STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	CIVIL ACTION NO. 2013-CP-10-1686
CHURCH OF GOD AND CHURCH OF GOD OF SOUTH CAROLINA, Plaintiffs, vs. MARK ESTES, PATRICIA ESTES, MICHAEL TIMOTHY BROOKS, INDIVIDUALLY AND AS TRUSTEE FOR CHURCH OF GOD AT NORTH CHARLESTON TRUST, ADAM BOYER INDIVIDUALLY AND AS TRUSTEE FOR CHURCH OF GOD AT NORTH CHARLESTON, ROLANDO RIVER OSORIO INDIVIDUALLY AND AS TRUSTEE AT CHURCH OF GOD AT NORTH CHARLESTON, AND NORTH PALM MINISTRIES, INC., NORTH PALM COMMUNITY CHURCH AND COMMUNITY FIRST BANK AND ITS SUCCESSOR CRESCOM BANK, Defendants, v. THOMAS PROPES AND MARC CAMPBELL, Third Party Defendants.	**ORDER GRANTING DEFENDANT COMMUNITY FIRST BANK AND ITS SUCCESSOR, CRESCOM BANK'S MOTION FOR SUMMARY JUDGMENT**

On April 2, 2015, this Court conducted a hearing on Defendant Community First Bank and its successor Crescom Bank's ("***Crescom***") Motion for Summary Judgment. Matt Tillman of Womble Carlyle Sandridge & Rice and Charlie Altman of Altman & Coker appeared on behalf of Crescom. George Kefalos and Oana Johnson of George J. Kefalos, P.A. appeared on

behalf of the Plaintiffs. For the reasons set forth below, this Court **GRANTS** Crescom's Motion for Summary Judgment and dismisses Crescom from this lawsuit.

FACTUAL BACKGROUND

A. Organization of the Church of God and Property Ownership.

The North Charleston Church of God ("***NCCOG***") was formerly a local congregation affiliated with the Plaintiffs, the Church of God and Church of God of South Carolina. Plaintiff Church of God is the national body which delegates authority to regional organizations, including the Plaintiff Church of God of South Carolina. The Church of God of South Carolina then has oversight over the local congregations within its territory, including the NCCOG. The Church of God of South Carolina is managed by a State Overseer who may appoint District Overseers to carry out the business of the Church. The Plaintiffs dissolved the NCCOG on or about March 22, 2010.

The property at issue is located at 5505 North Rhett Avenue in North Charleston, South Carolina (the "***Property***"). The Property was conveyed to the NCCOG in 1985 by deed from Lillian Buckner. The deed provides:

> The said Local Board of Trustees shall have full right, power and authority to sell, exchange, transfer and convey said property, or to borrow money and pledge the said real estate for the repayment of the same, and to execute all necessary deeds, conveyances, etc., provided the proposition shall first be presented to a regular or called conference of the said local church, presided over by the State Overseer of the Church of God, or one whom he may appoint, and the project approved by two-thirds of all members of the said local congregations present and voting.

The NCCOG owned the Property from 1985 until the events described herein.

B. NCCOG/North Palm Ministries.

On October 11, 2005, Defendant Mark Estes incorporated North Palm Ministries, Inc. ("***North Palm***"). The NCCOG operated as North Palm from that date forward (collectively referred to as "***NCCOG/North Palm***"). Defendant Mark Estes was pastor of NCCOG/North Palm and District Overseer for the Charleston area for the Plaintiff Church of God of South Carolina. Defendant Patricia Estes was the Exhorter of NCCOG/North Palm (Mark and Patricia Estes collectively referred to as the "***Estes Defendants***"). Defendants Adam Boyer, Timothy Brooks and Rolando Osorio ("***Trustee Defendants***") were the trustees of NCCOG/North Palm.

C. Relevant Transactions.

a. 2007 Loan.

