

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

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FEB 01 2016

SC Court of Appeals

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 Rosario, Individually and as Trustee at Church of God at North Charleston, and North Palm Ministries, Inc., North Palm Community Church and Community First Bank and its Successor Crescom Bank, Defendants.

Of Whom Crescom Bank is the Respondent,

v.

Thomas Propes and Marc Campbell, Third Party Defendants.

**RESPONDENT'S REPLY TO APPELLANT'S RETURN TO
RESPONDENT'S MOTION TO STRIKE AND RETURN TO APPELLANT'S
MOTION FOR LEAVE OF COURT TO ADD A CITATION AND AMEND
DESIGNATION OF MATTER**

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Daniel Q. Orvin
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(843) 722-3400
ATTORNEYS FOR RESPONDENT

Respondent, Crescom Bank, Successor by Merger to Community First Bank and its Successor Crescom Bank ("Respondent") respectfully requests that the Court grant its Motion to Strike any reference to the contents of the loan application referenced on Page 15 of Appellants' Initial Brief. In their Return, the Appellants contend that on April 20, 2015, they submitted to the Court the entire deposition transcript of Robert Warrick, including all exhibits. They further contend that pages 17-19 of the Warrick transcript and exhibit 1 to that deposition set forth the contents of the loan application. This is incorrect. The transmittal to which the Appellants refer contained only the transcripts of the depositions of Marc Campbell and Robert Warrick. *Exhibit 1*, Affidavit of Matthew Tillman. Further, pages 17-19 (or 19-21 as set forth later in Return) of the Warrick transcript make no mention of purchasing property for a new church. *Exhibit 2*, Warrick Tr. at 17-21. At best, the testimony confirms only that the proceeds would be used for new property, with no mention of a new church:

Q. Okay. And it shows that the purpose of the loan was to refinance church property to provide cash for purchase of new property; is that correct?

A. Yes.

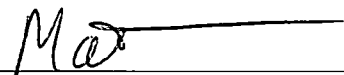
Id. at 21: 15-19. This testimony does not support the contention on Page 15 of Appellants' Initial Brief that "the Rogue Directors disclosed on the face of their loan application their intent to use the proceeds from the mortgage to purchase property for a new **church**." (emphasis added). It does not even distinguish between real and personal property. Therefore, Respondent's Motion to Strike should be GRANTED.

For these same reasons, Appellants' request to correct scrivener's errors and amend the Designation of Matter to be Included on the Record should be denied.

CONCLUSION

For the reasons set forth above, Respondent respectfully requests that it's Motion to Strike be GRANTED and that Appellants' Motion to Add a Citation and Amend the Designation of Matter to be Included on the Record be DENIED.

Respectfully submitted,



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ATTORNEYS FOR RESPONDENT

AFFIDAVIT OF MATTHEW TILLMAN

PERSONALLY APPEARED before me, Matthew Tillman, who, being duly sworn, alleges and says as follows:

1. I am over 18, and I am competent and knowledgeable regarding all of the matters set forth herein.

2. I am the attorney for Community First Bank and its Successor Crescom Bank, a defendant in Case No. 2013-CP-10-1686 and the Respondent in Appellate Case 2015-001848.

3. On or about April 20, 2015, I received a letter sent to the circuit court by Appellants Church of God and Church of God of South Carolina, in which the Appellants attached the deposition transcripts of Marc Campbell and Robert Warrick as part of Appellants' opposition to Crescom Bank's Motion for Summary Judgment.

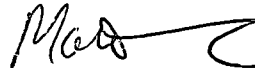
4. The exhibits for the depositions of Marc Campbell and Robert Warrick were not attached to the April 20, 2015 letter.

5. I have reviewed the Charleston County online docket for Case No. 2013-CP-10-1686, and it appears that the April 20, 2015 submission to the circuit court did not attach the aforementioned exhibits.

6. Based on these facts, it is my belief that the exhibits to Robert Warrick's deposition were never included in the materials to be considered by the circuit court when reviewing Crescom Bank's Motion for Summary Judgment and related opposition documents.



FURTHER AFFIANT SAYETH NOT.


Matthew Tillman

Sworn and subscribed before me
this 29th day of January, 2016.

