

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

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.

Frederick D. Shepherd, Jr.,Respondent

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SEP 17 2018

RENEWED MOTION TO SEAL RECORD ON APPEAL

SC Court of Appeals

Appellant Community First Bank, Inc. (“Community First” or “Bank”) moves the Court for the Court to place certain portions of the Record on Appeal (“ROA”) under seal and prohibit the parties from disseminating those portions of the ROA 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.

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.

9. On or about June 13, 2018, Appellant filed a Motion to Seal the ROA. An unredacted, non-public version of the ROA was attached as Exhibit A to the motion.

10. On July 26, 2018, this Court denied Appellant's Motion to Seal "at this time" because Appellant "failed to address the factors enumerated in Rule 41.1, SCRCF, and *Ex parte Capital*."

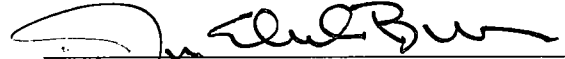
11. Appellant's Renewed Motion to Seal (and the memorandum in support thereof filed contemporaneously herewith and incorporated herein by reference) respectfully asks the Court to (1) reconsider its decision under Rule 41.1, SCRCF, and *Ex parte Capital* and (2) place the portions of the ROA that contain CSI under seal.

12. A public version of the ROA, redacting only the portions of the ROA Appellant respectfully asks the Court to maintain under seal, is attached hereto as Exhibit A.

WHEREFORE, Plaintiff prays the Court for an Order (1) placing the certain portions of the ROA under seal and (2) prohibiting the parties from disseminating those

portions of the ROA 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 11th day of September, 2018.



James Edward Bradley (S.C. Bar # 66130)
MOORE TAYLOR LAW FIRM, P.A.
1700 Sunset Blvd.
West Columbia, SC 29169
Telephone: (803) 796-9160
ward@mttlaw.com

James C. Adams, II (N.C. Bar # 18063)
Justin N. Outling (N.C. Bar # 38409)
BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.
P.O. Box 26000
Greensboro, NC 27420
Telephone: 336-373-8850
Facsimile: 336-378-1001
jadams@brookspierce.com
joutling@brookspierce.com
Attorneys for Appellant

EXHIBIT

A

**(Submitted with computer disk
containing redacted
Record on Appeal)**

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v.

Frederick D. Shepherd, Jr., Respondent.

REDACTED RECORD ON APPEAL

W. Andrew Arnold (S.C. Bar # 5947)
HORTON LAW FIRM, PA.
307 Pettigu Street
Greenville, SC 29601
Telephone: (864)233-4351

James C. Adams, II
Justin N. Outling
BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.
P.O. Box 26000
Greensboro, NC 27420
Telephone: (336) 373-8850

Elizabeth M. McMillan (SC Bar #15049)
McAngus, Goudelock & Courie, LLC
P.O. Box 2980
Greenville, SC 29602
Telephone: (864) 239-4037

Attorneys for Appellant

Douglas F. Patrick (S.C. Bar #4358)
Austin F. Watts (S.C. Bar # 78848)
COVINGTON PATRICK HAGINS
STERN & LEWIS
P.O. Box 2343
Greenville, SC 29602
Telephone: (864) 240-9000
Attorneys for Respondent

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CFB Board of Directors Minutes**

**REDACTED Attachment O (ROA000427-28)- 10/21/99 Redacted
CFB Board of Directors Minutes**

Defendant Frederick D. Shepherd’s Memorandum in Support of
Motion for Sanctions with Exs. A-Z dated/filed 01/13/2017..... 602

