

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master-in-Equity Judge

Case No. 2014-CP-40-3950

RECEIVED

AUG 17 2017

SC Court of Appeals

First Citizens Bank and Trust Company, Inc., successor by
Merger to Community Resource Bank, N.A.,.....Respondent,

v.

SOH Properties, LLC, Ivan A. Roldan, and Eugene G.
McDonald a/k/a Eugene G. McDonald, III, Defendants,

Of whom Eugene G. McDonald, III is the.....Appellant.

**MOTION TO REQUIRE APPELLANT TO SUPPLEMENT RECORD ON APPEAL
AND FOR EXTENSION OF TIME TO FILE FINAL BRIEFS**

Respondent First Citizens Bank and Trust Company, Inc., successor by Merger to
Community Resource Bank, N.A. ("Respondent") hereby moves for an Order extending the time
for Appellant and Respondent to file their Final Briefs. The current deadline to file and serve
Final Briefs is August 23, 2017.

The Record on Appeal submitted by Appellant on August 4, 2017 was incomplete,
contained documents not designated by either party, and contained errors in the index.
Respondent contacted Appellant via email on August 7, 2017 with a detailed list of deficiencies
related to the Appeal. (A copy of the correspondence and attachments is attached as Exhibit 1.)
On August 10, 2017, Respondent met with Appellant, who is *pro se*, and he affirmed his

agreement to correct the Record on Appeal and agreed to the extension of time to file Final Briefs. Respondent provided Appellant with copies of the missing documents, and Respondent and Appellant have been actively working together to enable Respondent to serve a complete and correct Record on Appeal. Based on the foregoing, Respondent respectfully requests that the issue an order allowing for an Amended Record on Appeal to be served within twenty days of an order on this Motion, and for Final Briefs to be filed and served within 20 days thereafter.

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.

By: 

Stanley H. McGuffin, SC Bar No. 3830

Mary M. Caskey, SC Bar No. 76198

Post Office Box 11889

Columbia, SC 29211

Telephone: (803) 779-3080

Attorneys for Respondent First Citizens Bank and Trust Company, Inc., successor by merger to Community Resource Bank, N.A.

August 17, 2017

Willoughby, Amanda

From: Caskey, Mary
Sent: Monday, August 07, 2017 2:11 PM
To: Gris McDonald
Cc: Willoughby, Amanda
Subject: Record on Appeal
Attachments: DM-#4340306-v1-Order_Granting_Plaintiff_s_Motion_for_Order_of_Reference_....pdf;
DM-#5069379-v1-Docs_Included_in_the_Record_on_Appeal_but_Not_on_the_Inde....doc;
DM-#5069328-v1-Docs_in_the_record_on_appeal_that_are_not_on_either_desig....pdf

Importance: High

Mr. McDonald –I'm reaching out to you about the record on appeal. Unfortunately, there are a few problems with it that need to be corrected. Rather than filing a motion, I was hoping we could work together to get it straightened out.

- 2 documents from First Citizens' designation are missing: No. 3 (Order granting motion for order of reference; and No. 14 (trial exhibits). I've attached the order, but you should have the trial exhibits. I can email them to you separately if that would help. These need to be included in the record.
- There are a number of documents in the Record that are not on either party's designation and they need to be removed. A list is attached. A list of errors related to exhibits is also included.
- Finally, there are a number of errors in the Index that will affect how we cite to the record. I've attached those as well.

Could you please review and confirm you will serve a corrected record? If I do not hear from you by Monday, August 14th, I will have no choice but to file a motion, so as to avoid any further delay.

Thanks,
Mary

**Haynsworth
Sinkler Boyd, P.A.**

ATTORNEYS AND COUNSELORS AT LAW

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
Case No. 2014-CP-40-3950

First Citizens Bank and Trust Company,
Inc., successor by merger to Community
Resource Bank, N.A.,

Plaintiff,

vs.

SOH Properties, LLC, Ivan A. Roldan,
and Eugene G. McDonald aka Eugene G.
McDonald III,

Defendants.

**ORDER GRANTING PLAINTIFF'S MOTION
FOR ORDER OF REFERENCE AND
DENYING DEFENDANT MCDONALD'S
MOTION FOR LEAVE TO AMEND ANSWER
TO ASSERT COUNTERCLAIMS**

RICHLAND COURT
FILED
2015 NOV 13 AM 10:09
JEANNETTE W. HCBRIDE
C.C.P. & G.S.

