THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

Appeal from Charleston County
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

CASE NO. 2013-CP-10-1686
APPELLATE CASE NO. 2018-000746

Church of God and Church of God of South Carolina, ... ~~Appellants,~~ Petitioners,

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 WRIT OF CERTIORARI

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INTRODUCTION

The Appellants are the state and national bodies governing the Church of God, respectively. The Appellants govern the local Church of God congregations. The Appellants' Petition – and this entire case – is simply Appellants' continued effort to try to hold Respondent Crescom Bank, Successor by merger to Community First Bank ("Respondent") responsible for Appellants' own failures to monitor their local congregation and diligently pursue their alleged claims. This case is simple – the Respondent made two loans to the Appellants' local congregation, and both loans were secured by mortgages encumbering Church property. Those loans went into default, and were subsequently repaid. The Respondent satisfied the mortgages. This was a standard loan transaction.

The Appellants claim that the closing attorney – hired by their own local congregation – failed to obtain the necessary approvals from the Appellants prior to closing the transactions. This became an issue when Appellants' local congregation – apparently unmonitored by the Appellants – used the loan funds to purchase new Church property. The Appellants' attempt to place responsibility for this alleged unauthorized use of loan funds by their own congregation on the Respondent is absurd. Respondent had no duty to ensure that Appellants' own congregation complied with Church doctrine. The responsibility for Appellants' loss – if any – lies with Appellants and their congregation. Respondent merely made two loans, and then received repayment for those loans. Respondent bears none of the responsibility for Appellants' failings.

Further, there is nothing about this dispute that warrants certiorari review: no meaningful novel question of law, no dissent in the unpublished opinion from the Court of Appeals, and no conflict between the Court of Appeals' decision and authority from any higher court. The Appellants merely seek review because the outcome was unfavorable. That is not a proper basis

for review by the Supreme Court of South Carolina. Accordingly, this Court should deny Appellants' Petition for Certiorari.

COUNTERSTATEMENT OF THE QUESTIONS PRESENTED

I. IS THE APPELLANTS' SLANDER OF TITLE CAUSE OF ACTION BARRED UNDER ANY POTENTIALLY-APPLICABLE STATUTE OF LIMITATIONS?

II. DO THE ARGUMENTS MADE BY THE APPELLANTS PROVIDE A PROPER BASIS FOR ISSUANCE OF A WRIT OF CERTIORARI?

III. ARE THE APPELLANTS' ARGUMENTS RELATED TO THE CONVERSION AND AIDING AND ABETTING BREACH OF FIDUCIARY DUTY CAUSES OF ACTION RENDERED MOOT BY ALTERNATIVE GROUNDS FOR AFFIRMANCE THAT ARE THE LAW OF THE CASE?

IV. DID THE COURT OF APPEALS PROPERLY AFFIRM THE TRIAL COURT'S GRANT OF SUMMARY JUDGMENT BECAUSE APPELLANTS' CAUSES OF ACTION ARE BARRED BY THE VOLUNTARY PAYMENT DOCTRINE?

V. DID THE COURT OF APPEALS PROPERLY AFFIRM THE TRIAL COURT'S GRANT OF SUMMARY JUDGMENT ON THE APPELLANTS' AIDING AND ABETTING BREACH OF FIDUCIARY DUTY CAUSE OF ACTION?

VI. WAS THE COURT OF APPEALS' DECISION CONCERNING THE IMPUTATION OF THE KNOWLEDGE OF ITS AGENTS NECESSARY TO UPHOLD THE RESULT AND, IF SO, WAS THE DECISION TO AFFIRM THE TRIAL COURT'S ORDER CORRECT?

COUNTERSTATEMENT OF THE CASE

The Appellants claim that this action arises because the Respondent loaned money to one Church (North Palm Ministries) and secured the loan with a mortgage on another Church (Church of God) without authority. (Pet. for Certiorari at 1). The Court should not be misled. In 2007 and 2009 respectively, Respondent made two loans in the amounts of $700,000.00 and $75,000.00 to the North Charleston Church of God ("NCCOG"), which was, at the time, a local congregation under the authority of the Appellants. The NCCOG, while still a congregation of the Appellants, defaulted on these loans in 2009. The NCCOG was not dissolved as a Church of God congregation until approximately March 22, 2010 – long after the loans were made by

Respondent. (R. pp. 375-376). Therefore, the statement that loans were made to one church body and secured with mortgages on property owned by another church body is factually incorrect and unsupported by the record.

