

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 2014-CP-37-00526
Appellate Case No. 2019-000614

RECEIVED
JAN 22 2020
SC Court of Appeals

Debi Baker Brookshire,

Appellant,

v.

Community First Bank and
Benjamin Hiott,

Defendants,

Of Which, Community First
Bank is

Respondent.

RECORD ON APPEAL
Volume III of III

Warren Blair Giese
SC Bar No. 2219
Kelly L. Giese
SC Bar No. 100089
THE GIESE LAW FIRM, LLC
1315 Blanding Street
Columbia, SC 29201

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ATTORNEYS FOR RESPONDENT

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ATTORNEYS FOR APPELLANT

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EXHIBIT

W

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COLUMBIA, SC 29201
803-708-6767

W. BARNEY GIESE, ESQ.

KEITH GIESE, ESQ.

KELLY L. GIESE, ESQ.

JUSTIN M. KATA, ESQ.

RENAE ALT-SUMMERS, ESQ.

August 19, 2013

VIA CERTIFIED MAIL RETURN-RECEIPT REQUESTED

James Louis Williams, Esq.
Derrick Ritter Williams & Morris PA
107 North Fairplay Street
Seneca, SC 29678

Re: Debi Baker Brookshire/Community First Bank
Account Number: 300701950

Dear Mr. Williams:

Thank you for sending us the information regarding Mrs. Brookshire's trust account previously held at your institution. After reviewing the contents and discussing the information with Mrs. Brookshire, Mrs. Brookshire adamantly denies any knowledge or involvement in the \$500,000.00 unsecured loan to Joseph C. Crosby, Jr. also known as "Coach."

I understand the bank's position with regards to Mr. Hiott and his employment in regards to the Power of Attorney. As I expressed in my previous letter, my investigator Billy Tabor and I spoke personally with Mr. Hiott on May 7, 2013, and he informed us that the miscellaneous debit of \$500,000.00 was used to purchase two annuities for Jordan Taylor Blackwell and Laura Ann Elizabeth Blackwell from Lafayette Life Insurance Company. Mr. Hiott relayed to us that he wrote a check to Mr. Holcombe of Holcombe Insurance Agency in Easley, SC and Mr. Holcombe purchased the annuities. After receiving the \$500,000.00 cashier's check to Joseph C. Crosby, Jr., we have determined the statement was false. We now have grave concerns about the money disbursed out of Mrs. Brookshire's trust account with your client.

A further review of the material sent to us has revealed at least \$1,089,200.00 in miscellaneous debits, a chart of which we have attached for your convenience. (Chart 1) We are requesting from Community First Bank any and all documents related to these transactions.

Our investigation also revealed at least \$600,800.00 in what has been described in Mrs. Brookshire's bank statements as "investment counter withdrawals." We would like an explanation of what an "investment counter withdrawal" entails and would at this time request

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August 19, 2013

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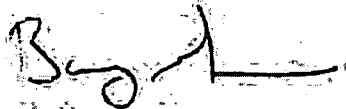
any and all documents related to these transactions. We have attached a chart for your convenience. (Chart 2)

We would also like to request any and all records of deposits and the source of the deposits that concern Mrs. Brookshire's trust account. We believe Mrs. Brookshire is entitled to all of the above stated documents as a previous account holder of the bank.

Furthermore, the documents you provided to my office included all of Mrs. Brookshire's bank statements up to November 1, 2010. Mrs. Brookshire's trust account was closed on February 22, 2011 and a check was paid to Mrs. Brookshire in the amount of \$285,233.34. At this time we would like to request those missing monthly statements from November 1, 2010 to February 22, 2011. The reason for needing these statements is that as of November 1, 2010, Mrs. Brookshire's trust account had a balance of \$0.00. On February 22, 2011, she received a check for \$285,233.34. We need to be able to justify where those funds came from.

Please forward me a bill for any reasonable copying charges that this request may incur. Thank you for your assistance in this matter. If you have any questions, please do not hesitate to contact me.

With warm regards, I am


W. Barney Giese

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CHART 1

DATE	DEBIT	AMOUNT
07/12/2007	Miscellaneous Debit	\$500,000.00
09/19/2007	Miscellaneous Debit	\$10,000.00
09/19/2007	Miscellaneous Debit	\$50,000.00
10/31/2007	Miscellaneous Debit	\$50,000.00
11/28/2007	Miscellaneous Debit	\$200,000.00
12/18/2007	Miscellaneous Debit	\$40,000.00
02/07/2008	Miscellaneous Debit	\$5,000.00
05/05/2008	Miscellaneous Debit	\$150,000.00
10/24/2008	Miscellaneous Debit	\$3,500.00
12/05/2008	Miscellaneous Debit	\$10,000.00
12/17/2008	Miscellaneous Debit	\$16,500.00
12/17/2008	Miscellaneous Debit	\$21,500.00
03/30/2009	Miscellaneous Debit	\$2,500.00
09/23/2009	Miscellaneous Debit	\$5,000.00
12/30/2009	Miscellaneous Debit	\$2,000.00
01/06/2010	Miscellaneous Debit	\$1,200.00
03/03/2010	Miscellaneous Debit	\$4,000.00
03/05/2010	Miscellaneous Debit	\$1,500.00
05/17/2010	Miscellaneous Debit	\$2,000.00
06/04/2010	Miscellaneous Debit	\$12,000.00
06/14/2010	Miscellaneous Debit	\$2,500.00
	TOTAL=	\$1,089,200.00

CHART 2

DATE	DEBIT	AMOUNT
11/14/2007	Investment Counter Withdrawal	\$15,000.00
01/14/2008	Investment Counter Withdrawal	\$20,000.00
01/17/2008	Investment Counter Withdrawal	\$5,000.00
03/03/2008	Investment Counter Withdrawal	\$8,000.00
03/13/2008	Investment Counter Withdrawal	\$16,000.00
03/31/2008	Investment Counter Withdrawal	\$20,000.00
04/10/2008	Investment Counter Withdrawal	\$15,000.00
04/16/2008	Investment Counter Withdrawal	\$57,000.00
06/16/2008	Investment Counter Withdrawal	\$10,000.00
06/16/2008	Investment Counter Withdrawal	\$35,000.00
06/23/2008	Investment Counter Withdrawal	\$3,000.00
07/22/2008	Investment Counter Withdrawal	\$12,000.00
07/25/2008	Investment Counter Withdrawal	\$4,100.00
08/22/2008	Investment Counter Withdrawal	\$5,000.00
09/15/2008	Investment Counter Withdrawal	\$3,200.00
09/23/2008	Investment Counter Withdrawal	\$10,000.00
10/10/2008	Investment Counter Withdrawal	\$20,000.00
10/16/2008	Investment Counter Withdrawal	\$3,500.00
10/28/2008	Investment Counter Withdrawal	\$15,000.00
11/05/2008	Investment Counter Withdrawal	\$3,000.00
11/06/2008	Investment Counter Withdrawal	\$3,200.00
11/21/2008	Investment Counter Withdrawal	\$10,000.00
12/26/2008	Investment Counter Withdrawal	\$40,200.00
01/15/2009	Investment Counter Withdrawal	\$7,500.00
01/27/2009	Investment Counter Withdrawal	\$3,000.00
01/29/2009	Investment Counter Withdrawal	\$2,000.00
02/19/2009	Investment Counter Withdrawal	\$10,000.00
02/25/2009	Investment Counter Withdrawal	\$7,500.00
04/15/2009	Investment Counter Withdrawal	\$5,000.00
05/01/2009	Investment Counter Withdrawal	\$5,000.00
05/14/2009	Investment Counter Withdrawal	\$10,000.00
05/26/2009	Investment Counter Withdrawal	\$5,000.00
06/05/2009	Investment Counter Withdrawal	\$5,000.00
06/17/2009	Investment Counter Withdrawal	\$2,500.00
06/24/2009	Investment Counter Withdrawal	\$3,500.00
06/25/2009	Investment Counter Withdrawal	\$2,000.00
06/30/2009	Investment Counter Withdrawal	\$3,000.00
07/03/2009	Investment Counter Withdrawal	\$2,500.00
07/08/2009	Investment Counter Withdrawal	\$3,000.00
07/17/2009	Investment Counter Withdrawal	\$4,000.00
07/20/2009	Investment Counter Withdrawal	\$5,600.00
07/23/2009	Investment Counter Withdrawal	\$2,500.00

CHART 2

07/30/2009	Investment Counter Withdrawal	\$3,000.00
08/05/2009	Investment Counter Withdrawal	\$3,000.00
08/10/2009	Investment Counter Withdrawal	\$2,000.00
08/17/2009	Investment Counter Withdrawal	\$3,000.00
08/18/2009	Investment Counter Withdrawal	\$2,000.00
08/25/2009	Investment Counter Withdrawal	\$1,200.00
08/31/2009	Investment Counter Withdrawal	\$1,000.00
08/31/2009	Investment Counter Withdrawal	\$1,600.00
09/01/2009	Investment Counter Withdrawal	\$1,000.00
09/04/2009	Investment Counter Withdrawal	\$2,500.00
09/09/2009	Investment Counter Withdrawal	\$2,500.00
09/09/2009	Investment Counter Withdrawal	\$4,000.00
09/22/2009	Investment Counter Withdrawal	\$3,500.00
10/02/2009	Investment Counter Withdrawal	\$1,500.00
10/02/2009	Investment Counter Withdrawal	\$3,200.00
10/05/2009	Investment Counter Withdrawal	\$3,000.00
10/09/2009	Investment Counter Withdrawal	\$2,500.00
10/15/2009	Investment Counter Withdrawal	\$2,000.00
10/22/2009	Investment Counter Withdrawal	\$1,500.00
10/26/2009	Investment Counter Withdrawal	\$3,500.00
11/02/2009	Investment Counter Withdrawal	\$2,500.00
11/06/2009	Investment Counter Withdrawal	\$2,000.00
11/09/2009	Investment Counter Withdrawal	\$3,000.00
11/16/2009	Investment Counter Withdrawal	\$2,500.00
11/18/2009	Investment Counter Withdrawal	\$500.00
11/18/2009	Investment Counter Withdrawal	\$2,000.00
11/23/2009	Investment Counter Withdrawal	\$2,000.00
12/14/2009	Investment Counter Withdrawal	\$3,500.00
12/14/2009	Investment Counter Withdrawal	\$5,000.00
12/17/2009	Investment Counter Withdrawal	\$2,000.00
12/21/2009	Investment Counter Withdrawal	\$4,000.00
12/23/2009	Investment Counter Withdrawal	\$3,500.00
12/28/2009	Investment Counter Withdrawal	\$3,500.00
12/30/2009	Investment Counter Withdrawal	\$2,500.00
01/04/2010	Investment Counter Withdrawal	\$2,500.00
01/08/2010	Investment Counter Withdrawal	\$4,000.00
01/12/2010	Investment Counter Withdrawal	\$20,000.00
01/14/2010	Investment Counter Withdrawal	\$2,000.00
01/20/2010	Investment Counter Withdrawal	\$2,500.00
01/26/2010	Investment Counter Withdrawal	\$2,500.00
01/27/2010	Investment Counter Withdrawal	\$2,000.00
01/29/2010	Investment Counter Withdrawal	\$2,500.00
02/01/2010	Investment Counter Withdrawal	\$2,500.00

CHART 2

02/05/2010	Investment Counter Withdrawal	\$3,000.00
02/08/2010	Investment Counter Withdrawal	\$4,000.00
02/09/2010	Investment Counter Withdrawal	\$2,500.00
02/12/2010	Investment Counter Withdrawal	\$2,500.00
02/17/2010	Investment Counter Withdrawal	\$5,000.00
02/18/2010	Investment Counter Withdrawal	\$2,500.00
02/22/2010	Investment Counter Withdrawal	\$500.00
02/23/2010	Investment Counter Withdrawal	\$3,000.00
02/25/2010	Investment Counter Withdrawal	\$500.00
02/26/2010	Investment Counter Withdrawal	\$5,000.00
03/12/2010	Investment Counter Withdrawal	\$2,500.00
03/16/2010	Investment Counter Withdrawal	\$2,500.00
03/17/2010	Investment Counter Withdrawal	\$2,000.00
03/23/2010	Investment Counter Withdrawal	\$2,000.00
03/25/2010	Investment Counter Withdrawal	\$2,000.00
03/30/2010	Investment Counter Withdrawal	\$1,500.00
04/05/2010	Investment Counter Withdrawal	\$2,000.00
04/13/2010	Investment Counter Withdrawal	\$4,000.00
04/14/2010	Investment Counter Withdrawal	\$3,500.00
04/16/2010	Investment Counter Withdrawal	\$2,000.00
	TOTAL=	\$600,800.00

EXHIBIT

X

THE GIESE LAW FIRM, LLC
1315 BLANDING STREET
COLUMBIA, SC 29201
803-708-6767

W. BARNEY GIESE, ESQ.

KEITH GIESE, ESQ.

KELLY L. GIESE, ESQ.

JUSTIN M. KATA, ESQ.

RENAE ALT-SUMMERS, ESQ.

September 17, 2013

VIA CERTIFIED MAIL RETURN-RECEIPT REQUESTED

James Louis Williams, Esq.
Derrick Ritter Williams & Morris PA
107 North Fairplay Street
Seneca, SC 29678

Re: Debi Baker Brookshire/Community First Bank
Account Number: 300701950

Dear Mr. Williams:

I am writing to follow up on my letter dated August 19, 2013 with regards to documents requested by my firm on behalf of Mrs. Brookshire. Once again, we believe that Mrs. Brookshire is entitled to these documents as a former investor of your client, Community First Bank and at this time we would re-request the documents listed in the August 19, 2013 letter. Please let me know if you are willing to comply.

Thank you for your assistance in this matter. If you have any questions, please do not hesitate to contact me.

With warm regards, I am


W. Barney Giese

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EXHIBIT Y

THE GIESE LAW FIRM, LLC

1315 BLANDING STREET

COLUMBIA, SC 29201

803-708-6767

W. BARNEY GIESE, ESQ.

KEITH GIESE, ESQ.

KELLY L. GIESE, ESQ.

JUSTIN M. KATA, ESQ.

RENAE ALT-SUMMERS, ESQ.

October 17, 2013

VIA CERTIFIED MAIL RETURN-RECEIPT-REQUESTED

James Louis Williams, Esq.
Derrick Ritter Williams & Morris PA
107 North Fairplay Street
Seneca, SC 29678

Re: Debi Baker Brookshire/Community First Bank
Account Number: 300701950

Dear Mr. Williams:

I am writing to follow up on my letters dated August 19, 2013 and September 17, 2013(attached) with regards to documents requested by my firm on behalf of Mrs. Brookshire. We have yet to hear back from you and your client Community First Bank. Mrs. Brookshire deposited a very substantial sum of money into First Community Bank on June 29, 2007, pursuant to Senior Vice President Ben Hiott's recruitment. We have asked from your client for a full accounting as well as an entire copy of Mrs. Brookshire's file from date of creation to date of termination (see March 19, 2013 letter to Ben Hiott, attached). Once again, we believe that Mrs. Brookshire is entitled to these documents as a depositor in your bank. I fail to understand why these requests remain unanswered.

At this time we would re-request the documents listed in the August 19, 2013 and September 17, 2013 letters as well as a full accounting and an entire copy of Mrs. Brookshire's file from date of creation to date of termination. Please respond within one week of this letter if you are willing to comply.

Thank you for your assistance in this matter. If you have any questions, please do not hesitate to contact me.

Giese-CFB 1378

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October 17, 2013
Page 2

With warm regards, I am



W. Barney Giese

Enclosure(s)

cc: Frederick D. Sheperd, Jr., President (via U.S. Mail)
James E. McCoy, Board of Directors, (via U.S. Mail)
Ben Hiott, Senior Vice President, (via U.S. Mail)

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THE GIESE LAW FIRM, LLC
1315 BLANDING STREET
COLUMBIA, SC 29201
803-708-6767

W. BARNEY GIESE, ESQ.

KEITH GIESE, ESQ.

JUSTIN M. KATA, ESQ.

KELLY L. GIESE, ESQ.

March 19, 2013

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Ben Hiott, Senior Vice President
Community First Bank
3685 Blue Ridge Blvd.
Walhalla, South Carolina 29691

In re: Debi Baker Brookshire
Acct. No: 300701950

Dear Mr. Hiott:

Please be advised that this office has been retained to represent Ms. Debi Baker Brookshire. It has been brought to our attention that there are issues concerning a previous trust account held by Ms. Baker Brookshire at your financial institution and therefore, at this time, Ms. Baker Brookshire respectfully requests a copy of her entire file from the date of creation to the date of termination associated with the above referenced trust account. As stated in the Power of Attorney that was in place when Ms. Baker Brookshire had her trust account with First Community Bank, Ms. Baker Brookshire is entitled to a full accounting whenever a request is made by her or any authorized personal representative. Per your convenience, I have attached a copy of the Power of Attorney, entered into by Ms. Baker Brookshire on May 25, 2007, appointing Ben Hiott as her Agent. It states, "[m]y Agent shall provide an accounting for all funds handled and all acts performed as my Agent, if I so request or if such request is made by any authorized personal representative of fiduciary acting on my behalf."

Specifically, we are requesting all paperwork in relation to any and all "miscellaneous debits" on this trust account. We are aware that previous requests have been made to obtain these documents, the most recent request taking place on November 27, 2012, in which Tabor Investigative & Consulting Services, LLC faxed an "Authorization To Release Information" signed by Ms. Baker Brookshire along with a request for a meeting to discuss the \$500,000 miscellaneous debit that was made on July 12, 2007, attached hereto. Carol Wilson responded that the request had been furnished to the institution's attorney, however she did not know the name of that individual. Ms. Wilson said that she would seek out an answer to the request made by Tabor Investigative & Consulting Services, LLC. As of March 15, 2013, Tabor Investigative & Consulting Services is still waiting for an answer from both Ms. Wilson and Community First's counsel.

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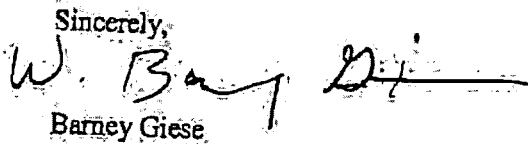
March 19, 2013
Page 2

Furthermore, I would like to request a meeting with Community First Bank's counsel and yourself in order to discuss Ms. Debi Baker Brookshire's previous account. Please contact my office at your earliest convenience to schedule a time and place.

Your assistance is greatly appreciated. Please forward me a bill for any reasonable copying charges that this request may incur. Please contact me when these documents are available for pick-up.

With warm personal regards, I am

Sincerely,


Barney Giese

Enclosure(s)

cc: Frederick D. Shepherd, Jr., President (via U.S. Mail)
James E. McCoy, Chairman, Board of Directors (via U.S. Mail)
Carol Wilson (via U.S. Mail)

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JUSTIN M. KATA, ESQ.

RENAE ALT-SUMMERS, ESQ.

August 19, 2013

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Derrick Ritter Williams & Morris PA
107 North Fairplay Street
Seneca, SC 29678

Re: Debi Baker Brookshire/Community First Bank
Account Number: 300701950

Dear Mr. Williams:

Thank you for sending us the information regarding Mrs. Brookshire's trust account previously held at your institution. After reviewing the contents and discussing the information with Mrs. Brookshire, Mrs. Brookshire adamantly denies any knowledge or involvement in the \$500,000.00 unsecured loan to Joseph C. Crosby, Jr. also known as "Coach."

I understand the bank's position with regards to Mr. Hiott and his employment in regards to the Power of Attorney. As I expressed in my previous letter, my investigator Billy Tabor and I spoke personally with Mr. Hiott on May 7, 2013, and he informed us that the miscellaneous debit of \$500,000.00 was used to purchase two annuities for Jordan Taylor Blackwell and Laura Ann Elizabeth Blackwell from Lafayette Life Insurance Company. Mr. Hiott relayed to us that he wrote a check to Mr. Holcombe of Holcombe Insurance Agency in Easley, SC and Mr. Holcombe purchased the annuities. After receiving the \$500,000.00 cashier's check to Joseph C. Crosby, Jr., his statement was false. We now have grave concerns about the money disbursed out of Mrs. Brookshire's trust account with your client.

A further review of the material sent to us has revealed at least \$1,089,200.00 in miscellaneous debits, a chart of which we have attached for your convenience. (Chart 1) We are requesting from Community First Bank any and all documents related to these transactions.

Our investigation also revealed at least \$600,800.00 in what has been described in Mrs. Brookshire's bank statements as "investment counter withdrawals." We would first like an explanation of what an "investment counter withdrawal" is and would at this time request any

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August 19, 2013
Page 2

and all documents related to these transactions. We have attached a chart for your convenience.
(Chart 2)

We would also like to request any and all records of deposits and the source of the deposits that concern Mrs. Brookshire's trust account. We believe Mrs. Brookshire is entitled to all of the above stated documents as a previous account holder of the bank.

Furthermore, the documents you provided to my office included all of Mrs. Brookshire's bank statements up to November 1, 2010. Mrs. Brookshire's trust account was closed on February 22, 2011 and a check was paid to Mrs. Brookshire in the amount of \$285,233.34. At this time we would like to request those missing monthly statements from November 1, 2010 to February 22, 2011. The reason for needing these statements is that as of November 1, 2010, Mrs. Brookshire's trust account had a balance of \$0.00. On February 22, 2011, she received a check for \$285,233.34. We need to be able to justify where those funds came from.

Please forward me a bill for any reasonable copying charges that this request may incur. Thank you for your assistance in this matter. If you have any questions, please do not hesitate to contact me.

With warm regards, I am

W. Barney Giese

THE GIESE LAW FIRM, LLC

1315 BLANDING STREET

COLUMBIA, SC 29201

803-708-6767

W. BARNEY GIESE, ESQ.

KEITH GIESE, ESQ.

KELLY L. GIESE, ESQ.

JUSTIN M. KATA, ESQ.

RENAE ALT-SUMMERS, ESQ.

September 17, 2013

VIA CERTIFIED MAIL RETURN-RECEIPT REQUESTED

James Louis Williams, Esq.
Derrick Ritter Williams & Morris PA
107 North Fairplay Street
Seneca, SC 29678

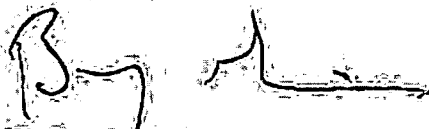
Re: Debi Baker Brookshire/Community First Bank
Account Number: 300701950

Dear Mr. Williams:

I am writing to follow up on my letter dated August 19, 2013 with regards to documents requested by my firm on behalf of Mrs. Brookshire. Once again, we believe that Mrs. Brookshire is entitled to these documents as a former investor of your client, Community First Bank and at this time we would re-request the documents listed in the August 19, 2013 letter. Please let me know if you are willing to comply.

Thank you for your assistance in this matter. If you have any questions, please do not hesitate to contact me.

With warm regards, I am


W. Barney Giese

Giese-CFB 1384

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EXHIBIT

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In the Matter Of:
**Brookshire, Debi Baker v
Community First Bank, Inc., et al**

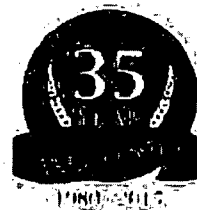
Donald G. Jones
August 25, 2016

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1 account.

2 A. Mm-hmm.

3 Q. At some point in December of 2013.

4 A. Mm-hmm.

5 Q. My office, after numerous attempts to
6 get an accounting, full accounting, was delivered
7 four binders of my client's account and paperwork.
8 Were you involved in making those binders?

9 A. I believe -- I did not make up those
10 binders, no. I was requested to give them copies of
11 some of my research out of my work and binders, for
12 them to use to do that with.

13 Q. So you never -- you never had any access
14 to the binders is what you're saying?

15 A. I did not work on assembling any binders
16 that I know of that you got.

17 Q. But you certainly would not have taken
18 anything out of a binder?

19 A. No.

20 Q. Because you would have nothing to hide?

21 A. No. Mr. Shepherd -- from what went on
22 in my presence, Mr. Shepherd was responsible for
23 what was put in those binders or not. He was asking
24 me for, you know, data to copy to respond to you. I
25 knew he was doing that. And Jeff Griffith was

1 working with him but it appeared to me, from the
2 conversation that was going on right outside my
3 door, that Mr. Shepherd was deciding what to put in
4 the binders and what not to, not Jeff. I never did
5 examine the binders or have anything to do.

6 Q. You said from the conversations you
7 overheard that -- you just testified that
8 Mr. Shepherd was determining what was to be put in
9 the binders?

10 A. Yes.

11 Q. Not Jeff. And that's interesting you
12 would mention that because there were certain
13 transactions that were left out of the binder. Were
14 you aware of that?

15 A. No.

16 Q. And, in fact, the transactions that were
17 left out of the binder were the money -- one of
18 them -- were you aware that one of the transactions
19 was the \$85,000 that went from my client's account
20 into Mr. McCoy's account?

21 A. I did not have anything to do with
22 assembling those binders, I did not see what they
23 took in and out. I heard him say, well, put this
24 in, we'll take that out.

25 Q. And that was Mr. Shepherd saying that?



EXHIBIT

AA

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF OCONEE

DEBI BAKER BROOKSHIRE,

Plaintiff,

vs.

CASE NO. 2014-CP-37-529

COMMUNITY FIRST BANK, INC., and
BENJAMIN LEE HIOTT,

Defendants.

DEPOSITION OF: JEFF GRIFFITH

DATE: February 24, 2016

TIME: 9:06 AM

LOCATION: Haynsworth Sinkler Boyd
One North Main Street
2nd Floor
Greenville, SC

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: AMY R. COPE,
Court Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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1 interest on excess funds.

2 Q. Now, you're saying a reverse
3 transaction is a situation where money goes from
4 one account to another account and then back into
5 the original account?

6 A. No, sir, it could. A reversal is a way
7 to -- it's generally used to correct a mis-post. A
8 reversal is talking about the source account. It
9 originally was posted to this account. If it was
10 in error, one method to correct it is to reverse
11 that transaction from this account and the offset
12 would post it to the account that it should have
13 been posted to. That's generally its use --

14 Q. Now, if in fact, the money,
15 hypothetically, of my client went into one of the
16 bank's accounts, say the general ledger account,
17 sat there for a while, gaining interest, making
18 money for the bank and then was -- and then was --
19 my client was then sent back the money days later
20 from a separate bank account, a separate ledger
21 account, or one of your accounts that you have, not
22 the one it originally went into, but a separate
23 one, is that a reverse transaction?

24 A. -- I wouldn't call it a reversal.

25 Q. What would you call it, juggling?

1 A. Yes, sir, I would call it juggling.

2 Q. And juggling is lawful or unlawful?

3 MS. BLACK: Object to the form.

4 THE WITNESS: My connotation of the
5 term juggling is used when it's done in a lawful
6 act.

7 BY MR. GIESE:

8 Q. So, in fact, if my client had \$310,000
9 sent over to one bank account, it sat there a while
10 and then \$310,000 came back to her account from a
11 separate bank account, you're saying your
12 definition of that is juggling?

13 A. No, sir, I didn't say that.

14 Q. Yes, you did.

15 A. Well, if there was no valid reason for
16 it, if there was nothing to support it, yes.

17 Q. Thank you. Let's talk about -- oh, do
18 you -- \$50,000, and I don't know if you know this
19 or not, are you aware of the transaction that went
20 from Debi Baker's account into Upstate Realty?

21 A. I think I've seen a copy of that
22 transaction.

23 Q. And it was \$50,000?

24 A. I don't recall the amount.

25 Q. Okay. Was there any connotation on

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In the Matter Of:

Brookshire, Debi Baker v
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Donald G. Jones
August 25, 2016

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1 A. (Witness moves head up and down.)

2 Q. Okay. Now, it sits there until January
3 7th of 2008 when \$310,000, the exact same amount,
4 comes from Account Number 1052201, which is a
5 state -- the State County Municipal Securities
6 Account. So the amount of money goes into this
7 account with Banker's Bank, eight days later the
8 same amount comes back from a different Community
9 First bank account. This one is the State County
10 Municipal Securities --

11 A. It was one of the investment securities
12 accounts.

13 Q. Right. And then three months later,
14 almost four months, on March 31, 2008 that same
15 amount of money goes from the account -- the
16 Banker's Bank account into 1052201 account. So it
17 goes from my client's account to Banker's Bank, and
18 then eight days later a different account, \$310,000
19 goes back into my client's account. Then four
20 months later money goes from Banker's Bank account
21 to the account that my client got paid back from.

22 A. So is this a net disbursement for your
23 client's account?

24 Q. No. My question is this. That's not a
25 reverse transaction, is it?



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1 A. It's a juggling -- no. He's moving,
2 hiding money from one place to the other, juggling.

3 Q. But clearly Community First Bank got the
4 use of my client's money when he put it into
5 Banker's Bank?

6 A. Yeah. It would have been in their
7 account.

8 Q. Yeah. She didn't have it, they had it?

9 A. But it was put back.

10 Q. Later?

11 A. Later, yeah. That's right. I guess you
12 could call it a -- improper transfer.

13 Q. Thank you. All right. If you could go
14 down to the next one, it says Keith Norton \$5,000.
15 Do you have any idea who Keith Norton is?

16 A. I do not.

17 Q. Okay. Next one, Marc Hiott, \$13,651.
18 Who is Marc Hiott, to your knowledge?

19 A. Marc Hiott is another one of Ben Hiott's
20 brothers.

21 Q. Okay. And that total was \$3,651?

22 A. Yeah. Yes.

23 Q. If you would look at the next one,
24 Sterling Currency Group \$570. Do you have any idea
25 what the sterling currency group is?

A W R

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In the Matter Of:
**Brookshire, Debi Baker v
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Donald G. Jones
August 25, 2016

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1 Hiott her POA, it says he could be paid fees.

2 Q. And I'm not asking you that.

3 A. Yeah, that's what I say. Some of this
4 could be fees, some might not.

5 Q. Yeah. I'm just asking. You found
6 \$31,550 of my client's account money went into Ben
7 Hiott -- or went to Ben Hiott over that three-year
8 period.

9 A. Mm-hmm.

10 Q. Okay. If you go down to the next line,
11 Ben -- it says Ben L. Hiott, \$2500 of my client's
12 money went into -- went to Ben L. Hiott; correct?

13 A. Personal account, yes.

14 Q. The next line, Benjamin L. Hiott, \$3500
15 of my client's money went into Benjamin L. Hiott's
16 account; correct?

17 A. Yes.

18 Q. The next line, Ben Wilson and Karen E.
19 Shepherd. At this point you believe that \$1360 of
20 my client's money went into Ben Wilson and Karen E.
21 Shepherd's account; correct?

22 A. It did.

23 Q. And who are Ben Wilson and Karen E.
24 Shepherd?

25 A. Karen E. Shepherd is Fred Shepherd's



1 wife.

2 Q. And Fred Shepherd is the -- or was the
3 CEO of Community First Bank?

4 A. That's correct.

5 Q. Okay. The next -- the next --

6 A. And Ben Wilson would be Karen Shepherd's
7 son and Fred's stepson.

8 Q. Right. But they had a joint account?

9 A. Yes.

10 Q. Thank you. All right. Next -- the
11 next --

12 A. Let me say one other thing on this..

13 Q. Yeah.

14 A. Subsequent to that -- trying to think
15 of where I have this. I got some information on
16 this that -- that this was supposed to be a purchase
17 of stock. This was related to a purchase of stock.
18 I have some other information on somewhere, I
19 remember -- I can't remember the context it came up
20 in. But I can't say whether it was a valid
21 transaction or not.

22 Q. Right. But you know for a fact that
23 \$1360 of my client's money went into that account.
24 Whether it was for a good purpose or not, it went
25 into that account?

EXHIBIT

DD

In the Matter Of
**Brookshire, Debi Baker v
Community First Bank, Inc., et al**

Frederick D. Shepherd, Jr. REDACTED
June 27, 2016

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1 comes back from a different account of the bank
2 into my client's account, you weren't aware of
3 that?

4 MR. KNOWLTON: Same objection.

5 THE WITNESS: No, sir.

6 BY MR. BARNEY GIESE:

7 Q. So were you aware that a transaction
8 that occurred on 2/29/08, which was \$8,500 that
9 went from my client's account to Mark Hiott's CFB
10 account, was also not included, were you aware that
11 wasn't included?

12 A. No, sir.

13 Q. All right. Do you know who Mark Hiott
14 is?

15 A. I believe that's Ben Hiott's brother.

16 Q. Is he a Realtor?

17 A. No, he's -- I believe he has a small
18 printing company.

19 Q. Hilltop?

20 A. I think that's it.

21 Q. I get his brothers mixed up. So you're
22 not aware that on 3/13/08 a transaction in the
23 amount of \$2,224 went from Debi Baker Brookshire's
24 account to account number 1222001, which is y'all's
25 miscellaneous accounts receivable, y'all being CFB,

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1 and that that money -- some of that money was then
2 transferred into someone's account named
3 David Wilson?

4 MR. KNOWLTON: Same objection.

5 BY MR. BARNEY GIESE:

6 Q. Were you aware of that -- I'm sorry,
7 Ben Wilson, I apologize, Ben Wilson?

8 A. No, sir.

9 Q. Do you know who Ben Wilson is?

10 A. I'm not sure, but that might be my
11 stepson.

12 Q. Yes. You didn't know that that was not
13 turned over to us?

14 A. No.

15 Q. Any reason why you think that that
16 wasn't turned over to us? Can you think of any
17 reason?

18 A. No, I don't. How much was the money?

19 Q. \$2,224 went from my client's account
20 into account number 1222001, which is a bank
21 account, one of y'all's bank accounts.

22 A. I understand.

23 Q. And then \$1,288 approximately of that
24 money went into David Wilson -- I'm sorry, I don't
25 know why I keep saying David, Ben Wilson's account.



EXHIBIT

EE

Gary Areheart

From: Knowlton, Bob <bknowlton@hsblawfirm.com>
Sent: Monday, December 15, 2014 6:24 PM
To: Gary Areheart
Subject: RE: \$85,000

Gary,

Thanks for your help with this. Bob

**Haynsworth
Sinkler Boyd, PA.**

ATTORNEYS AND COUNSELORS AT LAW

Robert Y. Knowlton | Attorney | Haynsworth Sinkler Boyd, P.A.
1201 Main Street, 22nd Floor (29201) | Post Office Box 11889 (29211) | Columbia, South Carolina
Phone: 803.779.3080 | Fax: 803.765.1243 | Direct: 803.540.7843 | Mobile: 803.429.4483
website | bio | vCard | map | email

From: Gary Areheart [mailto:gary-areheart@sc.rr.com]
Sent: Monday, December 15, 2014 6:00 PM
To: Knowlton, Bob
Subject: \$85,000

Bob,

Attached are the entries and documents associated with the \$85,000 debited from the Brookshire account.

Gary A. Areheart
Palmetto Consulting Services, Inc.
Phone - (803) 788-8963
Fax - (803) 788-8910

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PCS 000024

July 18, 2008 - BLH creates Official Check #70005131 in the amount of \$85,000.00 payable to Blue Ridge Bank of Walhalla, remitter line Acct. [REDACTED] 913 MPS Golf Operating Acct. No account has been debited, nor has a credit been run to recognize the Bank's liability for the check.

July 21, 2008 - Official Check #70005131 is deposited at BRB into account [REDACTED] 913 MPS Golf Operating Acct.

July 22, 2008 - Original of check is received in cash letter and is paid with offsetting credit to a GL Due from Bank account. No documents attached. Purchase copy of check (Credit Memo) and debit entry to pay for it have still not run.

July 25, 2008 - Purchase copy of check (Credit Memo) is processed; offset by a debit to General Ledger account [REDACTED] 1001 Accrued Interest - US Agencies.

November 25, 2008 - BLH processes on BLOCK: 0078 electronic entries (all effective dated November 1, 2008) to

DR account [REDACTED] 1650 of Debbie Brookshire for \$85,000.00

CR account [REDACTED] 100037 of Jim McCoy for \$85,000.00

DR account [REDACTED] 100037 of Jim McCoy for \$85,000.00 and

CR GL acct [REDACTED] 1001 Accrued Interest - US Agencies for \$85,000.00

November 26, 2008 - BLH processes paper tickets to DR account [REDACTED] 100037 of Jim McCoy for \$85,000.00 and CR GL acct [REDACTED] 1001 Accrued Interest - US Agencies for \$85,000.00 (this was done, apparently, to make it appear that Official Check #70005131 was paid for by Jim McCoy). However, in reality the net effect of these transactions is to use \$85,000.00 of Brookshire's money to purchase Official Check #70005131 (via GL account [REDACTED] 1001 Accrued Interest - US Agencies).

December 30, 2008 - BLH debits the Falcon's Lair Credit Card Sales account # [REDACTED] 12568 and credits Jim McCoy's account # [REDACTED] 100037 each for \$85,000.00, zeroing out the effect on McCoy's account [REDACTED] 100037. The source of this \$85,000.00 was a Community First Bank loan proceeds check (McCoy \$2,000,000 loan) that was deposited to the Falcon's Lair Credit Card Sales account on December 17, 2008.