This matter is before the court upon (a) the motion of Plaintiff, First Citizens Bank and Trust Company, Inc., successor by merger to Community Resource Bank, N.A., for an Order of Reference and (b) Defendant Eugene G. McDonald aka Eugene G. McDonald III's ("Defendant McDonald") Motion to Amend Answer of Defendant McDonald. A hearing was held on July 29, 2015. Present for Plaintiff were Mary M. Caskey, Esq. and John G. Tamasitis, Esq. of Haynsworth Sinkler Boyd, P.A. Defendant McDonald appeared *pro se*.

Upon the motions and arguments of counsel for Plaintiff, the Court finds that Plaintiff is entitled to the relief requested and in this regard, the Court makes the following findings of fact and conclusion of law:

1. The Court has jurisdiction over the parties to and the subject matter of this action.

2. On or about February 25, 2015, Defendant McDonald filed with the Court a Motion to Amend Answer of Defendant McDonald seeking leave to amend his Answer for the expressed purpose of asserting certain counterclaims.

3. Despite the lenient standard under Rule 15, SCRCP, South Carolina courts have refused to allow amendment of pleadings when an amendment would be futile. *See Red Oak Lands, Inc. v. Lane*, 268 S.C. 631, 634-36, 235 S.E.2d 718, 720 (1977) (affirming the trial court's ruling refusing to allow plaintiff to amend its complaint because the statute of limitations had run so that any amendment would be "futile"). All of Defendant's counterclaims are based on factual allegations that Plaintiff improperly failed to modify the commercial loan that is the subject of this action. Plaintiff is under no obligation, legally or contractually, to modify the loan that is the subject of this action. There is no provision in any of the loan documents or guaranties executed by any of the Defendants in this action that require a modification or other amendment to the terms of the agreements. Further, Plaintiff has not breached any loan document by denying Defendant McDonald's request for a loan modification, or by collecting the debt in the manner prescribed in the notes, the mortgages, the loan documents, and/or the guaranties. A contracting party does not breach his implied duty of good faith and fair dealing by refusing to change the terms of a contract. *Adams v. G.J. Creel and Sons, Inc.*, 320 S.C. 274, 277, 465 S.E.2d 84, 85 (1995). Because Defendant McDonald's counterclaims, at this time, do not state facts that would support a claim, his motion for leave to amend his Answer to assert certain counterclaims is denied without prejudice.

4. On or about March 13, 2015, Plaintiff filed with the Court a Motion for Order of Reference requesting that the Court refer this foreclosure action to the Honorable Joseph M.

Strickland, Master in Equity for Richland County, for the purpose of receiving evidence and rendering findings of fact and conclusions of law.


5. Plaintiff commenced this action in equity for the foreclosure of certain property located in Richland County, South Carolina. This is a proper matter to be referred to the Master in Equity pursuant to Rule 53, SCRPC, for the purpose of making appropriate findings of fact and conclusions of law with the authority to enter a final judgment in this case and with any appeal from the final judgment in this case directly to the South Carolina Court of Appeals.

IT IS HEREBY ORDERED, ADJUGED, AND DECREED that:

1. Defendant McDonald's motion for leave to amend his Answer to assert certain counterclaims is denied without prejudice because Defendant McDonald's proposed counterclaims do not state facts that would support a claim at this time.

2. This action is hereby referred to the Honorable Joseph M. Strickland, Master in Equity for Richland County, to take testimony arising under the pleadings, to make findings of fact and conclusions of law, with authority to dispose of any and all issues, and enter a final judgment in the case, pursuant to Rule 53, SCRPC. Any appeal from the final judgment entered by the Master in Equity shall be made directly to the South Carolina Court of Appeals.

AND IT IS SO ORDERED.


L. Casey Manning
Presiding Judge

, 2015

**List of Documents Included in the Record on Appeal that are Not on the Index
or Listed on Either Party’s Designations**

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Errors in Appellant’s Exhibits Included in Record on Appeal

The exhibits McDonald included in the Record on Appeal are not the same as the exhibits from the hearing on June 29, 2016; they do not include an exhibit sticker, only his hand-written exhibit numbers.

