

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

CASE NO. 2012-CP-26-5546

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

vs.

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

RECORD ON APPEAL

Gene M. Connell, Jr. (S.C. Bar No. 1358)
KELAHHER, CONNELL & CONNOR, P.C.
The Courtyard, Suite 209
1500 U. S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorney for Appellant

Thomas William McGee, III (S.C. Bar No. 11317)
Michael J. Anzelmo (S.C. Bar No. 72933)
Nelson Mullins Riley & Scarborough LLP
P. O. Box 11070
Columbia, SC 29211-1070
Phone: 803.799-2000
Fax: 803.255.9079
billy.mcgee@nelsonmullins.com
Attorney for Respondents

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STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUITRobert Shelley, a/k/a RDS Investments,
LLC, a/k/a ROS Investments, LLC,

Plaintiff,

vs.

Horry County State Bank and HCSB
Financial Corporation,

Defendants.

Civil Action No. 2012-CP-26-5546

**ORDER GRANTING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**Horry County
14 APR 14 AM 9:20
CLERK OF COURT

This matter comes before the Court on Defendants' Motion for Summary Judgment ("Motion"). A hearing was held on March 4, 2014, before The Honorable Larry B. Hyman, Jr. All parties were represented by counsel, who were provided a full and fair opportunity to be heard. For the reasons discussed herein, Defendants' Motion for Summary Judgment is GRANTED.

FINDINGS OF FACTS

Plaintiff Robert Shelley became a customer of Horry County State Bank ("Bank") "sometime in the mid-2000's." Soon after this time, Mr. Shelley asked an employee of the Bank whether "anybody [had] any stock for sale." The employee said she didn't know of anyone who was selling HCSB Financial Corp. ("Financial Corp.") stock, but would let Mr. Shelley know if this changed. Mr. Shelley testified he was fine with this arrangement.

In or around July 2005, Mr. Shelley was contacted by an employee of the Bank and advised that someone was selling 1,285 shares of Financial Corp. stock. Mr. Shelley agreed to purchase the stock for \$35.00 per share, and requested that the Bank arrange payment to the seller by debiting one of his accounts. As a result of this purchase, Mr. Shelley began receiving

the Financial Corp.'s annual report. There are no claims in the Amended Complaint related to this stock purchase.

Mr. Shelley's second purchase of Financial Corp. stock – the first transaction subject to the Amended Complaint - occurred in the same way as the first. In July 2009, Mr. Shelley was contacted by Bank employee Jane Cannon, who told him "there was some stock for sale ... and was [Shelley] interested in buying it." Mr. Shelley agreed to purchase 1,000 shares at \$24.00 per share and went to the Bank on July 17, 2009, to complete the transaction. While he was at the Bank, Mr. Shelley testified he asked Ms. Cannon if she knew who was selling the stock – Ms. Cannon said she did not.¹ Importantly, Mr. Shelley testified that at the time he asked Ms. Cannon, it did not matter to him who owned the stock. Mr. Shelley requested that Ms. Cannon complete the stock purchase for him by drafting the purchase price from his account at the Bank. Consequently, the following events took place on July 17, 2009: (1) Mr. Shelley's account was debited \$24,000.00 for the purchase of stock; (2) a cashier's check in the amount of \$24,000.00 was remitted from Mr. Shelley's account to the seller and Bank employee, Deborah Guyette; and (3) the cashier's check was deposited by Ms. Guyette into her account at Plantation Federal Bank.

Mr. Shelley alleges that sometime after the July 17, 2009 purchase – he cannot say exactly when – he was in the Bank meeting with Ms. Guyette on another matter. Mr. Shelley testified that he asked Ms. Guyette if she knew who sold him shares of Financial Corp. stock on July 17, 2009, and she said she did not know who the seller was.² Mr. Shelley claims that it was not until sometime in 2012 when he found out that Ms. Guyette was in fact the seller in the July

¹ There is no evidence before the Court that Ms. Cannon knew who the seller was when Mr. Shelley made the inquiry.

² Ms. Guyette testified that Mr. Shelley did not ask her who the seller was in the July 17, 2009 transaction. However, for purposes of this Motion, the Court will treat this allegation in the light most favorable to Mr. Shelley.

2009 sale. Mr. Shelley has not offered any evidence or testimony of other purported false or misleading statements in relation to this stock purchase.

The third purchase of Financial Corp. stock – and the second transaction subject to the Amended Complaint – occurred in October 2009. As with the first two transactions, Mr. Shelley was contacted by Ms. Cannon or Ms. Guyette³ about stock available for purchase. Mr. Shelley testified he doesn't recall whether he asked who the seller was, and he did not know who sold him the stock at the time of his deposition on August 27, 2013. As with the first two purchases, Mr. Shelley requested that the seller be paid by drafting his account at the Bank. As a result, Mr. Shelley purchased 2,192 shares at \$18.00 per share. Mr. Shelley testified that he is not aware of any false or misleading statements in relation to the October 2009 stock purchase.

The only evidence before the Court is that at the time of his stock purchases in 2005 and 2009, Mr. Shelley neither asked for nor received any disclosures from the Financial Corp., the Bank, or the actual sellers of the stock he purchased. Mr. Shelley also testified that he did not conduct any inquiry into the reasonableness of any price he paid for stock, nor did he review the annual reports he had been receiving since the end of 2005.

Importantly, the only evidence before the Court is that neither the Financial Corp. nor the Bank: (1) sold Mr. Shelley any stock; (2) instructed or requested anyone to sell stock to Mr. Shelley; (3) instructed or advised Mr. Shelley how much Financial Corp. stock was worth or how much he should pay for it; (4) instructed or advised the sellers of stock how much the stock was worth or how much to charge Mr. Shelley; and/or (5) received any commission, fee or other payment or benefit as a result of any purchase of stock by Mr. Shelley.

³ The only evidence before the Court is that neither Ms. Guyette nor Ms. Cannon are officers or directors of the Defendants.

Plaintiff filed his Summons and Complaint on July 19, 2012, naming only the Financial Corp. and Bank as Defendants. Plaintiff later filed an Amended Complaint, in which he asserted the following causes of action against both Defendants: (1) breach of fiduciary duty; (2) violation of the S.C. Uniform Securities Act of 2005 ("Securities Act"); (3) negligence; and (4) civil conspiracy. Defendants denied liability and timely moved for summary judgment as to all claims in the Amended Complaint.

CONCLUSIONS OF LAW

I. Plaintiff's Causes of Action

A. Breach of Fiduciary Duty

In his Amended Complaint, Plaintiff asserts a claim for breach of fiduciary duty based on the Defendants' failure to advise him of the Bank's financial condition or the name of the seller of shares he purchased in July 2009 prior to his purchase.

"The 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)). "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." Schmauch, 354 S.C. at 670, 582 S.E.2d at 444 (internal citations omitted). Furthermore, "a fiduciary relationship cannot be established by the unilateral action of one party. . . The other party must have actually

accepted or induced the confidence placed in him.” Id. at 670-71, 582 S.E.2d at 444 (internal citations omitted).

In the case at bar, no fiduciary relationship existed between the Plaintiff and Defendants. In fact, the very nature of Shelley’s allegations leads to the opposite conclusion. First, Shelley never asked for any information regarding the Bank’s financial condition and Defendants did not provide him any such information in connection with his purchases of stock from private shareholders. Second, although Shelley asked about the ownership of the shares he purchased, Ms. Cannon advised him that she did not know who owned them; however, Shelley chose to proceed with his purchase despite the lack of this information. Because Defendants did not undertake to advise him on either of these issues, he could not have relied on Defendants in making his purchases. See Schmauch, 354 S.C. at 670-71, 582 at 444 (Ct. App. 2003) (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). Shelley cannot show that he placed any “special confidence” in Defendants for his stock purchases or that the Defendants “accepted or induced confidence” from Shelley, and thus no fiduciary relationship was created as a matter of law.

Because Plaintiff has failed to establish the existence of a fiduciary duty owed by the Defendants, his claim for breach of fiduciary duty fails as a matter of law.

B. Violation of South Carolina's Uniform Securities Act of 2005

Next, Shelley asserts a cause of action pursuant to S.C. Code Ann. § 35-1-509(b)(1). Amended Complaint ¶ 30. This provision sets forth the private causes of action available for violation of South Carolina's Uniform Securities Act of 2005 ("Securities Act"). Specifically, this 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, "by 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."

See S.C. Code Ann. § 35-1-509(b)(1).

First, it must be noted that Section 35-1-509(b)(1) provides liability only for sellers of securities. See S.C. Code Ann. § 35-1-509(b)(1). The only evidence before the Court -- including the testimony of Mr. Shelley -- is that Defendants were not the sellers of any stock to Mr. Shelley. Therefore, Defendants are not liable under the Securities Act.

Even if there was some evidence that the Defendants were "sellers," Shelley's claims under the Securities Act still fail. Shelley asserts that Defendants violated Sections 35-1-501 and 35-1-504 of the Securities Act. Amended Complaint ¶¶ 28-29. These two provisions are addressed in turn.

i. Violation of Section 35-1-501: General Fraud

Section 35-1-501 provides as follows:

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;
- (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's Amended Complaint alleges that this Section was violated by Bank employees offering the sale of stock but failing to advise him of the current financial condition of the Bank at the time. Amended Complaint ¶ 28.

First, the Bank's 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. Shelley admits there were no statements made regarding the Bank's financial condition at the time and, therefore, there could be no false representation to constitute fraud or deceit. In any event, Shelley admitted he had received the Financial Corp.'s annual reports for several years as he became a shareholder in 2005, and further testified that "the condition of the bank was not in bad shape at all" when he made his purchase in October 2009.

Although not pleaded as the basis for the violation of this Section, the only statement made in connection with his purchases alleged to be false was the statement made by Ms. Guyette after his July 2009 purchase: that she did not know from whom Shelley was purchasing stock, even though she owned the shares he purchased in July 2009.

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. Moreover, Shelley testified that at the time he made his purchase, it did not matter to him who owned the stock. Accordingly, the alleged misrepresentation could not have been material.

Finally, Shelley has come forward with 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 testified that he cannot say if or how knowing the identity of the seller may have changed his decision to purchase stock in July 2009.

Because Plaintiff has failed to establish the necessary elements of a cause of action under Section 35-1-501, his claim against Defendants fails as a matter of law.

ii. Violation of Section 35-1-504: Filing of Sales and Advertising Literature

First, there is no private cause of action for a violation of Section 35-1-504. As noted above, S.C. Code § 35-1-509(b)(1) sets forth the only three private causes of action available for violation of the Securities Act, none of which included a violation of Section 35-1-504.

Even if a private cause of action for violation of this Section existed, Shelley's claim would fail. Section 35-1-504(a) provides as follows:

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).

Shelley's Amended Complaint alleges that the Bank violated this section by not providing Shelley with a prospectus or other documentation regarding the proposed sale of stock prior to the sale. Amended Complaint ¶ 29. However, Section 35-1-504 does not require the Bank to give him a copy, but instead provides that a rule or order issued under the Securities Act

may require that such information be filed. Shelley does not allege that any rule or order includes such requirement and makes no allegation regarding the filing of such information.

In any event, Section 35-1-504(b) exempts the subject security and transaction. 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, a security or transaction listed as exempt in Sections 35-1-201 or 35-1-202 is exempt from the potential filing of sales and advertising literature.

Section 35-1-201 exempts securities issued by and representing an interest in any banking or depository institution. S.C. Code Ann. § 35-1-201(3)(A)-(C). The stock at issue here represents an interest in a banking or depository institution and, therefore, is exempt under this provision.

Section 35-1-202 exempts any transaction that is "an isolated nonissuer transaction." S.C. Code Ann. § 35-1-202(1). A "nonissuer transaction" is defined as 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 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 Corp. because the shares were issued in its name. However, the subject stock sales were **not** for the benefit of Financial Corp. because the only evidence before the Court is that neither the Financial Corp. nor the Bank received any sort of commission or other benefit from the sale. Further, Ms. Guyette testified that she has not sold any of her

Financial Corp. stock other than the one sale in July 2009, making this the type of occasional sale by an individual that this exemption was specifically designed to encompass.

Section 35-1-202 also 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. S.C. Code § 35-1-202(15). Here, Shelley was an existing shareholder by virtue of his earlier purchase in 2005. Further, Defendants received no commission or other remuneration in connection with the sale. Therefore, Section 35-1-202 also exempts the subject sales from the potential filing of sales and advertising literature under Section 35-1-504.

Because there is no genuine issue of material fact as to Defendants' liability for violation of Section 35-1-504, Defendants are entitled to summary judgment on this claim.

C. Negligence

Next, Shelley asserts a claim for negligence. Amended Complaint ¶ 32. Again, the claim is based on the Bank's alleged failure to provide Shelley with any information regarding the Bank's financial condition or the identity of the seller of the shares he purchased.

"Negligence is the breach of a duty of care owed to the plaintiff by the defendant." Schmauch, 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 Defendants owed him some duty to advise him of the Bank's financial condition or the seller of the shares he purchased. "Ordinarily, the common law imposes no duty on a person to act. Where an act is voluntarily undertaken, however, the actor assumes the duty to use due care." Cowburn, 366 S.C. at 39, 619 S.E.2d at 448 (affirming grant of summary judgment where there was no evidence that defendant undertook duty to investigate investment he had recommended to plaintiff). As discussed above,

Ms. Cannon did not voluntarily undertake to advise Shelley of the Bank's financial condition or the owner of the shares Shelley was purchasing in July 2009. Had she done so, she would have assumed the duty to use due care regarding the information that was provided. See Schmauch, 354 S.C. at 669-70, 582 S.E.2d at 443-44 (distinguishing a case finding that a duty of care was owed where erroneous information was given from the situation where no duty of care is owed because no guidance was provided). However, because this obligation was not assumed, and because the record is devoid of any other evidence of a breach of duty owed by Defendants to Plaintiff, Shelley's claim for negligence fails as matter of law.

D. Civil Conspiracy

Lastly, Shelley asserts that Defendants' officers and employees conspired to injure him. Amended Complaint ¶ 37. "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) (quoting Cowburn, 366 S.C. at 49, 619 S.E.2d at 453). "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)).

To the extent Shelley alleges that Bank officers and employees were conspiring with the Bank, such allegations fail because a company cannot conspire with itself as a matter of law. Id. Alternatively, to the extent Shelley alleges that the officers and employees were conspiring with one another, such a claim is not appropriately lodged against Defendants Bank and Financial Corp., but rather against the individuals themselves as a matter of law. Accordingly, Defendants are entitled to summary judgment on Shelley's civil conspiracy claim.

II. Statute of Limitations – July 2009 Purchase

As set forth in more detail above, all of Plaintiff's causes of action against the Defendants must be dismissed for failure to sufficiently establish the necessary elements of each claim. However, as an additional basis for summary judgment, the applicable statutes of limitation bar Plaintiff's claims related to the July 17, 2009, stock purchase.

All claims set forth in the Amended Complaint are subject to a three-year statute of limitations. See Moore v. Benson, 390 S.C. 153, 700 S.E.2d 273 (Ct. App. 2010) (breach of fiduciary duty); S.C. Code Ann. § 35-1-509(j) (South Carolina Uniform Securities Act); Gibson v. Bank of America, N.A., 383 S.C. 399, 680 S.E.2d 778 (Ct. App. 2009) (negligence); Murphy v. Jefferson Pilot Communications Co., 657 F.Supp.2d 683 (D.S.C. 2008) (Civil Conspiracy).

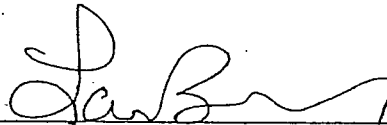
Plaintiff's first purchase in 2009 was completed on July 17, 2009. See p.2, supra. The Summons and Complaint in this case was filed on July 19, 2012. To the extent Plaintiff's claims are based on allegations that Defendants failed to provide information or made false or misleading statements at the time of the transaction, they are barred by the statute of limitations. Plaintiff's allegation that Ms. Guyette falsely stated she did not know who sold him the stock on July 17, 2009, does not save any of his claims. Not only did this occur after the sale was completed, Mr. Shelley testified that (1) at the time of the purchase, he did not care who the

seller was and (2) even if Ms. Guyette would have told him she was the seller, Mr. Shelley does not know how or if this would have changed his decision to purchase the stock.

CONCLUSION

Based on the reasons set forth above, Plaintiff has failed to sufficiently prove the elements of his causes of action against the Defendants. Moreover, the applicable statutes of limitation bar Plaintiff's claims as they relate to the July 19, 2009, stock purchase. Accordingly, Defendants' Motion for Summary Judgment is hereby GRANTED and Plaintiffs' causes of action are hereby dismissed with prejudice.

AND IT IS SO ORDERED.


 The Honorable Larry B. Hyman, Jr.
 Presiding Judge, Fifteenth Judicial Circuit

April
 March 8, 2014.

Conway, South Carolina



STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUITRobert Shelley, a/k/a RDS Investments,
LLC, a/k/a ROS Investments, LLC,

Plaintiff,

vs.

Horry County State Bank and HCSB
Financial Corporation,

Defendants.

Civil Action No. 2012-CP-26-5546

**ORDER DENYING PLAINTIFF'S
MOTION TO RECONSIDER**HORRY COUNTY
OCT 27 PM 1:14
JUDGE HUGGINS
CLERK OF COURT

This matter comes before the Court on Plaintiff's Motion to Reconsider the Court's April 14, 2014 Order Granting Summary Judgment. For the reasons discussed herein – and for the reasons more fully described in the Order, which is incorporated herein by reference – Plaintiff's Motion is DENIED.

Plaintiff filed his Summons and Complaint on July 19, 2012. Defendants filed a timely Answer and the parties conducted written and deposition discovery. Defendants filed a Motion for Summary Judgment on October 25, 2013, and the matter was heard by Judge Larry B. Hyman on March 4, 2014. By Order dated April 14, 2013, the Court granted Defendants' Motion for Summary Judgment and dismissed Plaintiff's Complaint with prejudice.

Plaintiff filed a timely Motion to Reconsider¹ on April 25, 2014. Neither party filed written briefs on the Motion. A hearing before Judge Hyman was held on October 1, 2014. All parties were represented by counsel and were afforded a full and fair opportunity to argue their respective positions. More specifically, counsel for both the Plaintiff and Defendants addressed

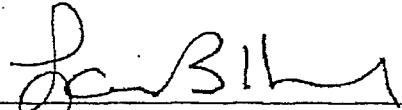
¹ A motion to alter or amend a judgment pursuant to Rule 59(e), S.C.R. Civ.P.

the same arguments against and in support of summary judgment that were presented at the March 4, 2014 hearing.

At the hearing of Plaintiff's Motion to Reconsider, Plaintiff's counsel presented the following documents: deposition transcripts for Robert Shelley, Deborah Guyette and Jane Cannon; Horry County State Bank's Code of Conduct. Counsel for the Defendants objected to the introduction or consideration of any documents that were not properly before the Court at the March 4, 2014 summary judgment hearing. The Court overruled the objection and agreed to consider all documents offered by the Plaintiff.

After carefully considering the arguments of counsel and the evidence properly before the Court, Plaintiff's Motion to Reconsider is hereby denied. Plaintiff and Defendants fully briefed all issues prior to the March 4, 2014 summary judgment hearing, at which extensive oral arguments were made. Because there has been no evidence presented that the April 14, 2014 Order is in error, and for the reasons set forth in more detail therein, Plaintiff's Motion to Reconsider must be denied.

AND IT IS SO ORDERED.



The Honorable Larry B. Hyman, Jr.
Presiding Judge, Fifteenth Judicial Circuit

October 15, 2014.

Conway, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2012-CP-26-5546

Robert Shelley, a/k/a RDS Investments,)
LLC, a/k/a ROS Investments, LLC,)
Individually, and as Class Representative,)
Plaintiffs,)

vs.)

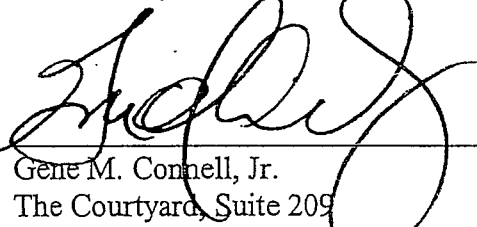
Horry County State Bank and)
HCSB Financial Corporation)
Defendants.)

**NOTICE OF MOTION AND MOTION
FOR RECONSIDERATION**

YOU WILL PLEASE TAKE NOTICE that the undersigned moves the Court for an order reconsidering the Order Granting Defendants' Motion for Summary Judgment filed April 14, 2014 and received by Plaintiff on April 16, 2014.

WHEREFORE, Plaintiff requests the Court reconsider its Order to include summary judgment granted to the Defendant on all causes of action and for such other and further relief as the Court may deem just, necessary and proper.

KELAHER, CONNELL & CONNOR, P.C.


Gene M. Connell, Jr.
The Courtyard, Suite 209
1500 U.S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorney for Plaintiff

April 25, 2014
Surfside Beach, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2012-CP-26-5546

Robert Shelley, a/k/a RDS Investments,)
LLC, a/k/a ROS Investments, LLC,)
Individually, and as Class Representative,)
)
Plaintiffs,)
)
vs.)
)
Horry County State Bank and)
HCSB Financial Corporation)
)
Defendants.)

*Class Action Pursuant
to SCRCP 23*

AMENDED COMPLAINT

JURY TRIAL DEMANDED

HORRY COUNTY
- 12 OCT -4 PM 1:57
MELANIE HUGHES-WARD
CLERK OF COURT

The Plaintiffs, complaining of the Defendants, would respectfully allege unto this Court as follows:

1. The Plaintiff Robert Shelley is a citizen and resident of Horry County, South Carolina and is upon information and belief a stockholder of Horry County State Bank.
2. The Plaintiff RDS Investments, LLC is a limited liability corporation owned by Plaintiff Robert Shelley.
3. That RDS Investments, LLC and ROS Investments, LLC are named as party-plaintiffs because the stock certificates are made out to those entities. That further on information and belief ROS Investments, LLC is not a corporation or limited liability corporation in the state of South Carolina.
4. The Defendant, Horry County State Bank, is a State Bank organized and existing pursuant to the laws of the State of South Carolina, and is solely owed by HCSB Financial Corporation.

5. The Defendant Horry County State Bank a/k/a HCSB Financial Corporation is a savings institution with seven directors and located at 5009 Broad Street, Loris, South Carolina.

6. The Plaintiffs were contacted by employees of Horry County State Bank in July 2009 at which time Defendants' employees solicited sale of bank stock to Plaintiffs.

7. That as a result of the solicitation, Plaintiffs purchased 1,000 shares at \$24.00 a share on July 21, 2009 and in October 2009 purchased 2,192 shares at \$18.00 a share.

8. That Plaintiffs were not provided any documentation including public offerings or any other documentation regarding Defendants' financial condition when he purchased the stock, nor was Plaintiffs informed the stock was being sold by an officer of Horry County State Bank.

9. Further, Plaintiffs were not aware of the precarious and unsettled financial condition of Horry County State Bank at the time he purchased the stock.

10. That Plaintiffs' purchase of the stock was by the direct solicitation of employees of the Defendants by personal telephone call.

11. That the stock Plaintiffs purchased in July 2009 and in October 2009 at \$17.00 a share immediately plummeted in price.

12. That Defendants and its employee who solicited Plaintiffs were aware of the financial condition of the Bank and of the real estate related losses that Defendant Bank had suffered prior to the solicitation.

13. That on information and belief other officers and directors of Horry County State Bank sold stock by direct solicitation to the Bank's customers through phone calls, emails and direct solicitation.

FOR A FIRST CAUSE OF ACTION

14. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

15. The Plaintiffs request that this Court certify a class of all purchasers of Horry County State Bank stock who were personally contacted by officers, agents or employees of Defendant Bank and solicited to purchase such stock in the above-time frame (July 2009 to December 31, 2011).

16. That Plaintiffs bring this action as a class action pursuant to South Carolina Rule of Civil Procedure 23 which provides in pertinent part that a class action may be brought when there are questions of law and fact common to the class; the class is numerous; the claims of the representative parties are typical of the claims of the class; the amount in controversy exceeds One Hundred Dollars (\$100) for each member of the class; and the class representatives will fairly and adequately protect the interests of the class.

17. The Plaintiffs are informed and believe that numerous other purchasers of the stock were contacted by Defendant Bank and the stock was sold by officers, employees and directors to depositors such as the Plaintiffs.

18. That Plaintiffs request that the Court certify a class under SCRCF 23 of all purchasers of stock who were solicited by Defendants' employees.

19. That Plaintiffs are informed and believe that Defendants breached their fiduciary duty to Plaintiffs and all others similarly situated in selling stock to Plaintiffs and in failing to advise Plaintiffs of the financial conditions of Defendant Bank (and to provide them a pro forma and the requisite disclosure statements).

20. The Plaintiffs are further informed and believe that Defendants' officers and employees did breach their fiduciary duty by contacting Plaintiffs personally to sell such stock and not providing Plaintiffs and all others similarly situated with the requisite information regarding the Bank's financial condition prior to selling such stock.

21. The Plaintiffs are further informed and believe that the breach of fiduciary duty occurred when Plaintiffs were sold bank stock by officers and employees of the Bank without such being disclosed to the Plaintiffs and as a result breach of fiduciary duty occurred.

22. The Plaintiffs ask for judgment individually and as a class for breach of fiduciary duty against the Defendant to include actual damages, attorney's fees and the costs of this action.

FOR A SECOND CAUSE OF ACTION

23. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

24. The Plaintiffs bring this cause of action under the South Carolina Uniform Securities Act of 2005 (S.C. Code Ann. § 12-35-10, et seq.).

25. That pursuant to S.C. Code Ann. § 12-35-10, Defendants did sell to Plaintiff securities as defined in the statute.

26. That such sale of securities falls under § 12-35-10 *et seq.*

27. That Plaintiffs bring this cause of action for a violation of S.C. Code § 12-35-10 *et seq.* and requests damages to include actual damages, attorney's fees and prejudgment interest.

28. That Defendants through their officers, agents and/or employees did violate S.C. Code § 35-1-501 in offering the sale of stock to Plaintiffs through employees of the Bank and in failing to advise Plaintiff and all other similarly situated of the current financial condition of the Bank when offering the stock in question.

29. That further, S.C. Code § 35-1-504 was not followed by Defendant Bank in that prior to the sale to the Plaintiffs and others similarly situated Plaintiffs were not provided with a prospectus or other documentation regarding the proposed sale of the stock.

30. The Plaintiffs bring this cause of action under S.C. Code § 35-1-509(b)(1) and requests recovery of the consideration paid for the security to include actual damages, reasonable attorney's fees and interest at the legal rate from the date of purchase and court costs.

FOR A THIRD CAUSE OF ACTION

(Negligence)

31. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

32. The Plaintiffs are informed and believe that the Defendants' officers, agents and/or employees were negligent, reckless, willful or wanton in one or more of the following particulars:

- a. in selling stock to the Plaintiffs without providing a prospectus;
- b. in failing to provide the Plaintiffs with updated financial information regarding the Bank's real estate holdings;
- c. in selling stock through employees of the Bank without informing Plaintiffs that officers of the Bank were selling such stock;
- d. in failing to disclose the name of the seller of the stock to the Plaintiffs prior to their purchase;
- e. in failing to provide Plaintiffs with all information regarding the Bank's current financial situation prior to selling the stock;

- f. in directly soliciting the Plaintiffs and in selling the stock and in taking the money directly out of Plaintiffs' bank account.

33. That as a direct and proximate result of the actions of the Defendants, Plaintiffs lost his investment as did all other similar situated who purchased stock from the period July 2009 forward.

34. That Plaintiffs bring this cause of action for actual damages, punitive damages and the costs of the action.

FOR A FOURTH CAUSE OF ACTION

(Civil Conspiracy)

35. The Plaintiffs reallege and reiterate each and every allegation as fully as if repeated verbatim herein.

36. Plaintiffs and others were solicited without being told who was selling the stock, the financial condition of the Bank, or the fact that the Bank has numerous bad real estate loans.

37. That Defendants' employees did combine with Bank officers and solicit Plaintiffs to purchase the stock.

38. That Defendants' employees injured the Plaintiffs in that the stock was worthless.

39. That Plaintiffs suffered special damage in the loss of the value of the stock he purchased.

40. That Plaintiffs are informed and believe they are entitled to actual damages and punitive damages.

WHEREFORE, Plaintiffs pray for judgment as follows:

A. That the Court certify a class of Plaintiffs and all others similarly situated who purchased stock from Defendants from July 2009 to date and said stock was sold by Defendants' agents in a similar manner to which it was sold to the Plaintiffs.

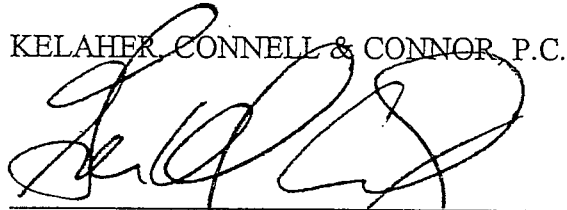
B. On the First Cause of Action for actual damages, punitive damages, attorney's fees and costs.

C. On the Second Cause of Action for actual damages, punitive damages, prejudgment interest, attorney's fees and costs.

D. On the Third Cause of Action for actual damages, punitive damages, attorney's fees prejudgment interest and costs.

E. On the Fourth Cause of Action for actual damages, punitive damages and attorney's fees.

KELAHER, CONNELL & CONNOR, P.C.



Gene M. Connell, Jr.
The Courtyard, Suite 209
1500 U.S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorney for Plaintiff

September 27, 2012
Surfside Beach, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2012-CP-26-5546

Robert Shelley, a/k/a RDS Investments,)
LLC, a/k/a ROS Investments, LLC,)
Individually, and as Class Representative,)

Plaintiffs,)

vs.)

Horry County State Bank and)
HCSB Financial Corporation)

Defendants.)

**PLAINTIFF'S AMENDED
ANSWERS TO INTERROGATORIES**

TO: THOMAS WILLIAM MCGEE, III AND TARA C. SULLIVAN, ATTORNEYS OR
DEFENDANTS:

The Plaintiff amends his Answers to Defendants' First Set of Interrogatories as follows:

5. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by you. Also provide a detailed description of the manner by which you calculated or arrived at your damages figure.

AMENDED ANSWER:

Plaintiff purchased 1,000 shares of stock on July 27, 2009 at \$24.00 a share. It is Plaintiff's contention that at the time he purchased that stock such stock was worthless, thus, Plaintiff's damages for the 1,000 shares is \$24,000.00.

Plaintiff also made a purchase of stock on October 22, 2009 of 2,192 shares which equals \$39,456.00. Plaintiff's claim is that that stock was also worthless. Further, Plaintiff would indicate that he paid \$18.00 a share.

Plaintiff is not clear why he had a stock certificate issued on July 23, 2012 for 3,500 shares. Plaintiff did not purchase those shares at the time. Plaintiff believes that stock certificate was issued for the October 22, 2009 shares and not for any new purchase. Plaintiff requests a copy of any and all discovery from the Defendant which shows when he paid for the stock which has a date of July 23, 2012.

7. Identify the employees of Horry County State Bank who contacted you in July 2009 as alleged in Paragraph 6 of your Amended Complaint.

AMENDED ANSWER:

Shelley does not remember who called him about the stock. Shelley had no idea that Debbie Guyette was selling the stock. Shelley believes that a teller by the name of Jane Cannon first called. Shelley paid approximately \$45,000.00 for stock in July 2009 and October 2009. He did not receive any paperwork. Shelley believes that the stock in October 2009 was purchased at \$18.00 a share. The only person that Shelley talked to was Jane Cannon a teller at Horry County State Bank.

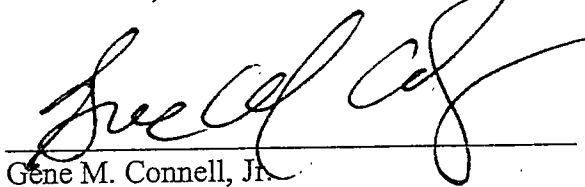
8. Set forth all statements made by Defendants' officers, agents or employees in connection with your purchase of stock in July and October 2009, the identity of the officers, agents or employees making such statements, and the dates such statements were made.

AMENDED ANSWER:

Plaintiff did not have any discussions with any officers for the purchase of the stock, except for Plaintiff's discussions with Jane Cannon, the head teller at Horry County State Bank. Plaintiff was not aware that other bank officers or employees owned the stock he purchased. Plaintiff's contention is borne out by the fact that the monies were directly debited from his Horry County State Bank Account no. 0910101515 by Jane Cannon for the 1,000 shares.

As for the October 2009 stock purchase by Plaintiff, Plaintiff is unable to locate any documents regarding that purchase other than to believe that the stocks which were issued on July 23, 2012 was for the purchase in October 2009 of 2,192 shares. In looking at the EDGAR site (Securities and Exchange Commission site), Plaintiff believes that his previous Answer to Interrogatory No. 7 that the stock was purchased at \$17.00 a share is incorrect. In fact, the stock was purchased on October 22, 2009 at \$18.00 a share.

KELAHHER, CONNELL & CONNOR, P.C.



Gene M. Connell, Jr.
The Courtyard, Suite 209
1500 U.S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorney for Plaintiff

May 10, 2013
Surfside Beach, South Carolina

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT

Robert Shelley, a/k/a RDS Investments,) Civil Action No. 2012-CP-26-5546
LLC, a/k/a ROS Investments, LLC,)
)
Plaintiff,)

VS.

Horry County State Bank and HCSB
Financial Corporation,

Defendants.

DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

TO: GENE M. CONNELL, JR., ATTORNEY FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that Defendants Horry County State Bank and HCSB Financial Corporation (hereinafter "Defendants"), will move before the Circuit Court for Horry County for an Order granting summary judgment in its favor as to the claims filed against them by Plaintiff Robert Shelley, a/k/a RDS Investments, LLC, a/k/a ROS Investments, LLC ("Plaintiff").

The grounds for this Motion are that no genuine issue of material fact exists as to any of Plaintiff's claims. Plaintiff has failed to present any evidence to support his claim that Defendants sold Plaintiff any stock, Defendants were negligent in any sale of stock and/or that Defendants owed Plaintiff any duties regarding his purchase of stock. In short, there is no genuine issue of material fact as to any issue in dispute that would create liability on the part of either Defendant in the case at bar.

Defendants' Motion will be further based on pleadings filed with the Court, discovery served by the parties to this action, relevant affidavits, other documents as permitted by the

Rules, and a supporting Memorandum of Law, which will be filed and served under separate cover.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

Thomas William McGee, III, SC Bar No. 11317

E-Mail: billy.mcgee@nelsonmullins.com

Tara C. Sullivan, SC Bar No. 79806

E-Mail: tara.sullivan@nelsonmullins.com

1320 Main Street / 17th Floor

Post Office Box 11070 (29211-1070)

Columbia, SC 29201

(803) 799-2000

Attorneys for Horry County State Bank and HCSB Financial Corporation

Columbia, South Carolina

January 2, 2014.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
Robert Shelley, a/k/a RDS Investments, LLC, a/k/a ROS Investments, LLC,	)	Civil Action No. 2012-CP-26-5546
	)	
Plaintiff,	)	
	)	<u>DEFENDANTS' MEMORANDUM IN</u>
vs.	)	<u>SUPPORT OF MOTION FOR</u>
	)	<u>SUMMARY JUDGMENT</u>
Horry County State Bank and HCSB Financial Corporation,	)	
	)	
Defendants.	)	

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, Defendants HCSB Financial Corporation ("Financial Corp.") and its wholly-owned subsidiary Horry County State Bank ("Bank," and collectively with Financial Corp., "Defendants"), by and through their undersigned counsel, hereby submit this Memorandum in Support of their Motion for Summary Judgment as to the claims asserted against them by Plaintiff Robert Shelley a/k/a RDS Investments, LLC, a/k/a ROS Investments, LLC ("Shelley"). Defendants' supporting Affidavit is attached hereto as **Exhibit 1**.

UNDISPUTED FACTS

This is a case in which Shelley seeks reimbursement for Financial Corp. stock he purchased in July and October 2009, which is alleged to have subsequently declined in value.

I. Initial Interest

In the past, individuals would sometimes contact the Bank to express their interest in selling or buying Financial Corp. shares from other people. **Exhibit 2**, Deposition Transcript of Robert Shelley at 27:8-11 and 65:7-9 (August 27, 2013); **Exhibit 3**, Deposition Transcript

of Debbie Guyette at 6:5-6 and 11:8-12:3 (December 16, 2013). In the mid-2000s, Shelley went to the Bank and asked Debbie Guyette,¹ a Bank employee, if “anybody [had] any stock for sale.” Shelley Dep. Trans. at 24:11-25:23; see also Guyette Dep. Trans. at 39:24-40:4 and 41:13-24; **Exhibit 4**, Deposition Transcript of Jane Cannon at 42:5-15 (December 16, 2013). “[S]he said no, that she didn’t know of anyone, but if she did, she’d let [Shelley] know.” Shelley Dep. Trans. at 24:11-25:23.

II. 2005 Purchase

As a result of his request, he was advised by a Bank employee, likely Ms. Guyette, that such stock was available from someone in or around July 2005. Shelley Dep. Trans. at 29:6-30:23. Shelley purchased the 1,285 available shares at \$35.00 per share and became a shareholder in Financial Corp. at that time. See generally Shelley Dep. Trans. at 25:24-28:7. As a shareholder, Shelley received Financial Corp.’s annual reports from that point forward. Affidavit at ¶ 7; Shelley Dep. Trans. at 66:18-67:9. This initial purchase of Financial Corp. stock is not the subject of any claims in the case at bar. See Amended Complaint; Shelley Dep. Trans. at 27:24-28:7.

