in his decision to purchase the stock. {Shelley Dep. Trans. at 42:1-21; R. \_\_\_\_}. Thus, the trial court properly granted summary judgment on the negligence claim. This Court should affirm.

**C. The trial court correctly granted summary judgment on Shelley's Securities Act claim because the claim fails as a matter of law.**

In the Amended Complaint, Shelley alleged the Bank and HCSB Financial violated sections 35-1-501 and 35-1-504 of the Securities Act by failing to provide the financial condition of the Bank and a prospectus. {Amended Complaint ¶¶ 28, 29, 30; R. \_\_\_\_}. Respondents moved for summary judgment on this claim, arguing that the Securities Act did not apply because Respondents were not "sellers" of the stock as defined by section 35-1-509(b)(1) of the Securities Act. Respondents further argued that even if the Securities Act applied, the claims under sections 35-1-501 and 35-1-504 still failed as a matter of law. The trial court agreed with both arguments and granted summary judgment. This Court should affirm.

**1. The two-issue rule requires affirmance of the trial court's grant of summary judgment on Shelley's claim under section 35-1-501 because Shelley failed to appeal each of the grounds supporting the trial court's ruling.**

Before the trial court, Shelley argued the Bank and HCSB Financial violated the Securities Act because they failed to advise him of the financial condition of the Bank and the identity of the seller of the stock he purchased. The trial court rejected each argument and granted summary judgment to the Bank and HCSB Financial on the Securities Act claim on multiple grounds.

The trial court found that the Bank and HCSB Financial were not sellers under section 35-1-509(b). {Order Granting Summary Judgment p. 6, R. \_\_\_\_}. Second, the trial court rejected Shelley's argument that the Bank and HCSB Financial violated section 35-1-501. The trial court made three specific and independent rulings on Shelley's arguments. First, the trial court found that no violation existed because any

failure to advise Shelley of the financial condition of the Bank “could not operate as a fraud or deceit” as required under section 35-1-501. {Id. at 7}. Second, the trial court rejected Shelley’s identity of the seller argument as a violation of section 35-1-501. {Id. at 7-8}. Third, the trial court found that Shelley failed to provide any evidence that such misrepresentations (failure to advise of the financial condition or failure to provide the identity of the seller) caused him any damage. {Id. at 8}.

Shelley failed to appeal each ground of the trial court’s grant of summary judgment. Shelley devotes the entirety of section II of his brief to his Securities Act claim, arguing “the trial court erred in granting summary judgment on [Shelley’s] Uniform Securities Act cause of action.” {App. Br. p. 5}. However, the sole basis of this argument is that an employee of the Bank failed to provide him the identity of the seller of the stock he purchased.<sup>12</sup> {App. Br. p. 5-9}. Appellant fails to make any argument to this Court that the trial court erred in rejecting Shelley’s identity of the seller argument **as a violation of section 35-1-501.** {Id.}. Appellant also failed to appeal the trial court’s ruling that Shelley failed to provide any evidence that he was damaged by the alleged misrepresentations of the Bank. {Id.}. Thus, the two-issue rule requires affirmance. See Atl. Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 328, 730 S.E.2d 282, 284 (2012) (“‘Under the two issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become law of the case.’”) (quoting Jones v. Lott, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010)).

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<sup>12</sup> Despite this assertion in the brief, Shelley fails to even cite section 35-1-501 in support of his argument. Moreover, Shelley does argue to this Court that the trial court erred in applying that section in granting Respondents summary judgment.

2. Respondents are not “sellers” as defined by the Securities Act.

On appeal, Shelley first alleges that a genuine issue of fact exists as to whether the Bank was a seller under section 35-1-509(b)(1) of the Securities Act. {App. Br. p. 9}. This argument should be rejected.