The Appellants also state the deed contained an important restriction that required written authorization pursuant to the Church Minutes. (Pet. for Certiorari at 2). This is also incorrect. The subject property was deeded to the NCCOG in 1985. (R. pp. 209-213). The deed contains the following language:

> The said Local Board of Trustees shall have full right, power and authority to sell, exchange, transfer and convey said property, or to borrow money and pledge the said real estate for the repayment of the same, and to execute all necessary deeds, conveyances, etc., provided the proposition shall first be presented to a regular or called conference of the said local church, presided over by the State Overseer of the Church of God, or one whom he may appoint, and the project approved by two-thirds of all members of the said local congregations present and voting.

(R. p. 210, lines 6-14). There is no requirement that the transaction be approved in writing.[1]

The NCCOG owned the Property from 1985 until the District Overseer for the Church of God of South Carolina dissolved the NCCOG on or about March 22, 2010. (R. pp. 375-376). At that point, the Church of God of South Carolina became the owner of the Property.

Mark Estes was pastor of the NCCOG and District Overseer for the Appellant Church of God of South Carolina. (R. p. 153, lines 21-23). Patricia Estes was the Exhorter of the NCCOG. (Mark and Patricia Estes, who are husband and wife, collectively referred to as the "Estes Defendants"). (R. p. 154, lines 1-3). Defendants Adam Boyer, Timothy Brooks and Rolando Osorio ("Trustee Defendants") were the trustees of the NCCOG. (R. p. 154, lines 4-9).

[1] The language quoted by the Appellants is set forth in the 2008 Church Minutes. These Minutes were not even adopted at the time of the 2007 loan transaction, nor were those Minutes recorded in the public records. Indeed, it the Appellants' obligation to record updated Minutes. The language in the NCCOG deed is the only recorded document setting forth procedures for approval of real property transactions for the NCCOG. It makes no mention of a requirement that the State Overseer approve real estate transactions in writing.

On or about October 15, 2007, the NCCOG received a loan from Respondent in the amount of $700,000. (R. pp. 215-218). It hired a local attorney to close this loan. (R. p. 219). The note is signed by the Trustee Defendants, as is the mortgage on the Property in favor of the Respondent ("2007 Mortgage"). (R. pp. 220-235). The Trustee Defendants provided the closing attorney with a resolution signed by NCCOG Recording Secretary Lisa Carey indicating that the members and financial supporters of the Church unanimously approved the transaction. (R. p. 236). The proceeds of this loan were used to pay off an existing loan secured by a mortgage to First Reliance Bank, as well as other debts of the Church. (R. pp. 215-218). In addition, the NCCOG received proceeds in the amount of $310,809.43. (R. p. 215).

On or about October 9, 2008, the NCCOG moved to a new location and leased the Property to Seacoast Church. (R. pp. 237-243). The lease term was five years, ending in 2013, and by its terms Seacoast Church agreed to pay the NCCOG the initial rent of $9,200.00 per month. (R. p. 237). The lease amount increased periodically, to $10,500.00 per month. The lease also contained an option to purchase, in amounts starting at $1,625,000.00 and increasing to $1,775,000.00 by the end of the term. (R. p. 237).

On or about March 23, 2009, the NCCOG received a loan from Respondent in the amount of $75,000.00. It hired the same local attorney to close this loan as well. (R. pp. 251-253). The note is signed by the Trustee Defendants, as is the mortgage on the Property in favor of Respondent. (R. pp. 244-247). As with the prior loan, the Trustee Defendants provided the closing attorney with a resolution signed by NCCOG Recording Secretary Lisa Carey indicating that the members and financial supporters of the Church unanimously approved the transaction. (R. p. 250). The NCCOG/NPM received proceeds in the amount of $74,032.50. (R. p. 251).

In the latter months of 2009 and early months of 2010, Mark Estes and Appellant Church of God of South Carolina's State Overseer Thomas Propes discussed certain grievances that Mr. Estes had with the Church of God. (R. pp. 254-257). These discussions culminated in Pastor Mark Estes' resignation as a pastor and District Overseer with the Church of God on March 12, 2010. (R. pp. 258-259). No later than March 12, 2010, Thomas Propes became concerned about the NCCOG congregation and the status of the Property. (R. p. 371, line 9- p. 373, line 5). On March 22, 2010, Appellant Church of God of South Carolina State Overseer Propes appointed pastor Marc Campbell as the new District Overseer and tasked him with handling disposition of the Property. (R. p. 260).