III. First Subject Purchase: July 2009

Once again, in July 2009, Shelley purchased 1,000 shares of Financial Corp. stock at \$24.00 per share. Amended Complaint ¶ 7; Shelley Dep. Trans. at 36:17-38:10. He was contacted by Jane Cannon,² the head teller of his Bank branch, and advised that Financial Corp. stock was available for purchase. Shelley Dep. Trans. at 39:12-40:16. Specifically,

¹ Ms. Deborah “Debbie” Guyette is a branch manager and commercial lender with Bank, but is not an officer or director of the Bank or Financial Corp. Affidavit at ¶ 14; Guyette Dep. Trans. at 3:18-19 and 7:3-7.

² Ms. Jane Cannon is a head teller of a branch with Bank, but is not an officer or director of the Bank or Financial Corp. Affidavit at ¶ 14; Cannon Dep. Trans. at 3:11-19.

Ms. Cannon called Shelley “and said that there was some stock for sale and how much -- how much stock was for sale and was [Shelley] interested in buying it.” Shelley Dep. Trans. at 40:9-12; see also Cannon Dep. Trans. at 8:16-19; 37:14-24; 42:16-23. Shelley testified that Ms. Cannon advised him there were 2,000 shares available for purchase and Shelley told her he was interested in purchasing 1,000 of them and would come into the Bank in the next couple of days. Shelley Dep. Trans. at 40:17-41:2; see also Cannon Dep. Trans. at 42:23 and 44:18-22.

When Shelley went into the Bank, he asked Ms. Cannon who owned the stock, and she said she did not know. Shelley Dep. Trans. at 41:21-42:3; see also Cannon Dep. Trans. at 9:22-24 and 37:2-6. Shelley admits he does not know if Ms. Cannon knew who the owner of the shares was at that time, and he had no idea who owned the stock himself. Shelley Dep. Trans. 48:14-16; 49:5-10; and 79:15-23. Importantly, Shelley testified that it did not matter to him who owned the stock; therefore, he advised Ms. Cannon to proceed with the purchase by drafting the purchase amount from his Bank account. Shelley Dep. Trans. at 42:1-21.

Shelley does not know how the purchase price was determined, but says he must have been okay with the price at that time. Shelley Dep. Trans. at 38:11-13 and 42:15-17. Shelley testified he did not do any research as to the purchase price before he agreed to buy the stock, and does not know what other shares sold for around the same time. Shelley Dep. Trans. at 52:13-16 and 50:16-25. Shelley does not know whether his purchase price was reasonable or not. Shelley Dep. Trans. at 51:13-17.

Shelley never asked for, and was not given, any information about the Bank's or Financial Corp.'s financial condition in connection with the purchase. Shelley Dep. Trans. at 48:17-22 and 51:18-22; see also Cannon Dep. Trans. at 11:13-12:2 and 14:22-24.³

III. Second Subject Purchase: October 2009

Finally, in October 2009, Shelley purchased 2,192 shares of Financial Corp. stock at \$18.00 per share. Amended Complaint ¶ 7; Shelley Dep. Trans. at 56:25-57:3. He was contacted by either Ms. Guyette or Ms. Cannon, who let him know that shares were available for purchase. Shelley Dep. Trans. at 58:2-15 and 59:5-11. Importantly, Shelley testified he likely told them to debit his Bank account for the purchase. Id.

Shelley does not know who owned these shares and does not recall whether he asked who was selling the shares when he purchased them. Shelley Dep. Trans. at 58:25-59:4 and 61:5-9.

Shelley does not know how the purchase price was determined. Shelley Dep. Trans. at 58:16-20. He thought 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. As with the prior stock purchase, he did not try to determine the value of any shares that were recently sold. Shelley Dep. Trans. at 62:3-7.

Shelley did not ask for any and was not given any information about the Bank's or Financial Corp.'s financial condition in connection with the purchase. Shelley Dep. Trans. at

³ Had Shelley asked for any information about the Defendants' financial condition, he would have been provided with the annual report, which he had already received as a current shareholder. Guyette Dep. Trans. at 20:9-15; Shelley Dep. Trans. at 66:18-67:9.

59:12-19.⁴ 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.

IV. After Subject Purchases

In his Complaint, Shelley alleges that the price of the Financial Corp. shares he purchased in July and October 2009 immediately plummeted in price. Amended Complaint ¶ 11. However, Shelley admits that he did not know how to keep up with the value of Financial Corp. stock after his purchases and does not know how much it is currently worth. Shelley Dep. Trans. at 64:21-25 and 65:20-22. In any event, Shelley has not alleged any wrongdoing by the Bank to cause the alleged decline in the stock price.

Instead, Shelley’s issue with the Bank focuses on an alleged statement made after his purchases. Shelley Dep. Trans. at 75:14-76:7. More specifically, Shelley alleges that at some point **after** he purchased the shares, he asked Ms. Guyette if she knew who owned the shares sold to him, and she said she did not know.⁵ Shelley Dep. Trans. at 44:21-45:3; 53:5-9; and 78:1-3. Shelley was not clear if this conversation related to the shares he purchased in July 2009 or the shares he purchased in October 2009. Shelley Dep. Trans. at 44:21-22.

Shelley testified that in or around June 2012, he first discovered that the shares he purchased in July 2009 had been owned by Ms. Guyette. Shelley Dep. Trans. 83:1-15. As a result, he feels misled by Ms. Guyette’s alleged statement made after his purchase that she did

⁴ Again, had Shelley asked for any information about the Defendants’ financial condition, he would have been provided with the annual report which he had already received as a current shareholder. Guyette Dep. Trans. at 20:9-15; Shelley Dep. Trans. at 66:18-67:9.

⁵ Ms. Guyette denies that Shelley ever asked him 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. However, Shelley’s allegations are treated as true for the purposes of this Motion.

not know from whom he was purchasing stock.⁶ Shelley Dep. Trans. 48:23-6. However, as noted above, it did not matter to Shelley who owned the stock when he made the purchase. Shelley Dep. Trans. at 42:18-21. Importantly, Shelley could not say how or if this information would have affected his course of action had he known it before he purchased the shares. Shelley Dep. Trans. 83:22-84:5.

PROCEDURAL HISTORY

Rather than suing the individuals from whom he purchased his shares, Shelley brought the instant action against Defendants on July 19, 2012, and filed an Amended Complaint on October 4, 2012.⁷ Shelley asserts the following claims against Defendants: (1) breach of fiduciary duty; (2) violation of South Carolina's Uniform Securities Act of 2005; (3) negligence; and (4) civil conspiracy. Each of these claims is based on Shelley's allegation that a Bank employee contacted Shelley to advise him that Financial Corp. stock was available for purchase, but did not advise him of the Defendants' financial condition or that the stock he purchased in July 2009 was owned by Ms. Guyette. Amended Complaint ¶¶ 6; 8; 19-21; 28-29; 32; and 36.

As a result, Shelley seeks reimbursement for the stock he purchased in July 2009 (1,000 shares at \$24.00 per share = \$24,000) and October 2009 (2,192 shares at \$18.00 per share = \$39,456), totaling \$63,456. **Exhibit 5**, Shelley's Amended Answers to

⁶ The shares Shelley purchased in October 2009 were **not** owned by Ms. Guyette or by anyone else employed by Defendants, 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.

⁷ 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.

Interrogatories at ¶ 5. Essentially, Shelley seeks the return of his investment in Financial Corp., which could come at the expense of all his fellow shareholders.

Defendants filed the instant Motion for Summary Judgment on January 3, 2014. For the reasons set forth herein, Defendants are entitled to summary judgment on each of the claims in this matter.

ARGUMENT

I. Shelley's claim for breach of fiduciary duty fails as a matter of law.

First, Shelley asserts a claim for breach of fiduciary duty based on the Defendants' failure to advise him of the Bank's financial condition or the owner of the shares he purchased in July 2009 prior to his purchase. Amended Complaint ¶¶ 19-21. Essentially, Shelley seeks to shift the risk of his investment to Defendants.

"The 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)). "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." Schmauch, 354 S.C. at 670, 582 S.E.2d at 444 (internal citations omitted). Furthermore, "a fiduciary relationship cannot be established by the unilateral action of one party. . . . The other party must have actually accepted or induced the confidence placed in him." Id. at 670-71, 582 S.E.2d at 444 (internal citations omitted).

Here, no fiduciary relationship could have been created. The very nature of Shelley's allegations leads to the opposite conclusion. First, Shelley never asked for any information regarding the Bank's financial condition and Defendants did not give him any information about the Bank's financial condition in connection with his purchases. Next, although Shelley asked about the ownership of the shares he purchased, Ms. Cannon advised him that she did not know and Shelley chose to proceed with his purchase despite the lack of this information. Because Defendants did not undertake to advise him on either of these topics, he could not have relied on Defendants in making his purchases. See Schmauch, 354 S.C. at 670-71, 582 at 444 (Ct. App. 2003) (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). Therefore, Shelley cannot show that he placed any "special confidence" in Defendants for his purchases, and no fiduciary relationship was created as a matter of law.

Furthermore, if there was a fiduciary relationship between Defendants and Shelley, it would not have required the disclosure of unknown information. Even a broker or dealer of securities⁸ 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 (affirming grant of summary judgment on cause of action for breach of fiduciary duty for failure to advise of risk of investment); see also Moore v. Moore, 360 S.C. 241, 251, 599 S.E.2d 467, 472 (Ct. App. 2004) ("Parties in a fiduciary relationship must fully disclose to each other all *known* information that is significant and material . . . ") (emphasis added). Here, Ms. Cannon did not know the Bank's financial condition at the time of

⁸ This example is for illustration purposes only and not to suggest that Defendants are brokers or dealers of securities.

Shelley's purchase. Cannon Dep. Trans. at 13:7-14:7. Ms. Cannon also did not know who owned the shares Shelley was purchasing. Cannon Dep. Trans. at 9:22-24 and 37:2-6. Therefore, there was no fiduciary duty for her to provide Shelley with this unknown information, and Shelley cannot now seek to shift the potential risk of his investment to Defendants. For all of these reasons, Shelley's claim for breach of fiduciary duty fails as a matter of law and should be dismissed.

II. Shelley's claim for violation of South Carolina's Uniform Securities Act of 2005 fails as matter of law.

Next, Shelley asserts a cause of action pursuant to S. C. Code § 35-1-509(b)(1). Amended Complaint ¶ 30. This provision sets forth the private causes of action available for violation of South Carolina's Uniform Securities Act of 2005 ("Securities Act"). Specifically, it 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, "by 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."

See S.C. Code Ann. § 35-1-509(b)(1).

First, it must be noted that Section 35-1-509(b)(1) provides liability only for sellers of securities. See S.C. Code Ann. § 35-1-509(b)(1). Defendants were not the sellers of any of the subject stock, and therefore, should not be liable under the Securities Act. Affidavit at ¶¶ 8-9.

Even if Defendants could somehow be liable despite the fact that they did not sell the subject stock, Shelley's claims under the Securities Act still fail as a matter of law. Shelley asserts that Defendants violated Sections 35-1-501 and 35-1-504 of the Securities Act. Amended Complaint ¶¶ 28-29. These two provisions are addressed in turn.

A. Alleged Violation of Section 35-1-501: General Fraud

Section 35-1-501 provides as follows:

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;
- (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's Amended Complaint alleges that this Section was violated by Bank employees offering the sale of stock but failing to advise him of the current financial condition of the Bank at the time. Amended Complaint ¶ 28.

It is well-established a claim for fraud requires proof of the following: "(1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury." Moseley v. All Things Possible, Inc., 388 S.C. 31, 35-36, 694 S.E.2d 43, 45 (Ct. App. 2010). These elements are not met here.

First, the Bank's 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. Shelley admits there were no statements made regarding the Bank's financial condition at the time and, therefore, there could be no false representation to constitute fraud or deceit. Similarly, there was no omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. Because there were no statements made about the Bank's financial condition at the time, there were no statements which needed further explanation. In any event, Shelley admitted he had received the Financial Corp.'s annual reports for several years as he became a shareholder in 2005, and further testified 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.

Although not pleaded as the basis for the violation of this Section, the only statement made in connection with his purchases alleged to be false was the statement made by Ms. Guyette after either his July 2009 or October 2009 purchase: that she did not know from whom Shelley was purchasing stock although she owned the shares he purchased in July 2009.

First, it is not clear that this statement was false. Shelley has come forward with no evidence to show that Ms. Guyette knew which stock purchase Shelley allegedly asked her about and Shelley himself was not clear to which stock purchase this alleged representation related. Importantly, 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. Moreover, Shelley said that at the time he made his purchase, it did not matter to him who owned the stock. Accordingly, the alleged misrepresentation could not have been material. Finally, Shelley has come forward with no evidence to show how this alleged

misrepresentation caused him any damage. Although he claims a decline in the stock price, the identity of Shelley's seller was certainly not the cause for the alleged decline, and Shelley testified that he had no idea how this information may or may not have changed his decision to purchase shares in July 2009. Because there is no genuine issue of material fact as to Shelley's cause of action under Section 35-1-501, summary judgment should be granted to Defendants on this claim.

B. Alleged Violation of Section 35-1-504: Filing of Sales and Advertising Literature

First, it must be noted that there is no private cause of action for a violation of Section 35-1-504. As noted above, S. C. Code § 35-1-509(b)(1) sets forth the only three private causes of action available for violation of the Securities Act, none of which included a violation of Section 35-1-504.

Even if a private cause of action for violation of this Section existed, Shelley's claim would fail. Section 35-1-504(a) provides as follows:

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). Shelley's Amended Complaint alleges that the Bank violated this section by not providing Shelley with a prospectus or other documentation regarding the proposed sale of stock prior to the sale. Amended Complaint ¶ 29. However, Section 35-1-504 does not require such action. Instead, it provides that a rule or order issued under the Securities Act may require that such information be filed. Shelley does not allege that any rule

or order includes such requirement and makes no allegation regarding the filing of such information.

In any event, Section 35-1-504 exempts the subject security and transaction. 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, a security or transaction listed as exempt in Sections 35-1-201 or 35-1-202 are also exempt from the potential filing of sales and advertising literature.

Section 25-1-201 exempts securities issued by and representing an interest in any banking or depository institution. S.C. Code Ann. § 35-1-201(3)(A)-(C). The stock at issue here represents an interest in a banking or depository institution and, therefore, is exempt under this provision.

Section 35-1-202 exempts any transaction that is “an isolated nonissuer transaction.” S.C. Code Ann. § 35-1-202(1). A “nonissuer transaction” is defined as 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 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 Financial Corp. because the shares were issued in its name. However, the subject stock sales were **not** for the benefit of Financial Corp. because it did not receive any sort of commission or other benefit from the sale. Affidavit at ¶ 13; Guyette Dep.

Trans. at 42:11-14; Cannon Dep. Trans. at 16:4-9 and 46:2-10. Further, Ms. Guyette has never sold any of her Financial Corp. stock other than the one sale in July 2009, making this the type of occasional sale by an individual that this exemption was specifically designed to encompass. Guyette Dep. Trans. at 12:4-11.

Section 35-1-202 also 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. S.C. Code § 35-1-202(15). Here, Shelley was an existing shareholder by virtue of his earlier purchase in 2005. Further, Defendants received no commission or other remuneration in connection with the sale. Affidavit at ¶ 13; Guyette Dep. Trans. at 42:11-14; Cannon Dep. Trans. at 16:4-9 and 46:2-10. Therefore, Section 35-1-202 also exempts the subject sales from the potential filing of sales and advertising literature under Section 35-1-504.

Because there is no genuine issue of material fact as to Defendants' liability for violation of Section 35-1-504, summary judgment should be granted to Defendants on this claim.

III. Shelley's claim for negligence fails as a matter of law.

Next, Shelley asserts a claim for negligence. Amended Complaint ¶ 32. Again, the claim is based on the Bank's alleged failure to provide Shelley with any information regarding the Bank's financial condition or the identity of the seller of the shares he purchased. Id.

"Negligence is the breach of a duty of care owed to the plaintiff by the defendant." Schmauch, 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 Defendants owed him some duty to advise him of the Bank's financial condition or the seller of the shares he purchased.

“Ordinarily, the common law imposes no duty on a person to act. Where an act is voluntarily undertaken, however, the actor assumes the duty to use due care.” Cowburn, 366 S.C. at 39, 619 S.E.2d at 448 (affirming grant of summary judgment where there was no evidence that defendant undertook duty to investigate investment he had recommended to plaintiff). Again, Ms. Cannon did not voluntarily undertake to advise Shelley of the Bank’s financial condition or the owner of the shares Shelley was purchasing. Had she done so, she would have assumed the duty to use due care regarding the information that was provided. See Schmauch, 354 S.C. at 669-70, 582 S.E.2d at 443-44 (distinguishing a case finding that a duty of care was owed where erroneous information was given from the situation where no duty of care is owed because no guidance was provided). However, because this obligation was not assumed, Shelley’s claim for negligence fails as matter of law and should be dismissed.

IV. Shelley’s claim for civil conspiracy fails as a matter of law.

Lastly, Shelley asserts that Defendants’ officers and employees conspired to injure him. Amended Complaint ¶ 37. “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) (quoting Cowburn, 366 S.C. at 49, 619 S.E.2d at 453). “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)).

Therefore, to the extent Shelley alleges that Bank officers and employees were conspiring with the Bank, such allegations fail because a company cannot conspire with itself as a matter of law. Alternatively, to the extent Shelley alleges that the officers and employees were conspiring with one another, such a claim is not appropriately lodged against Defendants but rather against the individuals themselves as a matter of law. Accordingly, Defendants are entitled to summary judgment on Shelley’s civil conspiracy claim.

V. Shelley should not be allowed to shift the risk of his investment to Defendants.

Shelley seeks reimbursement for his shares because they declined in value after he bought them. He acknowledges that when purchasing stock, he hopes the value will increase but he also takes the risk that it will decline in value. Shelley Dep. Trans. at 69:24-70:3. Shelley should not be allowed now to shift the risk of this investment to Defendants based on his allegations in this matter. If this were allowed, shareholders would seek reimbursement from the companies in which they purchased stock anytime their shares declined in value. Furthermore, this reimbursement from Defendants would come at the expense of all of Shelley’s fellow shareholders.

As explained above, Shelley requested the conduct of which he now complains. Bank employees notified Shelley that someone had stock available for him to purchase at Shelley’s request. There was no misinformation given to Shelley when he made his decision to purchase his shares in July and October 2009, and he had access to the Defendants’ annual reports as he

was already a shareholder at that time. He did no research himself on the Defendants' financial condition or the price of the shares he purchased.

The owner of the shares he purchased didn't matter to him at the time, and he couldn't say that he would do anything differently had he known this information then. Any incorrect statement about the ownership of the shares wasn't made until after he had already completed his purchase. Of course, the ownership of the shares did not cause the value of the stock to decline, and Shelley doesn't allege any wrongdoing by Defendants that would otherwise have caused the value of Financial Corp. shares to decline. Based on the facts as alleged by Shelley, there is no genuine issue of material fact in this matter as to any of Shelley's claims.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court enter summary judgment in its favor as to each of the claims in this matter.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: Tara C. Sullivan

Thomas William McGee, III, SC Bar No. 11317

E-Mail: billy.mcgee@nelsonmullins.com

Tara C. Sullivan, SC Bar No. 79806

E-Mail: tara.sullivan@nelsonmullins.com

1320 Main Street / 17th Floor

Post Office Box 11070 (29211-1070)

Columbia, SC 29201

(803) 799-2000

Attorneys for Defendants Horry County State Bank and
HCSB Financial Corporation

Columbia, South Carolina

February 28, 2014.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT

Robert Shelley, a/k/a RDS Investments,)
 LLC, a/k/a ROS Investments, LLC,)

Plaintiff,)

vs.)

Horry County State Bank and HCSB
 Financial Corporation,)

Defendants.)

Civil Action No. 2012-CP-26-5546

AFFIDAVIT OF JAMES R.
CLARKSON IN SUPPORT OF
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

PERSONALLY APPEARED BEFORE ME, James R. Clarkson, who, first being
 duly sworn, deposes and says as follows:

1. I am the President and Chief Executive Officer for Horry County State Bank ("Bank"). I have been employed by the Bank since it was organized in June 1987 and opened for business in January 1988. I have served as President and Chief Executive Officer for the Bank continually since that time.

2. I am also the President and Chief Executive Officer for HCSB Financial Corporation ("Financial Corp."). I have served as President and Chief Executive Officer for the Financial Corp. continually since its incorporation in March 1999.

3. I have reviewed the pleadings and allegations related to the claims and defenses in the above-captioned matter and have personal knowledge of the contents of this Affidavit.

4. I am familiar with the status and corporate structures of the Bank and Financial Corp.

5. Bank and Financial Corp. are separate legal entities. The Bank is wholly owned by the Financial Corp.

6. In his Amended Complaint, Plaintiff alleges that he made two separate purchases of Financial Corp. stock in July 2009 and October 2009. Plaintiff had previously purchased Financial Corp. stock in 2005 as well.

7. Financial Corp. provided annual reports to all of its shareholders, which Plaintiff would have received from 2005 forward.

8. Neither the Bank nor the Financial Corp. owned any of the stock purchased by Plaintiff at the time of his three purchases.

9. Neither the Bank nor the Financial Corp. sold Plaintiff any shares of Financial Corp. stock at any time.

10. Neither the Bank nor the Financial Corp. instructed or requested any party to sell stock to the Plaintiff at any time.

11. Neither the Bank nor the Financial Corp. instructed or advised the Plaintiff how much Financial Corp. stock was worth or how much he should pay for it.

12. Neither the Bank nor the Financial Corp. instructed or advised the sellers of stock to Plaintiff how much the stock was worth or how much to charge Plaintiff.

13. Neither the Bank nor the Financial Corp. received any commission, fee or other payment or benefit as a result of any purchase of stock by Plaintiff.

14. The individuals Plaintiff alleges to have been involved with his July 2009 and October 2009 purchases--Ms. Deborah "Debbie" Guyette and Ms. Jane Cannon--are not officers or directors of the Bank or Financial Corp.

<signature block next page>

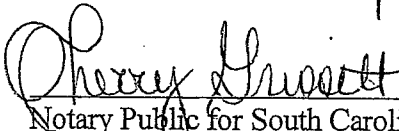
FURTHER AFFIANT SAYETH NOT.

Horry County State Bank and HCSB Financial Corporation

By: 
Its: President and Chief Executive Officer

SWORN to and subscribed before me

this 28 day of February, 2014.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: 7/1/2023

1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF HORRY
4 Robert Shelley, a/k/a RDS
5 Investments, LLC, a/k/a ROS
6 Investments, LLC,
7 Plaintiff(s),
8 vs. Case No: 2012-CP-26-5546
9 Horry County State Bank and
10 HCSB Financial Corporation,
11 Defendant(s).

11 D E P O S I T I O N

12 WITNESS: ROBERT SHELLEY
13 DATE: Tuesday, August 27th, 2013
14 TIME: 10:00 a.m.
15 LOCATION: Kelaher, Connell & Connor, PC
16 Suite 209, The Courtyard
17 1500 U.S. Highway 17 North
18 Surfside Beach, South Carolina
19 TAKEN BY: Attorneys for the Defendants
20 REPORTED BY: HEATHER M. CURLIN
21 Professional Court Reporter

20

21

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2

1 APPEARANCES:

2 ATTORNEYS FOR THE PLAINTIFFS:

3 KELAHER, CONNELL & CONNOR, PC
4 BY: GENE M. CONNELL, JR., ESQUIRE
Suite 209, The Courtyard
1500 U.S. Highway 17 North
5 Surfside Beach, South Carolina 29587
843.238.5648
6 gconnell@classactlaw.net

7
8 ATTORNEYS FOR THE DEFENDANTS:

9 NELSON MULLINS RILEY & SCARBOROUGH, LLP
BY: THOMAS WILLIAM MCGEE, III, ESQUIRE
1320 Main Street, 17th Floor
10 Columbia, South Carolina 29201
803.799.2000
11 billy.mcgee@nelsonmullins.com

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(INDEX AT REAR OF TRANSCRIPT)

25

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3

1 (The deponent waives the right to read and
2 sign the deposition transcript.)

3 - - - - -

4 ROBERT SHELLEY, being first duly sworn,
5 testified as follows:

6 EXAMINATION

7 BY MR. MCGEE:

8 Q. Good morning, Mr. Shelley. My name is Billy
9 McGee. We met a little while ago. Before I get started
10 with the standard introduction, have you ever had your
11 deposition taken before?

12 A. Yes.

13 Q. How many times?

14 A. I don't know.

15 Q.. More than once?

16 A. Yes.

17 Q. More than five times?

18 A. Probably.

19 Q. Tell me, were you a plaintiff or defendant in
20 those cases or simply a fact witness?

21 A. Some of all of the above.

22 Q. All right. Tell me some of the cases you've
23 been involved in in which you were a plaintiff. Who did
24 you sue?

25 A. When I was being sued -- Gene Connell sued me

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4

1 one time.

2 Q. All right. And who was the party suing you?

3 A. Surfside Presbyterian Church or its
4 affiliates, one or the other.

5 Q. And what were their allegations against you?

6 A. I forgot.

7 Q. You don't remember why the Surfside
8 Presbyterian or their affiliates sued you?

9 A. I forgot exactly what the allegations were.

10 Q. Just generally.

11 A. I helped them build a church. And the guy
12 they chose to build it, messed up on some things, and
13 they sued everybody.

14 Q. All right. And has that case revolved?

15 A. Uh-huh.

16 Q. Was it tried or settled?

17 A. Settled.

18 Q. Any other where you have been sued by
19 somebody, that you can recall?

20 A. The government.

21 Q. And what did they sue you for?

22 A. I owned 5 percent of a company in North
23 Carolina that declared bankruptcy.

24 (Reporter interjection.)

25 A. I owned 5 percent of a company in North

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1 Carolina that declared bankruptcy.

2 BY MR. McGEE:

3 Q. And the government sued you why?

4 A. Because I owned 5 percent of the company.

5 Q. What did the government want?

6 A. \$18 million.

7 Q. Has that case resolved?

8 A. Yes.

9 Q. And it settled or trial?

10 A. Settled.

11 Q. Any other cases in which you were sued by
12 another party?

13 A. Not to my immediate recollection.

14 Q. Okay. And if I ask you any question during
15 the course of the deposition and you recall something or
16 want to correct an answer, just let me know and I'll be
17 glad to give you time to do that. Is that fair?

18 A. (Witness nods head.)

19 Q. How about cases in which you have sued
20 someone else? How many times, to your recollection,
21 have you sued someone else? Either on behalf of
22 yourself individually or a company that you own any
23 interest in.

24 A. I sued Sea Garden Homes for not paying the
25 \$375,000 -- no, I think it was like \$475,000 one time.

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6

1 Q. Has that case concluded?

2 A. Uh-huh.

3 Q. And did it settle or go to trial?

4 A. Go to trial.

5 Q. Who represented you in that case?

6 A. John Thompson.

7 Q. And what was the result?

8 A. I won.

9 Q. Did you say you won?

10 A. Yes.

11 Q. Okay. And any other cases in which you have
12 sued someone on behalf of yourself individually or a
13 company that you own any interest in?

14 A. Not to my immediate recollection.

15 Q. Okay. We've talked about the cases in which
16 you have been a party, is that right, that you recall
17 here today?

18 A. Uh-huh. Yes.

19 Q. Have you ever testified at trial or given a
20 deposition as a fact witness in a case in which you were
21 not a party?

22 A. Like the expert witness?

23 Q. An expert witness or were you a fact witness
24 to, say, for example, an automobile accident, something
25 like that, where you weren't suing or being sued but you

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7

1 were a fact witness for the parties in the case?

2 A. Yes. I can remember one.

3 Q. Okay. Tell me about that, please.

4 A. This guy got arrested for rape, and the girl
5 he supposedly raped lived in one of my apartments. And
6 I drove up at the time they were having a big argument,
7 and they called me to be a witness to what I heard.

8 Q. Okay. And you testified at trial?

9 A. Yeah.

10 Q. Okay. All right. It sounds like that you've
11 had some experience being deposed or testifying as a
12 witness, but I just wanted to get your background on
13 that.

14 Let me just tell you that I represent Horry
15 County State Bank and HCSB Financial Corporation in this
16 lawsuit that you've brought against them. Today I'm
17 just going to take your deposition. Sounds like you've
18 been deposed before. I'll ask you a series of
19 questions. Typically, I like to start with just some
20 background and then move forward. Chronologically, it
21 just makes better sense to me. If at any time I ask you
22 a question that you don't understand or would like for
23 me to rephrase, just let me know and I'll be glad to do
24 that. Is that fair?

25 A. Fair.

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1 Q. As you know, the court reporter, Ms. Heather,
2 is going to be taking down everything that you and I say
3 and Mr. Connell says today. So if you would respond
4 verbally instead of by nodding or shaking your head,
5 that would be helpful to her so she can make a record of
6 our discussion. Is that fair?

7 A. Yes.

8 Q. And if at any time you need to take a break,
9 make a phone call, use the restroom, do anything like
10 that, just let me know and I will be glad to pause. We
11 can take a break, stretch our legs. Is that fair?

12 A. Fair.

13 Q. If you do not ask me to clarify or restate a
14 question, I will assume that you understand the question
15 and are answering truthfully. Is that fair?

16 A. True.

17 Q. Okay. Could you state your full name for the
18 record, please.

19 A. I already have, but I'll do it again.

20 Q. Thank you.

21 A. Robert Davis Shelley, S-H-E-L-L-E-Y.

22 Q. And your current address?

23 A. 510 Calhoun Road, Myrtle Beach.

24 Q. And how long have you lived at that address?

25 A. 27 years.

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1 Q. Were you born in the Myrtle Beach area?

2 A. Yes.

3 Q. And do you have a business address?

4 A. No.

5 Q. Do you own any other personal residences? I
6 know you mentioned that you had an apartment complex or
7 apartments perhaps, but do you have any other homes that
8 you stay in from time to time, vacation properties,
9 anything like that?

10 A. No.

11 Q. Could you state your date of birth, please.

12 A. 7/21/1949.

13 Q. You said that you were born in this area. Do
14 you have lots of family in the Horry County area?

15 A. I did. Most of them has died off.

16 Q. If -- are you married?

17 A. Yes.

18 Q. And what -- was your wife's family from
19 around this area, too?

20 A. No.

21 Q. And the reason I'm asking is because if this
22 matter goes to trial, we want to make sure that nobody
23 on our side, nobody on your side, relatives of the
24 parties are on the jury.

25 A. That will be hard to do.

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1 Q. That's what I want to say. If you had a
2 family reunion, say, and invited your family to it, what
3 would be some of the last names other than Shelley that
4 would be there?

5 A. Tompkins, T-H-O-M-P-K-I-N-S.

6 Q. Any others that you can think of?

7 A. That's probably the main lineage of the
8 families.

9 Q. Are you under any medications or any
10 condition that would prevent you from testifying
11 truthfully here today?

12 A. No.

13 Q. Do you have any children over the age of 18?

14 A. No.

15 Q. Do you have any military background?

16 A. Yes.

17 Q. Tell me about that, please.

18 A. Air Force, 1969 to '73.

19 Q. Where were you stationed?

20 A. Texas, Jersey, Arkansas.

21 Q. I apologize to all deponents when I ask this,
22 but I think Mr. Connell will verify this is asked in
23 every deposition. But have you ever been arrested or
24 convicted of any crime other than a minor traffic
25 violation?

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11

- 1 A. No.
- 2 Q. Are you a member of any church?
- 3 A. Yes. No.
- 4 Q. Which one?
- 5 A. No, I'm not.
- 6 Q. Okay. Any other social clubs or organizations
- 7 that meet in Horry County?
- 8 A. Yeah.
- 9 Q. What are those?
- 10 A. Masonic Lodge, Shriners, Sons of Confederate
- 11 Veterans, some boat club my wife's a member of.
- 12 Q. Excuse me.
- 13 A. You want some tissues?
- 14 Q. No, thanks. It's just my allergies.
- 15 Did you attend high school in Horry County?
- 16 A. Yes.
- 17 Q. And what did you do after high school?
- 18 A. Went to the Air Force.
- 19 Q. Did you attend any educational facility after
- 20 graduating high school and being --
- 21 A. I went to Coastal Carolina for a short time.
- 22 Q. Okay. After you -- was that after you were
- 23 discharged from the military?
- 24 A. Before.
- 25 Q. Okay. After you were discharged from the Air

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12

1 Force in 1973, can you just give me -- I don't want to
2 go through every single job that you had, but can you
3 kind of walk me through, since 1973, kind of what you
4 did for a living for your employers?

5 A. General contractor.

6 Q. Did you open up your own business after
7 getting out of the Air Force?

8 A. Yes.

9 Q. And what's the name of the business?

10 A. Shelley Construction Company.

11 Q. Has it been the same name, same organizations
12 since then?

13 A. Yes.

14 Q. How many -- how many employees does Shelley
15 Construction have today full-time?

16 A. None.

17 Q. None?

18 A. None.

19 Q. And is it an LLC or an incorporation?

20 A. Corporation. Wait a minute. Well, John
21 Gandy did change it to an LLC.

22 Q. Okay. And you say that there are no
23 employees. Do you bid on jobs and then --

24 A. No.

25 Q. -- sub it out?

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13

1 Tell me how your business works, then.

2 A. I don't -- I've closed the company down.

3 Q. Okay. When did you close the company?

4 A. Late '80s.

5 Q. And what sources of income, if any, have you
6 had since the late '80s?

7 A. Rental income.

8 Q. Is that commercial or residential or both?

9 A. Commercial.

10 Q. How many pieces of commercial property do you
11 estimate you have?

12 A. Not that many. Between 20 and 40.

13 Q. And you said commercial. A minute ago you
14 said something about an apartment. Is that -- would you
15 consider -- do you consider that part of it?

16 A. (Witness shakes head.)

17 Q. You don't own apartments anymore?

18 A. No.

19 Q. Okay. At the time that you closed Shelley
20 Construction in the late '80s, how many employees did
21 you have?

22 A. You mean the time of closing?

23 Q. Yeah. Well, just before.

24 A. Okay. What is your definition of "just
25 before"?

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14

1 Q. How many employees did you have at the --
2 what was the most employees you had at any one time
3 before you closed?

4 A. On paper?

5 Q. Yes.

6 A. 186.

7 Q. And did you do residential, commercial, both?

8 A. Commercial.

9 Q. Between 1973 when you left the Air Force and
10 the late '80s when you closed Shelley Construction,
11 other than Shelley Construction and rental income, did
12 you have any other sources of income?

13 A. No. It was all involved through Shelley
14 Construction Company.

15 Q. Okay. And did you -- since you closed down
16 Shelley Construction in the late '80s, other than rental
17 income, have you had any other sources of income during
18 that time?

19 A. Other income. I had income coming from the
20 corporation I owned 5 percent of in North Carolina.

21 Q. What was the name of that company?

22 A. Americare.

23 Q. What kind of business was that?

24 A. Assisted living homes.

25 Q. And you say that that company declared

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1 bankruptcy?

2 A. Yes.

3 Q. So it no longer exists, or did y'all emerge
4 from bankruptcy?

5 A. No.

6 Q. Do you recall when that company filed
7 bankruptcy? As best you can recall.

8 A. Mid 2005, give or take a year or two in
9 there.

10 Q. Okay. Other than Shelley Construction and
11 Americare, have you -- since the late '80s when you
12 closed Shelley Construction, have you owned an interest
13 in any other business?

14 A. We had a mental health company in North
15 Carolina for a while, and I forgot what it was named.
16 There was never any stock issued out of it. And I think
17 it was just an LLC that was formed up there. I'm trying
18 to think of the name of it. That merged into going into
19 the assisted living home business.

20 Q. Okay. And is that an ongoing business or is
21 that --

22 A. No.

23 Q. Okay. That business is closed as well?

24 A. Right.

25 Q. And you don't own any current -- strike that.

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1 As we sit here today, do you own any interest
2 in any other ongoing business?

3 A. No.

4 Q. What did you do to prepare for your deposition
5 today?

6 A. Showed up.

7 Q. Did you review any documents to refresh your
8 recollection about anything?

9 A. No.

10 Q. Did you discuss your deposition with anybody
11 prior to today?

12 A. You mean discuss it, you're talking about if
13 I -- what I was doing this morning?

14 Q. No. Not just the scheduling, logistics, but
15 did you discuss your testimony or your expected
16 testimony at today's deposition with anybody prior to
17 today?

18 A. Yeah.

19 Q. And who would that be?

20 A. Gene Connell.

21 Q. And did you meet with Mr. Connell before
22 today to discuss your deposition?

23 A. No.

24 Q. Anyone else?

25 A. Would you like to know what he asked me?

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1 MR. CONNELL: Don't --

2 BY MR. MCGEE:

3 Q. Yeah, don't tell me what he asked. I'm just
4 asking if you had any discussions. I'm not asking what
5 they were. I just wanted to check.

6 What is --

7 A. About two minutes.

8 Q. Yeah, don't tell me anything. I was just
9 asking --

10 A. I don't mind sharing with you, Buddy.

11 MR. CONNELL: You can't -- don't have to.

12 BY MR. MCGEE:

13 Q. No, no. Yeah, I'm not trying to squeeze
14 anything out of you in that regard. I'm not entitled to
15 it.

16 A. Imagine that.

17 Q. Yeah. Tell me how you would describe your
18 relationship with Horry County State Bank.

19 A. At the present?

20 Q. Yes, sir.

21 A. Good.

22 Q. Do you own any accounts there today?

23 A. No.

24 Q. Have you ever?

25 A. Yeah.

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18

1 Q. Tell me about that.

2 A. About what?

3 Q. About accounts that you have held at some
4 point in time at Horry County State Bank.

5 A. Tell you about accounts I've held at Horry
6 County State Bank?

7 Q. Yes.

8 A. I've had accounts there.

9 Q. Checking accounts? Savings accounts? CD
10 accounts?

11 A. Oh, okay.

12 Q. Business accounts? Personal accounts?

13 A. Okay. Checking accounts.

14 Q. Personal --

15 A. Okay. Now I know what you're talking about.
16 I didn't understand what you were asking.

17 Q. Okay. Personal? Business? Both?

18 A. Business and personal, uh-huh.

19 Q. When did you first start doing any type of
20 business with Horry County State Bank, either personally
21 or business?