On or about October 15, 2007, North Palm received a loan from Crescom in the amount of $700,000. NCCOG/North Palm hired a local Charleston attorney to close this loan. The note was executed on behalf of NCCOG/North Palm by the Trustee Defendants. The mortgage securing this loan ("***2007 Mortgage***") was executed by the Trustee Defendants on behalf of NCCOG – the record owner of the Property. The Trustee Defendants provided the closing attorney with a resolution signed by NCCOG/North Palm Recording Secretary Lisa Carey indicating that the members and financial supporters of the Church unanimously approved the transaction. The proceeds of this loan were used in part to pay off an existing loan secured by a mortgage on the Property to First Reliance Bank, as well as other debts of NCCOG/North Palm. In addition, NCCOG/North Palm received proceeds in the amount of $310,809.43.

b. Lease to Seacoast Church.

On or about October 9, 2008, NCCOG/North Palm outgrew the facilities located on the Property and moved to a new location. It leased the Property to Seacoast Church. The lease was a five year lease, ending in 2013, in which Seacoast Church agreed to pay the NCCOG the sum of $9,200 per month. The lease amount increased periodically, to $10,500 per month. The lease also contained an option to purchase, in amounts starting at $1,625,000 and increasing to $1,775,000 by the end of the term. Seacoast Church stayed current on the lease until it purchased the Property on July 15, 2010.

c. 2009 Loan.

On or about March 23, 2009, North Palm received a loan from Crescom in the amount of $75,000 which was secured by a second mortgage signed by the Trustee Defendants on behalf of NCCOG ("2009 Mortgage"). As with the prior loan, the Trustee Defendants provided the closing attorney with a resolution signed by Recording Secretary Lisa Carey indicating that the members and financial supporters of the Church unanimously approved the transaction. NCCOG/North Palm received proceeds in the amount of $74,032.50.

D. Dissolution of the North Charleston Church of God and Sale of the Property.

In late 2009, North Palm had defaulted on both loans. In the latter months of 2009 and early months of 2010, Defendant Mark Estes and Church of God State Overseer Thomas Propes discussed Mr. Estes' grievances with the Church of God. These discussions culminated in Mark Estes' resignation as a Pastor and District Overseer with the Church of God on March 12, 2010. No later than this date, Thomas Propes became concerned about the NCCOG congregation and the status of the Property. On March 22, 2010, State Overseer Propes appointed Pastor Mark Campbell as the new District Overseer and tasked him with handling disposition of the Property.

On March 31, 2010, Mark Campbell was provided with a copy of the 2007 and 2009 Mortgages. He spoke with Crescom Bank and determined that the loans were in default. Campbell entered negotiations with the lessee of the Property, Seacoast Church. This culminated in the sale of the Property to Seacoast Church on July 15, 2010 for $780,000. Pastor Campbell did no due diligence prior to selling the Property. He did not order an appraisal, did not speak with a real estate broker, did not list the Property, and did not market the Property to any potential buyer other than Seacoast Church.

NCCOG/North Palm purchased the Property with its own money, all payments made on any loans were made by NCCOG/North Palm, and all costs related to the Property were paid by NCCOG/North Palm. No payments of any kind related to the Property were made by Plaintiffs. Plaintiffs, however, did receive $20,000 at the time of the sale to Seacoast.

Upon selling the Property, the Plaintiffs repaid the Crescom loans, without protest in any form, in return for satisfaction of the 2007 and 2009 Mortgages. Crescom duly satisfied the mortgages, having no knowledge that the Plaintiffs contested the validity of those mortgages.

STANDARD OF REVIEW

In evaluating a motion for summary judgment, a court must view "the evidence and all reasonable inferences . . . in the light most favorable to the non-moving party." *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 355, 650 S.E.2d 68, 70 (2007). However, if, after granting such deference to the non-moving party, it is apparent to the court that "there is no genuine issue as to any material fact,'" and the moving party is entitled to judgment '"as a matter of law,'" the court should grant summary judgment. *Id.* (quoting S.C. R. Civ. P. 56(c)).

