

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS
THE HONORABLE JOCELYN NEWMAN
CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2019-001438
CIVIL ACTION NO. 2018-CP-40-06469

Gary Washington, Michele Washington, Carolina Procurement Institute, Inc., Carolina Encouragement Center, Gervais Professional Suites, LLC, Wellsfargo Bank, FRU, Haynsworth Sinkler Boyd, P.A., Edgefield Holdings, LLC, (Assignee), Liberty Solutions, US Department of Treasury, Fannie MAE and Freddie MAC, First Palmetto Savings Bank, F.S.B., Branch Banking and Trust Company of South Carolina, Palmetto Health Alliance, State of South Carolina Department of Revenue, and Seturas Mortgage Company,

Of whom Gary Washington, Michele Washington, and Carolina Procurement Institute, Inc. are the,

versus

South Carolina Community Bank a.k.a
SC Community Bank a.k.a. SCCB,
OPTUS Bank,

RECEIVED
Jun 11 2020
SC Court of Appeals

PLAINTIFFS,

APPELLANTS,

RESPONDENT.

INITIAL BRIEF OF RESPONDENT

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COUNTERSTATEMENT OF ISSUES ON APPEAL

- I. The Trial Court correctly dismissed Appellants' lawsuit alleging various fraud claims against Respondent South Carolina Community Bank based upon the doctrine of *res judicata* where Appellants could have and actually did litigate these issues in previous litigation between the parties.
- II. Appellants are collaterally estopped from litigating issues previously determined in prior bankruptcy litigation between the parties.
- III. Appellants failed to sufficiently allege causes of action for extrinsic fraud and fraud upon the court.
- IV. Appellants are barred by the doctrine of laches in bringing this lawsuit against Respondent South Carolina Community Bank where they unreasonably delayed in asserting their various fraud claims and the delay prejudices Respondent where the properties at issue in the litigation were sold at a foreclosure sale in 2015.

COUNTERSTATEMENT OF THE CASE

The litigation between Respondent South Carolina Community Bank (“SCCB”) and Appellants Gary Washington, Michelle Washington, and Carolina Procurement Institute, Inc. has spanned a number of years, beginning with a foreclosure action filed by SCCB in 2008 against Appellants seeking to foreclose on a mortgage given by the Washingtons on certain properties located in Richland County, South Carolina. The foreclosure action was stayed on multiple occasions by various bankruptcy filings of Appellants in the United States Bankruptcy Court for the District of South Carolina. After the Bankruptcy Court lifted the automatic stay, the foreclosure action proceeded and the properties were sold on November 2, 2015. Appellants appealed the sale of the properties to this Court, which affirmed the foreclosure sale on May 2, 2018. The South Carolina Supreme Court denied review of this Court’s Opinion on November 28, 2018.

On December 11, 2018, Appellants¹ filed an Initial Complaint in the Court of Common Pleas for Richland County purporting to allege extrinsic fraud and fraud upon the court against SCCB for its alleged misrepresentation to the United States Bankruptcy Court for the District of South Carolina regarding the lack of equity in the properties at issue resulting in the Bankruptcy Court’s lifting of the automatic stay which allowed the foreclosure of the properties to proceed. [R.pp. ___; Compl.] Appellants also alleged

¹ Appellants named numerous other plaintiffs in the caption of the Initial Complaint, including Carolina Encouragement Center, Gervais Professional Suites, LLC, Wellsfargo Bank, FRU, Haynsworth Sinkler Boyd, P.A., Edgefield Holdings, LLC, (Assignee), Liberty Solutions, US Department of Treasury, Fannie MAE and Freddie MAC, First Palmetto Savings Bank, F.S.B., Branch Banking and Trust Company of South Carolina, Palmetto Health Alliance, State of South Carolina Department of Revenue, and Seturas Mortgage Company, but these plaintiffs made no allegations in the Initial Complaint and did not sign the Initial Complaint. [R.pp. ___; Compl.] In addition, these plaintiffs did not appeal the Trial Court’s decision in this case and as such are not appellants in this appeal. [R.pp. ___; Notice of Appeal.]

that SCCB violated certain regulatory requirements of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. [R.p. ___; *Id.* at p. 2.] Appellants attached numerous exhibits to their Initial Complaint, including various documents relating to the prior foreclosure and bankruptcy proceedings. [R.pp. ___; Compl., Exs.]

Appellants filed an Amended Complaint on December 18, 2018, modifying the name of SCCB to “South Carolina Community Bank aka SC Community Bank aka SCCB, OPTUS Bank².” [R.pp. ___; Am. Compl.] No new claims or causes of action were added to the Amended Complaint, except in this complaint, Appellants alleged the properties at issue were taken by “intrinsic fraud.” [R.pp. ___; *Id.* at p. 2.]

On January 10, 2019, SCCB filed a Motion to Dismiss in Lieu of Answer pursuant to Rules 12(b)(1) and 12(b)(6) of the South Carolina Rules of Civil Procedure arguing, among other things, that (1) the claims raised against SCCB by Appellants were barred by the doctrine of *res judicata*; (2) Appellants failed to state facts sufficient for claims of extrinsic fraud and fraud upon the court; and (3) the Trial Court lacked subject matter jurisdiction to adjudicate Appellants’ claim that SCCB violated the regulatory requirements of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 because Appellants failed to exhaust their administrative remedies before the Federal Deposit Insurance Corporation. [R.pp. ___; Mtn. to Dismiss.] SCCB filed a Memorandum in Support of the Motion to Dismiss on April 11, 2019. [R.pp. ___; Memo. with attached exhibits.]

A hearing on SCCB’s Motion to Dismiss was held before The Honorable Jocelyn Newman on April 12, 2019. [R.pp. ___; Hearing Tr.] At the conclusion of the hearing,

² SCCB asserts this modified name is an improper identification of its name. [R.p. ___; Mtn. to Dismiss, p. 1.]

the Trial Court gave Appellants ten days to submit a written memorandum in opposition to the Motion to Dismiss. [R.p. ____; Id. at p. 28, ll. 14-19.] The Trial Court also issued a Form 4 Order on April 15, 2019 noting that SCCB's Motion to Dismiss was being taken under advisement by the Court and that a motion to recuse raised by Appellants was denied. [R.pp. ____; Form 4 Order.]

Appellants filed their Memorandum in Opposition to the Motion to Dismiss on April 24, 2019 to which SCCB filed a Reply on April 29, 2019. [R.pp. ____; ____; Memo. in Opp.; Reply.]

