

87013

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals  
Appellate Case No. 2017-002472

**RECEIVED**

JUN 14 2018

SC Court of Appeals

APPEAL FROM OCONEE COUNTY  
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2015-CP-37-635

Community First Bank, Inc., Appellant,

v.

John Michael Powell, Frederick D. Shepherd, Jr., James E. McCoy,  
MPS Golf Course, Inc., and MPS Development, Inc., Defendants,  
Of whom Frederick D. Shepherd, Jr. is the Respondent.

**MOTION TO SEAL RECORD ON APPEAL**

Appellant Community First Bank, Inc. ("Community First" or "Bank") moves the Court for the Court to place its Record on Appeal ("ROA") under seal and prohibit the parties from disseminating the ROA or the contents thereof to the public or any other party not expressly authorized to review the same by the Court or the Federal Deposit Insurance Corporation ("FDIC"). This motion is based upon the following grounds:

1. Defendant Frederick D. Shepherd, Jr. ("Shepherd") requested documents from Community First that contained confidential supervisory and other information that belongs to the FDIC and with regard to which disclosure by the Bank to third-parties, such as Shepherd, is prohibited without the express authorization of the FDIC ("CSI").

2. After its receipt of Shepherd's document requests, the Bank requested the permission of the FDIC to provide the CSI to Shepherd.

3. On or about August 24, 2016, the FDIC authorized Community First to disclose certain of the CSI to Shepherd. The FDIC expressly provided, however, that this authorization was subject to the Confidentiality Order the Court previously entered in the lawsuit. Further, the FDIC required that the documents containing CSI be marked "confidential" and that any disclosure of the CSI be strictly limited to only the parties mentioned in the Confidentiality Order. Moreover, the FDIC expressly stated that any further disclosure of CSI was not authorized without the prior approval of the FDIC and warned that unauthorized revelation of certain CSI may violate federal law, such as 31 U.S.C. §§ 5318(g), 5321, and 5322.

4. Also on or about August 24, 2016, the FDIC sent a private letter to the trial court in this matter regarding documents Shepherd requested from Community First that contain CSI. The substance of the letter was provided to the trial court on a confidential basis – it was not shared with the parties. However, upon information and belief, through the letter the FDIC informed the trial court on the FDIC's position on the topic and expressed concerns regarding the handling of CSI.

5. On September 15, 2016, the Court sent an email to all of the parties, acknowledging its receipt of the FDIC's letter to it.

6. Subsequently, on December 6, 2016, the FDIC authorized Community First to disclose certain other of the CSI to Shepherd. Like with the August authorization, the FDIC expressly provided that this authorization was subject to the Confidentiality Order the Court previously entered in the lawsuit, required that the documents containing CSI be marked "confidential," required that any disclosure of the CSI be strictly limited to only the parties

mentioned in the Confidentiality Order, and stated that any further disclosure of CSI was not authorized without the prior approval of the FDIC, with unauthorized revelation of certain CSI potentially violating federal law.

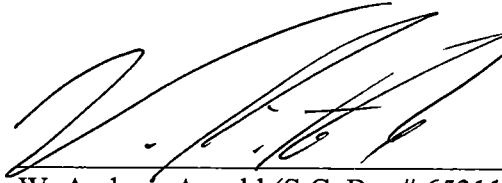
7. Community First provided documents containing CSI to Shepherd, in strict accordance with the authorizations provided to the Bank by the FDIC. Certain of the documents and information therein, including, but not limited to, the contents and substance of a 2012 FDIC Report on the Bank, is contained throughout in the ROA. The ROA, including a table of contents thereto, is attached hereto as Exhibit A.

8. Pursuant to the authorization and directives of the FDIC and federal law, however, the CSI should not be made available to the public or any non-parties to the lawsuit.

WHEREFORE, Plaintiff prays the Court for an Order (1) placing the ROA under seal and (2) prohibiting the parties from disseminating the ROA or the contents thereof to the public or any other party not expressly authorized to review the same by the Court or the Federal Deposit Insurance Corporation.