Pastor Marc Campbell received a copy of the 2007 and 2009 Mortgages. (R. p. 265, lines 10-12). He spoke with representatives of the Respondent and determined that the loans were in default. (R. p. 319, lines 6-23). Campbell entered negotiations with the lessee of the Property, Seacoast Church. This culminated in the sale of the Property to Seacoast Church on July 15, 2010 for $780,000.00 – less than half of the purchase option amount contained in the Seacoast Lease. (R. p. 237; R. p. 331, lines 5-18). Pastor Campbell, as acting District Overseer for the Appellants, did no due diligence prior to selling the Property. He did not order an appraisal, did not speak with a real estate broker, did not list the Property, nor did he market the Property to any potential buyer other than Seacoast Church. (R. p. 324, line 23 – p. 326, line 24).

Appellants never funded the purchase, maintenance or improvement of the Property. (R. p. 327, lines 4-19). Nevertheless, the Appellants took possession of the Property and sold it to Seacoast Church on July 15, 2010. (R. pp. 272-274). Upon selling the Property, the Appellants repaid the Respondent's loans, without protest in any form, in return for satisfaction of the 2007 and 2009 Mortgages. (R. p. 322, line 2 – p. 323, line 13). The Appellants also received

$20,000.00 in the transaction, despite the fact that Appellants never contributed financially to the purchase, maintenance or renovation of the Property. (R. p. 272). Respondent duly satisfied the mortgages, having no information that the Appellants contested the validity of those mortgages.

The trial court properly granted summary judgment as to all four of Appellants' causes of action against Respondent: conversion, aiding and abetting breach of fiduciary duty, slander of title and quantum meruit (R. pp. 1-14). The trial court also denied Appellants' Motion to Alter or Amend (R. p. 16). The Appellants appealed all of the holdings in the trial court order except for the dismissal of the quantum meruit cause of action. The Court of Appeals affirmed the trial court order on all grounds, including the holding that Appellants' conversion and aiding and abetting breach of fiduciary duty claims were barred by the three year statute of limitations set forth in S.C. Code Ann. § 15-3-530. (R. pp. 432-436). The Court of Appeals denied the Appellants subsequent Petition for Rehearing. The Appellants then served the Petition for Writ of Certiorari. In the Petition, the Appellants did not seek review of the Court of Appeals' decision affirming dismissal of the conversion and aiding and abetting breach of fiduciary duty causes of action pursuant to the three year statute of limitations set forth in S.C. Code Ann. § 15-3-530. (Pet. for Certiorari at 6-18).

ARGUMENTS AND AUTHORITIES

I. THE APPELLANTS CANNOT PREVAIL ON THE SLANDER OF TITLE CAUSE OF ACTION BECAUSE THE CLAIM IS BARRED UNDER ANY POTENTIALLY-APPLICABLE STATUTE OF LIMITATIONS.

Both the Appellate Court Rules and this Court's precedent make clear that certiorari review is the exception, not the rule, and that it is only available in cases that present unique or meaningful issues. *See, e.g.*, *State v. Lyles*, 381 S.C. 442, 443–44, 673 S.E.2d 811, 812 (2009) (emphasizing that certiorari review is available "only where special reasons justify the exercise of that power"); Rule 242(b), SCACR ("A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons."). This case falls far short of this high threshold. The Rule provides for certain issues that warrant review, including:

(1) Where there are novel questions of law.

(2) Where there is a dissent in the decision of the Court of Appeals.

(3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.

(4) Where substantial constitutional issues are directly involved.

(5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

Id.

The only appellate issue which may fall within one of these categories is the dismissal of the slander of title cause of action pursuant to the two-year statute of limitations set forth in S.C. Code Ann. § 15-3-550. The South Carolina appellate courts have not ruled on whether the period of limitations applicable to libel and slander causes of action are also applicable to slander of title claims. The Court of Appeals correctly noted that the generally adopted view is that the

period of limitations for slander and libel applies to slander of title (R. p. 434). The Court of Appeals correctly applied the two-year period of limitations set forth in S.C. Code Ann. § 15-3-550 (R. p. 434).

