

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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Appeal from Charleston County  
Court of Common Pleas

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R. Markley Dennis, Jr., Circuit Court Judge

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FEB 01 2016

SC Court of Appeals

CASE NO. 2013-CP-10-1686

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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 Crescom Bank, Successor by Merger to 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.

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**APPELLANTS' REPLY BRIEF**

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ATTORNEYS FOR APPELLANT  
CHURCHES OF GOD

January 22, 2016

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## REPLY ARGUMENT<sup>1</sup>

### I. THE TRIAL COURT IMPROPERLY DISMISSED APPELLANTS' CLAIMS UNDER THE VOLUNTARY PAYMENT DOCTRINE DESPITE THE FACT THAT THE CHURCH PAID WITHOUT FULL KNOWLEDGE OF THE FACTS.

Respondent spends considerable ink rehashing the fact that Appellants may have suspected the original loans had not been authorized when they tendered payment to Respondent Bank. It dismisses as “immaterial” the key point that, at the time payment was tendered, Appellants had no clue the funds had been misappropriated to purchase property for an entity not related to Church of God. Respondent then attempts to distinguish *Freeman v. J.L.H. Invs., LP*, 2015 S.C. LEXIS 367, \*28-29 (S.C. Nov. 4, 2015) where the Court refused to allow the application of the voluntary payment doctrine where the payor knew about the fee at the time she paid it but lacked full knowledge of what comprised the fee and where even if the payor had inquired about the fee, no employee of that defendant could have explained how it had arrived at this amount.

Here, while Appellants may have been aware that the mortgages may have been obtained without authorization, they had no knowledge the money had been stolen.. All payments made by Appellants were made with the belief that all funds obtained from Respondent Bank were used to improve the Church's property located at North Rhett. They no clue the funds had been misappropriated and used to acquire property for an unrelated church. Moreover, had Appellants inquired of Respondent Bank, no employee of Bank could have explained how the loan proceeds had been used. Clearly, Appellants did not

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<sup>1</sup> Appellants believe the issues are, by and large, properly joined and briefed by both sides. Rather than restate the entirety of Appellants' arguments, Appellants crave reference to their brief and submit these limited reply arguments as a supplement to their initial arguments regarding Issues I and IV on Appeal.

have “full knowledge of all the facts” when it repaid the loans, and the voluntary payment doctrine should not apply to bar Appellants from recovering.

Respondent’s argument also ignores (and impliedly concedes) Appellants’ other key argument which is that, at most, whether Appellants had “full knowledge of all facts” is a question of fact for the jury. Just as in *Freeman*, 778 S.E.2d at 913, none of the affirmative defenses or arguments asserted by Respondent entitle it to judgment as a matter of law prior to trial. Viewing the facts in the light most favorable to Appellants, this Court should reverse the trial’s grant of summary judgment on the basis of the voluntary payment doctrine, and, at minimum allow the question of Appellants’ “full knowledge” to be decided by the trial of fact.

**II. THE TRIAL COURT IMPROPERLY ATTRIBUTED THE KNOWLEDGE AND ACTS OF ROGUE AGENTS TO APPELLANTS WHERE THOSE AGENTS WERE ACTING FOR THEIR OWN PURPOSES OUTSIDE THE SCOPE OF THEIR AUTHORITY.**

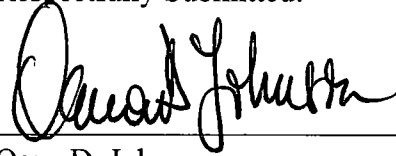
Respondent’s argument also ignores (and impliedly concedes) the issue of the trial court’s failure to consider the well-settled law applicable when agents are operating outside the scope of their authority or are acting “adversely to the principal in a transaction or matter, intending to act solely for the agent's own purposes or those of another person.” *Mauldin Furniture Galleries, Inc. v. Branch Banking & Trust Co.*, 2012 U.S. Dist. LEXIS 121140, 2012 WL 3680426 (D.S.C. Aug. 27, 2012) (citations omitted). As much as Respondent would like to distance itself from the fraudulent and bad acts of its co-defendants, it cannot simply ignore the *ultra vires* acts and still claim the purported agents’ knowledge should be attributed to Appellants.

