

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

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APPEAL FROM LAURENS COUNTY
Court of Common Pleas

SC Court of Appeals

The Hon. Charles B. Simmons, Special Referee

Appellate Case No. 2014-001248
Case No. 2011-CP-30-00583

Certus Bank, N. A.,Appellant,

v.

Kenneth E. Bennett, Twin Rivers Resort, LLC and
Bennett of Greenwood, LLC, Defendants,

Of which Twin Rivers Resort, LLC is theRespondent.

FINAL BRIEF OF THE APPELLANT,
CERTUS BANK, N.A.

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January 20, 2015
Columbia, South Carolina

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STATEMENT OF ISSUE ON APPEAL

I.

Did the Court err in granting Twin Rivers partial summary judgment dismissing Certus' ratification cause of action when the record was replete with evidence of ratification?

STATEMENT OF THE CASE

The complaint, filed June 16, 2011, has three causes of action – equitable lien, reformation, and ratification – all of which seek to establish the validity and enforceability of a mortgage dated November 1, 2007 regarding which Appellant, CertusBank, N.A. (Certus), is the owner and holder. Certus purchased the November 1, 2007, mortgage from the Federal Deposit Insurance Corporation after the failure of CommunitySouth Bank and Trust (CSBT). (Complaint, ROA 4).

Respondent, Twin Rivers Resorts, LLC (Twin Rivers), filed its answer – a general denial - on August 22, 2011. (Twin Rivers answer, ROA 24).

On February 25, 2014, Twin Rivers moved for summary judgment. (Twin Rivers motion for summary judgment, ROA 25) and filed a memorandum in support on April 4, 2014, (Twin Rivers memorandum in support, ROA 57). Certus filed its memorandum in opposition on April 8, 2014 (Certus memorandum in opposition, ROA 234).

On April 16, 2014, the Court granted Twin Rivers partial summary judgment, dismissing Certus' ratification claim. (Order granting partial summary judgment, ROA 1). Certus moved to alter or amend judgment on April 28, 2014 (Certus motion to alter or amend, ROA 246), which was denied on May 12, 2014 (order denying motion to alter or amend, ROA 3). This appeal followed.

STATEMENT OF FACTS

A. People and entities.

Kenneth E. Bennett (K.E. Bennett) was a member of JKR Development, LLC (JKR), was the sole member of Bennett of Greenwood (BOG) and is the brother of Richard C. Bennett (R.C. Bennett).¹

R.C. Bennett was not a member of JKR, but was hired by JKR to manage the property. R.C. Bennett moved to South Carolina to become an “owner of a percentage of the Twin Rivers Resort asset of JKR.” (R.C. Bennett Dep. p. 1, ll. 11-13, K.E. Bennett Dep. p. 8, ll. 5-9:2, ROA 659 and 259).

JKR was a limited liability company having three members – K.E. Bennett and two others who are not relevant to this litigation. JKR held title to the property from January 2006 until February 2008 (Deed from JKR to BOG, ROA 812). JKR also was the mortgagor under a purchase money mortgage given CSBT on January 31, 2006, when JKR acquired title to the property. (Certus memorandum in opposition to Twin Rivers’ motion for summary judgment, ROA 234).

BOG was a single member limited liability company. K.E. Bennett was its single member. BOG held title to the property from February 2008 until September 2010. (Deed from BOG to Twin Rivers, ROA 876).

Twin Rivers is a single member limited liability company with R.C. Bennett as its single member. (R.C. Bennett Dep. p. 7, ll. 19 – 25, ROA 655). Twin Rivers obtained title to the property on September 14, 2010.

¹ Another Bennett was involved with the property as a member of JKR - Richard K. Bennett, who is the nephew of K.E. Bennett and R.C. Bennett.

James S. Belk, Esq., was the closing attorney for the November 1, 2007 mortgage loan transaction. David Swank was the CSBT loan officer.

B. Property.

The subject property is located on Lake Greenwood in Laurens County and consists of a four unit efficiency motel, a rental home, a rental cabin, 17 RV lots, 24 boat slips and a gas pump. (First page of appraisal attached to David Swank affidavit, ROA 860).