**REDACTED Exhibit I (ROA000676-79)– 03/19/12 Email from F.
Shepherd to F. Grady, Subject: fdic audit**

**REDACTED Exhibit L (ROA000688)- 11/15/01 CFB Board of
Directors Minutes**

**REDACTED Exhibit M (ROA000690)- 03/15/12 Redacted CFB
Board of Directors Minutes**

REDACTED Exhibit Q (ROA000702-39)- 12/13/11 FDIC Report

**REDACTED Exhibit R (ROA000741-56)- 05/25/12 Redacted
FDIC Letter to CFB**

**REDACTED Exhibit T (ROA000765-815)- 04/19/12 CFB BOD
Meeting PowerPoint**

**REDACTED Exhibit V (ROA000822-23)- Redacted Report
entitled “Executive Summary and Progress/Status Report
Classified Assets (Loans & OREO) \$250,000 and Greater Consent
Order 4c. and e.”**

**REDACTED Exhibit W (ROA000825-28))– 05/22/12 Email from
F. Shepherd to F. Shepherd, Subject: Response to FDIC questions
and 09/11/14 Email from F. Shepherd to J. Griffith, Subject: Re:
loan grade 6 overdraft**

REDACTED Exhibit X (ROA000830-41)- John Powell Credit File

Memo

REDACTED Exhibit Y (ROA000843-44)- 02/11/12 Email string between F. Shepherd, D. Peters et al., Subject: Re: Don Jones

REDACTED Exhibit Z (ROA000846-47)- 04/19/12 Redacted CFB Board of Directors Minutes

Defendant Frederick D. Shepherd's Return to Community First Bank's Responses to Issues Raised at the Hearing for Sanctions dated 04/21/2017 (*filed 04/24/2017*)..... 1292

REDACTED Attachment B (ROA001310-11)- 09/11/14 Email from F. Shepherd to J. Griffith, Subject: Re: loan grade 6 overdraft

OTHER MATERIAL AND DOCUMENTS

Affidavit of Dr. Larry S. Bowman with Exs. A-C dated 10/30/2017 (*filed 11/01/2017 in Support of Opposition to Defendant Shepherd's Motion for Summary Judgment*) 1697

REDACTED Exhibit A (ROA001704-05)- 04/22/15 Email from Christopher to J. Michael Credit File AND 04/24/15 C. Swafford Memo to R. Burleson

REDACTED Exhibit B (ROA00107-09)- 06/15/11 Email string between F. Shepherd, J. Powell et al., Subject: Re: Falcons

REDACTED Exhibit C (ROA001711-12)- 04/19/12 Redacted CFB Board of Directors Minutes

Affidavit of William M. Brown with Exs. A-C dated 10/30/2017 (*filed 11/01/2017 in Support of Opposition to Defendant Shepherd's Motion for Summary Judgment*) 1713

REDACTED Exhibit A (ROA001719-20)- 04/22/15 Email from Christopher to J. Michael Credit File AND 04/24/15 C. Swafford Memo to R. Burleson

REDACTED Exhibit B (ROA001722-24)- 06/15/11 Email string between F. Shepherd, J. Powell et al., Subject: Re: Falcons

REDACTED Exhibit C (ROA001726-27)- 04/19/12 Redacted CFB Board of Directors Minutes

Affidavit of Richard D. Burleson with Exs. A-B dated 10/30/2017 (*filed 11/01/2017 in Support of Opposition to Defendant Shepherd's Motion for Summary Judgment*) 1728

REDACTED Exhibit A (ROA001733-34)- 04/22/15 Email from Christopher to J. Michael Credit File AND 04/24/15 C. Swafford Memo to R. Burleson

REDACTED Exhibit B (ROA001736-38)- 06/15/11 Email string between F. Shepherd, J. Powell et al., Subject: Re: Falcons

Affidavit of John R. Hamrick with Exs. A-C dated 10/30/2017 (*filed 11/01/2017 in Support of Opposition to Defendant Shepherd's Motion for Summary Judgment*) 1739

REDACTED Exhibit A (ROA001745-46)- 04/22/15 Email from Christopher to J. Michael Credit File AND 04/24/15 C. Swafford Memo to R. Burleson