22 A. I can't remember. Either the mid 2005, give
23 or take.

24 I wasn't trying to be smart, I just didn't
25 understand your question.

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1 Q. No, that's okay.

2 What led you to have a banking relationship
3 with Horry County State Bank in the mid 2000s; 2005,
4 give or take? Was it that you were dissatisfied with
5 your other bank or you wanted to diversify? Tell me
6 what led you to Horry County State Bank.

7 A. Years before that, when Horry County State
8 Bank was fixing to start, Ron Paige had stopped me
9 somewhere and asked me about coming over to that bank,
10 which he was just hired. And he had been the city exec
11 at a place back on 21st Avenue where I had banked at.
12 And I -- he left there and went to Horry County State
13 Bank. And then several years later -- I did not go
14 change banks with him right then. Several years later,
15 my banker at the bank where I was banking at had left,
16 so I was looking for another bank. And I went to about
17 three different banks. And Paige and -- lured me there,
18 I guess. He had the best line.

19 Q. What was that?

20 A. I don't know what it was, but it had to be a
21 good line in order for me to go bank with him.

22 Q. Okay.

23 A. I mean, I can't -- I'm -- I'm not trying to
24 be evasive.

25 Q. No, no. That's fine. It's a long time ago.

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1 When you say "best line," you mean best line
2 of credit, best pitch or --

3 A. Best pitch. All of them at that time there,
4 they were just begging to give away money.

5 Q. And this would have been, again, in the mid
6 2000s?

7 A. I think it was. I'm not quite sure about
8 that. Give or take a couple years.

9 Q. So you had checking accounts, personal
10 checking accounts and the business accounts?

11 A. Yes.

12 Q. And at that point, I guess we're talking
13 about the mid 2000s, so that would have been after you
14 closed Shelley Construction?

15 A. Oh, yeah, but I still had an account in
16 Shelley Construction Company.

17 Q. Okay. And what did Shelley Construction
18 Company do at that point? Does it own rental
19 properties?

20 A. Properties.

21 Q. Okay. Understood. Who was your point of
22 contact other than Mr. Paige? Or was he your sole point
23 of contact at Horry County?

24 A. At that time, he was my sole point of contact.

25 Q. And when did you -- just so I can put a

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1 bracket around this, when did you move your accounts
2 elsewhere after you opened them in or around 2005? How
3 long did you stay there?

4 A. Repeat the question.

5 Q. Sure. You said based on your best
6 recollection that sometime in mid 2000s, about 2005 is
7 when you first started banking at Horry County State
8 Bank. You had personal and business checking accounts
9 there. When did you move your accounts from Horry
10 County State Bank to another bank?

11 A. I never said I did.

12 Q. Well, I asked you -- I thought I asked you
13 first what your -- if you had any accounts there now,
14 and you said no. Is that -- did I --

15 A. I don't think you asked me that. But, no, I
16 don't have any accounts. And I would probably say it's
17 within the last six months. Four months, six months
18 somewhere in there.

19 Q. And when you moved -- at the time that you
20 closed out your accounts at Horry County State Bank, did
21 you only have the personal checking and the business
22 checking accounts there or did you have other accounts?

23 A. I think that's all I had.

24 Q. Okay. Had you ever bought any CDs while you
25 were a customer at Horry County State Bank?

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1 A. No.

2 Q. And what prompted you to leave Horry County
3 State Bank or move your accounts in the last four to six
4 months?

5 A. For the last several years as they went under
6 federal whatever it is, they could not loan money. And
7 they could only loan money on owner-occupied properties.
8 And I have to borrow money. So I found a bank that was
9 flexible to loan money.

10 Q. And who did you move your accounts to?

11 A. Conway National.

12 Q. And at the time, four to six months ago when
13 you moved your accounts, did you -- were you still
14 working with Ron Paige or was there somebody else that
15 you had started to do business with there?

16 A. I had not been working with anyone there
17 because they couldn't loan money.

18 Q. Okay.

19 A. In years.

20 Q. Is there anybody else that is an officer,
21 director, employer [sic] in management at Horry County
22 State Bank that you've had some regular dealings with
23 over your term as a customer there?

24 A. Debbie Guyette and Jane Cannon. She was the
25 head teller. I knew all the tellers in the bank.

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1 Q. Who was the second?

2 A. Jane Cannon.

3 Q. Jane Cannon?

4 A. Yeah. She was like the head teller there.

5 Q. Okay.

6 A. Very nice lady.

7 Q. How about any of the folks on the board or
8 the executives over there, did you have any personal or
9 business relationship with any of them?

10 A. Well, Frankie Blanton, he owns a lumber
11 company, and I've known him and his family from way
12 back. Singleton Bailey from -- I hunt with him. He's
13 out at Loris. He's on the board. Allen, he was --
14 taught me how to cut meat when I was in high school.
15 And he was Horry County Treasurer, and he sits on the
16 board.

17 Q. Who is that? Allen?

18 A. Allen, Johnny Allen.

19 Q. Yes. Okay. How about --

20 A. The Brittains.

21 Q. Go ahead. Sorry. Clay Brittain?

22 A. Clay Brittain's family.

23 Q. Uh-huh.

24 A. Do you know Clay?

25 Q. I do.

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1 How about have you had any relationship or
2 dealings with Jimmy Clarkson, Ed Loehr?

3 A. Any -- no more than just speaking to him.
4 Seems to be a very humble man.

5 Q. When you first started doing business at the
6 bank in or around the mid 2000s, 2005 time frame, do you
7 recall asking to be put on a list of people who were
8 interested in purchasing HCSB Financial Corp stock?

9 A. Not exactly that way.

10 Q. Tell me your recollection of that.

11 A. They -- Debbie Guyette, I went in there and
12 asked her did anybody have any stock for sale. And I
13 think at that time she said no, that she didn't know of
14 anyone, but if she did, she'd let me know. And I think
15 that's about how that conversation went. As far as me
16 even having knowledge there was a list, the first time
17 I've heard that is whenever Mr. Connell brought it up to
18 me.

19 Q. Okay. So at some point -- and would this
20 have been about the time that you opened up the
21 accounts?

22 A. No. I think this might have been a year,
23 maybe a year and a half, two years later, because I
24 was -- had some people that I had been doing some pretty
25 heavy business with that were pretty-good-sized

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1 stockholders in Horry County State Bank.

2 Q. Who would those have been?

3 A. Margaret and Ed Price.

4 Q. Margaret and Ed Prince?

5 A. Right.

6 Q. All right.

7 A. However -- Frankie Linton's grandson,
8 Brandon. And there was numerous people around Myrtle
9 Beach that had stock in the bank.

10 Q. And so you went to ask Debbie Guyette -- what
11 is her position at the bank, if you know?

12 A. I think she's president and Ron's city exec,
13 if I'm not mistaken.

14 Q. And so you asked her if anyone had any HCSB
15 Financial Corp stock for sale. She said that she didn't
16 know of any, but she would let you know if she became
17 aware of any?

18 A. That's the best of my recollection.

19 Q. Okay. And what was your response, if you
20 recall, when she told you that?

21 A. (Witness shrugs.)

22 Q. Okay?

23 A. Okay.

24 Q. All right. And do you recall purchasing HCSB
25 Financial Corp stock in 2005?

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1 A. I can't remember the date, but I remember
2 purchasing stock.

3 Q. Do you recall if it was about 1,285 shares?

4 A. As I said, I haven't been back through
5 anything, so I can't remember. The only thing I can do
6 is find this information out and come back to you.

7 THE WITNESS: This man's good.

8 BY MR. McGEE:

9 Q. Do you recall if you had -- do you recall if
10 you would have purchased any stock prior to having that
11 discussion with Ms. Guyette?

12 A. I can't remember right now. It's been a long
13 time ago.

14 Q. Do you recall anything -- well, let me ask
15 you this. In your complaint, you reference two -- two
16 separate stock purchases that occurred in the year 2009.
17 Does that sound right?

18 A. Yes.

19 Q. Okay. And do you recall purchasing a
20 separate stock purchase that occurred a few years before
21 that?

22 A. I remember purchasing stock prior to that.

23 Q. Okay. And do you recall anything about
24 the -- that transaction, that first stock transaction
25 that occurred a few years prior to 2009?

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1 A. Nothing that sticks out in my mind.

2 Q. Do you recall how much you paid for it?

3 A. No, ma'am -- no, sir.

4 Q. Do you know how that -- the price, the
5 purchase price that you paid, whatever it was, was
6 decided?

7 A. No, I cannot.

8 Q. I mean, HCSB Financial Corp stock was not
9 listed on the New York Stock Exchange or any of those
10 kind of exchanges at the time; is that right?

11 A. Not to my knowledge.

12 Q. Okay. Do you know, if it was not listed on a
13 standard exchange like that, how the price would have
14 been decided?

15 A. I've asked that question several times and
16 never got the answer.

17 Q. Okay. Well, if you had -- if you purchased
18 stock prior to July of 2009, you would have had to have
19 agreed to some price of the stock, right?

20 A. Well, I would probably have asked the officer
21 of the bank or Ed Prince or someone like this, you know,
22 what the price should be and probably relied on Ron or
23 Debbie's opinion on it.

24 Q. And the 2005 or the first stock purchase that
25 you had of HCSB Financial Corp shares, that was not

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1 subject to this lawsuit; is that right?

2 A. I can't even tell you that.

3 Q. Okay. Do you -- as you sit here today, are
4 you aware of anything improper that the bank or the
5 financial corp or any of its employees or agents did in
6 regard to that first stock purchase?

7 A. Not to my knowledge.

8 Q. Tell me about what is RDS Investments, LLC.

9 A. RGS?

10 Q. Is it RGS or RDS?

11 A. No, sir. It's RDS.

12 Q. Right. What is that?

13 A. That's just a company I've got for property
14 that I have that I am buying to maybe fix up and resell.

15 Q. And when was that entity set up?

16 A. I can't remember.

17 Q. Is it still an ongoing entity?

18 A. Yes.

19 Q. How about ROS Investments, LLC?

20 A. That's RDS.

21 Q. RDS. Okay. All right. I think there was
22 some confusion about that in some of the transfers of --

23 A. Yeah. That happens.

24 Q. Did you ever purchase any stock in HCSB
25 Financial Corp through RDS Investments, LLC?

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1 A. I can't really remember how I purchased it.
2 It was me or one of my companies.

3 Q. Okay. You -- are you -- and, again, I don't
4 want to -- I've got several questions about that initial
5 stock purchase, but if you don't recall anything about
6 it, I don't want to beat a dead horse. But do you
7 recall how you came to find out that there were shares
8 of stock that were available for you to purchase?

9 A. I think it was Debbie Guyette. I'm not sure,
10 but I believe it was, who told me about it.

11 Q. You believe Ms. Guyette may have, what,
12 called you or told you that there was some stock
13 available?

14 A. I believe she stopped me while I was in the
15 bank. I'm not real sure about it, but I -- my memory
16 recalls being . . .

17 Q. So do you believe that prior to Ms. Guyette
18 stopping you in the bank or however she got in touch
19 with you that you had had that discussion with her
20 expressing interest in buying some shares of stock and
21 to let you know if she came across any information about
22 someone wanting to sell?

23 A. I think so, but repeat the question before
24 I --

25 Q. Sure. Earlier you and I talked about a

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1 discussion that you had with Ms. Guyette at some
2 point --

3 A. Right.

4 Q. -- where you said you would like to buy some
5 HCSB Financial Corp stock --

6 A. Right.

7 Q. -- do you know anybody that has any, and she
8 said, no, I don't, but I'll --

9 A. Right.

10 Q. -- listen out and let you know if I hear of
11 any.

12 A. Yes.

13 Q. Do you believe that that discussion occurred
14 prior to you --

15 A. Oh, yeah.

16 Q. -- you buying that --

17 A. Yeah.

18 Q. -- first --

19 A. Right, uh-huh.

20 Q. -- block of stock?

21 Okay. Do you recall who you purchased the
22 stock from?

23 A. No, sir.

24 Q. Do you recall how you paid for it?

25 A. To the best of my recollection, I -- no, I

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1 really can't. Whether I just had them draft the money
2 out of the account or I wrote them a check, I can't
3 really recall.

4 Q. Okay. Do you recall if you went into the
5 bank to do it or if you did the transaction over the
6 telephone?

7 A. I believe that first purchase was -- I think
8 I was in the bank for that first purchase.

9 Q. Do you recall whether you were given a
10 prospectus in connection with that first purchase?

11 A. "Prospectus" as in meaning?

12 Q. Any type of written material that contained
13 information about the bank or the financial corp's --

14 A. No.

15 Q. -- financial condition?

16 A. No, sir, I was not.

17 Q. Okay.

18 A. I would have remembered that.

19 Q. Did it concern you at the time you didn't get
20 that information?

21 A. Did not even know it was available.

22 Q. Did you ever ask for it?

23 A. Did not know it was available to even ask for
24 it.

25 Q. So you did not ask for any type of

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1 disclosures prior to purchasing that first block of
2 stock?

3 A. No, sir. I know I would have asked someone
4 at the bank what it was worth.

5 Q. Do you recall what their response was?

6 A. No. I said I know I would have asked
7 someone, but I don't know -- I can't even remember who I
8 asked. It probably didn't -- it was probably either Ron
9 or Ms. Guyette, one or the other.

10 Q. Do you recall what --

11 A. No, I don't recall what the response was or
12 anything, but they would not have told me it was worth X
13 number of dollars -- \$50 and I paid 25 for it, you know,
14 or I paid 50 and they said it was worth 25.

15 Q. Do you --

16 A. Because I was in daily contact about -- with
17 Mr. Prince, and it wasn't -- Horry County State Bank was
18 not the topic of our discussion in business.

19 Q. Who is Mr. Prince?

20 A. Ed Prince.

21 Q. Who is he?

22 A. He's a white man that lives at Cherry Grove.

23 (Reporter interjection.)

24 A. He's the man that lives in Cherry Grove.

25 BY MR. McGEE:

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1 Q. And when you say you were in constant contact
2 with Mr. Prince, was he employed or on the board of
3 bank?

4 A. No. We just had little business dealings on
5 the side, you know, little business dealings invested in
6 a few things. A friend.

7 Q. How would Mr. Prince factor into your
8 purchase of this stock, if at all?

9 A. As I stated to start with, he and his mother
10 were stockholders in the . . .

11 Q. Okay. Understood. So would you have -- do
12 you believe -- insofar as your first purchase of stock
13 that you may have talked with Mr. Prince about the value
14 of the stock or what you paid for it?

15 A. I probably would have.

16 Q. Do you recall what he said during those
17 discussions?

18 A. No, sir.

19 Q. Do you still own that block of stock today?

20 A. As far as I know.

21 Q. Are you aware of any false or misleading
22 statements made to you in connection with that purchase
23 by anybody?

24 A. Not that I know of.

25 Q. When you agreed to purchase that block of

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1 stock, the first block of shares that you purchased, did
2 you believe at the time of purchase that it was a
3 reasonable price you were paying?

4 A. I would have probably had to believe that.

5 Q. If it was unreasonable, would you have paid
6 it?

7 A. No.

8 Q. Okay. Do you have any recollection about
9 what that stock was trading for around that same time
10 frame?

11 A. No, sir.

12 Q. Did you ask anybody either inside or outside
13 of the bank about the Horry County State Bank or HCSB
14 Financial Corp's financial situation at the time?

15 A. No, sir.

16 Q. Do you recall having any of those types of
17 discussions with anyone prior to your purchase of that
18 first block of stock?

19 A. No, sir.

20 Q. Do you know what the bank's or the financial
21 corp's financial situation was at that time?

22 A. No, sir.

23 Q. Other than talking with Mr. Prince before
24 purchasing that first block of stock, did you do any
25 research on the share price or their financial condition

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1 at the time?

2 A. I can't remember. I can't remember.

3 Q. Have you ever tried to sell that block of
4 stock?

5 A. No, sir.

6 Q. How come?

7 A. Never occurred to me.

8 Q. Do you have any documents related to your
9 stock purchase from 2005?

10 A. I guess I have the stock certificates.

11 Q. Where would those be located?

12 A. I think Mr. Connell has them.

13 Q. Okay.

14 MR. CONNELL: I gave you those, I think,
15 already.

16 MR. MCGEE: Yeah. Sure.

17 BY MR. MCGEE:

18 Q. Was that the first time that you had ever
19 purchased shares of HCSB Financial Corp that you're
20 aware of?

21 A. Yes, sir.

22 Q. All right. Let's go to July of 2009, which
23 in your complaint --

24 A. Okay.

25 Q. -- it talks about that being one of the stock

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1 purchases subject to your lawsuit. Is that your
2 understanding?

3 A. Yes, sir.

4 Q. Between the first purchase of HCSB stock in
5 or around 2005 through July 2009, had you purchased any
6 other HCSB Financial Corp stock?

7 A. I don't think so.

8 Q. Have you ever purchased any other stock in a
9 local lending institution other than HCSB Financial
10 Corp?

11 A. Have I ever from this day --

12 Q. Backwards, yes. Other than HCSB Financial
13 Corp?

14 A. I've got stock in Citibank.

15 Q. But no other local banks?

16 A. No, sir.

17 Q. Do you recall purchasing the HCSB Financial
18 Corp stock in July 2009?

19 A. I can't remember the date, but I do remember
20 purchasing.

21 Q. And you purchased -- according to the
22 complaint, you purchased a thousand shares of stock on
23 July 17, 2009; is that your recollection?

24 A. I can't remember the date so I can't say
25 that's my recollection, but it was somewhere in that

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1 area.

2 Q. Okay. I'm not going to make it an exhibit,
3 but I'm just going to show you just so we're on the same
4 page. If you look at --

5 A. Okay.

6 Q. -- Paragraph 5 of the complaint.

7 A. Okay.

8 Q. Does that refresh your recollection about
9 your purchase of stock in July of 2009?

10 A. Yes.

11 Q. And is that accurate, to the best of your
12 recollection?

13 A. Best of my knowledge.

14 Q. Okay.

15 (Exhibit No. 1 was marked.)

16 BY MR. MCGEE:

17 Q. Mr. Shelley, I'm showing you what's been
18 marked as Exhibit 1 to the deposition. This purports to
19 be -- well, why don't you tell me what this is.

20 A. Looks like Stock Certificate Number 26067,
21 Horry County State Bank Financial Corporation, a
22 thousand shares, on 7th and 27th of 2009. Is that good
23 enough?

24 Q. Yes, sir. And purchased a thousand shares on
25 or about -- looks like the certificate itself is dated

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1 July 27, 2009, right?

2 A. Yes, sir.

3 Q. And you paid -- do you recall how much you
4 paid for each --

5 A. No, I don't.

6 Q. -- of those shares?

7 Paragraph 5 of the complaint alleges that you
8 purchased those shares at \$24 a share. Is that correct,
9 to the best of your recollection?

10 A. It would be.

11 Q. Can you tell me how that price was decided
12 that you were going to pay \$24 a share at that time?

13 A. No, I can't.

14 Q. Well, tell me this.

15 A. Not that I don't want to, I just can't.

16 Q. Sure. Sure. I understand.

17 Tell me this. Let's say you're in June or
18 whenever. When was the first time that you -- strike
19 that.

20 You discussed early on a conversation that
21 you had with Ms. Guyette prior to the 2005 purchase of
22 HCSB Financial Corp stock, right?

23 A. Yes.

24 Q. Between the time that you bought that first
25 block of stock through July of 2009, had you had any

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1 discussions with Ms. Guyette or anybody else about the
2 possibility of acquiring more HCSB Financial Corp stock?

3 A. Not to my recollection, I haven't. And if I
4 did, I think it might have just been in passing;
5 however, I cannot recollect a direct conversation.

6 Q. Okay. So when would have been the first time
7 that you would have received notice or -- of shares that
8 were available in regard to the July 2009 stock
9 purchase?

10 A. When would I receive notice?

11 Q. I'm trying to -- that's a crummy question.

12 We know that you purchased a thousand shares
13 in July of 2009, right?

14 A. Okay.

15 Q. At some point, you either had to ask to buy
16 shares of stock or somebody had to let you know that
17 there were shares available; is that right?

18 A. Okay.

19 Q. How did you -- how did you first get word of
20 this?

21 A. I received a telephone call.

22 Q. Okay. From whom?

23 A. Jane Cannon.

24 Q. And you said Ms. Cannon is the head teller?

25 A. Uh-huh.

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1 Q. Is that yes?

2 A. Yes, sir. Very nice lady.

3 Q. And if the purchase of the stock occurred on
4 July 17, 2009, do you know how -- how much earlier than
5 that Ms. Cannon would have called you?

6 A. Several days.

7 Q. Okay. All right. And tell me what you can
8 recall about that telephone call from Ms. Cannon.

9 A. She called me up and, of course, said this is
10 Jane, which I knew who it was, and said that there was
11 some stock for sale and how much -- how much stock was
12 for sale and was I interested in buying it. I probably
13 remarked some smart-aleck remark like, of course I am.
14 And I told her I'd see her the next day, because I think
15 I was going out of town or something. So the next day I
16 went by the bank and saw her.

17 Q. Okay. When Ms. Cannon -- when Ms. Cannon
18 told you how many shares were for sale, was it a
19 thousand shares or was it more and you only wanted to
20 purchase a thousand?

21 A. I think it was 2,000 for sale.

22 Q. And you only wanted to purchase 1,000?

23 A. Yeah.

24 Q. So you told her you'd come in the next day to
25 see her?

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1 A. In the next couple days, I believe my remarks
2 was. Yeah.

3 Q. Okay. Do you recall anything else from that
4 conversation other than what you've told me already?

5 A. (Witness shakes head.)

6 Q. Is that no?

7 A. No, sir. I'm sorry.

8 Q. So the next day or the next few days, you go
9 by and you stop in to see Ms. Cannon. And tell me what
10 you recall about -- everything you recall about that
11 conversation.

12 A. I told her that I didn't want to buy 2,000
13 shares, I'll just buy a thousand shares, if my memory
14 recollects me on this transaction correctly. And I'm
15 trying to decide if this was this one because I
16 bought -- I think I bought this and then I bought
17 another stock. I believe it was this one right here was
18 the first one I bought with this telephone conversation.

19 Q. Okay.

20 A. And . . .

21 Q. All right. So you tell her when you go by
22 the bank a few days after you speak with her and say, I
23 want 1,000 shares, I don't want 2,000 shares. Tell me,
24 what else did you discuss? What the sale price would be
25 or who owned the stock? Anything else that you recall.

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1 A. I did ask her who owned the stock.

2 Q. Okay.

3 A. She said that she did not know.

4 Q. Okay. Then what?

5 A. I told her she could go ahead and draft it
6 out of my account.

7 Q. Okay. Your personal checking account or your
8 Shelley Construction account?

9 A. I don't know. An account.

10 Q. Okay. So how did you know how much to draft
11 out of the account?

12 A. She told me how much the stock was.

13 Q. How much it was trading for?

14 A. How much she was selling it for.

15 Q. And you were okay with that price?

16 A. Yeah. Must have been. I'm not trying to be
17 smart saying that, must have been.

18 Q. No. When she said that she didn't know who
19 owned the stock, did she say -- did it matter to you who
20 owned the stock?

21 A. No.

22 Q. All right. So at that point, did she tell
23 you that you would get the -- that she would draft your
24 account, purchase the stock, and get you a certificate
25 when it was ready? Or how did that -- how did the

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1 conversation end before you left the bank?

2 A. That was about how it ended.

3 Q. Okay.

4 A. I wasn't really -- I mean, whenever you trust
5 somebody and they say they're going to get you the
6 stock.

7 Q. Okay. And at some point afterwards, you were
8 mailed or delivered or somehow came to acquire the --

9 A. By mail.

10 Q. -- the stock certificate that's identified as
11 Exhibit 1, right?

12 A. Yes.

13 Q. Did you have any other discussions with
14 Ms. Cannon, Ms. Guyette, or anybody else with the bank
15 or the financial corp regarding the July 17, 2009
16 transaction at that time?

17 A. Well, now, you keep pinning this date down.
18 I cannot -- like I said, I cannot quite remember right
19 now without going back -- and what you said to start
20 with, have I done any research prior to this deposition,
21 I haven't -- when this telephone call took place because
22 I know I purchased two stocks at two different times.

23 Q. Uh-huh.

24 A. And I'm trying to dig all this back out, but
25 I'm old. I'm not a youngster.

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1 Q. No. That's completely fair. And if you
2 don't recall that specific timing, that's completely
3 understandable. I'm only going by the date that the
4 shares were purchased --

5 A. Right.

6 Q. -- that's raised in the complaint.

7 A. But I haven't been back to review all that
8 stuff.

9 Q. No problem. So let's just call it the second
10 transaction. Exhibit 1 is dated July 27, 2009. We know
11 that you purchased it prior to that date because it
12 would take them a little time --

13 A. Right.

14 Q. -- to generate this, correct?

15 A. Yes, sir.

16 Q. Okay. So just sometime in late July of 2009
17 when you purchased this, other than what you've already
18 discussed with me, did you have any other conversations
19 or communications with anybody employed by the bank or
20 the financial corp about Exhibit 1?

21 A. Well, either it was this stock or the next
22 stock in there, I went in and asked -- I was in Debbie's
23 office. I was trying to see if I was in a condition yet
24 where we could borrow money. And I asked Debbie
25 directly -- I think it was between me receiving the

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1 stock certificate and Ms. Cannon calling me up, I asked
2 Ms. Guyette whose stock it was, and she said she did not
3 know.

4 Q. Ms. Guyette said that, and then, of course,
5 Ms. Cannon -- you testified a minute ago that Ms. Cannon
6 told you that when you went in there, right?

7 A. Yes.

8 Q. All right. Any other discussions other than
9 that and what you've already previously discussed about
10 this transaction, the second transaction now?

11 A. Not -- not to my -- best of my recollection.

12 Q. Okay. And just to clarify, this Exhibit 1
13 says ROS Investments, and that's just -- it should be
14 RDS, right?

15 A. Yes.

16 Q. Okay.

17 THE WITNESS: I think I'm going to hire this
18 guy here. He's good.

19 MR. CONNELL: He's getting paid a lot of
20 money to ask those questions.

21 THE WITNESS: Listen to you, now.

22 A. He gets paid a lot of money, too.

23 BY MR. MCGEE:

24 Q. I know he does. I know he does.

25 A. I mean, he poor mouths you to death. Before

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1 he leaves, he'll be wanting to borrow money for himself.

2 Q. I'm going to be borrowing money from Gene
3 before I leave here today.

4 A. Get gas money to go back home.

5 Q. That's right.

6 (Exhibit No. 2 was marked.)

7 BY MR. McGEE:

8 Q. I'm going to show you what's been marked as
9 Exhibit 2. And this appears to be a debit slip from
10 Horry County State Bank dated July 17, 2009. A customer
11 named Robert D. Shelley. Is that right?

12 A. Yes, sir.

13 Q. It shows that stock, 1,000 shares in HCSB,
14 debit in the amount of \$24,000; is that right?

15 A. Yes, sir.

16 Q. Okay. And, again, that's what we believe
17 that you paid for that 1,000 shares of stock in July
18 2009?

19 A. Yes, sir.

20 Q. Okay.

21 (Exhibit No. 3 was marked.)

22 BY MR. McGEE:

23 Q. Mr. Shelley, I'm going to show you what's
24 been marked as Exhibit 3 to your deposition, which
25 purports to be a cashiers check dated July 17, 2009 in

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1 the amount of 24,000; is that right?

2 A. Yes, sir.

3 Q. Okay. And that's the amount that was paid
4 for the 1,000 shares of stock?

5 A. The amount, yes, sir.

6 Q. Okay.

7 (Exhibit No. 4 was marked.)

8 BY MR. McGEE:

9 Q. And Mr. Shelley, I'm going to show you what's
10 been marked as Exhibit 4, which is a statement, a bank
11 statement, from Plantation Federal. That's a local
12 bank; is that right?

13 A. Yes, sir.

14 Q. From Deborah Guyette. And is that Debbie
15 Guyette, to your knowledge?

16 A. Yes, sir. As far as I know.

17 Q. Right. And it shows deposits/credit \$24,000;
18 is that right?

19 A. Yes, sir.

20 Q. And do you know whether -- if you look down,
21 we've redacted unrelated transactions other than the
22 24,000. Do you see what date that the deposit of the
23 \$24,000 check is?

24 A. The 17th. Yes, sir.

25 Q. And do you -- is it your testimony that you

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1 asked Ms. Guyette who owned these thousand shares or the
2 2,000 shares of stock that were going to be sold, and
3 she told you she did not know who it was?

4 A. Correct.

5 Q. I mean, did you receive any transaction
6 documents that showed who the prior purchaser or the
7 prior owner was?

8 A. No, sir.

9 Q. Okay. All right.

10 A. And I don't know where this come from.

11 Q. Okay. Right. Sure. You're talking about
12 Exhibit 4?

13 A. Yes, sir.

14 Q. Who did you think that you were buying the
15 stock from?

16 A. I had no idea.

17 Q. Were you given a prospectus or any other
18 information about the bank or financial corp's financial
19 condition prior to purchasing this thousand shares?

20 A. No, sir.

21 Q. Did you ever ask for any such information?

22 A. No, sir.

23 Q. Are you aware of any false or misleading
24 statements that were made by anybody at the financial
25 corp or the bank to you in relation to the purchase of a

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1 thousand shares?

2 A. Not at that time. I do now.

3 Q. Okay. Tell me -- tell me what ones that you
4 are aware of now that you were not at the time.

5 A. Evidently, Ms. Guyette knew who I was buying
6 the stock from.

7 Q. Okay. Anything else?

8 A. I don't know that Ms. Cannon knew, but being
9 they worked right together, it would sort of make you
10 assume they did. But I don't know that she did.

11 Q. Prior to purchasing this thousand shares in
12 July of 2009, did you talk with Mr. Prince again about
13 the possibility of you purchasing additional shares of
14 stock?

15 A. Yes.

16 Q. What do you recall about that discussion with
17 Mr. Prince?

18 A. Well, Mr. Prince and his mother both wanted
19 me to go and invest pretty heavy in Horry County State
20 Bank.

21 Q. Did you have any discussion with Mr. Prince
22 or anybody else about the value of the shares of HCSB
23 Financial Corp before you purchased the thousand shares
24 in July of 2009?

25 A. Not to any extent; however, they would not

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1 have knowledge of that, to the best of my recollection.

2 Q. Right. I guess my question is, if they were
3 asking you -- your testimony is that they were asking
4 you to invest in HCSB Financial Corp's stock; is that
5 right?

6 A. They told me I should. Yes.

7 Q. Okay. And did you tell them, well, I just
8 found out about this 2,000 shares that are available and
9 I think I'm going to purchase a thousand shares of it?

10 A. Probably not.

11 Q. When they talked to you before about
12 purchasing stock prior to July of 2009, did you have any
13 discussions with them about what they believe the
14 stock's value was?

15 A. Prior to 2009. Probably not.

16 Q. Do you know what -- do you know what the
17 shares were selling for at the time that you purchased
18 them in July of 2009?

19 A. No, sir.

20 Q. Do you know who, if anyone, purchased the
21 other thousand shares that were available at that time?

22 A. No idea.

23 Q. Do you know what someone else, whoever it
24 was, paid for that other thousand shares of stock?

25 A. No idea.

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1 Q. So do you know whether or not \$24 per share
2 in July of 2009 was a reasonable price for a share of
3 HCSB Financial Corp's stock?

4 A. Can I define the question how I think you
5 said it, or do you want to resay it?

6 Q. If you want me to restate it, I will.

7 A. (Indicating.)

8 Q. You paid \$24 per share of HCSB Financial
9 Corp's --

10 A. Yes.

11 Q. -- stock in July of 2009, right?

12 A. Yes.

13 Q. Do you know whether that was -- based on
14 other sales that were occurring at or around that time.
15 period, do you know whether that was a reasonable price
16 per share to pay?

17 A. No, sir.

18 Q. Prior to purchasing that thousand shares in
19 July of 2009, did you ask anybody inside or outside of
20 the bank or financial corp about their financial
21 condition?

22 A. No, sir.

23 Q. In your complaint, you reference that the
24 bank had suffered real estate losses prior to you
25 getting a phone call to purchase the financial corp's

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1 stock in July of 2009. Are you aware of that?

2 A. Am I aware it's in the complaint?

3 Q. Yes, sir. Well, let me ask this. Is that an
4 accurate statement, to the best of your knowledge?

5 A. I guess the answer to both of them questions
6 would be no and no.

7 Q. You know don't know if that's true or not?

8 A. I haven't rehearsed the complaint and read
9 it, so I can't make a statement on it. If you'd like
10 for me to, I'd be glad to read it.

11 Q. That's all right. I'm just asking your
12 personal knowledge.

13 Did you do any research on the share price of
14 the financial corp's stock prior to purchasing that
15 1,000 shares in July of 2009?

16 A. No, sir. I wouldn't know how to go about
17 doing it. Hire somebody, I guess.

18 THE WITNESS: Am I speaking up enough?

19 BY MR. McGEE:

20 Q. Do you still own that thousand shares from
21 July of 2009?

22 A. As far as I know.

23 Q. Have you ever tried to sell it?

24 A. No, sir.

25 Q. Why not?

1 A. It's not worth anything.

2 Q. After you purchased the thousand shares in
3 July of 2009, did you ever speak to Ms. Guyette about
4 that purchase?

5 A. I already answered that, but I asked her who
6 owned the stock.

7 Q. Was that before or after you purchased the
8 shares?

9 A. After.

10 Q. Have you ever asked her to purchase the
11 shares back from you?

12 A. No, sir.

13 Q. Why not?

14 A. I didn't see the need to. It would be a
15 foolish question.

16 Q. Why do you say that?

17 A. I don't really know how to answer that
18 question.

19 Q. Well, you're not happy about the value of the
20 thousand shares that you purchased from Ms. Guyette in
21 July 2009, right?

22 A. Yes.

23 Q. Is that correct?

24 A. Yes.

25 Q. But since that time, you've not asked

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1 Ms. Guyette to repurchase those shares that she sold
2 you?

3 A. No, sir.

4 Q. Okay.

5 A. I will, if you want me to. Would you like to
6 buy them?

7 Q. You know, Gene might want to buy them.

8 MR. McGEE: That's what I need.

9 THE WITNESS: He needs that like a hog needs
10 a side salad.

11 MR. CONNELL: I've got my own problems with
12 Conway (ph) National Bank stock, how about that.

13 BY MR. McGEE:

14 Q. Okay. Other than Ms. Guyette, did you talk
15 to anybody else about your purchase of shares in July of
16 2009 since the time that you purchased them through
17 today? Anybody that's employed by the bank or the
18 financial corp?

19 A. And you keep on this date with this
20 particular stock. Okay?

21 Q. Right.

22 A. Now, if I did, which I think I did, but I
23 could not say -- you define it this one particular
24 document, so I cannot say yes to that. I can probably
25 say yes to the overall of the two transactions.

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1 Q. Okay. Well, let's get to that, then, and
2 maybe we can talk about them both at the same time.

3 A. Did I answer that okay? I mean --

4 Q. Absolutely. Absolutely. I'm not the best
5 question asker, so --

6 A. You get paid enough. Go ahead. You're doing
7 good.

8 Q. All right. After July of 2009, ultimately, I
9 think you testified, you were mailed the stock
10 certificate that's marked as Exhibit 1; is that right?

11 A. I believe so. Yes, sir.

12 Q. You get that certificate. What do you do
13 with it?

14 A. Put it in my vault.

15 Q. Okay. And do you recall any discussions from
16 the time that you stuck that Exhibit 1 in your vault
17 until October of 2009 when you purchased some additional
18 shares?

19 A. No, sir.

20 Q. Okay. And do you recall purchasing
21 additional shares of HCSB Financial Corp in October of
22 2009?

23 A. I recall purchasing the second. But exactly
24 the date, I can't -- and I know you're fixing to show it
25 to me. You've got your stuff in order, young man.

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1 Q. I can't remember where I was a week ago, more
2 or less, so I've got to get it going. All right.

3 (Exhibit No. 5 was marked.)

4 A. Make sure you get a couple of Gene's fancy
5 pens that you've got to have before you leave.

6 BY MR. McGEE:

7 Q. Absolutely.

8 A. I think they're about \$15 apiece.

9 Q. Let me show you what's been marked Exhibit 5,
10 which purports to be a stock certificate for HCSB
11 Financial Corp. How many shares is that?

12 A. 35 -- 3500.

13 Q. And this date is -- huh.

14 A. 7/23/2012.

15 Q. I think I . . .

16 A. That doesn't even sound right. But I reckon
17 it is. Huh.

18 Q. Let's see. All right. Let's set that aside
19 for a second.

20 A. Singleton Bailey signed that.

21 Q. Yeah, I don't know who reissues --

22 A. Better to be out in the woods with a man with
23 a shotgun.

24 Q. Let me look here at -- ah. Here we go.

25 Paragraph 5 of the complaint filed on your behalf states

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1 that in October 2009 you purchased 2,192 shares at \$18 a
2 share. Is that accurate, to the best of your knowledge?

3 A. Best of my knowledge, yeah.

4 Q. Okay.

5 THE WITNESS: Gene, have you got any coffee
6 in this establishment?

7 MR. McGEE: Do you want to take a break?

8 (A brief break transpired.)

