

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

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APPEAL FROM LAURENS COUNTY  
Court of Common Pleas

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The Hon. Charles B. Simmons, Special Referee

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

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**SC Court of Appeals**

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 the .....Respondent.

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

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**REPLY TO RESPONDENT’S STATEMENT OF THE CASE**

At page 1 of its brief, Respondent, Twin Rivers Resort, LLC (Twin Rivers), says Appellant, Certus Bank, N.A. (Certus), obtained a judgment against Defendant, Kenneth E. Bennett (K.E. Bennett). This is correct. The judgment Certus obtained against Kenneth E. Bennett is not relevant to any issue in the pending appeal, was obtained by Certus in a separate action against K.E. Bennett, and was a money judgment on the note, the payment of which was intended to be secured by the November 1, 2007, mortgage.

**REPLY TO RESPONDENT’S STATEMENT OF FACTS**

At page 2 of its Brief, Twin Rivers begins its recitation of the facts by saying K.E. Bennett obtained a loan from CommunitySouth Bank & Trust (CSBT) on November 1, 2007, giving CSBT a mortgage to secure repayment of that loan. This leaves out a crucial fact in the events leading up to this litigation. The November 1, 2007, mortgage loan transaction was the refinance (which Twin Rivers notes in its Brief) of a purchase money mortgage transaction in which JKR, LLC, obtained title to the property using financing provided by CSBT. (James S. Belk, Esq., affidavit, ROA 810). K.E. Bennett was one of three members of JKR, LLC. R.C. Bennett, the sole member of Twin Rivers, while not a member of JKR, LLC, moved to South Carolina to become an “owner of a percentage of the Twin Rivers Resort asset of JKR.” (R.C. Bennett Dep. p. 11, ll. 11-13, K.E. Bennett Dep. p. 8, ll. 15 – p. 9, l. 2, ROA 659 and 296 - 297).

Twin Rivers also says at page 2 of its brief, K.E. Bennett received the “Loan proceeds,” presumably from the November 1, 2007, refinance transaction.

This is not correct. According to the settlement statement from the November 1, 2007, refinance transaction, (ROA 886), the refinance loan principal amount was \$497,450.00, the

proceeds of which were used to pay and satisfy the purchase money mortgage encumbering the property (totaling \$393,973.88), along with two other loans. This required the borrower, K.E. Bennett, to bring \$17,109.50, to the closing table.

Twin Rivers says at page 3 of its brief, neither Certus nor CSBT brought a “malpractice action” against the closing attorney – a fact which though correct is not supported by any matter in the Record on Appeal nor relevant to any issue in this appeal or in this case. Twin Rivers also asserts at pages 3 and 4 of its brief, the closing attorney “wrote a title [insurance] policy in favor” of CSBT, and “Certus made a written claim” on its title insurance policy and has not sued the title insurance company. None of these facts relate to any issue in this appeal or this case. *Cf* S.C. R. Evid. 411.

Finally, at page 5 of its brief, Twin Rivers recites the “book value” of the “loan”, an amount Certus was “reimbursed” by the Federal Deposit Insurance Corporation for the “loan” and suggests an amount of money as “Certus’s actual loss.” No issue in this appeal or this case touches on any of these “facts.”

### **REPLY TO RESPONDENT’S ARGUMENT**

At page 9 of its brief, Twin Rivers suggests Certus “abandoned” its ratification argument against it and asserted a “second theory” that JKR, LLC, ratified the November 1, 2007, mortgage.

Certus has not “abandoned” any ratification theory. Its complaint asserts all defendants ratified the November 1, 2007, mortgage. (Complaint, ROA 4). Certus’ memorandum in opposition to Twins Rivers’ motion for summary judgment, which was in response to the bases for summary judgment in Twin Rivers’ summary judgment motion, asserted defendant, Bennett

of Greenwood, LLC (BOG) ratified the November 1, 2007, mortgage and Certus' brief in this Court argues JKR, BOG and Twin Rivers ratified the November 1, 2007, mortgage. (Certus memorandum in opposition, ROA 234).

When applied, the doctrine of ratification relates back to the time the agent acted. 3 Am. Jur. 2d *Agency* § 186. The ratification of the November 1, 2007, mortgage by JKR, BOG and/or Twin Rivers relates back to the event ratified, the November 1, 2007, those ratifications being argued by Certus in opposition to Twin Rivers' motion for summary and in this Court.

Certus argued in opposition to Twin Rivers' motion for summary judgment Twin Rivers was not a bona fide purchaser for value of the property from BOG and, therefore, could not claim to have taken title to the property free of the ratified November 1, 2007, mortgage. (Certus memorandum in opposition, ROA 234). R.C. Bennett knew of the November 1, 2007, mortgage as evidenced, for example, by (1) R.C. Bennett saying "if we can come to an agreement, I will assume" the November 1, 2007 mortgage payments (March 12, 2010, letter, ROA 890, R.C. Bennett Dep. p. 43, ll. 6 -18, ROA 691 and David Swank affidavit, ROA 860); (2) R.C. Bennett telling Certus' predecessor-in-interest all real property taxes on the property had been paid (March 15, 2010, letter, ROA 862 and David Swank affidavit, ROA 860); (3) payments being made on the November 1, 2007 debt by entities owned or controlled by R.C. Bennett; (*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 (November 29, 2007, letter, ROA 831 and March 31 and May 6, 2008, letters, ROA 834 and 835).

JKR, BOG and Twin Rivers ratified the November 1, 2007, mortgage. The Special Referee erred in granting Twin Rivers partial summary judgment dismissing Certus' ratification cause of action.

**CONCLUSION**

For the reasons set forth in its opening brief and in this reply brief, Certus respectfully requests the Special Referee's grant of partial summary judgment be reversed and the case remanded for trial.

Respectfully submitted,



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January 20, 2015  
Columbia, South Carolina

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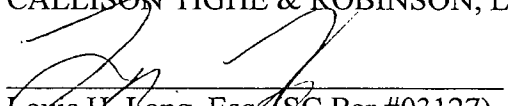
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CERTIFICATE OF COUNSEL

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

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