

**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**

**RECEIVED  
FEB 01 2018  
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 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.

**APPELLANT'S PETITION FOR REHEARING**

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ATTORNEYS FOR APPELLANTS

Pursuant to the provision of Rule 221 (a), Appellants (hereinafter "Petitioners"), through their undersigned counsel, respectfully petition this Court for a rehearing based on facts, points, and arguments overlooked or misapprehended as set forth herein.

### **STANDARD OF REVIEW**

Under Rule 221(a), SCACR, a party may file a petition for rehearing in accordance with Rule 240(d), SCACR. For the losing party to prevail on the petition, that party “must demonstrate the Court overlooked or misapprehended their argument.” *Kennedy v. S. C. Retirement Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001). The purpose of a petition for rehearing “is not to present points the lawyers of the losing parties overlooked themselves or to have the case tried in the Court of Appeals a second time.” *Checker Yellow Cab Co., Inc. v. Checker Cab & Parcel Serv., Inc.*, 287 S.C. 608, 612, 340 S.E.2d 549, 552 (Ct. App. 1986). The appellate courts “will not entertain petitions for rehearing on a motion or petition unless the action of the court on the motion or petition has the effect of dismissing or finally deciding a party's appeal.” Rule 221 (c), SCACR.

#### **I. As to the voluntary payment doctrine.**

The court failed to address whether the Church of God made payment to Crescom Bank with full knowledge of all the facts.

The Court failed to consider or discuss the effect of the fact that the Church paid the mortgage to Crescom Bank without knowledge that its former pastor had taken the money for his own use, and not that of the Church. While the Church knew its former pastor had mortgaged the property without permission, it believed there had been no loss, since the money had used for repairs to the Church property.

The Court overlooked failed to address whether the payment to Crescom Bank was voluntary and knowing if the Church did not know of any loss. The Court misapprehended the knowledge that the Church had at the time it made the payment to the Bank. While it is true that the Bank had knowledge that they payment was made with knowledge that the loan was not authorized, the Church was under the belief that the funds had been used to improve the Church such that no damages were suffered. Clearly the Church cannot be charged with **full knowledge of all facts** such that the payment was voluntary when it did not know that the funds were embezzled by the rogue defendants. The Court's reliance on *Hardaway v. S. Ry. Co.*, 90 S.C. 475, 73 S.E. 1020 and *Moody v. Stem*, 214 S.C. 45, 60, 51 S.E.2d 163, 169 (1948) is in error, because the Court failed to consider Plaintiff's material evidence that Plaintiffs did not have full knowledge of all the facts

**II. The Court failed to consider that South Carolina has a statute in place that would provide a statute of limitations for slander of title.**

The Court failed to appreciate that an action for slander of title is a claim "founded upon a title to real property" and should be governed by the 10-year statute of limitations contained in Article 3, "ACTIONS FOR RECOVERY OF REAL PROPERTY" S.C. Code § 15-3-350 and titled "ACTION FOUNDED ON TITLE OR FOR RENTS OR SERVICES".

The Court erred in determining that an action for slander of title was governed by Article 5 of Title 15, "ACTIONS OTHER THAN FOR RECOVERY OF REAL PROPERTY" found at S.C. Code § 15-3-550, which provided for a two-year statute of limitations similar to defamation and false imprisonment.

The Court mistakenly relied on *Hosey v. Cent. Bank of Birmingham, Inc.*, 528 So. 2d 843, 844 (Ala. 1988) in making its determination because in *Hosey* the Court there limited its ruling to cases "in the absence of a statute expressly made applicable to such actions," The Court here

ignored the fact that South Carolina does have a statute, more specifically S.C. Code § 15-3-350 that governs actions founded on title, such as slander of title, and the statute of limitations is ten years. As North Carolina Supreme Court held in *Selby v. Taylor*, 57 N.C. App. 119, 120, 290 S.E.2d 767, 768 (1982), *disc. review denied*, 306 N.C. 387, 294 S.E.2d 212 (1982), the thrust of slander of title is the interference with a prospect of sale of real property or interference with a property right.