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PCS 000025

Research Item Print

11/25/08 11:25

PAGE 1

Processing Date: July 22, 2008

Sequence: 99000005430
Orig. Sequence: 100000008756480
Poschar: 1
EACH: 0
Serial: 70005131
Route Log: 031302130
Account: 803200003
TXCode: 66
Amount: \$ 85,000.00

	COMMUNITY FIRST BANK	Community First Bank Walhalla, SC 29691	70005131
OFFICIAL CHECK		PAY \$ 85,000.00	ONLY
Pay To The Order Of: BLUE RIDGE BANK OF WALHALLA			
***** 07/18/2008 ***** Eighty-five Thousand Zero Dollars And Zero Cents			
ACCT CREDIT LIFE COUNCIL OFFICERS ACCT			
⑈70005131⑈ ⑈055202138⑈ 800100083⑈		⑈000850000⑈	

0925001860 07/22/08 0000-0000-0 ENT-8738 TRC-8732 PR-15	TO: 10-10-0001 07/21/2008 10-10-0001 07/21/2008 Walhalla, SC 29691	 DO NOT SIGN/STAMP/INITIALS BELOW THIS LINE FOR FURNISHING CREDITORS USE ONLY

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07/21/2008

NOT RECORDED

COMMERCIAL CHECKING ACCOUNT

DESCRIPTION	DEBIT	CREDIT	DATE	BALANCE
CHK# 8499 AMT \$156.07, 888 CHECK CHARGE	156.07		07/21/08	15,103.97
CHK# 8518 AMT \$300.00, 888 CHECK CHARGE	300.00		08/12/08	14,803.97
CHK# 8525 AMT \$336.04, 888 CHECK CHARGE	336.04		08/24/08	14,467.93
CHK# 8486 AMT \$51.23, 888 CHECK CHARGE	51.23		08/24/08	14,416.70
CHECK # 8901	154.86		08/24/08	14,261.84
CHECK # 8502	140.00		08/24/08	14,121.84
CHECK # 8809	1280.00		08/24/08	12,941.84
CHECK # 8515	1,545.88		08/24/08	11,395.96
CHECK # 8804	3,306.32		08/24/08	8,089.64
CHECK # 8516	1,454.48		08/24/08	6,635.16
CHECK # 8340	1,337.07		08/24/08	5,298.09
CHK# 8512 AMT \$3,825.00, 888 CHECK CHARGE	3,825.00		08/24/08	1,473.09
CHK# 8513 AMT \$600.00, 888 CHECK CHARGE	600.00		08/24/08	873.09
CHK# 8517 AMT \$434.82, 888 CHECK CHARGE	434.82		08/24/08	438.27
CHECK # 8424	318.73		08/24/08	119.54
CHECK # 8503	456.07		08/24/08	(336.53)
CHECK # 8518	390.00		08/24/08	(726.53)
CHECK # 8575	128.94		08/24/08	(855.47)
CHECK # 8517	182.88		08/24/08	(1,038.35)
CHECK # 8518	200.00		08/24/08	(1,238.35)
CHECK # 8512	224.00		08/24/08	(1,462.35)
CHK# 8474 AMT \$4,380.00, 888 CHECK CHARGE	4,380.00		08/24/08	(5,842.35)
DEPOSIT		2,400.00	08/24/08	(3,442.35)
DEPOSIT		1,000.00	08/24/08	(2,442.35)
DEPOSIT		1,000.00	08/24/08	(1,442.35)
CHK# 8488 AMT \$1,170.32, 888 CHECK CHARGE	1,170.32		08/24/08	(2,612.67)
CHK# 8529 AMT \$6,955.00, 888 CHECK CHARGE	6,955.00		08/24/08	(9,567.67)
CHK# 8508 AMT \$3,708.00, 888 CHECK CHARGE	3,708.00		08/24/08	(13,275.67)
CHECK # 8478	250.00		08/24/08	(13,525.67)
DEPOSIT		1,000.00	08/24/08	(12,525.67)
DEPOSIT		1,000.00	08/24/08	(11,525.67)
DEPOSIT		1,000.00	08/24/08	(10,525.67)
DEPOSIT		1,000.00	08/24/08	(9,525.67)

100005131

100 E. Main Street
Walhalla, SC 29691

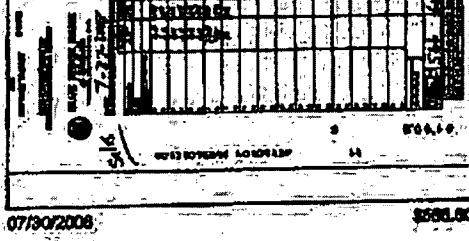
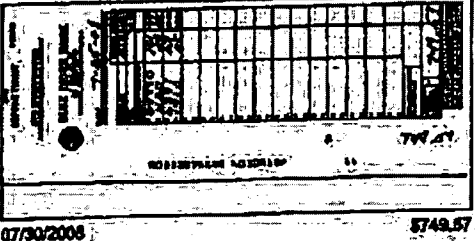
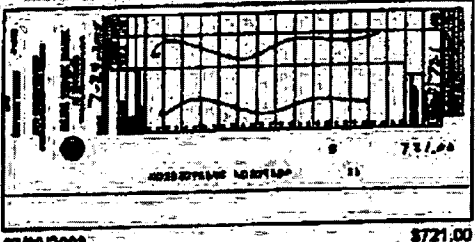
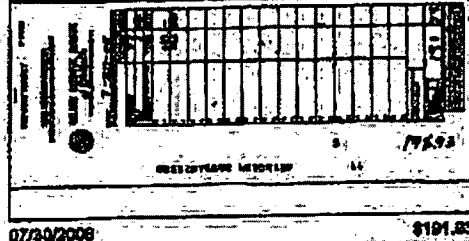
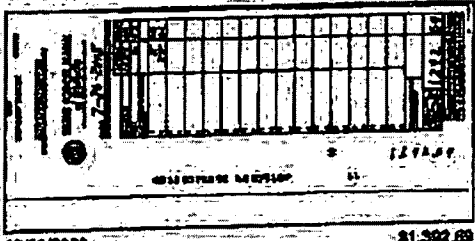
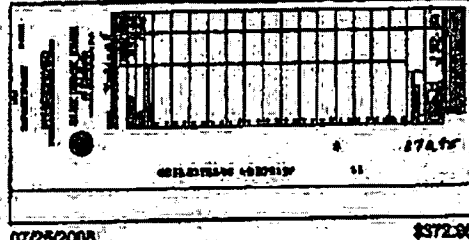
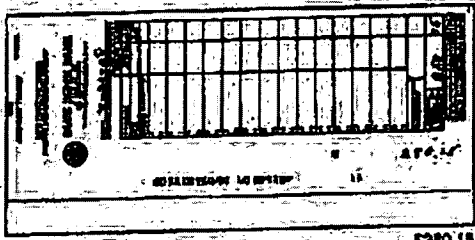
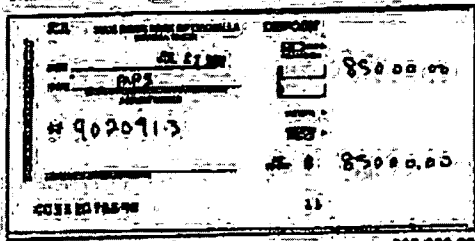
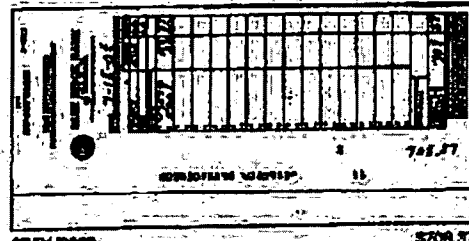
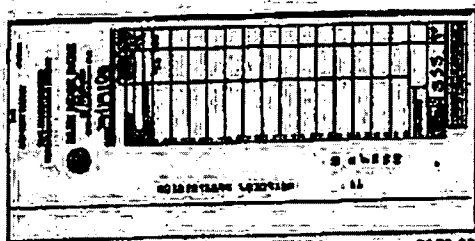
10070 John Street
Walhalla, SC 29691

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COP NO
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BLUE RIDGE BANK OF WALHALLA
 WALHALLA, SC 29381

DATE JUL 21 2008

NAME MPS
DEPOSITARY NOT BE AVAILABLE FOR CASHMENTS AND OTHERS
 ACCOUNT NUMBER

[REDACTED]

NET DEPOSIT FOR CASH RECEIVED IF ANY

10532076691

DEPOSIT

☒ CASH
 RECEIVED FOR

85000.00

SUB TOTAL

LESS CASH
 RECEIVED

NET DEPOSIT \$ 85000.00

11

85000.00

07/21/2008

COMMUNITY FIRST BANK

Community First Bank
Walhalla, SC 29681

OFFICIAL CHECK

70005131

PAY \$ **85000.00** ONLY

Pay To The Order Of BLUE RIDGE BANK OF WALHALLA

*****07/18/2008***** Eighty-five Thousand Zero Dollars And Zero Cents

ACCT AMPS GOLF OPERATIONS ACCT

70005131 0532021303 8001000839

07/21/2008

\$85,000.00

GAB Research

E 48

CONFIDENTIAL

PC5 000029

000 00007 03
ACCOUNT:
DOCUMENTS:

300701950
9

PAGE: 1
11/28/2008

DEBI BAKER BROOKSHIRE TRUST
DEBI BAKER BROOKSHIRE TRUSTEE

10-0
1
8

* AS PART OF THE ECONOMIC STABILIZATION BILL, A TEMPORARY INCREASE *
* IN FDIC INSURANCE COVERAGE IS EFFECTIVE IMMEDIATELY. *
* COVERAGE RAISES TO \$250,000 PER DEPOSITOR THROUGH DECEMBER 31, 2009 *

PERFORMANCE INVESTMENT ACCOUNT

DESCRIPTION	DEBITS	CREDITS	DATE	BALANCE
BALANCE LAST STATEMENT			10/31/08	284,407.05
IDS TRF	85,000.00		11/01/08	199,407.05
CELLANEOUS DEBIT	27,708.15		11/03/08	171,698.90
INVESTMENT COUNTER WITHDRAWAL	16,560.00		11/03/08	155,138.90
INVESTMENT COUNTER WITHDRAWAL	167.98		11/05/08	154,970.92
INVESTMENT COUNTER WITHDRAWAL	3,000.00		11/05/08	151,970.92
INVESTMENT COUNTER WITHDRAWAL	46.99		11/06/08	151,923.93
INVESTMENT COUNTER WITHDRAWAL	3,200.00		11/06/08	148,723.93
BAKERANDBAKER BAKER		5,433.76	11/14/08	154,157.69
DEPOSIT		1,600.00	11/17/08	155,757.69
INVESTMENT COUNTER WITHDRAWAL	10,000.00		11/21/08	145,757.69
INVESTMENT COUNTER WITHDRAWAL	27,573.00		11/21/08	118,184.69
INTEREST		331.28	11/28/08	118,515.97
BALANCE THIS STATEMENT			11/28/08	118,515.97
TOTAL CREDITS	(3) 7,365.04			145,722.70
TOTAL DEBITS	(9) 173,256.12			145,779.84
*** CONTINUED ***				

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PCS 000032

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ACCOUNT:
DOCUMENTS:

300701950
9

PAGE: 2
11/28/2008

DEBI BAKER BROOKSHIRE TRUST

PERFORMANCE INVESTMT ACCOUNT 300701950

I N T E R E S T

AVERAGE LEDGER BALANCE:	145,779.84	INTEREST EARNED:	331.28
AVERAGE AVAILABLE BALANCE:	145,722.70	DAYS IN PERIOD:	28
INTEREST PAID THIS PERIOD:	331.28	ANNUAL PERCENTAGE YIELD EARNED:	3.00%
INTEREST PAID 2008:	4,927.86		

ITEMIZATION OF NSF PAID AND RETURNED ITEM FEES

	THIS PERIOD	YEAR TO DATE
NSF PAID ITEM FEE:	.00	.00
NSF RETURNED ITEM FEE:	.00	.00
OVERDRAFT FEES:	.00	.00

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PCS 000033

INVT : 000
 REPORT : 130
 SYSTEM : 11/25/2008 18:35

COMMUNITY : F BANK
 ITEM : 001
 BLOCK : 0078

PAGE : 122
 RUN DATE : 12/25/2008
 PROCESSED THRU : 11/25/2008

SEQUENCE	DATE	ACCOUNT NUMBER	AMOUNT	CHECK #	T/C	PMT	DESCRIPTION
56.00	0532-0213	1051301	491,279.51	500	05		VALUATION MTD BACK
57.00	0532-0213	1051301	491,279.51C	400	06		VALUATION MTD BR
58.00	0532-0213	1052501	1,363,174.46	400	05		VALUATION SCH
59.00	0532-0213	2606001	1,363,174.46C	400	06		VALUATION SCH
60.00	0532-0213	3005501	190,356.98	500	05		ENTRY FOR MOV
61.00	0532-0213	1224201	190,356.98C	400	06		ENTRY FOR MOV
62.00	0532-0213	300100496	40,031.00C	012	02		INSURANCE
63.00	0532-0213	4064001	3,330.00	500	08		INSURANCE
64.00	0532-0213	4064002	3,002.00	500	08		INSURANCE
65.00	0532-0213	4064003	4,610.00	500	08		INSURANCE
66.00	0532-0213	4064004	3,092.00	500	08		INSURANCE
67.00	0532-0213	4064005	2,871.88	500	08		INSURANCE
68.00	0532-0213	4064006	4,047.00	500	08		INSURANCE
69.00	0532-0213	4064007	3,076.00	500	08		INSURANCE
70.00	0532-0213	4064008	2,010.00	500	08		INSURANCE
71.00	0532-0213	4064009	392.00	500	08		INSURANCE
72.00	0532-0213	4064010	2,332.00	500	08		INSURANCE
73.00	0532-0213	4064011	3,521.00	500	08		INSURANCE
74.00	0532-0213	1047001	2,064,000.00	500	05		INCREASE FT SOLD
75.00	0532-0213	1029001	2,064,000.00C	400	06		INCREASE FT SOLD
76.00	0532-0213	300701050	85,000.00	053	01		FUNDS TRF
77.00	0532-0213	300700037	85,000.00C	012	02		FUNDS TRF
78.00	0532-0213	1171001	85,000.00C	400	05		CHECK CORRECTION 11/01
79.00	0532-0213	300300037	85,000.00	053	01		DEBIT
80.00	0532-0213	1051001	58,933.48C	400	05		FEES ON PAYDORNS
81.00	0532-0213	1051201	269,993.00C	400	05		FEES ON PAYDORNS
82.00	0532-0213	1171001	90,185.40C	400	05		INT ON PAYDORNS
83.00	0532-0213	1029001	417,011.93	500	05		SECURITIES ACTIVITY
84.00	AVAILABLE CLOT	THRU SEQUENCE	300.00				

*Del: Brooks line
 in history
 in history*

CONFIDENTIAL

PCS 000034

000 00002.03
ACCOUNT:
DOCUMENTS:

PAGE: 1
11/28/2008
300200037
2

CHARLOTTE B MCCOY
JAMES B MCCOY

30-0
1
1

* AS PART OF THE ECONOMIC STABILIZATION BILL, A TEMPORARY INCREASE *
* IN FDIC INSURANCE COVERAGE IS EFFECTIVE IMMEDIATELY. *
* COVERAGE RAISES TO \$250,000 PER DEPOSITOR THROUGH DECEMBER 31, 2009 *

PERFORMANCE INVESTMENT ACCOUNT

DESCRIPTION	DEBITS	CREDITS	DATE	BALANCE
BALANCE LAST STATEMENT			10/31/08	49,888.92
INDS TRF From Bk of America		85,000.00	11/01/08	134,888.92
EBIT	85,000.00		11/01/08	49,888.92
DEPOSIT		37,000.00	11/26/08	86,888.92
MISCELLANEOUS DEBIT	85,000.00		11/26/08	1,888.92
INTEREST		59.15	11/28/08	1,948.07
BALANCE THIS STATEMENT			11/28/08	1,948.07
TOTAL CREDITS (3)	122,059.15			44,746.06
TOTAL DEBITS (2)	170,000.00			44,746.06

INTEREST

AVERAGE LEDGER BALANCE:	44,746.06	INTEREST EARNED:	59.15
AVERAGE AVAILABLE BALANCE:	44,746.06	DAYS IN PERIOD:	28
INTEREST PAID THIS PERIOD:	59.15	ANNUAL PERCENTAGE YIELD EARNED:	1.74%
INTEREST PAID 2008:	862.51		

ITEMIZATION OF NSF PAID AND RETURNED ITEM FEES

	THIS PERIOD	YEAR TO DATE
NSF PAID ITEM FEE:	.00	.00
NSF RETURNED ITEM FEE:	.00	.00
OVERDRAFT FEES:	.00	.00

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PCS 000035

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300200037

300200037

PAGE 3

DEPOSIT - CREDIT TRANSACTION FORM

DATE: 11/26/16

TO: JIMMY L. HARRIS

FROM: JIMMY L. HARRIS

AMOUNT: \$ 37,000.00

DATE: 11/26/16

DEPOSIT

11/26 Deposit \$ 37,000.00

ELECTRONICALLY FILED - 2016 Dec 09 4:58 PM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

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PCS 000036

12/12/78 11:40

PAGE: 1

[illegible]

12/28/2006 10:00:00 AM

11/28 57671610800 0 0 28,000.00

11-25-1950 [REDACTED]

ELECTRONICALLY FILED - 2016 Dec 09 4:58 PM - O'CONNOR - COMMON PLEAS - CASE#2014CP3700526

CONFIDENTIAL

PCS 000037

000 00002 03
ACCOUNT:
DOCUMENTS:

300200037 PAGE: 1
12/31/2008

CHARLOTTE B MCCOY
JAMES E MCCOY

30-0
3
0

* AS PART OF THE ECONOMIC STABILIZATION BILL, A TEMPORARY INCREASE *
* IN FDIC INSURANCE COVERAGE IS EFFECTIVE IMMEDIATELY. *
* COVERAGE RAISES TO \$250,000 PER DEPOSITOR THROUGH DECEMBER 31, 2009. *

PERFORMANCE INVESTMT ACCOUNT

DESCRIPTION	DEBITS	CREDITS	DATE	BALANCE
BALANCE LAST STATEMENT			11/28/08	1,948.07
DEPOSIT		140.00	12/18/08	2,088.07
DEPOSIT From Credit Card Sales Acct 50242568		85,000.00	12/30/08	87,088.07
DEPOSIT		140.00	12/31/08	87,228.07
INTEREST		4.77	12/31/08	87,232.84
BALANCE THIS STATEMENT			12/31/08	87,232.84
TOTAL CREDITS (4)	85,284.77	AVG AVAILABLE BALANCE		7,154.73
TOTAL DEBITS (0)	.00	AVERAGE BALANCE		7,163.22

----- I N T E R E S T -----
AVERAGE LEDGER BALANCE: 7,163.22 INTEREST EARNED: 4.77
AVERAGE AVAILABLE BALANCE: 7,154.73 DAYS IN PERIOD: 33
INTEREST PAID THIS PERIOD: 4.77 ANNUAL PERCENTAGE YIELD EARNED: .74%
INTEREST PAID 2008: 867.28

----- ITEMIZATION OF NSF PAID AND RETURNED ITEM FEES -----

	THIS PERIOD	YEAR TO DATE
NSF PAID ITEM FEE:	.00	.00
NSF RETURNED ITEM FEE:	.00	.00
OVERDRAFT FEES:	.00	.00

CONFIDENTIAL

PCS 000038

ELECTRONICALLY FILED - 2016 Dec 09 4:58 PM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

DECEMBER 1942

28/12/19 12:09

PAGE 1

James McCoy

ACCOUNT NO. **3002000370**

12-18 05

COMMUNITY FIRST BANK OF INDIANA

WESTMONTARY BRANCH

601 N 10TH ST

INDIANAPOLIS, IN 46204

14000

?

140⁰⁰

[illegible][illegible]

Handwritten: *Handwritten only*

CONFIDENTIAL

PCS 000039

PAGE: 1

12/12/13 13:00

RECEIPT FROM SILENT

DOCKEL - CREDIT TRANSACTION FORM

12-29-13

ACCOUNT: Jim Melton

ADDRESS: 2nd Street

AMOUNT: 85000.00

DATE: 012

RECEIPT: 00057

00000-00110

12/10 97071020750 0 \$ 85,000.00

DOCKEL - CREDIT TRANSACTION FORM

12-29-13

ACCOUNT: Jim Melton

ADDRESS: 2nd Street

AMOUNT: 85000.00

DATE: 012

RECEIPT: 00057

00000-00110

DOCKEL - CREDIT TRANSACTION FORM

12-29-13

ACCOUNT: Jim Melton

ADDRESS: 2nd Street

AMOUNT: 85000.00

DATE: 012

RECEIPT: 00057

00000-00110

12/10 97071020750 0 \$ 85,000.00

DOCKEL - CREDIT TRANSACTION FORM

12-29-13

ACCOUNT: Jim Melton

ADDRESS: 2nd Street

AMOUNT: 85000.00

DATE: 012

RECEIPT: 00057

00000-00110

CONFIDENTIAL

PCS 000040

12/12/11 12:04 PAGE: 1

RESEARCH TIME PRINTER

NAME Mc Coy ACCOUNT NO. 30020087 140.00

COMMUNITY PRIST 140.00

00512011404 012

12/11 97022024570 0 140.00

710-0400 215

12/09/16

James E. McCoy 12/14

One hundred forty and 00/100

PAID BY BANK

710-0400 215

00512011404 012

12/11 97022024570 215 140.00

12/11 97022024570 215 140.00

CONFIDENTIAL

PCS 000041

000 00002 01
ACCOUNT:-
DOCUMENTS:-

PAGE: 1
500212568 12/31/2008
14

FALCON'S LAIR
CREDIT CARD SALES

30-0
1
13

* AS PART OF THE ECONOMIC STABILIZATION BILL, A TEMPORARY INCREASE *
* IN FDIC INSURANCE COVERAGE IS EFFECTIVE IMMEDIATELY. *
* COVERAGE RAISES TO \$250,000 PER DEPOSITOR THROUGH DECEMBER 31, 2009 *

BUSINESS CHECKING ACCOUNT *****

AVG AVAILABLE BALANCE 82,677.10 LAST STATEMENT 11/28/08 3,494.36
VERAGE BALANCE 90,875.98 31 CREDITS 1,924,962.26
17 DEBITS 1,924,554.27
THIS STATEMENT 12/31/08 3,902.35

REF #.....DATE.....AMOUNT REF #.....DATE.....AMOUNT REF #.....DATE.....AMOUNT
12/17 1915,653.37

Deposits
OTHER CREDITS
DESCRIPTION DATE AMOUNT
AMERICAN EXPRESS SETTLEMENT 12/01 21.28
AMERICAN EXPRESS SETTLEMENT 12/01 108.36
AMERICAN EXPRESS SETTLEMENT 12/01 380.10
NPC MERCH DEP 12/01 380.97
NPC MERCH DEP 12/01 2,280.57
NPC MERCH DEP 12/02 361.69
AMERICAN EXPRESS SETTLEMENT 12/03 29.50
NPC MERCH DEP 12/04 28.06
AMERICAN EXPRESS SETTLEMENT 12/04 104.50
NPC MERCH DEP 12/05 448.81
NPC MERCH DEP 12/08 42.57
AMERICAN EXPRESS SETTLEMENT 12/08 184.00
NPC MERCH DEP 12/09 87.00
NPC MERCH DEP 12/11 21.28
AMERICAN EXPRESS SETTLEMENT

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PCS 000042

ELECTRONICALLY FILED - 2016-Dec-09 4:58 PM - O'CONNOR - COMMON PLEAS - CASE#2014CP3700526

000 00002 01
ACCOUNT:
DOCUMENTS:

500212568 PAGE: 2
12/31/2008
14

FALCON'S LAIR

BUSINESS CHKING ACCOUNT 500212568

OTHER CREDITS

DESCRIPTION	DATE	AMOUNT
NPC MERCH DEP	12/11	34.00
NPC MERCH DEP	12/15	1,079.01
NPC MERCH DEP	12/16	146.85
NPC MERCH DEP	12/18	68.00
NPC MERCH DEP	12/19	358.00
NPC MERCH DEP	12/22	21.28
AMERICAN EXPRESS SETTLEMENT	12/22	287.60
NPC MERCH DEP	12/22	503.50
NPC MERCH DEP	12/23	157.00
NPC MERCH DEP	12/24	70.50
NPC MERCH DEP	12/26	176.00
NPC MERCH DEP	12/29	120.00
NPC MERCH DEP	12/29	1,186.46
NPC MERCH DEP	12/30	23.75
NPC MERCH DEP	12/30	72.56
AMERICAN EXPRESS SETTLEMENT	12/31	525.69
NPC MERCH DEP		

OTHER DEBITS

DESCRIPTION	DATE	AMOUNT
CCP PREM-CCP	12/01	1,682.93
NPC 3897 MERCH FEES	12/02	336.15
MISCELLANEOUS DEBIT	12/15	4,000.00 <i>See 0</i>
DC ONE TIME PAY JDC DIRECT	12/16	1,183.80
MISCELLANEOUS DEBIT	12/17	4,511.33
FUNDS TRANSFER	12/17	1,642,609.05
MISCELLANEOUS DEBIT	12/18	1,241.05
MISCELLANEOUS DEBIT	12/18	1,795.80
MISCELLANEOUS DEBIT	12/18	2,533.40
MISCELLANEOUS DEBIT	12/18	6,643.34 <i>See 0</i>
MISCELLANEOUS DEBIT	12/18	12,375.11 <i>See 0</i>
MISCELLANEOUS DEBIT	12/18	27,085.15 <i>See 0</i>
MISCELLANEOUS DEBIT	12/23	1,600.00
MISCELLANEOUS DEBIT	12/30	33,222.24
MISCELLANEOUS DEBIT	12/30	85,000.00
MISCELLANEOUS DEBIT	12/30	98,729.97
MISCELLANEOUS DEBIT	12/31	6.95
AMERICAN EXPRESS COLLECTION		

ITEMIZATION OF NSF PAID AND RETURNED ITEM FEES

	THIS PERIOD	YEAR TO DATE
NSF PAID ITEM FEE:	.00	.00
NSF RETURNED ITEM FEE:	.00	.00
OVERDRAFT FEES:	.00	.00

*** CONTINUED ***

CONFIDENTIAL

PCS 000043

ELECTRONICALLY FILED - 2016 Dec 09 4:58 PM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

000 00002 01
ACCOUNT:
DOCUMENTS:

500212568
14
PAGE: 3
12/31/2008

FALCON'S LAIR

BUSINESS CHKNG ACCOUNT 500212568

DAILY BALANCE

DATE	BALANCE	DATE	BALANCE	DATE	BALANCE
12/01	4,982.71	12/11	5,987.97	12/23	218,684.55
12/02	5,008.25	12/15	3,066.98	12/24	218,755.05
12/03	5,037.75	12/16	2,030.03	12/26	218,931.05
12/04	5,170.31	12/17	270,563.02	12/29	220,237.51
12/05	5,619.12	12/18	218,957.17	12/30	3,381.61
12/08	5,845.69	12/19	219,315.17	12/31	3,902.35
12/09	5,932.69	12/22	220,127.55		

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PCS 000044

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[illegible]

DOB Credits - 12/17/2008

~~THIS INFORMATION IS UNCLASSIFIED~~

DDA Credits - 12/17/2008

16037

STEPHANIE M CONLEY
KILTA TRUST ACCOUNT
PO BOX
VERMILION, SC 29581

NEW ORLEANS EAST
VERMILION, SC 29581
6/1/2008

10/14/2007

PAID TO THE ORDER OF: John Powell, President, Stephens and James Mc Coy

On 10/14/2007, The South Carolina Trust Company of the South Carolina Trust Company, Inc. (SCSTC) received a check from the South Carolina Trust Company, Inc. (SCSTC) for \$1,000.00.

00112-08

0016037 005120 1457829100 1457829100

Transit - 12/17/2000

1975 9400
1975 9400
1975 9400

Transit - 12/17/2008

CONFIDENTIAL

PCS 000045

EXHIBIT

FF

TRANSFER ONLINE, INC.

512 SE SALMON STREET
PORTLAND, OR 97214
☎ 503.227.2950 ☎ 503.227.6874
✉ INFO@TRANSFERONLINE.COM 🌐 WWW.TRANSFERONLINE.COM

TRANSACTION INVOICE

Billed To:

Community First Bancorporation
bhott@c1stbank.com

Invoice Number: 184-425

Invoice Date: 08-05-2011

Transaction ID: 156-936

Transaction Date: 08-05-2011

Effective Date: 08-05-2011

Transaction Type: Transfer

Performed By: Carolyn Hall

Mail Carrier: Fedex

Transferred For Community First Bancorporation ID: 673

Canceled Common:

Certificate ID	Certificate	Name	Restriction	Shares
731-627	CFB 2814	Debi Baker Brookshire		508
831-811	CFB 3643	Debi Baker Brookshire		534
849-271	CFB 4390	Debi Baker Brookshire		5,300
653-937	CFB 6190	Debi Baker Brookshire		1,000
653-938	CFB 6191	Debi Baker Brookshire		139
672-430	CFB 6238	Debi Baker Brookshire		48
680-258	CFB 6243	Debi Baker Brookshire		621
683-560	CFB 6248	Debi Baker Brookshire		2,013
690-747	CFB 6253	Debi Baker Brookshire		2,121
693-110	CFB 6257	Debi Baker Brookshire		3,350
695-721	CFB 6965	Debi Baker Brookshire		403
704-116	CFB 7032	Debi Baker Brookshire		71
712-445	CFB 7042	Debi Baker Brookshire		410

Total Common Canceled: 16,518

Issued Common:

Certificate ID	Certificate	Name	Restriction	Shares
854-668	CFB 4400	Hilltop, Inc.		16,518

Total Common Issued: 16,518

Please Return This Portion With Payment

Invoice Amount: \$20.00

Invoice Total: \$20.00

Amount Paid: \$0.00

Balance Due: \$20.00 Payable Upon Receipt

Invoice Number: 184-425

Invoice Date: 08-05-2011

Transaction ID: 156-936

Canceled: 13

Issued: 1



A 1% service charge per month will be applied to all outstanding invoices after 30 days.

CONFIDENTIAL

CFB007076

EXHIBIT

GG

In the Matter Of:

Brookshire, Debi Baker v
Community First Bank, Inc., et al

Donald G. Jones

August 25, 2016

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1 You were concerned with Ben Hiott
2 purchasing shares of stock -- Community First Bank
3 stock with Community First Bank funds and then
4 selling them to other people?

5 A. Yes.

6 Q. Tell me about that.

7 A. Well, in other words, he would use funds
8 of Community First Bank to purchase stock from
9 people. I have, like, an analysis of all this stuff
10 of what went on in there. And then he would sell
11 the stock to other people on occasion and then money
12 could come in against it and -- in other words, it
13 was sort of like running a brokerage book.

14 Q. Yeah. You mentioned something about
15 that earlier.

16 A. The bank did not have investment
17 brokerage powers. In other words, my concern was
18 the -- is the bank in violation of banking laws and
19 regulations to even be running -- running an account
20 or a trading service on your own stock. I never did
21 get a legal opinion on it or anything like that, but
22 I was concerned about whether that was an authorized
23 activity for the bank.

24 Q. And you made that aware == you made that
25 concern == you made the bank aware of that concern

EXHIBIT

III

Brookshire Expert Report
Kenneth Richey

I have been retained by counsel for the Plaintiff in the matter of Debi Baker Brookshire v. Community First Bank, Inc. and Benjamin Lee Hiott to provide an opinion on the issues stated in the Complaint.

In preparing my opinion, I have reviewed the following documents:

Complaint
Community First Bank 2013/2014 Internal Audit Report
Community First Bank Consultation Report - Kraft CPAs
List of Transactions (21 pages)
Redacted Minutes Community First Board of Directors
General Power of Attorney
Consent Confidentiality and Protective Order
Frederick D. Shepherd, Jr. Deposition (electronic)

I am being paid \$300.00 per hour for time spent reviewing, preparing and writing my opinions and \$350 per hour for depositions and testimony.

My opinions are as follow:

1 - The *General Power of Attorney* created a conflict of interest for Community First Bank. Mr. Hiott's employment with as Senior Vice President and Chief Financial Officer of Community First Bank, would know that accepting this authority would cast both him and the Bank into a tenuous position which it did. As a senior bank official, Hiott should have never represented both Community First Bank and Brookshire.

2 - Upon learning of the existence of this *General Power of Attorney*, the bank should have acted immediately to correct the Bank/Brookshire relationship created by the *General Power of Attorney* and her significant depository relationship. The Bank did not take corrective action and failed in their fiduciary responsibility to their Depositor/Customer.

3 - The July 12, 2007 Cashier's Check or Official Check for \$500,000 and subsequent \$300,000 transfer were not transactions that are not authorized in the *General Power of Attorney*. Since the Bank did not act to terminate the *General Power of Attorney*, it allowed such unauthorized and illegal activity to continue to occur and are now responsible for all of the Brookshire funds given to Joseph Crosby, Jr and others through the fraudulent Hiott transactions.

4 - The October 31, 2007 withdrawal of \$50,000 transferred to Upstate Real Estate was not justifiable nor was it authorized by the *General Power of Attorney* and should have never been condoned by the Bank. These funds were moved via wire transfer. Proper controls would have had another officer of the Bank to approve the wire transfer since Hiott authorized the withdrawal from the Brookshire account. Hiott probably acted both sides of the transaction which indicates the Bank did not have proper controls in place to prevent fraudulent activity.

Giese-CFB 1815

5 - The November 9, 2007 \$2500 transfer from Brookshire to Hlott's own account at the Bank is indicative of why the Bank should never allow one of its staff to represent the Bank's customer and the Bank in depository transfers. This lack of dual control is a major cause the fraudulent activity continued undiscovered. A transfer from a customer's account to an employee's account should have caused a "routine" review of this transaction and the problem could have been discovered early.

6 - The November 14, 2007 electronic transfer from Brookshire to Hilltop, Inc. is another example of poor controls in the Bank. Hlott's electronic journal capability should have been reviewed and by another Officer of the Bank every day. Had this been done, the improprieties would have been discovered early and the fraudulent activity stopped. The Bank was negligent for its lack of controls to protect both themselves and their customers.

7 - On December 31, 2007 Hlott withdrew \$310,510.75 from Brookshire. Community First Bank required several months to provide documentation on this transaction. This transaction indicates that Hlott knew how to manipulate the internal banking system to the extent that he could conceal a transaction of this magnitude.

8 - Federal and State Regulations require appropriate approvals and authorizations to provide Trust services. Since Hlott was conducting stock transactions on behalf of Brookshire and the Bank he was essentially representing both the Bank and Brookshire which created a conflict of interest. Senior Officers of the Bank and Internal Auditors failed to monitor Hlott.

9 - Since a depository account was used to house Brookshire funds, monthly Bank statements should have been provided as required by Federal and State Regulation. Repeated requests for bank account statements with little or no results implied the Bank knew suspicious activity had taken place. The customer's bank statement is essential to maintaining the standard policy of dual control on all customer accounts. Failure to provide bank statements is a violation of State and Federal Regulation.

KENNETH L. RICHEY
Banking Consultant
Amherst Banking Consultants

WORK Experience

April 2012 -

Amherst Banking Consultants offering both deposit and loan operations consulting to southeastern banks.

June 2004 - March 2012

Responsible for implementing the latest banking systems including Synovus' first end to end image check processing system resulting in 80% expense reduction for back room operations. I was promoted to Synovus Financial Corp, 40 Bank holding company, where I lead the implementation of Treasury/Cash Management Services to Synovus' 40 affiliate banks in five southeastern states. Responsibilities included product development, training and corporate sales for all of Synovus Treasury Management functions.

I was promoted to Enterprise Deposit Officer while continuing to serve as an Executive Officer for NBSC and Synovus Director of Treasury Management Services. We created the unique Synovus Shared Certificates of Deposits, IRAs and Money Market Accounts that attracted \$2 Billion in deposits for Synovus Banks within two years while providing its customers with up to \$7.5 million in FDIC Insurance through our then 30 banking affiliates. Customers received a single consolidated bank statement and only one IRS-1099 INT.

I also served on the Fifth District Federal Reserve Operations Advisory Committee and The South Carolina Bankers Association Operations Advisory Committee for approximately 20 years each. I retired in October 2011 after 44 years in banking.

July 1997 - June 2004

Executive Vice President, The National Bank of South Carolina - Responsible for Operations & Technology Division in support of statewide banking operations. During this period, I led the development of a comprehensive Corporate Cash Management System which was highly successful that was later implemented by Synovus Financial Corp.

December 1996 - June 1997

Senior Vice President, NBSC - Responsible for Proof, Check Processing, Deposit Operations, General

EXPERIENCE (Continued)

Services, Computer Operations, and Central Loan Operations for statewide banking operations.

Giese-CFB 1817

October 1995 - December 1996 Senior Vice President, Transaction Services - Transition Planning and Execution, NationsBank. Responsible for managing Operations consolidations, mergers/acquisitions, and major nationwide operations and technology projects for Bank Operations. This included merging NationsBank with Boatmen's Bank-\$44Billion, Bank South-\$20Billion, four NC/SC Operations Centers, Charter Bank, Blue Bonnet Bank. During this period my Team lead the development and implementation of our nationwide Interstate Banking same day deposit processing for deposits accepted in any branch throughout the franchise. This Team also upgraded 56 IBM 3890 Check Sorters to the new IBM XPE system to handle check processing for our national franchise.

January 1994 - September 1995 Senior Vice President, Transaction Processing Utility, NationsBank Services - South Carolina. Responsibilities included management of Proof, Check Processing, Transportation, Training, Quality, Account Services, Quality Control and Corporate Cash Vaults. While managing SC Operations (April 1994 - June 1995), led three-man design team that developed NationsBank's single interstate check processing capture system with common float values.

