

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

RECEIVED

MAR 05 2018

SC Court of Appeals

CASE NO. 2013-CP-10-1686  
APPELLATE CASE 2015-001848

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, Defendants.

Of Whom Crescom Bank is the ..... Respondent,

v.

Thomas Propes and Marc Campbell, Third Party  
Defendants.

**RETURN TO APPELLANT'S PETITION FOR REHEARING**

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ATTORNEYS FOR RESPONDENT

Pursuant to Rule 240, SCACR, Respondent Crescom Bank, Successor by Merger to Community First Bank, (“**Respondent**”) submits its Return to the Petition for Rehearing submitted by Appellants Church of God and Church of God of South Carolina (the “**Appellants**”) dated January 31, 2018 (the “**Petition**”).

### **STANDARD OF REVIEW**

In order to prevail on a petition for rehearing, Appellant must demonstrate the Court overlooked or misapprehended its argument. Rule 221(a), SCACR; *Kennedy v. South Carolina Retirement System*, 349 S.C. 531, 564 S.E.2d 322 (2001). “The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time.” *Kennedy v. South Carolina Retirement System*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001), *citing* Jean H. Toal, Shahin Vafai & Robert Muckenfuss, *Appellate Practice in South Carolina* 309 (1999) (*citing* *Arnold v. Carolina Power & Light Co.*, 168 S.C. 163, 167 S.E. 234 (1933)).

### **ARGUMENT**

The Appellant has failed to set forth any arguments which the Court did not entertain and address in the briefs and during oral argument. Indeed, the arguments made by Appellant in the Petition were discussed in detail in the Appellant’s Final Brief, Reply Brief and oral arguments, and were considered and rejected by this Court in its opinion. *See Church of God and Church of God of South Carolina v. Mark Estes et al.*, Op. No. 2018-UP-030 (S.C. Ct.App. filed January 17, 2018) (the “**Opinion**”). As to the Appellants’ arguments themselves, Respondent incorporates by this reference the arguments and authority set forth in Respondent’s Final Brief and oral argument.

In their Petition, the Appellants merely repeat prior arguments that were rejected in the Opinion. For example, the Appellant argues that the “Court failed to consider or discuss the effect . . . 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.” This is identical to an argument posited by the Appellant in the Final and Reply Brief. *Appellant’s Final Brief* at 8-10; *Appellant’s Reply Brief* at 1-2. This was not a misapprehension of the Appellant’s argument. Rather, it is clear that the Court agreed with Respondent that, because the Appellant had full knowledge that the loan and related mortgage were not authorized by its representatives at the time the loan was repaid, the Appellant made the payment with full knowledge of the relevant and material facts. *Respondent’s Final Brief* at 8-10. Accordingly, the Court did not err in relying on *Hardaway v. S. Ry. Co.*, 90 S.C. 475, 488-489, 73 S.E. 1020, 1025 (1912) and *Moody v. Stem*, 214 S.C. 45, 60, 51 S.E.2d 163, 169 (1948) as support for its conclusion.

The Appellant also argues that the Court failed to consider the argument that the slander of title cause of action is governed by the ten year statute of limitations found in S.C. Code Ann. § 15-3-350. This is also an argument that was explicitly made to the Court and rejected. *Appellant’s Final Brief* at 11-13. There is no case supporting the Appellant’s claim that S.C. Code Ann. § 15-3-350 – a ten year statute of limitations – applies to a slander of title action. Rather, the Court correctly relied on the litany of case and secondary law cited by Respondents for the proposition that a slander of title cause of action is governed by the two year statute of limitations set forth for slander and libel in S.C. Code Ann. § 15-3-550(1). The Court did not misapprehend any arguments made by the parties and did not err in applying the two year statute of limitations.

The Appellant also attempts to rehash arguments supporting their position as to the aiding and abetting breach of fiduciary duty cause of action. Those arguments were presented and rejected by the Court. *Appellants' Final Brief* at 13-14. Further, the portions of the record cited by the Appellants do not even support their argument. Rather, the record citations prove only that Crescom relied on the closing attorney to properly handle the transaction, not that Crescom knew the mortgage may have been unauthorized. Further, simple knowledge of the alleged breach is not sufficient. As set forth the Opinion, the Appellants must prove that the Respondent "knowingly participated" in the alleged breach. *Future Group, II v. Nationsbank*, 324 S.C. 89, 99, 478 S.E.2d 45, 50 (1996). The Appellant provided no such proof. Finally, the Court also found that summary judgment was proper because the aiding and abetting breach of fiduciary duty cause of action is barred by the applicable three year statute of limitations. *Opinion* at ¶ 6. This provides an independent basis for upholding the trial court's order, and the Appellants did not seek reconsideration of this portion of the Opinion.

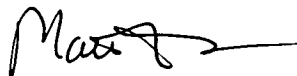
The Appellants also argue that the Court failed to address or misapprehended the closing attorney's role in the subject transaction and improperly imputed that attorney's knowledge to the Appellants. This is, again, a repeat of arguments made in Appellants' Final Brief, Reply Brief and oral arguments. *Appellants' Final Brief* at 16-18; *Appellants' Reply Brief* at 1-2. The Court considered this argument, but ultimately agreed with the Respondent that the Appellants' own agents hired the closing attorney, and his knowledge was imputable to the Appellants. The Court did not misapprehend these arguments which were properly presented in the briefs. Further, this ruling is not necessary to assist the Court in reaching its decision to affirm. The trial court granted

summary judgment as to all of the Appellants' causes of action on other grounds, and those grounds were affirmed in the Opinion. *Opinion* at ¶¶ 1-4, 6.

**CONCLUSION**

For the reasons set forth above, Respondent requests an Order denying the Appellants' Petition for Rehearing, and awarding the Respondent such other and further relief as this Honorable Court shall deem just and proper.

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA  
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R. Markley Dennis, Jr., Circuit Court Judge

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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 1st day of March 2018, I served a copy of the within *Return to Appellant's Petition for Rehearing* in the within entitled matter by sending a copy of the same in an envelope with the correct postage prepaid addressed to:

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Ministries, Inc. and North Palm Community  
Church*

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March 1, 2018  
Charleston, South Carolina



March 1, 2018

The Honorable Jenny Abbott Kitchings  
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Re: Church of God, et al. v. Mark Estes, et al.  
Appellate Case 2015-00184  
WBD File No: 85249.0040.9

Dear Ms. Kitchings:

Enclosed for filing please find the original and seven (7) copies of Respondent's *Return to Petition for Rehearing* and *Proof of Service* in the above action. Please return a filed, time stamped copy to me in the enclosed pre-addressed, stamped envelope.

Thank you for your assistance in this matter.

Yours very truly,

Womble Bond Dickinson (US) LLP

Matthew E. Tillman

**RECEIVED**

MAR 05 2018

SC Court of Appeals

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Enclosures: as stated

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