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Exhibit #5 is actually Exhibit #8 from hearing.....	301-302
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THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Master in Equity
The Honorable Joseph M. Strickland, Master in Equity

Case No. 2014-CP-40-3950

Appellate Case No. 2016-001895

First Citizens Bank and Trust Company, Inc., Successor by merger to Community Resource Bank, N. A.Respondent,

v.

SOH Properties LLC, Ivan A. Roldan, and Eugene G. McDonald a/k/a Eugene G. McDonald, III,
Defendants,

Of whom Eugene G. McDonald a/k/a Eugene G. McDonald, III is the Appellant.

RECORD ON APPEAL

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Columbia, South Carolina 29206
Pro se Appellant

Mary M. Caskey
Stanley H McGuffin
Haynsworth Sinkler Boyd P.A.
Post Office Box 11889
Columbia, SC 29211-1899
Attorneys for the Respondents

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master-in-Equity Judge

Case No. 2014-CP-40-3950
Appellate Case No. 2016-001895

First Citizens Bank and Trust Company, Inc., successor by
Merger to Community Resource Bank, N.A.,..... Respondent

v.

SOH Properties, LLC, Ivan A. Roldan, and Eugene G.
McDonald a/k/a Eugene G. McDonald, III, Defendants,

Of whom Eugene G. McDonald, III is the.....Appellant

PROOF OF SERVICE

I, the undersigned employee of Haynsworth Sinkler Boyd, P.A., do hereby certify that I have this 17th day of August, 2017, caused the foregoing *Motion to Require Appellant to Supplement Record on Appeal and for Extension of Time to File Final Briefs* to be served via U.S. mail, postage prepaid on *pro se* Appellant at the address shown below:

Eugene G. McDonald
4533 Ivy Hall Drive
Columbia, SC 29206
Pro se Appellant

(Signature Page Follows)

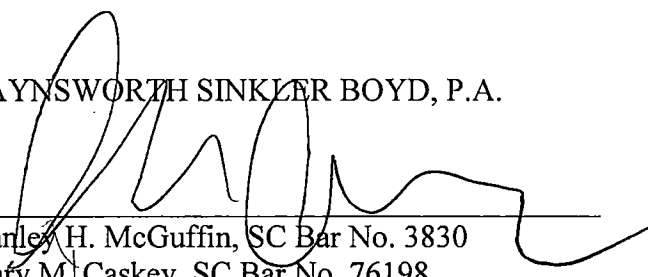
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Handwritten text, possibly a date or location.

Handwritten text, possibly a name or title.

HAYNSWORTH SINKLER BOYD, P.A.



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August 17, 2017

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August 17, 2017

VIA HAND DELIVERY

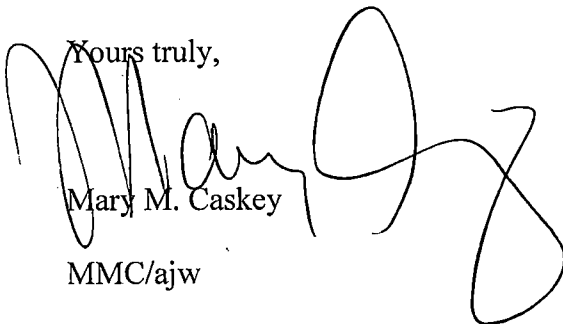
Jenny Abbott Kitchings
Clerk of South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: *First Citizens Bank and Trust Company, Inc., successor by merger to Community Resource Bank, N.A. v. SOH Properties, LLC, Ivan A. Roldan, and Eugene G. McDonald aka Eugene G. McDonald III*
Case No. 2014-CP-40-3950
Appellate Case No. 2016-001895
HSB File No. 01798.1203

Dear Ms. Kitchings:

With regard to the above-referenced matter, enclosed for filing please find the original and seven (7) copies of Respondent's Motion to Require Appellant to Supplement Record on Appeal and For Extension of Time to File Final Briefs, along with a Proof of Service. I have also enclosed a \$25.00 check for the filing fee. Please date-stamp the enclosed extra copy and return via our courier.

Yours truly,



Mary M. Caskey

MMC/ajw

Enclosures

cc: Eugene G. McDonald (w/encl.)

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AUG 17 2017

SC Court of Appeals