The solution was implemented in support of a preemptive posture for NationsBank and fully implemented during the agency phase of interstate consolidation. This solution supported same-day posting of deposits to the customers' account regardless of where it was received in the banking center network. This operational solution paved the way for the collapsing of bank charters for NC, SC, MD, VA, DC, GA, and FL, and TX into one national bank.

Led operation consolidation team for Bank South acquisition (October 1995 - June 1996) which included renovation of both operations facilities while continuing daily processing.

EXPERIENCE (Continued)

Recruited permanent transition (M&A) team of operations specialists (February 1996 - December 1996) to manage transition and major projects (i.e., upgrade 52 IBM B+ sorter to XPE level \$32MM).

Led Boatmen's (\$42Billion) operations transition team with permanent transition group. The consolidation plan reduced proof sites from 56 to 11; reduced capture sites from 14 to 4; and Account Services operations to only four sites; a \$30MM recurring expense reduction.

May 1992 - December 1993 Senior Vice President, NationsBank Services
Responsible for Item Processing Utility for Fifth Federal Reserve District, including District of Columbia, Maryland, Virginia, North Carolina, and South Carolina. Implemented a standard Item Processing operating platform; ideal staffing standards and standard performance measures.

August 1991 - April 1992 Managed C&S/Sovran Operations and Technology during merger and consolidation of C&S Sovran and NCNB SC collapsing five different buildings into one facility and resizing the workforce with the reduction of over 200 FTE's.

January 1990 - August 1991 Executive Vice President, South Carolina Operations and Technology, C&S/Sovran Corporation. Areas of responsibility included 122-branch network - banking center operations; compliance; technology systems and computer operations; Consumer Bank Operations, Corporate Bank Operations, Electronic Banking, Commercial Loan Operations, Item Processing, Bank Operating Policy and Procedures Manuals, and Quality by Design quality program, Disaster Recovery and Business Continuity plans.

Chairperson of the C&S/Sovran Operations and Technology Management Team

EXPERIENCE (Continued)

April 1986 - December 1989 Senior Vice President, C&S Corporation-Georgia. Responsibilities included all back room operations; branch operations, Commercial Loan operations; as well as operating policy, procedures, and deposit compliance for South Carolina.

October 1985 - March 1986 Senior Vice President for System Operations Administration, C&S of South Carolina, with a staff of approximately 510. Areas of responsibility included Item Processing, Consumer Bookkeeping, Corporate Bank Operations, Mail Distribution and Customer Service. Responsibilities included Bank's operating policy and procedures; branch operations; banking center operations and

compliance; deposit and loan application software; Quality by Design quality program.

1989 - Appointed Chairman, Deposit Users Committee for C&S CORP.

1988 - Member, Operations and Technology Steering Committee for C&S CORP.

September 1978 - September 1985 Vice President, Manager of Corporate Services, Wholesale Division, C&S National Bank of South Carolina. Responsible for developing and implementing a full array of cash management products and services handling all non-credit corporate sales and service. With state and national sales responsibility, the Bank became recognized as a state and regional leader and provider of high quality corporate financial services. Also, designed and implemented automated officer call tracking program for corporate lenders and business development officers.

1973 - April, 1977 Senior City Operations Officer for Citizens and Southern National Bank of South Carolina with responsibility for proof, bookkeeping, customer service, warehouse services, bank maintenance, branch operations, floating utility staff and the consolidated city-level budget.

EXPERIENCE (Continued)

Project Coordinator for consolidating statewide proof, bookkeeping and customer service functions from 10 remote locations into one consolidated operation in Columbia, South Carolina.

Led a three-man team that designed and installed the new C&S Demand Deposit Accounting system including a new automated decisions on overdraft accounts, plus CIF interfaces to support comprehensive CIF, and on-line teller support. Responsible for all deposit application software systems and project management after consolidation.

Project Manager for statewide Financial Wizard ATM network, responsible for design, implementation and subsequent management of daily operations and control procedures.

May - August 1977

Acting Chief Executive Officer of Hilton Head National Bank for Comptroller of Currency when the Bank was assumed by the Sixth District Comptroller. Managed Bank until a sales contract was finalized and the Bank's Board of Directors decided to sale versus raising new required capital.

1967 - 1972

Computer Operations Manager for Citizens and Southern National Bank of South Carolina and C&S Systems, Inc. In various positions, from computer operator and balancing supervisor and then to manager of bank check and computer processing. Responsibilities included processing coordination, software maintenance and support. Installed new Demand Deposit, Corporate Trust, Savings, and Installment Loan Accounting Systems.

1972

Electronic Data Systems as Bank Services Manager for C&S Bank and its correspondent Banks. Also served as Training officer for banking systems for EDS personnel.

1963 - 1967

U.S. Navy, Naval Security Group, Category III Top Secret Intelligence security clearance.

EDUCATION

1993 - 1995

Leadership Challenge, NationsBank

1988

Quality by Design, Larry Miller & Associates

1987

Interaction Management

1982

Graduate School of Cash and Treasury Management, Duke University

1980

Managing the Work Force - IBM courses

1978

School of Cash Management, AMA

1975 - 1977

Graduate School for Bank Administration, University of Wisconsin, Madison, Wisconsin

1967 - 1969

University of South Carolina, Business Administration Columbia, South Carolina

1960 - 1962

Furman University, Physics, Greenville, South Carolina

1956 - 1960

Greenwood High School, Greenwood, SC

RELATED PROFESSIONAL EXPERIENCE

Bank voting representative for National Automated Clearinghouse Association
Member, Federal Reserve Bank Operations Advisory Committee, Fifth District
Board of Directors, South Carolina Automated Clearing House Association
Member, Past Chairman, South Carolina Bankers Association, Operations Committee
Instructor, Cannon Bank Operations School, Notre Dame
Instructor, Cannon Bank Operations School, University of North Carolina-Charlotte
Instructor, Illinois Independent Bankers Association
Instructor, SCBA School of Banking, University of South Carolina
Instructor, AIB, Bank Operations and Introduction to Data Processing
Past President, Central South Carolina Chapter BAI
Speaker, BAI National Compliance Conference
Speaker, National and regional Cash Management Conferences

Member, Corporate Cash Management Association

COMMUNITY SERVICE

2012 - 2016	ARP Synod Investment Committee
2013 - 2016	Treasurer First Presbyterian Church
2005 - 2016	Executive Committee & Board Columbia YMCA
2000 - 2005	President, Board of Directors, Columbia YMCA
1998 - 2000	Vice President, Board of Directors, Columbia YMCA
	Chairman, Development Committee of New Branches
1987 - 1998	President, Board of Directors, Columbia YMCA
1988 - 1989	Chairman, Staff Policy Committee, Board of Deacons
	Northside Baptist Church
1983	Fund Raising Chairman, Congressional Medal of Honor
	Society of United States of America
1974 - 1987	Chairman, Governor's Carolighting Committee
1973	Distinguished President, Optimist International
1972 - 1983	Board of Directors, Babcock Center
1980 - 1984	Chairman, Training Committee, Midland's United Way
1980 - 1984	Treasurer, South Carolina Democratic Party
1982	Committee Chairman, Governor Richard Riley's
	Second Inauguration

Expert Witness - Only Deposition and Report

March 2015 - Deposition

Nelson Mullins Riley & Scarborough
Columbia, SC 29201
Mozingo & Wallace Architects, L. L. C., Plaintiff v.
HCSB Financial Corporation and Horry County State Bank,
Billy McGee and Tara Sullivan

November 29, 2012 - Deposition

Womble Carlyle Sandridge & Rice, LLP
550 S. Main Street, Suite 400 (29601)
P.O. Box 10208
Greenville, SC 29603
Clay Custer
Catherine Wren
Marymeade Apartments, LLC v.
TD Bank, NA successor by merger to Carolina First Bank

March 2012 - Expert Report

David H. Koysza | Wyche
44 East Camperdown Way
Greenville, SC 29601-3512
Superior Metals Trading Pty. Ltd. v.
Thompson's Garage & Used Auto Parts et al.

March 2011 - Expert Report

Sam Altman

Dorfner Altman & Wilborn

Charleston, SC 29403

E. Vernon McCurry, as Personal Representative of the
Estate of James Thomas McCurry, Plaintiff v.

First Financial Holdings

d/b/a First Federal Savings and Loan, Charleston, SC

February 2011 - Expert Report

Ellis Painter Ratteree & Adams

Megan Manley for McManamy

United Community Banks v.

Douglas P. McManamy and Law Office

of Douglas P. McManamy, P. C.

July 2005 - Deposition

Michael G. Stavale, Esq.

Stavale & Gemmete, P.L.L.C.

Gross Pointe, MI

Raymond E. Owens, Jr.

Christopher Lam

Kennedy Covington

Charlotte, NC

Earnings Performance Group, Inc. v.

Profit Technologies Corporation and Thomas Donovan

EXHIBIT

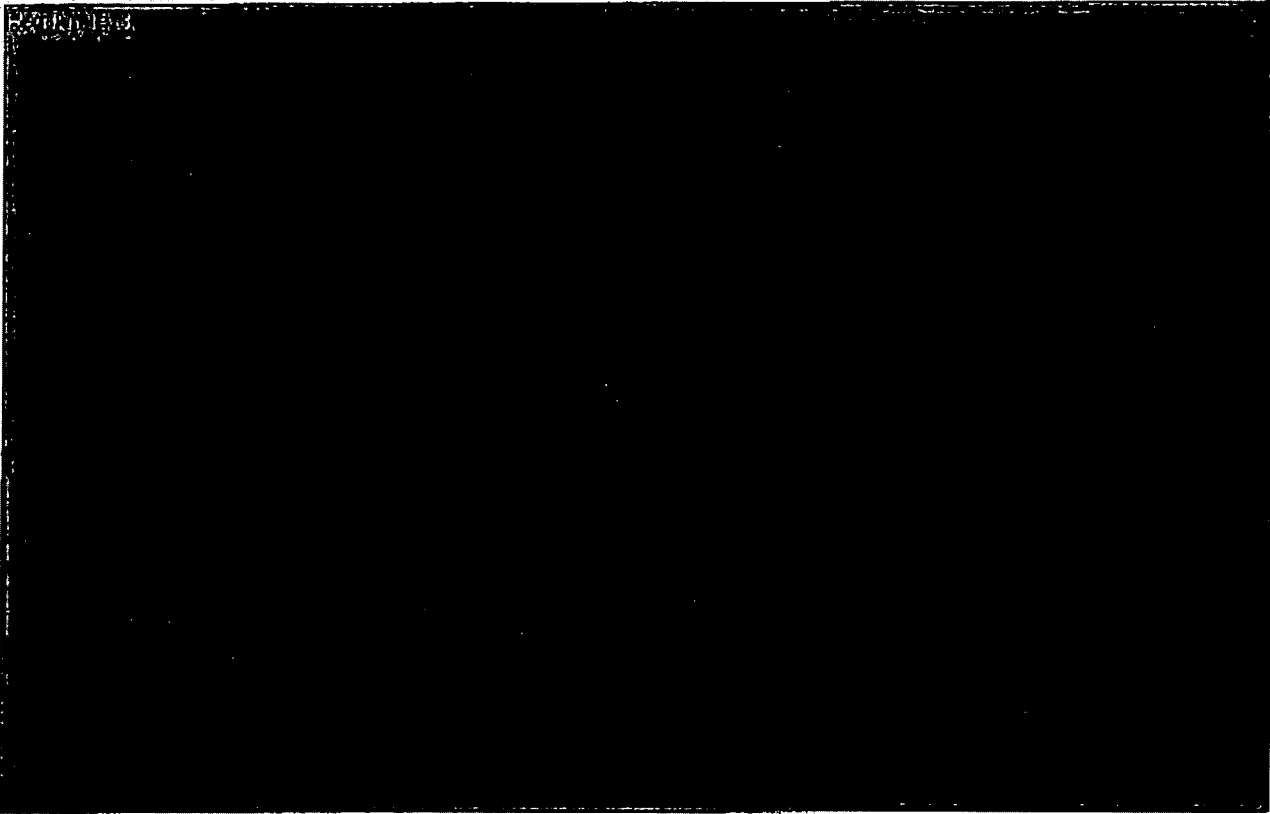
II

MINUTES

OF

THE EXECUTIVE SESSION OF THE BOARD OF DIRECTORS MEETING OF COMMUNITY FIRST BANK WAS HELD AT THE SENECA NORTH OFFICE ON THE 30th DAY OF APRIL 2014. ALL DIRECTORS WERE PRESENT. JIM MCOY OF THE BANK'S HOLDING COMPANY AND JOHNNY CREECH OF JW HUNT & CO ATTENDED AS WELL.

Fred Shepherd called the Executive session to order at approximately 2:30 PM.



John Hamrick asked about our status with the bonding company claim and was there a time limit for their response. Mr. Shepherd responded that we have provided the information to the bonding company for the claim but there was no time limit for their response. Mr. Hamrick stated that he was sure they (bonding company) are looking closely at Fred and Jim's relationship with MPS. Redacted

Redacted

Gary Thrift noted that when we first discovered the loss there was disagreement with how far Palmetto Consulting should go after determining what went to MPS Golf. Fred Shepherd stated that he thought that Ben Hiott did not put the MPS Deposits into the bank. John Hamrick asked why he (Mr. Hamrick) as a board member should care what MPS Golf did with the money. Mr. Hamrick continued that as a board member responsibility, we find out where the money went, anything beyond that is your problem (to Mr. Shepherd). Redacted

ELECTRONICALLY FILED - 2016 Dec 09 4:58 PM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

CONFIDENTIAL

CFB004254

Redacted

Bill Brown stated that he believed that both Ben Blott Redacted would likely say that Fred Shepherd told them to do it. Fred Shepherd responded that the bonding company will be checking him (Mr. Shepherd) out.

Redacted

Bill Brown asked what affect a \$3.4 million claim payment would have on our income. Fred Shepherd responded that it would not change our income because the claim amount is presently in accounts receivable. Redacted

Redacted

Redacted

CONFIDENTIAL

CFB004255

Fred Shepherd presented the agreement with KraftCPA's to complete a 2nd opinion on the misappropriation research of Palmetto Consulting and review of internal controls for review & approval. Gary Thrift motioned and Charles Winchester seconded. All directors voted in favor.

Redacted

John Hamrick stated that he had never saw one single report that indicated missing securities. Fred Shepherd stated that he (Mr. Shepherd) should have had a tighter rope on Mr. Riott. Don Jones and Ben Riott had a relationship and he (Mr. Shepherd) thinks that Ben talked Mr. Jones into a little bit of acquiescence.

Gary Thrift stated that we must make sure that the auditors talk with the audit committee. Fred Shepherd responded that our policy states that the auditors are to present their reports to the audit committee.



Gary Thrift, Chairman of the Board
Or
Fredrick D. Shepherd, President

CONFIDENTIAL

CFB004256

EXHIBIT

JJ

In the Matter Of:

Brookshire, Debi Baker v
Community First Bank, Inc., et al

Donald G. Jones

August 25, 2016

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1 I'll read you part --

2 A. I'm certainly sure that by November of
3 '13 I was going to every board meeting.

4 Q. And that's because of the ongoing
5 investigation that was going on?

6 A. Right. The board wanted an update on...

7 Q. Everything?

8 A. Everything that had happened or that we
9 found.

10 Q. All right. If you look down past the
11 dark section, the redacted section, it's the -- it's
12 the first paragraph that starts after that: Fred
13 Shepherd stated that he had asked Don Jones to
14 identify some actions that the bank could implement
15 to demonstrate that management has responded and
16 incorporated procedures to prevent frauds such as
17 this from re-occurring. Mr. Jones had recommended
18 the following actions: One, remove the CFO's
19 ability to originate Official Checks. CFO could
20 still sign checks but separate origination provided
21 a form of dual control.

22 Do you remember making that suggestion?

23 A. Probably not in those exact words, but I
24 made a -- the suggestion I made was that -- I'd have
25 to look back at my suggestions to tell you for sure.

1 These are not all of the suggestions.. He did not
2 present a number of my suggestions.

3 Q. He didn't present it to the board?

4 A. No.

5 Q. Okay. Let me -- let me go over them one
6 at a time real quickly here. What -- remove the
7 CFO's ability to originate Official Checks. CFO
8 could still sign checks but separate origination
9 provided a form of dual control.

10 Are you saying prior to this there was
11 no dual control?

12 A. Right.

13 Q. Explain that for me, for a lay person.

14 A. He could solely at his computer, at his
15 desk, he could solely create official checks, make
16 the entries for the official checks, transfer -- he
17 could make journal entries on his own. By that, I
18 mean, he could debit customers' accounts and then
19 offset on general ledger accounts. All these
20 techniques that he was using for the -- these
21 transactions and to juggle the books and that sort
22 of thing where he could do all that from his office.
23 He had access to virtually everything.

24 Q. And -- and when you're talking about he
25 could do all this from his office, that's without

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1 anybody else having to sign off on it? Is that what
2 the dual control -- or non dual control means?

3 A. Yes.

4 Q. He could do it on his own?

5 A. Yes.

6 Q. Such as in Ms. Brookshire's case the
7 \$500,000 -- and I don't know if it's the certified
8 check or cashier's check or bank check that was
9 written to Coach Joe Crosby?

10 A. Mm-hmm.

11 Q. This \$500,000, he could do that without
12 anybody else looking at the \$500,000 check?

13 A. Yes.

14 Q. He could create it, sign it and send it
15 and give it on his own?

16 A. Yes.

17 Q. And that was the procedure in that bank
18 at that time?

19 A. Yes.

20 Q. In fact, anybody could have done that if
21 they had access like Mr. Hiott did?

22 A. If they had the access. Probably most
23 people at the bank could not do that, but he could.

24 Q. And, in fact, he did on numerous
25 occasions?

EXHIBIT

KK

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS

Debi Baker Brookshire,

Plaintiff,

Civil Action No. 2014-CP-37-526

v.

Community First Bank, Inc. and
Benjamin Lee Hiott,

Defendants.

**DEFENDANT COMMUNITY FIRST
BANK'S ANSWERS TO PLAINTIFF'S
FIRST SET OF INTERROGATORIES**

TO: DEBI BAKER BROOKSHIRE AND HER ATTORNEY W. BARNEY GIESE:

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, Defendant Community First Bank, Inc. ("Community First Bank") answers Plaintiff's First Set of Interrogatories as follows:

INTERROGATORIES

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER:

Benjamin L. Hiott
c/o Daryl Hawkins, Esq.

Marc Hiott
Current address unknown

Debi Baker Brookshire
c/o Barney Giese, Esq.

Dan Brookshire

Current address unknown

Frederick D. Shepherd, Jr.
c/o Robert Knowlton, Esq.

Jeffrey A. Griffith
c/o Robert Knowlton, Esq.

Joseph Crosby
Current Address Unknown

Kristina Crosby
Current Address Unknown

A representative of Joseph Crosby's accountant (identity unknown)

Kathleen McDaniel, Esq.
Callison Tighe & Robinson, LLC
P.O. Box 1390
Columbia, SC 29202

James L. Williams, Esq.
Derrick Ritter Williams & Morris, PA
P.O. Box 795
Seneca, SC 29679

Representatives of the Hobbs Group Advisors, LLC
1704 Laurel Street
Columbia, SC 29201

Representatives of Baker & Baker Real Estate Developers, LLC
1400 Pickens Street, 5th Floor
Columbia, SC 29201

Donald G. Jones
Gary A. Areheart
Palmetto Consulting Services, Inc.
7812 Winnsboro Road
Columbia, SC 29203

Representatives of BB&T
Individuals and addresses unknown

Representatives of Tabor Investigative Services
Address unknown

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

ANSWER: Pursuant to Rule 33(c), SCRCP, see the documents produced by the parties in this case.

3. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

ANSWER:

Travelers Casualty and Surety Company of America
One Tower Square
Hartford, Connecticut

Financial Institution Professional Liability Coverage; \$3 million limit, subject to policy limits, and other policy provisions.

4. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

ANSWER: Donald Jones and Gary Areheart (see answer to interrogatory 1, *supra*). Community First Bank reserves the right to supplement this response.

5. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER: Plaintiff has knowledge of her power of attorney executed in favor of Defendant Hiott, her account at Community First Bank, and actions taken by Defendant Hiott pursuant to the power of attorney. Defendant Hiott has knowledge of the power of attorney Plaintiff executed in his favor and his actions on behalf of

Plaintiff vis-à-vis her account at Community First Bank. Mr. Shepherd and Mr. Griffith are knowledgeable about Defendant Hiott's employment and duties at Community First Bank and the investigation undertaken by Community First Bank into his activities as related to Plaintiff's account. Mr. Marc Hiott, Mr. Brookshire, Mr. Crosby, and Mrs. Crosby are, upon information and belief, knowledgeable about transfers of funds made from Plaintiff's account at Community First Bank to accounts owned by them or by businesses with which they were affiliated. Mr. Crosby's accountant would be knowledgeable about how such transfers of funds from Plaintiff's account at Community First Bank to accounts held by Mr. Crosby or one of his businesses were treated by Mr. Crosby for accounting purposes. Ms. McDaniel and Mr. Williams are, upon information and belief, knowledgeable about Plaintiff's inquiries of Community First Bank regarding her account. Representatives of the Hobbs Group would be knowledgeable about Plaintiff's finances and tax matters. Representatives of Baker & Baker would be knowledgeable about instructions given to that entity for payments made by Baker & Baker to Plaintiff's account at Community First Bank. Representatives of BB&T would be knowledgeable about Plaintiff's prior account at that institution. Representatives of Tabor Investigative Services would be knowledgeable about the investigation undertaken by them of relevant matters pursuant to engagement by Plaintiff or her representatives. Mr. Jones and Mr. Areheart are knowledgeable about their forensic accounting engagement at Community First Bank, which involved a review of Plaintiff's account and documents regarding transfers to and from Plaintiff's account at Community First Bank.

6. If the defendant is improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and pleading reflecting the correct information:

ANSWER: Community First Bank is properly identified.

7. Provide the name, address and telephone number of the person or entity who owns/holds title or has previously owned or held title to Community First Bank Account 1222001.

ANSWER: This number is assigned to Community First Bank's general ledger for miscellaneous accounts receivable.

8. List every individual who owns stock or is a shareholder in Community First Bank, Inc. For each person listed, state the number of shares owned; in addition, state the number of total shares of outstanding stock in Community First Bank, Inc. If Community First Bank, Inc. has issued more than one class or type of stock, provide the information requested above with respect to each different class or type of stock, and the total number of shares for each different class or type of stock. Identify whether Plaintiff and/or Defendant Hiott owns or has owned any shares of Defendant's stock, and if so, the number of shares owned by Plaintiff and/or Defendant Hiott and whether any stock certificates were issued for these shares.

ANSWER: Community First Bank objects to responding to this interrogatory on the grounds that it seeks information that is not relevant to the case and is not narrowly tailored to lead to the discovery of admissible evidence, it seeks confidential information, and it would be unduly burdensome to respond to taking into account the needs and issues in this case. Subject to and notwithstanding these objections, Community First Bank agrees to produce documents regarding record

ownership of shares of Community First Bancshares held by Defendant Hiott and Plaintiff pursuant to Rule 33(c), SCRCP. Those documents do not reflect whether they owned a beneficial interest in other shares held in "street name."

9. State if the Defendant has adopted policies and procedures for monitoring activity in customers' accounts for the purpose of detecting or preventing fraud or unauthorized account activity, including unauthorized withdrawals or transfers.

- (a) If the Defendant has adopted policies and procedures described above, state whether these policies and procedures have been reduced to writing.
- (b) If the Defendant has adopted policies and procedures described above, set forth in detail those policies and procedures, or in lieu of providing such a description, produce a copy of all policies and procedures adopted for the purpose of monitoring account activity and detecting or preventing fraud or unauthorized account activity, including unauthorized withdrawals or transfers.

ANSWER: Community First Bank objects to this interrogatory on the grounds that it is vague, ambiguous, and overly broad. This Defendant further objects to the extent it implies that the Bank had a duty to discern whether a person with signature authority for a demand deposit account had any other or further authority with regard to a particular withdrawal or transfer from the account. This Defendant also objects on the grounds that it seeks information that is not relevant to the case and is not narrowly tailored to lead to the discovery of admissible evidence, it seeks confidential information, and it would be unduly burdensome to respond to taking into account the needs and issues in this case.

10. Provide the name, address and telephone number of the person or entity that provided the funds (approximately \$280,000) that were deposited into the Plaintiff's account at Community First Bank, Inc. on or about February 22, 2011.

ANSWER: Based on the evidence currently available to Community First Bank, it appears that Defendant Hiott misappropriated funds in the amount of \$285,233.34 that belonged to Community First Bank and deposited them into Plaintiff's account on February 23, 2011.

11. Identify Senior Vice President Benjamin L. Hiott's direct supervisor at Community First Bank, Inc. during the time Defendant Hiott was employed there.

ANSWER: Frederick D. Shepherd, Jr.

12. Set forth Benjamin L. Hiott's date of employment with Community First Bank, Inc., the position or positions he held, his annual salary and all other payments, stock options, and other benefits provided to him by Community First Bank, Inc. during his employment, and state the date of Benjamin L. Hiott's termination of employment from Community First Bank, Inc.

ANSWER: Defendant Hiott began employment with Community First Bank on August 31, 1999. He was placed on administrative leave in or about early September 2013, and he resigned effective January 31, 2014. In further response, Community First Bank refers to Hiott's personnel file pursuant to Rule 33(c), relevant portions of which will be produced pursuant to Community First Bank's response to request for production number 13 at a mutually convenient time and place subsequent to the entry of an appropriate protective order.

13. Describe in detail the reason or reasons for Benjamin L. Hiott's termination of employment from Community First Bank, Inc. Identify by name and job title each person who made the decision to terminate Benjamin L. Hiott's employment.

ANSWER: Defendant Hiott was placed on administrative leave in or about early September 2013, and he resigned from employment effective January 31, 2014.

14. Identify by account number and by account holder's name every account into which Plaintiff's money was deposited or transferred between the dates of June 26, 2007 and February 22, 2011. Separately state the amount of the transfer and the purpose of the transfer.

ANSWER: Community First Bank refers to the documents related to Plaintiff's account pursuant to Rule 33(c), SCRPC. Community First Bank currently lacks information sufficient to state the purpose of the transfers from Plaintiff's account.

15. State whether Falcon's Lair currently maintains or ever maintained an account at Community First Bank, Inc. If so, state whether any funds were ever transferred directly or indirectly from Plaintiff's account at Community First Bank, Inc. to Falcon's Lair's account, and if so, the amount(s) of any transfers and the date(s) of each transfer.

ANSWER: Community First Bank is not aware of any transfer of funds from Plaintiff's account to Falcon's Lair. Community First Bank objects to responding further to this interrogatory on the grounds that it seeks information that is confidential and it seeks information that is not relevant to the issues in this case and is not likely to lead to the discovery of admissible evidence.

16. State whether Falcon's Lair ever obtained a loan from Community First Bank, Inc. If so, state the amount of the loan, the date of the loan, and the unpaid balance of the loan. Further state whether any funds were ever transferred from the Plaintiff's account at Community First Bank, Inc. to Falcon's Lair's loan account, and if so, the amount(s) of any transfers and the date(s) of each transfer.

ANSWER: Community First Bank is not aware of any transfer of funds from Plaintiff's account to pay a loan obligation of Falcon's Lair. Community First Bank objects to responding further to this interrogatory on the grounds that it seeks information that is confidential and it seeks information that is not relevant to the issues in this case and is not likely to lead to the discovery of admissible evidence.

17. State whether Community First Bank, Inc. has adopted any policies or procedures for monitoring account activity involving transfers of large amounts of money (i.e. transfers involving \$50,000 or more). If so, describe in detail these policies and procedures or in the alternative, produce a copy of all written policies and procedures described above.

ANSWER: Community First Bank objects to responding to this request on the grounds that it seeks confidential information. Without waiving its objections, this Defendant agrees to produce relevant policies upon the entry of an appropriate protective order.

18. State whether Joseph C. Crosby, Jr. and/or his wife, Kristina Crosby currently maintains or ever maintained an account at Community First Bank, Inc. If so, state whether any funds were ever transferred directly or indirectly from Plaintiff's account at Community First Bank, Inc. to Joseph C. Crosby, Jr. and/or Kristina Crosby's account, and if so, the amount(s) of any transfers and the date(s) of each transfer.

ANSWER: Yes, Joseph C. Crosby, Jr. and/or Kristina Crosby have maintained accounts at Community First Bank. See records of Plaintiff's account transactions for the requested details pursuant to Rule 33(c), SCRCP.

19. State whether Joseph C. Crosby, Jr. and/or Kristina Crosby ever obtained any loans from Community First Bank, Inc. If so, state the amount of the loan, the date of the loan,

and the unpaid balance of the loan. Further state whether any funds were ever transferred from the Plaintiff's account at Community First Bank, Inc. to Joseph C. Crosby, Jr. and/or Kristina Crosby's loan account, and if so, the amount(s) of any transfers and the date(s) of each transfer.

ANSWER: Yes, Joseph C. Crosby, Jr. and/or Kristina Crosby have obtained loans from Community First Bank. See records of Plaintiff's account transactions for the requested details pursuant to Rule 33(c), SCRCP.

20. State whether CLCB, LLC currently maintains or ever maintained an account at Community First Bank, Inc. If so, state whether any funds were ever transferred directly or indirectly from Plaintiff's account at Community First Bank, Inc. to CLCB, LLC's account, and if so, the amount(s) of any transfers and the date(s) of each transfer.

ANSWER: Yes, CLCB, LLC has maintained an account at Community First Bank. See records of Plaintiff's account transactions for the requested details pursuant to Rule 33(c), SCRCP.

21. State whether CLCB, LLC ever obtained any loans from Community First Bank, Inc. If so, state the amount of the loan, the date of the loan, who opened the loan on behalf of the LLC, and the unpaid balance of the loan. Further state whether any funds were ever transferred from the Plaintiff's account at Community First Bank, Inc. to CLCB, LLC's loan account, and if so, the amount(s) of any transfers and the date(s) of each transfer.

ANSWER: This Defendant agrees to make a reasonably diligent inquiry and, if it concludes that any funds were transferred from Plaintiff's account to payment of a loan from the Bank to CLCB, LLC, it will make relevant, non-privileged documents available at a mutually convenient time and place.

22. Identify all emails, letters, notes of conversation, or other documents reflecting or relating to any communication within Community First Bank, Inc. regarding Plaintiff and/or Plaintiff's Account.

ANSWER: Community First Bank objects to this interrogatory on the grounds that this request is overly broad and not sufficiently tailored to lead to the discovery of admissible evidence. Pursuant to Rule 33(c), SCRCP, Community First Bank agrees to conduct a reasonably diligent search for responsive documents as maintained in the ordinary course of Community First Bank's business and will produce responsive and non-privileged documents at a mutually convenient time and place.

23. For the following dates and amounts, withdrawn from Plaintiff's Account at Community First Bank, Inc., identify how these funds were spent. Identify the type of transfer, the account benefitting from the transfer, the name of the account holder who benefitted from the transfer, and the reason for the transfer.

12/31/2007: \$310,510.75

02/29/2008: \$8,500.00

02/29/2008: \$4.00

03/13/2008: \$2,224.00

08/29/2008: \$65,000.00

09/22/2008: \$1,000.00

10/24/2008: \$3,500.00

11/01/2008: \$85,000.00

06/05/2009: \$25,387.20

06/15/2010: \$3,000.00

Further, explain why documents relating to these transactions were not turned over with any of the multiple requests Plaintiff made for complete paperwork of the Account.

ANSWER: Pursuant to Rule 33(c), SCRCP, Community First Bank agrees to produce non-privileged documents related to these transactions at a mutually convenient time and place. The December 31, 2007 transfer of \$310,510.75 was reversed on January 7, 2008. Community First Bank objects to responding further to this interrogatory and objects to it the extent it suggests it owed a duty to produce certain of the documents produced in this case at an earlier time.

24. Define a "journal transfer." Identify by name and job title every employee authorized to make journal transfers, how a journal transfer is prepared, and what, if any, oversight is in place for these types of transfers.

ANSWER: A journal transfer is a general accounting term used to describe certain accounting adjustments made in the Bank's accounting system. They can be made electronically or initiated by document request. Approximately ten people have authority to make journal transfers, and the oversight is the general bank supervision over employees and bank practices.

25. State whether MPS Development, Inc. currently maintains or ever maintained an account at Community First Bank, Inc. If so, state whether any funds were ever transferred directly or indirectly from Plaintiff's account at Community First Bank, Inc. to MPS Development, Inc.'s account, and if so, the amount(s) of any transfers and the date(s) of each transfer.

ANSWER: Community First Bank is not aware of any transfer of funds from Plaintiff's account to MPS Development, Inc. Community First Bank objects to responding further to this interrogatory on the grounds that it seeks information that is confidential and it seeks information that is not relevant to the issues in this case and is not likely to lead to the discovery of admissible evidence.

26. State whether MPS Development, Inc. ever obtained a loan from Community First Bank, Inc. If so, state the amount of the loan, the date of the loan, and the unpaid balance of the loan. Further state whether any funds were ever transferred from the Plaintiff's account at Community First Bank, Inc. to MPS Development, Inc.'s loan account, and if so, the amount(s) of any transfers and the date(s) of each transfer.

ANSWER: Community First Bank is not aware of any transfer of funds from Plaintiff's account to pay a loan obligation of MPS Development, Inc. Community First Bank objects to responding further to this interrogatory on the grounds that it seeks information that is confidential and it seeks information that is not relevant to the issues in this case and is not likely to lead to the discovery of admissible evidence.

27. State whether MPS Golf Course, Inc. currently maintains or ever maintained an account at Community First Bank, Inc. If so, state whether any funds were ever transferred directly or indirectly from Plaintiff's account at Community First Bank, Inc. to MPS Golf Course, Inc.'s account, and if so, the amount(s) of any transfers and the date(s) of each transfer.

ANSWER: Community First Bank is not aware of any transfer of funds from Plaintiff's account to MPS Golf Course, Inc. Community First Bank objects to responding further to this interrogatory on the grounds that it seeks information

that is confidential and it seeks information that is not relevant to the issues in this case and is not likely to lead to the discovery of admissible evidence.

28. State whether MPS Golf Course, Inc. ever obtained a loan from Community First Bank, Inc. If so, state the amount of the loan, the date of the loan, and the unpaid balance of the loan. Further state whether any funds were ever transferred from the Plaintiff's account at Community First Bank, Inc. to MPS Golf Course, Inc.'s loan account, and if so, the amount(s) of any transfers and the date(s) of each transfer.

ANSWER: Community First Bank is not aware of any transfer of funds from Plaintiff's account to pay a loan obligation of MPS Golf Course, Inc. Community First Bank objects to responding further to this interrogatory on the grounds that it seeks information that is confidential and it seeks information that is not relevant to the issues in this case and is not likely to lead to the discovery of admissible evidence.

29. In Defendant's first Counterclaim against the Plaintiff, Defendant states in Paragraph 66, that "funds in the approximate amount of \$788,855.00 ("Funds"), none of which belonged to Plaintiff, were deposited in Plaintiff's Account by Defendant Hiott during the time the Account was held at the Bank." Describe in detail every fact upon which Defendant relies to support this allegation, specifically, the name of account holder(s), the address(es) associated with the account(s), and whether Defendant Community First Bank has contacted the account holder(s) in regards to this allegation; further, identify the employee or employees who discovered this information, the date of such discovery, and the process by which it was discovered.

ANSWER: Pursuant to Rule 33(c), SCRCP, this Defendant agrees to produce relevant and non-privileged documents at a mutually convenient time and place.

30. Identify any transfers from Plaintiff's Account into accounts owned or co-owned, either currently or previously, by any member of the Community First Bank, Inc. Board of Directors, past or present, including any corporations, limited liability companies, and/or partnerships in which a member or members of the Community First Bank, Inc. Board of Directors are or were associated. This request includes the date of transfer, purpose of transfer, bank employee committing the transfer, and the name on the account benefitting from the transfer.

ANSWER: Pursuant to Rule 33(c), SCRCP, documents will be produced at a mutually convenient time and place with respect to a November 1, 2008 transfer of \$85,000 into an account co-owned by James McCoy.

31. Identify any transfers from Plaintiff's Account into accounts owned or co-owned, either currently or previously, by any employee of Community First Bank, Inc., past or present. This request includes the date of transfer, purpose of transfer, bank employee committing the transfer, and the name on the account benefitting from the transfer.

ANSWER: See records of Plaintiff's account transactions for the requested details pursuant to Rule 33(c), SCRCP.

32. Identify where the \$500,000 Cashier's Check issued by Community First Bank, Inc. on or about July 12, 2007 was negotiated and whether or not it was deposited into an Account at Community First Bank, Inc. If so, identify the Account benefitting from the \$500,000 check and the Account holder.

ANSWER: See records of Plaintiff's account transactions for the requested details pursuant to Rule 33(c), SCRCP, which will be produced at a mutually convenient time and place.

33. State in what capacity William Steele is employed or has been previously employed with Community First Bank, Inc. If he is no longer working with Community First Bank, Inc., state the date of his termination and the reason for his termination.

ANSWER: William Steele was previously employed by Community First Bank as a branch manager and loan officer. He resigned on or about January 26, 2010.

34. Identify where the \$200,000 Cashier's Check issued by Community First Bank, Inc. on or about November 28, 2007 was negotiated and whether or not it was deposited into an Account at Community First Bank, Inc. If so, identify the Account benefitting from the \$200,000 check and the name of the Account holder.