The Trial Court issued its Order granting SCCB's Motion to Dismiss on August 1, 2019. [R.pp. ____; Order.] The Trial Court ruled that the entirety of Appellants' claims were barred by the doctrine of *res judicata* and further that Appellants had failed to plead sufficient facts to constitute causes of action for extrinsic fraud and fraud upon the court. [R.pp. ____; Id. at pp. 8-11.] Accordingly, the Trial Court dismissed Appellants' action and claims against SCCB with prejudice and ordered a *lis pendens* filed by Appellants on December 11, 2018 with the Richard County Clerk of Court be cancelled. [R.pp. ____; Id. at pp. 11-12.]

Appellants filed and served their Notice of Appeal on or about August 27, 2019. [R.pp. ____; Notice of Appeal.]

COUNTERSTATEMENT OF FACTS

The litigation between Appellants and SCCB involves a long and tortured history.³ SCCB initiated a foreclosure action (the “Foreclosure Action”) against Appellants Gary Washington, Michele Washington, and Carolina Procurement Institute, Inc.⁴ on December 17, 2008 in the Richland County Court of Common Pleas seeking to foreclose on a mortgage given by the Washingtons on certain real properties located at 1811 and 1815 Gervais Street, Columbia, South Carolina in Richland County (the “Properties”). [R.pp. ____; Foreclosure Summons and Complaint (Mtn. to Dismiss Memo., Ex. 1).] On July 31, 2009, the case was referred to Joseph M. Strickland, the Master-In-Equity for Richland County. Appellants failed to respond to the Foreclosure Action, and thereafter, on July 31, 2009, SCCB filed an Affidavit of Default. [R.pp. ____; Order of Reference; Aff. of Default; Aff. of Nonmilitary Service (Mtn. to Dismiss Memo., Ex. 2).]

Following Appellants’ default, the Master-In-Equity issued its Report and Judgment of Foreclosure on October 8, 2009. [R.pp. ____; Judgment of Foreclosure (Mtn.

³ In support of its Motion to Dismiss, SCCB attached the relevant filings in the prior litigation between Appellants and SCCB to provide the Court with the entire procedural history giving rise to the subject civil action. In its Order granting SCCB’s Motion to Dismiss, the Trial Court noted that pursuant to Rule 201 of the South Carolina Rules of Evidence, it would take judicial notice of the filings, pleadings, briefs, and orders from the prior litigation to summarize the procedural history of the case in the interest of justice and for the convenience of all the parties. See also Wise v. Wise, 394 S.C. 591, 601, 716 S.E.2d 117, 122 (Ct. App. 2011) (“A court can take judicial notice of its own records, files[,] and proceedings for all proper purposes including facts established in its records.”) (internal citation omitted). The Court further emphasized that its ruling was specifically limited to the allegations set forth in Appellants’ Complaint as required by Rule 12(b)(6), SCRCPP; see also Jarrell v. Petoseed Co., 331 S.C. 207, 209, 500 S.E.2d 793, 794 (Ct. App. 1998). [R.p. ____; Order, p. 2, n.2.]

⁴ Carolina Procurement Institute, Inc. (“Carolina Procurement”) was dismissed from the Foreclosure Action pursuant to a Stipulation of Dismissal filed on September 30, 2015. [R.p. ____; Stipulation (Mtn. to Dismiss Memo., Ex. 3).]

to Dismiss Memo., Ex. 6).] The Judgment noted that Appellants were in default for failure to respond to the suit. [R.p. ___; Id. at p. 2.] The Master-In-Equity ordered that SCCB was entitled to foreclose on the Properties and further ordered the Properties to be sold, after due advertisement, at a public auction at the Richland County Judicial Center on a convenient sales day thereafter. [R.pp. ___; Id. at pp. 6-7.]

The Foreclosure Action was stayed on multiple occasions by various bankruptcy filings by Appellants. Their first case, No. 09-08248-dd, was filed with the United States Bankruptcy Court for the District Court of South Carolina (the “Bankruptcy Court”) on November 2, 2009 and dismissed on September 14, 2010 at the request of the United States Trustee for cause pursuant to 11 U.S.C. § 1112(b)(4)(A). Appellants’ second case, No. 11-00625-dd, was filed February 3, 2011 with a plan being confirmed on December 22, 2011 and the Bankruptcy Court entering a final decree closing the case on July 17, 2012. [R.p. ___; Order Granting Relief from Stay, p. 1 n.1. (Compl., Ex. 8.A.).]

On October 3, 2014, the Washingtons filed for bankruptcy a third time. This bankruptcy action, No. 14-005589-dd, is referred to herein as the “Bankruptcy Proceeding.” [R.p. ___; Id. at p. 1.] SCCB moved the Bankruptcy Court for relief from the automatic stay under 11 U.S.C. § 362(d) to be able to proceed with the foreclosure of the Properties in the Foreclosure Action, which the Bankruptcy Court granted on February 26, 2015. [R.pp. ___; Id. at pp. 1-7.] The Bankruptcy Court granted relief from the stay based, in part, on the lack of equity in the Properties where the Washingtons scheduled the value of the Properties as \$306,300 and the value of SCCB’s lien as \$366,000. [R.p. ___; Id. at p. 1.] The Washingtons moved the Bankruptcy Court to

amend its order granting relief from the stay which the Bankruptcy Court denied on April 8, 2015. [R.pp. ___; Order Denying Mtn. to Alter or Amend (Compl., Ex. 8.B).]

In the Foreclosure Action, due to the multiple bankruptcy proceedings, supplemental orders to the Master-In-Equity's Judgment of Foreclosure were issued by the court for the limited purpose of updating and adjusting the judgment debt figures. [R.pp. ___; ___; ___; Supplemental Order filed December 20, 2010; Second Supplemental Order filed September 10, 2014; Third Supplemental Order filed July 17, 2015 (Mtn. to Dismiss Memo., Exs. 7, 8, and 9).] Appellants neither moved to set aside or reopen the Judgment of Foreclosure and the supplemental orders nor appealed such orders.