9 BY MR. McGEE:

10 Q. I think I got out of order with my exhibits,
11 Mr. Shelley, but let me ask you about this October 2009
12 transaction. It looks like in Paragraph 5 of your
13 complaint that it's alleged that in October 2009, you
14 purchased 2,192 shares at \$18 a share. Does that sound
15 accurate?

16 A. I can't remember.

17 Q. Okay. Do you have any documents in
18 connection with the purchase in October of 2009?

19 A. Any documents. No. I reckon I got the stock
20 certificate.

21 Q. Do you recall anything about that October
22 2009 transaction, that purchase of stock?

23 A. Not really.

24 Q. Did it occur the same way that the 2005 and
25 the July 2009 transactions occurred leading up to it?

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1 A. As far as I can recollect, yes.

2 Q. And what I mean by that is somebody at the
3 bank --

4 A. Yes.

5 Q. -- either in person or by the telephone told
6 you that there were some shares available to purchase?

7 A. Yes, sir.

8 Q. Do you recall who that may have been in
9 October of 2009?

10 A. It would have probably been Ms. Cannon.

11 Q. But you don't --

12 A. Or Ms. Guyette, one or the other.

13 Q. But you just don't have any specific
14 recollection?

15 A. No, sir, I do not.

16 Q. Do you know -- do you know how the price of
17 \$18 a share was arrived at in that October 2009
18 transaction?

19 A. No, sir, I do not, how they come up with that
20 share number. That's not helping you out very much.

21 Q. No, that's okay. It actually does because
22 then it ends the questions because I can't keep asking
23 you questions if you don't remember or don't know.
24 That's fine. That's completely fine.

25 Do you know who you purchased the stock from?

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1 A. No, sir.

2 Q. Did you ask who was selling the stock?

3 A. I would probably have. I can't recollect
4 that I did directly, but knowing me, I probably did.

5 Q. Do you recall how the purchase took place?
6 Did you go to the bank again and ask them to debit your
7 account, or did you send a check? Do you recall?

8 A. I don't recall, but I probably just told them
9 to debit my account. And which account, I don't know.
10 Okay? I told them whichever one had the most money in
11 it, probably.

12 Q. Were you given a prospectus or any type of
13 information --

14 A. I can answer that. No, sir.

15 Q. -- about the bank or the financial corp's
16 financial condition?

17 A. None whatsoever.

18 Q. Did you ask for any at the time?

19 A. No, sir.

20 Q. Are you aware, as we sit here today, of any
21 false or misleading statements made to you in connection
22 with that purchase?

23 A. The only thing that would be misleading is
24 the other question was I asked who bought it and later
25 might have found out who did sell it. They would have

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1 known they were selling their stock to me.

2 Q. What do you mean by that?

3 A. Well, if I tell you I don't know I'm -- who
4 is selling you something and I do know.

5 Q. Right.

6 A. Then it's misleading. You don't go to heaven
7 for stuff like that.

8 Q. Anything else -- any other concerns that you
9 might have about false or misleading statements made to
10 you in connection with the October 2009 purchase?

11 A. Other than when I found out, I was not a
12 happy camper.

13 Q. Found out what?

14 A. Who sold the stock.

15 Q. And who sold the stock?

16 A. Debbie Guyette.

17 Q. And the October two thousand --

18 A. I can't remember those dates on the stocks.
19 I know her stock that she sold me was --

20 Q. And we've looked at that. That's exhibit --

21 A. I've got some of these papers here, now.

22 Q. Exhibit 3?

23 A. Exhibit 3. Yes.

24 Q. And that's a cashier's check from you to
25 Debbie Guyette, right?

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1 A. Yes, sir.

2 Q. Okay. So that's the -- that's the purchase
3 of stock from Ms. Guyette?

4 A. Yes.

5 Q. Okay. Now, I'm talking about the October
6 2009. Do you know --

7 A. I can't remember.

8 Q. -- who sold you that stock?

9 A. No, sir.

10 Q. Okay. And so I think we've talked about
11 that -- the July 2009. I just want to focus on the
12 October 2009 purchase of 2,192 shares. Are you aware of
13 any false or misleading statements made to you in
14 connection with the October 2009 purchase?

15 A. Not that I'm aware of.

16 Q. Okay. And at the time you paid -- in October
17 2009, you paid \$18 a share. At the time that you
18 purchased it, did you believe that to be a reasonable
19 price for the shares?

20 A. From what I was talking to Ms. Cannon, at
21 that time, it sounded like somebody wanted to sell out.
22 And I had just bought some at 24; I remember that; and I
23 said, well, this here sounds like a good deal to me.
24 But I did not go out -- go about checking the price of
25 the stock out, blah, blah, blah, the condition of the

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1 bank at that time. I do not -- the condition of the
2 bank was not in bad shape at all.

3 Q. Did you ask any questions about what the
4 recent sales or what the recent --

5 A. No, sir.

6 Q. -- values of stocks that were sold?

7 A. Probably not.

8 Q. Do you recall anything else about any
9 conversations with Ms. Cannon, Ms. Guyette, or anybody
10 else employed by the financial corp or the bank
11 regarding the October 2009 purchase other than what
12 we've already discussed?

13 A. No, sir, I don't.

14 Q. Do you still own the October 2009 shares that
15 you purchased?

16 A. As far as I know.

17 Q. And have you tried to sell them?

18 A. No, sir.

19 Q. Have you ever requested that the seller of
20 the shares purchase them back from you?

21 A. No, sir. Might be advisable, though.

22 Q. All right. So we've talked about -- to try
23 to close the circle on these, we've talked about a 2005,
24 July 2009, and October 2009 purchases of shares in HCSB
25 Financial Corp, right?

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1 A. Yes, sir.

2 Q. And is it a fair description that in each of
3 those instances somebody at the bank advised you that
4 there were shares available to purchase and that you
5 ultimately agreed to purchase those shares?

6 A. Yes, sir.

7 Q. And that, to the best of your recollection,
8 you asked the bank to debit one account that you may
9 have had --

10 A. Right.

11 Q. -- at the bank to pay for the shares?

12 A. Yes, sir, I think that's . . .

13 Q. Okay. It looks like, based on what we've
14 talked about and what we've looked, that in July of 2005
15 the shares were purchased for \$35 a share, in July
16 2009 --

17 A. Say that again, now.

18 Q. July 2005, the first transaction that we
19 had --

20 A. Uh-huh.

21 Q. -- was for \$35 a share.

22 A. Uh-huh.

23 Q. July of 2009, \$24 a share; and October 2009
24 for \$18 a share. Did you believe that the downward
25 trend would continue, or did you believe that the shares

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1 would bounce back? Tell me what you thought about, if
2 anything, during that time period.

3 A. Somewhere in that conversation with
4 Ms. Cannon -- and I think this is just hitting me
5 because I've been trying to beat my brain up on this --
6 or Ms. Guyette or somewhere -- had told me that the
7 person selling the stock was building a house and needed
8 to sell the stock.

9 THE WITNESS: And I just thought of that.

10 A. I just thought -- I hadn't even told Gene
11 yet, but I just thought about it.

12 BY MR. McGEE:

13 Q. Do you recall, was that the 2005 July --

14 A. I don't -- it was one of the last -- the last
15 transactions of stock.

16 Q. You just don't know which one?

17 A. (Witness shakes head.)

18 Q. Is that no?

19 A. No. That conversation occurred in there at
20 some time in there, and I forget who it was even with.

21 Q. Okay. Over the course between 2005 through
22 the end of 2009 and beyond, did you keep up with how
23 much the financial corp's stock was selling for?

24 A. Don't know how to keep up with it. Tried to
25 keep up with it. Don't know how to.

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1 Q. Did you ever talk to Ron Paige about how you
2 might be able track that or try to keep up with it?

3 A. Not to my knowledge.

4 Q. Or any other financial advisor?

5 A. I have discussed that with Ms. Guyette at one
6 time, and she said that -- if I remember correctly, that
7 being that this wasn't an openly stock exchange traded
8 thing, it was like what a person wanted to sell it for
9 and what it's worth. And I said, well, isn't there a --
10 some measure, and she said it all depends on a lot of
11 factors. That's right. It all depends on -- I think
12 that was her exact quote, it all depends on a lot of
13 factors.

14 Q. When was that discussion?

15 A. I have no idea. I can't pin that on the
16 wall with that. And that was sometime -- I know you're
17 trying to put all these pieces together, and I'm --

18 Q. That's fine. If you don't remember, that's
19 fine.

20 Do you know how much the HCSB Financial Corp
21 stock is currently worth?

22 A. No, sir.

23 Q. Do you know whether there were -- do you
24 know -- do you have any recollection or knowledge about
25 what -- what the performance of HCSB Financial Corp's

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1 stock has looked like since July of 2005?

2 A. Till now?

3 Q. Right.

4 A. I don't till now. Up until I contacted
5 Mr. Connell --

6 Q. And, again, don't tell me anything that you
7 and he talked about, but -- but go ahead. I just want
8 to make sure you don't tell me that. I don't want to
9 get in trouble.

10 A. Don't get in trouble, now.

11 Q. That's right.

12 A. But you're in my county; I'll come get you
13 out.

14 Q. All right.

15 A. The -- no, I cannot tell you what the trend
16 was. I can tell you what the paper said, the newspaper,
17 when it was shutting down banks and et cetera, et
18 cetera, et cetera. But as far as me having anything
19 from the bank, other than the financial statements from
20 the bank for being a stockholder that you can't even
21 read -- in fact, I took them to my accountant to have
22 him read them, and he's like (indicating).

23 Q. Read what?

24 A. The financial statements from the bank every
25 year.

1 Q. Did you get those?

2 A. Do what? Did I get those?

3 Q. Yes, sir.

4 A. Yeah, but they haven't even filed one this
5 year.

6 Q. Did you get one each year as a stockholder?

7 A. Uh-huh.

8 Q. Is that yes?

9 A. Yes, sir.

10 Q. And did you give those to your accountant
11 each year?

12 A. No.

13 Q. Do you know whether you can -- whether the
14 Sun News or newspapers contained information about
15 trades of HCSB Financial Corp or have in the past?

16 A. No, sir, I don't. I know when it -- several
17 articles written up, it was just like them doing
18 reportings -- report of them reporting the conditions of
19 the bank.

20 Q. Tell me, what is your -- do you have a
21 financial advisor/stockbroker that you use?

22 A. No.

23 Q. Do you have investments? I know you said
24 that you own some Citicorp stock and --

25 A. You said a financial advisor. Now, I've got

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1 Butch Forguson I went to school with. He's a
2 stockbroker.

3 Q. Okay. And who is -- what's his name again?

4 A. Butch Forguson.

5 Q. Butch Forbison?

6 A. Forguson, F-O-R-G-U-S-O-N.

7 Q. And who does Mr. Forguson work for?

8 A. I don't know.

9 Q. Is it like Merrill Lynch, or does he have
10 his own business or --

11 A. No. He works for some other people over
12 there off -- over Oleander. I don't know the name of
13 the company.

14 Q. How long have you been a client of
15 Mr. Forguson's?

16 A. Well -- in the stock business?

17 Q. Yes, sir.

18 A. Seven, eight, ten years.

19 Q. Were you a client of his before 2005?

20 A. Probably.

21 Q. And did you discuss with Mr. Forguson your
22 intent to purchase any of the shares in --

23 A. No, sir.

24 Q. -- July of 2005, July 2009, or October of
25 2009 before you did it?

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1 A. No, sir.

2 Q. Have you ever -- other than Citi, are you
3 aware of any -- and HCSB Financial Corp, are you aware
4 of any other stocks that you own at the present time?

5 A. I'm aware I own some.

6 Q. And Mr. Forguson just looks after those; is
7 that right? Or do you know what your portfolio looks
8 like as we sit here?

9 A. Well, funny you ask that. I did call him up
10 Saturday because a friend of mine was wanting to get in
11 contact with him. And in the course of our conversation
12 about Blytheville, Arkansas, and being in the Air Force
13 and -- you know, I grew up with him. I did ask him,
14 well, how is my Citibank stock doing? He said, oh, it's
15 not doing too good. But that's -- about the other
16 stock, you know, I don't understand -- I've never made
17 no money from stocks anyway.

18 Q. Now, you own Citi -- you know that you own
19 Citi stock right now, right?

20 A. Yeah.

21 Q. What has that -- has that stock gone up or
22 down since your purchased it?

23 A. Down.

24 Q. And when you purchase any stock, you're
25 hoping it will go up, but you're taking the risk --

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1 A. Absolutely.

2 Q. -- that it goes down, right?

3 A. (Witness nods head.)

4 Q. Did you purchase -- to your recollection, did
5 you purchase any financial corp stock after October of
6 2009?

7 A. I can't remember.

8 Q. And this is where I got ahead of myself
9 earlier. Exhibit 5, it's been marked in your
10 deposition, is a stock certificate dated July 23rd,
11 2012, reflecting a purchase of \$3,500 -- excuse me --
12 3,500 shares of HCSB Financial Corp; is that right?

13 A. That's what it says right here.

14 Q. Okay. Do you recall purchasing that sometime
15 last year?

16 A. Not really.

17 Q. Do you have any idea why this certificate was
18 issued in July 2012?

19 A. No, sir.

20 Q. Did you request that it be issued?

21 A. Yes. This is -- if my mind's right, the
22 stock that I had didn't have stock certificates is when
23 I called the bank and asked that nice little lady over
24 in Loris what had happened, and she said she'd be glad
25 to go back and research the stuff here. I don't think I

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1 bought no 3500 shares, but I think this here is the --
2 if I'm not mistaken, now, I think this is the
3 certificate that -- for the -- I want to say lost stock
4 certificates.

5 Q. Right. So do you think it's possible that
6 Exhibit 5 is -- is a -- I guess a certificate that
7 reflects all of your holdings of HCSB Financial Corp
8 stock in RDS Investments, LLC, that name?

9 A. I can't answer that question.

10 Q. Okay.

11 A. I would --

12 Q. But you know that you did not purchase
13 additional shares of HCSB Financial Corp --

14 A. I don't think I did.

15 Q. -- last year?

16 Okay. All right. Have you ever expressed
17 any interest in serving on the board of either the
18 financial corp or the bank?

19 A. Well, some stockholders expressed interest
20 that they would like for me to, and then I did follow
21 up. Or I think that Brandon that I mentioned, Frankie
22 Blanton's grandson, and Ed Prince were both friends of
23 mine, and they've expressed they wanted me to serve on
24 the board, why they wanted me to buy stock. And even
25 Mr. Prince -- which I can't find it; I haven't even

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1 tried to look for it -- told me or gave me a letter
2 acting as power of attorney on his stock and their
3 stock.

4 And I -- if my mind -- and we were sitting in
5 Tsunami's restaurant, and I think Brandon had come back
6 after talking to his grandfather and said something
7 about having to own stock. And either he had
8 Mr. Frankie call me, which I believe that's what
9 happened, and set up a meeting for me to go up to
10 Cracker Barrel and meet with him. And I met with him
11 and his grandson, Brandon.

12 And I wasn't really all that impressed with
13 sitting on the bank board. To me, that's just --
14 it's -- I don't think I'm educated enough to sit on that
15 type of board. Maybe I should say it that way.

16 But I did meet with him and talk with him,
17 had lunch with him, just Mr. Frankie and his grandson.
18 And Mr. Prince kept pushing the matter. Because we
19 would eat sushi like once a week at Tsunami's
20 restaurant. And I don't know how it ever -- I can't
21 remember how it all panned back down.

22 But I was in Ron's office one day, and he was
23 questioning me about it. And I just said, well, what
24 makes -- he was looking on the negative side of it, but
25 I could tell by the tone of his voice. I said, well,

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1 why wouldn't you think I'd be qualified? He said,
2 Robert, some people is just qualified to and some
3 people's not qualified to. He said, this is not quite
4 your expertise.

5 I said -- I remember pointing my finger. I
6 said, you're right. I said, I just wanted to see your
7 feeling about it. And after he brought it up, I sort of
8 dug in there a little bit deeper. And that was the last
9 ever said about it.

10 But I did meet with Mr. Frankie. And at that
11 time, I had a pretty good bit of money in the bank.
12 Blanton and his grandson, Brandon. And I think
13 Mr. Frankie paid the bill. I'm not even sure about
14 that. He probably -- might be the only meal I ever got
15 off the bank.

16 Q. So you didn't -- you didn't have any big
17 interest in being on the board of the bank?

18 A. No.

19 Q. Earlier you mentioned -- again, we talked
20 about the purchase of Citi stock. Before you purchased
21 that stock or at the time you purchased the Citi stock,
22 did you receive a prospectus or any type of
23 information --

24 A. Well, that was personal stock market. No, I
25 didn't. And the reason I purchased that is that all my

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1 little coffee drinking buddies, I mean, they were just
2 betting on Citibank; Citibank's falling down, and it's
3 going to come back; Citibank is too big to fall down.
4 And I was on my way to the Amazon, and they called me --
5 I was in Atlanta changing planes. And Danny Brown
6 called me. He says, look. He said, put up -- I think
7 it was \$20,000. And he says, whatever you lose, I'll
8 pay 50 percent; and whatever you gain, I wanted 10
9 percent or whatever. I said, oh my -- Danny, I said,
10 you're playing gamble. He laughed. I said okay. So he
11 calls Butch.

12 Q. Uh-huh.

13 A. And Butch called me and asked me was I sure.
14 I said, I'm not going to let them fools put me down. So
15 that was my episode with the gamble on that.

16 Q. Okay.

17 A. But, no, I did not -- I'm talking too much.
18 I'm sorry.

19 Q. No, no, no. That's fine. It's your
20 deposition.

21 A. You like to hear war stories, don't you?

22 Q. Absolutely. Absolutely. I'm just glad to
23 hear that somebody else has shared the same joys of the
24 stock market the last few years as I have.

25 A. Well, I've got some stock I'll sell you.

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1 Make you a deal.

2 Q. Have you ever sold any stock? Now, I'm not
3 talking about through Mr. Butch, but yourself. Have you
4 ever acquired any stock and sold it to another person
5 directly?

6 A. No. Wouldn't know how to go about doing it.

7 Q. Do you know, if you were going to sell your
8 stock to, say, Mr. Connell -- in HCSB Financial Corp, if
9 you were going to sell your shares of stock in that
10 company to Mr. Connell, do you know whether you would
11 have to give him a prospectus or any type of
12 disclosures?

13 A. No idea.

14 Q. What is it that you think that the bank or
15 the financial corp has done wrong to you in this
16 instance?

17 A. Well, I didn't until I found out from that
18 lady in Loris who sold me the stock.

19 Q. You're talking about Ms. Guyette?

20 A. Right.

21 All right. And, you know, I'm usually a
22 pretty big boy. I can take it on the chin and keep on
23 ticking. And I've had a lot of losses in my life.
24 There's one of them sitting to my right over here.

25 And after I found out who sold me the stock,

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1 I said, well, you know, I asked them and they -- and
2 that just burnt me up. I felt like I was misled. And,
3 you know, I reckon that went on about two or three --
4 just stayed in my craw. I said, you know -- and I don't
5 mind losing money. I've made a lot of money. And I
6 hope I can live long enough to make more and lose more.
7 But I'm not going to do something falsely.

8 And I was talking to Mr. Connell -- and he
9 can probably -- his memory is a lot better than mine --
10 about another matter about something one day, and I run
11 this by him. And he says --

12 MR. CONNELL: All right. You can't --

13 THE WITNESS: Do what?

14 MR. CONNELL: You can't tell him what we
15 talked about.

16 THE WITNESS: He looks like a pretty good
17 boy.

18 A. Anyway, I run this by an attorney.

19 BY MR. McGEE:

20 Q. Right.

21 A. And this attorney advised me that officers of
22 the bank are not under the same, per se, scrutiny
23 individuals are in New York Stock Exchange or stock
24 exchanges is handled different than -- and this attorney
25 told me he was going to get back with me. And this

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1 attorney did get back with me, and he was not real happy
2 in what he was telling me.

3 Q. Uh-huh.

4 A. And this attorney asked me to bring some
5 information down to him. Up, around, over, get some
6 information to him. God, I hate to talk around in
7 circles. And I did. And he reviewed it, and then he
8 informed me what the law was on this stuff.

9 Q. Okay.

10 A. Have I answered your question yet?

11 Q. I think so. You're not happy that you were
12 not told prior to the July 2009 purchase of a thousand
13 shares that Ms. Guyette was the person who was selling
14 you the stock; is that right?

15 A. No. You said that wrong.

16 Q. Okay. Straighten me out.

17 A. You said prior to that. I was not -- during
18 that.

19 Q. Oh. Oh, you asked her afterwards and they
20 told you --

21 A. Yes.

22 Q. After you purchased a thousand shares, you
23 asked Ms. Guyette who sold you the shares; she said, I
24 don't know.

25 A. And Ms. Cannon. Ms. Cannon told me prior to

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1 she did not know. And Ms. Guyette told me after I done
2 told Ms. Cannon to make the transfer, blah, blah, blah,
3 that she did not know.

4 Q. Understood. So Ms. Cannon told you before
5 you purchased the thousand shares in July of 2009 that
6 she did not know who was selling the stock to you?

7 A. Right.

8 Q. Okay. And then Ms. Guyette told you after
9 you purchased the shares that she didn't know who sold
10 you the stock?

11 A. Okay. Now, when you say purchased it -- and
12 I'm -- I'm taking that word as when I told her to go
13 ahead and make the transfer.

14 Q. Right.

15 A. I'm talking that's the purchase time.

16 Q. Okay. So --

17 A. Now, whether the money had been transferred
18 or forth, I can't say that.

19 Q. Right. But when -- in other words, the debit
20 that we're looking at that's Exhibit 2 is dated -- to
21 debit your account \$24,000 for that July 17, 2009
22 purchase?

23 A. Yeah.

24 Q. Prior to this debit occurring, Ms. Cannon
25 told you she did not know who was selling you the stock?

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1 A. Yes.

2 Q. After this debit, Ms. Guyette told you she
3 didn't know who sold you the stock?

4 A. Can't say that.

5 Q. When did Ms. Guyette tell you --

6 A. I can't tell you.

7 Q. Okay. That's fair. Do you know --

8 A. I don't know. I just know it was after I
9 talked to Ms. Cannon. It might have been this week and
10 a half or two weeks in there prior to this or it might
11 have even been after that.

12 Q. Okay.

13 A. But it was in that relatively short period of
14 window.

15 Q. I gotcha. Okay. Now, do you know when
16 Ms. Cannon told you that she did not know who was
17 selling you the stock --

18 A. Whose stock it was.

19 Q. -- before this --

20 A. Yes.

21 Q. -- do you know if she even knew that
22 Ms. Guyette was the owner or not?

23 A. Oh, I wouldn't know that. No.

24 Q. All right. I gotcha. I think I'm on the
25 same track as you now. All right. I think we've gotten

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1 that down. Tell me what, if anything, else that you're
2 not happy about with the bank and financial corp other
3 than what we just discussed.

4 A. They wouldn't loan me money.

5 Q. And when wouldn't they loan you money?

6 A. No, they could not loan money.

7 Q. Okay.

8 A. You know. No, they've never turned me down
9 on a loan. But after I went back in there and started
10 talking about doing stuff, they were under federal
11 regulators, they couldn't loan. And I said that a
12 little bit facetiously. I didn't mean to. It was . . .

13 Q. Okay. Anything else other than what we've
14 discussed that you have a problem with the bank or the
15 holding company -- or the financial corp, excuse me?

16 A. No.

17 Q. I understand that you don't -- just like I or
18 anybody else don't recall specific dates and times
19 and -- and -- of conversations or those kind of things,
20 but have you answered the questions as truthfully as you
21 can recall based on your recollection today?

22 A. Yes, sir.

23 Q. And did you review the complaint that was
24 filed on your behalf before it was filed?

25 A. I did read it.

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1 Q. Okay. And are the -- as far as the shares
2 and the prices paid on each of those, were those
3 accurate, to the best of your knowledge?

4 A. To the best of my knowledge.

5 Q. You may have answered this already, but other
6 than the three transactions that we've talked about, are
7 you aware or do you recall purchasing any other shares
8 of HCSB Financial Corp's stock?

9 A. Not to my knowledge.

10 Q. Did you ever talk to anybody else, a
11 prospective purchaser of stock, somebody come to you and
12 say, hey, I'm thinking about buying shares of HCSB
13 Financial Corp, what do you think?

14 A. Other than a joke, no.

15 Q. Okay.

16 A. After it hit the paper, it got to be a big
17 joke around town. I got to be a big laugh.

18 Q. Right. Have you ever talked to Jimmy
19 Clarkson about any of your transactions?

20 A. I can't remember.

21 (Reporter interjection.)

22 A. I cannot remember. I'm sorry.

23 BY MR. MCGEE:

24 Q. Do you recall, have we -- I think throughout
25 we've discussed the various people that you dealt with

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1 at the bank or at the financial corp concerning your
2 three transactions. Do you recall any other
3 conversations or communications with folks at the bank
4 related to the stock purchases that we've gone over that
5 we haven't already talked about here?

6 A. I talked to Diane at the bank. She's the
7 lady that was in charge of -- I don't remember what
8 she's in charge over. She's not a teller. But I talked
9 about it one time, and she just shook her head and said,
10 Robert, I don't know and I don't want to get into it.
11 She was the go-to-type girl, like you need money
12 transferred or money shipped out or whatever.

13 Q. Okay.

14 A. I talked to Johnny Allen, but he was not at
15 the bank.

16 Q. And what do you -- I think you mentioned him
17 earlier. What did you talk to Mr. Allen about, if you
18 recall?

19 A. About this.

20 Q. About the lawsuit or the --

21 A. No, not about the lawsuit. About the
22 transaction. After I finally -- the lady at Loris told
23 me how to go in the bank and look at sales and this,
24 that, and the other. And I started to go back in there
25 and look, and I was like, wow.

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1 Q. When was that? When did you -- when did you
2 first -- when did you first find out that Ms. Guyette
3 was the person that had sold you the shares in July of
4 2009?

5 A. When I had found out I didn't have all my
6 stock certificates, and I called trying to get my stock
7 certificates. And that would have been before that date
8 there, whatever date that is, July of 2012.

9 Q. Before this, you would have found out?
10 Exhibit -- I think it's Exhibit 5 you were holding up?

11 A. Yes.

12 Q. Before July 23, 2012?

13 A. Yes.

14 Q. Do you know how long? A month? A year?

15 A. Probably a month and a half.

16 Q. Okay. Did you ask Ms. -- at that time, did
17 you go to Ms. Guyette and say, hey, you're the one that
18 sold me those shares back in July of 2009, but you said
19 you didn't know who owned it; what's the story?

20 A. No, I never went back to her. By that time,
21 I figured in-house women talk, she knew that I knew.

22 Q. And if she had been straight with you when
23 you asked her, whether it was a week and a half before
24 or a week and a half after the funds were debited, if
25 she would have been straight with you and said those are

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1 my shares of stock, would you have had a problem at that
2 point if she'd been straight up with you?

3 A. Well, hindsight is 20/20, so I can't really
4 answer that question. I don't know how I would have
5 felt at that time.

6 Q. Okay. Other than the stock certificates that
7 we looked at today, it looks like -- I think it's
8 Exhibit 1 --

9 A. Here's some.

10 Q. Yeah. 1 and 5. Are you aware or do you have
11 any other stock certificates that you're aware of
12 that -- other than these two?

13 A. Not that I know of.

14 Q. Have you -- have you given to Mr. Connell all
15 the documents that are in your possession, custody, or
16 control that relate to these transactions? Have you
17 given those documents to Mr. Connell?

18 A. As far as I know.

19 Q. Okay. And just to let you know, he's given
20 them to me. I just wanted to make sure there wasn't
21 anything else out there.

22 A. He didn't ask me about that.

23 Q. Okay.

24 A. I hope you gave him a good deposit.

25 Q. Let me ask you this. Have you talked to

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1 anybody from the regulators or from law enforcement
2 about Horry County State Bank or the financial corp?

3 A. We don't even want to go there.

4 Q. Huh?

5 A. You don't even want to go there, do you?

6 Q. Sure. Have you?

7 A. Did I pursue and talk to them?

8 Q. No. Have you spoken to anybody at any
9 regulator's office or any law enforcement office?

10 A. Yes, sir.

11 Q. Who?

12 A. I don't know the guy's name.

13 Q. Well, what agency is he with? Or he or she.

14 MR. CONNELL: Off the record a minute.

15 (Discussion off the record.)

16 BY MR. MCGEE:

17 Q. We had a brief discussion. Somebody from the
18 Treasury Department contacted Mr. Connell, and then,
19 ultimately, you met with someone from the Treasury
20 Department; is that right? Or is that --

21 A. I was thinking it was the Justice Department,
22 but if he says it was the Treasury Department, I'd have
23 to -- he's probably right.

24 Q. Do you recall how many people it was that you
25 met with?

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1 A. One, best of my recollection.

2 Q. And it was about -- how long was it? About
3 45 minutes?

4 A. Short period of time. He's a lot
5 short-winded than you are.

6 Q. Would you have -- would you recognize the
7 name if you heard it?

8 A. No, sir.

9 Q. John Sellers?

10 A. I wouldn't recognize it.

11 Q. Okay.

12 A. I wouldn't recognize him if he walked in the
13 door.

14 Q. Okay.

15 MR. CONNELL: I've got his card if you want
16 it.

17 MR. MCGEE: No, that's -- I'm just asking.

18 BY MR. MCGEE:

19 Q. What do you recall about the meeting with the
20 person from the Department of Justice or the Treasury
21 Department, whichever it was?

22 A. What do I recall about it. We met at
23 Mr. Connell's office, and he -- he was inquiring,
24 basically, about back when Horry County State Bank was
25 offering to borrow money from individuals and pay an

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1 exceptional high rate of interest and what I knew about
2 that and did I borrow any of the money and blah, blah,
3 blah, blah. Did I know anyone that borrowed any money.
4 Could I -- and was I ever contacted, who was I contacted
5 by, how many times I was contacted, did I ever get any
6 pamphlets of offering, who contacted me.

7 Q. You're talking about the subordinated debt
8 notes, the debentures?

9 A. I think that's what it was.

10 Q. And you didn't purchase any of the
11 subordinated debt notes; is that right?

12 A. No, sir.

13 Q. Were you ever approached by somebody?

14 A. Yes, sir.

15 Q. Who was that?

16 A. Debbie Guyette and Ron Paige.

17 Q. And Ron Paige. After discussing that or
18 considering it, you decided not to purchase the
19 subordinated debt notes?

20 A. That -- that -- yes, sir.

21 Q. Okay. And were there any discussions with
22 this person from the Treasury Department or the
23 Department of Justice about this lawsuit?

24 A. Yes.

25 Q. Okay. Do you recall anything else other than

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1 the subordinated debt and the subject of this lawsuit
2 that you discussed with the person from the Department
3 of Justice or the Treasury?

4 A. Anything else, you just said?

5 Q. Yes, sir.

6 A. No, sir.

7 Q. Okay. Other than that person that you met
8 with here at Mr. Connell's office, have you spoken to or
9 communicated with any other regulator or law enforcement
10 agency?

11 A. No, sir.

12 Q. To your knowledge, have you filed any
13 complaints with any regulator or law enforcement agency
14 concerning your relationship with Horry County State
15 Bank?

16 A. No.

17 (Discussion off the record.)

18 BY MR. MCGEE:

19 Q. Do you know anything about the rules that are
20 in place at HCSB Financial Corp or Horry County State
21 Bank insofar as their employees, like employee
22 guidebooks or anything like that? Have you ever seen
23 any of those things?

24 A. No, sir.

25 Q. And have you -- I think I may have asked you

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1 this already, but you've answered all my questions fully
2 and truthfully as you can based on your personal
3 recollection; is that right?

4 A. Yes, sir.

5 Q. Is there anything else that you can think of
6 that you need to correct or clarify that we haven't
7 talked about already?

8 A. No, sir.

9 Q. All right.

10 MR. McGEE: Gene, if you'll give me just a
11 couple minutes, I'm going to flip through this and see
12 if -- I may be done.

13 (A brief break transpired.)

14 MR. CONNELL: I've just got one question for
15 you.

16 MR. McGEE: The infamous one question.

17 I don't have anything else. Thank you very
18 much, Mr. Shelley, for your time today.

19 THE WITNESS: Yes, sir.

20 EXAMINATION

21 BY MR. CONNELL:

22 Q. Exhibit 3 --

23 A. Yes.

24 Q. -- the cashiers check made out to you, now
25 did you --

Robert Shelley 8/27/2013

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1 A. Made out to me?

2 Q. Well, I'm sorry. Made out to Ms. Guyette.

3 A. Yes.

4 Q. Did you ever see that before it was made out?

5 A. No, sir.

6 Q. All right. And is it -- how do you think
7 that happened? Would it have come out of your account
8 and the bank did that or what -- how did that happen?

9 A. Yes, sir.

10 Q. All right. And until you saw that check,
11 were you aware that Ms. Guyette had actually sold you
12 that stock or collected the money?

13 A. Yes, sir.

14 Q. Okay. And that was --

15 A. I was not aware.

16 Q. You were unaware?

17 A. No. No. I was aware of it before I saw this
18 (indicating), because the lady in Loris that looked it
19 up and told me.

20 Q. Okay.

21 A. Now, then I was unaware of this until you
22 presented this to me.

23 Q. Okay. Now, and you also sought some legal
24 advice from a female lawyer up in North Carolina; is
25 that right?

Robert Shelley 8/27/2013

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1 A. Yes. Betty Sue.

2 Q. Prior to seeing me?

3 A. Yes, sir.

4 Q. Okay. And you showed her -- did you show her
5 this check at that time?

6 A. No, sir. I didn't have that check.

7 Q. Okay. All right.

8 MR. CONNELL: Okay. I think that's it.

9 Thank you.

10 A. I don't know where that came from.

11 BY MR. CONNELL:

12 Q. All right.

13 A. Either you or her got it.

14 Q. All right. Okay.

15 MR. McGEE: Nothing further from me.

16 MR. CONNELL: You can leave.

17 (The deposition was concluded at 12:03 p.m.)

18 - - -

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Robert Shelley 8/27/2013

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1 CERTIFICATE OF REPORTER

2 I, Heather M. Curlin, Professional Court
3 Reporter and Notary Public for the State of South
4 Carolina at Large, do hereby certify:

5 That the foregoing deposition was taken
6 before me on the date and at the time and location
7 stated on page 1 of this transcript; that the deponent
8 was duly sworn to testify to the truth, the whole truth
9 and nothing but the truth; that the testimony of the
10 deponent and all objections made at the time of the
11 examination were recorded stenographically by me and
12 were thereafter transcribed; that the foregoing
13 deposition as typed is a true, accurate, and complete
14 record of the testimony of the deponent and of all
15 objections made at the time of the examination to the
16 best of my ability.

17 I further certify that I am neither related to
18 nor counsel for any party to the cause pending or
19 interested in the events thereof.

20 Witness my hand, I have hereunto affixed my
21 official seal this 5th day of September, 2013, at
22 Charleston, Charleston County, South Carolina.

23

24

25 Heather M. Curlin
Professional Court Reporter
Notary Public
State of South Carolina at Large
My Commission Expires:
May 27, 2021

26

27

28

29

30

31

Robert Shelley 8/27/2013

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3	BY MR. McGEE	3
4	BY CONNELL	89
5	Certificate of Reporter	92
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10	E X H I B I T S	
11	Marked for I.D.:	
12	1. 07/27/09 HCSB Stock Certificate Number 26067	37
13	2. 07/17/09 Universal Debit	46
14	3. 07/17/09 Cashiers Check Number 109111	46
15	4. 07/01/09 - 07/31/09 Bank Statement for Deborah Guyette	47
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17	5. 07/23/12 HCSB Stock Certificate Number 26334	56
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Robert Shelley

142

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P.2

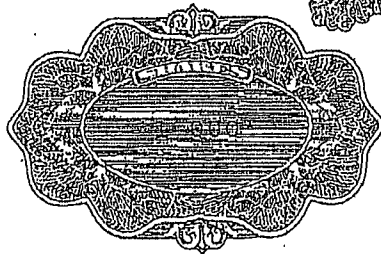
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BY *David C. Bailey*

TRANSFER AGENT
AND REGISTRAR

AUTHORIZED SIGNATURE

SECRETARY



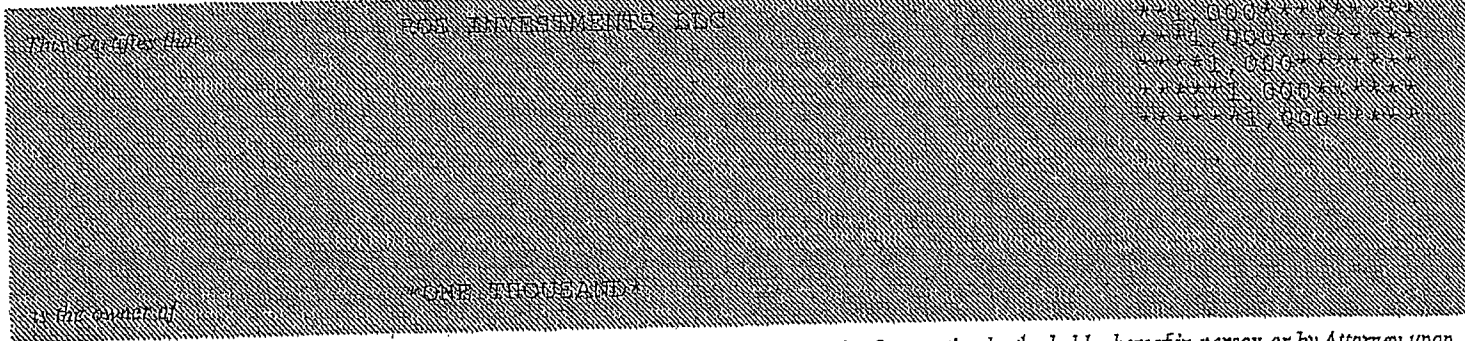
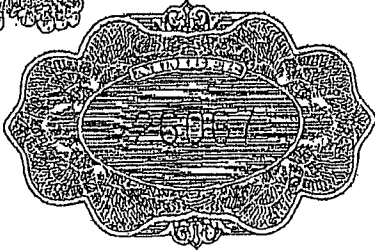
SEE REVERSE FOR CERTAIN DEFINITIONS
CUSIP 40413R.10 7

HCSB

HCSB FINANCIAL CORPORATION

INCORPORATED UNDER THE
LAWS OF THE STATE OF SOUTH CAROLINA

26067



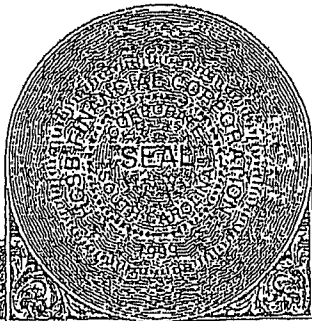
Shares of Capital Stock of HCSB Financial Corporation, transferable only on the books of the Corporation by the holder hereof in person or by Attorney upon surrender of this Certificate properly endorsed. This Certificate is not valid until countersigned and registered by the Transfer Agent and Registrar.