Print: Carol B. Casey
Sign: Carol B. Casey

Notary Public for South Carolina
My Commission Expires: 02/13/2019

1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON NINTH JUDICIAL CIRCUIT
3 CHURCH OF GOD, CHURCH OF GOD OF SOUTH CAROLINA
4 AND CHURCH OF GOD AT NORTH CHARLESTON,

Plaintiffs,

vs. CASE NO. 2013-CP-10-1686

5 MARK ESTES, PATRICIA ESTES, MICHAEL TIMOTHY
6 BROOKS, INDIVIDUALLY AD AS TRUSTEE FOR CHURCH
7 OF GOD AT NORTH CHARLESTON TRUST, ADAM BOYER
8 INDIVIDUALLY AND AS TRUSTEE FOR CHURCH OF GOD
9 AT NORTH CHARLESTON, ROLANDO RIVERA OSORIO
10 INDIVIDUALLY AND AS TRUSTEE FOR CHURCH OF GOD
11 AT NORTH CHARLESTON, AND NORTH PALM MINISTRIES,
12 INC., NORTH PALM COMMUNITY CHURCH AND CRESCOM
13 BANK AS SUCCESSOR BY MERGER TO COMMUNITY FIRST
14 BANK,

Defendants.

15 VIDEO

DEPOSITION OF: ROBERT WARRICK 30(b)(6)

16 DATE: March 20, 2014

TIME: 10:08 AM

17 LOCATION: Law Offices of
18 George J. Kefalos
19 46A State Street
20 Charleston, SC

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: Roxanne M. Easterwood, RPR

VIDEOGRAPHER: Nick Stello

21 A. WILLIAM ROBERTS, JR., & ASSOCIATES
22 Fast, Accurate & Friendly

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EXHIBIT

2

1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR PLAINTIFFS

3 CHURCH OF GOD, CHURCH OF GOD OF SOUTH
4 CAROLINA AND CHURCH OF GOD AT NORTH
5 CHARLESTON:

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7 BY: OANA D. JOHNSON

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15 DEFENDANTS

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17 CAROLINA, THOMAS PROPPES AND MARC
18 CAMPBELL:

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COMMUNITY FIRST BANK:

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Mtillman@wcsr.com

-- and --

ALTMAN & COKER

BY: CHARLES S. ALTMAN

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Charleston, SC 29403

(843) 853-9907

Caltman@altmancoker.com

1 closing?

2 A. In some -- in some case.

3 Q. All right. Would you agree that you
4 would have to make sure that the person borrowing
5 money on behalf of corporate -- of a corporation
6 has the authority to borrow the money?

7 A. Again, the attorney's job in a real
8 estate transaction is to offer title insurance and
9 to ensure that fact that they are a qualified
10 borrower, not the bank.

11 Q. Okay. Would you agree that you would
12 have to make sure that the person giving the
13 mortgage on behalf of the corporation has the
14 authority to mortgage the property?

15 A. The attorney would, in fact, do that
16 for us, yes.

17 Q. And this authority would typically
18 come in the nature of a corporate resolution; is
19 that correct?

20 A. I pre -- whatever would make the
21 closing attorney happy so they could give that
22 authority.

23 Q. Okay. There are ways that you can
24 determine whether the resolution is proper or not;
25 is that correct?

1 A. Again, that's not my expert -- not my
2 area of expertise. That's the attorney's area of
3 expertise.

4 Q. Okay. Does the bank require the
5 corporation to provide its governing documents
6 before making the loan?

7 A. In some cases, yes.

8 Q. Does the bank assure that the person
9 making the application for a loan has the
10 authority to make the application or the loan?

11 A. We do not, not on the application.

12 Q. Okay. What do you do that on? You
13 don't do that on the application, do you? Don't
14 -- the bank does not assure that --

15 A. No. No. When we close the loan we
16 assure that. When you make an application we're
17 going to assume that you're making a true
18 statement, and when you sign it you're certifying
19 that those are true statements. When we go to
20 close the loan we have the attorney certify that
21 and make sure they have proper authority.

22 Q. Okay. So the bank did not request a
23 copy of the governing -- the governing documents
24 that show who has the proper authority to request
25 the loan or mortgage the property in -- in this

1 case, and they do not do that in any other case?