ORDER

1. ALL OF PLAINTIFFS' CLAIMS AGAINST CRESCOM ARE BARRED BY THE VOLUNTARY PAYMENT DEFENSE.

It is undisputed that after assuming ownership of the Property the Plaintiffs sold the Property and paid off the loans, without protest, to secure satisfaction of the 2007 and 2009 Mortgages. "[A] person cannot use the courts to recover money voluntarily or consensually paid with full knowledge of all of the facts and without fraud, duress, or extortion in some form." 66 Am Jur 2d *Restitution and Implied Contracts* § 92 (2014). "Thus, it is universally recognized that money voluntarily paid under a claim of right to payment and with knowledge of the facts by the person making the claim cannot be recovered on the ground that the claim was illegal, or that there was not liability to pay in the first instance." *Id.* Further, the "question of whether a payment is voluntary or involuntary is one of law where the facts are undisputed . . .." *Id.*

Under South Carolina law, "all payments are presumed to be voluntary until the contrary is made to appear." *Baker v. Allen*, 220 S.C. 141, 151, 66 S.E.2d 618, 622 (1951) (*citing Moody v. Stem*, 214 S.C. 45, 51 S.E.2d 163 (1948)). Therefore, the burden is on the payor to show that the payment was made involuntarily. *Id.* This is a difficult burden to overcome, and even evidence of payment under protest may not be sufficient to establish that the payment was made involuntarily. *Baker*, 220 S.C. at 151, 66 S.E.2d at 622.

In their Complaint and answers to Crescom's discovery requests, Plaintiffs have admitted that they were aware of the 2007 and 2009 Mortgages and the fact that the debt may have been unauthorized prior to selling the Property and paying the debt owed to Crescom. There is no evidence that the Plaintiffs protested or expressed any concerns to Crescom prior to paying the debt. Having made the payment with full knowledge, the Plaintiffs must cite evidence that the payment was involuntary – that is, the payment was the result of fraud, duress, or extortion. The

Plaintiffs have cited no evidence to support a claim that the payment was made as a result of fraud, duress or extortion. Therefore, all of Plaintiffs' claims are barred under the voluntary payment doctrine and must be dismissed as a matter of law.

2. PLAINTIFFS' SLANDER CAUSE OF ACTION IS BARRED UNDER THE LIMITATIONS PERIOD SET FORTH IN S.C. CODE § 15-3-550(1).

The statute of limitations for an action for libel or slander is two years. S.C. Code Ann. § 15-3-550(1). Where, as in South Carolina, there is no statute expressly referring to actions for slander of title, the statute of limitations applicable to libel and slander applies. 50 Am. Jur. 2d *Libel and Slander* § 541 (2014). Therefore, the statute of limitations for Plaintiffs' slander of title cause of action is two years.

South Carolina does not recognize the discovery rule in slander cases, and therefore the Plaintiffs' slander of title claim accrued on the date of publication. *Jones v. City of Folly Beach*, 326 S.C. 360, 369, 483 S.E.2d 770, 775 (Ct. App. 1997) ("The trial court was correct in granting Peeples's motion for summary judgment because South Carolina has not adopted the discovery rule in libel and slander cases."); *see also* 50 Am Jur 2d *Libel and Slander* § 541 (2014) ("A right of action for slander of title accrues, and the statute of limitations commences to run, at the time of the publication of the slander."). The Plaintiffs claim that the slander of title occurred upon recordation of the mortgages (one in 2007 and one in 2009). Therefore, the slander of title claim accrued well over two years before the Plaintiff filed this lawsuit on March 20, 2013.

Even if the discovery rule applied, the Plaintiffs actually knew about the 2007 Mortgage and 2009 Mortgage no later than March of 2010. The Plaintiffs filed this action on March 20, 2013 – well over two years after discovery. Therefore, Plaintiffs' slander of title claim is barred under S.C. Code Ann. § 15-3-550(1).