IN WITNESS WHEREOF, the said Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed, by facsimile.

Dated: 07/27/2009

James L. Clarkson

PRESIDENT/CEO



D. Singleton Bailey

RECEIVED TIME JUL. 30. 7:28PM

PENGAD 800-631-6989

EXHIBIT

Shelley-1
8/27/13 dlc

Universal Debit

HORRY COUNTY STATE BANK

Prepared
by:Approved
by:

Checking	
36	Withdrawal
37	Close Checking
Savings	
30	Misc. Withdrawal
31	Close Savings

CD	
99	Close CD
Christmas Club	
40	Withdrawal
41	Close Christmas Club
IRA	
51	IRA Withdrawal

Loan	
105	Principal Advance
Sale Deposit Box	
002	Reversal
34 General Ledger Debit	

Customer Name: Robert O ShelleyDate: 7/17/09

Account Number

Tran Code

036

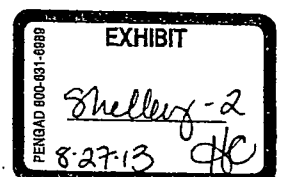
Amount

2400000

Description
Stock 1000 shares
HESS

⑆500⑆⑈0095⑆

7788818887 07-17-2009 >053201982<



CASHIERS CHECK

BANK CREDIT COPY

109111

DATE: 7/17/09

REMITTER: ROBERT SHELLEY (STOCK)

BRANCH: 0009
ORIGINATOR: CANNONJ
TIME: 11:09:59

TO:

CHECKAMT: \$24,000.00

DEBORAH GUYETTE

NON-NEGOTIABLE

⑈0000109111⑈ ⑆053201982⑆ 8001055574⑈ 03 ⑈0002400000⑈

24000.00

Cashiers Check

0000109111

11:07:58
7/17/09

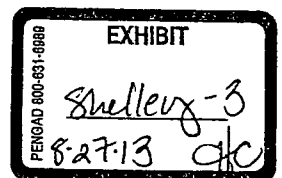
13

Trans#: 901

901

DOCUMENT Drawer: 901

7700010006 07-17-2009 >053201982<





11038 Ocean Highway
Pawleys Island, SC 29585

Return Service Requested

PLNT

Page Number

1

Primary Account Number

Statement Period

From 07/01/09
Thru 07/31/09

007446 0.4400 AT 0.357 TR00025

DEBORAH A GUYETTE

MYRTLE BEACH

SC 29577-3542

THIS SUMMER, HOW DOES BREAKING IN A NEW PAIR OF JEANS ON A
PRICELESS ESCAPE SOUND?
VISIT PRICELESS.COM FOR COMPLETE DETAILS.
JULY 1 THROUGH AUGUST 31, 2009.

FREE CHECKING

Beginning Balance	\$	[REDACTED]	Average Balance	[REDACTED]
Deposits/Credits		24,000.00		
Interest Paid		0.00		
Checks/Debits		[REDACTED]		
Service Charges		0.00		
Ending Balance	\$	[REDACTED]	# Deposits/Credits	1
			# Checks/Debits	5

Transaction Activity

Date	Description	Deposits	Withdrawals	Balance
07/01	BEGINNING BALANCE			[REDACTED]
07/08	DEBIT-AUTO TRANSF WDL		[REDACTED]	[REDACTED]
07/17	DEPOSIT-CHECK	24,000.00		[REDACTED]
07/20	[REDACTED]		[REDACTED]	[REDACTED]
07/20	[REDACTED]		[REDACTED]	[REDACTED]
07/29	[REDACTED]		[REDACTED]	[REDACTED]
07/31	[REDACTED]		[REDACTED]	[REDACTED]
07/31	ENDING BALANCE			[REDACTED]

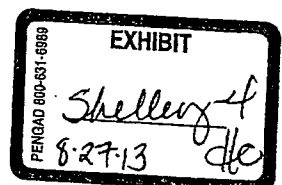
Account Credit Summary

Date	Amount	Description
07/17	24,000.00	DEPOSIT-CHECK

Check Register

Check#	Date	Amount	Check#	Date	Amount	Check#	Date	Amount
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

* INDICATES NON-CONSECUTIVE CHECK NUMBER(S)





HCSB

HCSB FINANCIAL CORPORATION

INCORPORATED UNDER THE LAWS OF THE STATE OF SOUTH CAROLINA

26334

This Certifies that

is the owner of

Dated: 07/23/2012

HCS INVESTMENTS LLC

THREE THOUSAND FIVE HUNDRED

Shares of Capital Stock of HCSB Financial Corporation, transferable only on the books of the Corporation by the holder hereof in person or by Attorney upon surrender of this Certificate properly endorsed. This Certificate is not valid until countersigned and registered by the Transfer Agent and Registrar.

IN WITNESS WHEREOF, the said Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed, by facsimile.

SEE REVERSE FOR CERTAIN DEFINITIONS

CUSIP 40413R 10 7

3,500

3,500

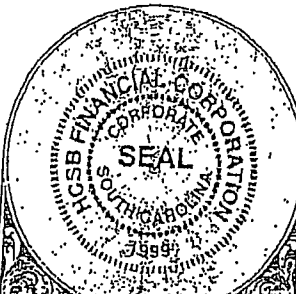
3,500

3,500

3,500

James L. Clackson

PRESIDENT/CEO



V. Singleton Bailey

SECRETARY

PENGAD 800-631-6989

8.23.13

EXHIBIT

Shelley - 6

OK

COUNTERSIGNED AND REGISTERED:

FIRST CITIZENS BANK & TRUST COMPANY

(FALCON, NC)

TRANSFER AGENT AND REGISTRAR

AUTHORIZED SIGNATURE

STATE OF SOUTH CAROLINA :
COUNTY OF HORRY : SS:
: - - - - -

IN THE COURT OF COMMON PLEAS
- - - - -

ROBERT SHELLEY, a/k/a RDS :
INVESTMENTS, LLC, a/k/a ROS :
INVESTMENTS, LLC, and as Class :
Representative, :

Plaintiffs, :

vs. :

HORRY COUNTY STATE BANK and :
HCSB FINANCIAL CORPORATION, :

Defendants. :

Case Number
2012-CP-26-5546

ORIGINAL

Deposition of DEBORAH A. GUYETTE, the Witness
herein, called for the purpose of Discovery
Examination by the Plaintiffs, pursuant to the South
Carolina Rules of Civil Procedure, taken before
James C. Grady, a Notary Public for South Carolina,
at the offices of Nelson, Mullins, Riley &
Scarborough, 3751 Robert Grissom Parkway, Myrtle
Beach, South Carolina, on Monday, December 16th,
2013, commencing at 2:55 p.m..

Flowers & Associates
P. O. Box 16105
Surfside Beach, SC 29587
843-238-5053

1 APPEARANCES:

2 ON BEHALF OF THE PLAINTIFFS:

3 GENE M. CONNELL, JR, Esq.
4 Kelaher, Connell & Connor
5 Suite 209 The Courtyard
6 1500 Highway 17 North
7 Surfside Beach, SC 29575

8 ON BEHALF OF THE DEFENDANTS:

9 T. WILLIAM McGEE, III, Esq.
10 Nelson, Mullins, Riley & Scarborough
11 P. O. Box 11070
12 Columbia, SC 29211-1070

13 ALSO PRESENT:

14 Jane Cannon.

15 - - - - -

16 STIPULATIONS

17 This deposition was taken pursuant to proper
18 Notice and pursuant to Circuit Rule 30, to be
19 used for the purpose of discovery and/or
20 evidence at trial, or for any other purpose
21 permitted by Circuit Rule 30; all objections
22 except as to the form of the question were
23 reserved until the time of trial.

24 - - - - -

25 Flowers & Associates
 P. O. Box 16105
 Surfside Beach, SC 29587
 843-238-5053

1 DEBORAH A. GUYETTE,
2 of lawful age, the Witness herein,
3 called for Discovery Examination by the
4 Plaintiffs, being by me first duly sworn,
5 as hereinafter certified, deposed and said
6 as follows:

7 EXAMINATION

8 BY MR. CONNELL:

9 Q. Is it Guyette, is that right?
10 A. Yes, sir.
11 Q. That's the French, I take it?
12 A. Yes, sir.
13 Q. All right. Would you give us your full name,
14 please, ma'am?
15 A. It's Deborah, D-E-B-O-R-A-H A. Guyette,
16 G-U-Y-E-T-T-E
17 Q. Okay. And what do you do for a living?
18 A. I am the branch manager and commercial lender
19 at Horry County State Bank.
20 Q. About how long have you been the branch manager
21 and commercial lender at Horry County State
22 Bank?
23 A. I have been a commercial lender at Horry County
24 State Bank since 2002. I acquired the branch
25 manager position a couple of years after that I

1 believe.

2 Q. Okay. And what other banking experience do you
3 have?

4 A. Prior to that I worked with the group that's
5 generally related Jane and Ron Page. I worked
6 with them at RBC Centura, and prior to that at
7 Southern National, BB&T.

8 Q. What type of training did you have to be a
9 banker?

10 A. I was on the job training. I started right out
11 of high school as a teller part-time at a small
12 community bank. I transferred here to South
13 Carolina and then took online banking courses
14 and actually went through training programs
15 that the banks offered that I worked for.

16 Q. Okay. Do you have a college degree?

17 A. No. One year of college.

18 Q. Have you been to the Bankers Institute down in
19 Louisiana?

20 A. No, sir.

21 Q. Have you earned any designations at the bank,
22 any --

23 A. I completed different courses that the bank
24 offered and yes there was a two year -- two
25 week commercial lending program that I went

1 through and you got your little completion
2 certificate.

3 Q. All right. Do you have a Series 7 Stock
4 Brokers License?

5 A. No, sir. I don't.

6 Q. Have you ever held a stock brokers license?

7 A. No, sir, I have not.

8 Q. Have you ever worked at a stock brokerage firm?

9 A. No, sir.

10 Q. Do you have any other specialty licenses?

11 A. No, sir.

12 Q. Commercial lending, have you been a commercial
13 lender?

14 A. I have been a commercial lender twelve years
15 with Horry County State Bank and then four
16 years at RBC Centura.

17 Q. Currently how much stock do you own in Horry
18 County State Bank?

19 A. Currently I believe it's about 1750 shares.

20 Q. How did you acquire those shares?

21 A. I purchased them. And then --

22 Q. Over the course of time?

23 A. Yes, sir. I purchased 1,000 shares when I came
24 on board in 2002. Then there was a stock split
25 I believe in 2005 and then I acquired stock for

1 my children after that.

2 Q. Okay. What is the current price of the stock?

3 A. I don't know the current price of the stock.

4 Q. What was the price the last time you checked?

5 A. The last time I checked, there is not a public
6 forum to be traded on. We've got a Website
7 where people are offering it for sale. One of
8 the employees actually has a brokerage account
9 and she said her statement showed 10 cents.

10 Q. Okay. When did Horry County State Bank come
11 under any regulatory authority by any of the
12 banking authorities such as the Federal
13 Government or the State of South Carolina?

14 A. I believe it was in 2010.

15 Q. Okay. And what was it that caused Horry County
16 State Bank to come under regulatory supervision
17 by either the State or Federal banking
18 authorities?

19 A. To the best of my knowledge it had to do with
20 our loan office.

21 Q. You are talking about the real estate loans;
22 right?

23 A. Yes, sir.

24 Q. All right. What is your understanding about
25 whether or not -- let me ask this: You are a

1 vice-president at the bank; is that right?

2 A. Yes, sir.

3 Q. Are you considered to be an officer of the bank
4 as being a vice-president?

5 A. No, sir. I'm not part of the Board of
6 Directors or part of the senior management
7 team.

8 Q. Are you a senior vice-president?

9 A. No. Just a vice-president.

10 Q. Are there separate levels?

11 A. Yes, sir. There is different levels, there is
12 vice-president, there is senior vice-president
13 and then there is executive vice-president.

14 Q. All right. When you sold this particular stock
15 did you disclose that to the Security and
16 Exchange Commission when you did that?

17 A. No, sir.

18 Q. Did you think you had to?

19 A. No.

20 Q. Did you think you didn't have to?

21 A. No, I did not believe that I had to disclose
22 it.

23 Q. Did you ask whether or not you would have to
24 disclose that with anybody at the bank?

25 A. No, sir, I did not.

1 Q. All right. Why did you think you didn't have
2 the disclose that.

3 A. I was welling it as an individual. The stock
4 was in my name individually.

5 Q. Even though you were a vice-president you
6 didn't think as a vice-president you would have
7 to disclose the sale of stock?

8 A. No, sir, since I was not part of the executive
9 management.

10 Q. And what led you to that understanding, how did
11 you come to believe that?

12 A. I just having done different reports for
13 regulatory agencies as things would come up,
14 usually what would come up is if I knew anybody
15 that was an executive vice-president that had
16 loans out to executive members of management
17 with the bank, never anything having to do with
18 just a vice-president.

19 Q. Okay. So you did not seek any advice from
20 anyone as to whether you had to disclose the
21 sale of that stock?

22 A. No, sir.

23 Q. All right. Have you been interviewed by any
24 regulatory authority with regard to the sale of
25 this particular stock.

1 A. No, sir.

2 Q. Has anybody contacted you from either any State
3 or Federal agency about the sale of this stock
4 to Mr. Shelley?

5 A. No, sir.

6 Q. Have you had any discussions with any other
7 managerial members of Horry County State Bank
8 about this lawsuit without Mr. Billy McGee
9 here?

10 A. Mr. Clarkson informed me that a lawsuit was
11 filed and asked me about the sale, about the
12 transaction.

13 Q. All right. And when did that take place?

14 A. I believe it was in 2012 that I first became
15 notified that there was a lawsuit.

16 Q. Okay. And what exactly did he tell you about
17 the lawsuit?

18 A. It was very general, just that a lawsuit had
19 been filed concerning the sale of the stock by
20 Mr. Shelley, how did the transaction occur.

21 Q. Okay. Why did you want to sell the stock?

22 A. I had a loan that was coming up for maturity
23 that needed to be paid off.

24 Q. You had loan in Horry County State Bank?

25 A. No, sir. It was with another bank.

1 Q. Was that the bank you deposited the money into?

2 A. Yes, sir.

3 Q. And what was the loan for?

4 A. Cost overruns where I had built an addition to
5 my home.

6 Q. Okay. Did you know Mr. Shelley before this
7 transaction?

8 A. Yes, sir.

9 Q. How long had you known him?

10 A. He started banking with Horry County State Bank
11 in 2002 and I had met him on different
12 occasions as he came into the bank when he
13 introduced himself to me initially to say who
14 he was.

15 Q. Okay. And why did you not contact him yourself
16 in regard to the sale of the stock?

17 A. I did not know him as well. Typically as stock
18 became available a member of the bank would
19 call, whoever had a better relationship with
20 the customer. In this case I knew that Jane
21 had been a friend of Robert's and that she had
22 known him for several years, she handled his
23 day to day transactions. So I asked her if she
24 would give him a call and see if he was
25 interested since he had expressed an interest

1 in purchasing stock.

2 Q. I take it from your testimony that this type of
3 transaction had been done before?

4 A. Yes, sir.

5 Q. All right. In what context, who actually did
6 that and how was it done in the past besides
7 the ones you did with Mr. Shelley?

8 A. We would be contacted, either we had someone
9 locally that wanted to sell stock so they would
10 let us know that they had so many shares
11 available and what they were asking, and we
12 would make phone calls to people that -- we had
13 an informal list with just names on it that we
14 kept at the office of people who were
15 interested in purchasing stock or we would get
16 a phone call from another branch stating that
17 they had a customer with stock available, this
18 is what they are asking for it and could we
19 check to see if we had anybody in our market
20 that was interested.

21 Q. And why would the bank be interested in doing
22 that for somebody?

23 A. All part of -- in my personal opinion it would
24 be all part of the community service. We were
25 not publicly traded so there was not -- we

1 didn't at that time have a Website with
2 everything listed on it so it was done by word
3 of mouth, who would want to sell stock.

4 Q. Other than this transaction with Mr. Shelley
5 had you sold stock before, before this time?

6 A. Personally?

7 Q. Yes, ma'am.

8 A. No, sir, I had not.

9 Q. Did you do it after this time, sell to other
10 folks?

11 A. Not for my personal stock. Yes, I was involved
12 in stock exchanges between customers but not
13 for the sale of my personal stock.

14 Q. This was the only sale of your personal stock
15 that you had done?

16 A. Yes.

17 Q. And the rest still remains in your name?

18 A. Yes, that and my children.

19 Q. And you had done this for other customers. How
20 about other bank employees, sold stock?

21 A. Yes.

22 Q. How many times?

23 A. For other bank employees once. For other
24 customers maybe a dozen or more.

25 Q. All right. Which bank employee did you do it

1 for?

2 A. For Cindy Campbell.

3 Q. She is?

4 A. An administrative assistant.

5 Q. All right. Did you follow the same course of
6 whoever knew the customer the best, that person
7 would contact them and see if they wanted to
8 buy the stock?

9 A. Yes, sir.

10 Q. Was it done by telephone all the time or was it
11 done by going and meeting them or was it done
12 by them coming into the bank, or all three?

13 A. Nine times out of ten it was making a phone
14 call to the customer since we have all been
15 together, the majority of our customers have
16 been with us the 18 to 22 years that we have
17 all been together so most of the time it was a
18 call to the customer telling them that there
19 was stock available, what the price was that
20 was being asked for it, whether or not they had
21 an interest in purchasing and nine times out of
22 ten they would have us debit their account and
23 issue the cashier's check.

24 Q. How did you set the price in this particular
25 transaction, how did you set the price at \$24?

1 A. That was what I needed to go ahead and pay off
2 my loan.

3 Q. Okay. What was the value of the shares at that
4 time to your understanding?

5 A. To my understanding it was within a couple
6 dollars of what I was asking.

7 Q. More or less?

8 A. I believe mine was a couple dollars more.

9 Q. So you wanted 24 and it was worth 22?

10 A. Yes. To my knowledge, yes.

11 Q. All right. Did you ever have any conversation
12 with Mr. Shelley about the price of the stock?

13 A. No, sir.

14 Q. Did you ever have any conversations with Mr.
15 Shelley at all about the sale of the stock?

16 A. About my particular sale?

17 Q. Yes.

18 A. No, sir. About stock in general, that he was
19 interested in purchasing stock? Yes, sir.

20 Q. All right. About your stock in general or
21 specifically did you have conversations with
22 him about that?

23 A. No, sir.

24 Q. When the transaction went through did you meet
25 with him and give him the stock certificates?

- 1 A. No, sir. The debit, the universal debit and
2 the credit copy of the cashier's check were
3 sent with my stock certificate to Denise Floyd
4 and she would then sent it off. I believe the
5 issuing party was First Citizens bank so she
6 sent all of that information to First Citizens
7 and the stock certificate would then be mailed
8 to Mr. Shelley.
- 9 Q. So did Mr. Shelley know you were the seller of
10 the stock?
- 11 A. No, sir.
- 12 Q. Do you ever have any conversation with him
13 after the stock was sold to him to identify
14 yourself as the seller of the stock?
- 15 A. No, sir.
- 16 Q. There were apparently two different stock
17 certificates. Do you know why that is?
- 18 A. No, sir. I'm familiar with the one that would
19 have been issued in July which was the exchange
20 for mine, the 1,000.
- 21 Q. Okay.
- 22 A. Or a thousand shares.
- 23 Q. Look at those. There is one dated July 23rd
24 and one dated July 29th I believe it is.
- 25 A. The July 23rd was in 2012.

Flowers & Associates
P. O. Box 16105
Surfside Beach, SC 29587
843-238-5053

1 Q. Do you know who sold that?

2 A. No, sir, I don't.

3 Q. Okay. And the July 29th?

4 A. The July 27th, 2009, that should have been the
5 exchange for my stock.

6 Q. Okay. Because that's when you sold your stock;
7 is that right?

8 A. Yes, sir.

9 Q. All right.

10 MR. McGEE: And just so that we know
11 which one since there are two of them, this one
12 would be the same one that's marked as Shelley
13 Exhibit 1.

14 A. Yes, sir.

15 Q. Shelley Exhibit 1 is the one you sold. The
16 other one in 2012 you did not sell?

17 A. No, sir. That is correct. I didn't sell the
18 one in 2012.

19 Q. Now, the typing on the stock certificate, the
20 one that you sold, Exhibit 1, who typed that
21 certificate?

22 A. That would have been typed by First Citizens
23 when they issued the stock.

24 Q. Okay. And that has ROS Investments; is that
25 right?

Flowers & Associates
P. O. Box 16105
Surfside Beach, SC 29587
843-238-5053

1 A. Yes, sir. That's what it is showing.

2 Q. Is that a typographical error?

3 A. It would be my assumption it was a
4 typographical error. The accounts that I'm
5 aware of that Mr. Shelley had were RDS
6 Investments, LLC.

7 Q. Okay. You said you have handled this same
8 procedure for customers that wanted to sell
9 stock the past?

10 A. Yes, sir.

11 Q. About how many times have you ever done that?

12 A. About a half -- probably about a dozen times.

13 Q. Have there been other members of the bank that
14 have done the same thing for other customers --

15 A. Yes, sir.

16 Q. -- who would have sold the stock in the same
17 manner?

18 MR. McGEE: Object to the form.

19 A. Ron Page would have also called customers to
20 sell purchase stock. Bill Langfelt when he was
21 a member would have done it, as well, as well
22 as other officers at other locations.

23 Q. Bill Langfelt, is he still employed there?

24 A. No, sir, he's not.

25 Q. So you think everybody did it a half dozen

1 times or more or more than you?

2 A. No. I would say, probably Ron Page would have
3 handled more transactions just based on the
4 number of people he knew. To the best of my
5 knowledge I believe Bill Langfelt probably
6 would have sold less stock just because again
7 of the difference in customer base.

8 Q. Now, Mr. Langfelt or Mr. Page, were they
9 getting paid anything to do that, to offer in
10 this manner?

11 A. No, sir.

12 Q. Has Mr. Shelley ever come to you and made a
13 complaint about the sale of the stock?

14 A. No, sir.

15 Q. And do you know Mr. Shelley other than him just
16 passing in the bank?

17 A. No, sir. I do not.

18 Q. And would the bank employees have meetings to
19 decide when somebody wanted to sell stock to
20 determine who knew the person that wanted to
21 buy the stock?

22 A. Yes. Who would know the customers best, yes.

23 Q. Did y'all have meetings to you discuss who that
24 was before you actually made an offer to let
25 someone buy the stock?

1 MR. McGEE: Object to the form.

2 A. Different times. I guess it would depend on
3 who it was that actually received a phone call.
4 For instance, if Denise Floyd called Ron Page
5 and said there is 1,000 shares available, this
6 is the stock price, if Ron had somebody that he
7 had that had recently mentioned to him that
8 they wanted to purchase stock, then he would
9 just go ahead and make the call and we wouldn't
10 all sit down to discuss.

11 There were occasions when there were large
12 blocks of stock that were being offered for
13 sale. There was a death of an individual and
14 the heirs were trying to liquidate shares, so
15 there were several thousand shares up at one
16 time. In that case, yes, we would sit down as
17 a group together and say okay, who still has
18 folks that want to buy and then who is going to
19 call until the shares were taken care of.

20 Q. Okay. Do you know what a prospectus is?

21 A. Yes, sir.

22 Q. When the stock was offered in the manner it was
23 offered in this case was a prospectus given to
24 people who were asked if they wanted to buy
25 shares?

1 A. No. The prospectus was given when a stock
2 offering was done either in 2002 or 2003. But
3 when it was being handled between individuals
4 there was not a prospectus that was given.

5 Q. Was any financial information ever given to any
6 person who wanted to purchase stock in the
7 manner which was done in this case?

8 MR. McGEE: Object to the form.

9 A. If someone requested financial information on
10 the bank, yes, they were given that. Annually
11 all of the share holders were given an annual
12 report and that's the same information we would
13 give out for anybody that was interested in
14 purchasing stock. We kept extra copies at the
15 office.

16 Q. Did you have a case where anybody actually
17 asked for financial information in order to
18 purchase the stock?

19 A. No, sir.

20 Q. There is some sort of a list. Did you have a
21 list of people who were interested in buying
22 stock?

23 A. Yes, sir. We had an informal list that just
24 gave names.

25 Q. Who kept that list?

1 A. It was kept in Ron Page's office and we would
2 each add names as people mentioned to us that
3 they were interest in purchasing stock.

4 Q. Were there rules and regulations by Horry
5 County State Bank or its holding company as to
6 how you were to sell the stock?

7 MR. McGEE: Object to the form.

8 Q. Did y'all have certain rules that you were
9 supposed to follow?

10 A. Not that I'm aware of, no.

11 Q. How did you know that if someone asked for
12 financial information you were supposed to give
13 that to them before they purchased?

14 A. I didn't know that that was something I had
15 to do. I just know that they asked for it
16 because occasionally they would come in if they
17 weren't yet shareholders of the bank and wanted
18 to know the financial condition of the bank, so
19 we kept annual reports in our office to be able
20 to give to prospective customers/buyers of
21 stock.

22 Q. In your case was that ever shown to anybody,
23 annual reports when they were purchasing stock?

24 A. I didn't have anyone ask for it when they were
25 purchasing stock, no.

1 Q. And the way the transaction as I understand it
2 went, the person, the individual selling the
3 stock actually never meets the person who is
4 the buyer in the normal course; isn't that
5 correct?

6 A. That is correct.

7 Q. And all the stock purchases are handled through
8 debit transactions?

9 A. Yes. Or they would bring a check if they were
10 not an existing customer of the bank.

11 Q. All right. And the buyers would never know who
12 the sellers were; is that right?

13 A. That's correct.

14 Q. Okay. And did Horry County State Bank ever
15 give a disclaimer that they were not the owners
16 of the stock when it was being sold in this
17 manner?

18 MR. McGEE: Object to the form.

19 A. Not that I'm aware of.

20 Q. Did you ever give out any documentation to
21 someone who wanted to buy stock in this manner
22 that Horry County State Bank was not the seller
23 of the stock?

24 A. No, I did not.

25 Q. Did Horry County State Bank sell any stock in

1 the manner where they would -- the company
2 would sell stock to people in the manner like
3 what was done to Mr. Shelley?

4 A. Not to the best of my knowledge. It would have
5 been either the stock offering where the
6 prospectus and all the paper work would have
7 been given out or it was an individual
8 purchasing.

9 Q. All right. Do you have any idea about how many
10 times the stock transactions were done in this
11 particular manner?

12 A. I'm aware of the ones that I did, that dozen or
13 so and as many or more for Ron Page, but for
14 the bank overall I don't know how many
15 transactions were completed that way.

16 Q. All right. Was this same transaction method
17 involved in all the branches?

18 A. To the best of my knowledge, yes.

19 Q. When did the stock begin to lose value, weren't
20 there certain financial ramifications that
21 caused the stock to lose value?

22 A. I don't know of an exact date when it started
23 to lose value but when we were put under the
24 order in 2010 I believe that the stock did take
25 a dip in value at that point in time.

1 Q. How about in 2009, did the stock lose any value
2 to your understanding in 2009?

3 A. Not to the best of my knowledge.

4 Q. When did the Federal regulators first come to
5 the bank with their concerns, what year?

6 A. In 2010.

7 Q. They did not come prior to 2010?

8 A. No, sir.

9 Q. And the consent order of supervision that you
10 are currently under, are you still under that
11 order?

12 A. Yes, sir.

13 Q. And are there still people trying to buy stock
14 -- or sell stock I should say?

15 A. There are people trying to sell stock, yes,
16 sir.

17 Q. Do you make any phone calls to interested
18 people to purchase stock at this time?

19 A. No, sir, because now everything has been put on
20 the computer because everything is via the
21 internet now.

22 Q. Okay. You will have to explain to me what you
23 mean by that.

24 A. Okay. We have a site on our Horry County State
25 Bank website for investor information. On

1 there is an opportunity to list shares of stock
2 that they currently own and what price they
3 would like to sell it for and there are people
4 on there that are listed as buyers and what
5 they would be willing to buy the stock for.

6 Q. Okay. Is there any other information on the
7 website, prospectus information, financial
8 information?

9 A. I have not looked at the website in several --
10 probably in a couple of years so I'm not sure.

11 Q. Do you know why it was changed from the way
12 that you were doing it to being done by
13 computers?

14 A. No, sir, I don't.

15 Q. Was that an internal decision by Horry County
16 State Bank or its employees or officers?

17 A. I don't know the answer to that.

18 Q. Were there any written regulations that were
19 set out as to how you were to perform the
20 transaction like what happened in Mr. Shelley's
21 case?

22 A. No, sir.

23 Q. How did you learn how to do it this way?

24 A. Really it was a matter of either Denise or Ron
25 would say that there was stock available and

1 that this is what the person wanted for the
2 stock, did we want to make phone calls. And we
3 would let folks know that it was not a publicly
4 traded stock. It was what you were willing to
5 sell it for and what you were willing to buy it
6 for, and we would give a range of what stock
7 sales had happened or had occurred that we were
8 aware of and we would put that on there, these
9 are stock sales that we are aware of but we are
10 not aware of all the stock sales.

11 Q. Okay. The stock that was sold, the 1,000
12 shares, what did you pay for that stock?

13 A. \$21 a share.

14 Q. And when did you purchase it?

15 A. I believe it was in 2002.

16 Q. And that was the first shares you purchased in
17 the bank; is that right?

18 A. Yes, sir. That is correct.

19 Q. Is Mr. Shelley still a customer of the bank?

20 A. No, sir, he's not.

21 Q. Do you know when he closed his accounts?

22 A. I believe the last of the accounts were closed
23 out this year.

24 Q. Okay. Do you know who sold the 3500 shares in
25 2012?

1 A. No, sir. I do not.

2 Q. Do you know about Mr. Shelley wanting to be on
3 the board of directors? I can't imagine
4 anybody wanting to on the board of directors of
5 a bank in these times, but did he want to be on
6 board of directors, is what you understood?

7 A. That's my understanding, yes.

8 Q. And did he tell you that actually or did you
9 just hear that from rumor?

10 A. No. I heard that. That was not something him
11 and I discussed.

12 Q. Would he come to your office and sit down and
13 ask that you bring him a cup of coffee?

14 A. No, he never asked me to bring him a cup of
15 coffee but yes, he did ask other members to
16 bring him cups of coffee, and eventually he
17 just started going to the break room and
18 serving himself and bringing out the coffee.

19 Q. All right.

20 A. But yes, upon occasion he would have come in if
21 I didn't have someone in, he would like to talk
22 about the project that he had going on down in
23 the Amazon.

24 Q. He apparently had some real estate related
25 loans with Horry County State Bank?

1 A. Yes, sir.

2 Q. Does he still have them?

3 A. No, sir. He does not. He paid them off.

4 Q. Did you ever go outside the bank to meet with
5 someone about the sale of stock?

6 A. No, sir.

7 Q. What is the current financial status of Horry
8 County State Bank?

9 A. We are under an order of protection. We are
10 not under a cease and desist order. That means
11 that we are still able to transact business on
12 a day to day basis. We are still making loans,
13 still able to handle deposits, still FDIC
14 insured.

15 Q. Something called the Texas standard line, do
16 you know anything about that?

17 A. No, sir. I don't.

18 Q. The health of the bank itself, do you know what
19 the current health of the bank is?

20 A. I don't.

21 Q. Other than what you have already said?

22 A. No, sir.

23 Q. Okay. Would you like to sell the rest of your
24 stock?

25 A. No, sir.

1 Q. Not at 10 cents a share I take it; right?

2 A. I'm just not interested in selling it. I only
3 sold the other stock just to pay off a loan.

4 Q. Okay. How do you know that Mr. Shelley was
5 told that the stock was not publicly traded,
6 it's just what a willing buyer and a willing
7 seller want to pay for it, how do you know that
8 was transmitted to him?

9 A. Mr. Shelley and I had had that discussion in
10 the past and if he also had a discussion with
11 Ron Page, he would have been told the same
12 thing.

13 Q. When did you have the discussion you are
14 talking about in regard to the stock?

15 A. I don't know exactly when it was. As I said,
16 Robert had been a customer since 2002 and we
17 had discussed stock between that time and the
18 time he actually purchased mine.

19 Q. Between 2002 and the time you sold in 2009 was
20 it difficult to get stock?

21 A. There were periods of time where it was
22 difficult to get stock, yes, sir.

23 Q. What period was that?

24 A. Just before the stock split and then again once
25 the stock had split there was still another

1 period of time where it was difficult to find
2 people who were willing to sell because the
3 stock was doing so well.

4 Q. Okay. What about right after the great
5 financial collapse?

6 A. In 2008 and 2009 period there were still people
7 that were willing to buy and sell but I don't
8 know how many.

9 Q. Okay. In 2008 and 2009 were you aware of the
10 financial losses, real estate related losses of
11 Horry County State Bank?

12 A. I was aware of the ones that I was directly
13 involved with, yes.

14 Q. Were you aware of any other meetings with other
15 vice-presidents in regard to other loss in 2008
16 from real estate related mortgages?

17 A. No, sir.

18 Q. Okay. But in 2008 you were aware of the ones
19 that you had made where there were current
20 losses; is that right?

21 A. Yes, sir.

22 Q. What kind of losses were you aware of in 2008?

23 A. In 2008 to the best of my recollection it would
24 have been a smaller, maybe a couple million
25 dollars in loans. It really wasn't until later

1 on that the larger losses started hitting.

2 Q. How about in 2009, when did you become aware of
3 larger losses?

4 A. We had some in 2009 but more so probably from
5 2010, 2011.

6 Q. What losses were you aware of from loans that
7 you had made in 2009?

8 A. From our office we had several that were in
9 litigation. We had several that had stopped
10 paying and we were in different stages of
11 trying to get rid of the property.

12 Q. Okay. Were there million of dollars we are
13 talking about?

14 A. Yes, several million.

15 Q. More than several?

16 A. It would have been more than two and less than
17 thirty million but I don't know where in that
18 range.

19 Q. Did the bank pay any dividends to stockholders
20 in 2008?

21 A. Everything that was done was in cash -- stock
22 dividends and I believe there was still a stock
23 dividend in 2008.

24 Q. Did the bank pay dividends to stockholders in
25 2009 in cash?

1 A. Not in cash. Everything was always in stock
2 dividends.

3 Q. And 2008 there was no cash dividends?

4 A. They have always been stock dividends.

5 Q. Did y'all e-mail anybody and ask them if they
6 wanted to buy stock in the manner that we have
7 discussed with the Shelley case?

8 A. Yes, I have contacted customers via e-mail as
9 well as phone.

10 Q. Okay. And how about direct solicitation at the
11 bank or off-site at peoples homes or
12 businesses?

13 MR. McGEE: Object at the form.

14 A. No, sir. I did not personally go out to
15 solicit outside the bank.

16 Q. All right. After Mr. Shelley's stock was sold
17 in July of 2009, what was the closing price at
18 the end of 2009 of the stock, if you know?

19 A. I don't know.

20 Q. Was \$17, would you agree or disagree with that
21 as being a good closing price?

22 A. I don't know at that point in time.

23 Q. In your capacity as vice-president what
24 authority do you have in regards to the bank
25 itself and what you can do?

1 MR. McGEE: Object to the form. Go
2 ahead.

3 A. I know so much as a vice-president I can sign
4 for a signature guarantee stamp up to the
5 bank's limit which is \$100,000. As a loan
6 officer I've got individual loan authority and
7 can make a loan for up to 150,000 secured or
8 50,000 unsecured. You know, other than that I
9 would have to get further approval.

10 Q. How about in regard to personnel matters, do
11 you have any authority in that regard?

12 A. I have several folks that I am responsible for,
13 yes.

14 Q. Okay. Currently does the bank if somebody
15 wants to buy stock, do you provide them with
16 any written documentation before they purchase
17 it?

18 A. I'm not aware at this point in time.

19 Q. Okay. Do you have seven directors at Horry
20 County State Bank, am I correct about that?

21 A. I believe that number is correct now. We've
22 got Tommy Grainger, Singleton Bailey.

23 Q. This is not a test.

24 A. Clay Brittain, Mike Addey -- yes, I believe
25 there are seven.

1 Q. Okay. Because it was a private sale of stock
2 did you think that Horry County State Bank was
3 required to provide any financial information
4 to the prospective buyer at the time you sold
5 the stock?

6 MR. McGEE: Object to the form,
7 foundation..

8 A. At the time I didn't think one way or the
9 other. It was me selling it personally.

10 Q. All right. But you would agree, would you not,
11 that Mr. Shelley would not have known who the
12 seller was based on the transaction that you
13 have already described?