This the 13th day of June, 2018.

*Signature continues on next page*



W. Andrew Arnold (S.C. Bar # 65311)

[aarnold@hortonlawfirm.net](mailto:aarnold@hortonlawfirm.net)

HORTON LAW FIRM, P.A.

307 Pettigru Street

Greenville, South Carolina 29601

Telephone: (864) 233-4351

Facsimile: (864) 233-7142

James C. Adams, II (N.C. Bar # 18063)

[jadams@brookspierce.com](mailto:jadams@brookspierce.com)

Justin N. Outling (N.C. Bar # 38409)

[joutling@brookspierce.com](mailto:joutling@brookspierce.com)

BROOKS, PIERCE, McLENDON,

HUMPHREY & LEONARD, L.L.P.

P.O. Box 26000

Greensboro, NC 27420

Tel: 336-373-8850

Fax: 336-378-1001

*Attorneys for Appellant*

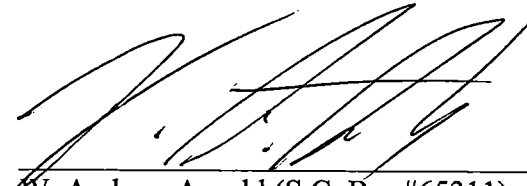
**CERTIFICATE OF SERVICE**

This is to certify that the undersigned did cause a copy of the foregoing document to be served by mailing and depositing a copy of the same in the United States Mail, proper postage affixed thereto, to the following:

Douglas F. Patrick, Esq.  
Austin F. Watts, Esq.  
Covington Patrick Hagins Stern & Lewis  
PO Box 2343  
Greenville, SC 29602

Elizabeth M. McMillan, Esq.  
McAngus Goudelock and Courie  
55 E. Camperdown Way, Suite 300  
Post Office Box 2980  
Greenville, SC 29601

This the 13th day of June, 2018.



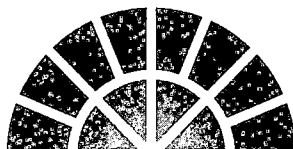
---

W. Andrew Arnold (S.C. Bar #65311)  
[aarnold@hortonlawfirm.net](mailto:aarnold@hortonlawfirm.net)  
HORTON LAW FIRM, P.A.  
307 Pettigru Street  
Greenville, South Carolina 29601  
Telephone: (864) 233-4351  
Facsimile: (864) 233-7142

**RECEIVED**

JUN 14 2018

**SC Court of Appeals**



**HORTON**  
**LAW FIRM, P.A.**

DAVID B. WARD  
WALLACE A. MULLINAX, JR.  
MICHAEL A. FARRY  
THOMAS F. DUGAS  
BRUCE B. CAMPBELL  
W. ANDREW ARNOLD  
JEREMY R. SUMMERLIN

OF COUNSEL

JOSEPH M. JENKINS, JR.  
RICHARD N. TAPP, P.A.

VANCE B. DRAWDY  
1928-1997

J. WRIGHT HORTON  
1919-2011

**RECEIVED**  
JUN 14 2018  
SC Court of Appeals

June 13, 2018

Clerk of Court  
SC Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

**RE: Community First Bank vs. John M. Powell**  
**Appellate Case No.: 2017-002472**

Dear Sir or Madam:

In reference to the above, enclosed are the Motion to Seal Record on Appeal, Certificate of Service, the original and 14 copies of the Record on Appeal (the original of which is unbound) (the Record on Appeal is Exhibit A to the Motion to Seal Record on Appeal), Certificate of Counsel, and Proof of Delivery. I have also enclosed a check in the amount of \$25 as the filing fee for the motion. The contents of this mailing are divided up in multiple boxes.

Thank you for your assistance.

Sincerely,

W. Andrew Arnold

WAA/jdf  
Enclosures

cc: Douglas F. Patrick, Esquire  
Austin F. Watts, Esquire  
James C. Adams, II, Esquire  
Justin N. Outling, Esquire  
Elizabeth M. McMillan, Esquire