Moreover, Respondent's argument again ignores the impropriety of the trial court granting summary judgment was there are genuine issues of material fact that must be decided by a jury. "Whether an agency relationship exists is a question of fact." *Gamble v. Stevenson*, 305 S.C. 104, 406 S.E.2d 350 (1991); *Hinson v. Roof*, 128 S.C. 470, 122 S.E. 488 (1924). Here, Appellants have made serious allegations of fraudulent activity, and, as in *Mauldin*, whether the purported agent were acting on behalf of Appellants — and by implication, whether their knowledge of the activity should be attributable to Appellants— is a genuine issue of material fact for the jury and should not have been decided at the summary judgment stage. *Id.* See also *Rothrock v. Copeland*, 305 S.C. 402, 405, 409 S.E.2d 366, 367-68 (1991) ("In determining whether summary judgment is appropriate, a court must not try issues of fact, but must discern whether genuine issues of fact exist to be tried . . . . Summary judgment is not appropriate where further inquiry into the facts is desirable . . . .") This Court should reverse the grant of summary judgment because it is a question of fact whether the knowledge of the purported agents should be attributable to Appellants.

### CONCLUSION

**WHEREFORE**, for all of the foregoing reasons, Appellants respectfully request that this Court **REVERSE** the trial court's grant of summary judgment and remand this action for trial.

Respectfully Submitted:



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January 22<sup>nd</sup>, 2016

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

v.

Thomas Propes and Marc Campbell, Third Party  
Defendants.

PROOF OF SERVICE

I certify that I have served copies of the forgoing **Initial Reply Brief** on Respondents' counsel of record by depositing true and correct copies in the United States Mail, postage prepaid, on January 22, 2016, addressed to the following:

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January 22, 2016

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RE: Church of God and Church of God of South Carolina vs Mark Estes, Patricia Estes, Michael Timothy Brooks, Individually and as Trustee for Church of God at North Charleston Trust, Adam Boyer, Individually and as Trustee for Church of God at North Charleston, Rolando River Osorio As Trustee For Church Of God At North Charleston Trust and North Palm Ministries, Inc., North Palm Community Church and Crescom Bank, Successor by Merger to Community First Bank and its Successor Crescom Bank  
Case No.: 2015-001848

Dear Ms. Kitchens,

Enclosed please find one copy and one original of Appellants' Initial Reply Brief in the above-referenced case matter. Please file the original and return a file-stamped copy to us using the self-addressed, postage-paid envelope enclosed.

Very truly yours,

*William R. Turner IV*

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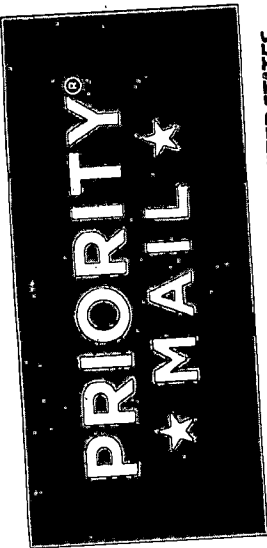
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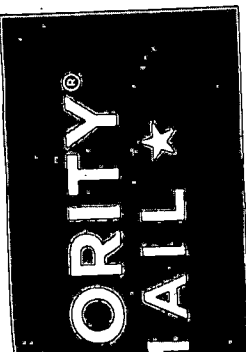
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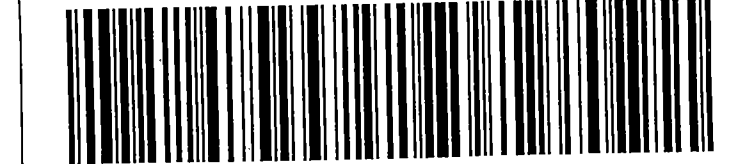
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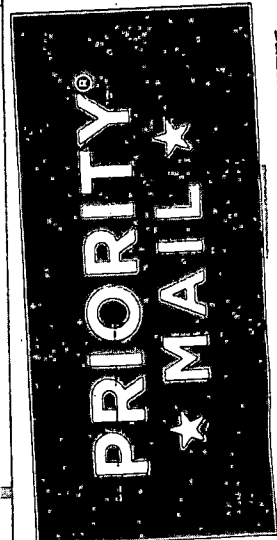
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