14 A. That is correct.

15 Q. And it would be reasonable for him and other
16 people to believe that Horry County State Bank
17 was selling the stock?

18 MR. McGEE: Object to the form.
19 Calls for speculation.

20 A. The stock trade that I was aware of, we let
21 folks know that there was an individual that
22 was selling the stock, it was not Horry County
23 State Bank selling the stock.

24 Q. All right. I'm trying to grasp what reason the
25 bank would want to be in the business of trying

1 to sell individual stock through the bank
2 itself and their employees. Why would you want
3 to do that?

4 MR. McGEE: Object to the form.
5 Mischaracterizes the testimony.

6 A. I don't know the answer to that.

7 Q. Okay. That was a common thing as a customer or
8 stockholders to contact the bank and then the
9 bank's employees to then contact people who
10 might want to purchase stock; is that right?

11 A. With the trades that I was involved in, yes,
12 sir.

13 Q. You worked at other banks. Was that done at
14 other banks also?

15 A. The other banks that I was involved in were
16 larger commercial banks where the stock was
17 publicly traded.

18 Q. You had not worked an another bank similar to
19 Horry County State Bank where stock was traded
20 in the same manner that you described in this
21 lawsuit?

22 A. No, sir.

23 Q. I'm assuming when you first came the bank, who
24 told you that this was the manner by which you
25 were going to trade stock?

1 MR. McGEE: Object to the form.

2 Misstates or mischaracterizes prior testimony.

3 A. I don't know that anyone ever formally told me.
4 When asked how stock transactions were handled
5 I was told that they would -- either a customer
6 would contact us as in times past or that
7 Denise Floyd would be a contact person and
8 someone would let her know that stock was for
9 sale and that this is how we handle it.

10 Q. How many branches did y'all have in 2009?

11 A. In 2009 we would have had 13 I believe
12 including the operations center.

13 Q. Was it being handled the same way in all the
14 branches that we discussed?

15 A. To the best of my knowledge, yes.

16 Q. All right. Does the bank have a securities
17 division?

18 A. We have -- yes. We have an investment
19 counselor, yes.

20 Q. Okay. Do you have an investment counselor at
21 the bank that you are currently working at?

22 A. Yes.

23 Q. Did you have one in 2009?

24 A. Yes.

25 Q. What is that person's name?

1 A. The only one that's still with us is Mark
2 Buckner and he works out of our Loris office.

3 Q. He has a Series 7 securities license?

4 A. I don't know.

5 Q. Who did you have in 2009 at your office that
6 you are at now who had one then?

7 A. We didn't have one that was set in our office.
8 We had one that would flow between our office
9 and several offices.

10 Q. And what type of investment services were they
11 offering?

12 A. Annuities, brokerage accounts, mutual funds.

13 Q. Banks are apparently into that business now; is
14 that right.

15 A. Well, Mark Buckner is still with us.

16 Q. Sounds like you had more employees in that
17 division?

18 A. We did at one point in time, yes.

19 Q. But you didn't have an actual employee at your
20 bank --

21 A. At my branch, no, sir.

22 Q. I'm sorry. At your branch.

23 When is the last time you remember stock
24 being traded or sold in the manner in which you
25 described in this deposition? We are in 2013

1 now.

2 A. To the best of my knowledge probably 2010.

3 Q. So there have been no sales since 2010?

4 A. That not that I've dealt with personally, so I
5 don't know about throughout the bank.

6 Q. Okay. Like I have stock at Conway National
7 Bank but nobody wants to buy it, or nobody
8 wants to buy any stock in any community based
9 bank. Is that kind of your understanding
10 currently?

11 A. Yes, that's my understanding currently.

12 Q. Based on the current financial situation
13 around?

14 A. For small banks, yes, sir.

15 Q. Now, if Horry County State Bank was going to
16 sell to a private individual, are you aware of
17 how they would sell stock to a private
18 individual?

19 A. No, sir, I'm not.

20 Q. You are not aware of them giving out a
21 prospectus, making the prospective buyer sign a
22 prospectus before they enter into a
23 transaction?

24 A. When we did the initial stock offering when I
25 came to the bank, yes, there was a prospectus

1 and all of that was given out to anybody who
2 was interested in purchasing stock prior to or
3 at the time of purchase.

4 Q. But afterwards Horry County State Bank has not
5 sold to your knowledge any stock to a
6 private --

7 A. A company as a whole not to my knowledge, no.

8 Q. Okay. Thank you so much.

9 A. Thank you.

10 EXAMINATION

11 BY MR. MCGEE:

12 Q. I have a few questions. First of all in July
13 of 2009, that's when the thousand shares of
14 HCSB stock were sold to Mr. Shelley; is that
15 right?

16 A. My personal shares, yes.

17 Q. How many times before July of 2009 had you
18 spoken with Mr. Shelley about his interest in
19 wanting to purchase shares of HCSB stock?

20 A. I would say at least on two or three occasions.

21 Q. Okay. And at some on point can you recall what
22 he said to you when he expressed his interest
23 in buying the shares?

24 A. He expressed an interest in wanting to purchase
25 shares, if I heard of any shares that were

1 becoming available, because like I said on and
2 off for several years it was hard to get at the
3 shares, would I please notify him or have
4 someone notify him when stock became available.

5 Q. Okay. And would that be typical of people that
6 wanted to buy shares of stock, would they let
7 folks know at the bank that they dealt with
8 that if anybody heard of anything, get in touch
9 with them and let them know?

10 A. Yes. That's why we started that informal list
11 because there were so many of us, at one point
12 there were 15 folks just working out of my
13 office so we were trying so make sure that
14 nobody was left out. So as people would say we
15 would like to purchase stock, we would put
16 their name down and then we had a list to go
17 by.

18 Q. And the converse of that, if somebody had some
19 shares to sell they would also go to the bank
20 And say "Hey, if you know anybody that would
21 like to purchase some I have some"?

22 A. Yes.

23 Q. How did it come to pass that Mr. Shelley was
24 contacted in July of 2009? You said he had
25 talked to you two or three times. Had he

1 talked to you recently about that?

2 A. I don't recall the exact time, last time that
3 Mr. Shelley had mentioned that he was looking
4 to purchase stock but his name was on our list
5 as wanting to purchase, and I in June knew that
6 I had a loan coming up so in July I asked Jane
7 since she knew him best if she would contact
8 him.

9 Q. And Mr. Shelley had asked you to be on the
10 lookout or others to be on the lookout for
11 stock for him. Had he ever asked if he had
12 been skipped over or anything like that?

13 A. Yes. He mentioned before that he had heard
14 that there was some stock out there for sale
15 and how come he didn't get a phone call. But
16 again since different offices would be
17 contacted by their customers we wouldn't
18 always know when stock was out there available
19 unless it involved folks that we knew.

20 Q. So before July of 2009 Mr. Shelley had made it
21 clear that he wanted to be contacted if there
22 were any shares of stock available for him to
23 purchase?

24 A. Correct.

25 Q. And in July of 2009 Ms. Cannon to your

1 knowledge called Mr. Shelley to let him know
2 that there were 1,000 shares available?

3 A. Correct.

4 Q. And in the transaction involving Mr. Shelley
5 you were the owner of the stock, the 1,000
6 shares?

7 A. That's correct.

8 Q. And did you receive all of the proceeds from
9 the sale of that stock?

10 A. Yes, sir, I did.

11 Q. Did the bank or HCSB Financial Corp, did they
12 receive any commission fee or any other thing
13 of value as a result that sale to Mr. Shelley?

14 A. No, sir.

15 Q. You mentioned that there were some others that
16 may have been contacted by prospective
17 purchasers of stock or prospective sellers of
18 stock; is that right?

19 A. Yes, sir.

20 Q. And do you know everything that those other
21 employees either at your branch or at another
22 branch said to those prospective purchasers or
23 sellers?

24 A. I knew that it was standard in my office -- I
25 don't know the personal conversations. I know

1 it was standard procedure for us to make the
2 customer aware that it was not publicly traded,
3 this was a range of values based on trades that
4 we were aware of that had taken place and that
5 it boiled down to this is what someone is
6 willing to sell it for were you willing to
7 purchase it for that price.

8 Q. Okay. But you don't know what the substance of
9 those discussions were that anybody else had
10 with folks?

11 A. No, sir.

12 Q. And you don't know whether folks or other
13 employees talked with people on the phone or in
14 person or outside of the bank about those?

15 A. No. I know some of them was done by phone call
16 because I would be in the room when those calls
17 were taking place.

18 Q. Did Mr. Shelley at any time prior to July of
19 2009 ask you for any information concerning the
20 bank's financial status?

21 A. No, sir.

22 Q. Is it your understanding that he had purchased
23 some HCSB Financial Corp. stock in 2005?

24 A. Yes, that is any understanding.

25 Q. And I think you testified earlier shareholders

1 of HCSB Financial Corp. received an annual
2 report?

3 A. Yes, sir.

4 Q. And after July of 2009 are you aware of any
5 time that Mr. Shelley contacted the bank or
6 anybody to request financial information from
7 the bank?

8 A. No, sir, I'm not aware.

9 Q. Okay. If somebody let it be known that they
10 had 500 shares of HCSB Financial Corp. stock to
11 sell and you put them in touch or contact with
12 somebody who had expressed interest in
13 purchasing them, you wouldn't consider the bank
14 or the financial corporation to be the seller
15 in that case, would you?

16 A. No, sir.

17 Q. That's all the questions I have. Thank you.

18 FURTHER EXAMINATION

19 BY MR. CONNELL:

20 Q. The prospective purchaser, though, may not know
21 who the seller was under the circumstances you
22 have described; isn't that right?

23 A. That is correct. I've never had anyone ask me
24 who was actually selling the stock in the
25 transactions I was involved with.

1 Q. All right. Thank you, ma'am. I appreciate it.

2 FURTHER EXAMINATION

3 BY MR. McGEE:

4 Q. One more. Did Mr. Shelley ever ask you whose
5 stock he purchased, the 1,000 shares?

6 A. No, sir.

7 Q. And if he had asked you would you have told
8 him?

9 A. Yes, sir. I mean, it would be public
10 knowledge. The copy of the debit and credit
11 was something that he could have access to at
12 any point in time.

13 Q. And again, he had in fact purchased stock in
14 2005; right?

15 A. To the best of my knowledge, yes.

16 Q. So he could have asked somebody at the bank or
17 Denise Floyd or somebody if he wanted to know
18 who the seller of the stock was?

19 A. Yes, sir.

20 Q. That's all I have.

21 FURTHER EXAMINATION

22 BY MR. CONNELL:

23 Q. The purchase in 2005, was it in the same manner
24 in which he did it in 2009 or was it directly
25 from the bank itself through a prospectus?

1 A. I'm not sure. I wasn't involved in that
2 transaction.

3 Q. And you don't know whether the bank was selling
4 stock in 2005 and used a prospectus or is
5 whether or not it was done in same manner as
6 this sale was done?

7 A. That is correct. I'm not aware.

8 Q. And you haven't done any research on that?

9 A. No, sir. I have not.

10 Q. Okay. Thank you, ma'am.

11 MR. McGEE: That's it.

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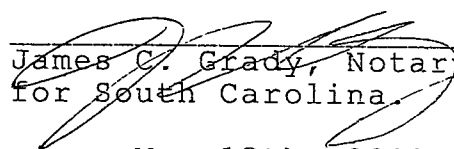
1 STATE OF SOUTH CAROLINA :
2 COUNTY OF HORRY : SS: CERTIFICATE

3 I, James C. Grady, a Notary Public for South
4 Carolina, do hereby certify that the within named
5 witness, DEBBIE GUYETTE, was by me first duly sworn
6 to testify the truth, the whole truth and nothing
7 but the truth in the cause aforesaid:

8 That the testimony then given was reduced by
9 me to stenotype in the presence of said witness,
10 subsequently transcribed onto a computer under my
11 direction, and that the foregoing is a true and
12 correct transcript of the testimony so given as
13 aforesaid.

14 I do further certify that this deposition was
15 taken at the time and place as specified in the
16 foregoing caption; and that I am not a relative,
17 counsel or attorney of either party, or otherwise
18 interested in the outcome of this action.

19 IN WITNESS WHEREOF, I have hereunto set my
20 hand and affixed my seal of office at Surfside
21 Beach, South Carolina this 8th day of January, 2014.

22 
23 James C. Grady, Notary Public
for South Carolina.

24 My Commission expires May 13th, 2019.

25 - - - - -

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Surfside Beach, SC 29587
843-238-5053

STATE OF SOUTH CAROLINA :
 : SS:
 COUNTY OF HORRY :

IN THE COURT OF COMMON PLEAS

ROBERT SHELLEY, a/k/a RDS
 INVESTMENTS, LLC, a/k/a ROS
 INVESTMENTS, LLC, and as Class
 Representative,

Plaintiffs,

vs.

HORRY COUNTY STATE BANK and
 HCSB FINANCIAL CORPORATION,

Defendants.

Case Number
 2012-CP-26-5546

Deposition of JANE CANNON, the Witness

herein, called for the purpose of Discovery
 Examination by the Plaintiffs, pursuant to the South
 Carolina Rules of Civil Procedure, taken before
 James C. Grady, a Notary Public for South Carolina,
 at the offices of Nelson, Mullins, Riley &
 Scarborough, 3751 Robert Grissom Parkway, Myrtle
 Beach, South Carolina, on Monday, December 16th,
 2013, commencing at 2:00 p.m..

Flowers & Associates
 P. O. Box 16105
 Surfside Beach, SC 29587
 843-238-5053

1 APPEARANCES:

2 ON BEHALF OF THE PLAINTIFFS:

3 GENE M. CONNELL, JR, Esq.
4 Kelaher, Connell & Connor
5 Suite 209 The Courtyard
6 1500 Highway 17 North
7 Surfside Beach, SC 29575

8 ON BEHALF OF THE DEFENDANTS:

9 T. WILLIAM MCGEE, III, Esq.
10 Nelson, Mullins, Riley & Scarborough
11 P. O. Box 11070
12 Columbia, SC 29211-1070

13 ALSO PRESENT:

14 Debbie Guyette.

15 - - - - -

16 STIPULATIONS

17 This deposition was taken pursuant to proper
18 Notice and pursuant to Circuit Rule 30, to be
19 used for the purpose of discovery and/or
20 evidence at trial, or for any other purpose
21 permitted by Circuit Rule 30; all objections
22 except as to the form of the question were
23 reserved until the time of trial.

24 - - - - -

JANE CANNON,

of lawful age, the Witness herein,
called for Discovery Examination by the
Plaintiffs, being by me first duly sworn,
as hereinafter certified, deposed and said
as follows:

EXAMINATION

BY MR. CONNELL:

Q. Ma'am would you tell me your name, please?

A. Jane Cannon.

Q. Okay. And you work for who?

A. Horry County State Bank.

Q. How long have you been working at Horry County
State Bank?

A. 11 and a half years.

Q. What is job there?

A. Head Teller.

Q. And which branch are you at?

A. The Oak Street office, 1701 North Oak Street.

Q. And prior to working at Horry County State Bank
what other banks had you worked at, if any?

A. I've worked at RBC Centura, Southern National,
BB&T.

Q. So you have pretty much been in banking
continuously since you left high school or

1 college?

2 A. I have been in banking for over 30 years.

3 Q. Okay. Have you ever been a securities trader,
4 stockbroker?

5 A. No, sir.

6 Q. Do you have a license as a stockbroker?

7 A. No, sir.

8 Q. Have you ever made a commission as a
9 stockbroker?

10 A. No, sir.

11 Q. All right. What knowledge do you have about
12 the sale of securities?

13 A. Not any.

14 Q. Have you been given any training at Horry State
15 Bank in regard to the sale of stock?

16 A. No, sir.

17 Q. Do you own stock yourself?

18 A. Yes.

19 Q. Is that in a 401(k) or in a retirement plan?

20 A. No, sir.

21 Q. Neither?

22 A. Neither.

23 Q. All right. So you have a personal brokerage
24 account?

25 A. No, sir.

1 Q. Okay. How is it you come to own stock?

2 A. Just purchased it through the Horry County
3 State Bank.

4 Q. So you are the owner of some stock in Horry
5 County State Bank?

6 A. Yes.

7 Q. How many shares do you own?

8 A. I have no clue.

9 Q. Okay. What is your educational background?

10 A. High school education.

11 Q. Where did you go to high school?

12 A. Knoxville, Tennessee. Graduated from high
13 school in Whiteville, North Carolina.

14 Q. Do you have any certifications as head teller,
15 taken any testing to be certified at a teller,
16 anything of that nature?

17 A. No, sir.

18 Q. All right. There is something called a
19 certified teller; isn't that right?

20 A. Not with Horry County State Bank.

21 Q. Is that with some other bank that you are aware
22 of?

23 A. I'm not aware of that.

24 Q. How did you come to be head teller?

25 A. With my years of experience as a teller.

1 Q. Okay. Do you know Robert Shelley?

2 A. Yes, sir.

3 Q. How long have you known him?

4 A. 30 years.

5 Q. And you said 30 years. You've worked at Horry
6 State Bank 11 years. Did you know him at other
7 banks?

8 A. No, sir. Through a mutual friends of mine.

9 Q. Tell me about that, about your knowledge of or
10 how you got to know him 30 years ago?

11 A. A friend of mine knew him that lived here at
12 the beach and that's how I met Robert, through
13 him.

14 Q. Okay. Would he have been a social friend or a
15 business acquaintance or what? You have known
16 him for 30 years in what context?

17 A. Through my friend as just a friend.

18 Q. Where would you see him besides the bank?

19 A. That's really all I seen him at really at the
20 bank.

21 Q. Okay. And who is the friend who you knew him
22 through?

23 A. Wendts Tate.

24 Q. And he is a bank customer, also?

25 A. No, sir.

1 Q. And he has been a friend of yours for a good
2 while I take it?

3 A. Yes.

4 Q. And was Mr. Tate an employee at the bank at one
5 time?

6 A. No, sir.

7 Q. Did you meet Mr. Shelley for the first time at
8 the bank or did you meet him outside the bank?

9 A. Outside the bank.

10 Q. In what setting did you meet him?

11 A. I can't recall.

12 Q. Okay. Do you go to the same church as Mr.
13 Shelley?

14 A. No, sir.

15 Q. Recently someone said what makes you think I
16 went to church.

17 All right. Now, as head teller what are
18 your duties and responsibilities?

19 A. I am the vault custodian. That means that the
20 tellers sell cash to me. They buy cash from
21 the vault and I do shipments, I order money.

22 Q. Okay.

23 A. And supervise the teller line.

24 Q. Does the head teller job include selling of
25 Horry County State Bank securities?

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843-238-5053

1 A. No, sir.

2 Q. Does the head teller job include soliciting or
3 calling people to see if they would like to buy
4 Horry County State Bank --

5 A. If I was asked to it I did.

6 Q. How many times have you been asked to do that?

7 A. One time.

8 Q. In the entire time you have been there only
9 once? You have to say yes or no for this man.

10 A. Yes.

11 Q. All right. And in what context were you asked
12 to do that, who asked you and when did it
13 occur?

14 A. It occurred in July of 2012.

15 Q. Okay.

16 A. And I got a call from Debbie, that he wanted
17 buy some stock and I called him to let me know
18 there was some stock for sale. I told him how
19 many shares and then how much it was a share.

20 Q. All right. So you had never called anyone
21 before about the sale of stock?

22 A. No, sir.

23 Q. And you said Debbie, are you speaking of --

24 A. Debbie Guyette.

25 Q. And she is working in your branch?

1 A. Yes, sir.

2 Q. What is her job there?

3 A. She is the branch manager, assistant
4 vice-president.

5 Q. Okay. Do you know why she asked you to call
6 Mr. Shelley?

7 A. Because she knew I was a friend of Robert and
8 she knew I knew him personally.

9 Q. Okay. And you had never done this before?

10 A. No, sir.

11 Q. And there wasn't a list of people who were
12 interested at that time to purchase stock that
13 you called on a regular basis?

14 A. No, sir. I didn't handle that.

15 Q. Is it my understanding that the only time that
16 you ever did that was at the request of the
17 branch manager in July of 2012?

18 A. Yes.

19 Q. How many shares were you told to tell Mr.
20 Shelley was available?

21 A. There was 1,000 shares.

22 Q. Okay. And did you tell Mr. Shelley who the
23 owner of the shares were?

24 A. No, sir, because I didn't know who it was.

25 Q. Did Miss Guyette tell you they were shares that

1 she owned?

2 A. No, sir.

3 Q. When did you learn that they were shares that
4 she owned?

5 A. When I did the cashier's check.

6 Q. And how did you come to learn that, how did
7 that happen?

8 A. Because I had to make the cashier's check
9 payable to whoever owned the stock.

10 Q. Okay. When you talked to Mr. Shelley on this
11 occasion did he advise you that he was
12 interested in purchasing the shares?

13 A. Yes.

14 Q. And did he ask whose shares they were?

15 A. I don't recall.

16 Q. What price did you tell him the shares were?

17 A. \$24.

18 Q. A share?

19 A. Yes.

20 Q. And do you know what the market price was for
21 the shares at that time period?

22 A. No, sir.

23 Q. Do you know whether or not it was more or less
24 than \$24?

25 A. I have no clue.

1 Q. Would Mr. Shelley come into the bank on a
2 regular basis?

3 A. Well, sometimes he would and then --

4 Q. All right. Was he a regular customer of the
5 bank?

6 A. He was our regular customer, right.

7 Q. And how was the transaction handled, was money
8 debited from his account or did he write a
9 personal check?

10 A. I debited his account.

11 Q. Did you do that at his request?

12 A. Yes, sir.

13 Q. All right. Did you give Mr. Shelley any
14 written information on the stock prior to the
15 sale?

16 A. No, sir.

17 Q. Did he ask for any?

18 A. No, sir.

19 Q. Did you forward him -- do you know what a
20 prospectus is? Do you know what the term
21 prospectus means? Maybe you don't know. Do
22 you know what that means?

23 A. No, sir.

24 Q. Other than the phone call did you provide any
25 written documentation to Mr. Shelley in regard

1 to the sale of the stock?

2 A. No, sir.

3 Q. And I think you said earlier that Ms. Guyette
4 wanted you to call because you were a friend?

5 A. She asked me to give him a call and tell him
6 there was some stock for sale, 1,000 shares and
7 it was \$24 a share.

8 Q. Was that an unusual request for her to ask you
9 to call?

10 A. No, sir.

11 Q. She never made that request of you before; is
12 that right?

13 A. On different things she had, you know, on
14 different occasions for different things. But
15 she asked me would I give Robert a call and I
16 said sure, I would be glad to.

17 Q. But not for the sale of stock apparently;
18 right? She never asked you to call and try to
19 sell stock in the past?

20 A. Not that I recall.

21 Q. Had any other bank employee asked you call
22 someone to try see if another person was
23 interested in the sale of stock?

24 A. No, sir.

25 Q. Does the bank have a list of people who wanted

1 stock in 2012, to purchase it?

2 A. Yes, sir.

3 Q. And who is in control of that list?

4 A. That list was in control of Ron Page.

5 Q. Had you ever seen the list?

6 A. No, sir.

7 Q. In July of 2012 can you give me what you know
8 about the financial health of the bank?

9 A. No, sir.

10 Q. No, sir, you don't know?

11 A. No, sir.

12 Q. All right. Have you seen the newspaper
13 accounts about Horry County State Bank's
14 financial health?

15 A. Yes, sir.

16 Q. And are you personally aware of whether or not
17 there were any financial problems with the bank
18 in 2012?

19 A. Not that I can recall.

20 MR. McGEE: Gene, I'm sorry. I don't
21 mean to interrupt. I think she said 2012. I
22 believe the sales were in July of 2009.

23 MR. CONNELL: Yeah. I know. I know
24 that. I thought may be she was in error when
25 she said that.

1 MR. McGEE: I just wanted to point
2 that out. I knew that previously. I thought
3 maybe -- anyway, we will go over that.

4 Q. So you have been saying 2012?

5 A. I'm sorry.

6 Q. So you now believe it's 2009?

7 A. It's 2009.

8 Q. All right.

9 A. Sorry about that.

10 Q. Okay. And how many sales were there, one or
11 two, or do you know?

12 A. There was only one sale.

13 Q. That you were involved in?

14 A. That's right.

15 Q. All right. And you said 2012 and I just let
16 you go because I thought you had another in
17 2012.

18 A. I apologies.

19 Q. You did not have another sale in 2012 to
20 someone else or to Mr. Shelley?

21 A. No, sir.

22 Q. All right. Did you give Mr. Shelley any
23 financial information about the bank in 2009?

24 A. No, sir.

25 Q. Were you present at this final transaction with

- 1 Mr. Shelley when the stock was turned over to
2 him?
- 3 A. I don't recall.
- 4 Q. How did he get the stock, do you know?
- 5 A. I'm sorry?
- 6 Q. How did he get it, how was it put in his hands?
- 7 A. I don't recall.
- 8 Q. You were not involved in that?
- 9 A. No, sir.
- 10 Q. Do you know whether or not Miss Guyette ever
11 talked to Mr. Shelley about the sale of the
12 stock?
- 13 A. I'm sure she did but don't recall when it was.
- 14 Q. Okay. And you say you're sure that she did.
15 Why do you say that?
- 16 A. Because he had to come to the bank to do the
17 transaction, you know, to get everything
18 settled and whatever.
- 19 Q. And you did not call him to come to the bank to
20 get -- to resolve the transaction?
- 21 A. No.
- 22 Q. So you only talked to him this one time about
23 the sale of the stock?
- 24 A. Right.
- 25 Q. Are you familiar with any of the rules

1 regarding the sale of stock such as stock from
2 Horry County State Bank?

3 A. No, sir.

4 Q. I'm just asking the question so don't be
5 offended. Did you get any money from the sale
6 of the stock?

7 A. No, sir.

8 Q. Or from making the phone call?

9 A. No, sir.

10 Q. And when Mr. Shelley made the -- did you make
11 the cashier's check out of his account?

12 A. Yes.

13 Q. All right. And did you do that upon his
14 authority?

15 A. Yes, sir.

16 Q. Did he come in and actually pick the check up
17 from you?

18 A. I gave the check to Debbie Guyette.

19 Q. When would you have done that?

20 A. Whatever date that I issued the cashier's
21 check.

22 Q. From the time you called Mr. Shelley until the
23 time this stock was transferred, how many days
24 was that?

25 A. I don't recall.

1 Q. Do you have any records that would show when
2 that was?

3 A. Not that I know of.

4 Q. In keeping the vault did you have any stock
5 certificates in the vault?

6 A. No, sir.

7 Q. Who is the secretary of the corporation who
8 would have had to sign the stock certificate,
9 do you know?

10 A. I would probably say Denise Floyd in the HR
11 Department.

12 Q. Do you know of any other stock purchases -- and
13 we agree it was 2009, is that right, when you
14 sold it, when the stock was sold?

15 A. Right.

16 Q. Do you know of any other stock purchases that
17 were made in 2009?

18 A. Not that I recall.

19 Q. Do you know the exact month that the stock was
20 sold in 2009?

21 A. July.

22 Q. All right. Now, I think you said that you
23 think that Miss Guyette?

24 A. Guyette.

25 Q. Miss Guyette handled the transaction herself,

1 is that what I'm understanding?

2 A. No, sir. She didn't handle the transaction
3 herself. I debited the account. I did the
4 cashier's check. I signed the cashier's check.
5 When I did that I gave her the cashier's check
6 to her and then she took care of it from there.

7 Q. All right. Were you there when they met?

8 A. No, sir.

9 Q. Do you know if they met at all?

10 A. I can't recall.

11 Q. Could Miss Guyette have just given the check
12 and the stock to a secretary or an assistant
13 and Mr. Shelley could have come in there and
14 got the stock and authorized the check to be
15 released, could that have happened?

16 A. I don't know how they handle the stock like
17 that.

18 Q. All right. Had Ms. Guyette ever sold other
19 stock that you are aware of?

20 A. No, sir.

21 Q. How about other officers, had other officers
22 sold stock in the same manner that we are
23 discussing in this case?

24 MR. McGEE: Object to the form. Go
25 ahead and answer if you know.

1 A. I don't recall.

2 Q. You don't ever recall making a call to sell
3 stock for another officer, though?

4 MR. McGEE: Object to the form. Go
5 ahead and answer if you know.

6 A. No, sir.

7 Q. Okay. And the cashier's check was for how
8 much?

9 A. 24,000.

10 Q. And the person who was being paid on the
11 cashier's check, what was that person's name?

12 A. Payable to?

13 Q. Yes, ma'am.

14 A. Deborah Guyette.

15 Q. Okay. Do you know what the process or
16 procedure is if a bank wants to sell some of
17 its stock to a prospective customer?

18 A. No, sir.

19 Q. My understanding is that you really had no
20 understanding about how stock is sold?

21 A. No, sir. I sure do not.

22 Q. And this was the only time this was ever done
23 to your knowledge in which you were involved?

24 A. Right.

25 Q. And you don't have any information nor can you

1 offer any testimony as to whether or not Mr.
2 Shelley ever met Miss Guyette in the sale of
3 the stock; is that right?

4 A. I'm sure that he did but it might have been
5 where I was not in the office. I could have
6 been out or I could have been gone to lunch.

7 Q. Okay. And when you say you're sure they did,
8 what evidence can you point me to to state that
9 you are sure that he met with Miss Guyette?

10 A. I'm sure he had to come in and meet with them,
11 you know, if you are buying stock. I think
12 anyone should have to come if you are
13 purchasing stock, you know, to get the
14 information and whatever. I don't handle that
15 so I'm not familiar with the stock stuff so I
16 can't -- you know.

17 Q. Who does handle that?

18 A. Denise Floyd.

19 Q. And she's in your branch?

20 A. No, sir. She's in the Loris office.

21 Q. Have you had any conversation with her about
22 this transaction?

23 A. No, sir.

24 Q. Have you had any conversations with other Horry
25 County State Bank employees, not with counsel

1 present but just amongst yourselves about this
2 transaction?

3 A. No, sir.

4 Q. Have you had any conversation with Miss Guyette
5 in regards to the sale of this stock? Do you
6 understand? Have you had any conversations
7 with her subsequent to --

8 A. Of what's going on now?

9 Q. Yes, ma'am.

10 MR. McGEE: Other than when I was
11 there.

12 A. No.

13 Q. So you have had no outside conversations in the
14 bank?

15 A. No, sir --

16 Q. -- about this?

17 A. No, sir.

18 Q. Do you know how many shares Miss Guyette owns
19 of Horry County State Bank?

20 A. No, sir, I do not.

21 Q. Okay. When you sold the stock in 2009 are you
22 aware of any investigations by any regulatory
23 authorities in regard to Horry County State
24 Bank?

25 A. Not to my knowledge.

1 Q. Do you know what I mean by regulatory
2 authorities, any State or any Federal
3 regulatory authorities?

4 A. Not to my knowledge.

5 Q. Are you aware of some involvement by the
6 regulatory authorities at this date at the
7 bank, are you not?

8 A. Yes, sir.

9 Q. When did that start?

10 A. I have no clue.

11 Q. Was it before or after 2009?

12 A. I can't answer.

13 Q. You don't know?

14 A. I don't know.

15 Q. What regulatory authorities are you aware of
16 that are currently involved with Horry County
17 State Bank?

18 A. I just thought that we were like under a
19 Consent Order.

20 Q. You don't know when that occurred?

21 A. No, sir.

22 Q. And that Consent Order was with which
23 regulatory authority, if you know?

24 A. I don't know.

25 Q. Did it require you to do anything different in

1 your job?

2 A. No, sir.

3 Q. And you had indicated earlier that other
4 officers of the bank -- and Miss Guyette is an
5 officer; is that right?

6 A. Yes, sir.

7 MR. McGEE: Object to the form.

8 A. Yes.

9 Q. What position does she hold as an officer of
10 Horry County State Bank?

11 MR. McGEE: Object to the form.

12 Q. You need to answer.

13 MR. McGEE: If I don't instruct you
14 not to answer, answer if you know, if you can
15 answer his question.

16 Q. It's confusing. I understand. People are
17 objecting and I am asking you questions.
18 Unless he tells you not to answer, if you know
19 the answer you need to tell us. If you don't
20 know the answer that's fine. The question on
21 the table is do you know what position Miss
22 Guyette holds in the bank and is she an
23 officer?

24 MR. McGEE: Object to the form. You
25 may answer if you know.

1 A. I had told you before she is the branch manager
2 and assistant vice-president but that's in the
3 branch itself. It's not like anything else,
4 you know.

5 Q. That's what I was asking. So you don't know
6 whether she's an officer in either the holding
7 company or the bank. You do know she is a
8 branch manager and a vice-president?

9 A. Yes.

10 Q. And you do understand the difference between
11 those two?

12 A. Right.

13 Q. All right. How long has she been an employee
14 at the bank, if you know?

15 A. She has been there the same amount as I have.

16 Q. Eleven years?

17 A. Eleven and a half.

18 Q. Now, has there been any discussion about Mr.
19 Shelley wanting to be on the Board of Directors
20 at the bank, do you know anything about that?

21 A. It was mentioned that he wanted to be on the
22 board but --

23 Q. Okay.

24 A. But me knowing anything?

25 Q. Yes, ma'am.

1 A. That's out of my category. I don't deal with
2 that.

3 Q. I understand. You said it was mentioned. Was
4 it just kind of a rumor that you heard or did
5 someone tell you that?

6 A. He told me that.

7 Q. When did he tell you that?

8 A. I have no clue.

9 Q. In what context did he tell you, was he at the
10 bank or were you at his house; do you know?

11 A. At the bank.

12 Q. All right. Was that in 2008, '09, '10 or do
13 you know?

14 A. I can't recall.

15 Q. Do you know whether or not Mr. Shelley and Miss
16 Guyette knew each other prior to this
17 transaction?

18 A. Yes, sir.

19 Q. They did know each other?

20 A. They knew each other.

21 Q. Tell me why you say that?

22 A. Well, he has been banking with us -- excuse me,
23 let me rephrase. He had been with us since
24 about 2002.

25 Q. Okay. And what evidence do you have that they

1 knew of each other, I mean did you see him go
2 into her office, did you see her talk to him at
3 the bank, did you see them go out to dinner?

4 A. I mean, Robert would come in and Robert would
5 let everybody know he was there: "I need you
6 to fix me a cup of coffee."

7 Q. Okay. He would have free coffee?

8 A. Yeah.

9 Q. Okay.

10 A. Right. Then he would come and just chitchat
11 with everybody.

12 Q. Okay. So he would go -- when he came into the
13 bank he would go by and talk to all of the
14 tellers?

15 A. We were all behind the same line of tellers and
16 we were all in a general conversation.

17 Q. Okay. And he would go -- Ms. Guyette's office
18 was where?

19 A. She was right across from me.

20 Q. Okay. And he would go in her office and talk
21 with her?

22 A. If she was there or if she didn't have a
23 customer.

24 Q. Okay. How many times a week did he come into
25 the office or to the bank?

1 A. I can't recall.

2 Q. More than -- most people come in no more than
3 one time a week, don't you think?

4 A. Sometimes maybe once or twice.

5 Q. Okay. Did he have loans through the bank
6 there, too?

7 A. Yes, sir.

8 Q. Did you take any records of your phone call
9 with Mr. Shelley --

10 A. No, sir.

11 Q. -- about the offer to sell?

12 MR. McGEE: Object to the form.

13 Q. In 2009 were there a lot of people selling
14 stock at Horry County State Bank?

15 A. I can't answer that because I didn't inquire on
16 that.

17 Q. Did you buy any in 2009?

18 A. No, sir.

19 Q. But you say you do own some?

20 A. Yes, sir.

21 Q. When did you buy yours?

22 A. Probably when I first came aboard.

23 Q. Back eleven years ago?

24 A. Uh-huh.

25 Q. All right. Are bank employees being given

1 shares of the bank as part of their either
2 retirement plan or --

3 A. No, sir.

4 Q. No. So in other words when you came on 11
5 years ago you had to pay for it?

6 A. I had to pay for what the stock was selling for
7 per share.

8 Q. Who told you what it was selling for and what
9 you had to pay for it?

10 A. Denise Floyd.

11 Q. How many shares do you own?

12 A. I don't know.

13 Q. How much did you pay for them?

14 A. I can't remember.

15 Q. I mean, are we talking about a few hundred
16 shares or a few thousand share, or do you have
17 10,000 shares?

18 A. No, sir. I don't have that many but I can't
19 remember how many shares that I do have.

20 Q. More than 500?

21 A. I've got, yeah, over 500.

22 Q. More than a thousand?

23 A. I think it's less.

24 Q. Ever tried to sell your shares?

25 A. No, sir.

- 1 Q. What do you think they are worth currently?
- 2 A. I have no idea.
- 3 Q. Less than \$24 a share do you think?
- 4 A. I can't answer that. I don't know.
- 5 Q. Are you holding yours in a regular account or a
- 6 retirement account?
- 7 A. Neither.
- 8 Q. In your personal name?
- 9 A. Yes, sir. Mine and my husband's.
- 10 Q. Now, I get the impression you said that Robert
- 11 Shelley came in and he kind of made a grand
- 12 entrance, is that right?
- 13 A. Yes.
- 14 Q. And wanted to be waited on I take it and paid
- 15 attention to, is that you are kind of alluding
- 16 to?
- 17 A. Yeah. Robert was Robert.
- 18 Q. All right. Wanted a cup of coffee. How many
- 19 accounts did he have at the bank besides the --
- 20 I assume this is a checking account. Did he
- 21 have a savings accounts, also?
- 22 A. No, sir.
- 23 Q. Okay. And was he making payments on real
- 24 estate related mortgages, too?
- 25 A. Yes, sir.