ANSWER: See records of Plaintiff's account transactions for the requested details pursuant to Rule 33(c), SCRCP, which will be produced at a mutually convenient time and place.

35. State whether Hilltop, Inc. currently maintains or ever maintained an account at Community First Bank, Inc. If so, state whether any funds were ever transferred directly or indirectly from Plaintiff's account at Community First Bank, Inc. to Hilltop, Inc.'s account, and if so, the amount(s) of any transfers and the date(s) of each transfer.

ANSWER: Yes, Hilltop, Inc. has maintained an account at Community First Bank. See records of Plaintiff's account transactions for the requested details pursuant to Rule 33(c), SCRCP, which will be produced at a mutually convenient time and place.

36. State whether Hilltop, Inc. ever obtained any loans from Community First Bank, Inc. If so, state the amount of the loan, the date of the loan, and the unpaid balance of the loan. Further state whether any funds were ever transferred from the Plaintiff's account at Community

First Bank, Inc. to Hilltop, Inc.'s loan account, and if so, the amount(s) of any transfers and the date(s) of each transfer.

ANSWER: Community First Bank is not aware of any transfer of funds from Plaintiff's account to pay a loan obligation of Hilltop, Inc. Community First Bank objects to responding further to this interrogatory on the grounds that it seeks information that is confidential and it seeks information that is not relevant to the issues in this case and is not likely to lead to the discovery of admissible evidence.

37. State whether Upstate Real Estate currently maintains or ever maintained an account at Community First Bank, Inc. If so, state whether any funds were ever transferred directly or indirectly from Plaintiff's account at Community First Bank, Inc. to Upstate Real Estate's account, and if so, the amount(s) of any transfers and the date(s) of each transfer.

ANSWER: Yes, Upstate Real Estate has maintained an account at Community First Bank. See records of Plaintiff's account transactions for the requested details pursuant to Rule 33(c), SCRCP, which will be produced at a mutually convenient time and place.

38. State whether Upstate Real Estate ever obtained any loans from Community First Bank, Inc. If so, state the amount of the loan, the date of the loan, and the unpaid balance of the loan. Further state whether any funds were ever transferred from the Plaintiff's account at Community First Bank, Inc. to Upstate Real Estate's loan account, and if so, the amount(s) of any transfers and the date(s) of each transfer.

ANSWER: Community First Bank is not aware of any transfer of funds from Plaintiff's account to pay a loan obligation of Upstate Real Estate. Community First Bank objects to responding further to this interrogatory on the grounds that it seeks

information that is confidential and it seeks information that is not relevant to the issues in this case and is not likely to lead to the discovery of admissible evidence.

39. Describe in detail all results of any forensic accounting done of the Plaintiff's Account and/or any other account at Community First Bank, Inc.

ANSWER: Community First Bank objects to this interrogatory on the grounds that it is overbroad, seeks information irrelevant to the claims and defenses in this case, and is not narrowly tailored to seek discovery of admissible evidence, specifically in the request for the results of forensic accounting done for "any other account" at Community First Bank. Subject to and notwithstanding this objection, Palmetto Consulting Services, Inc. conducted a forensic accounting, which included a review of Plaintiff's account by researching Plaintiff's account statements and documents relating to transactions in Plaintiff's account.

40. Define "investment counter withdrawal" and "miscellaneous debit." Describe any monthly limits or restrictions on these types of transactions for trust accounts.

ANSWER: Community First Bank objects to this interrogatory to the extent that it implies or states that Plaintiff's account was a trust account where Community First Bank served as trustee. Plaintiff's account was a deposit account held by Debi Baker Brookshire as trustee for the Debi Baker Brookshire Trust. An "investment counter withdrawal" is an in-person withdrawal by a person with signatory authority on a money market demand deposit account. There are no monthly restrictions or limits on "investment counter withdrawals" for the type of account held by Plaintiff. A "miscellaneous debit" is a category for non-check transactions

that do not fit into any other category, and there are no monthly restrictions or limits on "miscellaneous debits" for the type of account held by Plaintiff.

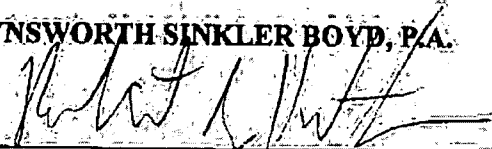
41. Describe any and all procedures in place at Defendant Community First Bank, Inc. for closing an account.

ANSWER: No specific written procedures were in place with regard to closing accounts at times relevant to this case. Community First Bank objects to producing any policies or procedures adopted after plaintiff's account was closed. Community First Bank further objects to producing any bank policies until an appropriate protective order is entered in this matter.

42. Identify every account number, account holder name and address on the account for all accounts that Defendant Benjamin Lee Hiott either transferred or misappropriated funds without the consent or knowledge of the account holders and whether or not Defendant Community First Bank has notified these account holders of Defendant Hiott's activities.

ANSWER: Community First Bank objects to this interrogatory on the grounds that it is overly broad, seeks irrelevant information, and is not narrowly tailored to seek discovery of relevant, admissible information. Subject to and notwithstanding this objection, Community First Bank is unaware of any other customers of Community First Bank who have made claims similar to the claims made by Plaintiff.

HAYNSWORTH SINKLER BOYD, P.A.

By: 

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Attorneys for Defendant Community First Bank, Inc.

December 15, 2014
Columbia, South Carolina

DM: 3877138 v.11

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Debi Baker Brookshire,

Plaintiff,

v.

Community First Bank, Inc. and
Benjamin Lee Hiott,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2014-CP-37-0526

CERTIFICATE OF SERVICE

I, the undersigned employee of Haynsworth Sinkler Boyd, P.A., do hereby certify that I have this 15th day of December 2014, caused the foregoing documents to be served via U.S. Mail, postage-prepaid on plaintiff's counsel of record at the address shown below:

Documents to be Served:

1. Defendant Community First Bank, Inc.'s Answers to Debi Baker Brookshire's First Set of Interrogatories; and
2. Defendant Community First Bank, Inc.'s Responses to Debi Baker Brookshire's First Requests for Production of Documents.

W. Barney Giese, Esq.
The Giese Law Firm
1315 Blanding Street
Columbia, SC 29201
Attorneys for Plaintiff

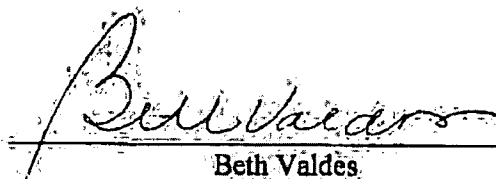

Beth Valdés

EXHIBIT LL

In the Matter Of:

Brookshire, Debi Baker v
Community First Bank, Inc., et al

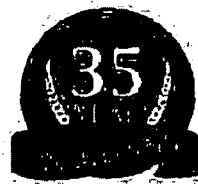
Frederick D. Shepherd, Jr. REDACTED

June 27, 2016

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1 it's a credit to us, but there would be a \$500,000,
2 something offsetting to balance the bank to check
3 to make sure that it happened, yes, sir.

4 Q. But this man, Mr. Hiott, you've
5 testified earlier had no authority to lend money to
6 people; is that correct?

7 A. That's correct.

8 Q. Okay. And on this check that he wrote
9 and signed, he calls it in the, for section, it
10 says: Brookshire loan, that you've testified that
11 he had no right to lend money from the bank?

12 A. That's correct.

13 Q. All right. That in and of itself
14 wouldn't have drawn someone's attention?

15 A. I'm not sure where you're speaking of
16 that -- I don't -- can you show me the check and I
17 can answer you. I don't know if I --

18 Q. We'll have to pull it up. We'll move
19 on --

20 A. It probably says something on the
21 bottom, that's a description of something that the
22 check is intended to be. It doesn't have anything
23 to do with --

24 Q. Whether or not it balanced?

25 A. No. No.

1 Q. But I'm saying so --

2 A. Probably says remitter.

3 Q. I don't recall, but Mr. Hiott had the
4 ability --

5 A. That's probably where the money came
6 from.

7 Q. Mr. Hiott had the ability to write a
8 check for that amount of money with no one -- other
9 than making sure that it balanced in the books, no
10 oversight, no one going, oh, yeah, Ben, you can do
11 that, as long as it balanced, no one called him and
12 said, what did you do this for?

13 A. I don't believe anybody did that, no,
14 sir.

15 Q. That's because of the position he was
16 in?

17 A. He was in a senior position, correct.

18 Q. And you were supervising him?

19 A. That's correct.

20 Q. And you never looked to see what that
21 \$500,000 check was for?

22 A. I did not look to see what that
23 \$500,000 check was for.

24 Q. That's a lot of money?

25 A. That's a lot of money, but in the

1 banking business we do a lot of checks. And our
2 checks and balances are how we follow things. And
3 it's designed to -- if there wasn't an entry
4 offsetting it, then I would have seen the next
5 morning that there was an entry that didn't
6 balance and I would have probably gone to him -- I
7 would have seen that it didn't balance, understand?

8 Q. Sure.

9 A. All right. And I would have said what
10 the hell is this or something like that. But it
11 balanced, so I didn't do that.

12 Q. And in summary, okay, on a regular
13 basis; whether it's a daily basis, weekly basis,
14 monthly basis, what would you do in your role as
15 his supervisor or his boss to monitor and evaluate
16 what he was doing in making sure he was properly
17 performing the duties of his job?

18 A. I think I've answered you already on
19 that question.

20 Q. And that's why I said in summary, if
21 you could tell me one more time.

22 A. I reviewed the bank's financial reports
23 daily, which he was a participant in preparing or
24 having prepared or his area of responsibility was
25 included in the bank's total picture, financial

1 picture. I looked at the bank's what we call daily
2 statement, which was the position of the bank every
3 day. And if there was anything out of the ordinary
4 or if I needed an answer from his area, I would
5 contact him. If it was somebody else, I would
6 contact them.

7 And I believe that he would review them
8 as well and I believe that operations would review
9 them as well and financial. And I believe the
10 branches would review theirs as well, so a lot of
11 people reviewed the financials every day.

12 Q. Okay. Did you ever -- what's the right
13 word -- did you ever issue an evaluation of his
14 work that you had to do yearly evaluations for
15 people?

16 A. Yes.

17 Q. Who was Mr. Peters in the loan
18 department?

19 A. He was the administrator of the loan
20 department, David Peters..

21 Q. And did he answer to you also?

22 A. Yes.

23 Q. Okay. And there was some issues with
24 the loan department at some point?

25 A. In the latter part of '13, correct.

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MM

In the Matter Of:

Brookshire, Debi Baker v.
Community First Bank, Inc., et al

Donald G. Jones

August 25, 2016

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1 up to the audit committee that there was a
2 discrepancy?

3 A: The report that I wrote that I'm
4 referring to here.

5 Q: Right.

6 A: Never went to the audit committee. And
7 no audit committee meeting was ever called for that
8 year at all. That was Hiott's responsibility to
9 coordinate setting up the meeting --

10 Q: Right.

11 A: -- and responding to the reports and
12 that sort of thing.

13 Q: In the -- and, again, the report that
14 you're talking about is in that 35,000 pages. I
15 think I've seen -- I know I've seen it, but it's a
16 report discussing the \$5.6 million that's missing.

17 A: There is a report like that, I'm not
18 sure if that was in the investigation stuff. It may
19 have been.

20 Q: I don't have a copy of it, but I know
21 what you're talking about.

22 A: Yeah.

23 Q: If you would look to the next paragraph:
24 Gary Thrift asked Don Jones how long it would have
25 been before he took other action. Don Jones

EXHIBIT

NN

1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF OCONEE

4 DEBI BAKER BROOKSHIRE,
5 Plaintiff,

6 vs. CASE NO. 2014-CP-37-529

7 COMMUNITY FIRST BANK, INC., and
8 BENJAMIN LEE HIOTT,
9 Defendants.

10 DEPOSITION OF: JOHN HAMRICK

11 DATE: February 25, 2016

12 TIME: 12:02 PM

13 LOCATION: Haynsworth Sinkler Boyd
14 One North Main Street
2nd Floor
Greenville, SC

15 TAKEN BY: Counsel for the Plaintiff

16 REPORTED BY: AMY R. COPE,
17 Court Reporter

18 A. WILLIAM ROBERTS, JR., & ASSOCIATES

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25



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1 full accounting of her account?
2 A. No.
3 Q. So you didn't know that she had
4 requested a full accounting as long back as --
5 goosh, I might have written it down, August 23rd of
6 2010?
7 MS. BLACK: Object to the form.
8 THE WITNESS: (Shakes head side to
9 side).
10 BY MR. GIESE:
11 Q. You had no idea that she had requested
12 an accounting --
13 A. Never heard the name.
14 Q. And that she did it again on 9/22/2010?
15 A. No knowledge.
16 Q. And do you understand that she then
17 followed up numerous times trying to get a full
18 accounting?
19 MS. BLACK: Object to the form.
20 THE WITNESS: Prior to that date,
21 nothing.
22 BY MR. GIESE:
23 Q. So the first information you had that
24 Ms. Brookshire had a problem with her account was
25 mid July of 2013?

Page 16

1 what I wanted to find out.
2 BY MR. GIESE:
3 Q. But needless to say, you would expect
4 one?
5 MS. BLACK: Object to the form.
6 THE WITNESS: Certainly.
7 BY MR. GIESE:
8 Q. Okay. So you could understand
9 someone's concern if they didn't get one?
10 MS. BLACK: Object to the form.
11 THE WITNESS: Right.
12 BY MR. GIESE:
13 Q. And do you understand that
14 Ms. Brookshire still has not received a full
15 accounting?
16 MS. BLACK: Object to the form.
17 THE WITNESS: I do not know that.
18 BY MR. GIESE:
19 Q. But you're on the Board of Directors,
20 right?
21 A. Yes, sir. And we're not involved in
22 the day-to-day operation.
23 Q. So you did not meet with Don Jones
24 and -- do you know Don Jones?
25 A. I do.

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1 A. I'm not sure of that date, but there
2 were four other board members there.
3 Q. What's a quorum, five?
4 A. You know, I don't know how many board
5 members were there -- I mean, I don't know how many
6 board members at that time. And to be frank with
7 you, I don't know -- I said four other, we ordered
8 spaghetti for ten and I think four showed up or
9 five. It was an impromptu --
10 Q. Been there, done that.
11 A. -- let's get together and see what's
12 going on. I do remember what we ate.
13 Q. Now, Mr. Hamrick, do you have a deposit
14 account there, are you a depositor there?
15 A. I sure do.
16 Q. A shareholder too, I'm guessing?
17 A. I am.
18 Q. As a depositor, if you wanted to see a
19 full accounting of your account and you asked the
20 bank that you wanted a full accounting of your
21 account, how long would it take before you got mad
22 that they hadn't given you the full accounting?
23 MS. BLACK: Object to the form.
24 THE WITNESS: I don't know, two weeks,
25 three, depending on how big the account was and.

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1 Q. Okay. He's with Palmetto?
2 A. I think that's the name of his company.
3 Q. Did you ever meet with him about this
4 issue?
5 A. After the fact, after Fred told us. He
6 came to our Board meetings and we met several times
7 on this.
8 Q. And so in mid July of 2013 is when you
9 first found out about it. When was the next time
10 you had any contact with anybody about that case?
11 A. I don't know.
12 Q. You --
13 A. I know it was an ongoing matter, but I
14 don't -- I couldn't tell you if it was two months
15 or five months later.
16 Q. Was it in a board meeting or was it
17 someone talking to you?
18 A. It was in a board meeting or one of our
19 board meetings.
20 Q. And how often did you have board
21 meetings?
22 A. Once a month, sometimes twice depending
23 on the amount of business we have to discuss.
24 Q. So you found out -- the next time you
25 had contact with it was in a board meeting. Do you

EXHIBIT

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In the Matter Of:

Brookshire, Debi Baker v
Community First Bank, Inc., et al

Frederick D. Shepherd, Jr. REDACTED

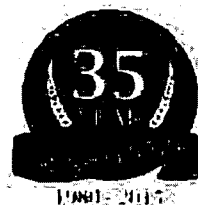
June 27, 2016

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1 that's written?

2 A. Oh, it's written, it says it is.

3 Q. You just don't know if you saw it or
4 not?

5 A. I don't believe I saw it.

6 Q. Because a Power of Attorney -- if
7 you're talking about a Power of Attorney, which
8 we'll talk about in a minute -- is a Power of
9 Attorney being held by a senior vice president of a
10 bank for a depositor unusual?

11 A. Yes.

12 Q. That would have piqued your interest?

13 A. I would have liked for him or her to
14 get -- to discuss this situation, but I'm sure it's
15 done -- I'm sure other institutions and other
16 people do it, especially for family or close
17 relatives or close relationships. A Power of
18 Attorney is not a trust --

19 Q. I understand that.

20 A. -- it's a Power of Attorney to
21 administer an account or administer funds or
22 whatever the Power of Attorney gives them.

23 Q. But that would have piqued your
24 interests, correct?

25 A. Piqued my interest?

EXHIBIT

PP

000 00007 03
ACCOUNT
DOCUMENTS

300701950
12

PAGE: 1
09/30/2008

DEBI BAKER BROOKSHIRE TRUST
DEBI BAKER BROOKSHIRE TRUSTEE
1707 DEVINE ST

COLUMBIA SC 29205

30-0
2
10

PLEASE VISIT OUR NEW OFFICE NOW OPEN AT 2007 EAST GREENVILLE ST.
ANDERSON, SC. (ACROSS FROM ANMED HEALTH CAMPUS ON HIGHWAY 81).
PHONE (864) 224-0178.

=====

PERFORMANCE INVESTMT ACCOUNT 300701950

=====

DESCRIPTION	DEBITS	CREDITS	DATE	BALANCE
BALANCE LAST STATEMENT				
INVESTMENT COUNTER WITHDRAWAL			08/29/08	69,888.09
FUNDS TRANSFER	8,052.25			
DEPOSIT # 127	10,000.00		09/08/08	61,835.84
INVESTMENT COUNTER WITHDRAWAL		69,120.00	09/08/08	51,835.84
			09/12/08	120,955.84
WIRE TRANSFER	3,200.00		09/15/08	117,755.84
WIRE TRANSFER	2,103.36		09/16/08	115,652.48
FUNDS TRANSFER	12,528.79		09/16/08	103,123.69
DEPOSIT	10,000.00		09/16/08	93,123.69
FUNDS TRANSFER	15,000.00	5,433.76	09/17/08	98,557.45
FUNDS TRANSFER	1,000.00		09/17/08	83,557.45
INVESTMENT COUNTER WITHDRAWAL			09/22/08	82,557.45
INVESTMENT COUNTER WITHDRAWAL	1,532.10		09/22/08	81,025.35
INVESTMENT COUNTER WITHDRAWAL	5,426.23		09/22/08	75,599.12
MISCELLANEOUS DEBIT	10,000.00		09/23/08	65,599.12
MISCELLANEOUS DEBIT	445.00		09/29/08	65,154.12
FUNDS TRANSFER	30,195.00		09/30/08	34,959.12
INTEREST	15,000.00		09/30/08	19,959.12
BALANCE THIS STATEMENT		147.87	09/30/08	20,106.99
			09/30/08	20,106.99

***** CONTINUED *****

Gleco-CFB 0172

ELECTRONICALLY FILED - 2016 Dec 09 4:58 PM - OGONE - COMMON PLEAS - CASE#2014CP3700526

000 00007 03
ACCOUNT
DOCUMENTS:

300701950
12

PAGE: 2
09/30/2008

DEBI BAKER BROOKSHIRE TRUST

=====

PERFORMANCE INVESTMT ACCOUNT 300701950

=====

TOTAL CREDITS	(3)	74,701.63	AVG AVAILABLE BALANCE	67,793.24
TOTAL DEBITS	(14)	124,482.73	AVERAGE BALANCE	74,443.04

- - - I N T E R E S T - - -

AVERAGE LEDGER BALANCE:	74,443.04	INTEREST EARNED:	147.87
AVERAGE AVAILABLE BALANCE:	67,793.24	DAYS IN PERIOD:	32
INTEREST PAID THIS PERIOD:	147.87	ANNUAL PERCENTAGE YIELD EARNED:	2.52%
INTEREST PAID 2008:	4,007.69		

- - - ITEMIZATION OF NSF PAID AND RETURNED ITEM FEES - - -

	THIS PERIOD	YEAR TO DATE
NSF PAID ITEM FEE:	.00	.00
NSF RETURNED ITEM FEE:	.00	.00
OVERDRAFT FEES:	.00	.00

Giese CFB 0173

ELECTRONICALLY FILED - 2016 Dec 09 4:58 PM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

7000097

ELECTRONICALLY FILED - 2016 Dec 09 4:58 PM - 060NEE - COMMON PLEAS - CASE#2014CP3700526

VOID

Wire/Funds Transfer Payment Order

7000097

BENEFICIARY BANK BENEFICIARY DATA

Originating Bank Processing Data

Name of Institution: JP MORGAN CHASE

Branch Information:

Beneficiary Name: CAROL M. [unclear] INC

Beneficiary Address:

Beneficiary City/State/Zip:

Beneficiary Account Number:

Instructions:

Method of Payment: Other

Originator Data

Sender's Name: CLCB MO

Sender's Address:

Sender's City/State/Zip:

Sender's Account Number:

Sender's Signature: [Signature]

CLCB MO

0532021301 500601091

050 0000210336

Actually deleted
to 300701950
on 9-16-08
Block: 0078

Wire/Funds Transfer Payment Order 70000970

ORIGINATING BANK PROCESSING DATA

Beneficiary Bank: **JP MORGAN CHASE** Date: **09/11/2008** Time: **03:27:08 PM** Fee: \$ **0.00**

Branch Information: **JP MORGAN CHASE** Method of Payment: **Other**

Account Number: **00000000000000000000** Record Kept? ☐ Yes

Instructions: **00000000000000000000** Sender's Name: **CLO LLC**

ORIGINATOR DATA

Address: **0 -** O.L. No. **1252879**

City: **00000000000000000000** Dollar Amount: \$ **1252879**

State: **00000000000000000000** Signature: X

Zip: **00000000000000000000**

THIS CHECK CONTAINS AN ARTIFICIAL LINE LINK ON BACK. MICROPRINTS, FLUORESCENT FIBERS AND IS CHEMICALLY REACTIVE.

⑆053202130⑆ 500601091⑆ 066 ⑆0001252879⑆

① Acct of CLO LLC indicated, but

Actually debited
to 300701950
on 9-16-2008
Block 0076

Giese-CFB 0186

EXHIBIT

QQ

000 00007 03
ACCOUNT
DOCUMENTS:

300701950
12

PAGE: 1
09/30/2008

DEBI BAKER BROOKSHIRE TRUST
DEBI BAKER BROOKSHIRE TRUSTEE
1707 DEVINE ST

COLUMBIA SC 29205

30-0
2
10

* PLEASE VISIT OUR NEW OFFICE NOW OPEN AT 2007 EAST GREENVILLE ST.
* ANDERSON, SC. (ACROSS FROM ANMED HEALTH CAMPUS ON HIGHWAY 81)
* PHONE (864) 224-0178.

=====

PERFORMANCE INVESTMT ACCOUNT 300701950

=====

DESCRIPTION	DEBITS	CREDITS	DATE	BALANCE
BALANCE LAST STATEMENT				
INVESTMENT COUNTER WITHDRAWAL			08/29/08	69,888.09
FUNDS TRANSFER	8,052.25		09/08/08	61,835.84
DEPOSIT # 127	10,000.00		09/08/08	51,835.84
INVESTMENT COUNTER WITHDRAWAL		69,120.00	09/12/08	120,955.84
WIRE TRANSFER	3,200.00		09/15/08	117,755.84
WIRE TRANSFER	2,103.36		09/16/08	115,652.48
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FUNDS TRANSFER	15,000.00		09/17/08	83,557.45
INVESTMENT COUNTER WITHDRAWAL	1,000.00		09/22/08	82,557.45
INVESTMENT COUNTER WITHDRAWAL	1,532.10		09/22/08	81,025.35
INVESTMENT COUNTER WITHDRAWAL	5,426.23		09/22/08	75,599.12
MISCELLANEOUS DEBIT	10,000.00		09/23/08	65,599.12
MISCELLANEOUS DEBIT	445.00		09/29/08	65,154.12
FUNDS TRANSFER	30,195.00		09/30/08	34,959.12
INTEREST	15,000.00		09/30/08	19,959.12
BALANCE THIS STATEMENT		147.87	09/30/08	20,106.99
			09/30/08	20,106.99

***** CONTINUED *****

Glese-CFB 0172

000 00007 03
ACCOUNT:
DOCUMENTS:

300701950
12
PAGE: 2
09/30/2008

DEBI BAKER BROOKSHIRE TRUST

PERFORMANCE INVESTMT ACCOUNT 300701950

TOTAL CREDITS:	(3)	74,701.63	AVG AVAILABLE BALANCE:	67,793.24
TOTAL DEBITS:	(14)	124,482.73	AVERAGE BALANCE:	74,443.04

I N T E R E S T

AVERAGE LEDGER BALANCE:	74,443.04	INTEREST EARNED:	147.87
AVERAGE AVAILABLE BALANCE:	67,793.24	DAYS IN PERIOD:	32
INTEREST PAID THIS PERIOD:	147.87	ANNUAL PERCENTAGE YIELD EARNED:	2.52%
INTEREST PAID 2008:	4,007.69		

ITEMIZATION OF NSF PAID AND RETURNED ITEM FEES

	THIS PERIOD	YEAR TO DATE
NSF PAID ITEM FEE:	.00	.00
NSF RETURNED ITEM FEE:	.00	.00
OVERDRAFT FEES:	.00	.00

Giese-CFB 0173

ELECTRONICALLY FILED: 2016 Dec 09 4:58 PM - O'CONNOR - COMMON PLEAS - CASE#2014CE3700526

Wire/Funds Transfer Payment Order

70000974

ORIGINATING BANK PROCESSING DATA

Branch Information: **WACHOVIA**

Date: **09/12/2008** Time: **05:02:11 PM** Fee: **\$ 0.00**

Method of Payment: **Other**

Sender's Name: **CLCB LLC**

Address: **SENECA SC**

City: **0 -**

State: **00000000**

Zip: **00000000**

Country: **00000000**

DL No. **00000000**

Dollar Amount: **\$ 15000.00**

Signature: **X**

UnGoing BDA

053202130 500601091 066 0001500000

Actually charged to
300701950
Deb: Brookshire

ELECTRONICALLY FILED - 2016 Dec 09 4:58 PM - OGCONE - COMMONPLEAS - CASE#2014CP3700526

EXHIBIT RR

000 00007 03
ACCOUNT:
DOCUMENTS:

300701950
9

PAGE: 1
11/28/2008

DEBI BAKER BROOKSHIRE TRUST
DEBI BAKER BROOKSHIRE TRUSTEE
1707 DEVINE ST
COLUMBIA SC 29205

30-0
1
8

* AS PART OF THE ECONOMIC STABILIZATION BILL, A TEMPORARY INCREASE *
* IN FDIC INSURANCE COVERAGE IS EFFECTIVE IMMEDIATELY. *
* COVERAGE RAISES TO \$250,000 PER DEPOSITOR THROUGH DECEMBER 31,2009 *

=====

PERFORMANCE INVESTMT ACCOUNT 300701950

=====

DESCRIPTION	DEBITS	CREDITS	DATE	BALANCE
BALANCE LAST STATEMENT			10/31/08	284,407.05
IDS TRF	85,000.00		11/01/08	199,407.05
CELLANEIOUS DEBIT	27,708.15		11/03/08	171,698.90
INVESTMENT COUNTER WITHDRAWAL	16,560.00		11/03/08	155,138.90
INVESTMENT COUNTER WITHDRAWAL	167.98		11/05/08	154,970.92
INVESTMENT COUNTER WITHDRAWAL	3,000.00		11/05/08	151,970.92
INVESTMENT COUNTER WITHDRAWAL	46.99		11/06/08	151,923.93
INVESTMENT COUNTER WITHDRAWAL	3,200.00		11/06/08	148,723.93
BAKERANDBAKER BAKER		5,433.76	11/14/08	154,157.69
DEPOSIT		1,600.00	11/17/08	155,757.69
INVESTMENT COUNTER WITHDRAWAL	10,000.00		11/21/08	145,757.69
INVESTMENT COUNTER WITHDRAWAL	27,573.00		11/21/08	118,184.69
INTEREST		331.28	11/28/08	118,515.97
BALANCE THIS STATEMENT			11/28/08	118,515.97
TOTAL CREDITS (3)	7,365.04			145,722.70
TOTAL DEBITS (9)	173,256.12			145,779.84
* * * C O N T I N U E D * * *				

Gleese-CFB 0234

ELECTRONICALLY FILED - 2016 Dec 09 4:58 PM - OCONEE - COMMON PLEAS - CASE#2017ACP3700526

000.00007 03
ACCOUNT:
DOCUMENTS:

300701950

PAGE: 2
11/28/2008

DEBI BAKER BROOKSHIRE TRUST

PERFORMANCE INVESTMT ACCOUNT 300701950

I N T E R E S T

AVERAGE LEDGER BALANCE:	145,779.84	INTEREST EARNED:	331.28
AVERAGE AVAILABLE BALANCE:	145,722.70	DAYS IN PERIOD:	28
INTEREST PAID THIS PERIOD:	331.28	ANNUAL PERCENTAGE YIELD EARNED:	3.00%
INTEREST PAID 2008:	4,927.86		

ITEMIZATION OF NSF PAID AND RETURNED ITEM FEES

	THIS PERIOD	YEAR TO DATE
NSF PAID ITEM FEE:	.00	.00
NSF RETURNED ITEM FEE:	.00	.00
OVERDRAFT FEES:	.00	.00

Giese CFB 0235

ELECTRONICALLY FILED - 2016 Dec 09 4:58 PM - OCONEE - COMMON PLEAS - CASE#2014CP3700526

GENERAL LEDGER CREDIT

Commonwealth First Bank
Wire Transfer
Outgoing-DOA

Item Number:	98001004	Acct:	0 16,500.00	For:	0 13.00
Date:	10/31/2008	Time:	13:06	Loc:	01-05/007
From:	CLCB LLC	Payee:	ROCK HILLS OF ARKANSAS LLC		

⑆053202130⑆ 1024001⑆ 658.00001656000⑆

GL Credits - 11/03/2008

11/03/2008 71088812438 ⑆053202130⑆ CFB Bankway

GL Credits - 11/03/2008

DDA/DDC - DEBIT TRANSACTION FORM

ACCOUNT NAME: CLCB Bankway DATE: 11/3/08

PREPARED BY: CLCB

AMOUNT: 16560.00

REGULAR DEBIT TRANSACTION

01 - OVERDRAFT CHARGE	03 - PAY FIRST CHECK
02 - CHECK HANGING CHARGE	04 - FEDERAL WITHDRAWAL
05 - MISC. DEBIT	06 - SERVICE CHARGE
07 - OFFICER APPROVED CHECK	08 - SALES TAX
09 - LOAN PAYMENT	09 - CLOSE ACCOUNT WITHDRAWAL
10 - PAY FIRST CHECK	

LOAN DEBITING TRANSACTION

01 - LOAN ADVANCE
02 - PAYMENT ADVANCE

⑆5555⑆5001⑆

300701950

DDA Debits - 11/03/2008

11/03/2008 71088812438 ⑆053202130⑆ CFB Bankway

DDA Debits - 11/03/2008

Substituted for original portion of multi-part wire form

Giese-CFB 0237

EXHIBIT

SS

TIGHE

Kathleen M. McDaniel - Attorney
803-404-6900
KathleenMcDaniel@callsonTighe.com

October 19, 2010

Frederick D. Shepherd, Jr.
President, Community First Bancorporation
449 Highway 123 Bypass
Seneca, South Carolina 29678

James E. McCoy
Chairman, Board of Directors
Community First Bank
449 Highway 123 Bypass
Seneca, South Carolina 29678

Re: Debi Baker-Brookshire financial matters
Our file number: 1345.001

Dear Mr. Shepherd and Chairman McCoy:

This firm represents Debi Baker-Brookshire in certain matters concerning her personal finances. One of those matters is an account that Ms. Baker-Brookshire had at your bank for several years and her unfruitful attempts to obtain information regarding that account.

In June of 2007, Ms. Baker-Brookshire deposited over \$1 million into a trust account at Community First Bank. It was Ms. Baker-Brookshire's understanding and desire that Ben Hiott, Senior Vice President at the Walhalla branch, would provide her with guidance and assistance in handling her personal finances through management of this account. Unfortunately, Mr. Hiott has failed to provide Ms. Baker-Brookshire with important information when requested, which failure has caused Ms. Baker-Brookshire to be unable to assess the true status of her personal finances. I, therefore, am writing to you to request your assistance in obtaining this information from Community First Bank.

On August 23, 2010, I spoke with Mr. Hiott on the telephone and requested that he send me a full and complete accounting of Ms. Baker-Brookshire's account. Ms. Baker-Brookshire had made multiple requests previously for the same information but no information had been forthcoming. In response our telephone conversation, Mr. Hiott faxed to me a copy of what appears to be a computer-generated report of wire transfers out of Ms. Baker-Brookshire's account. I have enclosed a copy of the information provided by Mr. Hiott.

This information is not a full and complete accounting of the over \$1 million that was deposited into the account. Therefore, on September 21, 2010, I sent a letter to Mr. Hiott

Giese-CFB 1247

EXHIBIT

TT



Kathleen M. McDaniel - Attorney
803-404-6900
KathleenMcDaniel@callsonthigh.com

November 18, 2010

Frederick D. Shepherd, Jr.
President, Community First Bancorporation
449 Highway 123 Bypass
Seneca, South Carolina 29678

James E. McCoy
Chairman, Board of Directors
Community First Bank
449 Highway 123 Bypass
Seneca, South Carolina 29678

Re: **Debi Baker-Brookshire financial matters**
Our file number: 1345.001

Dear Mr. Shepherd and Chairman McCoy:

Following my letter to you dated October 19, 2010, regarding the financial affairs of Mrs. Debi Baker-Brookshire, I received the enclosed letter from Ben Hiott. Unfortunately, Mr. Hiott's response to my requests for information have so far been inadequate.

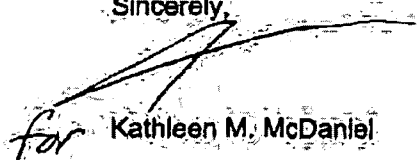
After I received Mr. Hiott's response, I conferred with my client, and she as well as her personal bookkeeper have confirmed that they have not received monthly account statements for Mrs. Baker-Brookshire's accounts at Community First Bank in quite some time if ever. Furthermore, this information should be straightforward for Mr. Hiott or some other employee of Community First Bank to generate and provide to Mrs. Baker-Brookshire. I, therefore, do not understand Mr. Hiott's reluctance to provide the requested information.

As I have been unable to obtain the requested information directly from Mr. Hiott, I am again asking that you assist me in obtaining this information for Mrs. Baker-Brookshire.

Thank you for your assistance with this matter.

With kind regards, I am

Sincerely,


for Kathleen M. McDaniel

Encl:

cc: Debi Baker-Brookshire
Ben Hiott

Giese-CFB 1250

EXHIBIT

UU

In the Matter Of:
**Brookshire, Debi Baker v
Community First Bank, Inc., et al**

Frederick D. Shepherd, Jr. REDACTED
June 27, 2016

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1 banking business we do a lot of checks. And our
2 checks and balances are how we follow things. And
3 it's designed to -- if there wasn't an entry
4 offsetting it, then I would have seen the next
5 morning that there was an entry that didn't
6 balance and I would have probably gone to him -- I
7 would have seen that it didn't balance, understand?

8 Q. Sure.

9 A. All right. And I would have said what
10 the hell is this or something like that. But it
11 balanced, so I didn't do that.

12 Q. And in summary, okay, on a regular
13 basis; whether it's a daily basis, weekly basis,
14 monthly basis, what would you do in your role as
15 his supervisor or his boss to monitor and evaluate
16 what he was doing in making sure he was properly
17 performing the duties of his job?

18 A. I think I've answered you already on
19 that question.

20 Q. And that's why I said in summary, if
21 you could tell me one more time.

22 A. I reviewed the bank's financial reports
23 daily, which he was a participant in preparing or
24 having prepared or his area of responsibility was
25 included in the bank's total picture, financial

51
1 picture. I looked at the bank's what we call daily
2 statement; which was the position of the bank every
3 day. And if there was anything out of the ordinary
4 or if I needed an answer from his area, I would
5 contact him. If it was somebody else, I would
6 contact them.

7 And I believe that he would review them
8 as well and I believe that operations would review
9 them as well and financial. And I believe the
10 branches would review theirs as well, so a lot of
11 people reviewed the financials every day.

12 Q. Okay. Did you ever -- what's the right
13 word -- did you ever issue an evaluation of his
14 work that you had to do yearly evaluations for
15 people?

16 A. Yes.

17 Q. Who was Mr. Peters in the loan
18 department?

19 A. He was the administrator of the loan
20 department, David Peters.

21 Q. And did he answer to you also?

22 A. Yes.

23 Q. Okay. And there was some issues with
24 the loan department at some point?

25 A. In the latter part of '13, correct.

EXHIBIT

VV

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Debi Baker Brookshire,

Plaintiff,

v.