Section 35-1-509(b) of the Securities Act creates a private right of action for a violation of the act by a seller of securities. That section provides that a seller of a security is liable to the purchaser in only three instances: (1) if the seller violates Section 35-1-301 regarding securities registration; (2) if the seller violates Section 35-1-501 regarding fraud generally; or (3) if the seller:

[B]y means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the purchaser not knowing the untruth or omission and the seller not sustaining the burden of proof that the seller did not know and, in the exercise of reasonable care, could not have known of the untruth or omission.

S.C. Code Ann. § 35-1-509(b). However, a prerequisite to a cause of action under this section is that the action must be brought against the seller of the security. S.C. Code Ann. § 35-1-509(b) (“A person is liable to the purchaser if the person sells a security . . .”) (emphasis added).

HCSB Financial and the Bank are not sellers under the Securities Act. It is undisputed in this matter that neither HCSB Financial nor the Bank owned the stock that Shelley purchased. The only evidence before the trial court established that Shelley’s stock was sold by individual owners and not the Respondents. {Affidavit at ¶¶ 8-9, R. \_\_\_; Shelley Dep. Trans. at 42:21-42:3; R. \_\_\_}. Moreover, Shelley

admitted to this Court that “[t]he stock in question in this case was not owned by the Bank . . . .” {App. Br. p. 14}. HCSB Financial and the Bank could not sell something that neither owned. Therefore, HCSB Financial and the Bank cannot be “sellers” under the Securities Act. Accordingly, section 35-1-509(b) cannot impose liability on HCSB Financial and the Bank. Summary judgment was proper on this basis.

Shelley also claims that HCSB Financial and the Bank were sellers based on their roles in the transaction, relying on McCall v. Finley, 294 S.C. 1, 362 S.E.2d 26 (Ct. App. 1987). {App. Br. p. 5-6, 9}. However, Shelley’s argument contradicts South Carolina law on this issue. In McCall, this Court recognized that the Securities Act applies only to a seller of securities. Id. at 7, 362 S.E.2d at 30. McCall tried to hold Bashier, who did not own the stock purchased by McCall, liable as a “seller” under the Securities Act. Id. McCall claimed that Brashier qualified as a “seller” under the act because Bashier participated in the sale of stock from Finley to McCall by transferring the stock certificates to McCall. Id. at 8, 362 S.E.2d at 30. The court rejected that argument and held that a “purely ministerial act does not constitute significant participation in the sale.” Id. at 8, 362 S.E.2d at 30-31. Therefore, the non-seller cannot be a “seller” under the Securities Act because such actions were not substantive to the sale between Finley and McCall. Id.

The evidence presented to the trial court yields but one conclusion—any participation in the sale of the stock to Shelley by HCSB Financial and the Bank was “purely ministerial.” In response Shelley’s specific request, an employee of the Bank called to let Shelley know an owner of HCSB Financial was looking to sell their shares.

Neither HCSB Financial nor the Bank had any further role in the sale to Shelley. The evidence cited by Shelley in brief does not alter this conclusion.

The fact that an employee of the Bank alerted Shelley to the availability of shares at his request does not elevate the Bank to a seller. Such actions are at most ministerial and are not substantive to a sale transaction – between the owner of the stock and the purchaser – to which the Bank had no involvement. Therefore, Shelley’s position is without merit. HCSB Financial and the Bank are not “sellers” under the Securities Act as a matter of law. The trial court properly granted summary judgment. This Court should affirm.

**3. The trial court correctly granted summary judgment because Shelley’s claim pursuant to section 35-1-501 failed as a matter of law.**

Even if there were some evidence that the HCSB Financial or the Bank was a “seller” under the Securities Act, or if Shelley had properly presented an appellate argument as to section 35-1-501, Shelley’s claim under section 35-1-501 of the Securities Act still fails as a matter of law. Shelley argued to the trial court that Respondents violated this section by failing to advise him of the current financial condition of the Bank at the time of his purchase.<sup>13</sup> This argument lacks merit, even if properly raised to this Court.