- 1 Q. Does he still come in the bank?
- 2 A. No, sir.
- 3 Q. Is he still a customer?
- 4 A. No, sir.
- 5 Q. When did he quit being a customer?
- 6 A. I would probably say over six months ago or
- 7 longer.
- 8 Q. Okay. And did he close all of his accounts out
- 9 or do you know how that happened?
- 10 A. He closed his accounts out.
- 11 Q. All right. And do you know what caused him to
- 12 close the accounts out?
- 13 A. Yes, sir.
- 14 Q. Okay. Tell me?
- 15 A. Probably the situation right here.
- 16 Q. And you say probably. What makes you think it
- 17 was that and not something else?
- 18 A. Probably didn't want to face us.
- 19 Q. All right. And why do you say he didn't want
- 20 to face you?
- 21 A. I don't know.
- 22 Q. Do you believe he's embarrassed about this
- 23 situation?
- 24 A. Knowing Robert, no. I don't think so.
- 25 Q. Do you believe that this transaction -- when I

1 say transaction I'm talking about the sale of
2 this stock. Do you believe it was handled
3 appropriately?

4 A. Yes, sir.

5 Q. Had you ever in the past prepared cashier's
6 checks from a customer's account to purchase
7 stock?

8 A. Not that I can recall.

9 Q. Okay. Would you call this an unusual
10 transaction?

11 A. No, sir.

12 Q. Okay. And what do you have to gauge it on if
13 you have only done it one time? Do you see
14 what I mean? My understanding is you only --
15 only one time have you taken money out of a
16 customer's account for sale of stock, is that
17 right, that you can remember?

18 A. Well, I have, you know, debited customers
19 accounts for cashier's checks but it was for
20 something else, you know, like paying a bill or
21 something like that.

22 Q. I understand. But for the sale of Horry County
23 State Bank stock, have you ever done that
24 before?

25 A. Not that I recall.

1 Q. All right. And do you believe you would have
2 remembered that?

3 A. Yes. Let me -- Yes sir, I have done it.

4 Q. Okay. You have. Tell me in what context?

5 A. When our operations people were upstairs over
6 our office and our HR Department was up there,
7 our CEO, and when people were selling stock I
8 would have to do cashiers, checks for Denise
9 Floyd. But the people that I did them for I
10 can't tell you because that's been -- they have
11 been removed from up there probably six or
12 seven, eight years they have been gone.

13 Q. Okay. When this transaction was completed did
14 you actually type on the stock certificate?

15 A. I don't do that.

16 Q. Who would have done that, do you know?

17 A. I don't know. The paperwork would have been
18 sent to Denise Floyd so she would have been the
19 one to handled that.

20 Q. So how about Singleton Bailey, who is that?

21 A. On the board.

22 Q. The stock certificates appear to show a company
23 called ROS Investments, LLC. Do you know
24 whether or not that's a typo or not?

25 A. ROS?

1 Q. Yes, ma'am.

2 A. His was RDS.

3 Q. Yes, ma'am. And if there was one that has a
4 ROS Investment, LLC as the owner, that would
5 have been a typo?

6 MR. McGEE: Object to the form,
7 foundation.

8 Q. Or do you know?

9 MR. McGEE: Go ahead and answer if
10 you know.

11 A. I have no clue.

12 Q. There are actually two separate stock
13 certificates. There is one dated July 27th,
14 2009 and one dated July 23rd, 2009. Did you
15 know that?

16 A. I knew that he purchased the stock in July but
17 I didn't know anything about the other one. I
18 don't know anything about that one.

19 Q. All right. The transaction you know about was
20 that 1,000 shares or the 3500 shares?

21 A. The 1,000 shares.

22 Q. Okay. So if I showed you for one for 3500
23 shares, you don't know how that came about?

24 A. No.

25 Q. You were not involved in that?

1 A. No, sir. I'm not involved in that. I can't
2 answer that.

3 Q. Okay. And you never saw those certificates;
4 right?

5 A. No, sir.

6 Q. Now, when you debited the account -- I've seen
7 this before in other banks. If you debit the
8 account and I tell you I'm the customer and I
9 tell you over the phone, do you write a piece
10 of paper that says per customer's request or
11 per telephone request and put that in the
12 records?

13 A. Sometimes I do. Sometimes I don't.

14 Q. In this particular transaction have you gone
15 back to look to see if you put on the debit per
16 customer's request when you took the money out
17 of Mr. Shelley's account?

18 A. No. It's not on there.

19 Q. You seem like you are --

20 A. No. No.

21 Q. -- pretty sure?

22 A. If I approved it, you know, filled out the
23 universal debit because it was done in-house,
24 he did not give a personal check, and I wrote
25 on the description like HCSB shares 1,000.

1 Q. You did not have any written authorization from
2 Mr. Shelley to debit his account for the
3 payment of the shares?

4 A. Just over the phone.

5 Q. All right. And you did not write on the debit
6 sheet approval from Mr. Shelley via telephone
7 conference?

8 A. No, sir.

9 Q. Sometimes you will do that, sometimes you
10 won't?

11 A. I have done so much for him over the phone,
12 stuff like that, and I knew who I was talking
13 to.

14 Q. All right. Have you gone back and looked at
15 the records to see how the debit was handled?

16 A. Yes, sir.

17 Q. And you did not see that in the records; is
18 that right?

19 A. Right.

20 Q. Okay. And do you know how the 3500 shares were
21 paid for?

22 A. No, sir. I'm sorry. I do not. I'm not
23 involved in that. I have no clue.

24 Q. That's all right.

25 Now, besides having the conversations with

1 Debbie with regards to this transaction have
2 you had any conversations with any other bank
3 management concerning this transaction, I'm
4 talking about the one we are here about today?

5 A. No, sir.

6 Q. Has any investigator asked you about this
7 transaction from the bank or any Federal or
8 State agency?

9 A. No, sir.

10 Q. Has any managerial employee asked you about
11 this case or who discussed it with you, your
12 involvement in it?

13 A. No, sir.

14 Q. When did you first learn that this case was
15 ongoing, how long ago was that?

16 A. Probably three months ago.

17 Q. Okay. You didn't know about that before?

18 A. No, sir.

19 Q. Who told you that three months ago?

20 A. I -- I don't recall.

21 Q. Okay. Do you recall the circumstances by which
22 you first learned of it?

23 A. I can't say if it was Debbie or who that told
24 me but it was someone -- had to be someone from
25 my branch. I didn't hear it from somebody

1 else.

2 Q. When Miss Guyette asked you to call Mr.
3 Shelley, whose stock did you think it was you
4 were to call him about?

5 A. I didn't have a clue. I didn't know whose it
6 was. I didn't ask.

7 Q. Okay. And you hadn't been asked by any other
8 bank employee to do that before; is that right?

9 A. I'm sorry?

10 Q. You hadn't been asked by a bank employee to
11 call someone about the sale of stock; is that
12 right?

13 A. No, sir.

14 Q. You actually remember the conversation you had
15 with Mr. Shelley or are you going by your
16 collective memory, if you will?

17 A. I just called Robert and told him. I said,
18 "Robert, this is Jane at the bank. We've got
19 some stock for sale if you are interested." I
20 can't remember word for word because that was
21 over four years ago. And I told him how many
22 shares and how much it was.

23 Q. All right.

24 A. And wanted to know if he was interested.

25 Q. Was there ever a list of people y'all kept at

1 the bank who are interested in purchasing
2 stock?

3 A. The list is kept but it was not behind the
4 teller line where we would see it. If someone
5 came in, you know, they would send them to
6 Debbie or Ron.

7 Q. Since you seem to know about the list, where
8 was it kept?

9 A. In Ron Page's desk.

10 Q. Can I ask who Ron Page is?

11 A. City Exec.

12 Q. Had you ever seen the list?

13 A. I don't recall.

14 Q. Have you ever had anybody ask to be put on the
15 list?

16 A. I don't recall.

17 Q. Had you ever gone and gotten a list at the
18 request of a customer or at the request of
19 another executive at the bank?

20 A. No, sir. I would send them to either one of
21 them.

22 Q. Okay. Because the list was kept under lock and
23 key or did you say --

24 A. I mean, I didn't -- I didn't know where the
25 list was kept. I didn't plunder or anything

1 like that. I would just turn it over to Ron or
2 Debbie because I don't -- you know.

3 Q. Had you ever had anybody else inquire of you
4 about the sale of or purchase of Horry County
5 State Bank stock, another employee, another
6 customer, a telephone call or anything of that
7 nature?

8 A. If I had, that I recall, it was sent to Denise,
9 the HR Department.

10 Q. Okay. Did Mr. Page or Miss Guyette ever
11 involve themselves with the sale of Horry
12 County State Bank stock and other third
13 parties?

14 A. I can't recall.

15 Q. You are not aware of any other transactions at
16 this time; is that right?

17 A. I have no clue.

18 Q. The stock that you are currently holding, do
19 you have any intention to sell the stock at
20 this time?

21 A. You're talking about My personal stock?

22 Q. Yes, the stock you said you had.

23 A. No, sir.

24 Q. Do you like your -- I know your boss is sitting
25 here. Kind of awkward but do you like your

1 job, do you like where you work?

2 A. Oh, yeah.

3 Q. And what do you like about it?

4 A. I just -- I like people. I just like people.

5 Q. All right. I mean, why RBC or BB&T, why do you
6 like Horry County State Bank?

7 A. I have been with Ron Page for 22 years, so
8 wherever he goes I go. We go with a package
9 deal.

10 Q. And what banks had he been at, BB&T and RBC?

11 A. He started out with Southern National.

12 Q. So you came with him?

13 A. I was here at the beach and he came from
14 Lumberton down here, but we have been together
15 ever since.

16 Q. But these other banks that you had worked at he
17 worked at also?

18 A. Yes, sir.

19 Q. So normally when he would switch to another
20 bank you would go with him?

21 A. Yes, sir.

22 Q. And how long has that been going on?

23 A. 22 years.

24 Q. That's some loyalty. Was it because you just
25 like working with him or was it because you

1 were going to get more money to go to the next
2 stop?

3 A. I just like working with him.

4 Q. Let me show you theses stock certificates and
5 see if you have seen them. I'll throw them out
6 and you can look at them.

7 MR. McGEE: Gene, I had them marked
8 from Robert's deposition, if you want to use
9 them. It doesn't matter unless you want to
10 mark them. You don't have to.

11 A. No.

12 Q. And the only paperwork you would be able to
13 verify is just the transfer of the \$24,000?

14 A. Right.

15 Q. Because that has your signature on that?

16 A. Right. That's the only thing.

17 Q. All right. Thank you.

18 A. You're welcome.

19 EXAMINATION

20 BY MR. McGEE:

21 Q. I have just a few questions, Miss Jane.

22 This stock sale was sometime in July of
23 2009; right?

24 A. Right.

25 Q. And before you called Mr. Shelley to see if he

1 still wanted to purchase some shares of HCSB
2 Financial Corp. had you ever spoken with him
3 about his desire to purchase some shares?

4 A. No, sir.

5 Q. Had he ever mentioned to you that he was in the
6 market to buy shares of HCSB Financial Corp?

7 A. He had mentioned it.

8 Q. Do you recall when he mentioned it to you?

9 A. No, sir.

10 Q. Or how many times?

11 A. No, sir.

12 Q. Do you recall what he said to express his
13 interest in the shares?

14 A. That he was just interested in, you know,
15 buying some shares of the stock.

16 Q. So when you called Mr. Shelley in July of 2009
17 do you recall what specifically you said to
18 him?

19 A. I just told him, "Robert, this is Jane at the
20 bank. There is some stock for sale at the
21 bank. Are you interested?" And I said, "It's
22 1,000 shares and it's \$24 a share."

23 And he said yes.

24 Q. Do you know if Mr. Shelley had asked anybody
25 else at the bank to notify him if shares became

1 available?

2 A. Not that I can recall.

3 Q. And do you know whether the bank maintains a
4 hard copy list now of people that are
5 interested in buying shares or whether it's
6 done electronically?

7 A. I'm sure there is a list.

8 Q. And when you say that Mr. Shelley asked about
9 being on or said something about wanting to be
10 on the board of the bank, do you recall what he
11 said?

12 A. No, sir.

13 Q. Okay. I'm going to show you what's been --

14 MR. MCGEE: Do you mind if I use the
15 Shelley Exhibit? It's just got the sticker on
16 it.

17 MR. CONNELL: No. No problem.

18 Q. I'm going to show you what's been marked as
19 Exhibit 2 to Mr. Shelley's deposition. Have
20 you ever seen that document before?

21 A. Yes, sir.

22 Q. Can you tell me what that is?

23 A. That is a universal debit that's done in-house
24 in the bank, that is if someone comes in, if
25 they don't have a personal pre-encoded check to

1 use, we can use this to debit their account to
2 take money from their account.

3 Q. Was this specific universal debit, do you know
4 who filled that out?

5 A. Debbie filled this out. I wrote that and I
6 signed it right there.

7 Q. When you say Debbie filled this out you are
8 talking about the account number?

9 A. Yes.

10 Q. When you say I signed this?

11 A. Right there.

12 Q. It says "Stock 1,000 shares HCSB"?

13 A. Right.

14 Q. And at the very top right corner it says?

15 A. Jane Cannon.

16 Q. And that's your name obviously?

17 A. Right.

18 Q. And when you talked to Mr. Shelley on the
19 telephone and told him that there were 1,000
20 shares of stock available at \$24 a share what
21 did he say?

22 A. He said fine, he would take it.

23 Q. Okay. And did he then give you permission --
24 did you ask him how he wanted to pay for it?

25 A. I asked him did he want me to debit his

1 account? Because he normally doesn't come in
2 with checks. Normally we just debit his
3 account, so he just told me to debit his
4 account.

5 Q. And based on his instructions or authority is
6 that why you prepared Exhibit 2?

7 A. Right, this is why I prepared this, in order to
8 purchase the stock.

9 Q. I understand.

10 A. Out of his account.

11 Q. All right.

12 A. To purchase the cashier's check.

13 Q. And then looking at Exhibit 3 to Mr. Shelley's
14 deposition, have you seen that before?

15 A. Yes, sir. I did the cashier's check.

16 Q. Okay. And is that -- who is the remitter,
17 whose account is that coming from?

18 A. Robert Shelley.

19 Q. And who is it written to?

20 A. Deborah Guyette.

21 Q. And in what amount?

22 A. \$24,000.

23 Q. And does that reflect the total purchase price
24 of 1,000 shares of stock by Mr. Shelley from
25 Miss Guyette?

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1 A. Yes, sir.

2 Q. Miss Cannon, are you aware of -- I think Mr.
3 Connell may have asked you this earlier -- did
4 you get a commission or a fee for making the
5 telephone call to Mr. Shelley?

6 A. No, sir.

7 Q. Are you aware of whether the bank or the
8 holding company received a fee or commission on
9 this transaction?

10 A. No, sir.

11 Q. Okay. That's all I have.

12 MR. CONNELL: Could you give her
13 back the one in your right hand, right there?

14 FURTHER EXAMINATION

15 BY MR. CONNELL:

16 Q. Did you fill out the cashier's check, ma'am?

17 A. Yes.

18 Q. And do you know whether or not Mr. Shelley to
19 your personal knowledge ever saw the cashier's
20 check?

21 A. I can't answer that.

22 Q. All right. Do you see his signature on the
23 back of the cashier's check?

24 A. No.

25 Q. Okay.

1 A. His signature wouldn't be on the back.

2 Q. I understand. Does his initials appears on the
3 cashier's check or on the debit form?

4 A. No, sir.

5 Q. Is there any indication that the debit was done
6 at his request?

7 A. Yes, sir.

8 Q. Okay. Tell me where. I understand. I know
9 what you said. Can you show us any proof,
10 written proof that he asked for that?

11 A. No, sir.

12 Q. All right. Thank you, ma'am.

13 MR. McGEE: That's all.

14 - - - - -

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P. O. Box 16105
Surfside Beach, SC 29587
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STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF HORRY	)	2012-CP-26-5546
	)	
	)	
	)	
Robert Shelley	)	)
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
Horry County State Bank and	)	)
HCSB Financial Corporation	)	
<u>DEFENDANT</u>	)	March 4, 2014
		Conway, South Carolina

B E F O R E:

THE HONORABLE LARRY B. HYMAN, JR., JUDGE.

A P P E A R A N C E S:

GENE MCCAIN CONNELL, JR., ESQ.
Attorney for the Plaintiff

T. WILLIAM MCGEE, ESQ.
Attorney for the Defendant

KESHIA REED
Official Court Reporter

I N D E X

(WHEREUPON, there were no witnesses called.)

1 THE COURT: All right, number six Shelley vs.
2 Horry County State Bank.

3 MR. MCGEE: Yes, Your Honor. Billy McGee on
4 behalf of the defendants.

5 THE COURT: All right, Mr. McGee.

6 MR. MCGEE: Your Honor, I filed a memorandum. I
7 did just a one sheet timeline might be a little bit easier
8 to follow.

9 THE COURT: All right.

10 MR. MCGEE: Your Honor, I've given a copy to ---

11 THE COURT: Who represents, Mr. Martin -- I
12 mean, Mr. Shelley?

13 MR. CONNELL: I do, Your Honor.

14 THE COURT: Okay, Mr. Connell. All right.

15 MR. CONNELL: I'm here to aggravate you again
16 today.

17 THE COURT: Okay. All right.

18 MR. MCGEE: Your Honor, again Billy McGee on
19 behalf of the Defendants Horry County State Bank and HCSB
20 Financial Corp. Judge, this is a case in which the
21 Plaintiff Robert Shelley seeks reimbursement from the
22 Financial Corp and the bank for stock that he purchased in
23 July and October of 2009, which has gone down in value
24 since then. We see this nothing more as just an effort to
25 recoup his lost investment, Judge. And we would submit

1 that none of the claims asserted in the amended complaint
2 have any merit. There's no genuine issue of fact and
3 summary judgment should be granted. Your Honor, I will
4 again we've submitted the memorandum for the Court's
5 consideration.

6 THE COURT: I've read it.

7 MR. MCGEE: But I just wanted to run through the
8 background facts very quickly. Essentially, Mr. Shelley
9 purchased stock in HCSB ---

10 THE COURT: Three times.

11 MR. MCGEE: --- Financial Corp three times.
12 Once was in 2005 ---

13 THE COURT: Thrity-five, 24 and \$18 a share.

14 MR. MCGEE: Yes, sir, okay. That one is not
15 subject to this matter.

16 THE COURT: Not the first one.

17 MR. MCGEE: The only reason I raise it is
18 because the way that it was purchased was followed ---

19 THE COURT: Essentially, the same way.

20 MR. MCGEE: Exactly, yes, sir. And after he
21 purchased in mid 2005, he would have received the bank's
22 annual report each year following that and Mr. Shelley
23 testified as to that. And I would just note, Judge, as I
24 move through this, if there's any questions about
25 citations for authority, I don't want it to appear like

1 that I'm providing this as an argument. I can certainly
2 cite for Mr. Shelley's deposition as to any of these. The
3 second purchase of stock from -- by Mr. Shelley was July
4 17, 2009. I handed up to Your Honor a copy of the
5 deposition exhibits from Mr. Shelley that shows the debit
6 that occurred on July 17, 2009. The cashiers check that
7 went to the seller of stock who was Debra Guyette on
8 September -- excuse me on July 17, 2009. And then the
9 third page is Ms. Guyette's account statement that shows
10 that that check was negotiated and deposited.

11 THE COURT: Let me ask Mister -- hold your
12 thought, Mr. McGee.

13 MR. MCGEE: Yes, sir.

14 THE COURT: Let me ask Mr. Connell one thing
15 here. Mr. Connell, what are the significant issues that I
16 saw in this case was the shares that Mr. Shelley bought
17 that he allege to have been owned by Ms. Guyette who was
18 head teller at the bank I believe. And he had been asking
19 her about shares and she said there's a thousand shares
20 for sell and they're \$24 a share. And he bought that
21 thousand shares. And one of his allegations is that she
22 failed to divulge the fact that they were her shares; is
23 that right?

24 MR. CONNELL: Yes, sir.

25 THE COURT: But I look here at the cashiers

1 check dated 7-17-2009 for \$24,000. And it shows the
2 remitter being Mr. Shelley and the payee being
3 Ms. Guyette. How did that check get issued if the -- it's
4 payable to Ms. Guyette. I mean, didn't he know that ---

5 MR. CONNELL: No, Your Honor, and I'll tell you
6 ---

7 THE COURT: How did that work?

8 MR. CONNELL: Here's what happened, Mr. Shelley
9 got a call from the bank. He got a call from Jane Cannon,
10 who was a teller, and said we're selling some stock would
11 you like to buy some. Ms. Cannon was not the seller.
12 Ms. Guyette was the vice president of the bank, she was
13 selling. And Mr. Shelley's testimony is is that they knew
14 I had money in my account and they transferred the money
15 directly out of my account by this cashiers check, which
16 he never saw.

17 THE COURT: Okay, very good. Thank you. All
18 right, go ahead, Mr. McGee.

19 MR. MCGEE: Yes, Your Honor, and just to
20 clarify, what happened in 2005 before Mr. Shelley
21 purchased the first group of stock is that Mr. Shelley
22 said do y'all have any stock for sell in the Financial
23 Corp. He was told, no, we're not selling. But if we hear
24 of anybody, any shareholder that is going to sell their
25 shares, we can let you know. And he said, yes, please do

1 let me know if you hear of any stock for sell. So it's
2 not like that they're cold calling, Mr. Shelley. They're
3 doing this at his request certainly not arm twisting him.
4 And none importantly ---

5 THE COURT: That was back in 2005.

6 MR. MCGEE: Back in 2005. And so they're the
7 ones that -- and so Mr. Shelley is the one that asked to
8 be contacted about this. The Financial Corp nor the bank
9 ever sold Mr. Shelley any shares. These are for example
10 if I own Microsoft stock and wanted to sell it to Drew or
11 Mr. Connell, I would call him up and say I got some
12 Microsoft stock to sell you would you like to buy it,
13 that's essentially how it was.

14 Your Honor, so we're at the second purchase here
15 July 17, 2009, just as with the first purchase, he was --
16 Mr. Shelley was contacted said -- asked if he wanted to
17 buy the shares. He said, yes. He said debit my account.
18 The account was debited.

19 Pursuant to Mr. Shelley's deposition testimony,
20 he said I ask Ms. Cannon, who was the head teller that
21 contacted him, do you know who is selling the stock. And
22 she said, no, I don't know. Her deposition she said I
23 didn't know. Mr. Shelley says I don't know whether she
24 knew or not, so there's no dispute as to that.

25 July 17, 2007, that sell goes through it is

1 done. He owns that stock on that day. Mr. Shelley
2 testified that at some point after either that sell or
3 October 2009, he can't remember which one. After one of
4 those two times, he ask Ms. Guyette do you know who sold
5 me my stock. She said no. He can't say which stock he's
6 talking about July 2009 or October of 2009. Ms. Guyette
7 according to him says, no, I don't know who sold you that
8 stock. Remember now this is after the sell of the July
9 2009 stock.

10 THE COURT: But isn't it also after the October
11 of 2009 ---

12 MR. MCGEE: He says he doesn't know. He says I
13 don't know if it was after this one or that one. Ms.
14 Guyette sold him the ---

15 THE COURT: At any rate he says it was after.

16 MR. MCGEE: Exactly. The July 2009 stock was
17 sold by Ms. Guyette to Mr. Shelley. The October 2009 sell
18 was not from Ms. Guyette.

19 THE COURT: Isn't that significant, Mr. Connell,
20 that he actually came back and bought more stock?

21 MR. CONNELL: No, Your Honor, because he was
22 contacted the same way. And you have to understand how
23 Horry State Bank was selling the stock. What they were
24 doing was is the bank was actually procuring -- not
25 procuring, but they were in the business of trying to sell

1 vast quantities of the stock that they got ---

2 THE COURT: To raise capital.

3 MR. CONNELL: Yes, sir. And what's significant
4 in this case is that Horry County State Bank had a code of
5 conduct for its employees, which I'll give to you. It's
6 on their website. And it says that will act in good faith
7 and fair dealing. And we will not have any conflicts of
8 interest and will always tell you the truth. And in this
9 situation, Mr. Shelley was contacted twice once in --
10 we're talking about five years later in 2005 he did buy
11 some stock. And in 2009 he bought some stock when they
12 called him -- when the teller called him and said do you
13 want to buy some and then in October of 2009. Now, what's
14 very interesting is that, of course, they didn't tell him
15 about the banks condition as we all know today. The
16 bank's in terrible condition. And they didn't tell him
17 about the Form 10Q, which is -- this was in the height of
18 the recession.

19 THE COURT: But wasn't he getting the financial
20 audits and reports that we all get if you have bank stock.
21 You know, you get them -- I can't remember whether it's
22 quarterly or yearly, but you do get them.

23 MR. CONNELL: They argue that he did get those.
24 We don't take a position about that. We say that under
25 the code of conduct ---

1 THE COURT: But shouldn't he have understood
2 that you buy stock \$35 and you buy it at \$24 and then you
3 buy it at \$18, that something's going down the tube?

4 MR. CONNELL: Your Honor, that's an issue of
5 fact for a jury to decide as to what -- especially, in
6 light of the fact that Ms. Guyette's a vice president and
7 she's selling her stock at a value that's going to fall
8 immediately. And when the stock starts plummeting
9 immediately after the second sell in October of 2009. I
10 mean, so -- and the other thing is the bank is in the
11 business of actually finding out who is selling stock and
12 taking it in and trying to give it to someone else. And,
13 of course, the reason why they want to do that is what,
14 Your Honor, says is they want to raise capital. You know
15 what the stock is worth today?

16 THE COURT: Probably \$5.

17 MR. CONNELL: Ten cents a share right now.

18 THE COURT: Glad, I didn't buy any at \$5 then.

19 MR. CONNELL: You could have bought all you
20 wanted at \$5. Ms. Guyette, actually concealed her
21 identity. We think this a little clearer in the

22 deposition what Billy says in between the July and October
23 2009, we think that the testimony is susceptible to that
24 inference that he said who's selling the stock. And she
25 didn't want to tell him because at that time it was going

1 right down the tube.

2 THE COURT: But wasn't it after. I mean, even
3 under taking it in the like most favorable to your client,
4 I mean doesn't he acknowledge that that exchange was after
5 he had purchased the stock three times?

6 MR. CONNELL: After the second -- after -- I
7 think the testimony is in the like most favorable to the
8 plaintiff sometime between July 17th and the October 2009,
9 that's when that took place.

10 THE COURT: But it was after Ms. Guyette's stock
11 had been sold.

12 MR. CONNELL: After her stock had been sold,
13 after the first stock ---

14 THE COURT: I mean, after the fact before he
15 made the inquiry.

16 MR. CONNELL: Right. But, Your Honor, you got
17 to look at it this way, you're sitting at home and
18 somebody from the bank calls you and says, hey, would you
19 like to buy some stock. Who do you think owns that stock
20 when they call you that and call you and say that. You
21 know that they think they have a good deal. And as a
22 result of that, that's why he bought it to begin with,
23 that was five years -- almost five years after the 2005
24 initial purchase. And, of course, if you look at the 10Q
25 for the month prior to the sell of the stock, it says

1 something to the effect quote this bank has significant
2 problems with loans. We're going to have a federal order
3 the stock is going to drop, that's in 2010. There may be
4 30 million dollars worth of bad loans. And interestingly
5 enough, there were no sells in stock after 2010. None.
6 These were some of the last transactions that were done.
7 And so, Your Honor, we -- let me put this on the record.
8 I'll show you this. This is their -- this is on their
9 website. This is their -- what they call a duty of the
10 code of conduct. And the code of conduct that they argue
11 or that they say is is that we'll deal fairly with a
12 customer. There will be no concealment, that's under fair
13 dealing in section two. They also say in section three
14 honest and candid conduct with the costumers. And section
15 three conflict of interest they'll be no process over
16 transactions. And then in section four personal
17 investments if we have confidential information we're
18 going to disclose that. We say, Your Honor, that the code
19 of conduct required them to tell Mr. Shelley what was
20 going on especially in light of the fact that Ms. Guyette
21 was a vice president and she had a teller ---

22 THE COURT: That's kind of what Martha Smith --
23 I mean, Martha Stuart got in trouble for; isn't it?

24 MR. CONNELL: It's a question of fact.

25 MR. MCGEE: Your Honor, please if I may, first

1 of all, HCSB and the bank, there's no dispute whatsoever
2 that they were not the sellers of this stock. Mr. Shelley
3 admits that. Mr. Shelley had purchased the stock in the
4 same way in 2005. He knew that he didn't buy it from the
5 bank and Financial Corporation. There is ---

6 THE COURT: Well, what was then the -- what was
7 then the head teller and the vice -- what was their role?

8 MR. MCGEE: Mr. Shelley had previously asked if
9 you hear anybody that's selling any stock call me. And so
10 they called Mr. Shelley to say there is some stock here
11 for sell if you want it. If you don't want it, you don't
12 have to have it. In other words, his testimony was that
13 they said there's two thousand shares if you want it. He
14 said, no, I only want one thousand, okay, no problem. He
15 did not ask. At the time about any type of financials
16 even though as Your Honor points and Mr. Shelley admits in
17 his deposition on -- he admits in his deposition that he
18 was receiving the annual reports.

19 On page 11 of our brief, it's transcript
20 deposition page 62, he says he admits that he was -- had
21 been receiving the annual reports for several years and he
22 further testified, Judge, that quote the condition of the
23 bank was not in bad shape at all end quote when he made
24 his final purchase in October of 2009. Mr. Connell cited
25 from the 10Q that has all of the required disclosures in

1 there. Mr. Shelley admits he got them. Now, whether he
2 read them or not, that's his own business, but he admits
3 in his deposition he did no due diligence about the price
4 of the shares, what they were trading for, the financial
5 condition of the bank at the time. What he did was he
6 wanted to buy shares in the Financial Corp. He told the
7 bank let me know if you hear of any individual seller
8 that's selling. They did. They complied with his request
9 and he purchased the shares and now he's upset that
10 they've gone down. Well, there's plenty of people over
11 there that work there ---

12 THE COURT: And, Mr. Connell, how his he
13 different from any other investor?

14 MR. CONNELL: Your Honor, he's different because
15 they called him and made an offer to him of additional
16 shares under the guise that the bank may own them. I
17 mean, that's the idea.

18 THE COURT: Where does he say that he understood
19 that the bank owned any of these shares.

20 MR. CONNELL: Well, what he says ---

21 THE COURT: I mean, isn't his complaint -- I
22 mean, doesn't he say in his deposition that he asked who
23 are -- who owns these shares. I mean he knew they were
24 individuals.

25 MR. CONNELL: I don't think he did. I don't

1 think he did at all. I think what happened was -- and you
2 have to go back and look at the testimony, but Ms. Cannon,
3 the teller -- apparently, Ms. Guyette said I want to sell
4 some stock, that's in her deposition. And she said who
5 knows Mr. Shelley. Well, she said I don't really know him
6 that well, so I'll get Ms. Cannon to call instead of her
7 calling himself. And so Ms. Cannon calls and says look,
8 you know, there's some shares for sell would you like to
9 buy them. Apparently, the bank was keeping a list of
10 people and was trying to facilitate all those
11 transactions. And I asked Ms. Guyette, I said why were
12 y'all you doing that. She said, oh, that was -- we were
13 doing that for the community. They weren't doing that for
14 the community. They were doing that to keep the price up
15 and to continue to move those shares at a price that they
16 could sell them. And Ms. Guyette, a vice president, sells
17 her shares and doesn't even disclose to him that she's
18 selling them and that there's this 10Q out there, that was
19 filed two weeks before the July 17th sell. And so, Your
20 Honor, we argue that under the scintilla rule -- I mean,
21 that's what the evidence is under the scintilla rule that
22 Mr. Shelley ought to be able to tell his story to a jury
23 and let them decide if in fact you believe Ms. Guyette and
24 Ms. Cannon versus Mr. Shelley about what happened when he
25 bought these stocks -- these shares of stocks.

1 THE COURT: Well, what does Mr. Shelley say?
2 You even have a civil conspiracy cause, but if they were
3 acting as employees of the bank, you know that has to
4 fail. How can the bank conspire with it's own employees?

5 MR. CONNELL: In this way, Your Honor, she
6 testified in her deposition that when they would get large
7 blocks of stock that she and some of the other officers
8 would all meet together with Mr. Page and they would
9 decide who they were going to call and how they were going
10 to get those stocks moved. I mean, in that ---

11 THE COURT: Even under your theory, that would
12 have made her an agent of the bank, wouldn't it?

13 MR. CONNELL: Well, it would have made ---

14 THE COURT: Or the Financial Corp. The
15 corporation can't conspire with its own agents, can it?

16 MR. CONNELL: How about the employees among
17 themselves deciding how they're going to move this stock
18 if they've got -- when they have large batches of stock.
19 Cause that's what ---

20 THE COURT: Are you talking about their stock or
21 someone else's stock?

22 MR. CONNELL: No, I'm talking -- what would
23 happen ---

24 THE COURT: They were acting on behalf of the
25 bank you just said that a moment ago.

1 MR. CONNELL: They were acting on behalf of the
2 bank to move large shares of stock that they had that they
3 wanted to decide who they were going to offer it to.

4 THE COURT: But they were acting as agents of
5 the bank.

6 MR. CONNELL: True. Isn't that -- can't two
7 agents of the corporation conspire among themselves to do
8 that?

9 THE COURT: I don't believe so. I don't think
10 you can conspire with your agent because they act of the
11 agent is the act of the master so to speak the
12 corporation.

13 I think there's ample case law on that; isn't
14 there, Mr. McGee?

15 MR. MCGEE: That's correct, Judge. It's cited
16 in our memorandum on the second to last page. Your Honor,
17 if I could, the July 2009 -- first of all, the
18 October 2009 asked Mr. Shelley are you aware of any
19 fraudulent or false representations or conduct by the bank
20 in relation to the October 2009 sell he said no. So I'm
21 going to set that one on the back burner for a second
22 while we talk about this July 2009 one. First of all, Mr.
23 Shelley has sued the bank and the Financial Corp and there
24 is no dispute in the record that they did not sell this
25 stock to him. He knows that and he knew it at the time

1 that he filed the complaint. So these are just the wrong
2 parties involved. They didn't sell the stock.

3 THE COURT: But aren't his allegations that
4 agents of the bank and the Financial Corp induced him to
5 buy knowing that the bank was in trouble and that the
6 stocks were overpriced?

7 MR. MCGEE: The only evidence before the Court
8 including Mr. Shelley's deposition testimony is that he
9 asked the bank to let him know when there was a stock
10 available for purchase and they did so. And he asked them
11 to debit his account and they did so, that's the only
12 evidence in the record. Also, shortly, Judge, the
13 improper parties are here. May he have a complaint
14 against individual seller, Ms. Guyette, I don't know, but
15 the banks and the Financial Corp certainly didn't sell the
16 stock.

17 Also, Judge, I think the -- let me get to the
18 nut of this. There's no dispute that Mr. Shelley
19 purchased the stock on July 17, 2009. Sometime afterwards
20 and he can't say when it was sometime after that he asked
21 -- he testified he asked Ms. Guyette, do you know who sold
22 me the stock and she said no. For the sake of this
23 hearing, we have to assume that that's the case. He had
24 already purchase the stock. He did not purchase the stock
25 in reliance on that statement or that omission.

1 THE COURT: Inquiry.

2 MR. MCGEE: Or that inquiry at that time.

3 THE COURT: How about that, Mr. Connell?

4 MR. MCGEE: He has already purchased the stock
5 at that point in time and let me point out one more thing,
6 Your Honor, that purchase occurred January 17th 2009.
7 This complaint was not filed until July 19, 2012. So the
8 purchase occurred on July 17, 2009. At that point in
9 time, there had been -- and there still is is no evidence
10 in the record of any false or misleading statement that
11 occurred as of that time that stock sell went through. He
12 can't say he relied on it later on when he found out who
13 may or may not have sold it to him. So that would be
14 barred by the statute of limitations because it's outside
15 of three years.

16 Not only that, Judge, even if he had asked Ms.
17 Guyette that and she told him, no, and he somehow relied
18 retrospectively on it, I asked him in his deposition if
19 he -- what difference that would have made to him. He
20 said that's 20/20, I don't know if it would have made any
21 difference. He said -- he also testified that it didn't
22 matter who sold him the stock. So not only is it -- was
23 the deal done without any false or misleading
24 representations when it closed not only is it barred by
25 the statute of limitations, not only could he not have

1 relied on a statement that occurred after the transaction
2 took place, but even if that wasn't the case, I asked him
3 what difference would it make. He said, well, that's
4 20/20 I don't know how it would have changed anything.

5 THE COURT: How about that, Mr. Connell?

6 MR. CONNELL: Your Honor, our argument is that
7 apparent agency argument that the bank had the right to
8 control what was going on and that they did this all the
9 time. There's evidence in the record from Ms. Cannon and
10 from Ms. Guyette that bank members sold stock all the time
11 to people in this manner. And we argue, Your Honor,
12 that's not an appropriate way to do that to call someone
13 on the phone and say five years after you bought some
14 stock, do you want buy some stock without disclosing the
15 full details of what's going to happen or what may happen
16 in the next few months after you buy the stock i.e. stock
17 is going to take a nose dive and become worthless.

18 THE COURT: Did the bank get a commission? Did
19 the bank get anything out of the sell other than advising
20 him someone that had some stock for sell?