Community First Bank, Inc. and
Benjamin Lee Hiott,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2014-CP-37-526

**DEFENDANT COMMUNITY FIRST
BANK, INC.'S RESPONSES TO
PLAINTIFF'S FIRST
REQUESTS FOR PRODUCTION**

TO: DEBI BAKER BROOKSHIRE AND HER ATTORNEY W. BARNEY GIESE:

Pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, Defendant Community First Bank, Inc. ("Community First Bank") answers Plaintiff's First Requests for Production as follows:

REQUESTS FOR PRODUCTION

1. All documents or tangible items identified in Defendant Community First Bank's Answers to Plaintiff's Interrogatories.

RESPONSE: Responsive, non-privileged documents will be made available for inspection and copying at a mutually convenient time and place. Some responsive documents will be produced upon the entry of a protective order, as detailed in Community First Bank's answers to Plaintiff's interrogatories.

2. Any and all documents related to Debi Baker Brookshire's Trust account, account number 300701950.

RESPONSE: Community First Bank objects to this request to the extent it implies or states that Plaintiff's account at Community First Bank was a trust account with the Bank serving as trustee. Plaintiff's account at Community First

Bank was a deposit account held in the name of Debi Baker Brookshire as Trustee for the Debi Baker Brookshire Trust. Community First Bank further objects to the request on the grounds that it is overly broad, vague, and ambiguous in that it seeks "[a]ny and all documents related to" Plaintiff's account. Subject to and notwithstanding this objection, responsive, non-privileged account documents will be made available for inspection and copying at a mutually convenient time and place.

3. Community First Bank, Inc. stock certificates issued to Debi Baker Brookshire that prove Ms. Brookshire's ownership of such stock.

RESPONSE: This Defendant objects to this request on the grounds that it is vague and ambiguous in that it refers to stock certificates that "prove" Plaintiff's ownership of stock. Without waiving its objection, the Bank agrees to produce documents pertaining to Plaintiff's record ownership of shares of Community First Bancshares for inspection and copying at a mutually convenient time and place. Those documents do not reflect whether Plaintiff owned a beneficial interest in other shares held in "street name."

4. Any and all documents that relate to or support any affirmative defense or averment in Defendant Community First Bank, Inc.'s Answer and Counterclaim.

RESPONSE: Responsive, non-privileged documents will be made available for inspection and copying at a mutually convenient time and place.

5. Any and all documents concerning any statement made by Defendants or their agents, servants, employees or former employees concerning the subject matter of this action.

RESPONSE: This Defendant objects to this interrogatory on the grounds that it is vague, ambiguous, and overly broad. Without waiving its objections, this Defendant agrees to produce relevant and non-privileged documents at a mutually convenient time and place.

6. Copies of all insurance policies, including but not limited to bonds, fidelity insurance, commercial general liability insurance, excess or umbrella insurance, or any other policy which might potentially provide coverage for acts alleged in the Complaint.

RESPONSE: This Defendant agrees to produce the subject insurance policy at a mutually convenient time and place.

7. All letters, correspondence, emails or any other form of communication between or among any employees or former employees of Defendant Community First Bank, Inc. wherein the subject of the communication is Plaintiff and/or her account. This request includes management, supervisory positions, board members and any other person authorized to act on behalf of Defendant Community First Bank, Inc.

RESPONSE: Community First Bank will make a reasonably diligent search for responsive documents as maintained in the ordinary course of Community First Bank's business and will produce responsive and non-privileged documents for inspection and copying at a mutually convenient time and place.

8. Produce all forensic accountings or audits conducted on Plaintiff's account from June 22, 2007 to present. If Plaintiff's account was not individually audited, provide a complete copy of all forensic accountings or audits which involved a review of Plaintiff's account.

RESPONSE: This Defendant agrees to produce responsive, non-privileged documents regarding Plaintiff's account for inspection and copying at a mutually

convenient time and place. This Defendant objects to further response on the grounds that the request is overly broad, vague, ambiguous, and seeks documents that are confidential and privileged.

9. All policies and procedures for monitoring activity in customers' accounts for the purpose of detecting or preventing fraud or unauthorized account activity, including unauthorized withdrawals or transfers.

RESPONSE: Community First Bank objects to this request on the grounds that it seeks confidential and proprietary business information. Subject to and notwithstanding this objection, Community First Bank will make relevant, non-privileged documents available for inspection and copying at a mutually convenient time and place to the extent such documents exist.

10. All written policy and procedure manuals defining or in any way relating to "journal transfers," "investments counter withdrawals," and "miscellaneous debits."

RESPONSE: Community First Bank objects to this request on the grounds that it seeks confidential and proprietary business information. Subject to and notwithstanding this objection, Community First Bank will make relevant, non-privileged documents available for inspection and copying at a mutually convenient time and place to the extent such documents exist.

11. If Defendant has retained or in the future does retain an expert on any matter in this case, produce any reports generated by the expert or a summary of any opinions to be offered by the expert.

RESPONSE: Community First Bank will produce copies of these documents should they be generated in the future.

12. All documents generated or produced in connection with Community First Bank Account 1222001.

RESPONSE: Community First Bank objects to this request on the grounds that it is overbroad, seeks documents irrelevant to the claims and defenses in this case, and is not sufficiently tailored to seek discovery of relevant or admissible evidence. This account number refers to a miscellaneous accounts receivable accounting line on Community First Bank's general ledger and is not a customer account nor a deposit account. Subject to and notwithstanding these objections, see Plaintiff's account documents for relevant information about interactions between Plaintiff's account and Community First Bank Account 1222001, which will be made available for inspection and copying at a mutually convenient time and place.

13. Produce a copy of Defendant Benjamin Lee Hiott's personnel file.

RESPONSE: Community First Bank objects to this request on the grounds that it seeks confidential information. Subject to and notwithstanding this objection, relevant portions of Mr. Hiott's personnel file will be made available for inspection and copying upon the entry of a protective order.

14. Any and all documents generated or produced in connection with any loans made by Defendant Community First Bank, Inc. to the following individuals or entities:

- (a) Joseph C. Crosby, Jr.
- (b) Kristina Crosby
- (c) CLCB, LLC
- (d) Falcon's Lair
- (e) MPS Development, Inc.

(f) MPS Golf Course, Inc.

(g) Benjamin Lee Hiott

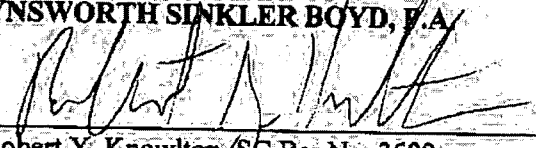
(h) Marc Hiott

(i) Hilltop, Inc.

(j) Upstate Real Estate

RESPONSE: Community First Bank objects to the production of loan files (if any) for third party customers on the grounds that such information is confidential, irrelevant to the claims and defenses asserted in this case, and the request is not sufficiently tailored to lead to the discovery of admissible evidence.

HAYNSWORTH SINKLER BOYD, P.A.

By: 

Robert Y. Knowlton, SC Bar No. 3589

Elizabeth H. Black, SC Bar No. 76067

1201 Main Street - 22nd Floor

PO Box 11889 (29211-1889)

Columbia, SC 29201

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Attorneys for Defendant Community First Bank, Inc.

December 15, 2014

Columbia, South Carolina

Dm. 3901994 v.1

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Debi Baker Brookshire,

Plaintiff,

v.

Community First Bank, Inc. and
Benjamin Lee Hiott,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2014-CP-37-0526

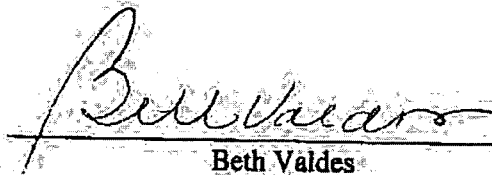
CERTIFICATE OF SERVICE

I, the undersigned employee of Haynsworth Sinkler Boyd, P.A., do hereby certify that I have this 15th day of December 2014, caused the foregoing documents to be served via U.S. Mail, postage-prepaid on plaintiff's counsel of record at the address shown below:

Documents to be Served:

1. Defendant Community First Bank, Inc.'s Answers to Debi Baker Brookshire's First Set of Interrogatories; and
2. Defendant Community First Bank, Inc.'s Responses to Debi Baker Brookshire's First Requests for Production of Documents.

W. Barney Giese, Esq.
The Giese Law Firm
1315 Blanding Street
Columbia, SC 29201
Attorneys for Plaintiff



Beth Valdes

Dim: 3915981 v.1

EXHIBIT

WW

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BEVERLY H. WHITFIELD
CLERK OF COURT

2015 FEB 25 PM 2:43

STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)
Debi Baker Brookshire,)
Plaintiff,)
v.)
Community First Bank, Inc. and)
Benjamin Lee Hiott,)
Defendants.)

COURT OF COMMON PLEAS

Case No.: 2014-CP-37-526

ORDER

This matter is before the Court upon motion by Defendant Ben Hiott to dismiss the Complaint against him pursuant to Rules 12(b)(6) and 12(c) of the South Carolina Rules of Civil Procedure. The Court heard arguments of counsel for Defendant Hiott and Plaintiff Debi Brookshire in Oconee County Court of Common Pleas on January 26, 2015. Also present at the hearing was Attorney Robert Knowlton, representing Defendant Community First Bank, Inc. Prior to the hearing, the attorneys for Defendant Hiott and Plaintiff Brookshire submitted to the Court written memoranda of law setting forth their respective positions on the Motion to Dismiss. After carefully considering the written memoranda and the arguments of counsel, and for the reasons set forth below, Defendant Hiott's Motion to Dismiss is denied.

Rule 12(b)(6) and 12(c) Standards

In considering a motion to dismiss under Rule 12(b)(6), SCRCP, this Court must base its ruling solely on allegations set forth in the complaint. If the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper. Furthermore, the complaint should not be dismissed merely because the Court

doubts the plaintiff will prevail in the action. *Spence v. Spence*, 368 S.C. 106, 628 S.E.2d 869, 874 (2006); see also, *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999).

A motion under Rule 12(c), SCRCP, is judged by essentially the same standard:

Any party may move for a judgment on the pleadings under Rule 12(c), SCRCP. When considering such motion, the court must regard all properly pleaded factual allegations as admitted. On review of the motion, the court may not consider matters outside the pleadings.

A judgment on the pleadings against the plaintiff is not proper if there is an issue of fact raised by the complaint which, if resolved in favor of the plaintiff, would entitle him to judgment. When a fact is well pleaded, any inference of law or conclusions of fact that may properly arise therefrom are to be regarded as embraced in the averment. Moreover, a complaint is sufficient if it states any cause of action or it appears that the plaintiff is entitled to any relief whatsoever. Our courts have held that pleadings in a case should be construed liberally so that substantial justice is done between the parties. Furthermore, a judgment on the pleadings is considered to be a drastic procedure by our courts:

Falk v. Sadler, 341 S.C. 281, 286-87, 533 S.E.2d 350, 353 (Ct. App. 2000) (internal citations omitted).

Defendant Hiott's Motion to Dismiss is based on his argument that the allegations of the complaint establish as a matter of law that the statute of limitations has lapsed on all of the Plaintiff's putative claims. Under South Carolina law, the statute of limitations is an affirmative defense. See Rule 8(c), SCRCP; *Hedgepath v. American Tel. & Tel. Co.*, 348 S.C. 340, 559 S.E.2d 327 (Ct. App. 2001) (the statute of limitations is an affirmative defense). An affirmative defense "ordinarily may not be asserted in a motion to dismiss under Rule 12(b)(6) unless the allegations of the complaint demonstrate the existence of the affirmative defense." *Spence, supra*, at 123, 628 S.E.2d at 878. "[B]ecause the factual analysis of a Rule 12(b)(6) motion is confined to the four corners of the complaint, an affirmative defense usually must be pled in an

answer and either resolved in later motions such as summary judgment or directed verdict or at trial." *Id.*

In deciding this motion, the Court must necessarily construe the allegations in the complaint in the light most favorable to the Plaintiff. *See Spence, Baird, and Falk, supra.* Applying the standards for determining a motion to dismiss based on Rules 12(b)(6) and 12(c), SCRCP, the Court – without reaching any conclusion as to the veracity of any of the allegations – finds that the Complaint has alleged facts sufficient to state a basis for relief. The allegations set forth in the Complaint do not establish the affirmative defense of the statute of limitations. Based on the stringent standard for deciding motions to dismiss brought pursuant to Rules 12(b)(6) and Rule 12(c), SCRCP, the Court at this time must deny Defendant Hiott's motion to dismiss.

Equitable Tolling

In the alternative, the Court finds that Defendant Hiott's Motion to Dismiss should be denied because the allegations in the Complaint, construed in the light most favorable to the Plaintiff, give rise to application of the doctrine of equitable tolling. Equitable tolling is a judicially created doctrine or concept. *Hooper v. Ebenezer Senior Services and Rehabilitation Center*, 386 S.C. 108, 687 S.E.2d 29 (2009). The doctrine of equitable tolling "stems from the judiciary's inherent power to formulate rules of procedure where justice demands it. Where a statute sets a limitation period for action, courts have invoked the equitable tolling doctrine to suspend or extend the statutory period to ensure fundamental practicality and fairness." *Id.* at 115, 687 S.E.2d at 32 (internal citations and quotation marks omitted). Equitable tolling is judicial recognition that "a defendant may be estopped from claiming the statute of limitations as a defense if the delay that otherwise would give operation to the statute had been induced by the

defendant's conduct." *Black v. Lexington School Dist. 2*, 327 S.C. 55, 61, 488 S.E.2d 327, 330 (1997). The South Carolina Supreme Court recognized in *Hooper, supra*, that there is no bright-line test for determining application of equitable tolling. The rule "exists to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other." *Id.* at 116, 687 S.E.2d at 33.

In her Complaint, the Plaintiff alleges Defendant Hiott engaged in a course of conduct whereby Hiott manipulated funds in the Plaintiff's trust account and took steps to avoid detection and to conceal the financial transactions involving the Plaintiff's account funds. She further alleges Hiott misrepresented to her the amount of money in her account, misrepresented to her how funds in her account had been spent, and refused to provide her with an accounting when she asked for one. *See* Complaint, ¶¶ 15, 45, 46, 51, 83, 93, 94, 95, 135, 136, and 137.

As an alternative reason for denying Defendant Hiott's Motion to Dismiss, and assuming the truth of the allegations in the Complaint, the Court finds Plaintiff has made sufficient assertions of fact to give rise to equitable tolling of the statute of limitations.

S.C. Code Section 15-3-110

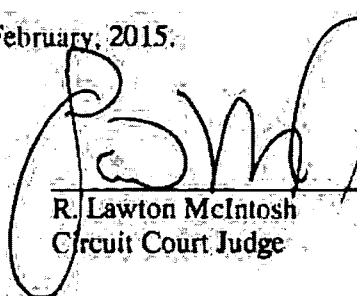
Plaintiff argued in her memorandum in opposition and at the hearing on the Motion to Dismiss that South Carolina Code Section 15-3-110 applies to some or all of the claims alleged in her Complaint. Section 15-3-110 provides that "[l]imitations are not applicable to bills, notes or other evidence of debt issued by moneyed corporations. This chapter shall not affect actions to enforce the payment of bills, notes or other evidences of debt issued by moneyed corporations or issued or put in circulation as money." S.C. Code §15-3-110. The Section does not define "moneyed corporation." Neither party could cite a case that has ever applied Section 15-3-110;

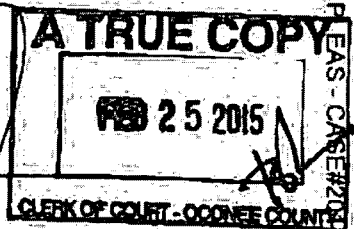
but Plaintiff cited Miriam-Webster Dictionary which defines "moneyed corporation" as "a corporation authorized to engage in the investment of moneyed capital." Defendant Hiott failed to provide any contrary definition, but instead offered public policy arguments why the statute should not apply to the Plaintiff's claims. This Court is bound to apply the law as determined by the legislature. Giving the words in Section 15-3-110 their common meaning, the Court is not convinced at this stage of the litigation that the statute cannot apply. As an alternative grounds for denying Defendant Hiott's Motion to Dismiss, the Court finds that the allegations set forth in the Complaint may be governed by Section 15-3-110.

CONCLUSION

For the reasons set forth above, Defendant Hiott's Motion to Dismiss pursuant to Rules 12(b)(6) and 12 (c), SCRCP, is hereby denied.

IT IS SO ORDERED, this 20 day of February, 2015.


R. Lawton McIntosh
Circuit Court Judge



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CLERK OF COURT
2015 FEB 25 PM 2 43

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF OCONEE

Debi Baker Brookshire,

Case No. 2014-CP-37-526

Plaintiff,

v.

Community First Bank, Inc. and
Benjamin Lee Hiott,

Defendants.

**DEFENDANT COMMUNITY FIRST BANK, INC.'S REPLY MEMORANDUM IN
FURTHER SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

Defendant Community First Bank, Inc. ("Community First") herein replies in further support of its Motion for Summary Judgment ("Motion") and in specific response to Plaintiff Debi Baker Brookshire's ("Plaintiff") Memorandum in Opposition filed on December 9, 2016. Plaintiff utterly fails to respond to critical and dispositive grounds for summary judgment raised by Community First. Plaintiff further repeatedly misrepresents key facts and fails to cite to any evidence in the record for numerous points. Ultimately, Plaintiff's efforts to show that there is a genuine issue of material fact to preclude summary judgment fail. Community First is entitled to summary judgment as a matter of law.

I. Plaintiff completely fails to respond to several of Community First's grounds for summary judgment.

Two of Community First's overarching grounds for summary judgment on all claims are (1) the statutory immunity granted to Community First as a third party relying on a power of attorney (Motion pp. 4-6; Mem. in Support pp. 17-18) and (2) the statute of repose under the

South Carolina Uniform Commercial Code (“UCC”) that completely bars a customer’s claim against a bank for an unauthorized disbursement (Motion pp. 9-10; Mem. in Support pp. 21-24). Plaintiff’s 40-page memorandum in opposition does not discuss these two foundational issues. Consequently, Plaintiff does not and cannot point to any evidence in this matter to preclude summary judgment to Community First on all claims.

II. Plaintiff’s strenuous and tortuous efforts to categorize her account at Community First as a “trust account” fail.

There is no documentary or testamentary evidence to support Plaintiff’s claim that the account she held at Community First ending in 1950 (the “Account”) was a trust account, yet Plaintiff persists in this baseless claim. Ultimately, this is a case that boils down to what the contracts *actually say* that govern the relationships between Plaintiff and Hiott (the May 25, 2007 power of attorney (the “POA”), Ex. 9)¹ and between Plaintiff and Community First (the June 2007 account agreement (the “Account Agreement”), Ex. 24 at Ex. 7 thereto). As a matter of public policy and law, Plaintiff is charged with knowledge of and is bound by the terms of her written contracts. *Burwell v. S.C. Nat’l Bank*, 288 S.C. 34, 39, 340 S.E.2d 786, 789 (1986) (“One cannot complain of fraud and misrepresentation in the contents of a document if the truth could have been ascertained by reading it.”); *Regions Bank v. Schmauch*, 354 S.C. 648, 663-64, 582 S.E.2d 432, 440 (Ct. App. 2003). Here, those terms are the unambiguous terms of the POA and Account Agreement. *See* Mem. in Support pp. 17-18; Ex. 9; Ex. 24 at Ex. 7 thereto. In addition, under the UCC, Plaintiff has a duty to obtain and review her Account statements – in essence she is charged with knowledge of the contents of her statements. *See* Mem. in Support pp. 21-24.

¹ All references to numbered exhibits 1-56 are to the exhibits attached to Community First’s memorandum in support filed on December 9, 2016. Exhibits beginning at number 57 are attached hereto.

The Account Agreement clearly and unambiguously states that the Account description is “Business Premium Investment Checking” and the owner/signer of the Account is “Debi Baker Brookshire Trustee.” Ex. 24, at Ex. 7 thereto.² Plaintiff contorts the plain language of the Account Agreement to argue that the typed words “Trust Accounts” somehow morphs the disclosed “Business Premium Investment Checking” Account into a trust account with Community First serving as trustee (Mem. in Opp. pp. 17-18), yet completely fails to mention that the typed words “Trust Accounts” appears under the heading “Ownership of Account.” Ex. 24 at Ex. 7 thereto. The plain language of the Account Agreement and other Account opening documentation (Plaintiff’s Exhibit A) is exactly what Community First has always maintained: this was a checking account opened in the name of and owned by a trust. *See* Exhibit 57, pp. 50-51, 60-65, 67-71 (Wilson Dep. Excerpts); Exhibit 58, pp. 18-19 (Griffith Dep. Excerpts). Plaintiff’s monthly Account statements that Community First sent to her as a matter of course show that Community First’s records reflected that Plaintiff herself was serving as trustee of the trust—not Community First. *See* Exs. 3, 4, 5, 6 to Ex. 24.

Contract language matters and controls this case. The POA states that Hiott is Plaintiff’s attorney in fact. Ex. 9. Community First is not mentioned or even impliedly referenced in the POA, nor is Hiott’s profession as a banker. Ex. 9. Plaintiff cannot create a trust account (or a genuine issue of material fact that she created a trust account) by assuming she had one. Plaintiff’s assumption is wholly inconsistent with the actual agreements, the monthly Account statements, and the *voluminous* other documents showing that Hiott was acting as her attorney in

² Plaintiff claims that Exhibit A to her Memorandum in Opposition is the “deposit agreement.” Mem. in Opp. p. 17. This is partially false. Pages 9-13 of Plaintiff’s Exhibit A constitute the “deposit agreement” (what Community First refers to as the Account Agreement). Ex. 24 ¶ 36 and Ex. 7 thereto. The other documents in Plaintiff’s Exhibit A are fairly described as Account opening paperwork, but this paperwork is internal to the bank, and it is incorrect and inaccurate to describe it all together as the deposit agreement or Account Agreement.

fact under the POA in disbursing Plaintiff's money from the Account (along with keeping her children, storing her motor home, negotiating her lease, and personally keeping \$500,000 worth of Plaintiff's jewelry and silver—hardly actions undertaken by someone acting as a banker). Not one document and not one piece of record evidence demonstrate that Community First was acting as a trustee for Plaintiff.³ In fact, Plaintiff's own expert testified that Plaintiff did not have a "trust account at Community First with the bank serving as a trustee," nor is Plaintiff's own expert "aware of any agreement where [Community First] undertook any trustee duties for [Plaintiff]." Exhibit 60, pp. 116-17 (Richey Dep. Excerpts).

III. Hiott was **Plaintiff's** agent with regard to the disbursements from the Account.

Whether a given relationship gives rise to certain duties and the contours of those legal duties are questions of law for the court to decide. *Roe v. Bibby*, 410 S.C. 287, 293, 763 S.E.2d 645, 648 (Ct. App. 2014). As the POA and the Account Agreement are contracts, the court's role is to interpret these unambiguous contracts using the language found in the four corners of the respective documents to determine the duties owed to and by the parties to those contracts. *See Hawkins v. Greenwood Development Corp.*, 328 S.C. 585, 594, 493 S.E.2d 875, 879 (Ct. App. 1997).⁴ In the POA, Plaintiff granted Hiott individually the authority to "[c]onduct any

³ Indeed, it is clear that after terminating BB&T as trustee in May 2007, Plaintiff was not looking for a trustee relationship. She was upset with the actions of BB&T as trustee for the approximately two years they served as her trustee. *See* Mem. in Support pp. 4, 38. In 2007, she asked Ron Craven—a grocery store merchandiser—to handle her finances before calling Hiott out of the blue to see if he would "protect [her] interests." Mem. in Support pp. 6-7. She, of course, signed the POA granting Hiott sweeping authority to handle all manner of her affairs. Ex. 9. After Plaintiff began winding down Hiott's responsibilities in the spring of 2010, she asked another friend and retired administrative aide, Ann Gell Hamiter, to assume her bill paying duties, but did nothing more than give Ms. Hamiter signature authority on multiple accounts at BB&T. Mem. in Support pp. 10-11; Exhibit 59, pp. 8, 30-31, 33 (Hamiter Dep. Excerpts).

⁴ In contrast to the representations in Plaintiff's memorandum (Mem. in Opp. p. 26), Plaintiff's expert conceded in his deposition that he cannot name a regulation, statute, industry

business with any banking or financial institution,” including “making deposits and withdrawals.” Ex. 9. Under this grant of authority, Community First had no right to control Hiott’s decisions about how to spend Plaintiff’s funds. Plaintiff voluntarily and openly ceded that control to Hiott—and Hiott alone—on May 25, 2007. The Account Agreement unambiguously sets forth the terms governing the relationship between Plaintiff and Community First. There is absolutely no language in the Account Agreement that indicates that Community First is serving as a trustee for Plaintiff or that Community First is exerting any sort of control over the propriety of disbursements from the Account. Ex. 24 at Ex. 7 thereto.

Indeed, under the plain language of the POA, Hiott could have walked into any bank in town, opened an account with Plaintiff’s funds, and spent every penny of Plaintiff’s money on her utility bills, her car payments, her charitable contributions, and her childcare bills. He could have sent money to her accounts at BB&T. He could have written checks to Dan Brookshire, Joseph Crosby, and Terry Russell. He could have paid her taxes, purchased stock, invested in local businesses, or purchased Christmas presents for the children in Plaintiff’s custody. The POA authorized all of this and more. Hiott could have opened up a money market checking account (like the Account) at any bank in town using the POA and made personal appearances at the teller window to effect investment counter withdrawals in order to keep the number of checks written on the account below the legal maximum. *See Ex. 57*, pp. 74-75, 95-96. Community First and Hiott’s employment there is of no causal significance because the POA granted Hiott the authority to make every withdrawal from Plaintiff’s account—no matter where it was held. Plaintiff’s generalized agency argument that omits any discussion of the POA and Account Agreement is unavailing and inapplicable on the facts of this case.

standard, or Community First policy that prohibits a bank officer from serving as a power of attorney for a bank customer. Ex. 60, pp. 38, 53-54, 81-83.

IV. S.C. Code Ann. § 15-3-110 does not apply.

Under South Carolina law, statutes of limitations do not apply to actions to “enforce the payment of bills, notes or other evidences of debt issued by moneyed corporations or issued or put in circulation as money.” S.C. Code Ann. § 15-3-110 (2005). Although it does not appear that South Carolina courts have construed this particular statute, several other states have enacted similar statutes. *See* N.D. Cent. Code Ann. § 28-01-35 (West); S.D. Codified Laws § 15-2-18; Mo. Ann. Stat. § 516.310 (West); Miss. Code. Ann. § 15-1-79 (West). Both historical banking practice and cases from other jurisdictions with these statutes demonstrate that this statute is antiquated and applies only to bank-specific bills, notes, or actual tangible instruments intended to function as currency, which are no longer circulated and of which there is no evidence of use by Community First here.

In *Butts v. Vicksburg & Meridian R.R. Co.*, 63 Miss. 462 (Miss. 1886), the appellants argued that notes issued by a railroad company were substantially the same as bank notes and that it was well settled that statutes of limitation did not apply to bank notes. Accordingly, appellants argued that the statute of limitations did not apply to the railroad-issued notes at issue in that case. The Supreme Court of Mississippi held that the statutory exception to the statute of limitations did not apply because the railroad-issued notes had ceased to circulate as currency and had ceased to be taken in and reissued by banks. *Id.* at 465. In the opinion, the court explained the reasoning behind excepting bank notes from the statute of limitations:

While the general rule is that statutes of limitation do not apply to bank bills, because they are by the consent of mankind and course of business *considered as money*, and that their date is no evidence of the time when they were issued, as they are being continually returned and reissued by the banks, yet if such bills have ceased to circulate as currency and have ceased to be taken in and reissued by the banks, they no longer have that distinctive character from other contracts which excepts them from the operation of the statutes of limitation.

Id. (emphasis added; internal citations omitted). In *Quattrochi v. Farmer's & Merchants' Bank*, 89 Mo. App. 500 (Mo. Ct. App. 1901), the court held that an action against a bank to recover the difference between a balance shown and the balance that was actually due was not within the purview of Missouri's statute excepting actions to enforce bills, notes, and other evidences of debt from the general statute of limitations. *Id.* at 508. Specifically, the court reasoned that "[t]he entry of a deposit in a pass book, to the credit of the depositor, is in the nature of a receipt, and is prima facie evidence that the bank has received the amount from the depositor and entered it as a credit, but it is not a contract to pay money." *Id.* Thus, under *Butts* and *Quattrochi*, the statute only applies in situations where a bank or other moneyed corporation is circulating its own bills, notes, or evidences of debt intended to function as circulated money.

Plaintiff here is not seeking to enforce any bill, note, or evidence of indebtedness *issued* by Community First that would be *considered as money*. See *Butts*, 63 Miss. at 465. Further, these limited cases all arose in a pre-New Deal economic era where companies, including banks, would circulate their own bills and currency. See Jessica Lautin, B.J. Ellis, *When Banks Were Able to Print Their Own Money, Literally*, Bloomberg View (Oct. 19, 2012), attached hereto as Exhibit 61; Franklin Noll, *Forgotten Currency*, 99 Financial History: The Magazine of the Museum of American Finance (2011), attached hereto as Exhibit 62. Here, however, Community First is not issuing any specialized currency. As such, the statute has no application to the instant situation.

Further, applying this statute to the modern practice of banking would upend the UCC and decades of established case law. The UCC represents a specific balancing of modern commercial practice and a careful allocation of rights and responsibilities among the parties to commerce. Article 4 of the UCC, which the legislature comprehensively updated in 2008,

specifically addresses the timeframe that a bank customer has to challenge disbursements from his or her account—limiting the maximum timeframe to one year. S.C. Code Ann. § 36-4-406 (2003 & Supp. 2015) as applicable; *see also Sabatino v. Atl. Sav. Bank, F.S.B.*, 314 S.C. 402, 403, 444 S.E.2d 537, 538 (Ct. App. 1994). The statute of repose contained in the UCC, as a more recent and specific statute, prevails over the older and more general provisions of S.C. Code Ann. § 15-3-110. *See Stone v. State (City of Orangeburg)*, 313 S.C. 533, 535, 443 S.E.2d 544, 545 (1994).

V. Plaintiff has not cited any evidence to show her entitlement to equitable relief from the statute of limitations.

Plaintiff was “violently upset” in August 2010 when she believed Hiott “was stealing her money.” Ex. 34, pp. 38, 49-50. She waited approximately four years to file her lawsuit. Plaintiff received a set of Account statements showing the disbursements from her Account no later than April 2011, including the \$500,000 disbursement in July 2007 about which she claims so much outrage and testified that there was nothing Hiott could have spent such funds on in July 2007 that would have been appropriate or authorized by her. Ex. 1, pp. 271, 394-98. She waited well over three years to file her lawsuit. The law simply does not allow a plaintiff to sleep on his or her rights in this way. As previously briefed by Community First, Plaintiff has cited no facts or evidence to validly invoke equitable relief from the statute of limitations. Mem. in Support pp. 31-37. Not having complete or accurate information is no excuse under the law. *Gibson v. Bank of Am., N.A.*, 383 S.C. 399, 409-10, 680 S.E.2d 778, 783-84 (Ct. App. 2009) (holding that receipt of bank statements in June 2000 that disclosed account balances placed the account holder “on notice that she had some type of claim for any perceived discrepancy, even if she did not know the precise details behind the discrepancy” and barred lawsuit against bank brought in September 2003); *Republic Contracting Corp. v. S.C. Dep’t of Highways & Pub. Transp.*, 322 S.C. 197, 211,

503 S.E.2d 761, 768-69 (Ct. App. 1998) (emphasizing that the party claiming equitable estoppel must link any sort of misinformation with lulling the plaintiff into a sense of security such that the plaintiff was actually prevented from filing suit prior to the expiration of the statute of limitations).

VI. Plaintiff misrepresents or cites no supporting evidence for multiple important points.⁵

At several places in her memorandum, Plaintiff claims with no support that Hiott “lured” Plaintiff to Community First. This is false. Plaintiff herself testified that she sought out Hiott, received his telephone number from some mutual friends, and thereafter contacted him about handling her affairs. Ex 1, pp. 30-31.

Plaintiff also claims that Ms. Hamiter’s deposition testimony provides support that Plaintiff did not receive original statements as a matter of regular course while the Account was open, and the original statements in Plaintiff’s possession were returned by Hiott in the summer of 2010 along with the motor home. Mem. in Opp. p. 4. Ms. Hamiter’s testimony provides no such support. Ms. Hamiter testified that although Hiott brought “paperwork” with him, she could not remember what it was, that perhaps there were some bank statements there, but that she had no memory of seeing any Community First bank statements. Hamiter Dep. pp. 54-55.⁶ In any event, Hiott returned the motor home to Plaintiff in the early summer of 2010 (Ex. 1, pp. 119-120), well over four years before Plaintiff filed her lawsuit.

⁵ Plaintiff also cites to the allegations of her Complaint in claiming that genuine issues of material fact exist. Mem. in Opp. p. 26. She must provide actual *evidence* – not simple allegations – to avoid summary judgment. *Thomas v. Waters*, 315 S.C. 524, 526, 445 S.E.2d 659, 661 (Ct. App. 1994) (“[T]he non-moving party may not rest on the mere allegations or denial of pleadings, but must set forth or point to specific facts showing there is a genuine issue of material fact.”).

⁶ Plaintiff herself has been exhaustively asked about her receipt of the original Account statements, but has never herself advanced any claim that Hiott returned original statements to her in the RV. Ex. 31.

Plaintiff, again without citing any evidence and in apparent ignorance of Ms. Wilson's undisputed affidavit (Ex. 24, ¶¶ 5, 6, 10, 11, 15), claims that Hiott could have somehow accessed the original monthly account statements under the custody and control of the operations department. Mem. in Opp. p. 4. All evidence in the record regarding the mailing of the Account statements is that Hiott did not actually access and did not have the opportunity to access the monthly Account statements. Ex. 24, ¶¶ 5, 6, 10, 11, 15. Similarly, Plaintiff argues that Hiott manipulated dates and amounts of transfers as reflected in the Account statements, yet cites no evidence for this claim. Mem. in Opp. pp. 4, 26. Indeed, all of the extensive documentary evidence in this matter shows the backup documentation and authenticity of each disbursement from the Account. Ex. 18.

Conclusion

For the reasons stated in Community First's Motion for Summary Judgment, Memorandum in Support, this Reply Memorandum, the exhibits to these pleadings, and any other materials or argument that Community First may present to the court, Community First's motion for summary judgment should be granted in full.

[signature block on following page]

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.

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Robert Y. Knowlton, SC Bar No. 3589
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Attorneys for Defendant Community First Bank, Inc.

December 13, 2016
Columbia, South Carolina

DM: 4777994 v.1

EXHIBIT 57

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF OCONEE

DEBI BAKER BROOKSHIRE,

Plaintiff,

vs.

CASE NO. 2014-CP-37-529

COMMUNITY FIRST BANK, INC., and
BENJAMIN LEE HIOTT,

Defendants.

DEPOSITION OF: CAROL WILSON

DATE: February 25, 2016

TIME: 9:16 AM

LOCATION: Haynsworth Sinkler Boyd
One North Main Street
2nd Floor
Greenville, SC

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: AMY R. COPE,
Court Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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1 Q. But my question was much more general
2 than that. In the normal course of business, when
3 would you do a normal risk assessment? When should
4 you do a risk assessment?

5 A. Normally at account opening.

6 Q. The same day?

7 A. It could have been a day later.

8 Q. Normally within 24 hours or one
9 business day?

10 A. It could be.

11 Q. Two business days?

12 A. Normally within a couple of days.

13 Q. Normally within a couple of days. And
14 that would be two business days; is that correct?

15 A. Should be.

16 Q. And this one at least, if this
17 paperwork is to be believed, was a checking account
18 even though it says it's a trust account, right?

19 MS. BLACK: Object to the form.

20 BY MR. SCOTT:

21 Q. I mean, isn't that what you testified
22 to?

23 A. This is a checking account.

24 Q. That indicates it was a trust account?

25 MS. BLACK: Object to the form.

1 THE WITNESS: It is not a trust
2 account.

3 BY MR. SCOTT:

4 Q. But it indicates that it is a trust
5 account, correct?

6 A. The box marked --

7 Q. We've been through this.

8 A. -- I know, the box marked says checking
9 account -- trust account --

10 Q. Trust account --

11 A. -- but it's not.

12 Q. -- but in your testimony it's a
13 checking account. And the risk assessment, which
14 is normally done within two business days, on a 1.2
15 -- almost say \$1.2 million wire transfer, was not
16 done, at least according to the paperwork, for
17 33 days; would you agree?

18 A. That's the date on her paperwork.

19 Q. Do you have any reason to question that
20 date?

21 A. I don't know -- I don't know when she
22 completed it. All I have to go on is her date.

23 Q. So do you have any reason to question
24 her date?

25 A. Yes.

1 page 59, line 18.)

2 THE WITNESS: I don't see documentation
3 that someone else could have completed, but that
4 doesn't mean that someone did not pick up midway or
5 could have made notes.

6 BY MR. SCOTT:

7 Q. Okay. And on page 1362, which is about
8 the fifth or sixth page maybe, other than that one
9 I think -- I'll represent to you that other than
10 that one page, I think the rest of them are
11 consecutively paginated. You got 1362?

12 A. I do.

13 Q. Up at the top of that page, what's that
14 word written under the preprinted stuff? There's
15 about three preprinted lines and then a word
16 written, what's that word?

17 A. Trust.

18 Q. What does that mean?

19 A. I have no idea. I didn't write it, so
20 I don't know.

21 Q. What would -- I mean, but you've seen
22 these things before, right, isn't that your job, at
23 least part of your job?

