

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM YORK COUNTY  
Court of Common Pleas

SC Court of Appeals

John C. Hayes, III, Circuit Court Judge

Case No. 2009-CP-46-1673

Yadkin Valley Bank & Trust, ..... Respondent,

v.

Oaktree Homes, Inc., Dawne M. Ras and  
Thomas C. Ras, Daniel Simpson, Above All  
Services, Inc., Carter Lumber Company, Efficient  
Painting Contractors, Inc., Creative Concepts, and  
Solid As A Rock, Inc., ..... Defendants,

Of whom

Oaktree Homes, Inc., is the ..... Appellant.

SUPPLEMENTAL RECORD ON APPEAL

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INDEX

**Transcripts**

Deposition (excerpts) of Walter Joyce  
(Attached in support of multiple motions) ..... 2

Deposition (excerpts) of Thomas Ras  
(Attached in support of multiple motions) ..... 9

**Deposition (excerpts) of Walter Joyce  
(Attached in support of multiple motions)**

1 no.

2 Q Okay. Well, what's your best --

3 A I would bet not. I did a computer refresh last  
4 year, about middle of the year. And we  
5 refreshed -- we replaced about 175 computers.

6 And I believe Mark DeMarcus's computer was one of  
7 those.

8 Q Okay.

9 A I'm not 100 percent sure of that. I'd have to go  
10 back to my records to know for sure.

11 Q Okay. How about --

12 A I didn't memorize that list, obviously.

13 Q How about Jeff Cramer?

14 A Again, same -- same is true with -- with Jeff  
15 Cramer. I'm not as sure whether or not his was  
16 refreshed or not. I know that a large number of  
17 American Community Bank computers were refreshed  
18 because they had a lot of old computers.

19 Q Okay.

20 A So I would say the chances are his was -- was  
21 replaced as well.

22 Q And what happened to the old computers that were  
23 replaced?

24 A The hard drives were destroyed, as per policy.  
25 We drill them so you can't read them. And the

1 rest of the computers were disassembled and  
2 recycled --

3 Q Okay.

4 A -- by a third-party vendor.

5 Q Is it fair to say, then, that if Mr. Cramer's  
6 computer is one that was replaced, that there is  
7 no way currently to examine the hard drive of --  
8 of his old computer?

9 A Absolutely no way.

10 Q Same thing with Mr. DeMarcus?

11 A That's a true statement.

12 Q And you have no idea whether the bank still owns  
13 the computer that was used by Derek Franklin when  
14 he was employed here?

15 A I do not.

16 Q Okay. Is there any way to find out?

17 A I mean, I could look at -- I know the computers  
18 that I currently secure, for various reasons, and  
19 I know whose those are. And I don't have one --  
20 I don't have his. I don't know where else it  
21 would be.

22 Q Okay.

23 A I've tried to clean out all the other places  
24 where there are excess equipment.

25 Q There's a -- if I gave you a path to a folder on

1 Q Okay.

2 A There are other files that I keep much, much  
3 longer. Like electronic messaging e-mail files,  
4 I've got every e-mail that was ever written, at  
5 least since -- I can say -- I can say since we  
6 put the archiver in, which was about a year --  
7 actually, it was before I got here. Probably a  
8 year and a half ago.

9 Q Which would have been sometime in...

10 A It was after the ACB merger, if that's why  
11 you're -- what you're trying to figure out. It  
12 was after the -- because we put that archiver in,  
13 as I understand it -- I wasn't there then, but  
14 from what my folks tell me, they put that  
15 archiver in after the merger was completed.  
16 After the merger in -- but I -- when I say,  
17 "merger," I'm talking about the IT integration.

18 Q Okay. Let's talk about that for a bit, the IT  
19 integration between American Community Bank and  
20 Yadkin Valley Bank. Did American Community Bank  
21 use Exchange server?

22 A To my knowledge, yes.

23 Q Does --

24 A Again, I wasn't here then.

25 Q Okay. Does Yadkin Valley Bank use Exchange

1 server?

2 A We do.

3 Q Do you know what was done to -- to take the  
4 message store from the American Community --  
5 well, do you know what happened to the message  
6 store that American Community Bank maintained on  
7 its Exchange server when the merger was  
8 accomplished?

9 A I know what I was told.

10 Q What were you told?

11 A I was told that they saved e-mails from eight  
12 people. And I -- don't ask me who those eight  
13 people were. The only names I -- I -- I was  
14 shown was eight -- eight first names, and that  
15 was all my technician knew.

16 Q Do you know who it was that masterminded this  
17 saving?

18 A No. I asked that question. I don't -- I don't  
19 know.

20 Q Nobody will fess up?

21 A Well, my technician doesn't know. That's as far  
22 as I took it at the time.

23 Q And how long after this happened did you come to  
24 work for the bank?

25 A As I said, I came to work for the bank

1 November the 2nd, 2009.

2 Q Oh, okay. I'm sorry. And by -- at that time,  
3 this was already -- whatever had been done was  
4 already done?

5 A Was already done, yeah.

6 Q Where is the list of the eight names?

7 A I have, I think, on my desk a hard copy of the  
8 e-mail that the -- that the technician sent me.

9 Q Did --

10 A I didn't bring it with me, but --

11 Q With the eight names on it?

12 A The eight first names, yeah.

13 Q Okay. Do you remember whether Jeff Cramer, Mark  
14 DeMarcus, or Derek Franklin --

15 A Again, there were no last names.

16 Q Okay. Mark, Jeff, or Derek?

17 A There was no Derek. I remember that.

18 Q All right.

19 A I really don't -- I -- I don't remember the other  
20 two. I'd have to just look at the piece of  
21 paper.

22 Q That's --

23 A I'm sorry.

24 Q Fair enough. Since there was no Derek, is it  
25 your understanding that whatever e-mails may have

1           been associated with Derek's account that did not  
2           appear in the message stores associated with the  
3           eight names on your list are gone?