C. Relief sought by Certus.

Certus' complaint seeks to confirm the validity and enforceability of the November 1, 2007, mortgage. The November 1, 2007, mortgage was signed by K.E. Bennett when the property was titled in the name of JKR. The proceeds from the November 1, 2007, CSBT loan, which the November 1, 2007, mortgage was to secure, paid and satisfied the January 31, 2006, purchase money loan JKR received from CSBT on February 1, 2006, through which JKR financed the purchase of the property. (K.E. Bennett July 20, 2007, purchase agreement and closing statement from November 1, 2007 mortgage loan transaction, ROA 818 and 886).

Twin Rivers' has denied Certus' holds any interest, lien or encumbrance on the property.

D. Pertinent Facts.

On January 31, 2006, JKR acquired the property and financed that purchase by a purchase money loan from CSBT for \$520,000.00. Repayment of the loan was secured by a purchase money mortgage signed by JKR and given to CBST. (Certus memorandum in opposition, ROA 234).

On July 20, 2007, K.E. Bennett agreed to buy-out the interest of the other two members of JKR. (July 20, 2007, purchase agreement, ROA 818). The July 20, 2007, purchase agreement

provided K.E. Bennett would (1) “take over all payments on the properties ...;” (2) “take over the line of credit (\$50,000.00 at Community South)...;” and (3) **“take over all payments on the 1st mortgage for Twin Rivers (\$405,000+/-)”** *Id.* Emphasis added. R.C. Bennett, who would become the sole member of Twin Rivers and was the manager of the property for JKR, participated in the negotiations of July 20, 2007, purchase agreement. (R.C. Bennett deposition, p. 14, ll. 7-20, ROA 660). The July 20, 2007, purchase agreement provided certain debts owed by JKR to R.C. Bennett would be paid by K.E. Bennett. (July 20, 2007, purchase agreement, ROA 818). R.C. Bennett knew of the January 31, 2006, purchase money mortgage given JKR to CSBT. (R.C. Bennett Dep. p. 14, ll. 7-20, ROA 660).

The July 20, 2007, purchase agreement closed on November 1, 2007. Attorney James S. Belk, Esq., was the closing attorney. A new loan was obtained from CSBT to fund payment of various JKR debts including the refinance of the CSBT February 1, 2006, purchase money mortgage. (James S. Belk, Esq., affidavit, ROA 810).

The closing attorney, James S. Belk, Esq., K.E. Bennett and CSBT all intended the new CSBT loan be secured by a first lien mortgage encumbering the property. (James S. Belk, Esq., affidavit, ROA 810). That did not occur, and the new CSBT mortgage was signed only by K.E. Bennett, although the property was titled in JKR. (November 1, 2007, closing statement, November 1, 2007, mortgage and agreement to provide insurance, ROA 886, and 821 and 820).

For the November 1, 2007 closing, K.E. Bennett provided proof of a hazard insurance policy listing CSBT as the mortgagee. (November 1, 2007, closing instructions from CSBT to James S. Belk, Esq., and agreement to provide insurance, ROA 819, and 820 and K.E. Bennett Dep. p. 23, ll. 23 – p. 24, l. 8, ROA 311 - 312). K.E. Bennett signed a business purpose statement

affirming the November 1, 2007, loan proceeds were being used to “refinance commercial [i.e. Twin Rivers’] property.” (Business purpose statement, ROA 830).

On February 22, 2008, K.E. Bennett, acting as manager for JKR, executed a deed transferring title of the property to BOG. (February 22, 2008 deed, ROA 812).

The affidavit attached to the February 22, 2008 deed, also signed by K.E. Bennett, says the total consideration for the conveyance was \$1,600,000 and the property was transferred subject to \$1,300,000 in liens or encumbrances which would include the November 1, 2007, CSBT mortgage. (February 22, 2008 deed, ROA 832).

Following the conveyance to BOG, R.C. Bennett continued to manage the property and was involved in the management of the financing and debts on the property. (K.E. Bennett Dep. p. 30, ll. 16-21, ROA 318). Although maintaining that he was not a member of BOG, R.C. Bennett testified he “was a percentage [owner]” of BOG. (R.C. Bennett Dep. p. 19, l. 14 – p. 20, l. 3, ROA 667 - 668).

On November 29, 2007, shortly after closing the November 1, 2007, mortgage loan transaction, R.C. Bennett inquired with his brother, K.E. Bennett, about the “due dates, or amount due at Community South on the twin rivers (sic) note?” (November 29, 2007, letter, ROA 831).