Regardless, the Appellants' slander of title cause of action is barred under either a two-year or three-year statute of limitations.[2] The subject mortgages, upon which the slander of title claim is based, were recorded in 2007 and 2009, respectively (R. p.p. 226-235; R. pp. 244-247). The period of limitations began to run on the date the mortgages were recorded because the discovery rule does not apply to slander of title claims. (R. p. 434); 50 Am Jur 2d *Libel and Slander* § 541 (2014) ("A right of action for slander of title accrues, and the statute of limitations commences to run, at the time of the publication of the slander."); *Jones v. City of Folly Beach*, 326 S.C. 360, 369, 483 S.E.2d 770, 775 (Ct. App. 1997) ("The trial court was correct in granting Peeples's motion for summary judgment because South Carolina has not adopted the discovery rule in libel and slander cases."). The lawsuit was filed on March 20, 2013, more than three years after the 2009 mortgage was recorded. For this reason, the Appellants cannot prevail under either a two- or three-year statute of limitations.

The Appellants argue that the Court should adopt the ten year statute of limitations set forth in S.C. Code Ann. § 15-3-350. The Appellants did not – and cannot – cite to any authority which supports this position. S.C. Code Ann. § 15-3-350 is found in Article 3 of Title 15 – "Actions for Recovery of Real Property." The statute plainly applies to actions concerning disputed ownership of real property. Slander of title is a cause of action to remedy the publication of a false statement that is derogatory to the plaintiff's title. *Huff v. Jennings*, 319

[2] The Appellants cited *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) for the proposition that the statute of limitations for a trespass cause of action should be applied to a slander of title claim (R. p. 402). The period of limitations for a trespass cause of action is three years in South Carolina (R. p. 463).

S.C. 142, 459 S.E.2d 886 (Ct. App. 1995). It does not concern ownership of real property, and therefore S.C. Code § 15-3-350 is plainly inapplicable.

The trial court and Court of Appeals properly held that the Appellants' slander of title cause of action is barred by the two-year statute of limitations set forth in S.C. Code Ann. § 15-3-550. The Appellants could not prevail even if the trial court had applied the only other potentially applicable period of limitations – three years. Therefore, there is no basis upon which the Court should grant the Appellants' request, and the Petition should be denied.

II. THE REMAINING ARGUMENTS MADE BY THE APPELLANTS DO NOT PROVIDE AN APPROPRIATE BASIS FOR ISSUANCE OF A WRIT OF CERTIORARI.

There is no "special reason" justifying this Court's review of the Court of Appeals holding concerning the Court of Appeals' affirmance of the grant of summary judgment as to the voluntary payment doctrine, aiding and abetting breach of fiduciary duty and conversion causes of action. All three arguments made by the Appellants constitute a nearly verbatim recitation of the arguments made in the Appellants' written briefs and in oral arguments before the Court of Appeals. The Appellants merely disagree with the Court of Appeals' application of established law to the facts of this case, and are seeking review upon that basis. There is no novel question of law, dissenting opinion, or constitutional consideration. Therefore, there is no proper basis for the issuance of a writ of certiorari and the Court should deny the Petition.

III. THE APPELLANTS FAILED TO CONTEST ALTERNATIVE GROUNDS FOR THE COURT OF APPEALS' DECISION TO AFFIRM SUMMARY JUDGMENT ON THE CONVERSION AND AIDING AND ABETTING FIDUCIARY DUTY CLAIMS, AND THEREFORE THE DECISION IS THE LAW OF THE CASE.

The Court of Appeals affirmed the trial court's dismissal of the conversion and aiding and abetting breach of fiduciary duty on numerous grounds. The Court of Appeals held that both causes of action are barred by the three-year statute of limitations set forth in S.C. Code Ann. §

15-3-530 (R. pp. 12-13); (R. pp. 432-436). The Court of Appeals also affirmed the trial court's holding that there was no genuine issue of material fact as to Appellant's conversion cause of action (R. p. 9) (R. pp. 432-436). The Appellant did not challenge either holding in its Petition for Rehearing to the Court of Appeals or the Petition for Writ of Certiorari. Therefore, these alternative bases for affirmance of the trial court decision have become the law of the case and preclude issuance of a writ. *Anderson v. Short*, 323 S.C. 522, 525, 476 S.E.2d 475, 477 (1996) (holding that where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case); *Austin v. Specialty Transp. Servs.*, 358 S.C. 298, 302, 594 S.E.2d 867, 878 (Ct. App. 2004) *citing Greenville Cty. v. Kenwood Enters.*, Inc., 353 S.C. 157, 577 S.E.2d 428 (2003) ("A portion of a judgment that is not appealed presents no issue for determination by the reviewing court and constitutes, rightly or wrongly, the law of the case.").