The judicial sale of the Properties was scheduled for November 2, 2015 at 12:00 p.m. at the Richland County Judicial Center before the Master-In-Equity. [R.p. ____; Notice of Sale (Mtn. to Dismiss Memo., Ex. 10).] The Notice of Sale was advertised in The Columbia Star, a weekly newspaper of general circulation published in the City of Columbia, for three consecutive weeks preceding the sales day (October 16, 23, and 30, 2015). [R.p. ____; Aff. of Publication filed November 4, 2015 (Mtn. to Dismiss Memo., Ex. 11).] In addition, on October 1, 2015, counsel for SCCB mailed the Notice of Sale to Appellants at their 1815 Gervais Street, Columbia, South Carolina address which was the address of one of the properties subject to the foreclosure sale. [R.pp. ____; October 1, 2015 Letter. (Mtn. to Dismiss Memo., Ex. 12).] The letter was also mailed to Robert H. Cooper, an attorney representing Appellants in the Bankruptcy Proceeding at the time, as well as to the Master-In-Equity. [R.p. ___; Id.]

The Properties were sold on November 2, 2015 to SCCB which entered the highest bid in the amount of \$370,000.00. [R.pp. ___; Master's Report on Sale and Disbursements and Order of Confirmation (Mtn. to Dismiss Memo., Ex. 13).] The Master-In-Equity's Deed conveying the properties at issue to SCCB was recorded on December 18, 2015. [R.pp. ___; Deed (Mtn. to Dismiss Memo., Ex. 14).] An order of deficiency judgment was also filed by the Master-In-Equity on December 18, 2015 ordering that SCCB was entitled to a deficiency judgment in the amount of \$187,365.21 through December 3, 2015. [R.pp. ____; Order (Mtn. to Dismiss Memo., Ex. 15).]

After the Properties were sold and more than eight months after the Bankruptcy Court filed its April 8, 2015 order denying the Washingtons' motion to alter or amend the grant to SCCB of relief from the automatic stay under § 362, the Washingtons, with new bankruptcy counsel, filed with the Bankruptcy Court on December 14, 2015 a second motion for reconsideration purportedly seeking relief under FED. R. CIV. P. 60(b)(3) for "fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party" or Rule 60(b)(6) which allows a court to grant relief for "any other reason that justifies relief." [R.pp. ___; Mtn for Reconsideration (Compl., Ex. 6).]

The Washingtons' basis for their motion, in part, was (1) SCCB's alleged misrepresentation to the Bankruptcy Court of the value of the Properties; and (2) the alleged ineffective assistance of the Washingtons' prior bankruptcy counsel who, according to the Washington, failed to challenge whether there was any equity in the Properties. In their motion, the Washingtons also referenced three appraisals which they argued SCCB had in its possession showing that equity existed in the mortgaged properties: (1) The Rosen Appraisal dated January 16, 2013 with a value of \$425,000;

(2) The McKinney Appraisal dated April 2, 2014 with a value of \$450,000; and (3) the Crider Appraisal dated March 12, 2015 with a value of \$557,000. The Washingtons did not attach the appraisals to their motion or otherwise submit the appraisals to the Bankruptcy Court. [R.pp. ___; Id. at pp. 7-8.]

Carolina Procurement, the wholly owned corporation of the Washingtons, filed a motion with the Bankruptcy Court joining in the Washingtons' Motion for Reconsideration on December 28, 2015, alleging that SCCB "manipulated the facts and misrepresented to the Court the true value of the properties." [R.pp. ___; Carolina Procurement Mtn. (Compl., Ex. 6).]

On December 30, 2015, the Bankruptcy Court issued an order denying Appellants' motion to reconsider, ruling:

Debtors have repeatedly attempted to relitigate the issue of the value of the Properties without providing any new evidence or evidence that was not available at prior proceedings. Like the First Motion to Reconsider, this Motion attempts to present allegedly new evidence that contradicts Debtors' earlier admission of value – an admission Debtors' reiterate in their plan and disclosure statement. The evidence presented by the UST [United States Trustee] at the hearing on the motion to dismiss suggests that Debtors are still utilizing the \$306,000 value (or lower values) when it suits them (for example, in calculating plan payments to creditors), and are only attempting to argue the value of the Properties is higher with respect to [SCCB] receiving relief from stay. Relief from stay was granted eight months ago. The foreclosure process is complete and the deed to the Properties has been transferred. Debtors failed to file a plan that was confirmable by the Court within the deadline established by the Court, thus the case will soon be dismissed. In short, even if the facts warranted reconsideration, which they do not, granting relief would serve no purpose. Debtors' motion is denied.

[R.pp. ___; Order Denying Mtn, to Reconsider (Compl., Ex. 8.C).]

The Washingtons appealed the Bankruptcy Court's order denying their second motion for reconsideration of the order granting relief from the automatic stay to the

United States District Court for the District of South Carolina and then to the United States Court of Appeals for the Fourth Circuit which ultimately affirmed the ruling of the Bankruptcy Court lifting the automatic stay on July 24, 2017. See In re: Gary Allen Washington, 693 Fed. Appx. 241 (4th Cir. 2017).

In the Foreclosure Action, the Washingtons meanwhile proceeded to attempt to overturn the foreclosure sale of the Properties. On January 27, 2016, Appellants Gary and Michele Washington moved to set aside the foreclosure sale.⁵ [R.pp. ____; Mtn. to Set Aside (Mtn. to Dismiss Memo., Ex. 16).] In this motion, the Washingtons argued that the sale was accompanied by other circumstances warranting the interference of the court, in particular, allegations that the Washingtons' bankruptcy counsel was deficient in the Bankruptcy Proceeding with respect to valuation of the Properties resulting in the lifting of the automatic stay by the Bankruptcy Court so that SCCB could proceed with the foreclosure. [R.pp. ____; Id. at pp. 4-5.] The Washingtons furthered argued that the Judgment of Foreclosure and the Third Supplemental Order, neither of which had ever been challenged or appealed, failed to meet the requirements of Rule 71 of the South Carolina Rules of Civil Procedure. [R.pp. ____; Id. at pp. 5-6.] Finally, the Washingtons contended that Gary Washington did not receive notice of the sale date. [R.pp. ____; Id.]

On February 1, 2016, SSCB filed a Petition for Writ of Assistance to remove Appellants and their tenants from the properties after Appellants and their tenants refused to vacate the properties following the sale. [R.pp. ____; Petition for Writ of Assistance; Rule to Show Cause (Mtn. to Dismiss Memo., Ex. 17)].]

⁵ Carolina Procurement had already been dismissed from the Foreclosure Action at this point and did not join in the motion to set aside the foreclosure sale.