Section 35-1-501 of the Securities Act provides that:

It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly:

(1) to employ a device, scheme, or artifice to defraud;

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<sup>13</sup> Again, Shelley fails to argue to this Court that the trial court erred in rejecting Shelley’s identity of the seller argument as a violation of section 35-1-501. In fact, Shelley does not even cite section 35-1-501 in his argument that the trial court erred in granting summary judgment on his Securities Act claim.

(2) to make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(3) to engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

S.C. Code Ann. § 35-1-501. Shelley failed to present any evidence that Respondents omitted a statement of material fact at the time of the July or October 2009 stock purchase.

Any alleged failure to provide Shelley with the current financial condition of the Bank at the time of his purchase could not operate as a fraud or deceit upon Shelley for several reasons. First, Respondents did not owe a duty to provide Shelley with such information as set forth in sections II.A and II.B, supra. Second, Shelley admitted that he never asked either Respondent provide the Banks financial condition prior to either sale. {Shelley Dep. Trans. at 48:17-22, 51:18-22, 59:12-19; R. \_\_\_\_}. Third, Shelley could not establish that he relied on any omission from Respondents as a false representation because Shelley admitted he had the financial information in his possession at the time of the July and October 2009 purchases via Respondents' annual reports Shelley received since 2005, when he first became a shareholder. Fourth, Shelley further admitted that "the condition of the bank was not in bad shape at all" when he made his purchase in October 2009. Thus, Respondents did not make or omit representations regarding the Bank's financial condition at the time of Shelley's stock

purchases.<sup>14</sup> As a result, there could be no false representation to constitute fraud or deceit as required under section 35-1-501.

**4. The trial court properly granted summary judgment on Shelley's claim under section 35-1-504 of the Securities Act.**

Shelley claims that the Bank violated section 35-1-504 of the Securities Act by not providing Shelley with a prospectus prior his stock purchase. {App. Br. p. 14-16}. Shelley's argument misconstrues the requirements of section 35-1-504 because that section cannot provide him relief against Respondents as a matter of law for several reasons.

First, section 35-1-504 does not provide for a private right of action. Section 35-1-509(b) sets forth the only three private causes of action available for a violation of the Securities Act. See S.C. Code Ann. § 35-1-509(b)(1), (2), and (3). Importantly, section 35-1-509(b) does not include a private right of action for a violation of section 35-1-504. Id. Thus, Shelley's reliance on this section is misplaced. This Court should affirm.

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<sup>14</sup> The only representation that Shelley alleged to be false in connection with his purchases, which was submitted to the trial court, was the statement made by Guyette after his July 2009 purchase that she did not know from whom Shelley was purchasing stock. Such testimony does not create an issue of fact. First, this alleged statement was made after his purchase was complete and, therefore, it could not have been relied on by Shelley when making his purchase as a matter of law. Second, Shelley has never presented any authority that the identity of a seller of stock constitutes a material issue necessary to be disclosed in a stock purchase transaction. Third, Shelley testified that at the time he made his purchase, it did not matter to him who owned the stock. Fourth, Shelley presented no evidence to show how this alleged misrepresentation caused him any damage. Although he claims a decline in the stock price, there is no evidence that the identity of Shelley's seller was the cause for the alleged decline. Lastly, Shelley presented no evidence that had he known the identity of the seller at the time, then he would not have purchased the stock in July 2009. In fact, the only evidence before the trial court established that the identity of the seller would not have altered his decision to purchase the stock. {Shelley Dep. Trans. at 42:1-21; R. \_\_\_\_}.

Second, even if a private right of action existed, the General Assembly exempted Shelley's purchase of stock from section 35-1-504. Section 35-1-504(b) provides as follows:

This section does not apply to sales and advertising literature specified in subsection (a) which relates to a federal covered security, a federal covered investment adviser, or a security or transaction exempted by Section 35-1-201, 35-1-202, or 35-1-203 except as required pursuant to Section 35-1-201(7).