3. THERE IS NO EVIDENCE THAT CRESCOM HAD KNOWLEDGE OF, OR PARTICIPATED IN, THE OTHER DEFENDANTS' ALLEGED BREACHES OF FIDUCIARY DUTIES, AND THEREFORE THE PLAINTIFFS' AIDING AND ABETTING CAUSE OF ACTION IS HEREBY DISMISSED.

The Plaintiffs allege that Crescom aided and abetted the following alleged breaches of fiduciary duties: (1) failing to seek or obtain authorization for signing mortgage documents; (2) failing to inform Plaintiff of diverting the funds in amounts exceeding $385,000 for personal purposes or for the benefit of Defendant North Palm Ministries; (3) misappropriating over $385,000 in Plaintiffs' funds and assets, which have not been repaid; (4) failing to inform Plaintiffs that they had used their resources to form, develop and conduct business as a new church, unaffiliated with the Plaintiff; and (5) failing to protect the assets of the Trust for which they were acting as Trustees.

The elements for the cause of action for aiding and abetting a breach of fiduciary duty are: "(1) a breach of a fiduciary duty owed to the plaintiff[;] (2) the defendant's knowing participation in the breach[;] and (3) damages." *Future Group, II v. Nationsbank*, 324 S.C. 89, 99, 478 S.E.2d 45, 50 (1996). "The gravamen of the claim is the defendant's knowing participation in the fiduciary's breach." *Id.; see Gordon v. Busbee*, 397 S.C. 119, 133-34, 723 S.E.2d 822, 830 (Ct. App. 2012) (affirming the grant of directed verdict in favor of an attorney on aiding and abetting breach of personal representative's fiduciary duty and finding that even if the attorney should have conducted additional investigation into the assets of the estate, that does not constitute evidence of actual knowledge of improper activity on the personal representative's part).

There is no evidence that Crescom had actual knowledge of, or participated in, the alleged breaches of fiduciary duty committed by the Estes Defendants and the Trustee Defendants. The activities allegedly perpetrated by the Estes Defendants and Trustee

Defendants related to Church activities, and are totally unrelated to Crescom's lending activities. Therefore, Plaintiffs' aiding and abetting breach of fiduciary duty claim is dismissed as a matter of law.

4. THE PLAINTIFFS' CONVERSION CAUSE OF ACTION IS DISMISSED AS A MATTER OF LAW.

Conversion is defined as the unauthorized assumption in the exercise of the right of ownership over goods or personal chattels belonging to another to the exclusion of the owner's rights. *SSI Med. Servs., Inc. v. Cox*, 301 S.C. 493, 498, 392 S.E.2d 789, 792 (1990). To establish the tort of conversion, the plaintiff must establish either title to or right to the possession of the personal property. *Crane v. Citicorp Nat'l Servs., Inc.*, 313 S.C. 70, 72, 437 S.E.2d 50, 52 (1993) (superseded by statute on other grounds).

The Plaintiffs allege that Crescom "exercised unauthorized dominion and control over Plaintiff's funds and assets, as well as assets obtained as a result of the improper use of Plaintiffs' resources, including, but not limited to [the Property] and Plaintiffs' funds." There is no evidence that Crescom asserted a right of ownership or control over any of the Plaintiffs' assets. The undisputed evidence demonstrates that Crescom loaned money to the NCCOG. It never exercised any control over those funds, or the disposition of those funds after the money was transferred. To the extent the Plaintiffs assert that the alleged conversion related to the 2007 and 2009 Mortgages, that allegation is unsupported by South Carolina law. *Hawkins v. City of Greenville*, 358 S.C. 280, 297, 594 S.E.2d 557, 566 (Ct. App. 2004) ("It is well settled that a conversion action does not lie when alleging the exercise of dominion or control over real property."). Therefore, the Plaintiffs' conversion claim fails and is dismissed as a matter of law.