On March 31, 2008, and again on May 6, 2008, R.C. Bennett acknowledged CSBT’s encumbrance on the property, asking his brother, K.E. Bennett, about the “main mortgage on Twin Rivers (CommunitySouth [CBST])!” (March 31, 2008, and May 6, 2008, letters, ROA 834 and 835). On August 11, 2008, K.E. Bennett provided CSBT a document entitled “Evidence of Property Insurance” on the Twin Rivers property listing CSBT as the “Mortgagee”. (August 11,

2008, Evidence of Property Insurance and R.C. Bennett Dep. p. 34, l. 11 – p. 35, l. 1, ROA 836 and 682 - 683).

On November 6, 2009, R.C. Bennett, signing as “agent” for BOG, applied for new insurance on the property and obtained that insurance which designated CBST as the “Certificate Holder” of the policy. R.C. Bennett also listed CSBT as having a “Loss Payable” interest on the property and as “Mortgagee” on the policy. (Handwritten note to David Swank dated April 14, 2010, ROA 869, Taylor Insurance Agency Documents, ROA 838, and R.C. Bennett Dep. p. 29, l. 20 – p. 31, l. 6 and p. 31, l. 25 – p. 32, l. 8, ROA 677 – 679 and ROA 679-680).

On April 1, 2009, K.E. Bennett signed a modification of the November 1, 2007, loan. This modification extended the loan’s maturity date to April 1, 2010. The loan modification says the obligation is secured by a mortgage dated November 1, 2007. (Loan modification, ROA 837).

On schedule D of K.E. Bennett’s personal financial statement as of January 1, 2010, “Twin Rivers Resort” is listed as an asset valued at \$550,000.00 and says “Community South [CBST]” is the “Mortgage Company” with a loan balance of \$497,000.00. The schedules attached to this personal financial statement say that “All Properties Titled in the Name of Ken E. Bennett Unless So Note (sic).” (K.E. Bennett, personal financial statement, ROA 844).

On March 12, 2010, R.C. Bennett told CSBT loan officer David Swank “if we can come to an agreement...I will assume the mortgage payment” on the “Twin Rivers Notes.” (March 12, 2010 letter, ROA 859, R.C. Bennett Dep. p. 43, ll. 6-18, ROA 691 and David Swank affidavit, ROA 860).

On March 15, 2010, R.C. Bennett provided proof to CBST loan officer David Swank that all taxes on the property had been paid. (March 15, 2010 letter, ROA 862 and David Swank affidavit, ROA 860).

On or about March 30, 2010, K.E. Bennett and R.C. Bennett received and accepted a CSBT loan commitment to refinance the November 1, 2007 loan. The new loan was to be secured by a first mortgage on the property, and by encumbrances on other properties owned by R.C. Bennett or owned by an entity owned or controlled by him. K.E. Bennett signed the commitment letter representing himself as the "owner" of the property. (March 30, 2010, commitment letter, ROA 863).

On March 30, 2010, R.C. Bennett wrote a check to CSBT for \$14,923.49 for the "interest on Twin Rivers [November 1, 2007] Loan" (Check #8813, ROA 868).

On April 14, 2010, R.C. Bennett provided CSBT's David Swank with proof of insurance coverage on the property, which listed CSBT as the mortgagee. (Handwritten note, ROA 869 and David Swank affidavit, ROA 860).

On April 23, 2010, K.C. Bennett signed a 90-day extension of the November 1, 2007, loan which acknowledged that the loan was separately secured by a "Mortgage Dated 11/01/2007." (April 23, 2010, Loan extension, ROA 870).

In June 2010, R.C. Bennett made handwritten notes on a "past due notice" on the November 1, 2007, CSBT loan. The past due notice lists the "Twin Rivers Rd" property as the collateral for the loan. (Past due notice, ROA 872 and R.C. Bennett Dep. p. 56, l. 21 – p. 57, l. 1 and p. 58, l. 18 – p. 60, l. 16, ROA 704 – 705 and 706 - 708).

On June 17, 2010, R.C. Bennett provided CBST a hand written document entitled “new payment history to Community South Bank on Twin Rivers [November 1, 2007] Loan #8001376 \$497,450” listing the payments he made on the CBST November 1, 2007 loan. (June 17, 2010 letter, ROA 873).

On July 13, 2010, Twin Rivers Resort, LLC was formed. (R.C. Bennett Dep. p. 7, ll. 19-25, ROA 655).