A hearing was held before the Master-In-Equity on February 19, 2016. Following the hearing, the Master-In-Equity issued an order on March 23, 2016 finding (1) the Washingtons were in default; (2) the sales price of \$370,000.00 was not so gross as to shock the conscience to warrant setting aside the judicial sale previously consummated; (3) no other circumstances existed warranting the interference of the court into the judicial sale; (4) the Washingtons' argument as to deficient bankruptcy counsel was appropriately addressed by Bankruptcy Court and was not grounds for setting aside the judicial sale; (5) the notice of the November 2, 2015 sale date of the Properties was appropriately published and noticed to the Washingtons; and (6) the Master-In-Equity's Judgment of Foreclosure, filed October 8, 2009, as supplemented by the Third Supplemental Order, filed July 17, 2015, complied with the requirements of Rule 71, SCRCF. The Master-In-Equity therefore denied the Washingtons' motion to set aside the foreclosure sale. [R.pp. ___; Order (Mtn. to Dismiss Memo., Ex. 18).] On March 28, 2016, the Master-In-Equity also granted SCCB's Petition for a Writ of Assistance to remove Appellants and their tenants from the properties. [R.pp. ____; Order for Writ of Assistance (Mtn. to Dismiss Memo., Ex. 19).]

On April 14, 2016, the Washingtons filed a motion requesting reconsideration of the Order Denying the Motion to Set Aside the Foreclosure Sale and Order for Writ of Assistance. The motion reargued that the judicial sale should be set aside because of the circumstances attendant to the Bankruptcy Proceeding, the alleged failure of the Judgement of Foreclosure and Third Supplemental Order to comply with Rule 71(b), SCRCF, and the alleged failure of Gary Washington to receive notice of the foreclosure sale date. [R.pp. ____; Mtn. to Reconsider (Mtn. to Dismiss Memo., Ex. 20).]

A hearing was held on the motion for reconsideration on April 28, 2016 before the Master-In-Equity. The Master-In-Equity thereafter issued an order denying the motion for reconsideration on June 1, 2016 and additionally ordered that the Sheriff of Richland County be authorized to remove Appellants and their tenants from the Properties any time after 5:00 p.m. on June 6, 2016 and that any rent by tenants should be paid and delivered to SCCB. [R.pp. ____; Order Denying Mtn. to Reconsider (Mtn. to Dismiss Memo., Ex. 21).]

Appellants appealed to this Court the June 1, 2016 Order of the Master-In-Equity denying the motion for reconsideration. In their appeal this Court, Appellants argued: (1) the Master-in-Equity's order denying the motion for reconsideration failed to comply with Rule 52(a), SCRPC; (2) the Notice of Sale did not comply with the requirements of Rule 71, SCRPC; and (3) Gary A. Washington allegedly did not receive notice of the sale. On May 2, 2018, this Court affirmed the Master-in-Equity's denial of Appellants' motion to set aside the foreclosure sale and the order denying Appellants' motion for reconsideration, holding (1) findings of fact and conclusions of law are not required under Rule 52(a) for decisions on motions; (2) Appellants' argument regarding the Notice of Sale not complying with Rule 71 was not preserved for appellate review; and (3) parties to a suit for foreclosure are not required to be given personal notice of a judicial sale. [R.p. ____; Opinion (Mtn. to Dismiss Memo., Ex. 23).]

On or about May 17, 2018, Appellants filed a Petition for Rehearing with this Court. They did not challenge any of the holdings in this Court's Opinion, but rather argued that the judgment below was not valid because Carolina Procurement was in bankruptcy and subject to the automatic stay provided under 11 U.S.C. § 362 from

September 2015 and the subsequent months when the foreclosure proceedings occurred. [____; Petition for Rehearing (Mtn. to Dismiss Memo., Ex. 22).] This Court denied the Petition for Rehearing on August 16, 2018. [R.p. ____; Mtn. to Dismiss Memo., Ex. 23).] Appellants then filed a Petition for Writ of Certiorari with the South Carolina Supreme Court, which the Supreme Court denied on November 28, 2018. [R.p. ____; Mtn. to Dismiss Memo., Ex. 24).]

On December 11, 2018, Appellants filed the Initial Complaint in the current action against SCCB. The Initial Complaint by Appellants purported to allege claims for extrinsic fraud and fraud upon the court by SCCB to obtain the Properties. Appellants alleged that SCCB “knowingly and willingly deceived the [Bankruptcy] Court that equity did not exist in the property and testifying that it was not being adequately protected.” According to Appellants, the “[Bankruptcy] Court accepted the fraudulent claim and removed property [from] the Automatic Stay in which the plaintiffs were entitled.” [R.p. ____; Initial Compl., p. 1.]

Appellants further alleged that SCCB failed to disclose evidence to the Bankruptcy Court regarding the appraised value of the Properties and misrepresented to the Court that no equity existed in the properties. [R.p. ____; Id. at p. 3.]

Finally, Appellants alleged that SCCB violated certain regulatory requirements of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and committed fraud in connection therewith. [R.pp. ____; Id. at p. 2.]

The Initial Complaint also contained allegations which do not involve SCCB but were instead directed at the United States Trustee for the Bankruptcy Court, Linda Barr, and her alleged failures before the Bankruptcy Court. [R.pp. ____; Id. at pp. 3-6.]

Numerous exhibits were attached to the Initial Complaint, including:

1. the Deed regarding title to the Properties;
2. the Affidavit of Steven N. Siegler, FRICS, ASA dated February 19, 2016 regarding valuation of the Properties;
3. a memorandum regarding the Financial Institutions Reform, Recovery, and Enforcement Act of 1989;
4. a portion of transcript testimony before the Bankruptcy Court in the Bankruptcy Proceeding;
5. Appraisals of the Properties including:
 - (a) The McKinney Appraisal dated April 2, 2014 with a valuation of \$450,000;
 - (b) an Appraisal prepared by Carter Commercial Appraisal Group, Inc. dated October 2, 2002 with a valuation of \$450,000.00; and
 - (c) the Crider Appraisal Report prepared for the Washingtons dated March 12, 2015 with a valuation of \$557,000;
6. Motions filed before the Bankruptcy Court in the Bankruptcy Proceeding including:
 - (a) Carolina Procurement's Motion for Reconsideration and Joinder in Debtors' Motion for Reconsideration filed on December 28, 2015; and
 - (b) The Washingtons' Motion for Reconsideration filed on December 14, 2015;
7. a letter dated February 24, 2015 from Appellants to United States Trustee Linda K. Barr regarding equity of the Properties in the Bankruptcy Proceeding; and
8. Correspondence from the Federal Deposit of Insurance Corporation ("FDIC") dated October 19, 2018 to Gary Washington and correspondence from SCCB to the FDIC dated October 2, 2018 with the following attachments:
 - a. Order Granting Relief From Stay filed February 26, 2015 by the Bankruptcy Court in the Bankruptcy Proceeding;

- b. Order Denying Motion to Alter or Amend filed April 8, 2015 by the Bankruptcy Court in the Bankruptcy Proceeding;
- c. Order Denying Motion to Reconsider filed December 30, 2015 by the Bankruptcy Court in the Bankruptcy Proceeding; and
- d. Third Supplemental Order to the Master-in-Equity's Order and Judgment of Foreclosure and Sale filed July 17, 2015 in the State Foreclosure Proceeding with the attached Master-In-Equity's Report and Judgment of Foreclosure filed October 8, 2009.