5. THE PLAINTIFFS' QUANTUM MERUIT CAUSE OF ACTION IS DISMISSED AS A MATTER OF LAW.

To prevail on a quantum meruit claim, a plaintiff must prove: "(1) [a] benefit conferred by [the] plaintiff upon the defendant; (2) realization of that benefit by the defendant; and (3) retention of the benefit by the defendant under circumstances that make it inequitable for him to retain it without paying its value." *Gignilliat v. Gignilliat, Savitz & Bettis, L.L.P.*, 385 S.C. 452, 467, 684 S.E.2d 756, 764 (2009). "It is axiomatic that a claim for quantum meruit will not lie absent evidence of unjust enrichment." *Id.* Further, if the plaintiff is seeking compensation under a quantum meruit theory in the presence of an express contract which has not been abandoned or rescinded, the plaintiff may not recover under quantum meruit. *Swanson v. Stratos*, 350 S.C. 116, 122, 564 S.E.2d 117, 120 (Ct. App. 2002).

There is no evidence Crescom was unjustly enriched. Crescom simply loaned money to NCCOG/North Palm and was repaid for that loan upon the sale to Seacoast Church. It did not retain any benefit conferred upon it by the Plaintiffs or any other entity. It merely *provided* a benefit.

Further, the Plaintiffs never contributed to the purchase, maintenance or repair of the Property. They now seek repayment of the loans made by Crescom to NCCOG/North Palm because the Estes Defendants allegedly absconded with loan proceeds. Therefore, there is no evidence that the Plaintiffs conferred a benefit on Crescom.

Finally, there is no dispute that NCCOG/North Palm and Crescom entered into a contract, by which Crescom loaned funds in exchange for the promise of repayment. Plaintiffs' quantum meruit claim is merely a breach of contract action disguised in equity.

For these reasons, Plaintiffs' quantum meruit cause of action is dismissed as a matter of law.

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6. CRESCOM'S MOTION IS GRANTED BECAUSE THE PLAINTIFFS ARE BOUND BY THE ACTIONS OF THEIR AGENTS – THE ESTES DEFENDANTS AND THE CLOSING ATTORNEY – INVOLVED IN THE SUBJECT TRANSACTIONS.

An agent contracting with the authority of his principal binds him to the same extent as if the principal personally made the contract. *S.C. Ins. Co. v. James C. Greene and Co.*, 290 S.C. 171, 183, 348 S.E.2d 617, 624 (Ct. App. 1986). Thus, the principal is liable via the agent by reason of his consent to be bound. *Id.*

The subject transactions were closed by an attorney hired by the NCCOG/North Palm. To the extent the closing attorney failed to ensure that proper approvals were in place before closing the loans to NCCOG/North Palm, those failures are imputable to the Plaintiffs. *See Koutsogiannis v. BB&T*, 365 S.C. 145, 149, 616 S.E.2d 425, 428 (2005) ("In the attorney-client relationship, clients are generally bound by their attorneys' acts or omissions during the course of the legal representation that fall within the apparent scope of their attorneys' authority.").

The Plaintiffs are also bound by the representations made and knowledge possessed by the Estes Defendants, Trustee Defendants and other officials cloaked with the authority of the Church of God and Church of God of South Carolina. The relevant transactions were authorized by the members and financial supporters of NCCOG/North Palm and by Mark Estes – a District Overseer for the Plaintiffs. The subject notes and mortgages were signed by the Trustee Defendants, who hold the property in trust for Plaintiff Church of God. Finally, the Church provided the closing attorney with a resolution signed by Recording Secretary Lisa Carey. These actions are imputable to the Plaintiffs. Therefore, there is no genuine issue of material fact as to any theory of liability and Plaintiffs' causes of action are dismissed as a matter of law.

7. PLAINTIFFS' REMAINING CAUSES OF ACTION AGAINST CRESCOM ARE BARRED BY THE THREE YEAR STATUTE OF LIMITATIONS SET FORTH IN S.C. CODE ANN. § 15-3-530.