On August 20, 2010, K.E. Bennett signed a second extension of the November 1, 2007, loan, extending the maturity date of the loan until October 3, 2010. (Loan extension #2, ROA 874).

On September 14, 2010, K.E. Bennett, the sole member of BOG, in consideration of “One Dollar,” signed a deed conveying the property to R.C. Bennett’s single-member limited liability company, Twin Rivers. This deed was not recorded until December 17, 2010. (September 14, 2010 deed, ROA 876).

For the September 14, 2010, deed, K.E. Bennett signed an affidavit of exempt transfers claiming transferring the property was exempt from recording fees because the value of property being transferred was equal to or less than \$100. (Affidavit attached to September 14, 2010, deed, ROA 879).

On September 29, 2010, R.C. Bennett signed documents, including a note, as a “modification” of the November 1, 2007, loan. The documents signed by R.C. Bennett say the November 1, 2007, note is secured by a “MORTGAGE DATED 11-1-2007 RECORDED IN LAURENS COUNTY 12-10-2007 BK M1727 PG 1” - the November 1, 2007, mortgage.

(Modification, ROA 881 and R. C. Bennett Dep. p . 38, ll. 8-24, ROA 686 and David Swank affidavit, ROA 860).

On September 29, 2010, R.C. Bennett made another payment on the November 1, 2007 loan. (Check number 1030, ROA 885).

In connection with the purposed modification of the November 1, 2007, loan, R.C. Bennett signed several mortgages on various properties under his control in Illinois intended to be the additional collateral in the modification of the Bennett Loan. (David Swank affidavit, ROA 860).

ARGUMENT

I.

The court erred in granting Twin Rivers partial summary judgment dismissing Certus' ratification cause of action because the record is replete with evidence of ratification.

A. Summary judgment standard.

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Strother v. Lexington County Recreation Commission*, 332 S.C. 54, 504 S.E.2d 117 (1998). In determining whether any triable issues of fact exist, the evidence and all inferences which can reasonably be drawn from the evidence must be viewed in the light most favorable to the non-moving party. *Lyles v. BMI, Inc.*, 292 S.C. 153, 355 S.E.2d 282 (Ct. App. 1987). “[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009), quoted in *Simmons v. Berkeley Elec. Coop., Inc.*, 404 S.C. 172,

744 S.E.2d 580 (Ct. App. 2013). The South Carolina Supreme Court defines the word “scintilla” as a “gleam,” a “glimmer,” a “spark,” the “least particle,” and the “smallest trace.” *Beathea v. Floyd*, 177 S.C. 521, 181 S.E. 721, 724 (1935), (citation omitted). See also *H&H of Johnston, LLC v. Old Republic Nat. Title Ins. Co.*, 405 S.C. 469, 476, 748 S.E.2d 72, 75 (Ct. App. 2013) (The Court of Appeals held there was a genuine issue of fact regarding the existence of an oral contract because the non-moving party submitted an affidavit saying, “H&H had an agreement with [the title agent] regarding the three coverage exceptions.”).

B. The facts precluded the Court granting partial summary judgment.

The record is replete with evidence of ratification.

Everyone involved in the November 1, 2007, mortgage loan transaction - the closing attorney, JKR through its member K.E. Bennett, and K.E. Bennett - intended the November 1, 2007, mortgage to secure the November 1, 2007, loan.

Based on my knowledge of this transaction, it was my intent as the closing attorney, the intent of Kenneth Bennett, and the intent of CSBT for SCBT to obtain a first lien on the property described in the [November 1, 2007, mortgage] in order to secure repayment of its loan and it was the intent of JKR Development, LLC, of which Kenneth Bennett was a member, as the title holder of the property, to give CSBT that first lien.

(James S. Belk, Esq., affidavit, ROA 811).

R.C. Bennett knew the November 1, 2007 loan was to be secured by the November 1, 2007 mortgage. R.C. Bennett managed the property, having moved to South Carolina to do so. R.C. Bennett says he was an “owner of a percentage of the Twin Rivers Resort Asset of JKR.” R.C. Bennett was involved in the negotiations of the July 20, 2007, purchase agreement. The July 20, 2007, purchase agreement refers to the first lien purchase money mortgage held by CSBT which

encumbered the property. The November 1, 2007, loan paid and satisfied that purchase money mortgage.