24 A. I see accounts opened, checking
25 accounts opened for a trust, but not a trust

1 account.

2 Q. So have you ever seen under -- this is
3 a preprinted form, right?

4 A. It is.

5 Q. And somebody went into that preprinted
6 form and they created a new category on the page
7 that we've been talking so much about, that says:
8 Trust accounts. And on page -- and three pages
9 before that on 1362, underneath preprinted number
10 16; underneath that, they wrote the word: Trust.
11 Would you agree with that?

12 A. Yes, the word trust is written.

13 Q. But you don't know what it means?

14 A. No.

15 Q. And you don't know who wrote it?

16 A. No.

17 Q. But in the normal course of business,
18 this would have been provided to your customer; is
19 that correct? That piece of paper right there,
20 would that have been provided to your customer?

21 A. No.

22 Q. It would not have, this is an internal
23 document?

24 A. Yes.

25 Q. What do you use it for?

1 A. On 1360 it says: Identified commercial
2 customer due diligence, that is the second page --
3 let's see, that 1362 is the third page of that.
4 That is an internal document.

5 Q. All right. And what is it used for?
6 What does it say it's used for at the very top?

7 A. Because it's a customer -- commercial
8 customer due diligence, it's used to identify
9 specific -- or to answer specific questions
10 pertaining to a commercial account.

11 Q. Well, if you read that description, it
12 says: You give it to the government to help
13 them -- does it not say -- let's do it this way,
14 this is a little easier. How about read -- the
15 document is titled, would you agree with me,
16 identified commercial customer due diligence
17 questionnaire; is that what it's called?

18 A. It is.

19 Q. And how about read for me the sentence
20 underneath that that starts with: To help?

21 A. To help the government fight the
22 funding of terrorism and money laundering
23 activities, federal law requires all financial
24 institutions to obtain, verify, and record certain
25 information. Your assistance in answering these

1 brief questions is appreciated.

2 Q. So does the bank -- my interpretation
3 of that is that you compile this information and
4 you give it to the Federal Government; is that your
5 understanding of this document?

6 MS. BLACK: Object to the form.

7 BY MR. SCOTT:

8 Q. Is that not what it says?

9 MS. BLACK: Object to the form.

10 THE WITNESS: No.

11 BY MR. SCOTT:

12 Q. Okay. Well, what do you use it for?

13 A. This is used to collect information.

14 Q. For whose purpose?

15 A. For internal purposes.

16 Q. Whose internal purposes?

17 A. The bank's purposes.

18 Q. What do you use it for? What internal
19 purpose do you use it for?

20 A. To assess the risk associated with this
21 type of account.

22 Q. So the part about helping the
23 government fight terrorism and funding and money
24 laundering, that's not what it's used for; is that
25 your testimony?

1 MS. BLACK: Object to the form.

2 BY MR. SCOTT:

3 Q. Is that your testimony?

4 A. The form states to help the government,
5 not give to the government.

6 Q. If you look at the -- underneath the --
7 where it says there's 1, 2, 3, and there's one
8 that's not numbered and it says describe the
9 products and services below; do you see that?

10 A. I do.

11 Q. And it's handwritten in that, what does
12 it say?

13 A. Trust account.

14 Q. It says: Trust A-C-C-T, right?

15 A. Yes.

16 Q. But that would be shorthand for
17 account?

18 A. Yes.

19 Q. So that's yet another instance where
20 it's identified as a trust account; would you agree
21 with that?

22 A. No.

23 Q. You would not agree with that?

24 A. No.

25 Q. Even though it says trust account,

1 that's not what it means?

2 MS. BLACK: Object to the form.

3 THE WITNESS: I don't know what she
4 meant because --

5 BY MR. SCOTT:

6 Q. Who was she?

7 A. The person who would have opened this
8 account.

9 Q. How do you know it was a woman?

10 A. Because we've not had a male CSR.

11 Q. That's a good answer. Up under
12 number 4, it says: Business type, circle one. And
13 then it gives you 1, 2, 3, 4 options, corporation,
14 sole proprietorship, LLC, LLP, and it says other.
15 And what does that say?

16 A. It states trust. But if you go one
17 line down below, account type, business performance
18 investment account, that's what she opened. That's
19 what the person opening this account opened.

20 Q. Okay. But whoever opened it
21 represented to them that it was a trust account;
22 didn't they?

23 MS. BLACK: Object to the form.

24 THE WITNESS: Repeat your question.

25 BY MR. SCOTT:

1 Q. Okay.

2 A. But that's my opinion.

3 Q. But I asked you before about whether or
4 not you remember having any communication with
5 Ben Hiott subsequent to June or July of 2007,
6 specific to the Debi Brookshire account. Do you
7 remember me asking you that question?

8 A. Not specifically, but you've asked me a
9 lot of questions.

10 Q. Do you remember after June or
11 July of '07 ever having any communication with
12 Ben Hiott about Debi Brookshire's account?

13 A. After or before? The first time I
14 thought you said before.

15 Q. If I did, I misspoke, I mean after.

16 A. If I did, I don't remember. I could
17 have because like I say, I touch accounts every
18 day. I get messages every day from someone in the
19 bank to look at an account, question an account.

20 Q. But your testimony is that from its
21 inception this was a checking account?

22 A. True.

23 Q. And that every time this says, trust
24 account, it doesn't really mean trust account, it
25 really means checking account?

1 MS. BLACK: Object to the form.

2 THE WITNESS: This is a checking
3 account that was opened at our bank, a money market
4 checking account.

5 BY MR. SCOTT:

6 Q. That the documents identify -- and
7 we've gone through it five times -- that the
8 documents identify throughout as a trust account --

9 MS. BLACK: Object to the form.

10 BY MR. SCOTT:

11 Q. -- would you agree with that?

12 MS. BLACK: Object to the form.

13 THE WITNESS: No, I don't agree with
14 that.

15 BY MR. SCOTT:

16 Q. You don't agree that this document says
17 it's a trust account?

18 MS. BLACK: Object to the form.

19 THE WITNESS: Trust is written and it's
20 manually typed in, but it is not a trust account.

21 BY MR. SCOTT:

22 Q. Okay. Let's go through it. On the
23 first page 1357, does it not say -- tell me if I'm
24 wrong, but does it not say in the margin
25 handwritten by somebody, trust? Do you see that

1 word, trust?

2 A. Because the checking account was
3 named --

4 Q. I'm just asking you to tell me if this
5 is what the document says. Maybe I can't read;
6 does that say trust?

7 A. The word, trust, is written behind her
8 name.

9 Q. All right. On the next page, 1358,
10 over in the -- at the top, does it say:
11 Debi Baker Brookshire trust; is that what it says?

12 A. It does.

13 Q. And then over to the right of the CIP
14 individual, does it say: Trustee?

15 A. It does.

16 Q. And halfway down the page, does it say:
17 Trust paperwork on file in vault?

18 A. It does.

19 Q. And then on the next page, 1359, does
20 it say: Debi Baker Brookshire trust?

21 A. It does.

22 Q. On the next page, 1360, does it say:
23 Describe your product and services, trust
24 account -- or actually does it say: Trust ACCT?

25 A. It does.

1 Q. And the ACCT, is your -- what you
2 understand to mean account?

3 A. Short for account.

4 Q. Okay. Does it say on the next page,
5 1361, underneath number 12: Trust paperwork?

6 A. It does.

7 Q. On the next page, 1362, underneath
8 number 16, does it say: Trust?

9 A. It does.

10 Q. On the next page, does it say -- 1363,
11 does it say: Debi Baker Brookshire title trustee?

12 A. It does.

13 Q. On the next page, 1634, mistakenly
14 numbered, under ownership of account, where it
15 says: The specified ownership will remain the same
16 for all accounts. Is it -- is the box that is
17 checked, typed in and not preprinted, does that
18 say: Trust accounts?

19 A. It does.

20 Q. On the next to the last page, 1369 -- I
21 don't think we've talked about that one -- does it
22 say over to the right, handwritten by someone in
23 the margin, we don't know who it could be, it might
24 be Lisa Reed or some bum off the street --

25 MS. BLACK: Object to the form.

1 BY MR. SCOTT:

2 Q. -- USA market area, does it to the
3 right of that in the margin say: Trust account?

4 A. It does.

5 Q. Under customer demographics over to the
6 right of that, does it say: Trust account?

7 A. It does.

8 Q. Number 11, valid state license that has
9 not expired, does it say to the right of that:
10 Trust paperwork?

11 A. It does.

12 Q. And I haven't been keeping count, but
13 at least 10 or 15 times throughout this document it
14 says, trust, right?

15 A. It does, it says --

16 Q. But this is and always has been -- your
17 testimony is this is and always has been a checking
18 account?

19 A. Yes.

20 Q. Very good. You don't have any specific
21 recollection of talking to Ben Hiott about changing
22 the character or the identification of this account
23 from this inception; is that your testimony?

24 A. It is.

25 Q. It is?

1 Ben Hiott wrote to you at 11:32, Tuesday,
2 April 20th of 2010?

3 A. Will you change account 300701950,
4 Debi Baker Brookshire, to an interest-bearing
5 checking account of some sort. I guess the best is
6 the 49-plus performance checking, she will be using
7 this account more like a checking account in the
8 future and I don't want her to show up over the
9 three transactions.

10 Q. Do you have any idea what he means in
11 that -- in those two sentences?

12 A. Yes, I do.

13 Q. Tell me what it means.

14 A. This account, if you look back on 1360,
15 where it has business performance investment
16 account, that's the way this account was originally
17 set up on the system.

18 Money market accounts are regulated by
19 the FDIC to allow only three transactions per
20 month. And he had sent me a request to change this
21 to a non-money market account, so that she would
22 not be charged -- service charged and go over the
23 three transactions per month.

24 Q. So did you change the account?

25 A. Without my research and documentation,

1 I probably did. I told him I would, so I'm sure I
2 changed it from a money market account to a normal
3 checking account.

4 Q. But I thought you -- we just spent like
5 an hour going over that it was a checking account
6 to begin with?

7 A. A money market is a checking account.

8 Q. And what's the difference in a -- so
9 what change did you effect here?

10 A. Moving from a money market account to a
11 different product, checking account, keeps the
12 three transactions -- with a money market you're
13 limited to three transactions per month.

14 Q. And why is that?

15 A. Because that's federal regulation.

16 Q. And was this ever -- how would the
17 Federal Government know that it was a money market
18 account?

19 A. Because this account is put on the
20 system as a money market account.

21 Q. When did you tell Ms. Brookshire that
22 it was being changed from a money market account to
23 a -- what did you call it that it was changed to, a
24 regular checking account --

25 A. It looks like what he asked it to be

1 a letter is mailed to the customer.

2 Q. And in this case the customer would be?

3 A. In this case it would be

4 Debi Baker Brookshire.

5 Q. And do you know if that report was ever
6 mailed to her?

7 A. I would have to look to see. It
8 depends on if her transactions were truly three
9 that she would have required a letter.

10 Q. And that brings up another question,
11 what is -- how do you define transaction?

12 A. Three transactions related to this, if
13 you have a money market account, you write a check
14 to your mortgage, one to your house insurance, one
15 for your car payment; that's your limit of three
16 checks per month.

17 You can walk into the bank and withdraw
18 out of this account as many times as you want, but
19 if you're going to write a check outside of the
20 bank, you're limited to three.

21 Q. So transaction wouldn't really mean
22 what I would think of as a transaction, it means
23 checks; is that correct?

24 MS. BLACK: Object to the form.

25 BY MR. SCOTT:

1 Q. Isn't that kind of what you said?

2 A. What I consider a true transaction,
3 that could be a debit, your insurance company could
4 debit your house insurance; that is a transaction,
5 that is one of the three. So you're limited to
6 that.

7 Q. So would it be three withdrawals?

8 A. No, because the withdrawal could be
9 over-the-counter.

10 Q. So I could walk in the bank any time if
11 I had one of these money market accounts, I could
12 walk in the bank literally every day that the bank
13 is open and draw out money and that wouldn't count
14 as a transaction? That wouldn't count against my
15 three?

16 A. It wouldn't count against your three
17 Reg D transactions.

18 Q. But if I had a debit, if my mortgage
19 was automatically debited, that would count as a
20 transaction?

21 A. Yes, that would --

22 Q. And if I wrote --

23 A. -- be one of your three.

24 Q. And I apologize for talking over you.
25 If I wrote a check to my mortgage company, that

EXHIBIT 58

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF OCONEE

DEBI BAKER BROOKSHIRE,

Plaintiff,

vs.

CASE NO. 2014-CP-37-529

COMMUNITY FIRST BANK, INC., and
BENJAMIN LEE HIOTT,

Defendants.

DEPOSITION OF: JEFF GRIFFITH

DATE: February 24, 2016

TIME: 9:06 AM

LOCATION: Haynsworth Sinkler Boyd
One North Main Street
2nd Floor
Greenville, SC

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: AMY R. COPE,
Court Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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1 and it had that it was a trust, that it was a trust
2 account, in the box where it says: Other is
3 checked, and it says trust, would that set off an
4 alarm with you?

5 A. No, we have many trusts -- a checking
6 account held by a trust. We don't offer trust
7 services.

8 Q. Right, because you're not certified for
9 that, correct?

10 A. No, I don't think so.

11 Q. So when you say you don't have a trust
12 department, there's no department that looks at a
13 trust and says we are going to invest in this and
14 we're going to invest in that?

15 A. No.

16 Q. Okay. It's strictly a trust account --

17 A. A checking account.

18 Q. -- a checking account from some trust?

19 A. Or it could a CD or it could be a
20 savings account.

21 Q. How many would you say there are in
22 your bank at this point?

23 A. I wouldn't speculate, I don't know.

24 Q. All right. So in this case, I don't
25 know if you're aware of this or not, but there

1 was -- the application for the account involved in
2 this case had on it, written on it: Trust
3 paperwork on file in a vault.

4 What would that mean to you?

5 A. Most documents were sent centrally to
6 bookkeeping, but certain documents were maintained
7 at the branch level in their vault. Documents like
8 IRAs, Power of Attorneys, and trust agreements,
9 because the CSR needed those documents as they
10 administered the accounts.

11 Q. So if that's written in -- on a
12 application in hand, that would not be unusual?

13 A. Not at the time. Now, at present, we
14 have all documents sent. But during those times,
15 as I said, some documents were maintained in the --
16 at the individual branch level.

17 Q. When did it start that it was going to
18 one central location?

19 A. I don't have that date off the top of
20 my head.

21 Q. All right. In 2007 to 2011, you did
22 not have --

23 A. It had been a constant evolution to get
24 everything to bookkeeping.

25 Q. Back in 2007 to 2011, how many branches

EXHIBIT 59

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF OCONEE

DEBI BAKER BROOKSHIRE,

Plaintiff,

vs. CIVIL ACTION NO. 2014-CP-37-526

COMMUNITY FIRST BANK, INC.,
BENJAMIN LEE HIOTT,

Defendants.

DEPOSITION OF: ANN GELL HAMITER

DATE: September 7, 2016

TIME: 10:00 A.M.

LOCATION: Haynsworth Sinkler Boyd
1201 Main Street, 22nd Floor
Columbia, South Carolina

TAKEN BY: Counsel for the Defendant

REPORTED BY: DEBRINA L. JONES, Court Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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1 would be tried.

2 Q. Yes ma'am.

3 A. What you do for them whatever.

4 Q. Yes, ma'am. What do you do for a
5 living?

6 A. I'm retired.

7 Q. Okay. What have you retired from
8 doing?

9 A. I was an administrative and research
10 aid at the South Carolina Senate.

11 Q. And when did you retire from the state
12 senate?

13 A. '91.

14 Q. Okay. And how long had you worked at
15 the senate?

16 A. 20 years.

17 Q. Okay.

18 Q. Okay. Can you give me, briefly, your
19 educational background starting with high school
20 forward?

21 A. I gradated from high school at Dreher.
22 I attended Carolina -- USC, and I got about pretty
23 close to three years at Carolina.

24 Q. Okay. Do you have a bachelors degree?

25 A. No.

1 A. It would not have been before that.

2 Q. Okay.

3 A. And Debi was really bad, and the
4 documents that I gave to -- I took a box of
5 documents to her brother at the time, and I
6 returned all of her documents. I came across that
7 one in the attic and I gave it to John, because I
8 couldn't get her and he said he would give it to
9 her.

10 Debi would sit on the floor, or on the
11 bed more often than not -- excuse me -- and she
12 would take boxes of those documents after I had
13 organized everything out and lay them out on the
14 bed and let the children jump on them and get them
15 all messed up. But she would sit there sometimes,
16 five six hours and she'd be looking at one of the
17 documents and writing something on the documents.
18 What was going on in her head, I can't tell you.
19 But to Debi that right there probably meant
20 something. I don't think that, you know, that I
21 would have ever signed something with Baker and
22 Baker on it without knowing what it was that I was
23 talking about.

24 Q. But to your knowledge did Ms.
25 Brookshire ever sign the power of attorney giving

1 you power attorney?

2 A. Not to my knowledge, no.

3 Q. Did you have any discussions with her
4 about why she did not sign the power of attorney?

5 A. No, not really. It was given to her.
6 I didn't want it, and I kind of made that clear. I
7 would still take the children if it were necessary.

8 Q. Why did you not want the power of
9 attorney?

10 A. Because I had seen several things.
11 Well, first of all you go back and she had the two
12 guys, who I liked, they were good enough guys, but
13 she was allowing things to happen that I didn't
14 like.

15 My son kept the children for her once
16 or twice, and she accused him of mistreating McCall
17 because he had to stop the car and threaten McCall
18 because she was slapping him from behind and he
19 couldn't drive and she had said that Brandon had
20 stole from her and even had that picture and
21 everything. But yet, she was letting Brandon
22 handle the children all of the time.

23 She would talk bad about Ken, and then
24 she had two ladies come clean up her house and she
25 accused them of stealing, and it just seemed to be

1 the children". And I said, "well, it's up to you".

2 I felt like she ought to give the
3 children back to their momma when their momma got
4 out of jail.

5 (DFT. EXH. 3, BB&T Proof of Signature,
6 was marked for identification.)

7 Q. Ms. Hamiter, I'm handing you what's
8 been marked as Exhibit 3 to your deposition.

9 Q. First of all, is that you signature?

10 A. It is.

11 Q. And Ms. Brookshire's signature?

12 A. It looks like it.

13 Q. Okay. And I'll tell we got this from a
14 subpoena to BB&T, and this purports to be a BB&T
15 signature for an account there.

16 A. Yeah.

17 Q. Do you recall that you were on -- that
18 Ms. Brookshire put you on her BB&T accounts?

19 A. Right. Right.

20 Q. Okay. And this would be the paperwork
21 that would accomplish that?

22 A. I would assume so. Yeah.

23 Q. Okay.

24 A. I told you I wrote checks for her so...

25 Q. Yes, ma'am.

EXHIBIT 60

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF OCONEE

DEBI BAKER BROOKSHIRE,

Plaintiff,

vs.

CASE NO. 2014-CP-37-526

COMMUNITY FIRST BANK, INC.

AND BENJAMIN LEE HIOTT,

Defendants.

DEPOSITION OF: KENNETH RICHEY

DATE: August 4, 2016

TIME: 9:35 a.m.

LOCATION: Law Offices of
Haynsworth Sinkler Boyd
1201 Main Street, 22nd Floor
Columbia, South Carolina

TAKEN BY: Counsel for the Defendants

REPORTED BY: ANGELA D. ZUVER,
Court Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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1 Q. Did you review any correspondence
2 between Ms. Brookshire and Mr. Hiott?

3 A. No, ma'am.

4 Q. Did you review any bank statements for
5 Ms. Brookshire's account with Community First?

6 A. None were provided.

7 Q. Did you review any Community First
8 policies and procedures?

9 A. No, ma'am.

10 Q. Did you review a Community First
11 employee handbook?

12 A. No, ma'am.

13 Q. Did you review any item from Ben
14 Hiott's personnel file?

15 A. No.

16 Q. Did you review any trust documentation?

17 A. No, ma'am.

18 Q. Have you spoken with or interviewed
19 Ms. Brookshire?

20 A. No, ma'am.

21 Q. Have you spoken with or interviewed Dan
22 Brookshire, her husband?

23 A. No, ma'am.

24 Q. Have you spoken with or interviewed Ben
25 Hiott?

1 First Bank.

2 Q. In what capacity -- why is it a
3 conflict of interest for Mr. Hiott to hold power of
4 attorney for Ms. Brookshire and also hold
5 employment at Community First Bank?

6 A. It creates a conflict of interest. He
7 can't act for both parties in an appropriate
8 manner.

9 Q. What is the source of your opinion that
10 this was inappropriate? Is there a regulation or a
11 statute or an industry standard you can point me
12 to?

13 A. Banks develop policy and procedures,
14 preferably in writing, and accepting a power of
15 attorney requires a bank attorney approval or a
16 senior operations person. Typically it is not
17 done. If it is determined that a branch manager or
18 someone like that has taken one, action is taken to
19 correct that situation.

20 Q. Okay. Have you reviewed any of the
21 policies and procedures employee manuals for
22 Community First Bank?

23 A. No.

24 Q. Do you have any knowledge as to what
25 their -- the bank's actual policies were regarding

1 a power of attorney or fiduciary appointment?

2 A. Just that I haven't reviewed any --
3 excuse me. Since I haven't reviewed any I can't
4 answer that.

5 Q. Has anybody told you what they
6 allegedly say?

7 A. I haven't had any discussions.

8 Q. I believe you said that it's typically
9 not done in the industry. Are you aware of any
10 regulation or statute or any published guidance
11 discouraging or speaking to that issue?

12 A. In policy and procedure manuals they
13 require that to be referred, as I told you before.
14 And the second point of that is if you need
15 something of that nature you should be at the trust
16 department and not at the bank.

17 Q. You would agree with me, would you not,
18 that a bank's policies and procedures and manuals
19 exists for the protection of the bank?

20 MR. SCOTT: Object to the form.

21 THE WITNESS: No.

22 BY MS. BLACK:

23 Q. Tell me why you disagree with that.

24 A. The object of a good policy is to
25 protect the bank and its customer.

1 it could be corrected.

2 BY MS. BLACK:

3 Q. Okay. What are those?

4 A. Well, you can close the account or
5 terminate the power of attorney.

6 Q. In what authority would the bank be
7 able to terminate the power of attorney?

8 A. The bank wouldn't, but the bank can
9 close the account.

10 Q. When do you understand -- who at the
11 bank should have done this? Whatever corrective
12 action you say should have been taken, who at the
13 bank should have done that?

14 A. I believe he reported to the CEO.

15 Q. When do you understand that the CEO of
16 the bank learned of the power of attorney?

17 A. I can't answer that.

18 Q. The correction of closing the account
19 held at the bank, what is your authority that this
20 is the proper way to handle this situation?

21 A. 45 years of banking.

22 Q. Can you point me to any statute or
23 regulation that directs this course of action?

24 A. I can't cite the regulation, but we did
25 get a write-up one time by the FDIC for having such

1 a relationship and we put it in our policies and
2 procedures that all of them had to be reviewed by
3 counsel a long time ago.

4 Q. So the bank policy in that instance
5 became if a situation arises it has to be reviewed
6 by the bank's counsel?

7 A. Yes.

8 Q. And that was the policy that your bank
9 employed?

10 A. Yes, ma'am.

11 Q. And bank policies, whether it's -- you
12 know, no matter what bank it is, you would agree
13 with me that those policies get reviewed by
14 auditors and regulators from time to time, correct?

15 A. Yes, ma'am.

16 Q. And that the appropriateness or ways to
17 make policies and procedures better, all of those
18 sorts of things, are recommendations? All that is
19 made by auditors and regulators throughout that
20 process, correct?

21 A. Typically.

22 Q. Is there any published industry
23 standard that you can point me to that discusses
24 what to do if a bank officer holds a power of
25 attorney for a bank customer?

1 A. Possibly is, but I can't cite it to
2 you.

3 Q. The last sentence of -- I guess the
4 second sentence of your second opinion reads, the
5 bank did not take corrective action and failed in
6 their fiduciary responsibility to their depositor,
7 slash, customer. Is the depositor, slash, customer
8 that you're referring to Ms. Brookshire?

9 A. Yes.

10 Q. And you say that the bank had a
11 fiduciary duty to Ms. Brookshire?

12 A. Uh-huh.

13 Q. Tell me why the bank had a fiduciary
14 responsibility to Ms. Brookshire.

15 A. You basically have that on any
16 depository relationship.

17 Q. And what is -- is there a regulation or
18 a case or statute or industry standard you can
19 point me to discussing that?

20 A. Yeah. If you -- probably with this
21 bank, if you take the signature card, that's a
22 contract and that contract will state things that
23 the bank is going to do and the things that they
24 expect the customer to do.

25 Q. But those would be contractual duties,

1 trust services.

2 What specific regulations are you aware
3 of regarding the provision of trust services?

4 A. I don't understand the question.

5 Q. Well, okay. Thank you. I'll see what
6 I can do to clean it up a little bit.

7 You say that federal and state
8 regulations require appropriate approvals and
9 authorizations to provide trust services, and my
10 question is: What specific regulations are you
11 aware of? Can you give me a cite or a code section
12 or where do we go to find these?

13 A. It's in all of -- the FDIC has
14 regulation under OCC. They share those regulations
15 today in many parts and there's a section in there
16 concerning trust powers which states that you must
17 apply -- make application to and be approve before
18 you can offer trust services, and which trust
19 services must be identified in there as well.

20 Q. Is it your understanding that
21 Ms. Brookshire had a trust account at Community
22 First with the bank serving as a trustee?

23 A. No.

24 Q. And you're not aware of any agreement
25 where the bank undertook any trustee duties for

1 Ms. Brookshire, correct?

2 A. Correct.

3 Q. And Community First does not have a
4 trust department? Is that your understanding?

5 A. According to the testimony of the CEO,
6 they don't.

7 Q. And do you have any reason to doubt
8 that?

9 A. No.

10 Q. So the second sentence in number eight
11 says, since Hiott was conducting stock transactions
12 on behalf of Brookshire and the bank he was
13 essentially representing both the bank and
14 Brookshire which created a conflict of interest.
15 What is your understanding of what Mr. Hiott was
16 doing to conduct stock transactions?

17 A. In the documentation there's
18 transactions that say there was a buying and
19 selling of bank stock between Brookshire and this
20 account and the bank.

21 Q. And what is your understanding of
22 Mr. Hiott's role? What specifically was he doing
23 in the buying and selling of stock?

24 A. I don't know.

25 Q. Have you seen any reference to or are

EXHIBIT 61

When Banks Were Able to Print Their Own Money, Literally

OCT 19, 2012 1:36 PM EDT

Oct. 19 (Bloomberg) -- In 2012, it isn't unusual to go days without using actual money: Lunch goes on the debit card, a clothing purchase goes on the credit card and in some cities even parking meters take plastic. As the Internet and instruments of credit continue to transform our relationship with money, it is worth reflecting on the forms that money has taken in the past.

Before the institution of federally backed paper currency in 1862, the government didn't see issuing paper money as its responsibility. Although it coined gold and silver, there was never enough in circulation to provide an effective medium of exchange. Because the Constitution prohibited states from printing money, banks became the primary suppliers of paper money in the U.S.

From 1791 to 1811, and then again from 1817 to 1836, the First Bank of the United States and the Second Bank of the United States brought a degree of order to this system, both regulating the issue of bank notes and issuing their own trusted notes. But when Andrew Jackson failed to renew the second bank's charter in 1836, private bank notes proliferated unchecked. By the 1850s, U.S. banks had issued more than 10,000 kinds of bank notes, varying in size, denomination, design and value. (Many of them are now on display at the Museum of the City of New York.)

BANK NOTES

There were significant problems with this system, in which money often wasn't worth the paper it was printed on. In theory, a bank note derived its value from its ability to be redeemed for gold or silver at the issuing bank, but what banks could live up to that promise? Those that were poorly capitalized went to great lengths to ensure that their notes weren't redeemed. For example, the Union Bank of Tennessee issued notes only redeemable in New Orleans. In the small town of Versailles, Kentucky, an agent who came to redeem notes at the local bank was hanged in effigy by local citizens. Banks also suspended redemptions during financial panics, and when a bank failed, its notes became worthless.

When banks couldn't provide an adequate supply of money, other institutions stepped in. In particular, there was demand for small-denomination bank notes and coins. (In 1840, per-capita annual income in the U.S. was about \$65, so a \$1 bank note was a lot of money.) Hotels, restaurants and bars that didn't have enough coins and bank notes to make change issued their own money in small denominations. A note issued by one hotel promised "to pay on demand twenty five cents in current funds when presented in sums of \$1 & upwards."

A note worth 25 cents in the hotel lobby would have changed hands at a steep discount just a few blocks away. Meanwhile, small towns issued bank notes of a few cents to support local commerce. In Virginia, people were reduced to cutting apart large bank notes and circulating them in pieces.

In this unpredictable environment, spending a dollar required some serious thinking. A wallet might have three, five or a dozen different bank notes -- a bull's head staring back at you from a Bull's Head Bank note, or a Marine Bank bill illustrated with ships -- not to mention foreign coins from around the world and personal checks, which also circulated as money. Most bank notes traded at a discount based on the reputation of the bank and how far the note was from where it originated.

A shop owner had even more variables to consider. When a consumer opened his wallet to pay, the proprietor turned to his local edition of "Bicknell's Counterfeit Detector and Bank Note Reporter," or to "Van Court's Counterfeit Detector and Bank Note List."

COUNTERFEIT GUIDES

These guides not only identified counterfeits, they also reported the prices of bank notes on the local market. (As professional note brokers traded and speculated, prices rose and fell.) Thumbing through a counterfeit detector, the store owner would try to assess the value of the bank notes at hand. He took a hard look at the person handing over the bills, judging value based on the person's race, class, dress, comportment and reputation.

Counterfeiters exploited this feature of the system, and passed themselves in addition to their notes, dressing and acting as proper ladies and gentlemen. And with so many bank notes from so many banks, counterfeiters flourished. Some simply invented whole banks. Others erased the name of a failed bank and replaced it with that of a reputable one.

Of course, as 19th-century observers frequently noted, a poorly capitalized bank that printed notes it couldn't redeem was, in the end, little different from a counterfeiting operation.

(Jessica Lautin is the Andrew W. Mellon postdoctoral curatorial fellow at the Museum of the City of New York. B.J. Lillis is a curatorial intern at the museum. The exhibit "Capital of Capital: New York's Banks and the Creation of a Global Economy" will be running at the museum through Oct. 21. The opinions expressed are those of the authors.)

Read more Echoes columns online.

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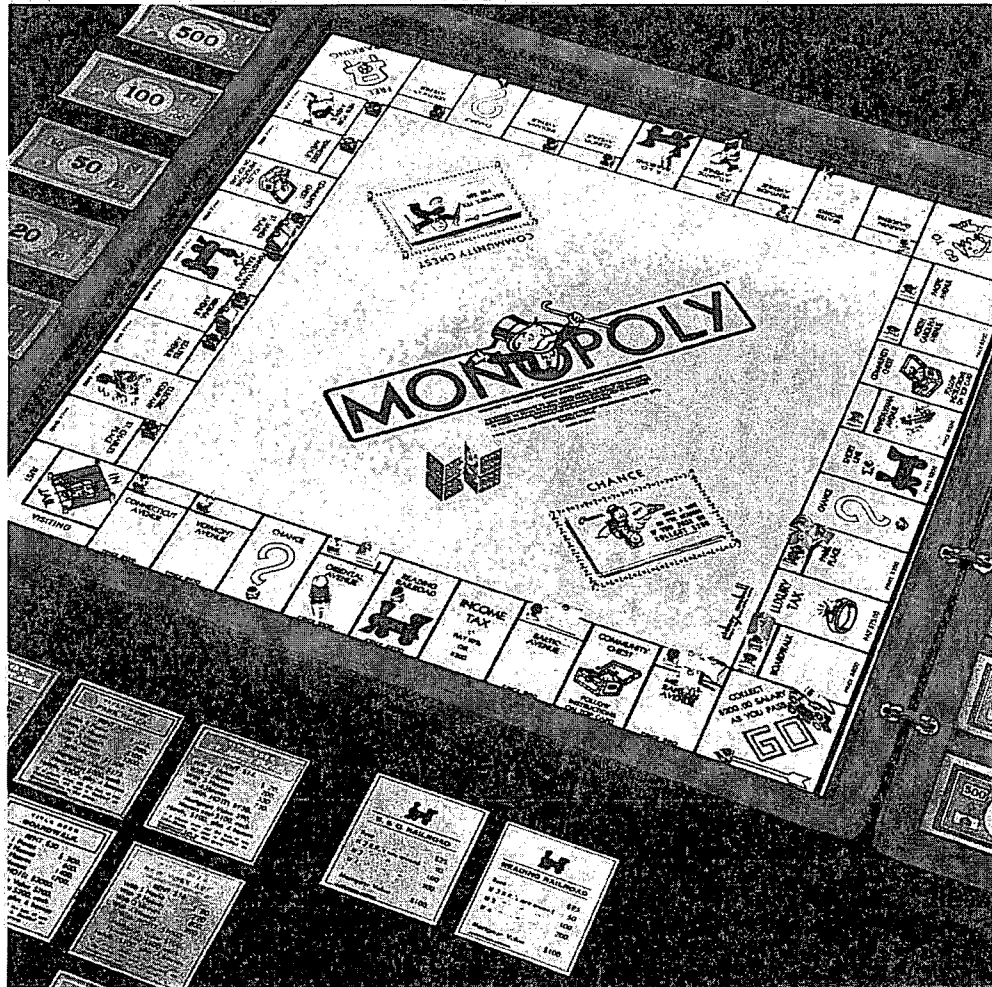
EXHIBIT 62

THE MAGAZINE OF THE MUSEUM OF AMERICAN FINANCE

FINANCIAL

HISTORY

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Museum Unveils 18-Karat Gold Monopoly Set

The Antibubble: Thomas Willing and Early American Financial Stability

The Rise of the Venture Exchange

ISSUE 99 ~ WINTER 2011 ~ \$4.00

FEDERAL RESERVE BANK NOTES



BY FRANKLIN NOLL

WE ARE ALL FAMILIAR with Federal Reserve notes. We use them every day, and the United States Bureau of Engraving and Printing (BEP) prints billions of them every year. The production of Federal Reserve notes has been going on continually since 1914 when the Federal Reserve System first went into operation following its establishment in December 1913. Yet, in the first half of the 20th century, the Federal Reserve System also periodically issued a second form of currency—Federal Reserve *bank* notes.

Federal Reserve bank notes were authorized by the Federal Reserve Act of December 23, 1913. While the Federal Reserve notes we see every day are the responsibility of the Federal Reserve System as a whole, Federal Reserve bank notes were established as obligations solely of the Federal Reserve bank that issued them. Upon depositing bonds with the Treasurer of the United States, a Federal Reserve bank could issue its own notes as long as it followed the same rules that applied to national banks. While this did not happen very often or to any great extent, issuances of Federal Reserve bank notes are interesting because they always occurred during currency crises.

THE NATIONAL
BANK NOTE CRISIS

One of the reasons for the creation of the Federal Reserve System was to eliminate the system of national bank notes and to replace it with a centrally controlled system of Federal Reserve notes. However, with the start of Federal Reserve operations, the dispersion of Federal Reserve notes across the country would take some time, and no one knew how quickly national banks would go out of the currency business and stop issuing their own notes. There was a real possibility that national bank notes might be withdrawn from circulation faster than the new Federal Reserve notes could be issued to the public. This could cause sudden drops in the number of bank notes in different parts of the country, resulting in regional scarcities of currency. To counteract such a crisis, the local Federal Reserve bank was authorized to step in and issue its own currency on a temporary basis to make up the deficiency.

To meet the expected need, in 1915, the BEP printed 3.2 million notes in denominations of \$5, \$10, and \$20 in anticipation of the Federal Reserve System's final start-up. But, as it

turned out, few national banks retired their currency as quickly as feared and there was little demand for Federal Reserve bank notes. The crisis never materialized. Consequently, production of Series 1915 Federal Reserve bank notes fell to 264,000 notes by the middle of 1918. However, by this time the United States was facing a new crisis, World War I.

THE SILVER
CERTIFICATE CRISIS

The United States entered the war in April 1917. A year later, in April 1918, it agreed to sell silver bullion to the British. The US Treasury had lots of silver in the form of \$1 coins and silver ingots that it held as security against the silver certificates it issued. (The Treasury ended the issuance of silver certificates in 1963.) The problem was that for each \$1 in silver sold to Britain, \$1 in silver certificates had to be withdrawn from the money supply. To make up the loss in circulation, Federal Reserve bank notes were issued as an emergency replacement, and the volume of Federal Reserve bank notes in circulation swelled from about \$9 million in the summer of 1918 to a little over \$261 million a year later.

To meet this new demand for notes, the BEP had to increase production in fiscal year 1919 by almost a 1,000-fold, from 264,000 to 227 million notes. Besides the manifold problems stemming from such a massive increase in production, the Bureau also had to face the problem of a linen shortage caused by the war. As a result, the notes were printed on 100% cotton paper, making them more fragile and harder to work with. Series 1918 notes were produced in \$1, \$2, \$5, \$10, \$20 and \$50 denominations until 1922. By that time, the Treasury had replaced the missing silver, and silver certificates were reissued as the Federal Reserve bank notes were retired.

THE BANKING CRISIS OF 1933

The next use of Federal Reserve bank notes as an emergency currency occurred in early March 1933 when President Franklin D. Roosevelt closed all the banks for three days to stop a banking panic during the Great Depression. The Treasury feared that once the banks reopened there would be a mad dash by depositors for cash. To counter this threat, Federal Reserve banks were authorized for a limited time to issue their own notes as they saw fit.