[R.pp. ___; Initial Compl. Exs.]

Appellants then filed an Amended Complaint on December 18, 2018 to incorrectly modify the name of defendant to "South Carolina Community Bank aka SC Community Bank aka SCCB, OPTUS Bank." [R.pp. ___; Am. Compl.] The Amended Complaint did not add any new allegations against SCCB, although it referred to SCCB's alleged fraudulent valuation of the Properties as "intrinsic fraud." [R.p. ___; *Id.* at p. 2.] SCCB will refer to the Initial Complaint and the Amended Complaint together herein as the "Complaint" for ease of discussion except for where specific reference is made to the Initial or Amended Complaint.

The Trial Court dismissed Appellants' action against SCCB, ruling that Appellants' claims were barred by the doctrine of *res judicata* and failed to state sufficient facts to constitute causes of action for extrinsic fraud and fraud upon the court.

[R.pp. ___; Order.]

STANDARD OF REVIEW

Under Rule 12(b)(6), SCRCP, a defendant may move to dismiss a plaintiff's complaint based on a failure to state facts sufficient to constitute a cause of action. Flateau v. Harrelson, 355 S.C. 197, 201, 584 S.E.2d 413, 415 (Ct. App. 2003). "On appeal from the dismissal of a case pursuant to Rule 12(b)(6), an appellate court applies the same standard of review as the trial court." Rydde v. Morris, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009). The appellate court is required to construe the complaint in a light most favorable to the nonmovant and determine if the facts alleged and reasonably deducible inferences in the complaint would entitle the plaintiff to relief on any theory of the case. Id. The court may sustain the dismissal when the facts alleged in the complaint do not support relief under any theory of law. Flateau, 355 S.C. at 202, 584 S.E.2d at 416.

ARGUMENT

- I. **The Trial Court correctly dismissed Appellants' lawsuit alleging various fraud claims against Respondent South Carolina Community Bank based upon the doctrine of *res judicata* where Appellants could have and actually did litigate these issues in previous litigation between the parties.**

Appellants' current action against SCCB is barred by the doctrine of *res judicata* which precludes the relitigation of claims that were raised or could have been raised in prior litigation. "Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties. . . . Under the doctrine of res judicata, [a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit. . . . [T]he fundamental purpose of res judicata . . . is to ensure that no one should be twice sued for the same cause of action." Zinn v.

CFI Sales & Marketing, Ltd., 415 S.C. 93, 105-06, 780 S.E.2d 611, 617-18 (Ct. App. 2015) (internal citations omitted); Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 34, 512 S.E.2d 106, 108 (1999) (“Res judicata ends litigation, promotes judicial economy and avoids the harassment of relitigation of the same issues.”) (internal citations omitted).

The following elements must be shown in order to establish the plea of res judicata:

- (1) The parties must be the same or their privies;
- (2) the subject matter must be the same; and
- (3) while generally the precise point must be ruled, yet where the parties are the same or are in privity the judgment is an absolute bar not only of what was decided but of what might have been decided.

Nunnery v. Brantley Constr. Co., 289 S.C. 205, 209, 345 S.E.2d 740, 743 (Ct. App. 1986) (internal citations omitted).

The Complaint in the current action is centered on the primary allegation that SCCB “knowingly and willingly deceived” the Bankruptcy Court that equity did not exist in the Properties and failed to disclose certain appraisals of the Properties which led to the Bankruptcy Court lifting the automatic stay and allowing the foreclosure of the Properties to proceed in state court. [R.pp. ___; Compl.] The attachments to this Complaint show that this very issue not only could have been raised in prior litigation between Appellants and SCCB, but in fact was actually litigated before the Bankruptcy Court.

In the Bankruptcy Proceeding, the Washingtons, subsequently joined by Carolina Procurement, filed with the Bankruptcy Court on December 14, 2015 a motion for reconsideration purportedly seeking relief under FED. R. CIV. P. 60(b)(3) for “fraud

(whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party” or Rule 60(b)(6) which allows a court to grant relief for “any other reason that justifies relief.” [R.pp. ___; ___; Mtns. (Compl., Ex. 6).]

The Washingtons argued to the Bankruptcy Court that they were entitled to reinstatement of the automatic stay because of (1) SCCB’s alleged misrepresentation to the Bankruptcy Court of the value of the Properties; and (2) the alleged ineffective assistance of the Washingtons’ prior bankruptcy counsel who, according to the Washington, failed to challenge whether there was any equity in the Properties. In this motion to the Bankruptcy Court, the Washingtons further referenced three appraisals which they argued SCCB had in its possession showing that equity existed in the mortgaged properties: (1) The Rosen Appraisal dated January 16, 2013 with a value of \$425,000; (2) The McKinney Appraisal dated April 2, 2014 with a value of \$450,000; and (3) the Crider Appraisal dated March 12, 2015 with a value of \$557,000. The Washingtons did not attach the appraisals to their motion or otherwise submit the appraisals to the Bankruptcy Court. [R.pp. ___; Id. at pp. 7-8.] Carolina Procurement, in its motion to the Bankruptcy Court, argued SCCB “manipulated the facts and misrepresented to the Court the true value of the properties.” [R.pp. ___; Carolina Procurement Mtn. (Compl., Ex. 6).]

