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**RECEIVED**  
JAN 14 2016  
SC Court of Appeals

**THE STATE OF SOUTH CAROLINA**  
**In the Court of Appeals**

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**Appeal from Charleston County**  
**Court of Common Pleas**

**R. Markley Dennis, Jr., Circuit Court Judge**

\_\_\_\_\_  
**CASE NO. 2013-CP-10-1686**  
**APPELLATE CASE 2015-001848**

Church of God and Church of God of South Carolina, .....Appellants,

v.

Mark Estes, Patricia Estes, Michael Timothy Brooks, Individually and as Trustee for Church of God at North Charleston Trust, Adam Boyer, Individually and as Trustee for Church of God at North Charleston, Rolando River Osorio As Trustee For Church Of God At North Charleston Trust and North Palm Ministries, Inc., North Palm Community Church and Community First Bank and its Successor Crescom Bank, Defendants.

Of Whom Crescom Bank is the ..... Respondent,

v.

Thomas Propes and Marc Campbell, Third Party  
Defendants.

\_\_\_\_\_  
**RESPONDENT'S MOTION TO STRIKE**

Matthew E. Tillman  
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5 Exchange Street  
P. O. Box 999  
Charleston, South Carolina 29402  
(843) 722-3400

ATTORNEYS FOR RESPONDENT

Respondent CresCom Bank, successor by merger to Community First Bank, (“Respondent”) hereby moves to strike all of Appellants’ references to loan applications set forth in Appellants’ Initial Brief.<sup>1</sup>

Specifically, on page 15 of their brief, Appellants make the following representations concerning the contents of a loan application submitted by Defendants Brooks, Boyer and Osorio:

To make matters worse, the Rogue Directors disclosed on the face of their loan application their intent to use the proceeds from the mortgage loan to purchase property for a new church. The upshot is that the Respondent Bank allowed the Rogue Directors to mortgage another’s property (without authority) and to use the proceeds for their own purposes!

The loan application was never introduced in the circuit court. Therefore, its alleged contents may not be considered by the appellate court or used for argument by the Appellants. See Rule 210(h), SCACR (providing that “the appellate court will not consider any fact which does not appear in the Record on Appeal”); *id.* 210(c) (“The Record shall not, however, include matter which was not presented to the lower court or tribunal.”); *Jenkins v. Jenkins*, 401 S.C. 191, 204, 736 S.E.2d 292, 299–300 (Ct. App. 2012) (noting that a party’s appellate argument based on a court order that was not included in the Record on Appeal violated Rule 210(h), SCACR); *Spreeuw v. Barker*, 385 S.C. 45, 68, 682 S.E.2d 843, 854 (Ct. App. 2009) (“[A]fter reviewing the record, we have been unable to find where Father listed this amount as income on his tax return. Accordingly, we conclude this evidence does not appear in the record and cannot be considered on appeal.”).

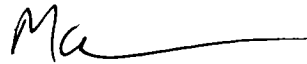
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<sup>1</sup> On July 29, 2011, as evidenced by the Articles of Merger filed of record with the South Carolina Secretary of State and the RMC Office of Charleston County, South Carolina, Community First Bank merged into Crescent Bank, with the surviving entity known as CresCom Bank, Respondent herein.

**CONCLUSION**

For the reasons set forth above, Respondent moves for an order striking from all references to the subject loan application from Respondent's filings, and for the Court to disregard the loan application and any related arguments in reviewing this case.

Respectfully submitted,



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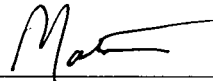
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North Charleston and Michael Timothy  
Brooks, individually and as Trustee for  
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WOMBLE CARLYLE SANDRIDGE &  
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ATTORNEYS FOR RESPONDENT

January 12, 2016

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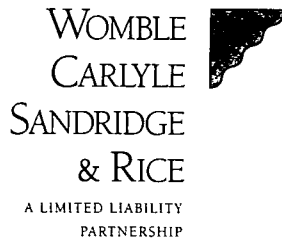
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Defendants.

PROOF OF SERVICE

I do hereby certify that on the 12<sup>th</sup> day of January 2016, I served a copy of the within Respondent's *Motion to Strike* in the within entitled matter by sending a copy of the same in an envelope with the correct postage prepaid addressed to:



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January 12, 2016

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SC Court of Appeals

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

Re: Church of God, et al. v. Mark Estes, et al.  
Appellate Case 2015-001848  
WCSR File No: 85249.0040.9

Dear Ms. Kitchings:

Enclosed for filing please find the original and one copy of Respondent's Motion to Strike in the above action. Please return the filed, time stamped copy to me in the enclosed pre-addressed, stamped envelope. This firm's check in the amount of \$25.00 is enclosed to cover the filing fee.

Sincerely,

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

Matthew E. Tillman

MET/cbc  
Enclosures: as stated

cc with encl: George J. Kefalos, Esq.  
Oana D. Johnson, Esq.  
C. Steven Moskos, Esq.  
Carol B. Ervin, Esq.  
Brian L. Quisenberry, Esq.  
Rolando Rivera Osorio

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