21 MR. CONNELL: They never advised him that
22 someone had stock for sell. The pitch was would you like
23 to buy some stock. Mr. Shelley assumed that the stock was
24 from the bank. I mean, the way they were doing this was
25 ---

1 THE COURT: Well, why would he ask whose stock
2 was it then?

3 MR. CONNELL: He didn't ask that until after the
4 purchase.

5 THE COURT: What happened to make him think that
6 it belong to an individual then? What would have changed
7 his mind?

8 MR. CONNELL: We don't know the answer to that
9 question was asked of the deposition. But the point is is
10 that when you're offering a security like that and you
11 have a code of conduct and you're suppose to give fair and
12 honest dealing to someone else ---

13 THE COURT: Did the bank ever offer the
14 security?

15 MR. CONNELL: The apparent authority of those
16 individuals -- Ms. Guyette didn't call herself you notice
17 and say, hey, Mr. Shelley, I'm trying to sell this stock.
18 She didn't do that. And the inferences she knew that he
19 wouldn't buy it if that was the case.

20 THE COURT: You saying she used the bank to
21 facilitate a sell under -- I mean, overvalue.

22 MR. CONNELL: We say under false pretenses. And
23 we also say according to her deposition that bank members
24 Mr. Page, some other officers did that all the time. That
25 was being done.

1 THE COURT: Selling their shares.

2 MR. CONNELL: And others, other people shares
3 too. But -- and apparently if they got a particularly big
4 block of stock according to the deposition, like three or
5 four thousand shares if somebody died or something. They
6 would all meet and decide how they were going to peddle
7 that stock. Now, if you go today and look at their
8 website, they don't do that at all any more. They do it
9 the way Billy's firm advise them to do it, which is
10 internet disclosure and that type of thing. What we argue
11 to the Court is is that the issue of the scintilla of
12 evidence is such as slim standard that based upon all the
13 course of conduct in this transaction and others
14 apparently there were a whole bunch of other people who
15 did this too, that this is an issue for a jury to decide.

16 MR. MCGEE: Your Honor, if I may, first of all,
17 there's no evidence in the record that the price was
18 unfair. Mr. Shelley says that he did no research. He has
19 no idea whether it was fair or not. He assumes it was
20 because he paid it at the time and he's a smart
21 businessman. Let me ---

22 THE COURT: How about that, Mr. Connell? Do you
23 have any information to show that it was not a fair price
24 at the time?

25 MR. CONNELL: The deposition of Ms. Guyette said

1 that she asked for more than asking price. She valued it
2 more than asking price.

3 THE COURT: Do you have anything to show that it
4 wasn't a fair price at the time he bought it?

5 MR. CONNELL: It was above what the market price
6 was, that's ---

7 THE COURT: Well, what was the market price
8 then?

9 MR. CONNELL: I think the market price was 20
10 and she got 24 a share is what I understand.

11 THE COURT: Well, that's not unusual, is it?

12 MR. CONNELL: Well, it is unusual when -- in the
13 course of how you're offering this particular stock. I
14 mean, I think it would have been different if Ms. Guyette
15 had just gone straight out to Mr. Shelley and said look,
16 you know, I want to sell this stock. I'm a vice president
17 of this bank. You need to know we're 30 million down in
18 loans, but if you want to buy it, that's fine. We're
19 willing to sell it to you, but that's not. It's kind of
20 a ---

21 THE COURT: But didn't he have the financial
22 reports?

23 MR. CONNELL: He might have had it from 2005,
24 but he wasn't given a new prospectus on the day that they
25 called him on the phone and said we want to -- do you want

1 to buy this stock. I mean, if somebody calls you on the
2 phone from a bank and says you want to buy stock. One of
3 our arguments is is they need to tell those people what
4 the financial condition of the bank is at that point
5 whether or not you bought stock. I mean, we're talking
6 about he bought it in 2005 and now they call him four
7 years later. I mean, it's a completely different
8 transaction and completely different financial transaction
9 as to how it all happened.

10 MR. MCGEE: Your Honor, first of all, there's
11 no expert testimony saying there's an obligation to do
12 what Mr. Connell says and the statute certainly don't
13 require it. We go into that.

14 I did want to mention one thing to Your Honor.
15 When I did ask again, when I did ask Mr. Shelley in my
16 exact question was if she, Ms. Guyette, would have been
17 straight with you and said those are shares of my stock,
18 would you have had a problem at that point if she been
19 straight up with you. Well, hindsight is 20/20, so I
20 really can't answer that question. I don't know how I
21 would have felt at the time. He can't even say that if

22 Mr. Connell -- if the bank had done what Mr. Connell said
23 that it would have made any difference. And, of course,
24 that's after the transaction occurred. Also, I asked him
25 specifically about the July 2009 transaction ---

1 THE COURT: How about on your fraud claim, Mr.
2 Connell, if he can't tell us, I acted in reliance on her
3 omission and I was just justified in doing so. If he
4 can't even tell us that he wouldn't have...

5 MR. MCGEE: And in fact, Judge, it goes one step
6 further, I said when you said that she didn't know, that's
7 the original Ms. Cannon, the teller, when she didn't know
8 who own the stock, did it matter to you who own the stock.
9 His answer no. At the time he purchased the stock he
10 didn't care who owned it. He says -- and, of course, he
11 wouldn't have done anything differently because he said he
12 didn't know and didn't care.

13 MR. CONNELL: Your Honor, we don't have a fraud
14 claim. We're suing for breach of fiduciary duty for
15 negligence, for conspiracy and for violation of the
16 securities act.

17 THE COURT: I thought you had fraud claim?

18 MR. CONNELL: No, sir, we don't have one.

19 MR. MCGEE: But again that goes to causation,
20 which is the root of all of these claims is that he --
21 again, it occurred outside the statute of limitations.

22 There was no misrepresentation or omission of fact at the
23 time that he agreed to purchase it. He did no inquiry.
24 He didn't read the -- apparently, the financial reports
25 that he admits that he got. The inquiry came after

1 sometime we don't know when after he purchase the stock.
2 Later on, he said it didn't matter to him on the day that
3 he bought it who own the stock clearly because he didn't
4 ask on the day he bought the stock. And then later on, he
5 says I don't even know if it would have made any bit of
6 difference had I known that it was her when I bought it.
7 I mean, there is -- this is just, Judge, as I opened
8 earlier, this is a case of a person who purchased stock.
9 It's gone down like every other bank stock in the country
10 and he wants to get his money back. But unfortunately,
11 he's outside the statute of limitations and he can't prove
12 the elements of his causes of action.

13 THE COURT: All right, submit orders to me and
14 please address all the causes of action.

15 MR. MCGEE: Yes, sir.

16 MR. CONNELL: Thank you, Your Honor.

17 THE COURT: Thank you very much.

18 MR. MCGEE: Your Honor, the statute of
19 limitations was not briefed, but it was raised as an
20 affirmative defense. I was -- I didn't have time to get
21 it in.

22 THE COURT: What do you say about that,
23 Mr. Connell?

24 MR. CONNELL: I wasn't aware that was an issue
25 until today. Frankly, I thought the summary of the stock,

1 there's a six year statute of limitations I believe.

2 We'll have to talk about it.

3 THE COURT: Okay. Well, look at it and let me
4 know. Thank you very much.

5 THE CLERK: Judge, when do you want those
6 orders?

7 THE COURT: I like to have the orders. I've
8 already got Mr. Connell doing one in two weeks. I'll give
9 you three weeks.

10 MR. CONNELL: Thank you, Your Honor.

11 MR. MCGEE: Your Honor, this case is up for
12 trial in -- eligible after May 1. Our hope is that we
13 want need to deal with that -- my hope is at least.

14 THE COURT: I would have ruled by then.

15 END OF REQUESTED TRANSCRIPT

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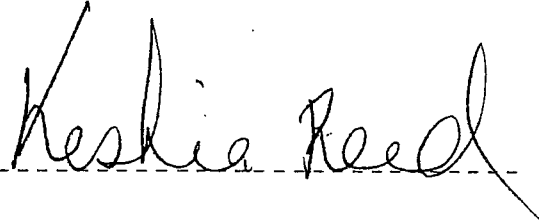
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter and Notary Public
in and for the State of South Carolina At Large, do hereby
certify that the above-entitled cause was heard as
hereinafter set out; that I was authorized to and did
transcribe the said proceedings; and that the foregoing
and annexed paged, numbered 1 through 28, inclusive,
constitute a true and accurate transcription of my
stenographic report of the said cause taken during the
said hearing. In the Court of Common Pleas for Florence
County, South Carolina, on the 4th day of March, 2014.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto. In witness
whereof, I have hereunto affixed my signature this 9th day
of March 2015.


Keshia Reed, Court Reporter

1
2 STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD
3 COUNTY OF HORRY) CASE NO.: 2012-CP-26-5546
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6 October 1, 2014

7 BEFORE: The Honorable Larry Hyman
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9 ROBERT SHELLEY, et al.,

10 Plaintiffs,

11 vs.

12 HORRY COUNTY STATE BANK and HCSB FINANCIAL
13 CORPORATION,

14 Defendants.
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17 APPEARANCES:

18
19 Gene M. Connell, Jr., Esq.
Attorneys for the Plaintiffs.

20 T. William McGee, III, Esq.
21 Attorneys for the Defendants.
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24 Official Court Reporter
Natalie Dahl
25

 ORIGINAL

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MR. CONNELL: The clerk's office said there was a document that showed it was dismissed through mediation settlement, and that is just a mistake.

THE COURT: All right. Shelley versus Horry County State Bank.

MR. CONNELL: I don't know if you remember this --

THE COURT: I certainly do.

MR. CONNELL: What I would like to do is put a couple of things in the record, if I could.

THE COURT: Mr. Shelley was sold bank shares by bank employees.

MR. CONNELL: Yes. I have the depositions of Deborah Guyette, Jane Canon and Mr. Shelley.

You granted summary judgment on all causes of action, so I'm here for a motion to reconsider your decision on those causes of action.

As Your Honor knows, the standard of summary judgment is that there is a scintilla of evidence that would prove the plaintiff's claim. Your Honor granted summary judgment on breach of fiduciary duty, negligence, civil conspiracy and the statute of limitations, and the South Carolina Securities Act, five causes of action. Your Honor, we would submit to

1 you, respectively, that the decision is in error for a
2 number of reasons. One, the statute of limitations
3 argument. The argument by the bank is that it was
4 three, and the South Carolina Statute of Limitations
5 for securities is five years from the date of the
6 transaction, so it could not be three years as they
7 argued.

8 The other thing is the order says the transaction
9 occurred on July 19th, and the stock certificates have
10 July 23rd and July 27th. So even if it was three
11 years, which we say it couldn't have been, the stock
12 certificates themselves show the dates of the
13 transactions. Your Honor, we would like to add those
14 as an exhibit.

15 THE COURT: Does that make a difference?

16 MR. CONNELL: I say it is a five-year statute,
17 and I think Billy says three years.

18 THE COURT: Does the date make a difference?

19 MR. CONNELL: It does, because your order says
20 July 17th the stocks were purchased, July 19th the
21 lawsuit was filed. So, in other words, they say the
22 South Carolina Securities Act is two days out of time.

23 THE COURT: What about that, Mr. McGee?

24 MR. MCGEE: It is our position that the statute
25 of limitations is not the sole basis of summary

1 judgment. I have Your Honor's order here, and it goes
2 through each of the causes of action on why they fail
3 irrespective of the statute of limitations issue. The
4 statute of limitation, in our view, as held in your
5 order, is three years for the South Carolina Uniform
6 Securities Act, and we believe that the testimony and
7 the evidence presented at the motion for summary
8 judgment hearing was that the transaction occurred on
9 July 19. The stock certificates may have been issued
10 afterwards, but the transaction itself was
11 consummated, and actually the plaintiff's deposition
12 testimony supports that.

13 Let me say for the record, I'm not sure what was
14 put in evidence at the summary judgment hearing, but
15 to the extent that anything beyond that is submitted
16 to the Court, we would object since that would be
17 outside of the scope of 59(d).

18 MR. CONNELL: Your Honor --

19 THE COURT: Mr. Connell.

20 MR. CONNELL: -- in response to that, of course
21 the order of summary judgment cites deposition
22 testimony of the plaintiff, and that was not put into
23 evidence at the summary judgment to begin with.

24 It's my understanding that on reconsideration you
25 get to relook at the facts, and the order that is

1 written is about 12, 15 pages. Your Honor, we would
2 submit to you that there are a number of issues that
3 are issues of material fact. One of the things that
4 was presented in our proposed order to Your Honor was
5 the McCall case, which is a case that discusses who a
6 seller of securities is. In this particular case, as
7 Your Honor probably remembers, Mr. Shelley was
8 solicited by a bank employee, Do you want to buy
9 stock. He did not go to the bank and ask; he was
10 called by a bank employee. It turns out that that
11 bank employee was selling the stock for another bank
12 officer, which was not disclosed to the plaintiff at
13 the time.

14 THE COURT: Was it a bank officer, or not?

15 MR. CONNELL: She was a vice president of the
16 bank, is what I understand.

17 MR. McGEE: It is not. There is no evidence
18 before the Court that she's an officer. How many vice
19 presidents are there of Bank of America? A gazillion.
20 They are not officers of Bank of America simply
21 because they have that title. Your Honor made the
22 specific finding that there was no evidence in the
23 record that she was an officer of the bank at that
24 time, and I would point out to Mr. Connell that
25 Exhibit 2 are transcripts from Mr. Shelley's

1 deposition, and they were before the Court at Your
2 Honor's summary judgment hearing.

3 THE COURT: I remember those specifically because
4 Mr. Shelley made one statement, that he didn't rely on
5 them.

6 MR. McGEE: Correct, Judge. In fact, Mr. Shelley
7 also testified that he was the first one to ask the
8 bank if there is ever any stock for sale, let me know.
9 But you are right, Judge, he said it didn't make any
10 difference to me at the time who was selling the
11 stock. In fact, I asked him, What if you had known at
12 that time that it was Ms. Guyette selling the stock,
13 would that have made a difference, and he said, I have
14 no idea.

15 THE COURT: Go ahead.

16 MR. CONNELL: Our position about that is that was
17 something they had to disclose under South Carolina
18 Securities Act. As I was saying before, the question
19 of who was a seller of securities has not been
20 answered by any court in South Carolina; although, in
21 the McCall case that we cited in the proposed order
22 denying summary judgment, there was a discussion by
23 the Court of Appeals about whether or not if you
24 participated in the sale of securities that you could
25 be found liable. The McCall case talks about the

1 Fourth Circuit and other federal circuits and comes to
2 the conclusion that it is undecided in South Carolina.

3 Your Honor, our point in all of that is that
4 Horry County State Bank had a code of conduct about
5 how they expected their employees to react to certain
6 situations, and one of them was a duty of good faith
7 and fair dealing and honesty. When the teller called
8 Mr. Shelley and said, hey, do you want to buy stock,
9 and didn't disclose that that stock was sold by a vice
10 president, which we maintain is a person of executive
11 authority at the bank, then that created a genuine
12 issue of material fact as to whether that was a breach
13 of fiduciary duty of the bank as to whether or not the
14 Uniform Securities Act was violated.

15 THE COURT: But is there any proof that the
16 stocks were not worth that at the time?

17 MR. CONNELL: No, sir, but directly thereafter --
18 this was 2009 -- those stocks went from \$18 to ten
19 cents a share.

20 THE COURT: Over a course of like two years?

21 MR. CONNELL: They bought them in 2009, and they
22 went before the end of the year to -- currently about
23 12 cents a share.

24 So we maintain, respectively, and I understand
25 you have heard this before, but we maintain that to

1 grant summary judgment on six causes of action, breach
2 of fiduciary duty, South Carolina Securities Act in
3 which the law is uncertain and certainly novel about
4 whether or not the bank is liable for calling him
5 months and months after he inquired about the stock,
6 civil conspiracy and negligence, all of those causes
7 of action, to throw us out under each one based on the
8 unique facts of this case and the argument the Supreme
9 Court said on numerous occasions that you have to have
10 a scintilla of evidence. Certainly, with this case
11 with the bank employees, the code of conduct that they
12 are supposed to follow, the stock certificates --

13 THE COURT: Aren't you describing a situation
14 where we try the case and then it is appealed? Why
15 don't we appeal it now? I'm sure you will.

16 MR. CONNELL: You know, the motion for
17 reconsideration is -- I've always argued that that is
18 a difficult thing to come back before the same Court
19 and say, you know, respectively, we think you made an
20 error, but that is the way the rule is, such that we
21 have to come back before Your Honor --

22 THE COURT: I understand.

23 MR. CONNELL: -- and ask the ridiculous question,
24 Will you reconsider. How many times have you done
25 that? I bet you haven't done five times in the years

1 you've been a judge.

2 THE COURT: I believe I did it one time for you.

3 MR. CONNELL: I know you did, and I believe one
4 time is a charm. What I would like to do is put the
5 stock certificates and the dates in, and I think I
6 need to put the Code of Conduct in also; those were
7 discussed.

8 THE COURT: Mr. McGee objects, but I'll let you
9 do it.

10 MR. MCGEE: I believe our memorandum speaks for
11 itself, as does Your Honor's order, but as to the
12 claim of Uniform Securities Act, our memorandum at
13 Page 9 specifically goes through each section that has
14 a private right of action and why it fails on its
15 merit, irrespective of the statute of limitations.
16 Secondly, the only evidence in the record, Judge, is
17 that the woman that called Mr. Shelley to say, you
18 know, you asked about stock certificates, there is
19 some that are for sale now, the only evidence in the
20 deposition taken by Mr. Connell is that she had no
21 idea whose they are; that is the only evidence. So
22 she could not say, by the way, this belongs to an
23 employee of the bank, because she doesn't know it;
24 that is the only evidence in the record.

25 THE COURT: All right. Thank you.

1 MR. CONNELL: One thing in reply. You asked the
2 question: Why don't we find out now rather than a
3 trial? The reason we don't is because we don't
4 piecemeal litigation in South Carolina, as Your Honor
5 knows, and that is why the scintilla rule is
6 important, and many summary judgment cases.

7 THE COURT: And I was being somewhat facetious,
8 Mr. Connell.

9 MR. CONNELL: I know you were.

10 THE COURT: I respectfully deny the motion to
11 reconsider. Mr. McGee, do an order for me for the
12 reasons set out in my original order. Send a copy to
13 Mr. Connell first.

14 MR. MCGEE: Absolutely.

15 THE COURT: Is two weeks enough?

16 MR. MCGEE: Oh, yes, sir.

17 (Whereupon, the proceedings concluded.)

18 (Plaintiffs' Exhibits 1 through 5 were marked and
19 admitted.)
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CERTIFICATE OF REPORTER

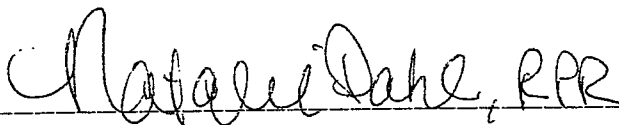
State of South Carolina)

County of Horry)

I, Natalie Dahl, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the captioned case, relative to appeal, in the Court of Common Pleas for Horry County, South Carolina, on the 1st day of October, 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

December 3rd, 2014.



Natalie Dahl, RPR

Court Reporter

HCSB FINANCIAL CORPORATION
 Horry County State Bank
 CODE OF BUSINESS CONDUCT AND ETHICS

September 10, 2007

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CODE OF BUSINESS CONDUCT and ETHICS

Section 1 – Introduction

HCSB Financial Corporation and its subsidiary, Horry County State Bank (collectively, the "Company"), are committed to conducting all aspects of their business in accordance with the highest ethical and legal standards. To memorialize some of the core values and spirit with which the Company's Board of Directors expects the Company's business to be conducted, the Board has adopted the following Code of Business Conduct and Ethics (the "Code"). More specifically, this Code is being adopted to:

- Promote honest and ethical conduct, including fair dealing and the ethical handling of conflicts of interest.
- Promote full, fair, accurate, timely, and understandable disclosure under, and in compliance with, applicable securities and corporate laws, rules and regulations of the Securities and Exchange Commission (the "SEC").
- Ensure the protection of the Company's legitimate business interests, including corporate opportunities, assets, and confidential information and to deter wrongdoing.

The Board intends for this Code to serve as a guide for general decision-making in a variety of circumstances that directors, officers and employees might encounter in conducting the Company's business. The Board expects all directors, officers and employees of the Company to be familiar with the Code and to adhere to the principles and procedures provided in the Code that apply to them. More code of conduct information can be found in the Personnel Policy Manual. The Board of Directors recognizes that no code can describe every circumstance that might confront directors, officers and employees. Therefore, the Board expects, in addition to complying with the Code and applicable laws, rules and regulations, all employees, officers and directors to observe the highest standards of business and personal ethics in the discharge of their assigned duties and responsibilities.

For the purposes of this Code, the "Code of Business Conduct Contact Person" will be the Chairman of the Audit Committee of the Board of Directors. **Please refer to Addendum I for the contact information.**

Section 2 – Fair Dealing

The Company has a history of succeeding and growing through honest business competition. The Company does not seek competitive advantages through illegal or unethical business practices. Each director, officer and employee should endeavor to deal fairly with the Company's customers, strategic partners, service providers, suppliers, competitors, and employees. No director, officer or employee should take unfair advantage of anyone through manipulation, concealment, or abuse of privileged information, misrepresentation of material facts or any unfair dealing practice.



CODE OF BUSINESS CONDUCT and ETHICS

Section 3 – Honest and Candid Conduct

Each director, officer, and employee should always be mindful of the Company's prominence and reputation in the community. Since the success of any banking business depends on the public's trust, it is extremely important that you conduct your personal affairs in such a way as to avoid discredit or embarrassment to yourself and the Company. Your personal behavior and appearance should be governed by both common sense and good taste.

Each director, officer and employee owes a duty to the Company to act with integrity. Integrity requires, among other things, being honest and candid. Deceit and subordination of the principles of this Code are inconsistent with integrity.

Each Director, Officer and Employee must:

- Act with integrity, including being honest and candid while still maintaining the confidentiality of information where required or consistent with the Company's policies.
- Observe both the form and spirit of laws and governmental rules and regulations, accounting standards and Company policies.
- Adhere to a high standard of business ethics to help maintain a safe workplace, free of prohibited substances, unlawful discrimination and harassment.
- Avoid conduct which would or could create an unsafe and unsound condition for the Company.
- Cooperate fully with any inquiry or investigation undertaken at the Company's direction.
- Promote ethical behavior as a responsible partner among peers in the work environment.

Section 4 – Conflicts of Interest

A "conflict of interest" occurs when an individual's private interest interferes or appears to interfere with the interests of the Company. A conflict of interest can arise when a director, officer or employee takes actions or has interests that may make it difficult to perform his or her work for the Company objectively and effectively. For example, a conflict of interest would arise if a director, officer or employee, or a member of his or her family receives improper personal benefits as a result of his or her position in the Company.

Some conflicts of interest situations involving directors, executive officers or other employees who occupy supervisory positions or who have discretionary authority in dealing with any third party includes, but is not limited to, the following:

- Any significant ownership interest in any service provider.



CODE OF BUSINESS CONDUCT and ETHICS

- Any consulting or employment relationship with any service provider, supplier, or competitor.
- Any outside business activity that detracts from an individual's ability to devote appropriate time and attention to his or her responsibilities with the Company.
- The receipt of other than nominal gifts or excessive entertainment from any institution with which the Company has current or prospective business dealings.
- Being in a position of supervision, reviewing, or having any influence on the job evaluation, pay or benefit of any immediate family member.
- Selling anything to the Company or buying anything from the Company.

Anything that would present a conflict for a director, officer or employee would likely also present a conflict if it were related to a member of his or her family. Any conflict of interest situation, including those described above, should be discussed with the Code of Business Conduct Contact Person.

You must not approve your own loans, act as officer on any account on which you are a signator, process your own transactions, or authorize refunds on any account on which you are a signator. This prohibition applies also to loans and accounts of relatives, close personal friends and entities owned or controlled by any of them.

You must not accept business opportunities from persons doing business or seeking to do business with the Company if such opportunities are made available to you because of your position with the Company. You must never use your position with the Company to influence public officials or others for your personal benefit. Likewise, your employment with the Company must not be used as leverage to gain favors from customers or suppliers.

Service to the Company should never be subordinated to personal gain and advantage. Conflicts of interest should, wherever possible, be avoided. The Company recognizes that it is not practicable or desirable to avoid all relationships that could give rise to conflicts of interests.

Accordingly, conflicts of interest, potential conflicts of interest or relationships that are identified as giving rise to potential conflicts of interest that are approved as described in the following paragraph, including those that have been previously disclosed in the Company's Annual Reports on Form 10-K or proxy statements, are permitted. Furthermore, consistent with past practice, the Company will continue to disclose potential conflicts of interest in its Annual Report on Form 10-K or proxy statement when appropriate. Any material transaction or relationship that could reasonably be expected to give rise to a conflict of interest should be discussed with the Code of Business Conduct Contact Person if not previously approved as described in the following paragraph.

The Board of Directors has adopted and has long followed a policy that all transactions between the Company and our shareholders, affiliates, officers and directors are subject to the approval of a majority of the independent and disinterested outside directors and are conducted on terms no less favorable than could be obtained from unaffiliated third parties on an arm's length basis.



CODE OF BUSINESS CONDUCT and ETHICS

In addition, the Company is required to conduct an appropriate review of all related party transactions for potential conflict of interest situations on an ongoing basis, and all such transactions must be approved by the Audit Committee (or another independent body of the Board). Any transaction or relationship that is approved as required under this paragraph complies with this Code, and such approval shall not be regarded as a waiver of the Code.

Section 5 – Loans and Extensions of Credit - Overdrafts

Loans made by the Company to directors, executive officers, principal shareholders, and other affiliated persons will be made on the same terms and conditions as loans and extensions of credit made to members of the general public of comparable creditworthiness. Certain loans and extensions of credit by the Company or its subsidiaries must be approved by the Company's Board of Directors according to applicable banking regulations.

The Company must identify all directors, executive officers, principal shareholders and other affiliated persons and their related interests when making loans or extensions of credit to these persons and to their related interests.

No director, officer or other employee of the Company should knowingly overdraw his or her account with the Company, and any inadvertent overdraft must be promptly repaid.

Section 6 – Personal Investments

Employees of the Company, by the nature of their positions, must be particularly circumspect regarding investments that may appear improper to customers, regulatory authorities or the public. You should consult with our Chief Executive Officer if you have or are considering any investments that might have even an appearance of impropriety.

You should avoid entering into transactions in which it may appear that you are improperly benefiting from your relationship with the Company. This applies also to investment by members of your immediate family.

While a complete list of such matters cannot be given, you must refrain from directly or indirectly owning or purchasing any of the following, unless specifically approved in writing by an unrelated executive officer of the Company.

- Real or personal property in which the Company has or intends to obtain an ownership interest (i.e., through purchase, foreclosure or repossession or in a fiduciary capacity)
- Stocks, bonds or other securities about which you have or could be expected to have confidential information (i.e., a proposed merger involving a customer)
- Trust deeds, mortgages or chattel mortgages that create a security interest in property in which the Company has a security interest
- An interest in a company for which you are the account officer



CODE OF BUSINESS CONDUCT and ETHICS

- An interest in any business entity that is a customer or supplier of the Company. This limitation does not apply to directors who are not officers of the Company or to ownership of the stock of any public company by an employee who does not possess confidential information about such company.

Section 7 – Disclosure

Each director, officer or employee involved in the Company's disclosure process, including the Chief Executive Officer, Chief Financial Officer and President (or other persons serving in comparable positions or those persons that might be so designated from time-to-time by the Company's Chief Executive Officer, Chief Financial Officer or President), is required to be familiar with and comply with the Company's disclosure controls and procedures.

Additionally, employees, officers and directors are required to be familiar with the internal control over financial reporting, to the extent relevant to his or her area of responsibility and position, so that the Company's public reports and documents filed with the SEC comply in all material respects with the applicable Federal securities laws and SEC rules.

In addition, each such person having direct or supervisory authority regarding these SEC filings or the Company's other public communications concerning its general business, results, financial condition, and prospects, should consult with other Company officers and employees and take other appropriate steps regarding these disclosures with the goal of making full, fair, accurate, timely and understandable disclosure.

Section 8 – Compliance

The Company's policy is to comply with all applicable laws, rules and regulations. Each director, officer or employee is personally responsible to adhere to the standards and restrictions imposed by those laws, rules and regulations.

It is against Company policy and in many circumstances illegal for a director, officer or employee to profit from undisclosed information relating to the Company or any other institution.

Any employee, officer or director may not purchase or sell any of the Company's securities while in possession of material nonpublic information relating to the Company in violation of Federal securities laws. Information is "material" if a reasonable investor would deem it to be important in deciding whether to buy, sell or refrain from any activity regarding the Company's common stock. Information also is material if it is likely to have a significant impact on the market price of the Company's common stock.

In addition, the directors, executive officers and financial reporting personnel of the Company must "pre-clear" any proposed transaction in the Company's stock with the Company Chief Executive Officer, who will consult with the Company's outside securities counsel to the extent necessary and appropriate.



CODE OF BUSINESS CONDUCT and ETHICS

Section 9 – Computer Networks, E-Mail and Internet

Many Company employees and officers depend on access to computer networks, voice mail, E-mail and/or the Internet to do their jobs. These tools come with risks and responsibilities that all employees and officers must understand and accept.

Employees, Officers and Directors should refrain from:

- Sending or posting discriminatory, harassing or threatening messages or images.
- Stealing, disclosing or using someone else's password without authorization.
- Copying, pirating or downloading software and electronic files without permission.
- Sending or posting confidential material, trade secrets or proprietary information outside of the organization as outlined in the Security Policy.
- Violating copyright law or failing to observe licensing agreements.
- Participating in the viewing or exchange of pornography or obscene materials.
- Sending or posting messages that defame or slander other individuals.
- Attempting to break into the computer system of another organization or person.
- Sending or posting chain letters, solicitations or advertisements not related to business purposes or activities.
- Using the Internet for political causes or activities, religious activities or any sort of gambling.
- Jeopardizing the security of the Company's electronic communications system.
- Sending or posting messages that disparage another institution's products or services.
- Refusing to cooperate with a security investigation.
- Sending anonymous e-mail messages.

The Company has a separate policy on Information Security. All employees, officers and directors are responsible for completely reading and understanding this policy and complying with the policies and provisions contained therein.



CODE OF BUSINESS CONDUCT and ETHICS

Section 10 – Reporting and Accountability

The Audit Committee is ultimately responsible for applying this Code to specific situations in which questions are presented to it and has the authority to interpret this Code in any particular situation.

As stated in section one of this Code, the Audit Committee Chairman is the Code of Business Conduct Contact Person and the contact information is stated in Addendum I. **Any director, officer or employee who becomes aware of any existing or potential violation of this Code is required to notify the Audit Committee Chairman promptly.** Failure to do so is itself a violation of the Code. Violations may be reported anonymously.

Each director, officer or employee must:

- Comply with this Code, which prohibits violation of local, state, federal or foreign laws and regulations applicable to our Company and comply with all Company policies.
- Be familiar with laws and Company policies applicable to his or her position. Management must communicate laws and Company policies effectively.
- Ask questions if a policy or the action to take in a specific situation is unclear and be alert to indications and/or evidence of possible wrongdoing.
- Notify the Audit Committee Chairman promptly of any existing or potential violation of this Code.

Reports of suspected violations will be kept confidential to the fullest extent possible and consistent with the conduct of an appropriate investigation. The reporting procedures should be used for purposes of furthering the purpose of this Code and not to report matters unrelated to this purpose.

The Audit Committee shall take all action it considers appropriate to investigate any violations reported, including but not limited to the involvement of the Internal Audit Department, Human Resources, Compliance Department, Outside Consultants, Securities Counsel, Attorneys, etc. Generally, a preliminary investigation, utilizing all resources available, will be completed within 30 days of receipt of reported information.

A case number will be assigned to the complaint to allow investigation assistance (from independent parties not involved in the complaint) without releasing the identity of the person reporting the financial misconduct/wrongdoing.

All records relating to the business of the Company shall be retained as required by the Company's record retention guidelines.

Retaliation in any form against an employee, officer or director who has, in good faith, reported a violation of this Code will not be tolerated.



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Section 11 – Waivers

You must request a waiver of a provision of this Code if there is a reasonable likelihood that your contemplated action will violate the Code.

If a waiver request involves directors, executive officers or other employees who occupy supervisory positions, the determination with respect to the waiver shall be made by the Audit Committee of the Board of Directors, in consultation with such external legal counsel as the Audit Committee deems appropriate. Any waivers granted by such committee shall be submitted to the Board for ratification.

If a waiver request relates to any other employee, the determination shall be made by the Chief Executive Officer, unless the matter is quantitatively or qualitatively material or outside the ordinary course of business, in which case such determination shall be made by the Audit Committee.

All waivers of this Code (other than those approved by the Audit Committee) shall be promptly reported to the Audit Committee.

Waivers will not be granted except under extraordinary or special circumstances.

Any waivers of this Code for any member of Executive Management or a Director of the Company must promptly be disclosed to Shareholders.

Section 12 – Corporate Opportunities

Directors, officers and employees owe a duty to the Company to advance the Company's business interests when the opportunity to do so arises. Directors, officers and employees are prohibited from taking (or directing to a third party) a business opportunity that is discovered through the use of corporate property, information, or position, unless the Company has already been offered the opportunity and turned it down.

Generally, directors, officers and employees are prohibited from using corporate property, information or position for personal gain and from competing with the Company. Business opportunities that are presented to directors, officers or employees of the Company either in their capacity as such or specifically for the use and benefit of the Company must be first presented to the Company before being directed elsewhere.

Section 13 – Confidentiality

In carrying out the Company's business, directors, officers and employees often learn confidential or proprietary information about the Company, its suppliers or customers. Therefore, confidentiality must be maintained on all information entrusted to them, except when disclosure is authorized or legally mandated.



CODE OF BUSINESS CONDUCT and ETHICS

Information obtained in the course of evaluating a loan application or servicing a loan and other information about customers, suppliers, prospective customers, employees or applicants is strictly confidential and the property of the Company. Confidential or proprietary information of the Company and of other institutions include any non-public information that would be harmful to the relevant institution or useful or helpful to competitors if disclosed.

Financial information about the Company is not to be disclosed to anyone unless it has been included in a published report or otherwise made generally available to the public. Any questions concerning the disclosure of confidential information should be addressed to our Chief Executive Officer.

It is important that all communications with the public and the media about the Company be made only through an appropriately designated officer under carefully controlled circumstances. All media inquiries regarding the Company must be referred to the Chief Executive Officer. Business matters about the Company and information about any customer of the Company are never to be discussed with the media or in any other public forum.

Section 14 – Protection and Proper Use of Company Assets

All directors, officers and employees should protect the Company's assets and ensure their efficient use. All Company assets should be used only for legitimate business purposes.

Section 15 – General

The Board of Directors believes it to be in the best interest of the Company that the directors, officers and employees of the Company act in a manner consistent with this Code and not suffer harm for doing so. Accordingly, the Company will not take action against any director, officer or employee or the Company for any action taken or not taken in good faith compliance with the provisions of this Code or otherwise with the approval of the appropriate person or body as contemplated hereby. Each director, officer or employee of the Company will be entitled to rely upon the provisions of this Section. Nothing in this Code alters the employment relationship between the Company and any of its employees (whether contractual or at-will), and does not create a contractual relationship for any at-will employees.

HCSB FINANCIAL CORPORATION

Addendum I to Code of Business Conduct

Financial Misconduct Reporting Contact Information

HCSB Financial Corporation and its subsidiary, Horry County State Bank, are committed to conducting all aspects of their business in accordance with the highest ethical and legal standards. For purposes of this Code, the contact person will be the Chairman of the Audit Committee of the Board of Directors.

Any Director, Officer or Employee may communicate with the Chairman of the Audit Committee either by e-mail or telephone.

Michael S. Addy is currently the Chairman of the Audit Committee and his e-mail address is maddy@addysharbordodge.com, or he can be contacted via telephone at 843-236-2277.

The reporting procedures should be used for purposes of reporting financial misconduct and not to report matters unrelated to this purpose. All communications will remain confidential.

The Audit Committee shall take all action it considers appropriate to investigate any violations reported, including but not limited to the involvement of the Internal Audit Department, Human Resources, Compliance Department, Outside Consultants, Securities Counsel, Attorneys, etc.

A case number will be assigned to the complaint to allow investigation assistance (from independent parties not involved in the complaint) without releasing the identity of the person reporting the financial misconduct.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

SEP 25 2015

SC Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

CASE NO. 2012-CP-26-5546

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

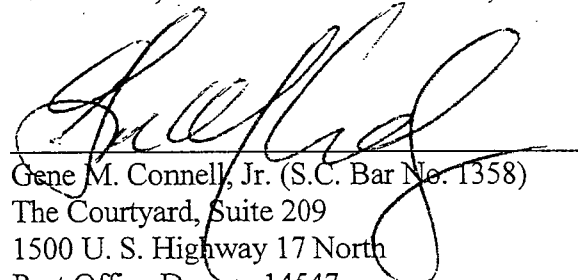
vs.

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

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all materials
proposed to be included by any of the parties and not any other material.

KELAHER, CONNELL & CONNOR, P.C.



Gene M. Connell, Jr. (S.C. Bar No. 1358)
The Courtyard, Suite 209
1500 U. S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorney for Appellant

September 9 2015
Surfside Beach, South Carolina

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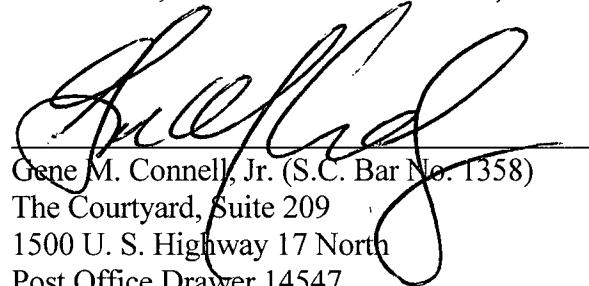
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