Plaintiffs' aiding and abetting, conversion and quantum meruit causes of action are governed by a three year statute of limitations. S.C. Code Ann. §15-3-530.[1]

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." *Gibson v. Bank of Am., N.A.*, 383 S.C. 399, 405-406, 680 S.E.2d 778, 782 (Ct. App. 2009) (citations and quotations omitted). "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." *Id.* at 406, 680 S.E.2d at 782. "When there is no conflicting evidence or when only one reasonable inference can be drawn from the evidence, the determination of when a party knew or should have known that he or she had a claim becomes a matter of law to be decided by the trial court. *Id.* at 407, 680 S.E.2d at 782. The Plaintiffs had both actual and constructive notice that the NCCOG pledged the Property prior to March 20, 2010.

The Plaintiffs had reason to know of their potential claims before March 20, 2010 – three years prior to commencement of this lawsuit. The Estes Defendants resigned their Church of God credentials by letter dated March 12, 2010. No later than that date, Church of God of South Carolina State Overseer Thomas Propes became concerned with the status of the North Charleston congregation and the Property. Propes named Mark Campbell as new District Overseer and asked Campbell to obtain any information concerning property issues that may be

[1] Plaintiffs' quantum merit claim is equitable. However, it is governed by the three year statute of limitations. *McConnell v. Crocker*, 217 S.C. 334, 60 S.E.2d 673 (1950).

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lingering. Therefore, Overseer Propes, an agent of the Plaintiffs, had actual concerns about the status of the Property no later than March 12, 2010.

In addition, NCCOG/North Palm were required to complete a Monthly Treasurer's Report and send it to the office of the Church of God of South Carolina and Church of God. These Monthly Treasurer's Reports provide the method by which the local Churches report certain financial data, including Church property value and indebtedness. NCCOG/North Palm habitually failed to complete and submit the Monthly Treasurer's Report, including the property valuation and indebtedness section. Well before March of 2010, the Plaintiffs repeatedly sent deficiency letters to Defendant Mark Estes and asked Overseer Propes to intervene. Despite these concerns, the Plaintiffs never followed up on the missing reports and information. Had they followed up on the reports, they would have discovered outstanding debt and mortgages well before March 20, 2010.

Finally, on January 13, 2010, Defendant Mark Estes sent a letter to Church of God of South Carolina State Overseer Propes, in which Estes expressed his concerns with Church leadership and promised to account for checks that had bounced. In addition, Estes claimed the checks bounced because "checks given to us by the ***other church assuming our lease bounced***." Overseer Propes testified that he read the letter, but does not recall this sentence. Nevertheless, Overseer Propes admitted that the sentence may have caused him to wonder where NCCOG/North Palm was conducting services "if [he] gave it thought." Whether or not Overseer Propes "gave it thought" is irrelevant. He received notice that NCCOG/North Palm was leasing the Property on January 13, 2010, and the limitation period accrued on that date. The Plaintiffs filed this lawsuit more than three years later, and their claims are therefore time barred.

KWD 13

For the reasons set forth above, Defendant Community First Bank and its successor Crescom Bank's Motion for Summary Judgment is **GRANTED**. Crescom is hereby dismissed from this lawsuit.

Presiding Judge R. Markley Dennis, Jr.

Charleston, South Carolina
May 5, 2015

RMOT/14

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS Case No. 2013-CP-10-1686
Church of God and Church of God of South Carolina Plaintiffs,	)	
Mark Estes, et al Defendants.	)	ORDER

FILED
2015 JUL 29 PM 4:07
JULIE J. ARMSTRONG
CLERK OF COURT

This matter comes before me upon Plaintiff's Motion to Alter or Amend Order Granting Defendant Crescom's Motion for Summary Judgment, filed 5/26/2015 by and through counsel. After fully considering said Motion, this Court finds no need for oral argument in this matter and therefore the Motion to Alter or Amend Order Granting Defendant Crescom's Motion for Summary Judgment is denied;

AND IT IS SO ORDERED!

R. MARKLEY DENNIS, JR.
Presiding Judge

Charleston, South Carolina

July 28, 2015

EXHIBIT
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