S.C. Code Ann. § 35-1-504(b). As noted in this provision, the General Assembly has exempted a security or transaction listed in section 35-1-201 or section 35-1-202 from the requirements of section 35-1-504.

Third, Section 35-1-201 exempts securities issued by and representing an interest in any banking or depository institution. See S.C. Code Ann. § 35-1-201(3)(A)-(C). It is undisputed that the stock purchased by Shelley constitutes an interest in a banking or depository institution. Therefore, the trial court properly found the stock purchased by Shelley was exempt from any requirements imposed by section 35-1-504.<sup>15</sup>

Fourth, section 35-1-202 exempts any transaction that is "an isolated nonissuer transaction." See S.C. Code Ann. § 35-1-202(1). A "nonissuer transaction" is a transaction "not directly or indirectly for the benefit of the issuer," and "issuer" is defined as "a person that issues or proposes to issue a security . . . ." S.C. Code Ann. § 35-1-102(17) and (18). The Official Comments to section 35-1-202 explain that this

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<sup>15</sup> In his brief, Shelley claims the section 35-1-201 exemption does not apply because Shelley did not buy the Bank stock directly from the Bank. {App. Br. p. 14}. That is a distinction without a difference. The fact of the matter is that Shelley purchased stock in HCSB Financial, and the shares were issued in its name. Thus, the sale of the stock qualifies for the exemption in section 35-1-201.

exemption is generally “intended to cover the occasional sale by a person.” S.C. Code Ann. § 35-1-202, Official Comments n.2.

Here, the issuer would be HCSB Financial because the shares were issued in its name. However, the subject stock sales were not for the benefit of HCSB Financial because the only evidence before the trial court established that neither HCSB Financial nor the Bank received any sort of commission or other benefit from the sale. {Affidavit; R. \_\_\_\_}. Further, Guyette testified that she did not sell any of HCSB Financial stock other than the one sale in July 2009. {Guyette Dep. Trans. at 12:14-16, 16:6-9; R. \_\_\_\_}. Thus, this one-off sale from Guyette to Shelley is the type of occasional sale by an individual that this exemption was specifically designed to encompass.

Fifth, section 35-1-202 exempts any transaction that consists of an offer to an existing shareholder of the issuer if a commission or other remuneration is not paid or given, directly or indirectly, for the solicitation. See S.C. Code § 35-1-202(15). This exemption also applies. Shelley was an existing shareholder by virtue of his stock purchase in 2005. Respondents received no commission or other remuneration in connection with the sale. {Affidavit; R. \_\_\_\_}. Therefore, section 35-1-202 also exempted the stock sales from section 35-1-504.

Lastly, Shelley incorrectly interprets section 35-1-504 in an attempt to impose liability where none exists. Section 35-1-504 provides, in relevant part:

Except as otherwise provided in subsection (b), a rule adopted or order issued under this chapter may require the filing of a prospectus, pamphlet, circular, form letter, advertisement, sales literature, or other advertising record relating to a security or investment advice

regarding securities, addressed or intended for distribution to prospective investors, including clients or prospective clients of a person registered or required to be registered as an investment adviser under this chapter.

S.C. Code Ann. § 35-1-504(a) (emphasis added). The plain and unambiguous language of this section only mandates the “filing” of a prospectus with the Securities Commissioner<sup>16</sup> if the General Assembly adopts such a rule. This section does not require that a prospectus be provided to a stock purchaser. Shelley failed to present any evidence that Respondents failed to make any such filing with the Securities Commissioner. Thus, Shelley’s claim under section 35-1-504 failed as a matter of law.

Shelley now claims<sup>17</sup> that a state regulation (S.C. Code Regulations § 13-501(10)) provided the “rule” that required HCSB Financial or the Bank to provide the prospectus to him. {App. Br. p. 15}. This argument likewise fails. Regulation 13-501(10) also does not create a private right of action. That section creates administrative powers for the Attorney General in his role as Securities Commissioner to penalize “broker-dealers” with “suspension or revocation of registration, imposition of administrative fines, or such other action . . . .” S.C. Code Regulations § 13-501(A). The regulation does not allow for any action by a private citizen and any claim brought under this regulation or section 35-1-504 fails to state a claim.

