

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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Jan 20 2021

S.C. SUPREME COURT

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Karl A. Folkens, Special Referee
Fifteenth Judicial Circuit

Case Nos. 2015-CP-26-1084 / 2013-CP-26-5535 (combined)
Appellate Case No. 2017-001646

Supreme Court Case No. 2020-001478

Jericho State Capital Corp. of FloridaPlaintiff

v.

Chicago Title Insurance Company, Defendant

AND

Lynx Jericho Partners, LLC.....Plaintiff

v.

Chicago Title Insurance Company Defendant

of whom Jericho State Capital Corp. of Florida and Lynx Jericho Partners, LLC

are the..... Respondents

and Chicago Title Insurance Company is the Petitioner.

AFFIDAVIT OF MATTHEW TILLMAN

I, Matthew Tillman, hereby swear under penalty of perjury that the following are true and correct statements.

1. I over the age of 18 and am competent to provide the statements set forth in this affidavit.

2. I have personal knowledge concerning all statements made in this affidavit.

3. I am a partner in the law firm of Womble Bond Dickinson (US) LLP (“*WBD*”).

4. On December 8, 2020, Palmetto Land Title Association (“*PLTA*”) hired me to prepare an amicus curiae brief in support of Chicago Title Insurance Company’s Petition for Writ of Certiorari to review the Court of Appeals’ decision in *Jericho State Capital Corp. of Florida v. Chicago Title Insurance Company*, 848 S.E.2d 572 (Ct. App. Oct. 7, 2020).

5. Prior to being retained, I obtained the results of a conflict check for the matter. Those results showed that Jericho State Capital Corp. of Florida (“*Jericho*”) was not a current client of our law firm, the last time entry for any Jericho matter was entered in December of 2011 and that the file was closed. I did not know that other WBD lawyers had represented Jericho in the foreclosure of the property that is the subject of the litigation. I have never been involved in any representation of Jericho.

6. Shortly after being engaged to represent PLTA, I learned that my father was in the end stages of his life, such that I would not be able to prepare the brief by the date on which the Petitioner’s reply was due – December 29, 2020.

7. Upon the recommendation of the Supreme Court Clerk’s Office, I filed a Motion to File Amicus Curiae Brief on December 23, 2020 (“*Motion*”), in which I sought an order permitting PLTA to file an amicus curiae brief by January 8, 2021. This motion was filed with the consent of all counsel in the case, although it is my understanding that Jericho’s counsel was not aware of a potential conflict at the time of consent.

8. I had no communication with counsel for Jericho between December 23, 2020 and January 8, 2021.

9. On or about January 4, 2021, I transmitted the proposed amicus curiae brief to PLTA for review.

10. I am the primary author of the brief. At the time of drafting the brief, I knew nothing about the details of WBD's prior representation of Jericho, and did not search for, or access, any of WBD's files concerning the prior Jericho representation.

11. In fact, the matters determined by the Court of Appeals do not pertain to the foreclosure of the underlying property. Rather, the matters decided relate to claims for insurance coverage of losses caused by the existence of an ordinance enacted by Horry County. To my knowledge, the effects of that ordinance and insurance coverage issues were not dependent upon, or related to, the prior foreclosure of the subject property.

12. The proposed amicus curiae brief contains purely legal and policy arguments. The only matters I reviewed when drafting the proposed amicus brief were the Court of Appeals' decision, the subject ordinance and insurance policies, and relevant statutes, case laws and secondary source material. I did not review any of the factual material in the Appendix.

13. After receiving comments on the brief from the PLTA, I called the Supreme Court Clerk's Office to determine how best to submit the proposed brief. The case manager recommended that I file the proposed amicus curiae brief conditionally, and that the Supreme Court would consider it along with the Motion. I transmitted the proposed brief to the Supreme Court Clerk's Office on the morning of January 8, 2021.

14. At around 5:00 P.M. on Friday, January 8, 2021, I received a telephone call from Scott Masel, counsel for Jericho. Mr. Masel informed me that his client, Jericho, had informed him that WBD represented Jericho in the underlying foreclosure action. Mr. Masel also provided the names of the WBD attorneys who worked on that matter. This was the first time that I was

made aware that WBD had represented Jericho in the foreclosure of the subject property. I told Mr. Masel that I would investigate the issue as quickly as possible and let him know my response on Monday, January 11, 2021.

15. Despite the fact that my father's funeral was set for January 9, 2021, I immediately contacted WBD's general counsel and the attorneys who worked on the prior Jericho matter. I was able to ascertain that WBD had worked on the prior foreclosure matter.

16. Although it was not clear to me that this presented an ethical conflict, in an abundance of caution I made the decision that I would withdraw from representation of PLTA at the earliest opportunity. I contacted my client at around 7:15 P.M. on Friday, January 8, 2021 and informed the client representative of the situation and that I would need to withdraw. I told the client that I would provide recommendations for replacement counsel by Sunday, January 10, 2021.

17. On Sunday, January 10, 2021, I sent an email to my client with recommendations for replacement counsel.

18. On Monday, January 11, 2021, I spoke with case manager and asked that the Supreme Court stay any decision on the Motion to allow for time for me to withdraw as counsel for PLTA and for new counsel to file a replacement motion and brief. The case manager instructed me to send an email to her explaining the situation. I promptly sent the email, copying all counsel.

19. I also contacted Mr. Masel, informed him that I would be withdrawing as counsel for PLTA, and apologized for the inconvenience the situation had caused.

20. During the day on Monday, January 11, 2021, I communicated with my client and my client's proposed replacement counsel several times regarding my withdrawal and the strategy for maximizing the chance that the withdrawal did not prejudice PLTA.

21. On the morning of Tuesday, January 12, 2021, I again communicated with the case manager and inquired as to how the withdrawal should be done from a logistical standpoint. The case manager informed me that a letter of withdrawal, followed by the replacement motion to file amicus curiae brief, would be the proper way to withdraw and replace PLTA counsel.

22. At approximately 10:30 A.M. on January 21, 2021, I received a call from Mr. Masel, in which he informed me that Jericho had instructed him to file a motion to disqualify WBD from its PLTA representation and a motion to strike the proposed amicus curiae brief. I informed Mr. Masel that I intended to send a letter of withdrawal later that day.

23. At approximately 11:00 A.M., I was copied on an email from Mr. Masel to the Supreme Court Clerk's Office filing Jericho's motion to disqualify WBD as counsel and striking the proposed amicus curiae brief.

24. At approximately 11:30 A.M., my law firm transmitted my letter of withdrawal to the Supreme Court.


Matthew Tillman

Sworn to and subscribed before me
this ~~19th~~ day of January, 2021

By: 
Print: SANDRA J. Carr

Notary Public for South Carolina
My Commission Expires: 2-8-27

