

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Marvin H. Dukes, III, Special Circuit Court Judge

Appellate Case No. 2016-001899
Case No. 2016-CP-07-1778

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AUG 16 2017
SC Court of Appeals

A&B Associates, L.P.....Plaintiff/Respondent,

v.

FCRE REL, LLC; and TIDELAND REALTY, INC.Defendants,

Of whom FCRE REL, LLC is the Appellant.

APPELLANT'S RETURN TO RESPONDENT'S NOTICE OF MOTIONS AND MOTIONS
TO STRIKE

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Attorneys for Plaintiff/Respondent A&B ASSOCIATES, L.P.

RETURN TO RESPONDENT'S MOTIONS TO STRIKE

A & B Associates, L.P. (hereinafter "A & B") has filed two motions to strike in this matter. One seeks to exclude copies of the loan documents referenced in Appellant's July 31, 2017 "Designation of Matter to Be Included in the Record on Appeal." The other seeks to strike any reference to those documents in the Initial Reply Brief of FCRE REL, LLC (hereinafter "FCRE"). FCRE files this return to those motions, responding as follows:

A & B's Complaint in the underlying action refers to the "Loan Agreement," the "Loan Documents," and/or the "Loan" on the preponderance of pages and uses those terms interchangeably. A & B's allegations in the Complaint and the bases of its request for the trial court to issue an injunction, were all predicated upon covenants running to the Loan Documents. A & B specifically requested that the trial court "...declare that the Loan Documents violate public policy and therefore should not be enforced." *See* Complaint, page 16, Count IV (4). However, A & B never filed the Loan Documents.

Recognizing that the trial court could not make any determination whatsoever pertaining to the loan documents due to A & B's failure to file them, FCRE made it clear during the injunction hearing that FCRE intended to and was prepared to offer live testimony focused on the loan documents.

That's not the case, however, in the ten-day hearing following the issuance of the temporary restraining order. During this hearing, testimony, in-person testimony, is allowed, and has actually been encouraged when it's a contentious case like this one is today, so I would object to his assertion that you're not able to hear testimony today.

Injunction Hr. Tr., 9:5-13. Thereafter, FCRE's counsel made it clear that much of the testimony it would offer related directly to the loan documents. *See* Injunction Hr. Tr., 11:8-13; 11:23-12:12; 16:10-19:10. Ultimately, the Court completely denied any evidence whatsoever from being

offered: “First things first, Mr. Coltrane has brought up the issue of the live testimony. And I think I’m going to grant his petition to not hear this or deal with live testimony. If all you were to come up and testify, we’d be here until 1 o’clock in the morning, I’m sure.” Injunction Hr. Tr. 24:16-22.

During the contempt hearing, FCRE again repeatedly asserted that the loan documents barred the borrower’s claims. *See* Contempt Hr. Tr., 10:9-16; 11:18-24; 16:24-17:11. Indeed, the trial judge expressly acknowledged that the loan documents were squarely in issue: “Because I understand they have an interpretation of the paperwork which may or may not be unconscionable. We haven’t gotten there yet.” Contempt Hr. Tr., 17:13-16.

There is no basis for the borrower’s assertion that FCRE did not present the loan documents to the court below. To the contrary, despite failing to allow the Loan Documents to be entered into evidence and completely prohibiting any evidence whatsoever, the court, along with counsel for both parties, acknowledged the existence of the Loan Documents and several provisions thereof on numerous occasions during both hearings. It is clear that the courts decisions were largely predicated on the Loan Documents, language and provisions therein, and the actions of the parties governed by those provisions. It was patently obvious that the loan documents were relevant, but the trial court refused to consider those documents. FCRE’s proffer was more than adequate, particularly because the trial court refused to conduct any hearing whatsoever. This is not a case where there was a trial and the testimony of only one witness was excluded. Here, the trial court denied any hearing whatsoever. Limiting the record on appeal would only exacerbate the due process violation the trial court committed by enjoining and punishing FCRE without holding an evidentiary hearing. This Court should consider the loan documents, which govern the rights and obligations of the parties.

CONCLUSION

For the foregoing reasons and for the reasons, Appellant respectfully requests that the Respondent's Motions to Strike be denied.

Coppage Law Firm, LLC



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August 14, 2017
Beaufort, South Carolina

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Of whom FCRE REL, LLC is the..... Appellant.

PROOF OF SERVICE

I certify that I have served the **Appellant's Return to Respondent's Motions to Strike** in the above-captioned matter upon the following counsel of record by depositing the same in the United States Mail with proper postage affixed and addressed as follows:

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Attorneys for Plaintiff/Respondent A&B ASSOCIATES, L.P.

Coppage Law Firm, LLC

A handwritten signature in black ink, appearing to read 'BDC', with a horizontal line underneath it.

Benjamin T. Coppage

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Attorney for Appellant FCRE REL, LLC
and Defendant Tideland Realty, Inc.

August 14, 2017
Beaufort, South Carolina

**Coppage
Law
Firm**

August 14, 2017

Hon. Jenny A. Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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SC Court of Appeals

Re: *A&B Associates, L.P. v. FCRE REL, LLC; and Tideland Realty, Inc.*
Appellate Case No. 2016-001899
Lower Court Case No. 2016-CP-07-1778

Dear Ms. Kitchings:

Please find enclosed for filing an original and seven copies of the **Appellant's Return to Respondent's Motions to Strike** and a **Proof of Service** in the above-referenced matter. Please file these and return filed copies to me in the enclosed self-addressed, postage-paid envelope.

By copy of this letter, I am serving all counsel of record with a copy of the same. Please do not hesitate to contact me if you need any additional information.

With warmest regards,


Benjamin T. Coppage

Enclosures

cc: Curtis L. Coltrane
Brian H. Mahany
Timothy J. Granitz

COPPAGE LAW FIRM

P.O. BOX 2473

BEAUFORT, SC 29901

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SC Court of Appeals

Hon. Jenny A. Kitchings

South Carolina Court of Appeals

P.O. Box 11629

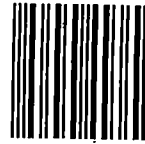
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