For all of the above reasons, the trial court properly granted summary judgment against Shelley on all of his Securities Act claims.

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<sup>16</sup> See S.C. Code Ann. § 35-1-601 (“This chapter shall be administered by the Attorney General who shall be the ex officio Securities Commissioner. . . .”).

<sup>17</sup> This argument is not preserved for appellate review. Shelley did not raise this issue to the trial court in the hearing on the motion for summary judgment. Shelley also failed to raise this argument in his motion to reconsider because that motion contained no arguments at all. {Motion to Reconsider; R. \_\_\_\_}.

**D. This Court should affirm the grant of summary judgment as to Shelley's civil conspiracy claim.**

Shelley claims that testimony from two bank employees created an issue of fact precluding summary judgment. {App. Br. p. 10-11}. This argument misconstrues the evidence necessary to maintain a civil conspiracy claim. Even taking the factual allegations of Shelley as true, such facts cannot support a civil conspiracy claim against Respondents as a matter of law.

“It is well-settled in South Carolina that the tort of civil conspiracy contains three elements: (1) a combination of two or more persons; (2) for the purpose of injuring the plaintiff; (3) causing plaintiff special damage.” Pridgen v. Ward, 391 S.C. 238, 243, 705 S.E.2d 58, 61-62 (Ct. App. 2010). “A civil conspiracy cannot be found to exist when the acts alleged are those of employees or directors, in their official capacity, conspiring with the corporation.” Id. (quoting McMillan v. Oconee Mem’l Hosp., Inc., 367 S.C. 559, 565, 626 S.E.2d 884, 887 (2006)). “As a result, ‘no conspiracy can exist if the conduct challenged is a single act by a single corporation acting exclusively through its own directors, officers, and employees, each acting within the scope of his employment.’” Id. “However, although a corporation cannot conspire with itself, ‘the agents of a corporation are legally capable, as individuals, of conspiracy among themselves or with third parties.’” Id. (quoting Lee v. Chesterfield General Hosp., Inc., 289 S.C. 6, 14, 344 S.E.2d 379, 383 (Ct. App. 1986)).

The facts recited by Shelley in his appellate brief fail to establish the elements of civil conspiracy. To the extent Shelley alleges that Cannon or Guyette were conspiring with the directors, officers, and employees of the Bank, then such allegations fail as a

matter of law because the Bank cannot conspire with itself or its employees. To the extent that Shelley claims that Guyette conspired with Cannon, the civil conspiracy claim against the Bank and HCSB Financial fails as a matter of law because such a claim should have been brought against the individuals themselves and not the Respondents. The trial court correctly granted the Bank and HCSB Financial's motion for summary judgment on that basis. This Court should affirm.

Conclusion

This Court should affirm the grant of summary judgment because the applicable statute of limitations barred each of Shelley's claims against Respondents. Even if the claims were not time-barred, each claim failed as a matter of law for the reasons set forth herein. Thus, this Court should affirm the grant of summary judgment on each of Shelley's claims against Respondents.

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August 6, 2015

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Case No. 2012-CP-26-05546  
Appellate Case no. 2014-002571

RECEIVED  
AUG 06 2015  
SC Court of Appeals

Robert Shelley, a/k/a RDS Investments, LLC, a/k/a  
ROS Investments, LLC , ..... Appellant,

v.

Horry County State Bank and HCSB Financial  
Corporation, ..... Respondents.

**PROOF OF SERVICE**

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Horry County State Bank, do hereby certify that I have served all counsel in this action with a copy of the document(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Document(s):  
Counsel Served:

**Initial Brief of Respondents**

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Administrative Assistant

August 6, 2015