2 MR. TILLMAN: Object to the form. Go
3 ahead.

4 THE WITNESS: In some cases we do.

5 BY MS. JOHNSON:

6 Q. Can you give me an example of a case
7 where you would?

8 A. We may request those documents, you
9 know, for some review if it's an unsecured loan or
10 if it's a loan on equipment or something to that
11 nature. On a real estate transaction we do -- we
12 don't.

13 Q. Okay. Can you please take a look at
14 Exhibit Number 1.

15 (The witness reads the document, as
16 requested.)

17 BY MS. JOHNSON:

18 Q. Can you identify this document for me?

19 A. It says at the top: Commercial loan
20 application summary.

21 Q. This does not appear to be the actual
22 application, does it?

23 A. This is an application, I think, at
24 the time that we would get. And if you see at the
25 bottom, it allows us to pull credit bureaus.

1 Q. Okay. So this is the actual
2 application that was submitted to the bank for the
3 loan?

4 A. I would surmise.

5 Q. Okay. Can you tell me who made this
6 application, which entity?

7 A. It's -- at the top it reads: North
8 Palm Ministries, Inc.

9 Q. Okay. What is the date of this
10 application?

11 A. 9/24/2007.

12 Q. Okay. It shows that the application
13 was for a \$700,000 secure loan, correct?

14 A. Yes.

15 Q. Okay. And it shows that the purpose
16 of the loan was to refinance church property to
17 provide cash for purchase of new property; is that
18 correct?

19 A. Yes.

20 Q. Okay. You understood that
21 authorization resolution was to be provided,
22 correct?

23 A. How would I understand that?

24 Q. Can you look at the document where it
25 says authorization resolution dated 10/15/2007?

1 It's below the name of the entity applying for the
2 loan, about three lines down.

3 A. Uh-huh. I see that. I see a date
4 there.

5 Q. Okay. And then the -- there is a
6 checkmark -- a checkbox to be provided?

7 A. Uh-huh. I see that.

8 Q. So -- so the bank understood that
9 authorization resolution was to be provided,
10 correct?

11 A. It looks like they were requesting it.

12 Q. Okay. Can you tell me what is
13 authorization resolution?

14 A. It's a resolution given to the bank by
15 the borrowers.

16 Q. Okay. Would you take a look at
17 Exhibit 10?

18 (The witness reads the document, as
19 requested.)

20 THE WITNESS: That's small.

21 BY MS. JOHNSON:

22 Q. Do you know what this document is?

23 A. It's a note.

24 Q. It's a note. And does this document
25 show who was giving the property to secure the

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Of Whom Crescom Bank is the Respondent,

v.

Thomas Propes and Marc Campbell, Third Party Defendants.

PROOF OF SERVICE

I do hereby certify that on the 29th day of January 2016, I served a copy of the within *Respondent's Reply to Appellant's Return to Respondent's Motion to Strike and Return to Appellant's Motion for Leave of Court to Add a Citation and Amend Designation of Matter* in the within entitled matter by sending a copy of the same in an envelope with the correct postage prepaid addressed to:

George J. Kefalos, Esq.
46 A State Street
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Attorney for Appellant

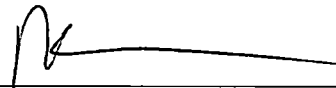
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Patricia Estes, Adam Boyer, individually
and as Trustee for Church of God at
North Charleston and Michael Timothy
Brooks, individually and as Trustee for
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North Palm Community Church*

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January 29, 2016

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January 29, 2016

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

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Re: Church of God, et al. v. Mark Estes, et al.
Appellate Case 2015-001848
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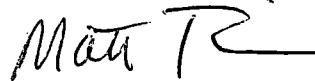
Dear Ms. Kitchings:

Enclosed for filing please find the original and one copy of *Respondent's Reply to Appellant's Return to Respondent's Motion to Strike and Return to Appellant's Motion for Leave of Court to Add a Citation and Amend Designation of Matter* in the above action. Please return the filed, time stamped copy to me in the enclosed pre-addressed, stamped envelope.

Thank you for your assistance.

Sincerely,

WOMBLE CARLYLE SANDRIDGE & RICE, LLP



Matthew E. Tillman

MET/cbc
Enclosure: 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.
Charles S. Altman, Esq.
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