The BEP was given an initial order for \$2 billion, or over 186 million

notes. The problem was that the notes were to be provided immediately and the Bureau did not have the necessary plates, paper or even employees to do the job. The plate and paper problems were overcome by utilizing the existing stock of national bank note blanks. It was planned that these would be overprinted by a single logotype plate for each Federal Reserve bank, blacking-out certain features while adding others. The necessary labor was organized by calling upon the wives and husbands of current employees and all former employees. Within weeks, the Bureau was ready to go into production.

On March 9, 1933, the new Federal Reserve bank notes were officially authorized, and within 24 hours the first shipment of currency was ready. The feared run on the banks for currency never materialized, and many of the notes shipped by the Bureau were not issued. Beginning in 1934, those notes that had been actually issued were retired as the banking industry and the economy recovered. This was also the last year that the BEP ever printed Federal Reserve bank notes.

The existing stock of Federal Reserve bank notes left over from the 1933-1934 printing, \$660 million worth, was issued during World War II (1941-1945), much of it in December 1942 when the Treasury was suffer-

ing a cash crunch. These notes began to be retired as the end of the war approached; and, in the summer of 1945, Congress amended the Federal Reserve Act to end the use of Federal Reserve bank notes. There really was not a need for them anymore. The Federal Reserve System had become very adept at using just Federal Reserve notes in controlling the money supply and no other currency was needed.

Though Federal Reserve bank notes had a short history, they made a big impact, serving as an emergency currency or, at worst, as insurance against a currency crisis. In all, the BEP produced over 641 million notes valued at over \$1.7 billion. In circulation from basically 1915 to 1945, these notes marked the transition from a United States economy using a number of different currencies (national bank notes, silver certificates, gold certificates and United States notes) to one that just uses one form of currency—the familiar Federal Reserve note. ■■■

Dr. Franklin Noll is president of Noll Historical Consulting, LLC, and historical consultant to the Bureau of Engraving and Printing, running its history program and conducting research on the history of the BEP, US currency, Treasury securities and the public debt.



\$10 Federal Reserve Bank of New York note (top) with the same design as a \$10 national bank note (right).

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS

Debi Baker Brookshire,

Civil Action No. 2014-CP-37-0526

Plaintiff,

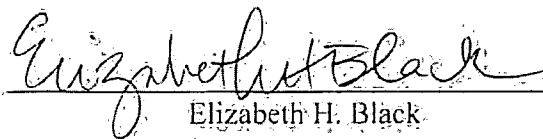
v.

CERTIFICATE OF SERVICE

Community First Bank, Inc. and
Benjamin Lee Hiott,

Defendants.

I, the undersigned shareholder of Haynsworth Sinkler Boyd, P.A., do hereby certify that on the 13th day of December 2016, I instructed my paralegal, Beth Valdes, to serve a copy of Defendant Community First Bank, Inc.'s Reply Memorandum in Further Support of Its Motion for Summary Judgment and the six exhibits attached thereto on the Court and all counsel via email. Ms. Valdes did so by virtue of the attached email. In addition, hard copies of the Reply Memorandum and all exhibits were submitted to the Court and all counsel by hand delivery at the hearing held in this matter on December 13, 2016.


Elizabeth H. Black

October 11, 2017

DM: 5149125 v.1

Black, Elizabeth

From: Valdes, Beth
Sent: Tuesday, December 13, 2016 8:57 AM
To: cmaddoxj@sccourts.org
Cc: cmaddoxlc@sccourts.org; barneygiese@gmail.com; dscott@jrslawsc.com; dgh@dghlaw.net; klg@thegieselawfirm.com; Knowlton, Bob; Black, Elizabeth
Subject: Brookshire v. Community First Bank and Benjamin Lee Hiott (2014-CP-37-0526); Reply Brief
Attachments: Community First Bank, Inc.'s Reply Brief.pdf

Dear Judge Maddox,

Please find attached an electronic courtesy copy of Defendant Community First Bank, Inc.'s Reply Brief in the above-referenced matter. Hard copies will be made available at the hearing today at 11:00 a.m.

Sincerely,

Beth Valdes.

**Haynsworth
Sinkler Boyd, PA.**

ATTORNEYS AND COUNSELORS AT LAW

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STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF OCONEE	)	Case No.: 2014-CP-37-526
	)	
Debi Baker Brookshire,	)	
	)	
Plaintiff,	)	
	)	
v.	)	PLAINTIFF'S MOTION TO ALTER OR
	)	AMEND THE JUDGMENT PURSUANT
Community First Bank, Inc. and	)	TO RULE 59(e), SCRCP AND
Benjamin Lee Hiott,	)	SUPPORTING MEMORANDUM
	)	
	)	
Defendants.	)	
	)	

Plaintiff, by and through her undersigned counsel, submits this Motion, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, to Alter or Amend the Judgment filed with the Clerk of Court on September 26, 2017. For the reasons set forth below, Plaintiff submits the judgment should be amended to address all the issues raised by the Plaintiff and to deny the Defendant Community First Bank, Inc. (hereinafter, "the Bank"), summary judgment on Plaintiff's claims against the Bank and to deny the Bank summary judgment on its counterclaims against the Plaintiff.

PROCEDURAL HISTORY

The Plaintiff filed a Summons and Complaint on September 8, 2014 alleging six (6) causes of action against the Defendants, including Breach of Fiduciary Duty, Conversion, Negligent Supervision, Negligence/Gross Negligence, Breach of Contract Accompanied by Fraudulent Act, and Accounting. Defendant CFB timely filed an Answer and Counterclaim against Plaintiff alleging two (2) causes of action for Conversion and Unjust Enrichment. Plaintiff filed a timely reply to the counterclaims, wherein she raised, among other things, the statute of limitations as a defense to the Bank's counterclaims.

Defendant Hiott filed a motion to dismiss pursuant to Rule 12, SCRCP on October 30, 2014. By Form 4 Order filed February 2, 2015 and formal Order filed February 25, 2015, the Court denied Hiott's motion to dismiss. On October 13, 2016 and October 19, 2016 respectively, defendants each filed motions for summary judgment. A hearing was held December 13, 2016, where the matter was taken under advisement. This motion is in response to the Order filed September 26, 2017.

THE ORDER IS INCONSISTENT IN ITS
APPLICATION OF THE STATUTE OF LIMITATIONS

The Court granted the Bank's Motion for Summary Judgment on Plaintiff's claims based in part on the Court's determination that the statute of limitations had expired on Plaintiff's claims. In its Memorandum in Support of Summary Judgment, the Bank explained that "[o]n eight occasions from July 2008 until February 2011, it is undisputed that Hiott deposited a total of \$880,855.58 of funds belonging to Community First into the [Plaintiff's] account." See page 14 of the Bank's Memorandum in Support of Summary Judgment. Thus, based on the Bank's own argument, the last date any Bank funds were deposited into the Plaintiff's account was February 2011. Plaintiff filed her complaint on September 8, 2014. The Bank answered and alleged counterclaims against the Plaintiff on October 9, 2014 – substantially more than three years after the last alleged money transfer (a transfer made by the Bank's Vice President, Hiott). In her answer to the Bank's counterclaims, Plaintiff raised the statute of limitations as a defense. In her Memorandum Opposing Summary Judgment, Plaintiff again raised the Statute of Limitations as a bar to the Bank's counterclaims. See Plaintiff's Memorandum in Opposition to Summary Judgment, page 39. In the Court's Order granting the Bank summary judgment against the Plaintiff in the amount of \$780,855.58, the Court addresses the Plaintiff's Statute of Limitations argument in a single sentence: "Further, there is no genuine issue of material fact that the statute of

limitations does not bar Community First's counterclaim." Page 3, Order Granting Summary Judgment.

As an initial matter, there is no discussion or explanation in the Order of the discrepancy in the amount the Bank requested in its counterclaim (\$880,855.58) and the amount awarded in the Order (\$780,855.58). Plaintiff respectfully asks the Court to reconsider its determination that the Bank is entitled to Summary Judgment where the Bank has failed to raise any argument as to why the Statute of Limitations should be tolled against the Bank and where no basis for tolling exists. Plaintiff submits that the Order is inconsistent in its application of the Statute of Limitations.

On the one hand, the Order strictly construes the Statute of Limitations against the Plaintiff, who had incomplete access to information concerning her account, and in the same Order rewards the Bank, an entity with complete and unfettered access to all information concerning the account, for not asserting timely its counterclaims. The Order contains no explanation for this inconsistency. Plaintiff submits that if her claims are barred by the Statute of Limitations, the Bank's counterclaims are likewise barred – the Bank's claims were raised even after the Plaintiff's.

In granting the Bank Summary Judgment on its counterclaims, the Order concludes the Bank is entitled to Summary Judgment "for the reasons outlined in Community First's motion and memoranda," Order, page 3, ¶12. However, the Bank's Memorandum in Support of Summary Judgment contains only a single conclusory paragraph on the subject of its counterclaims. See page 43 of the Bank's Memorandum in Support of Summary Judgment. Its Memorandum does not explain how the Bank arrived at this number, \$880,855.58 according to its memo but \$780,855.58 in the Order it submitted to the Court. Nor does the memo attempt to articulate why the Statute of Limitations does not bar its claims. The Plaintiff's account was closed in October 2010 – **four years** before the Bank asserted its counterclaims. Plaintiff submits under these facts that the Bank

is not entitled to Summary Judgment on the counterclaims where these claims were raised four years after the account was closed and after the Bank new or should have known of Hiott's scheme to defraud the Bank's customers. Plaintiff respectfully asks the Court to alter its Order and to deny the Bank's request for Summary Judgment on its counterclaims.

PLAINTIFF'S CLAIMS

1. Power of Attorney

The Order finds that there is no material question of fact the Power of Attorney ("POA") absolves the Bank of any liability at all regarding Plaintiff's account and the Bank is entitled to judgment as a matter of law for the reasons stated in the Bank's Memorandum in Support of Summary Judgment. Plaintiff respectfully alleges that questions of fact do in fact exist and the Bank is not entitled to judgment as a matter of law.

The Order incorporates, by reference, the Bank's Memorandum in Support of Its Motion for Summary Judgment ("Bank Memo"). To the extent that the Order relies on the Bank Memo with regards to this issue, Plaintiff respectfully contends that the legal reasoning outlined in the Bank Memo is incorrect. The Bank relies on a very small portion of Plaintiff's approximately 14 hours of deposition testimony where Plaintiff testified that she contended that disbursements of \$500,000 and \$200,000 would be inappropriate and *unauthorized* for Defendant Hiott to make. Bank Memo, Ex. 1, p. 271. (Emphasis added.) Plaintiff does not now, and has never, contended that Defendant Hiott did not have broad powers over her finances as granted by the POA. The Bank Memo cites §62-5-501 (F)(2) (2009) as authority as to why the Bank, as a third-party to the POA, had no duty to investigate whether the attorney-in-fact was acting within his power¹, however Plaintiff's claims allege conduct

¹ The statute allows a third-party to honor a "valid" POA. While Plaintiff has not alleged that the POA is not valid, there is no evidence the Bank conducted any inquiry into the validity of the POA other than it being presented by its trusted employee. In order for a POA to be "valid," it must be executed in the required manner and must be

on behalf of the Bank outside of the actual transactions themselves. While Defendant Hiott was given broad authority to conduct business on Plaintiff's behalf, he did so at the Bank, utilizing systems and practices that were contrary to accepted banking practice. Plaintiff's Memo. Exhibit GG and Exhibit HH. In fact, the existence of the POA, coupled with Plaintiff's account at the institution where Hiott worked, was against the Bank's own policy. The systems and practices at the Bank allowed Hiott to execute his scheme both with Plaintiff's funds and with the Bank's funds as well. Defendant Hiott was authorized to conduct business on Plaintiff's behalf, however, the business that he conducted "on her behalf" was also while he was a senior employee of the Bank and he conducted this "business" in areas of the banking world where he was not authorized to act. For example, while the POA allowed Hiott to purchase and sell stock on Plaintiff's behalf, he was not authorized to do so by his employer, the Bank. In essence the Bank was aiding Hiott in carrying out his scheme and the Bank's conduct goes beyond a third-party honoring or not honoring the POA as contemplated by §62-5-501 (F)(2) (2009).

Plaintiff's claims and some causes of action go beyond the actual transfer of funds themselves as well. Plaintiff alleges causes of action for Breach of Contract Accompanied by Fraudulent Act, Negligent Supervision, Negligence/Gross Negligence and Accounting. To the extent that the Order relies on the Bank's Memo for legal reasoning as to why the Bank is entitled to Summary Judgment, Plaintiff contends that the legal reasoning set forth in the Bank's Memo is incorrect for the reasons outlined below.

To the extent that the Order relies on the Bank's Memo with regards to Plaintiff's cause of action for conversion, the Bank's Memo is incomplete. The Bank's Memo contends that "there can be no conversion of money unless there is an obligation on the defendant to deliver a specific

recorded as required by S.C. Code §30-5-30. There is no indication on the document itself that it was ever recorded anywhere.

identifiable fund to the plaintiff.” *Richardson’s Restaurants, Inc. v. Nat’l Bank of S.C.*, 304 S.C. 289, 294, 403 S.E.2d 669, 672 (Ct. App. 1991). In the case at hand, however the alleged conversion concerns both funds as well as stock shares. Unbeknownst to Plaintiff, Defendant Hiott had purchased shares of Community First Bank stock in her name, as he was authorized to do by the POA, but against proper banking practice. Plaintiff’s Memo Ex. GG and HH. In February of 2011, the Plaintiff’s account was closed. At the time it was closed, Plaintiff was not aware that her funds had been used to purchase 16,519 shares of Bank stock. The Bank’s Proxy Mailing Address for Plaintiff was 449 ByPass 123, Seneca, SC 29678, which happens to be the address of a branch location of the Bank. Plaintiff did not know or have reason to know of her ownership of these shares of stock. Nothing on any of the statements produced by the Bank in support of its summary judgment motion would have alerted Plaintiff to her ownership of any stock. CFB Memo Ex. 36. Subsequent to the account being closed and the POA revoked, the 16,518 shares of Bank stock were transferred from Plaintiff to a third-party². Plaintiff has contended that the retention and ultimate transfer of these shares of stock, in addition to other fund transfers, represent a cause of action for conversion against the Bank. The Bank’s Memo, and as a consequence, the Order, is silent as to reasoning why the Bank is entitled to Summary Judgment with respect to the shares of stock. Plaintiff would respectfully request a specific ruling on this critical issue.

To the extent the Order relies on the Bank’s Memo to grant the Bank summary judgment on Plaintiff’s cause of action for Negligent Supervision, Plaintiff contends that the legal reasoning outlined in the Bank’s Memo is contrary to the facts and circumstances of the case at hand. The Bank’s Memo relays the duties of an employer to exercise reasonable care to control an employee when

² The party that ultimately received the Bank shares was Hilltop, Inc., a corporation owned by Defendant Hiott’s brother.

acting outside the scope of employment to prevent the employee from intentionally harming others on if:

- a) [the employee]
 - i. is upon the premises of the [employer] or upon which the [employee] is privileged to enter only as his [employee], or
 - ii. is using a chattel of the [employer], and
- b) [the employer]
 - i. knows or has reason to know that he has the ability to control his [employee], and
 - ii. knows or should know of the necessity and opportunity for exercising such control.

Degenhart v. Knights of Columbus, 309 S.C. 114, 116, 420 S.E.2d 495, 496 (1992). While Defendant Hiott was operating under a POA, he was doing so using the Bank's equipment and systems, on the Bank's property, and in a manner only available to him as a Senior VP of Defendant CFB. Further, the unquestioned evidence is that Defendant Hiott was conducting his scheme in a similar manner using CFB funds and funds of MPS Incorporated³ as early as 2004. The question of whether the Bank should have known about Defendant Hiott's conduct in 2004 and continuing through 2013 is one properly determined by a jury. A question of fact exists as to whether the Bank knew or should have known about Defendant Hiott's conduct. Plaintiff respectfully requests the Court amend its order to accurately reflect the facts presented.

To the extent the Order relies on the Bank's Memo with regards to Plaintiff's cause of action for Breach of Contract Accompanied by Fraudulent Act, Plaintiff contends the legal reasoning outlined in the Bank Memo is likewise contrary to the facts and circumstances of the case. The Bank's Memo assumes, incorrectly, that the contract Plaintiff in question is the POA, and any and all

³ MPS Incorporated is a company owned by three members. Two of those members, James McCoy and Frederick D. Shepard, Jr. were the Chairman of the Board of Directors for the Bank and its holding company and the Bank's President, and Hiott's direct supervisor, respectively. They would, or should have, been on notice of misappropriations of funds by Hiott either by reason of their positions with the Bank or by reason of their ownership of MPS Incorporated.

reasoning relied upon by the Court in incorporating the Bank's Memo into its Order is therefore also making an incorrect assumption. Plaintiff only entered into one (1) contract **solely** with the Bank: the "Account Agreement" as identified by Defendant at CFB Memo, Ex. 7 to Ex. 24. In a footnote to the Bank's Memo, the only mention of any potential breach of the Account Agreement by the Bank is that "Community First has not breached the Account agreement." CFB Memo, 42 at footnote 32.

Inherent in each and every contract is a duty of good faith and fair dealing between the parties. On December 17, 2013, some ten (10) months prior to the filing of this action, the Bank, at Plaintiff's request, provided her with what the Bank represented to be a complete record of documents showing the activities of the account. Those documents were initially compiled by Donald Jones, an outside auditor working for the Bank, and transferred by Mr. Jones to Fred Shepard, the Bank's President. Mr. Jones overheard Fred Shepard and Jeff Griffith, another Bank employee, discussing removing records of transactions totaling over \$500,000 from the "complete" set compiled by Mr. Jones. Plaintiff's Memo, Exhibit Z. The incomplete and edited set was then produced on December 17, 2013 and held out as a complete set. These actions are the fraudulent act that Plaintiff contends the Bank committed. These actions took place less than one (1) year prior to the filing of this action and thus would require a separate analysis as to the application of the Statute of Limitations as a bar to this claim. Further, the Plaintiff respectfully requests the Court amend its Order to reflect accurately the contract to which the Bank was a party.

APPLICATION OF S.C. CODE SECTION 15-3-110

Plaintiff respectfully asks the Court to reconsider, alter and amend its determination that S.C Code Ann. § 15-3-110 does not apply to this matter. Code Section 15-3-110 provides that "[l]imitations are not applicable to bills, notes or other evidence of debt issued by moneyed corporations. This chapter shall not affect actions to enforce the payment of bills, notes or **other**

evidences of debt issued by moneyed corporations or issued or put in circulation as money.” (Emphasis added). No South Carolina case has ever applied this statute, however, the dictionary definition of a “moneyed corporation” is “a corporation authorized to engage in the investment of moneyed capital.” Merriam-Webster Dictionary.⁴ Community First Bank would fall within this dictionary definition of “moneyed corporation.”

When the Plaintiff deposited funds with Community First, she became a creditor of the Bank and the Bank became indebted to her in the amount of the funds deposited. The Bank acknowledges as much in its Memorandum when it asserts that “the normal relationship between a bank and its customer is one of creditor-debtor and not fiduciary in nature.” See page 37, Bank’s Memorandum in Support of Summary Judgment. Giving the words of Section 15-3-110 their plain and ordinary meaning, the three-year statute of limitations applicable to most causes of action does not apply here because the more specific statute of limitations contained in § 15-3-110 applies. South Carolina law is clear that

[W]here there is one **statute** addressing an issue in **general** terms and another **statute** dealing with the identical issue in a more **specific** and definite manner, the more **specific statute** will be considered an exception to, or a qualifier of, the **general statute** and given such effect. **Specific statutes** are not to be considered repealed by a later **general statute** unless there is a direct reference to the earlier **statute** or the intent of the legislature to do so is explicitly implied.

Denman v. City of Columbia, 387 S.C. 131, 138, 691 S.E.2d 465, 468–69 (2010) (Emphasis in original; internal citations omitted).

The Court’s September 26 Order explains that § 15-3-110 does not apply “for the reasons outlined in Community First’s Reply Memorandum”. See September 26, 2017 Order, page 2, ¶ 4.

⁴ <http://www.merriam-webster.com/dictionary/moneyed%20corporation>

However, Community First's Reply Memorandum is not filed with the Oconee County Clerk of Court's Office and therefore the memorandum is not part of the record in this case.

The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk.

Rule 5(e), SCRPC. As of the date this Motion is filed, the Bank's "Reply Memorandum" is not on file with the Oconee County Clerk of Court. Accordingly, neither the unfiled memorandum nor anything argued therein should be considered by the Court since it is not in the record. See, e.g., Loyd's Inc. by Richardson Const. Co. of Columbia, S.C. v. Good, 306 S.C. 450, 453, 412 S.E.2d 441, 443 (Ct. App. 1991) (Rule 56(c), SCRPC, "requires summary judgment motions and, inferentially, supporting materials to be on file when they are to be relied upon at a summary judgment motion hearing. To be on file, we hold they ordinarily must have been filed.").

To the extent the Order relies upon unfiled documents and materials for support, Plaintiff respectfully asks the Court to amend the Order to remove references to unfiled materials, and to reconsider its ruling that the limitations period set forth in § 15-3-110 does not apply to the actions alleged in the Complaint.

CONCLUSION

Plaintiff respectfully asks the Court to reconsider its September 26 Order and to deny in full the Bank's Motion for Summary Judgment. To the extent the Order relies on the Bank's Memo as support, the Memo is inaccurate and certainly does not present the evidence and inferences reasonably to be drawn therefrom in the light most favorable to the Plaintiff – the standard to be applied in deciding a motion for summary judgment. In addition, the Order does not specifically address the application of Section 15-3-110, an issue consistently raised by the Plaintiff since the earliest stages of the case. In the alternative, and assuming the Court does not agree that 15-3-110

controls the Plaintiff's claims, Plaintiff submits and respectfully requests the Court apply the same statute of limitations that the Bank insists requires summary dismissal of the Plaintiff's claims to the Bank's counterclaims. There can be no serious contention that the Bank knew or should have known less about the peculiar goings on with its deposit accounts, and particularly with the Plaintiff's account, than the Plaintiff. It is not disputed that the Bank, through Fred Shepard, Jeff Griffith, and Ben Hiott actively concealed the truth about the Plaintiff's account from her for years.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA)
)
COUNTY OF OCONEE)
-----) IN THE COURT OF
 COMMON PLEAS
 2014-CP-37-00526

DEBI BAKER BROOKSHIRE,)
 PLAINTIFF)
 vs.)
)
COMMUNITY FIRST BANK,)
INC.)
 DEFENDANT)
-----)

TRANSCRIPT OF RECORD

DECEMBER 13, 2016
ANDERSON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE J. CORDELL MADDOX

A P P E A R A N C E S:

WARREN BLAIR GIESE, ESQUIRE
M. DAVID SCOTT, ESQUIRE
JONATHAN WALLER, ESQUIRE
ATTORNEYS FOR PLAINTIFF

ROBERT YATES KNOWLTON, SR., ESQUIRE
ELIZABETH HALLIGAN BLACK, ESQUIRE
ATTORNEYS FOR DEFENDANT

DARYL G. HAWKINS, ESQUIRE
ATTORNEY FOR MR. HIATT

VIVIAN CROSS,
CIRCUIT COURT REPORTER

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I N D E X

MOTIONS 3

1 * * * DECEMBER 13, 2016 * * *

2 -----
3 THE COURT: Okay. Look, y'all have given me a
4 good foot of documentation here on these things and I
5 realize we've got at least two summary judgments, so
6 whoever wants to start first can start because
7 obviously a lot of this -- now, we got some of this
8 overnighted yesterday and I haven't read it. So I
9 probably won't until y'all finish, but I'll be happy to
10 hear from you. Yes, sir.

11 MR. KNOWLTON: Robert Knowlton, and with me is
12 Elizabeth Black, and together we represent Community
13 First Bank, the defendant in this case. And I do
14 apologize for the heft of --

15 THE COURT: No, I'm just teasing.

16 MR. KNOWLTON: But the plaintiff in this case has
17 challenged 115 disbursements from an account over a
18 period of four years. And we wanted to make sure, when
19 we bring this motion for summary judgment, that we have
20 a full record that will support it.

21 THE COURT: Yeah.

22 MR. KNOWLTON: It necessarily involved a lot of
23 documentation. But I do believe that we can boil
24 things down to a few fairly discrete issues to simplify
25 the ruling in this case.

1 This case involves the exercise of a power of
2 attorney granted by Mrs. Brookshire, the plaintiff in
3 this case, to Benjamin Hiatt. A copy of that power of
4 attorney, Your Honor, is in our material at Defendant's
5 Exhibit 4 -- I'm sorry -- that's not -- it's Exhibit
6 9.

7 THE COURT: Okay. That's the power of attorney?

8 MR. KNOWLTON: That's the power of attorney.

9 THE COURT: All right.

10 MR. KNOWLTON: He -- a month later, he opened an
11 account at Community First Bank.

12 THE COURT: Let me ask you this -- how is Mr.
13 Hiatt related to Mrs. Brookshire?

14 MR. KNOWLTON: They're friends.

15 THE COURT: Just friends. Okay.

16 MR. KNOWLTON: Right.

17 THE COURT: So, no family?

18 MR. KNOWLTON: No family connection.

19 THE COURT: Okay.

20 MR. KNOWLTON: The tolling -- this account was
21 closed originally in October of 2010 and reopened. A
22 disbursement was made and closed again in February of
23 2011 -- over three and a half years after that this
24 lawsuit was brought. Among the issues we raised are
25 the absolution of the bank from liability due to the

1 power of attorney by statute and time bar claims.

2 Let me first review some of the undisputed
3 facts. First, pre Community First Bank, before this
4 power of attorney, Mrs. Brookshire had a trust
5 agreement at BB&T. We have attached a copy of that
6 trust agreement as Exhibit 2 to our materials, the
7 Defendant's Exhibit 2.

8 And in that trust agreement, it's an irrevocable
9 management trust agreement. And this woman testified
10 that she was familiar with the trust agreement. She
11 was familiar with powers of attorney and she knew
12 different types of power of attorneys, general and
13 limited and durable and not. And she had had
14 experience with trust agreements. This is the one that
15 was in force immediately before she engaged Mr. Hiatt.

16 And in this trust agreement, the bank is named
17 -- BB&T is named as the trustee. In this trust
18 agreement, there's a description of what property will
19 be the subject of the trust. In that trust agreement
20 is a description of the powers and the duties of BB&T
21 as trustee.

22 It is also undisputed that Mrs. Brookshire had a
23 dispute with BB&T. She wanted to buy a \$250,000 motor
24 home. They strongly advised her against doing that
25 given the level of funds that she had in her account

1 and just the nature of spending that sort of money. So
2 in their role as trustee, they wrote several letters to
3 her strongly advising her not to do that.

4 She also had a dispute with other services
5 performed by BB&T. And if you look at the BB&T
6 statements -- and we've attached one at Exhibit 5 at
7 Bates number CFB 347 to 348. It reflects in the
8 account statement from BB&T, that BB&T is the trustee.
9 And it reflects the thousands of dollars in trustee
10 fees she was paying every month. It looks like for
11 something like that month that I'm referring -- I think
12 it was like \$2,500.

13 THE COURT: Okay.

14 MR. KNOWLTON: And as a result of those disputes
15 that she had with BB&T, she terminated that trust
16 agreement. And a copy of the revocation is attached as
17 Defendant's Exhibit 8. And that revocation was on May
18 23rd of 2007. On the same day at BB&T, she signed a
19 power of attorney that we have attached as Exhibit 9
20 granting a -- it's a general and broad power of
21 attorney granting Benjamin Hiatt very broad powers to
22 manage her financial affairs.

23 Before that, during her -- the end of her
24 dispute with BB&T, she had asked Ron Craven and his
25 wife if they would be agreeable to take over her

1 financial affairs. They said no, but they reminded her
2 of their mutual friend Ben Hiatt, why don't you try
3 him. They gave her Hiatt's number. She solicited him
4 and asked him if he would be willing to handle her
5 financial affairs.

6 The POA, as recited within the agreement itself
7 on the last page, reflects that it was signed in the
8 offices of BB&T. The address in that agreement is --
9 of Mr. Hiatt is his home address. Mr. Hiatt was an
10 employee of Community First Bank, but that agreement
11 does not mention the bank at all. It was not executed
12 at the Community First Bank, it was executed at BB&T.

13 THE COURT: Okay.

14 MR. KNOWLTON: And in that agreement, it
15 unambiguously grants Mr. Hiatt, among other things, the
16 power to open a bank account at any financial
17 institution and to handle all financial affairs
18 involving that account including deposits and
19 disbursements.

20 THE COURT: So this is as broad as it can be?

21 MR. KNOWLTON: This is as broad as it can be.

22 THE COURT: All right.

23 MR. KNOWLTON: And there's no -- it's clear and
24 unambiguous, and it gives him authority to basically
25 handle all her financial affairs and it's intentionally

1 broad as -- as most general powers of attorneys are.

2 A month after that, the account was opened at
3 Community First Bank. It shows -- once again, the
4 separation between here's my POA to you instead of Mr.
5 Craven, it was to Mr. Hiatt, and the account was at a
6 Community First Bank.

7 We have attached a copy of the account
8 agreement, Exhibit 24 is the affidavits of Carol
9 Wilson. And Exhibit 7 to her affidavit, I believe it's
10 the last five pages of that Exhibit 24, is the account
11 agreement. And the account agreement is in the name of
12 Debi Baker Brookshire trust and Debi Baker Brookshire
13 is named as the trustee. The bank is not listed as the
14 trustee.

15 And if you look at the signature line is Debi
16 Baker Brookshire trustee. There is an account
17 description with the type of account at CFB 2358, a
18 page also bearing her signature, recites that the type
19 of account is a business premium investment checking
20 account. So -- and if you look at the account terms
21 and agreement, there is no undertaking by the bank to
22 serve as trustee. It is a checking account in the name
23 of her trust with her serving as trustee.

24 The account agreement also contains some
25 language that's important in this case at page 2360 of

1 that, next to the last page of that exhibit under the
2 -- under the heading statement, Mrs. Brookshire agreed
3 that she must examine the statements with reasonable
4 care and promptness. And she authorized -- I am going
5 to paraphrase some here --

6 THE COURT: Sure.

7 MR. KNOWLTON: -- regarding any unauthorized
8 signatures, she undertook the duty to report it to the
9 bank. It goes on to say that you agree that the time
10 you have to examine your statement and report to us
11 will depend on the circumstances, but will not in any
12 circumstance exceed a total of 14 days from when the
13 statement is first sent or made available to you. And
14 further agrees that if you have failed to report any
15 unauthorized signatures or other error in your account
16 within 60 days of when they first send the statement,
17 you cannot assert a claim against us on any items in
18 that statement and the loss will be entirely yours.

19 As we have said in our brief, UCC has a statute
20 of repose under -- under 36-4-406. And within the UCC
21 also you have the ability to modify that. The UCC sets
22 an outer limit of a year. The UCC also allows you to
23 modify that to 60 days, and other cases have said
24 that's fine. That's what this account agreement does.

25 We have also attached a couple of exhibits at 12

1 and 13 where Mr. Hiatt signed letters to third parties
2 signed as power of attorney. Once again, the bank has
3 never mentioned Ms. Brookshire signed that same
4 document she knows he is exercising the power of
5 attorney.

6 THE COURT: Okay.

7 MR. KNOWLTON: She admits that she knows that he
8 was exercising his power of attorney. She acknowledges
9 her signature on the power of attorney. She allowed
10 him and understood that he was dealing with multiple
11 third parties in the capacity that she gave him. She
12 dealt with her family business, her siblings, her
13 parents had been involved with Baker & Baker Real
14 Estate, and he dealt with all matters of third parties
15 within that capacity.

16 He paid her bills. And among other things, she
17 -- he sent -- she had other accounts at BB&T. And at
18 her request, he would frequently send her, you know,
19 transfer money into that account, well over a million
20 dollars of undisputed disbursements were made from this
21 account to that account. She repeatedly asked for
22 that.

23 THE COURT: Okay.

24 MR. KNOWLTON: She also had Mr. Hiatt handle the
25 taxes, insurance matters, he signed residential leases

1 for her. He paid her telephone bills, utility bills,
2 car payment, storage unit fees, attorney and
3 accountant's fees, insurance bills, medical bills,
4 traffic tickets, child care bills and charitable
5 contributions.

6 He also handled very personal things. This --
7 this woman and her husband had custody of two children
8 who were the parent -- the parents were in Alabama and
9 she took custody of these children. And Mr. Hiatt
10 would take care -- you know help take care of those
11 children. In fact, he kept those children over one
12 Christmas holiday at his home. He bought them gifts
13 and had them in his home for the Christmas holiday.
14 And she couldn't remember if it was one Christmas or
15 two Christmases, but it was a very personal
16 relationship. And she knew him before all of this from
17 college years.

18 THE COURT: From college? I mean they had been
19 friends that long?

20 MR. KNOWLTON: Right. They didn't maintain --
21 they didn't -- may not even college, but since the
22 '80s.

23 THE COURT: Okay.

24 MR. KNOWLTON: And they had seen each other and
25 socialized in bars where he lived at one time. So --

1 and the Cravens were mutual friends, so -- but it was a
2 friendship relationship. She also gave him -- and she
3 was living in Columbia at the time -- but she gave Mr.
4 Hiatt her \$250,000 motor home to store and maintain for
5 over a year.

6 And in addition -- and to me this is one of the
7 stranger things for a woman to do, but she gave him a
8 box of her jewelry and silver worth over half a million
9 dollars for him personally to take care of for an
10 extended multi year period. And in short, he handled
11 all aspects of her financial affairs and personal
12 matters and things of a very personal nature that have
13 no relationship to a regular banking situation.

14 Another exhibit to Ms. Wilson's affidavit is
15 Exhibit 6, and that is an example of one of the
16 statements that was sent to this plaintiff, one of the
17 monthly account statements. And this one in particular
18 is important. It's one of the very first ones. But
19 one thing it shows is it's addressed to Debi Baker
20 Brookshire Trust, Debi Baker Brookshire Trustee. So it
21 reflects that she is the trustee. The bank is not a
22 trustee. It also reflects that there are no trustee
23 fees being charged unlike the thousands of dollars she
24 was getting charged every month by BB&T, she's getting
25 charged no trustee's fees. She's getting treated as a

1 regular checking account.

2 This one in particular -- in this case, she's --
3 she's -- took from -- from the outset that she -- the
4 position that she had never received statements. And I
5 think she still maintains that position. And I
6 thought -- we all thought that's odd. This account was
7 opened for four years and nobody ever heard that
8 complaint, and we drilled all the way to the granular
9 level. We started with requests to admit, and they
10 didn't admit it. We went all the way to the granular
11 level to the person who is still there and handling
12 back room operations at this bank, Carol Wilson
13 overseas it.

14 And her affidavit details the fact that the
15 undisputed evidence in this case is that the bank
16 mailed these every month -- and a compilation of a
17 reprint of the statements is attached as Exhibit 36 --
18 until they were started getting returned in the first
19 of 2010, because she had moved at that point and I
20 guess her forwarding address expired. But from the
21 opening of the account in June of 2007 until the
22 beginning of 2010, the undisputed evidence is that the
23 account statements were sent every month.

24 Oddly enough in this lawsuit, we were still
25 scratching our head about how can she say she never got

1 the statements, she produced several original
2 statements and this is one of them. And we had Ms.
3 Wilson come down here and say, you know, take a look at
4 this. And she explained in her affidavit, yes, that
5 is -- that is the original statement paper. That is --
6 the reprints are never put on letterhead. You can
7 print it on regular copy paper. In all aspects of the
8 details -- I won't bore you with right now -- but there
9 is no way that this could -- this was the original
10 statement and it was produced by the plaintiff in
11 discovery.

12 THE COURT: Who is the statement being made to?

13 MR. KNOWLTON: To Mrs. Brookshire.

14 THE COURT: Was -- Mrs. Brookshire or Mr. Hiatt?

15 MR. KNOWLTON: To Mrs. Brookshire at her address.

16 THE COURT: Okay.

17 MR. KNOWLTON: And so plaintiff actually has
18 produced three originals and I think a xeroxed copy of
19 another original statement in this lawsuit. This one
20 in particular reflects a \$500,000 disbursement two
21 weeks -- roughly two weeks after this account was
22 opened. And I'll get back to that later. But that's
23 one of the key disbursements in dispute in this
24 lawsuit.

25 Now, let me -- let me first back up and talk

1 about one of the grounds of our motion is that the bank
2 is absolved from liability by the terms of the power of
3 attorney. That's clearly set forth in our motion and
4 we have addressed it in our memo, and it is completely
5 ignored by the plaintiff in its memorandum in
6 opposition. We think for that reason alone, all claims
7 against the bank should be dismissed.

8 I have handed up several cases, Your Honor. One
9 of those cases is Watson. And in Watson it also
10 involves a power of attorney. And it says, you know,
11 the power of attorney is construed in the four corners
12 of the document. And if it is clear and unambiguous,
13 it must be enforced according to its terms.