IV. THE COURT OF APPEALS PROPERLY AFFIRMED THE TRIAL COURT'S GRANT OF SUMMARY JUDGMENT PURSUANT TO THE VOLUNTARY PAYMENT DOCTRINE.

The Court of Appeals was absolutely correct in its affirmance of the trial court's order. There is no dispute that, after assuming ownership of the subject property in March of 2010, the Appellants sold the Property and repaid the loans secured by the Property made from Respondent to NCCOG. There is also no dispute that the Appellants did so without protest and with full knowledge that the loans to the NCCOG and mortgages were not placed through the approval process that the Appellants claim was necessary pursuant to their own Church Minutes.[3] (R. pp.

[3] As set forth herein, the Church Minutes were not recorded, and therefore neither the Respondent nor the closing attorney had record notice of their contents. However, the Appellants contend that the 2007 and 2009 loans and mortgages were unauthorized pursuant to the Minutes, and their knowledge of this contention occurred long before the Respondent's loans were repaid and the 2007 and 2009 mortgages were satisfied.

281-282) (Pet. for Ceriorari at 9) ("While the Church admits that it may have had knowledge that the mortgage was unauthorized, it did not have full knowledge of the facts).

"[A] person cannot use the courts to recover money voluntarily or consensually paid with full knowledge of all of the facts and without fraud, duress, or extortion in some form." 66 Am Jur 2d *Restitution and Implied Contracts* § 92 (2014). "Thus, it is universally recognized that money voluntarily paid under a claim of right to payment and with knowledge of the facts by the person making the claim cannot be recovered on the ground that the claim was illegal, or that there was not liability to pay in the first instance." *Id.* Further, the "question of whether a payment is voluntary or involuntary is one of law where the facts are undisputed . . . ." *Id.* Under South Carolina law, "all payments are presumed to be voluntary until the contrary is made to appear." *Baker v. Allen*, 220 S.C. 141, 151, 66 S.E.2d 618, 622 (1951) *citing Moody v. Stem*, 214 S.C. 45, 51 S.E.2d 163 (1948). Therefore, the burden is on the payor to show that the payment was made involuntarily. This is a difficult burden to overcome, and even evidence of payment under protest may not be sufficient to establish that the payment was made involuntarily. *Baker*, 220 S.C. at 151, 66 S.E.2d at 622.

The Appellants again make the argument that, at the time the loans were repaid and the mortgages satisfied, they did not have knowledge concerning how the NCCOG used the loan funds. As such, the Appellants claim that there is an issue of fact concerning whether they made the payment with "full knowledge of the facts." This argument was properly rejected by the Court of Appeals because it is an immaterial fact. The claim against the Respondent is based on the allegation that it recorded allegedly unauthorized mortgages on the subject property. (Pet. for Certiorari at 3). The Respondent did not direct or participate in the NCCOG's use of the loan funds. The Appellants freely admit that they knew the mortgages may have been unauthorized at

the time they repaid the loans. Therefore, Appellants had full knowledge of the only material fact concerning the Respondent's conduct at the time the loans were repaid. The allegations concerning the NCCOG's use of the money relate only to claims against the NCCOG and its former officers and trustees. The Appellants may pursue those claims upon conclusion of this appeal, but those allegations do not provide a basis for issuance of a Writ of Certiorari.

V. THE COURT OF APPEALS PROPERLY AFFIRMED THE TRIAL COURT'S GRANT OF SUMMARY JUDGMENT ON THE APPELLANTS' AIDING AND ABETTING BREACH OF FIDUCIARY DUTY CAUSE OF ACTION.