On December 30, 2015, the Bankruptcy Court ruled on Appellants’ arguments that SCCB misrepresented and deceived the Bankruptcy Court as to the value of the Properties and the existence of equity in the Properties. The Bankruptcy Court rejected each of Appellants’ arguments, specifically noting that Appellants had themselves admitted to and were continuing to use the lower \$306,000 value of the Properties when

it suited them in the Bankruptcy Proceeding (for example, in calculating plan payments to the creditors). The Bankruptcy Court found no fraud or misrepresentation by SCCB. [R.pp. ___; Order Denying Mtn, to Reconsider, pp. 5-6 (Compl., Ex. 8.C).] This Order of the Bankruptcy Court was affirmed on appeal to both the United States District Court for the District of South Carolina and the United States Court of Appeals for the Fourth Circuit which ultimately affirmed the ruling of the Bankruptcy Court lifting the automatic stay on July 24, 2017. See In re: Gary Allen Washington, 693 Fed. Appx. 241 (4th Cir. 2017).

Appellants' Complaint and the attachments thereto establish that the elements of *res judicata* are therefore met. The parties and/or their privies are the same. The subject matter litigated in the Bankruptcy Proceeding is the same as that which Appellants seek to have litigated in this action – whether SCCB misrepresented and deceived the Bankruptcy Court as to the value of and the remaining equity in the Properties. Finally, these issues were actually litigated before the Bankruptcy Court. Accordingly, the prior litigation in the Bankruptcy Court precludes this current action against SCCB. The Trial Court properly dismissed Appellants' action because all claims – including extrinsic fraud, fraud upon the court, and violation of Title XI of the Financial Institutions Reform,

Recovery, and Enforcement Act of 1989⁶ – center on the alleged fraud of SCCB in connection with its representation to the Bankruptcy Court of the value of the Properties which was already litigated before the Bankruptcy Court or could have been.

Appellants acknowledge that SCCB is entitled to dismissal of the action on *res judicata* grounds except for one alleged ground: extrinsic fraud. [See Appellants’ Brief, p. 8.] Appellants contend that the doctrine of *res judicata* does not bar collateral attack of a judgment based on extrinsic fraud. Appellants’ Complaint, however, does not raise allegations of extrinsic fraud.

“Extrinsic fraud is ‘fraud that induces a person not to present a case or deprives a person of the opportunity to be heard.’” Chewning v. Ford Motor Co., 354 S.C. 72, 81, 579 S.E.2d 605, 610 (2003) (citation omitted). Intrinsic fraud, on the other hand, is fraud which misleads a court in determining issues and induces the court to find for the party perpetrating the fraud. Id. The classic case of intrinsic fraud is perjured testimony or presenting forged documents at trial. See, e.g., Bryan v. Bryan, 220 S.C. 164, 169, 66 S.E.2d 609, 611 (1951); James F. Flanagan, *South Carolina Civil Procedure* at 485 (2d ed. 1996). Allegations that a party failed to disclose documents also amounts to intrinsic,

⁶ Appellants’ allegations with respect to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 is that SCCB was prohibited from using any appraisal except for the one it used as a part of the lending process in arguing to the Bankruptcy Court that there was no equity in the Properties in connection with its motion to lift the automatic stay. Appellants claim it was fraud for SCCB to use the Washingtons’ scheduled values of the Properties. [R.p. ___; Compl., Ex. 3.] Not only could Appellants have raised this to the Bankruptcy Court, it is an incorrect statement of law that a creditor cannot rely upon the values of property as scheduled by a debtor. See Sovran Bank, N.A. v. Anderson, 743 F.2d 223, 225 n.1 (4th Cir. 1984) (“Filing the schedule in a proceeding in bankruptcy is an ex parte act on the part of the bankrupt, and in that proceeding is a solemn admission which, unless corrected, binds him.”) (internal citation omitted) (further observing that a bank could rely upon the values in the debtors’ schedules showing on their face that there was no equity in the property and did not need to prove lack of equity in the property).

rather than extrinsic, fraud. Chewning, 354 S.C. at 82, 579 S.E.2d at 610–11; see also Raby Constr. L.L.P., v. Orr, 358 S.C. 10, 19-20, 594 S.E.2d 478, 482-83 (2004).

Relief is granted for extrinsic but not intrinsic fraud on the theory that the latter deceptions should be discovered during the litigation itself, and to permit such relief undermines the stability of all judgments.” Mr. G. v. Mrs. G., 320 S.C. 305, 308, 465 S.E.2d 101, 103 (Ct. App. 1995) (citation omitted); see also Bryan, 220 S.C. at 168, 66 S.E. at 610 (“relief from a judgment is denied in cases of intrinsic fraud, on the theory that an issue which has been tried and passed upon in the original action should not be retried in an action for equitable relief against the judgment”); Raby Constr., 358 S.C. at 20, 594 S.E.2d at 483.

Further the Supreme Court of South Carolina has held “a party may not prevail on a Rule 60(b)(3) motion on the basis of fraud where he or she has access to disputed information or has knowledge of inaccuracies in an opponent's representations at the time of the alleged misconduct.” Id. at 358 S.C. at 21, 594 S.E.2d at 484 (citation omitted).

Here, the allegations of Appellants’ Complaint amount to at most intrinsic fraud which was ruled upon by the Bankruptcy Court. Appellants even acknowledge in their Amended Complaint that the alleged fraud committed by SCCB was only “intrinsic.” [R.p. ___; Am. Compl., p. 2.]

Appellants allege that SCCB failed to disclose evidence of an appraisal ordered by the City of Columbia which showed an appraisal value higher than the \$306,300 used by Appellants themselves before the Bankruptcy Court. Yet, from the attachments to Appellants’ Complaint, it is undisputed that Appellants had knowledge of this appraisal

when it raised its arguments to the Bankruptcy Court yet failed to attach proof of it to the Bankruptcy Court. [R.p. ___; Mtn., p. 8 (Compl., Ex. 6).]

In the Motion for Reconsideration to the Bankruptcy Court, Appellants specifically reference the McKinney Appraisal submitted to the City of Columbia with a value of \$450,000. Therefore, Appellants had knowledge of this appraisal and its specific contents but did not offer evidence of the appraisal to the Bankruptcy Court. [R.p. ___; Mtn., p. 8 (Compl., Ex. 6).] Appellants attached this appraisal as Exhibit 5 to the Initial Complaint. [R.pp. ___; see The McKinney Appraisal.]

Appellants' Motion for Reconsideration also showed that they had their own appraisal prepared, The Crider Appraisal, which showed an alleged value of \$557,000. [R.p. ___; Mtn., p. 8 (Compl., Ex. 6).] Yet, even though they had an appraisal prepared for themselves, Appellants nevertheless failed to present this appraisal to the Bankruptcy Court as evidence of the value of the Properties. Appellants also attached this appraisal as Exhibit 5 to the Initial Complaint. [R.pp. ___; see The Crider Appraisal.]

