

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Robert E. Watson, Master-in-Equity

Appellate Case No. 2014-001487

RECEIVED

JUL 10 2017

SC Court of Appeals

Linda Gibson, formerly known as Linda Ann Avinger
Individually and as Trustee of the Paul William Gibson
Family Trust, and Heritage Seven, LLC, Respondents,

v.

Ameris Bank Appellant.

REPLY TO RETURN TO
PETITION FOR REHEARING

Respondents Gibson again respectfully request that this Court grant this Petition for Rehearing and issue a substituted opinion affirming the judgment in favor of Respondents by the Master. Respondents incorporate the arguments and discussions made previously in the initial petition for rehearing and will not repeat them herein, yet submits the following additional response to Appellant’s Return to the Petition for Rehearing:

- 1. Agency was certainly argued extensively at the trial court level, but insufficiently thereafter to preserve the issue for review.

Appellant explains how the issue of agency was presented at trial and discussed extensively before the trial court, noting that the “master spent ten pages addressing and deciding the issue.”

Handwritten initials

(Pet. Reply p. 3). That extensive and direct consideration at the lower level, however, makes the near total failure to address the issue squarely on appeal by inclusion in the statement of issues on appeal so much more egregious and consequential. Appellant claims the “argument that Zerbst was not its agent was present throughout the briefs, and was specifically embedded within the analysis of the first two issues on appeal.” (Pet. Reply p. 6-7). However, the cites to the Appellant’s initial brief focus on a mere footnote (n. 7), buttressed by two of the three additional quotes that also were sourced from mere footnotes to the initial brief (notes 6 and 12).

As for oral argument quotes, Appellant is able to marshal just two brief quotes, both identified as containing responses to questions from the Court, not affirmative offerings clearly and directly set forth by Appellant’s as issues requiring consideration and resolution in their favor. Surely Appellant’s reviewed the entire argument recording, yet present no quotes from Respondent’s counsel, either directly or in response to questions from the panel. That further confirms that Appellant’s had not made preserved those issues by clearly placing them before the Court for necessary and appropriate consideration such as would be necessary to preserve them.

2. Sufficient evidence existing to support the finding of agency.

Appellant contends that “Respondents have failed to point to any conduct or statements made by Ameris to Linda Gibson during this time period concerning whether Zerbst was its agent.” (Pet. Reply p. 8). In support for that statement, Appellant puts on blinders by focusing exclusively on Zerbst’ official employment date, something which the Master specifically rejected in the underlying order, while explaining his basis for doing so. Appellant mentions the prior shopping center transaction as pre-dating Zerbst’ even alleged association with Ameris, but ignores the clearly stated reason provided by the Master for referencing the same, all the parties were involved

Handwritten initials

(including Lanier who was admittedly Ameris' employee during the relevant period leading up to the apartment loan) in following the exact structure used previously.

Appellant glosses over the involvement of its admitted employee that was at the center of this transaction, Lanier, by referencing the supposed indirect transfer of loan documents to Ameris by Zerbst. They fail to mention that Lanier picked up Zerbst from an arranged meeting point, drove Zerbst to that meeting, and then participated in the choreographed transfer of documents from Zerbst to Villavicencio over to Lanier. [R. pp. 495-498]. Even Lanier acknowledged the transfer was "staged." [R. p. 498, lines 9-14].

Appellant also contends their "approval of a commercial loan application does not ratify any conduct by Zerbst..." (Pet. Reply p. 9). However, the *means by which that approval occurred*, not mere end result of approval, are what Respondents referenced in the petition for reconsideration. Those means are noteworthy, a \$2.8 million-dollar loan application approved the very next day after submission a state president for Ameris, because they are so unusual.


3. Ameris knowingly participated in the breach of fiduciary duty.

Respondents Gibson submit that the determination that the record lacks "any evidence" of knowing participation in the breach of fiduciary duty, an element of her claim for aiding and abetting a breach of fiduciary duty, was also the product of evidence being overlooked and misapplication of the law. That is true even if a more stringent "actual knowledge" standard is applied. Respondents rely upon their prior discussion of the same as part of the Petition for Rehearing in support of that argument, and at this time offers no additional argument in reply to Appellant's discussion thereof in its return to that petition.

CONCLUSION

For the foregoing reasons and those set out more fully in Respondents' Petition for Rehearing, Respondents again respectfully request that this Court grant the Petition for Rehearing and issue a substituted opinion affirming the judgment in favor of Respondents by the trial court below.

Respectfully submitted,



Desa Ballard
Harvey M. Watson III

BALLARD & WATSON

P.O. Box 6338

West Columbia, South Carolina 29171

Telephone 803.796.9299

Facsimile 803.796.1066

desab@desaballard.com

harvey@desaballard.com

ATTORNEYS FOR RESPONDENT

July 6, 2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Robert E. Watson, Master-in-Equity

Appellate Case No. 2014-001487

RECEIVED

JUL 10 2017

SC Court of Appeals

Linda Gibson, formerly known as Linda Ann Avinger
Individually and as Trustee of the Paul William Gibson
Family Trust, and Heritage Seven, LLC, Respondents,

v.

Ameris Bank Appellant.

CERTIFICATE OF SERVICE

I, Beth Cogan, an employee with Ballard & Watson, Attorneys at Law, do hereby certify that on July 6, 2017, I served a copy of the **Reply to Return to Petition for Rehearing** in the above-captioned case on the following individual by electronic mail and by United States Mail, with sufficient first-class postage affixed, addressed as follows:

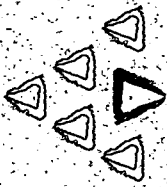
Robert E. Stepp, Esquire
rstepp@sowellgray.com
Sowell Gray Stepp & Laffitte, LLC
Post Office Box 11449
Columbia, South Carolina 29211

Tina M. Cundari, Esquire
tcundari@sowellgray.com
Sowell Gray Stepp & Laffitte, LLC
Post Office Box 11449
Columbia, South Carolina 29211

Benjamin R. Gooding, Esquire
bgooding@sowellgray.com
Sowell Gray Stepp & Laffitte, LLC
Post Office Box 11449
Columbia, South Carolina 29211


Beth Cogan, Paralegal

July 6, 2017
West Columbia, South Carolina



Ballard & Watson
Attorneys at Law
PERSISTENT. UNWAVERING.

Desa Ballard
Harvey M. Watson III

Post Office Box 6338 | West Columbia, SC 29171
226 State Street | West Columbia, SC 29169
ph 803.796.9299 | fx 803.796.1066 | desaballard.com

July 6, 2017

Via U.S. Mail

Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *Linda Gibson v. Ameris Bank*
Appellate Case No: 2014-001487

Dear Ms. Kitchings:

Please find enclosed for filing an original and seven copies of the **Reply to Return to Petition for Rehearing** in the above-referenced matter. Please file the original and return the copy in the enclosed self-addressed stamped envelope.

Please do not hesitate to contact our office if you should have any questions. With warm personal regards, I am,

Sincerely yours,

Harvey M. Watson III
harvey@desaballard.com

Enclosures

cc: Via U.S. Mail and Email
Robert E. Stepp, Esquire
Tina Cundari, Esquire
Benjamin R. Gooding, Esquire

RECEIVED

JUL 10 2017

SC Court of Appeals