REDACTED Exhibit B (ROA001748-50)- 06/15/11 Email string between F. Shepherd, J. Powell et al., Subject: Re: Falcons

REDACTED Exhibit C (ROA001752-53)- 04/19/12 Redacted CFB Board of Directors Minutes

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Community First Bank, Inc., Appellant,

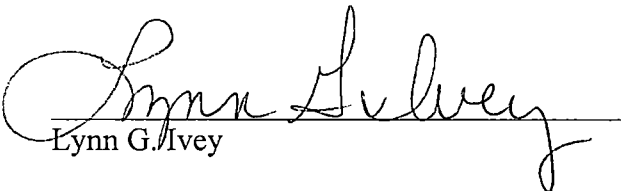
v.

Frederick D. Shepherd, Jr., Respondent.

PROOF OF SERVICE

I, Lynn G. Ivey, an employee of Moore Taylor Law Firm, P.A., certify that I have served the Renewed Motion to Seal Record on Appeal on Respondent Frederick D. Shepherd, Jr., by depositing a copy of same in the United States Mail, postage prepaid, addressed to his attorneys of record as follows:

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


Lynn G. Ivey

West Columbia, South Carolina

September 11, 2018

September 11, 2018

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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SC Court of Appeals

Re: Community First Bank, Inc., v. Frederick D. Shepherd, Jr.
C/A No. 2017-002472

S. Jahue Moore†
J. Mark Taylor*
C. Vance Stricklin, Jr.
James Edward Bradley†
Sheila McNair Robinson
Christian G. Spradley
C. David Sawyer, Jr.
William H. Edwards
Stanley L. Myers
Jane H. Downey♦
S. Jahue Moore, Jr.
John C. Bradley, Jr.
Melissa K. Moore
William B. Fortino
Ralph Nichols Riley, Jr.
Amber Cary Fulmer
Justin Thomas Williams

Robert D. Hazel
RETIRED
Billy C. Coleman
RETIRED

Dear Ms. Kitchings:

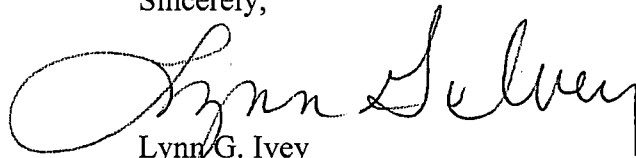
Enclosed for filing with your office are the original and seven copies of Appellant Community First Bank, Inc.'s Renewed Motion to Seal Record on Appeal and Proof of Service in this matter. As discussed with Shelby of your office, a redacted copy of the Record on Appeal at issue is an included exhibit to this motion. Due to the size of the Record, this is being provided by way of a computer disk. Should the Court wish a paper copy instead, we will be pleased to provide this. Our check for \$25.00 is also enclosed to cover the filing fee.

In addition, the original and seven copies of the Memorandum in Support of Appellant's Renewed Motion to Seal is included. Please have the extra copies clocked in and returned to us. A self-addressed stamped envelope is provided for your convenience.

By copy of this letter, I am serving Respondent's counsel with the Renewed Motion, computer disk and Memorandum.

Thank you for your assistance with these filings.

Sincerely,



Lynn G. Ivey
Assistant to James Edward Bradley

Enclosures

cc: Douglas F. Patrick, Esq.
Austin F. Watts, Esq.
W. Andrew Arnold, Esq. (via email w/o disk)
James C. Adams, II, Esq. (via email w/o disk)
Elizabeth McMillan, Esq. (via email w/o disk)

1700 Sunset Boulevard, West Columbia SC 29169 | PO Box 5709, West Columbia SC 29171

TEL 803.796.9160 FAX 803.791.8410 www.mooretaylorlaw.com

MT MOORE | TAYLOR
LAW FIRM

PO Box 5709, West Columbia SC 29171
1700 Sunset Boulevard, West Columbia SC 29169

The Honorable Jenny Abbott Kitchings
Clerk of Court
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