In order to prevail on the aiding and abetting breach of fiduciary duty cause of action, the Appellants must prove that Respondent knowingly participated in the alleged breach. *Future Group v. Nationsbank*, 324 S.C. 89, 99, 478 S.E.2d 45, 50 (1996). More specifically, the Appellants must prove that Respondent had **actual** knowledge of the breach. *Id.* "(There is no evidence in the record, however, that Bank had actual knowledge Agency's by-laws required shareholder approval. Although Agency's counsel, Drayton Hastie, knew it, there is no evidence he advised Bank."). The Appellants have not cited any evidence that the Respondent had actual knowledge that the Appellants' own congregation would use the loan funds for a purpose that was not authorized by the Appellants. Rather, the Appellants argue that, because of the language on the deed into the NCCOG, the Respondent was "charged with the knowledge that the [subject] property . . . was subject to special fiduciary rules and consent requirements which they promptly ignored." (Pet. for Certiorari at 14). To be charged with knowledge is the very definition of **constructive**, rather than actual knowledge. *Strother v. Lexington County Recreation Comm'n*, 332 S.C. 54, 63, 504 S.E.2d 117, 122 (1998) ("Constructive notice is a legal inference which substitutes for actual notice. It is notice imputed to a person whose knowledge of facts is sufficient to put him on inquiry; if these facts were pursued with due diligence, they

would lead to other undisclosed facts."). Therefore, it is clear that the Court of Appeals properly affirmed the grant of summary judgment as to the aiding and abetting breach of fiduciary duty cause of action.

Further, the Appellants again mischaracterize the record to support their position. Appellants argue that the special consent requirements were noted on the face of the deed into the NCCOG and that the resolution presented to the Respondent was deficient because it "lacked the approval of the State Overseer" (Pet. for Certiorari at 14-15). The Appellants imply that the deed language specifies that the resolution must contain written approval from the State Overseer in order to be valid. The deed states no such thing:

> The said Local Board of Trustees shall have full right, power and authority to sell, exchange, transfer and convey said property, or to borrow money and pledge the said real estate for the repayment of the same, and to execute all necessary deeds, conveyances, etc., provided the proposition shall first be presented to a regular or called conference of the said local church, presided over by the State Overseer of the Church of God, or one whom he may appoint, and the project approved by two-thirds of all members of the said local congregations present and voting.

(R. p. 210, lines 6-14).[4] Per the deed language, the State Overseer need not approve the transaction, and therefore the factual basis for the Appellants' argument fails.

The Appellants have failed to present any basis – legal or factual – for reversing the Court of Appeals' decision. Therefore, the Petition for Writ of Certiorari should be denied.

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[4] The Appellants' contention is based on the language in the 2008 Minutes which requires written approval from the State Overseer. As set forth herein, those Minutes were not passed until after the 2007 loan and were never recorded to become part of the public record.

VI. THE COURT OF APPEALS' DECISION CONCERNING THE IMPUTATION OF THE KNOWLEDGE OF ITS AGENTS IS NOT NECESSARY TO UPHOLD THE RESULT; HOWEVER, THE DECISION REMAINS CORRECT.

The Court of Appeals affirmed the trial court's finding that the actions of the NCCOG officers and trustees, as well as the closing attorney hired by the NCCOG, are imputed to the Appellants. First, the trial court's order and the Court of Appeals' decision were not dependent on this finding. As set forth above, there were several independent bases – both substantive and procedural – upon which the grant of summary judgment was based. The Court of Appeals affirmed summary judgment on the statute of limitations and voluntary payment doctrine for the slander of title cause of action, and on the statute of limitations, voluntary payment doctrine, and failure to establish an issue of material fact as to the conversion and aiding and abetting causes of action. Therefore, the Appellants cannot prevail on this agency issue alone.

Further, there is no dispute that the closing attorney for both of the subject loan transactions was hired by Appellants' congregation, the NCCOG. *Chase Home Fin., LLC v. Risher,* 405 S.C. 202, 213, 746 S.E.2d 471, 477 (Ct. App. 2013) *citing* S.C. Code Ann. § 37-10-102(a) ("We agree that in a standard real estate transaction, the closing attorney represents the borrower.") The NCCOG provided its attorney with a unanimous resolution signed by NCCOG Recording Secretary Lisa Carey, in which Ms. Carey certified that the congregation and financial supporters of the Church unanimously approved the transactions. (R. p. 236; R. p. 250). Armed with the resolutions, the NCCOG's attorney closed the 2007 and 2009 loan transactions, which the Appellants now claim were unauthorized.