4           A       To the best of my knowledge.

5           Q       And there's no way to retrieve them?

6           A       As far as I know.

7           Q       Okay. Now, in the message archive that you --  
8           that the bank has now.

9           A       Uh-huh.

10          Q       If a specific message could be found from this  
11          period, let's say in the middle of 2008.

12          A       Uh-huh.

13          Q       And that message had an attachment.

14          A       Uh-huh.

15          Q       Would the attachment also be archived?

16          A       Yes.

17          Q       So I could retrieve the attachment to an e-mail  
18          message, assuming that the message itself had  
19          been archived?

20          A       Yes. The way that works is the attachment is  
21          associated with the original e-mail that the  
22          attachment was attached to. Pardon me for the  
23          redundancy there. If you -- I don't know if  
24          you've ever noticed, we call an e-mail string  
25          where you go back and forth and back and forth

**Deposition (excerpts) of Thomas Ras  
(Attached in support of multiple motions)**

- 1 Q who was the borrower in that commitment letter?
- 2 A OakTree Homes.
- 3 Q Would that be OakTree Homes, Inc.?
- 4 A Yes, sir.
- 5 Q What was the amount stated in the commitment letter
- 6 as the loan?
- 7 A 3.8 million dollars.
- 8 Q What was the interest rate?
- 9 A That was a point of contention. He had put prime
- 10 plus five, and I remember it because I fought him
- 11 over it.
- 12 Q So when you saw prime plus five, what did you say
- 13 to him?
- 14 A Extremely exorbitant.
- 15 Q Did the two of you have discussions that the
- 16 interest rate needed to change?
- 17 A Yes.
- 18 Q Do you recall the substance of those discussions?
- 19 A I do.
- 20 Q What did you say?
- 21 A That it was an exorbitant amount for this deal.
- 22 Q What did he say?
- 23 A Being a short-term thing, this is what we feel
- 24 comfortable doing.
- 25 Q Did you agree to prime plus five?

Continued Deposition of Tom Ras

1 A At that time, yes.

2 Q Verbally?

3 A On a piece of paper.

4 Q The written commitment letter that you signed  
5 contained prime plus five. Is that true?

6 A Correct.

7 Q What was the maturity date?

8 A I don't remember that offhand. I would be  
9 guessing, and we've already had that discussion. I  
10 don't recall.

11 Q When were the proceeds to be disbursed?

12 A The original closing date was set up for May 23rd.

13 Q So you, therefore, met with Mr. Franklin and your  
14 wife at your office prior to May 23rd?

15 A That is correct.

16 Q Would it also be correct that you did not meet with  
17 Mr. Franklin on the weekend?

18 A That is correct.

19 Q What was the loan fee that was charged?

20 A To be exact, normally the origination fee was like  
21 half, if not zero on our stuff, and on this  
22 origination it was like one plus.

23 Q So the loan fee was greater than what you were  
24 willing to accept?

25 A No, I accepted the terms.

Continued Deposition of Tom Ras

1 Q Did you have any discussions with Grier Sandifer at  
2 Bank of York about the terms that would be in a  
3 written commitment letter from the Bank of York if  
4 it were to provide funding for the 51 lots?

5 A Absolutely.

6 Q what would the amount of the loan be?

7 A I had existing room on my line. Grier Sandifer on  
8 the telephone and in person said whatever the  
9 shortfall is between your purchase and ACB, we will  
10 cover. We have never denied you before. We won't  
11 deny you now.

12 Q So there was not a discussion about an exact  
13 amount? It was your understanding that the Bank of  
14 York would just provide whatever amount was  
15 required to make up the difference in order for  
16 OakTree to fund the purchase price?

17 A That's absolutely correct.

18 Q What was the interest rate?

19 A Whatever my existing line was, and you have that  
20 document, I believe.

21 Q What was the maturity date?

22 A Whatever that existing line was.

23 Q So the maturity date then was June 30, 2008? Is  
24 that consistent with your recollection of your  
25 discussion with Grier?

Continued Deposition of Tom Ras

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Of whom

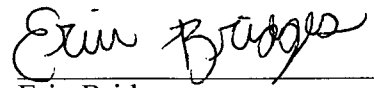
Oaktree Homes, Inc., is the ..... Appellant.

**PROOF OF SERVICE**

The undersigned hereby certifies that on the date indicated below she served counsel for the Respondent with a copy of the *Motion to File Supplemental Record on Appeal*, the conditionally filed *Supplemental Record on Appeal*, and the final *Brief of Appellant* and *Reply Brief* by mailing a copy of the same via United States Mail with first class postage prepaid to the following address:

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