A principal may ratify the act of his agent. 2 Am. Jur. 2d *Agency* § 180 (1986) (“As applied to the law of agency, ratification is the adoption or affirmance by a person of a prior act which did not bind him, but which was done or professed to be done on his account, thus giving effect to the act....”). Ratification may be express or implied, *id.* at § 182, and because ratification relates back to the time of the original transaction, once it is occurs, the ratification becomes immediately obligatory and cannot afterward be revoked or recalled, *id.* at § 184.

The elements of ratification are (1) acceptance by the principal of benefits of agent's acts, (2) full knowledge of the facts, and (3) circumstances or an affirmative election indicating the principal's intention to adopt the unauthorized arrangements. *Anthony v. Padmar, Inc.*, 320 S.C. 436, 465 S.E.2d 745 (Ct. App. 1995).

Here, JKR is the principal and K.E. Bennett its agent. JKR accepted K.E. Bennett's actions. K.E. Bennett was the moving force behind the entire series of events leading up to the November 1, 2007, closing. K.E. Bennett agreed in the July 20, 2007, purchase agreement to buy-out the other two JKR members. He agreed to take over the payments on the outstanding purchase money mortgage. He agreed to pay “\$59,000+/-” JKR owed R.C. Bennett. The November 1, 2007, mortgage loan transaction refinanced JKR debt, including the purchase money mortgage. JKR accepted the benefits of the November 1, 2007, mortgage loan transaction.

JKR knew of the November 1, 2007, mortgage loan transaction. This mortgage loan transaction was closed and the November 1, 2007, mortgage was signed by its member and driving force, K.E. Bennett. As evidence of K.E. Bennett's authority within JKR, one need only look as

far as the July 20, 2007, purchase agreement where K.E. Bennett says, without preamble, “[b]elow please find the purchase agreement....” whereby K.E. Bennett is to purchase the interests of JKR’s other two members. Further evidence of K.E. Bennett’s leadership and management role in JKR is the deed from JKR into BOG, signed by K.E. Bennett as the “manager” of JKR. (Deed from JKR to BOG, ROA 812).

The record is full of evidence of the intent of JKR to adopt the actions of its principal and leading member, K.E. Bennett, regarding the November 1, 2007, mortgage loan transaction. This evidence includes: (1) the November 1, 2007 mortgage was signed by K.E. Bennett; (2) the November 1, 2007 loan transaction was a refinance of the purchase money loan transaction whereby JKR obtained title to the property; (3) proceeds from the November 1, 2007, mortgage loan transaction were used to pay certain obligations K.E. Bennett agreed to take on in the July 20, 2007, purchase agreement; (4) an assignment of leases and rents on the property was also signed with the November 1, 2007 closing; (5) K.E. Bennett represented and warranted he was the owner of the property encumbered by the purchase money mortgage refinanced on November 1, 2007; (6) K.E. Bennett provided proof of insurance at the November 1, 2007, closing showing CSBT as the “mortgagee”; and (7) K.E. Bennett signed a “Business Purpose Statement” at the November 1, 2007 closing affirming the loan proceeds were being used to “refinance commercial property”.

There being far more than a mere scintilla of evidence JKR ratified the November 1, 2007, mortgage loan transaction, the Court erred in granting Twin Rivers partial summary judgment dismissing that cause of action.

The JKR’s ratification of the November 1, 2007, mortgage relates back to November 1, 2007. The November 1, 2007, mortgage therefore encumbers the property to this day and the

subsequent deeds into BOG and Twin Rivers are subject to that encumbrance. Thus, it is not necessary to demonstrate ratification of the November 1, 2007, mortgage by either BOG or Twin Rivers. However, there is further evidence not only of JKR's ratification, but of BOG and Twin Rivers.

BOG's ratification is evidenced by (1) the affidavit attached to the BOG deed shows the property encumbered by \$1,300,000.00 in debt which would include the debt sought to be secured by the November 1, 2007 mortgage; (2) R.C. Bennett, the property manager, inquired of K.E. Bennett the due dates and amount due on the November 7, 2007 note and mortgage; (3) R.C. Bennett inquired of K.E. Bennett about the "main mortgage" on the property, referring to the November 1, 2007 mortgage; (4) K.E. Bennett provided proof of insurance listing CSBT as "mortgagee"; and (5) in an insurance application, BOG listed CSBT as a "loss payee" and "mortgagee").