Having knowledge of these appraisals and having failed to present them to the Bankruptcy Court precludes any further claims related to the appraised value of the Properties as the Bankruptcy Court has already denied Appellants' fraud claims on December 30, 2015. [R.pp. ___; Order (Compl., Ex. 8.C).] Appellants were in possession of the very information that they now complain SCCB failed to disclose. Appellants' failure to properly raise this evidence to the Bankruptcy Court is fatal to their ability to maintain this lawsuit.

Moreover, as the appellate courts of this State have held many times, "a mere failure to disclose to an adversary, or the court, matters which would defeat one's own

claim is not extrinsic fraud.” Hilton Head Ctr. of South Carolina, Inc. v. Public Serv. Com’n of South Carolina, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987); see also Aaron v. Mahl, 381 S.C. 585, 593, 674 S.E.2d 482, 486 (2009); Ray v. Ray, 374 S.C. 79, 86, 647 S.E.2d 237, 241 (2007) (misrepresentation of martial assets equates to intrinsic fraud); Gregory v. Gregory, 292 S.C. 587, 358 S.E.2d 144 (Ct. App. 1987) (failure of wife to disclose retirement benefits available to her in divorce action constituted only intrinsic fraud which cannot serve as the basis of opening a judgment). Therefore, the allegations that SCCB failed to disclose certain appraisals to the Bankruptcy Court at most would only constitute intrinsic fraud which cannot circumvent the doctrine of *res judicata*.

Furthermore, Appellants continued to litigate issues with the Properties in the Foreclosure Action. Appellants sought to set aside the foreclosure sale before the Master-in-Equity and appealed the denial of the motion to set aside to this Court as well as the Supreme Court. Never was fraud or misrepresentation on the part of SCCB alleged in these actions. [R.pp. ___; Mtn. to Dismiss Memos., Exs. 4, 5, 18, 21, 22, 23, 24.]

Appellants have had their several bites at the same apple. The Trial Court properly dismissed all claims of Appellant against SCCB to avoid the harassment and relitigation of the same issues. Accordingly, this Court should affirm the dismissal of Appellants’ lawsuit against SCCB based on the principle of *res judicata*.

II. Appellants are collaterally estopped from litigating issues previously determined in prior bankruptcy litigation between the parties.

As an additional sustaining ground⁷, Appellants’ action is also barred by doctrine of collateral estoppel. Collateral estoppel, also known as issue preclusion, prevents a

⁷ See Rule 220(c), SCACR (“The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal.”).

party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same. Judy v. Judy, 383 S.C. 1, 7, 677 S.E.2d 213, 217 (Ct. App. 2009). The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment. Beall v. Doe, 281 S.C. 363, 369 n. 1, 315 S.E.2d 186, 189–90 n. 1 (Ct. App. 1984); see also Carolina Renewal, Inc. v. South Carolina Dept. of Transp., 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009). “The doctrine of collateral estoppel prevents the relitigation of issues, not claims, necessarily determined in a former proceeding regardless of whether the identity of the causes of action in successive lawsuits are the same.” Carolina Renewal, 385 S.C. at 556, 684 S.E.2d at 783.

For the reasons explained in Section I hereof, collateral estoppel also applies because the Bankruptcy Court already ruled upon Appellants’ claims of fraud and misrepresentation against SCCB relating to the equity in the Properties. The Bankruptcy Court’s December 30, 2015 Order rejected all allegations of Appellants that SCCB had committed fraud or misrepresentation in connection with the value of the Properties. [R.pp. ___; Order (Compl., Ex. 8.C).] Therefore, the very issues that Appellants raise in the current action were actually and directly litigated in the Bankruptcy Proceeding and were necessary to support the Bankruptcy Court’s decision to not reinstate the automatic stay. Appellants are accordingly collaterally estopped from bringing the claims asserted in Complaint.

III. Appellants failed to sufficiently allege causes of action for extrinsic fraud and fraud upon the court.

Alternatively, even if the doctrines of *res judicata* and collateral estoppel do not bar Appellants' action, Appellants nevertheless failed to plead sufficient facts to state claims for extrinsic fraud and fraud upon the court. A Rule 12(b)(6) motion for failure to state a claim must be granted "if facts alleged in the complaint and inferences reasonably deducible therefrom do not entitle the plaintiff to relief on any theory of the case." Jarrell v. Petoseed Co., Inc., 331 S.C. 207, 209, 500 S.E.2d 793, 794 (Ct. App. 1998).

Appellants allege in the Complaint that SCCB purportedly deceived the Bankruptcy Court as to the equity of the Properties and failed to disclose an appraisal prepared for the City of Columbia, an appraisal which Appellants knew of at the time as evidenced in their motion for reconsideration to the Bankruptcy Court. [R.p. ___; Mtn., p. 8 (Compl., Ex. 6).] These allegations do not rise to the level of either extrinsic fraud or fraud upon the Court.

The argument in Section I of this Brief explains why the allegations of the Complaint do not constitute extrinsic fraud.⁸ The allegations in the Complaint also fall

⁸ In Section IV of Appellants' Brief, Appellants make a long-winded argument that they did not have an opportunity to present their case in Bankruptcy Case No. 16-02667-JW. As the Trial Court noted in its Order of Dismissal, SCCB was not involved in this bankruptcy filed on May 30, 2016 because the properties had already been sold on November 2, 2015 and were no longer part of the bankruptcy estate. [R.p. ___; Order, p. 3 n. 4.] Therefore, nothing that Appellants are alleging happened in Bankruptcy Case No. 16-02667-JW involved any action by SCCB. Even the argument made by Appellants in their Brief with respect to this 2016 bankruptcy case makes no allegations against SCCB. Nothing in this perplexing argument establishes any claim of extrinsic fraud or fraud upon the court against SCCB. Even the property mentioned in this argument, 2917 River Drive Columbia, South Carolina, is not the property relevant in this action - 1811 and 1815 Gervais Street, Columbia, South Carolina. Appellants also refer to a completely different creditor – Edgefield Holdings. This Court should accordingly disregard this entire argument by Appellants.

far short from a claim for fraud upon the court. Fraud upon the court is “a serious allegation . . . involving corruption of the judicial process itself.” Chewning v. Ford Motor Co., 354 S.C. 72, 78, 579 S.E.2d 605, 608 (2003) (citation omitted). “[F]raud upon the court” has been described as “that species of fraud which does, or attempts to, subvert the integrity of the Court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication.” Id. (internal citation omitted).