The closing attorney, and not the Respondent, was charged with ensuring that the subject transactions were conducted with the requisite authority. Even if there was any evidence that the closing attorney failed to ensure that NCCOG had the requisite authority, his conduct is

imputable to the Appellants. *Koutsogiannis v. BB&T*, 365 S.C. 145, 149, 616 S.E.2d 425, 428 (2005) ("In the attorney-client relationship, clients are generally bound by their attorneys' acts or omissions during the course of the legal representation that fall within the apparent scope of their attorneys' authority.")

Respondent rightfully relied on Appellants' closing attorney to ensure that the Appellants' congregation obtained the proper approvals. There is no evidence in the record which implicates the closing attorney in any fraudulent behavior intended to conceal information from the Appellants. Therefore, the fraud exception to the standard rules of agency is not implicated. As such, the closing attorney's actions and knowledge are binding on the Appellants, and they cannot now claim ignorance of the loans and mortgages. The circuit court properly imputed the closing attorney's actions and knowledge to the Appellants and dismissed the claims against Respondent based on that finding.

The Appellants are also bound by the 2007 and 2008 resolutions provided by NCCOG Recording Secretary to the closing attorney. Those resolutions evidence unanimous authorizations for the NCCOG to proceed with the loan transactions. (R. p. 236; R. p. 250). These authorizations are binding on the Appellants whether or not the NCCOG Recording Secretary followed Church of God protocol for certifying financial transactions.

Indeed, South Carolina has long recognized that an agent may bind the principal if the agent is acting within the scope of his agency, even if those actions violate corporate policy. In *Hutchison v. Rock Hill Real Estate & Loan Co.*, 65 S.C. 45, 43 S.E. 295 (1902), a corporation's secretary certified in writing that a certain resolution had been passed by the directors authorizing the execution of a bond and an assignment of assets. The court held that the

corporation was bound by such certified resolution whether or not it had been passed as a matter of fact:

> We will next consider whether the action of R. Lee Kerr, secretary and treasurer, was binding upon the corporation, even admitting that the resolutions were not authorized by the board of directors. At the foot of the resolution marked "B" is the following certificate: "I, R. Lee Kerr, secretary of the Rock Hill Real Estate and Loan Company, do hereby certify that the above is a true copy of the resolution adopted by the board of directors of the Rock Hill Real Estate and Loan Company, at a meeting held on date above written, and that the same has been duly enrolled in the minute books of the said company..."... **The signing of the certificates was within the scope of his employment, and therefore, even if they were unauthorized and fraudulent on the part of R. Lee Kerr, his action was nevertheless binding upon the corporation.**

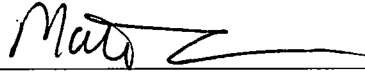
Id at 306. (emphasis added). In reaching the holding in *Hutchison,* the court reasoned, "[s]eeing that someone must be loser by the deceit, it is more reasonable that he who employs and confides in the deceiver should be the loser than a stranger." *Id.* In other words, as a matter of policy, the court would rather punish a board of directors for confiding in deceitful officers than third parties who interact with the board in good faith. Therefore, the NCCOG's Recording Secretary bound the Appellants when she provided the 2007 and 2008 resolutions to the closing attorney. There is simply no evidence to the contrary.

Further, there is no allegation that the NCCOG Recording Secretary acted solely in her own interests, or adverse to the interest of the Appellants. She is not named as a defendant in the lawsuit, and there are no allegations against her in the Second Amended Complaint. (R. pp. 152-167). Therefore, there exists no evidence that supports Appellants' contention that the 2007 and 2008 resolutions are subject to the fraud exception. The 2007 and 2008 resolutions are binding on the Appellants, and the circuit court properly charged the Appellants with the approval of the transactions set forth in those resolutions.

CONCLUSION

For the reasons set forth above, the Respondent respectfully requests that this Court deny the Appellants' Petition for Writ of Certiorari.

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED
MAY 21 2018
S.C. SUPREME COURT

Appeal from Charleston County
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

CASE NO. 2013-CP-10-1686
APPELLATE CASE NO. 2018-000746

Church of God and Church of God of South Carolina, ... ~~Appellants,~~ Petitioners,

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.

PROOF OF SERVICE OF RETURN TO APPELLANT'S PETITION FOR WRIT OF CERTIORARI

I do hereby certify that on the 18th day of May 2018, I served a copy of the within **RETURN TO APPELLANT'S PETITION FOR WRIT OF CERTIORARI** 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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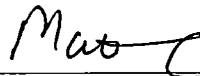

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