Evidence of Twin Rivers ratification of the November 1, 2007 mortgage transaction include (1) R.C. Bennett says "if we can come to an agreement, I will assume" the November 1, 2007 mortgage payments; (2) R.C. Bennett told Certus' predecessor-in-interest all real property taxes on the property had been paid; (3) payments were made on the November 1, 2007 debt by entities owned or controlled by R.C. Bennett; paragraph 42 (*see e.g.* check number 1030, dated September 29, 2010, payable to CSBT, drawn on an account owned by Twin Rivers and signed by R.C. Bennett, ROA 885). This check is dated shortly before the deed from BOG to Twin Rivers, conveying the property; and (4) R.C. Bennett's hand-written notes acknowledging the debt secured by the November 1, 2007 mortgage.

JKR ratified the November 1, 2007, mortgage. BOG and Twin Rivers ratified the November 1, 2007, mortgage. The Court erred in granting partial summary judgment.

C. The order granting partial summary judgment.

Citing an 1892 case and one section of Corpus Juris Secundum (CJS), the order granting partial summary judgment concludes ratification does not apply to the circumstances of this case. *See* April 14, 2014 Order at 1. Certus respectfully submits this conclusion overlooks the law of ratification and numerous genuine issues of material facts set out in its submissions in opposition to the motion for summary judgment.

The law of ratification is much broader than the Court concluded. Ratification of an unauthorized act can occur either by a manifestation of an election to treat the unauthorized act as authorized or by conduct justifiable only if there is an election to treat the unauthorized act as authorized. Certus' Memorandum in Opposition to Defendant's Motion for Summary Judgment (Certus Memo.) at 11.

Similarly, an affirmance of an unauthorized act may be inferred from failing to repudiate the act. Restatement of the Law *Agency* § 94.

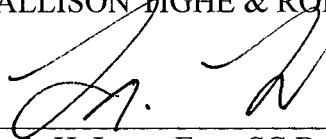
The case referred to by the April 14, 2014 order, *Scottish-American Mort. Co. v. Deas*, 35 S.C. 42, 14 S.E. 486 (1892), supports Certus's ratification cause of action. The issue in *Deas* was whether a mortgage entered into by a woman was enforceable given the legal incapacities under which women suffered in the late 19th century. The question was whether a debt secured by a mortgage was attributable to the borrower's separate estate and enforceable or whether it was attributable to the separate estate of her husband, in which case it might not be. Because much of the funds from that loan satisfied a prior mortgage, the court considered whether the prior debt was

the debt of the husband or the wife. The court concluded, “if ... Allen Deas [Husband] never rented this land from his wife, but, on the contrary, managed it for her, it would seem that the [funds borrowed] to ‘run the place’ would constitute the debt of the wife, *contracted, as to her separate estate, through her manager or agent, her husband, - for which she would be liable.*” *Id.* at 42, 14 S.E., 482. (Emphasis added). *See also McNeely v. Walters*, 211 N.C. 112, 114, 189 S.E. 114, 114 (1937) (Conceding that the note and deed of trust were executed ... without authority, ... Plaintiff was fully aware of all the facts surrounding the transaction ... when he accepted from the defendants further indulgence and forbearance.....) and *Carr v. McColgan*, 100 Md. 462, 60 A. 606, 608 (1905) (“The line of conduct subsequently pursued by the mortgage in accepting the benefit of the mortgage loan, and paying an installment of interest on it, and asking and receiving indulgence on another instrument, and attending the mortgage sale and suggesting the method which was adopted of offering the several parcels ... all without suggesting any defect in the mortgage”).

CONCLUSION

The Court erred in granting Twin Rivers partial summary judgment. The Court's order should be reversed and the case returned to the Circuit Court for trial.

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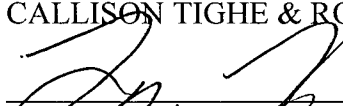
Kenneth E. Bennett, Twin Rivers Resort, LLC and
Bennett of Greenwood, LLC, Defendants,

Of which Twin Rivers Resort, LLC is theRespondent.

CERTIFICATE OF COUNSEL

The undersigned certifies the Final Brief and Final Reply Brief of Appellant comply with Rule 211(b), SCACR.

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January 20, 2015
Columbia, South Carolina