The South Carolina Supreme Court observed in Chewning:

Generally speaking, *only the most egregious misconduct, such as bribery of a judge or members of a jury, or the fabrication of evidence by a party in which an attorney is implicated* will constitute fraud on the court.

Id. (internal citation omitted) (emphasis added). The Supreme Court further noted that “less egregious misconduct, such as nondisclosure to the court of facts allegedly pertinent to the matter before it, will not ordinarily rise to the level of fraud on the court.” Id. (internal citation omitted). Fraud upon the court requires a showing that one has acted with an intent to deceive or defraud the court. Id. Fraud upon the court is a “deliberate scheme to defraud.” Id. (internal citation omitted).

The only allegations in Appellants’ Complaint against SCCB is that it allegedly “knowing and willingly deceived the Court that equity did not exist in the property” and did not disclose a certain appraisal to the Bankruptcy Court. [R.pp. ___; Compl., pp. 1, 3.] Yet, as fully previously explained herein, the Bankruptcy Court heard these issues and found that SCCB properly relied upon Appellants’ own valuation of the properties. [R.pp. ___; Order Denying Mtn, to Reconsider (Compl., Ex. 8.C.).] Further, Appellants knew of the very appraisal of which they now complain SCCB did not disclose to the

Bankruptcy Court because they referenced the appraisal and its contents in the motion for reconsideration. [R.p. ___; Mtn., p. 8 (Compl., Ex. 6).] As the Bankruptcy Court noted, it was Appellants who wanted to continue using the lower property value of \$306,000 because that value was more favorable to them in terms of calculating plan payments to creditors. [R.pp. ___; Order Denying Mtn, to Reconsider (Compl., Ex. 8.C.).]

Appellants' Complaint and its attachments clearly show there was no conduct before the Bankruptcy Court rising to the level of fraud upon the court. Appellants had a full opportunity to litigate the issue of equity before the Bankruptcy Court and were not impeded by any alleged conduct of SCCB. Therefore, like the claim for extrinsic fraud, Appellants' claim for fraud upon the court fails because Appellants did not plead sufficient facts to maintain such a cause of action. The Trial Court properly dismissed the claims of extrinsic fraud and fraud upon the court pursuant to Rule 12(b)(6), SCRCF for failure to state claim.

IV. Appellants are barred by the doctrine of laches in bringing this lawsuit against Respondent South Carolina Community Bank where they unreasonably delayed in asserting their various fraud claims and the delay prejudices Respondent where the properties at issue in the litigation were sold at a foreclosure sale in 2015.

As a further additional sustaining ground, Appellants' action was properly dismissed by the Trial Court because under the theory of laches, Appellants significantly delayed asserting their claims for extrinsic fraud, fraud upon the court, and violations of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 arising out of SCCB's alleged misrepresentations to the Bankruptcy Court regarding the value of the Properties.

Laches is neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done. Byars v. Cherokee County, 237 S.C. 548, 559, 118 S.E.2d 324, 330 (1961). Whether a claim is barred by laches is to be determined in light of facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party; delay alone in assertion of a right does not constitute laches. Arceneaux v. Arrington, 284 S.C. 500, 503, 327 S.E.2d 357, 358-59 (Ct. App. 1985). In sum, a defendant must establish the following elements to prove laches: (1) delay; (2) unreasonable delay; and (3) prejudice. Robinson v. Estate of Harris, 388 S.C. 630, 642, 698 S.E.2d 222, 228 (2010).

The Foreclosure Action was filed in 2008. After Appellants filed multiple bankruptcies, the Bankruptcy Court ultimately lifted the automatic stay on February 26, 2015 to allow SCCB to proceed with the Foreclosure Action. [Rpp. ___; Order (Compl., Ex. 8.A).] In December 2015, Appellants raised their allegations of fraud and misrepresentation against SCCB to the Bankruptcy Court in connection with the determination of equity in the Properties for lifting the automatic stay. [R.pp. ___; Mtns., (Compl., Ex. 6).] The Bankruptcy Court, in rejecting these claims on December 30, 2015, noted that the Properties had already been sold at a public foreclosure sale. [R.pp. ___; Order (Compl., Ex. 8.C).]

On January 27, 2016, Appellants moved to set aside the foreclosure sale in the Foreclose Action, which was denied by the Master-in-Equity on March 23, 2016, and never once did Appellants argue to the Master-in-Equity that the foreclosure sale should be set aside due to alleged fraud on the part of SCCB. [R.pp. ___; Mtn. to Dismiss

Memo., Exs. 16 and 17.] Only after this Court affirmed the denial of the motion to set aside the foreclosure sale on appeal and the South Carolina Supreme Court denied Appellants' Petition for Writ of Certiorari did Appellants finally bring this action on December 11, 2018 against SCCB.

Appellants have had information since at least 2015 relating to the claims asserted against SCCB in this action. Appellants unreasonably delayed in making these claims against SCCB which has significantly prejudiced SCCB as the Properties have been sold since November 2015. The doctrine of laches promotes finality and ensures SCCB is not subject to claims years after the foreclosure sale and accordingly affords an additional basis for affirming the Trial Court's dismissal of Appellants' action.

CONCLUSION

For the reasons set forth herein, Respondent South Carolina Community Bank hereby requests that this Court affirm the dismissal of Appellants' action against SCCB.

Respectfully submitted,

s/ Carmen V. Ganjehsani

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June 11, 2020.

CERTIFICATE OF SERVICE

I, Carmen V. Ganjehsani, an attorney practicing with Richardson Plowden & Robinson, P.A., certify that on this day, June 11, 2020, pursuant to Section (g)(3) of the Supreme Court's Amended Order dated May 29, 2020, I served this *Initial Respondent's Brief* on the following counsel of record using the primary email addresses listed in the Attorney Information System (if applicable):

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A copy of the sent email is enclosed with this Certificate of Service.

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Dated: June 11, 2020.

Carmen Ganjehsani

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Subject: Washington v. SC Community Bank Case No. 2019-001438
Attachments: 2019-001438 Initial Respondent's Brief (Washington v. SCCB).pdf; 2019-001438 Designations (Washington v. SCCB).pdf

Attached please find the Initial Respondent's Brief and Designation of Matter to be Included in the Record on Appeal being served upon you today.

Thank you,
Carmen Ganjehsani

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