

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS

Debi Baker Brookshire,

Plaintiff,

v.

Community First Bank, Inc. and
Benjamin Lee Hiott,

Defendants.

Case No. 2014-CP-37-526

RECEIVED
APR 12 2019
SC Court of Appeals

**ORDER GRANTING DEFENDANT COMMUNITY FIRST BANK, INC.'S
MOTION FOR SUMMARY JUDGMENT AND DENYING DEFENDANT
BENJAMIN LEE HIOTT'S MOTION FOR SUMMARY JUDGMENT**

This matter is before the Court on Defendant Community First Bank, Inc.'s ("Community First") Motion for Summary Judgment on all claims ("Community First's Motion"), filed October 13, 2016, and Defendant Benjamin Lee Hiott's ("Hiott") Motion for Summary Judgment ("Hiott's Motion"), filed October 19, 2016. The Court heard oral argument on these Motions on December 13, 2016. Appearing for Plaintiff Debi Baker Brookshire ("Plaintiff") were W. Barney Giese, Esq. and M. David Scott, Esq. Appearing for Community First were Robert Y. Knowlton, Esq. and Elizabeth H. Black, Esq., and appearing for Hiott was Daryl G. Hawkins, Esq. Prior to or during the December 13, 2016 hearing, Community First submitted a Memorandum in Support of its Motion for Summary Judgment, a Reply Memorandum in Further Support of its Motion for Summary Judgment, a combined 61 exhibits, and presented two demonstrative exhibits during oral argument. Prior to or during the December 13, 2016 hearing, Plaintiff submitted a Memorandum in Opposition to Defendant CFB and Defendant Hiott's Motions for Summary Judgment along with 49 exhibits.

As to Community First's Motion, after considering these various submissions and the arguments of counsel, Community First's Motion for Summary Judgment is GRANTED as to all claims for the reasons set forth in its motion, memoranda, and arguments, as follows:

1. Plaintiff's power of attorney to Hiott bars her claims against Community First because there is no genuine issue of material fact that, by the power of attorney, Plaintiff authorized Hiott to take all of the actions he did with regard to Plaintiff's account at Community First, and the law imposes no duty on Community First to monitor or regulate Hiott's activities and decisions undertaken pursuant to the power of attorney.

2. Plaintiff's claims that Hiott's disbursements from Plaintiff's account at Community First were unauthorized are time barred under the Uniform Commercial Code because there is no genuine issue of material fact that Plaintiff failed to timely challenge the disbursements.

3. All of Plaintiff's claims are time barred pursuant to S.C. Code Ann. § 15-3-530(5) because there is no genuine issue of material fact that Plaintiff received statements for the subject account more than three years prior to August 1, 2014, and Plaintiff believed that Hiott had misappropriated her funds or otherwise was untruthful with her about her affairs more than three years prior to August 1, 2014.

4. S.C. Code Ann. § 15-3-110 does not apply to this matter for the reasons outlined in Community First's Reply Memorandum.

5. Neither equitable tolling nor equitable estoppel apply to save Plaintiff's time-barred claims for the reasons outlined in Community First's memoranda.

6. Community First is entitled to summary judgment on Plaintiff's breach of fiduciary duty cause of action because there is no genuine issue of material fact that Community First did not owe fiduciary duties to Plaintiff with regard to the checking account at issue in this matter. Further,

there is no genuine issue of material fact that Hiott was not serving as Community First's agent in making disbursements from Plaintiff's account at Community First, but was rather acting as Plaintiff's agent under the power of attorney Plaintiff gave to Hiott.

7. Community First is entitled to summary judgment on Plaintiff's cause of action for conversion for the reasons outlined in Community First's motion and memoranda.

8. Community First is entitled to summary judgment on Plaintiff's cause of action for negligent supervision for the reasons outlined in Community First's motion and memoranda.

9. Community First is entitled to summary judgment on Plaintiff's cause of action for negligence/gross negligence for the reasons outlined in Community First's motion and memoranda.

10. Community First is entitled to summary judgment on Plaintiff's cause of action for breach of contract accompanied by a fraudulent act for the reasons outlined in Community First's motion and memoranda.

11. Community First is entitled to summary judgment on Plaintiff's cause of action for an accounting for the reasons outlined in Community First's motion and memoranda.

12. Community First is entitled to summary judgment on its offset and counterclaims against Plaintiff in the total amount of \$780,855.58 for the reasons outlined in Community First's motion and memoranda. Further, there is no genuine issue of material fact that the statute of limitations does not bar Community First's counterclaim.

As to Hiott's Motion for Summary Judgment, after considering these various submissions and the arguments of counsel, Hiott's Motion for Summary Judgment is DENIED.

This Order further replaces and supersedes in its entirety the Form 4 Order entered on August 29, 2017, as that August 29, 2017 Order contained an error in denying "all motions" for

summary judgment. This Order is supplemental to the Form 4 Order entered on September 8, 2017, and constitutes the forthcoming formal order referenced therein.

It is therefore ORDERED:

1. Community First is granted summary judgment in its favor on all claims asserted against it, and Plaintiff's claims against Community First are hereby dismissed with prejudice.
2. Community First is granted summary judgment in its favor on its counterclaims asserted against Plaintiff, and a judgment in the principal amount of \$780,855.58 is hereby rendered in Community First's favor and against Plaintiff.
3. Pursuant to Rule 54(b), SCRCP, this Order is a final judgment as to all of Plaintiff's claims against Community First and as to all of Community First's claims against Plaintiff. There is no just reason for delay, and the Clerk is hereby directed to so enter such final judgment.
4. Hiott's motion for summary judgment is denied.
5. The Form 4 Order entered on August 29, 2017, is hereby replaced and superseded in its entirety by this Order.

And it is so ordered.

The Honorable J. Cordell Maddox, Jr.
Judge, Tenth Judicial Circuit

Dated: _____, 2017



Oconee Common Pleas

Case Caption: Debi Baker Brookshire VS Community First Bank Inc , defendant, et al-
Case Number: 2014CP3700526
Type: Order/Other

So Ordered

s/ J. Cordell Maddox Jr.

THE

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LAW FIRM, LLC

April 12, 2019

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APR 12 2019

SC Court of Appeals

Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
PO Box 11629
Columbia, SC 29211

Re: Debi Baker Brookshire v. Community First Bank & Benjamin Hiott
Case No.: 2014-CP-37-00526

Mrs. Kitchings:

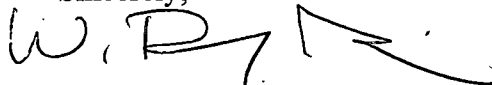
Please be advised that my firm represents Mrs. Brookshire in the above referenced matter.

Enclosed please find the Proof of Service of the Notice of Appeal. I would appreciate your filing the original and returning the additional clocked-in copies to our office in the self-addressed, stamped envelope.

Also, find enclosed a copy of both orders challenged on appeal.

Should you have any questions or need additional information, please feel free to contact our Columbia office.

Sincerely,



Warren Blair Giese

cc: Robert Y. Knowlton, Sr., Esq.
Elizabeth Black, Esq.
Daryl Hawkins, Esq.