There is no dispute here that the Respondent's actions interfered with the Church's property rights and the marketability of the property and given that South Carolina has a statute specifically addressing actions founded on title, the statute of limitations is ten years.

**III. As to the Aiding and Abetting Breach of Fiduciary Duty:**

The Court ruled that “[t]he gravamen of the claim is the defendant's knowing participation in the fiduciary's breach.” but failed to address whether Crescom Bank knowingly participated in Estes breach of fiduciary duty.

The record was clear that Crescom Bank was aware Estes had no authority to put a mortgage on property owned by the Church of God (R. pp 0343-344, 0359) but failed to rule on whether making a mortgage with this knowledge rose to the level of aiding and abetting Estes breach of fiduciary duty.

**IV. As to whether the trial court erred in attributing the knowledge and acts of agents, including the attorney who closed the bank loans, to Church:**

Estes put a mortgage on Church property without authority and used the money for his private purposes. Crescom Bank knew Estes lacked the authority, but nevertheless permitted the attorney hired by Estes, to close the loan. Crescom had a copy of the Minutes containing those limitations in its file (Warrick Deposition pgs. 29 - 31 - R pp 0351 - 0353) and (Exhibit 5 Minutes

- R p. 0364); (also Exhibit 1 to Complaint - R pp 0037 - 0111). The Bank admitted it knew the Rogue defendants did not own the property they were using to obtain the mortgage, yet without further inquiry, it moved on with the closing of the mortgage.

“Q ... So does this mean that the bank at the time it created this document knew that North Charleston Church of God was giving the property to secure the North Palm Ministries loans?

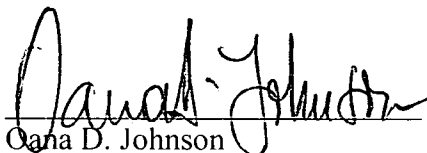
A. This is what we assumed. And so we sent the closing package and had it verified.”

(Warrick deposition page 23 - R pp. 0347)

On one hand, the Bank takes the position that it relied upon the attorney to properly perform the title search and obtain the authorizations. On the other hand, the bank asserts that the attorney was not their agent and thus his knowledge could not be imputed to the Bank, but should be imputed to the Church. This position is not only inconsistent, but in adopting this position the Court failed to appreciate the fact that the attorney did not work for the Church, but for the pastor who stole from the Church. The attorney who closed the loan for the pastor who stole from the Church without authority cannot possibly be said to be the agent of the Church.

## CONCLUSION

For the reasons stated below and the reasons stated in Appellants' Briefs and during oral argument, Appellants respectfully request that this court issue an order reversing the lower court's grant of summary judgment.



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ATTORNEY FOR PETITIONERS

This 31<sup>st</sup> day of January 2018  
Charleston, South Carolina

OANA D. JOHNSON  
-ATTORNEY AT LAW-

January 31<sup>st</sup>, 2018

South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

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SC Court of Appeals

RE: Church of God and Church of God of South Carolina vs. Mark Estes, Patricia Estes, Michael Timothy Brooks, et. all, vs. Thomas Propes and Marc Campbell, Third Party  
**APPELLATE CASE 2015-001848**

Dear madame or sir,

Enclosed, please find the original and seven copies of the Appellant's Petition for Rehearing together with the original and one copy of the proof of service in the above referenced case along with the filing fee of twenty five dollars. Please return a filed copy of the Petition and Proof of Service in the self addressed envelope provided.

Very truly yours,

Allison Millar  
Assistant to Oana D. Johnson

CC: Matthew E. Tillman, Esquire  
Carol B. Ervin, Esquire  
C. Steven Moskos, Esquire  
Rolando Rivera Osorio, *Pro Se*

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**PROOF OF SERVICE**

I certify that I have served copies of the forgoing Appellant's Petition for Rehearing on Respondents' counsel of record by depositing true and correct copies in the United States Mail, postage prepaid, on January 31<sup>st</sup>, 2018 addressed to the following:

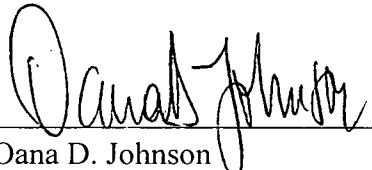
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