14 This power of attorney unambiguously and clearly
15 gave Mr. Hiatt authority to make disbursements from
16 this account. Third parties, as power of attorneys,
17 are designed to do -- and they used it frequently --
18 but as they are designed to be used, it wouldn't work
19 if you had to say what are you spending that money for
20 every time somebody exercised it. You have the
21 statutory right to rely on the authority granted by the
22 power of attorney. Just like a bank has -- if you have
23 a joint checking account with your spouse, the bank
24 doesn't have to look and say, wait a minute, you went
25 to -- you went to the liquor store or bought something

1 that the other owner of the account thought was
2 inappropriate, and, you know, wants the bank to repay
3 you. The bank has no duty to go behind the authority
4 to make disbursements from the account -- to ask why
5 are you spending the money.

6 The statutes we set forth in the brief at
7 62-5-501 grant a third party, including banks, of
8 course, because they have to rely on them all of time.
9 They grant them absolute -- absolution from liability
10 in reliance on the power of attorney.

11 We've also raised several time bar arguments.
12 The first one we raise -- or really two that we've
13 raised -- deal with the statute of repose found under
14 section 36-4-406, and as allowed by statute, we're also
15 allowed to produce that one year period to 60 days. So
16 that brings in the agreement language itself.

17 THE COURT: Okay.

18 MR. KNOWLTON: And, Your Honor, we have handed
19 up -- the Saventino case addresses that. And we --
20 we've cited some other out of state authority as well
21 that makes it clear that this is not a statute of
22 limitations, this is a statute of repose. And when you
23 have a statute of repose, equitable tolling does not
24 apply.

25 And in the -- and so after these statements were

1 sent, 60 days after they were sent each -- any
2 disbursement regarding that statement expires if they
3 haven't complained to the bank. Period. And that
4 applies -- this isn't a commutative thing. This is
5 every month, the bank sends a statement.

6 One of the other cases we handed up was Gibson.
7 And in the language in Gibson makes a lot of sense to
8 me, but it basically says that when a bank sends you a
9 statement, that is in essence the bank saying this is
10 what we owe you and nothing more. This is what you
11 have in the bank and nothing more. And if you dispute
12 that, you have to tell the bank. And you have to come
13 in and dispute it. And if you don't, you are forever
14 barred from bringing that claim after the statutory or
15 agreed upon length of time.

16 There is no dispute in this case that Mrs.
17 Brookshire never complained about anything in her
18 account until at best late 2010. So virtually every
19 one of the disbursements at issue in this case are time
20 barred as a result of that. They did not address this
21 argument in their memorandum in opposition, but we
22 think as a matter of law that the claims are time
23 barred due to their failure to report.

24 When they -- when they did first ask for
25 documentation, they were -- they were never specific in

1 their complaints, so we think all of their claims are
2 time barred as a result of the operation of this
3 statute and the agreement language.

4 We have also raised the general -- as an
5 alternative, we have raised a general statute of
6 limitations found under section 15-3-530 subsection 5,
7 which is a three year limitations period. And that
8 again would run from each statement.

9 And there -- one of the arguments they make in
10 opposition is essentially that we didn't get the
11 statements. And that fails for multiple reasons. One,
12 it's not true. She's produced statements in this
13 lawsuit. She got them. And we've also attached the
14 testimony -- drilling down we went and took the
15 plaintiff's counsel's investigator's deposition. And
16 he said, yeah, I got the statements from the plaintiff.
17 We've -- we've drilled all the way down, where did
18 these things come from. He said I got them from the
19 plaintiff. So they did get the statements.

20 And two of the statements involved here were --
21 one was the \$500,000 disbursement to Coach that I will
22 talk about a little more lately, and one reflected a
23 \$200,000 disbursement to Coach. That's \$700,000 worth
24 of disbursements right there. As set for in Ms.
25 Wilson's affidavit, the statements were sent. It is

1 undisputed that the statements were sent.

2 As a matter of public policy in law, you are
3 obligated as a customer to obtain your statements. The
4 UCC is not going to let you get away with saying, oh, I
5 didn't get a statement, so it doesn't matter. As a
6 matter of law and public policy, if you don't get a
7 statement, you have to go to the bank and get it
8 yourself.

9 And their own expert acknowledges if you haven't
10 gotten a statement, you need to go by the bank within
11 at least 90 days and demand it. And we've attached his
12 testimony as Exhibit 53, pages 132 to 33. So,
13 essentially a customer is charged with knowledge of the
14 contents of the statement.

15 And there are some pretty harsh cases out there
16 where there is actual evidence of the statements being
17 intercepted or stolen, and the courts have said too
18 bad. You got to go to the bank and get them. You
19 can't just sit back and, you know, these deadlines are
20 running, and you're charged with notice of the
21 statement. And if you don't get it, you are still
22 barred. So whether she got them or not doesn't matter.
23 She had a duty to go insist on it. Whether -- and if
24 she didn't get them, her own expert has conceded that
25 she had a duty to do that. Here they've also

1 complained about -- raised issues of equitable
2 estoppel. They essentially say Mr. Hiatt started lying
3 about whether -- what he had done with some of this
4 money beginning in -- some time in I think late 2010.

5 We -- we have -- and I've got a little
6 demonstrative summary, but, Your Honor, we have -- we
7 have -- and I've handed up a small version of this.
8 Again the POA was executed in May of 2007. The account
9 opened in June. Two of these disbursements, the five
10 hundred and two hundred that went to Mr. Crosby were
11 reflected in statements -- original statements that
12 they actually produced in July and November of 2007.

13 THE COURT: All right. Who is Crosby?

14 MR. KNOWLTON: Crosby is --

15 THE COURT: The \$500,000 and \$200,000?

16 MR. KNOWLTON: Right.

17 THE COURT: Okay.

18 MR. KNOWLTON: And, Your Honor, there's actually
19 in total over a million went to him. And we have
20 got -- there was another -- the other -- there was
21 another big one of \$150,000, and then multiple other
22 ones went to him totaling about another may be two
23 hundred.

24 The last disbursement that went to him -- and
25 this is part of Exhibit 42, a summary exhibit, was in

1 November -- I'm sorry -- was in 2008, the very last
2 disbursement to Crosby.

3 THE COURT: Okay.

4 MR. KNOWLTON: And as we explained in our memo,
5 Mr. Crosby is called Coach at some times, because he
6 used to be a football coach at I think Savannah State.
7 A real charming guy. We took his deposition in this
8 case.

9 In 2007 and 2008, he was on fire. He was -- he
10 had -- he had previously owned a restaurant. He had
11 come up with some spices and he had contracts to sell
12 those spices. It was Coach's Lowcountry Boil. And he
13 had large contracts with the military, with major
14 grocery stores. He was on national TV on the QVC or
15 one of those shopping networks. Multiple banks were
16 loaning him money. And in this case, the first check
17 that went out is payable to Joseph Crosby. And on the
18 remittitur line it says "loan".

19 THE COURT: Loan?

20 MR. KNOWLTON: Loan.

21 THE COURT: But there's no note or anything?

22 MR. KNOWLTON: There's no note that we've ever
23 found. He testified, you know, we asked him what were
24 these disbursements to you about. He said, well, I
25 understood that this woman was loaning me money. His

1 business blew up when the financial crisis came in
2 2009. Although he had these contracts lined up, he was
3 trying to arrange another round of finance -- financing
4 to pay for that growth, and then his real estate value
5 went way down. He couldn't get the loan. He couldn't
6 fulfill the contracts, and so then he lost his
7 contracts and his business failed. So, you know,
8 several banks -- and, you know, this money was unable
9 to be repaid. But on the face of it that's -- it was a
10 loan to Crosby.

11 And she has said in this case, I don't know who
12 that guy is. And I don't agree that Mr. Hiatt -- she
13 contends that was inappropriate for him to make a loan
14 to Mr. Hiatt.

15 THE COURT: She didn't know who he was, but Mr.
16 Hiatt knew who he was?

17 MR. KNOWLTON: Correct.

18 THE COURT: Okay.

19 MR. KNOWLTON: That's her testimony. And although
20 it sounded like he went -- she went to his restaurant
21 for lunch with Mr. Hiatt one day -- but in any event,
22 let's just assume for purposes of this motion she
23 didn't know the guy. She testified though that -- let
24 me get -- so the -- the last disbursement to Mr. Crosby
25 was in December of 2008. And the UCC is very clear,

1 the notes and the case law. And one of the reasons for
2 this short time bar is that if you think a disbursement
3 to somebody or somebody is forging your endorsements,
4 they need to stop it so it doesn't happen again. And
5 she testified that when she saw the statement
6 reflecting that \$500,000 disbursement, it doesn't say
7 who it's to, it just says the \$500,000. She said she
8 immediately knew that was -- in her mind, that was
9 inappropriate. She -- you know, you don't just -- her
10 balance wasn't but -- I think a -- it was a little over
11 a million, but it wasn't two million.

12 And, you know, she's thinking maybe this guy is
13 paying my grocery bills and all these other bills, but
14 she said he did not have authority to do -- send
15 \$500,000 to anybody. And -- and remember, Your Honor,
16 that -- by law and public policy, you are on notice of
17 the contents of your statement.

18 And by her own testimony, when she
19 immediately -- when she saw this statement, she
20 immediately knew that in her mind that was
21 inappropriate, and she could have stopped all the other
22 disbursements to Mr. Crosby.

23 THE COURT: Did she do anything?

24 MR. KNOWLTON: She didn't do anything.

25 THE COURT: All right. Is she competent? There

1 -- I mean, obviously, I'm just seeing this today, but
2 I'm wondering -- sort of a base question, why would she
3 give Mr. Hiatt a power of attorney? Was there
4 something going on with her or -- I mean tell me why.

5 MR. KNOWLTON: The -- Your Honor, the facts in
6 this case are odd. She is -- she came from a wealthy
7 family. She's never -- there's been no allegation that
8 she's incompetent to handle her affairs. She's never
9 been proceeding along those lines if that's what you're
10 suggesting. But she just didn't want to be bothered
11 with that sort of thing, and was used to her -- you
12 know, she was in the interior decorating world, and
13 actually worked as an interior decorator with the
14 family of the Baker & Baker for a while. She owned her
15 own business. But I think she was just sort enjoying,
16 you know, I guess a lot of people have people --
17 accountants or CPAs or somebody to help them with --

18 THE COURT: Or drivers.

19 MR. KNOWLTON: Or drivers.

20 THE COURT: I gotcha.

21 MR. KNOWLTON: You know the type.

22 THE COURT: Yeah, I know.

23 MR. KNOWLTON: But that's what she did. And she
24 obviously wanted to go in another direction than a bank
25 trustee by asking the Cravens and then she asked Mr.

1 Hiatt. When she got mad at Mr. Hiatt, she later asked
2 a woman name Anngell Hamiter --

3 COURT REPORTER: I'm sorry. The name again.

4 MR. KNOWLTON: Ann -- one word -- Gell -- G-e-l-l-
5 Hamiter, H-a-m-i-t-e-r.

6 THE COURT: All right. But when -- when she
7 noticed in 2007, in July or November, that Mr. Hiatt
8 had written \$700,000 out to a guy who was selling
9 spices and ribs and that kind of thing, is there any
10 evidence that she contacted Mr. Hiatt and said, what's
11 this about and where is the promissory note?

12 MR. KNOWLTON: Let -- let me clarify, I -- I may
13 have been mis -- when she first -- she claims she
14 first saw the statements when they were delivered to
15 her in 2011. She claims until 2011, she didn't know
16 about these disbursements at all.

17 THE COURT: Even though y'all are saying you sent
18 them monthly to her, not him?

19 MR. KNOWLTON: Right. And the bank records go all
20 the way back -- and we've got the undisputed evidence
21 is in Carol Wilson's affidavit.

22 THE COURT: Well, let me ask you just --

23 MR. KNOWLTON: And she produced -- this particular
24 -- these two particular statements, she produced the
25 originally of them in this lawsuit.

1 THE COURT: Well -- and I don't know who
2 represents who here, but is it possible that Mr. Hiatt
3 was getting her mail? I mean, look, let's face it,
4 there's \$700,000 written out by someone that you
5 allegedly trust -- by a person who is competent, you
6 would think that if they were competent that in July or
7 November, if they were getting their mail -- and again,
8 this doesn't go to you. I'm just asking -- you guys
9 have been in this case. I have been in it for 15
10 minutes, but there's something wrong. I mean, I'm no
11 rocket scientist, but somebody was hiding something.
12 So is there anybody here that represents Mr. Hiatt?

13 MR. HAWKINS: I am.

14 THE COURT: Well, how perfect. What does he say
15 about that? Did he get --

16 MR. HAWKINS: There's -- there's a long story on
17 that. Briefly, I can do it --

18 THE COURT: Yeah, briefly.

19 MR. HAWKINS: Mr. Hiatt, during his employment
20 with the bank, did take money from the bank. And he
21 had just completed a jail sentence for some of that
22 activity. It does not involve Ms. Brookshire or the
23 facts of this case.

24 THE COURT: Yeah.

25 MR. HAWKINS: The defendant -- the plaintiff.

1 THE COURT: Yet.

2 MR. HAWKINS: In their memorandum -- well, they
3 refer to it as a scheme. And what I would say is that
4 if Mr. Hiatt had a scheme, his scheme was to take money
5 from the bank and give it to his friends -- or his
6 employer. The thing that he went to prison for is --
7 the chairman of the board of the bank, and the
8 president of the bank, had a real estate development
9 along with a third person that was -- development of a
10 golf course -- I think it's called Falcon Lair. You
11 might have seen it or maybe even played there --

12 THE COURT: I played -- my golf yeah --

13 MR. HAWKINS: Well, they owned it. It got in
14 money trouble. They asked him to look at it because of
15 his knowledge of financial matters and so forth, and he
16 did. And they had bills that they didn't make enough
17 money to pay, and he used bank money to pay. He paid
18 \$2 or \$3 million dollars. I know it was over -- well
19 over a million. I believe it's in the range of \$2 to
20 \$3 million dollars over a period of years that were
21 debts of that financial entity -- or, you know, the
22 couple of companies -- the typical golf course
23 development, you've got the course and the operations
24 and the clubhouse --

25 THE COURT: Yes.

1 MR. HAWKINS: And separate from that, you're
2 selling lots, so you have a real estate aspect to it.
3 So that happened here.

4 There was a federal investigation. Mr. Hiatt
5 pled guilty. He did not receive one penny of anything
6 for his involvement in any of that. He never got to
7 play free golf at the golf course. He didn't get free
8 drinks. He didn't get anything. But he worked a lot
9 there and he transferred a lot of money there, the
10 defendant -- the plaintiff -- I'm sorry. I do almost
11 all plaintiff's work, Your Honor, so I'm -- I always
12 want to call the other party the defendant.

13 THE COURT: Yeah. Yeah.

14 MR. HAWKINS: Out of habit. But the plaintiffs in
15 this case claim that to be a scheme, and that whatever
16 went on with Ms. Brookshire is part of this master
17 scheme that Mr. Hiatt had to make other people wealthy.
18 He received zero. He didn't get anything.

19 THE COURT: Well --

20 MR. HAWKINS: So -- so he served time for that.

21 THE COURT: Would you sort of admit -- and again,
22 I'm not making a great logical leap in assuming that if
23 he had control of \$700,000 of her money and it's gone,
24 and there's -- it's in the ether or in some spices or
25 ribs somewhere, that kind of falls in line with what he

1 was doing at the bank?

2 MR. HAWKINS: I don't think so at all, Your Honor.
3 It's not even -- I mean those are direct checks that
4 went from this account to Lewis Crosby or his company.

5 THE COURT: And have y'all deposed Mr. Crosby?

6 MR. HAWKINS: They have. I was not -- I was not
7 present for that. My client is broke.

8 THE COURT: Yeah.

9 MR. HAWKINS: And I haven't been paid in forever,
10 and we stopped going to depositions and buying
11 transcripts from depositions, which is another issue
12 I'll bring up in another light at a later time.

13 THE COURT: Well, was there any evidence that Mr.
14 Crosby -- what did Mr. Crosby say this five -- I mean
15 I'm just fixated on the \$700,000. Did he say, hey,
16 look, I wrote -- Mr. Hiatt wrote me a check for
17 \$500,000, and I wrote him back a check for \$450,000? I
18 mean, that's what I normally see in criminal court up
19 here. That -- that kind of scheme.

20 MR. KNOWLTON: He testified he understood it to be
21 a loan.

22 THE COURT: And it was never paid back?

23 MR. KNOWLTON: His business failed so he couldn't
24 pay back any of his loans.

25 MR. GIESE: Your Honor, this loan -- alleged loan

1 that there was no paperwork signed, nothing was done
2 other than giving him a certified check basically, a
3 cashier's check for \$500,000, that he then did not put
4 into his business account that he had at the bank,
5 which was CLCB, he put it into he and his wife's
6 personal account. The money then was transferred to
7 different places, a little bit of it went into the CLCB
8 account. The rest was for personal expenses.

9 MR. HAWKINS: Your Honor, just on that point to
10 finish something off on that.

11 THE COURT: Yeah.

12 MR. HAWKINS: Our -- our strong contention in this
13 case is that were we -- were this lawsuit had been
14 filed when it should have been, within three years of
15 July, August of 2007 when these things happened, we
16 could have gone to this gentleman and we could have
17 subpoenaed all of his bank records, and we could have
18 gone to his office and we could have gotten all of his
19 financial records out of his file, and we could have
20 had that discovery in this case to show more
21 specifically what happened to all of this money.

22 If Mr. Hiatt were testifying, he would say he
23 thought -- he considered them all loans. They were
24 loans made at the same time when other financial
25 institutions also considered Crosby to be a good -- a

1 good risk, and they were loaning him money and nobody
2 suspected he was going under. But -- but because they
3 waited seven years to file this lawsuit, all of that
4 information is gone. And that will come around to the
5 statute of limitations argument and why we have
6 statutes so that people can reasonably defend
7 themselves, but --

8 THE COURT: Yeah. And I didn't mean to interrupt
9 you, it is just -- it is -- I -- when y'all started,
10 again, I -- this is the first time I have heard of this
11 case, it -- it just seems there's something here that
12 is kind of unsaid.

13 MR. HAWKINS: On one point that you had asked that
14 started this.

15 THE COURT: There's a crook in the pile somewhere.

16 MR. HAWKINS: You asked what happened to her bank
17 statements and did she get them or somebody intercepted
18 them.

19 THE COURT: And?

20 MR. HAWKINS: There is no evidence in this case
21 that anybody got the bank statements that were intended
22 for Mrs. Brookshire except Mrs. Brookshire's claim that
23 she never, ever received a bank statement from the day
24 the account was opened until sometime after she hired a
25 lawyer to help her with all this after the accounts

1 were closed -- or these accounts.

2 THE COURT: Well, and let's quit dancing on the
3 head of a needle, what's wrong with her? I mean, why
4 would she do this? Is there some reason that she
5 couldn't manage -- I mean, which is a substantial
6 amount of money -- I mean, y'all I understand. I'm
7 just asking, as a laymen, why would she do this? Does
8 anybody know? Do y'all know? Was it love? Was it --
9 was it --

10 MR. GIESE: Your Honor, she trusted Ben Hiatt, who
11 is a senior vice president at Community First Bank to
12 do her bidding. That's -- that's the problem.

13 THE COURT: Okay. Go ahead. I didn't mean to
14 interrupt you, but that's just \$700,000, I -- I would
15 have noticed that in my bank account. I'd be in prison
16 if I wrote a check for that much.

17 MR. KNOWLTON: Well, I'm -- I'm right with you.
18 And I had the same curiosity, what is going on here.
19 But she should have -- the history of when she was born
20 evolved with the business, with having family business
21 bookkeepers, help with the finances, or her husband
22 helped with them.

23 And then the bank, she didn't like that. So
24 then she goes and asked the Cravens and then him, and
25 then -- now she's instead of a power of attorney, she

1 gave this woman, Anngell Hamiter, she just gave her
2 signature authority on her account, and paid her --
3 I've forgotten what it was -- 50 bucks an hour to do
4 the same thing Mr. Hiatt was doing. So she is in the
5 habit of hiring people to hire -- I imagine Donald
6 Trump probably hires somebody. But the point is some
7 people hire people to handle their finance. But this
8 is peculiar. And Your Honor the --

9 THE COURT: Yeah. This is real peculiar. I mean,
10 you have to admit, a woman who is competent -- I mean I
11 guess the best reason is exactly what y'all probably
12 all agree is that she trusted this guy, right? She
13 banked with him. He was nice to her. They had known
14 each other for a long time. She probably said, you
15 know, this is a lot of money, I don't know what to do.
16 And maybe there was a response, well, I can help you.
17 I mean I'm looking at the kernel of how all this
18 started. And that doesn't affect where -- why we're
19 here today. I'm just trying to figure it out. It is
20 of some interest to me.

21 MR. KNOWLTON: She -- she sought him out -- you
22 know, as a -- it wasn't the first guy she sought out to
23 replace the bank to say I want somebody to handle my
24 financial affairs. First the Cravens -- and Mr. Craven
25 was the guy who used to stock grocery shelves. He

1 wasn't a banker. She wasn't looking for a banker. And
2 Anngell Hamiter is a retired secretary. She was
3 looking for somebody who could just do the routine
4 handling of her financial affairs. But to do that
5 instead of being -- all right, I want to sign all of
6 the checks though -- she just gives this power of
7 attorney, and she knows that for the four years this
8 account is opened, that she is disbursing money out of
9 this account.

10 THE COURT: Okay.

11 MR. KNOWLTON: And, Your Honor, your point about,
12 hey, you all, you know, somebody should be looking at
13 this thing, well the law and public policy require you
14 to. She can say all day long she didn't get the
15 statements, but as her own expert concedes, you've got
16 a duty to go get them.

17 THE COURT: Well, if you don't get them, don't you
18 call the bank and say, hey, what's going on with my
19 \$700,000?

20 MR. KNOWLTON: Exactly.

21 THE COURT: And where is my bank statement?

22 MR. KNOWLTON: And under -- under the UCC and
23 under the account agreement, she's got the duty to do
24 that. And -- and some of the cases are pretty strong.

25 THE COURT: I know. I know.

1 MR. KNOWLTON: You know, some of them -- one
2 person I think even died --

3 THE COURT: Well, I've had cases like this for
4 more and less money, and I've always been a little bit
5 amazed at the obligation the law puts on you to know
6 what is going on with your money. I understand why,
7 but quite frankly, I don't live up to that. I don't
8 look at my statement every month, but I don't have, you
9 know, \$800,000 in a checking account.

10 MR. KNOWLTON: Maybe a lot of people don't. But
11 to make the banking system work, you know, the
12 legislature has said this is the way you have got these
13 statutory duties.

14 THE COURT: All right. So y'all's position is
15 basically the statute of repose expired prior to the
16 lawsuit being filed?

17 MR. KNOWLTON: Long, long before. And -- and the
18 general statute of limitations.

19 THE COURT: Okay.

20 MR. KNOWLTON: And there -- under the general
21 statute of limitation, there is equitable tolling.
22 That's an alternative argument.

23 THE COURT: Right.

24 MR. KNOWLTON: That statute -- and that's what I'm
25 going to point to. There are a couple of other things.

1 First of all, the UCC still applies. You know, you're
2 still on notice in the contents of your statement. So
3 you can't wait three years. If you look at Gibson,
4 that's essentially -- you are still on notice of the
5 contents of your statement. So for your July of 2007
6 statement, even if you go to the three year statute,
7 you're over in 2010.

8 Now, there's several things that happened here
9 well more than three years before this lawsuit was
10 filed -- and that -- and equitable tolling is an
11 objective test. And she -- in -- when the account was
12 first closed in August of 2010, she was given
13 \$200,000 -- \$202,000 and said that's all the money you
14 have left.

15 THE COURT: She -- she closed her account in 2010,
16 which would have been within the three years and --
17 within the time of statute of repose and limitations?

18 MR. KNOWLTON: Well, not the statute of repose.
19 The statute of repose -- well, that would be on a month
20 to month basis --

21 THE COURT: Well, right. Right. I'm assuming the
22 last statement she got, it may have been within that.

23 MR. KNOWLTON: Yeah.

24 THE COURT: So she was put on notice at that time,
25 you have 200 X thousand dollars in this account?

1 MR. KNOWLTON: And she -- and her -- the testimony
2 was that she was violently upset and believed she
3 should have more money.

4 THE COURT: All right. Yeah. Okay.

5 MR. KNOWLTON: And this -- this went on for a
6 while, and then she got -- through her lawyer's
7 requests, they reprinted all of the estate -- account
8 statements that had been generated to that date. I
9 think they went through November of 2010, and delivered
10 to her lawyer at the time. Again, that's more than
11 three years before the lawsuit. So she has the
12 statements in her lawyer's possession.

13 She acknowledges -- and then something odd
14 happened. The account was reopened and \$285,000 was
15 misappropriated by Mr. Hiatt from the bank, put into
16 this account, and disbursed to Plaintiff and the
17 account was closed again.

18 THE COURT: Really?

19 MR. KNOWLTON: Really. Which is I think that was
20 part of his indictment.

21 THE COURT: All right. So -- so the account is
22 closed. They gave her 200 X thousand dollars. Then at
23 some point later, it looks like a month --

24 MR. KNOWLTON: A few months later.

25 THE COURT: A few months later.

1 MR. KNOWLTON: Maybe six months later.

2 THE COURT: She goes back and puts the \$285,000,
3 which she received previously from the bank, into a new
4 account?

5 MR. KNOWLTON: No -- well, she was saying, you
6 know, I think I have got more money, I think I have got
7 more money --

8 THE COURT: Right.

9 MR. KNOWLTON: And then Hiatt issues a check to
10 her that -- first he steals the money from the bank.

11 THE COURT: Right. But let me -- no, what I'm
12 saying is, that when she closed that account and she
13 was given \$200,000 -- let's just say that -- and she
14 says I think I have more money, at some point later,
15 she reopens an account -- does she replace that
16 money -- her own money into that account?

17 MR. KNOWLTON: No. Mr. Hiatt --

18 MR. SCOTT: He reopened it.

19 THE COURT: Huh?

20 MR. SCOTT: He reopened it. Hiatt did.

21 MR. KNOWLTON: Yeah, Mr. Hiatt reopened the
22 account by making an one penny deposit, and then
23 misappropriated two eighty-five from the bank --

24 THE COURT: So the \$200,000 she received before
25 didn't go back into that account?

1 MR. KNOWLTON: No, she has the account, several
2 accounts at BB&T, as he had wiring money to her BB&T
3 account all along.

4 THE COURT: So, he opens the account with a penny,
5 does he do that at her direction or does he do that to
6 try to cover his tracks?

7 MR. KNOWLTON: I think it was to cover his tracks.
8 He misappropriated \$285,000 to try to keep this woman
9 happy.

10 THE COURT: Yeah.

11 MR. KNOWLTON: And then gets a check for the
12 balance again and closes the account again basically
13 the same day in February of 2011. And once again says,
14 that's it. Three and a half years later is when the
15 lawsuit was brought.

16 And she acknowledges that she --- by at least
17 April of 2011, she had the full package of account
18 statements that had been reprinted.

19 THE COURT: Okay.

20 MR. KNOWLTON: And by her own testimony that we
21 cited in the record, the moment she read that first
22 statement, she says I know that's not appropriate, and
23 I would have challenged it the minute I saw that.
24 That's her testimony that we have attached in the
25 record. So it is undisputed that that statement puts

1 her on actual notice of what she contends is an
2 impropriety and unauthorized disbursement. And that --
3 that is -- since that is undisputed, I think it --
4 nevertheless that would be our objective evidence that
5 you should have -- be on notice of the claim.

6 Now, Your Honor, we -- you've been patient with
7 me, I don't -- we've got a number of things we have
8 briefed while they didn't -- failed to meet the
9 elements of each claim --

10 THE COURT: Right.

11 MR. KNOWLTON: But I would like to take a little
12 bit of time to talk about the damages issues in this
13 case that we have briefed this as well. First of all,
14 a total of \$4 million went into and out of this account
15 over the four years that it was opened.

16 Now -- and -- and I'm sure they will correct me
17 if I'm wrong, but my understanding is that there is no
18 dispute in this lawsuit about over \$1.8 million
19 dollars. In other words, a lot of that -- at least a
20 million of it is money that went into her account at
21 BB&T.

22 THE COURT: So she opened this account with
23 \$4,057,000?

24 MR. KNOWLTON: No, Your Honor. She opened it with
25 \$1.17 million. And her Baker & Baker -- her family

1 business, she owned like 10 percent of it. And they
2 would sell off a K-mart or something, she would get
3 about \$5,000 a month, plus distributions when they
4 would sell an asset. So most of that money came from
5 Baker & Baker.

6 THE COURT: I got you.

7 MR. KNOWLTON: And some of this money represents
8 money in and out. I'll go down the list.

9 THE COURT: I got it. I got it.

10 MR. KNOWLTON: This includes everything, but
11 everything that went in totals \$4 million dollars.
12 Everything went out, so there's nothing left. But they
13 don't dispute \$1.8 million.

14 In addition, there are some transactions
15 referrals -- or they want to call it juggling for some
16 reason, but for several instances -- two of them are
17 the most significant amounts of money, if you look at
18 the account statement it reflects something like that,
19 you know, \$200,000 withdrawn from the account. A few
20 days later, the exact same amount was deposited back
21 into the account. The bottom line is, why Mr. Hiatt
22 did it, we don't know, but there's no loss. There is
23 no damage with regard to that amount. Because as the
24 statements reflect, the money went back into it.

25 Now, there are also other than what they have

1 acknowledged that they don't dispute, there is \$182,000
2 that was wired to her BB&T accounts -- the undisputed
3 evidence is that money went into her account.

4 Now, she waited so long to bring this lawsuit,
5 BB&T -- she didn't keep her BB&T records either. And
6 we subpoenaed BB&T and they didn't have things back far
7 enough. So they said, well, anything we don't have the
8 BB&T records for, we're not going to admit. But the
9 only evidence from our bank records is that another
10 \$182,000 was wired to her BB&T account, so we don't
11 think -- we were trying to whittle this thing down.

12 We started off with like 300 transactions.
13 We're down to 115. They started off contending ever
14 bit of this was owed back. So we don't think that
15 should be part of this lawsuit.

16 If we have to try it, it's probably going to
17 need a special term of court because of the number of
18 transactions, but that's why this is important too if
19 the whole thing doesn't go away, that we deal with some
20 of these items.

21 Now, for some reason, we have got direct
22 evidence and went through trying to figure out what
23 somebody else did with their checking account seven
24 years later has been no simple task. But we
25 demonstrated that on the disputed list. She paid

1 amounts for car payments, payments for a credit card
2 she had at Community First. Insurance -- no, paid her
3 insurance bills. Paid a guy named Logan Voxx, who is
4 -- what she -- you know, one of her childcare people.
5 She had two guys that -- I won't get into details of
6 that either, but it was still -- she acknowledged most
7 of those disbursements to him, for some reason not
8 these.

9 THE COURT: Well, I don't want you to get into the
10 details, but did she have children?

11 MR. KNOWLTON: She -- these are the children that
12 she had the custody of.

13 THE COURT: Okay.

14 MR. KNOWLTON: Mr. Hiatt also kept, on occasion,
15 including over the holidays -- over the Christmas
16 holidays on one occasion.

17 THE COURT: Okay.

18 MR. KNOWLTON: And helped arranged for -- with the
19 Cravens and other people for weekend care. Now, there
20 is -- the undisputed evidence is also that Mr. Hiatt
21 misappropriated \$880,000 from the bank and deposited it
22 into this account. Mrs. Brookshire testified that she
23 acknowledged she had no right to those funds. That was
24 -- those --

25 THE COURT: Sure.

1 MR. KNOWLTON: Those deposits were inappropriate.
2 And the backup that we have attached to our exhibit
3 shows that Mr. Hiatt had -- had made false entries to
4 offset those based on purchase of Federal securities as
5 an asset. And, you know, how accountants have to have
6 something on each side of the ledger, it was a
7 fraudulent entry and made that number -- that amount of
8 total deposits into her account. That is the subject
9 of our offset and counterclaim. And we contend the
10 evidence is undisputed that that amount should at least
11 be offset against any amount that she is due.

12 Then we get back to Crosby again. And there --
13 there are a lot of other transactions here, but I'm
14 just pointing out to the court if you just take the
15 Crosby account numbers out of there -- and I think you
16 must because they are on the actual statements that she
17 produced, the first 500 and 200, and you're on notice
18 that this -- the disbursements of this account may be
19 inappropriate, and then you have the 150, and then the
20 balance of \$350,000 -- you have the 500, 200 and a
21 total of 350 more thousand. When you take just those
22 transactions out, she's \$300,000 in the hole. And so I
23 don't think it makes any sense to have a multi week
24 trial about something when these undisputed
25 transactions put her in the negative to start with.

1 THE COURT: Would she be in the negative if you
2 take the \$800,000 -- is the \$880,000 out? In other
3 words that's not her money, that was stolen, and I'll
4 have to look at that. To be honest with you, I'm just
5 going to have to look at that. I understand what
6 you're saying. I just want to make sure.

7 MR. KNOWLTON: I've included \$880,000 here. And
8 she acknowledges, you know, that was inappropriate.
9 And the undisputed evidence is that from -- there's a
10 forensic investigator -- when this thing came up, and
11 it really came up, Mrs. Brookshire -- when -- when the
12 bank looked at what -- you know, what she was
13 complaining about things, and looked at it and said
14 where did this \$285,000 come from? And that lead to
15 the discovery of the other fraud.

16 And the bank focused -- I mean -- this guy used
17 to be a -- used to work for a bank auditor. In fact,
18 the bank's auditor. And so he knew how to conceal
19 things from the bank. But in any event he -- there
20 were multiple prongs to what he had done, no other
21 customers are involved. You know, no other customer
22 has lost money or is a claim against the bank.

23 But with regard to this, you know the
24 investigator was looking at all right how much -- you
25 know, what -- what all did Mr. Hiatt do and where all

1 did it go. This is one aspect -- in order to look at
2 what came out this account -- because they can't really
3 know what Mrs. Brookshire might think -- seven years
4 later what she might think is appropriate.

5 THE COURT: Okay.

6 MR. KNOWLTON: Your Honor, I've got some more
7 issues on this, but it may make more sense to --

8 THE COURT: Yeah. Let me hear -- what's -- here's
9 the deal, what is y'all's position on the statute of
10 limitation and repose, because that is the threshold
11 issue.

12 MR. SCOTT: A couple of things, Your Honor,
13 36-4-406, as I read it, applies to -- the title of it
14 is a customer's duty to discover and report
15 unauthorized signature or alteration. If you read 406,
16 it's talking about when somebody forges your check or
17 it's talking about when you wrote a check for \$1,000,
18 and whoever the payee is changes it from \$1,000 to
19 \$10,000, whatever it might be. And that's 36-4-406.
20 The cases that interpret 4-406 all -- I say all, I
21 have not read all of them, but the ones I've read all
22 deal with forgeries and alterations of instruments.

23 This -- our -- our contention here is that 4-406
24 has nothing to do with this dispute because we're not
25 not talking about a forgery or an altercation. There's

1 no question but that she executed a POA. There's no
2 question but that Hiatt had -- as long as he operated
3 within the confines of the POA, that he had the
4 authority to withdraw money from -- from her account.
5 So, based on that, we take the position that none of
6 the statutes of limitation or repose or 406 apply. I
7 think that's a plain, fair reading of the statute and I
8 think --

9 THE COURT: All right. Let me ask you this: Why
10 did she -- why did she wait so long? I mean, what
11 caused her -- at some point here, again -- and I'm --
12 everybody says she's competent, she realized that she
13 had been cleaned out by a bad guy at the bank; why
14 didn't she immediately do something?

15 MR. SCOTT: She did, Your Honor. Her testimony in
16 her deposition, and I think this creates -- this
17 creates a question of fact with material fact dispute,
18 that she never received any bank statements from CFB.
19 She said she never received any.

20 Ms. Carol Wilson, who they rely on -- who is an
21 employee of the bank who they rely on to establish that
22 she did in fact get statements at least until they --
23 one was returned where after which they admit they
24 never sent her another statement after the first one
25 was returned. But she relies on basically the bank's

1 own internal mechanisms for delivery of bank
2 statements. She had to get them because we had this
3 process that never failed and always worked. But Mrs.
4 Brookshire has consistently denied getting bank
5 statements. She did receive bank statements later on.

6 And I'll tell you my understanding of that --
7 and these are the bank statements that was produced by
8 us or somebody on -- on her side of the ledger to them,
9 she had loaned Hiatt her RV. Apparently he wrecked it
10 or didn't do what he was supposed to do with it or
11 something like that, he brings her RV back to her -- I
12 want to say late in 2010.

13 When he brings the RV back, there are a couple
14 of boxes in that RV, maybe three boxes in that RV, and
15 those boxes were filed with documents. She starts the
16 process of going through those documents. In -- and
17 this is not an issue or a situation, I should say,
18 where she just sat around and did nothing. She was --
19 she was proactive. Maybe she was not as proactive as
20 she could have been or as she should have been, but she
21 was proactive.

22 Her testimony at her deposition was that she was
23 constantly asking Hiatt what was going on with her --
24 what was going on in her -- with her account, and he
25 was basically stringing her along and giving -- giving

1 her answers that she -- they weren't necessarily
2 satisfactory to her.

3 But in 2010, he brings the RV back. She -- she
4 now has access to these documents. She hires a lawyer,
5 which is what somebody would do -- I would submit which
6 is what somebody would do if they thought somebody was
7 stealing from them. She hired a lawyer Kathleen
8 McDaniel from a reputable firm in Columbia. Ms.
9 McDaniel -- and that was on -- as the best I can tell
10 8/11 of 2010.

11 Ms. McDaniel then sets upon the course that
12 we've been embarked on for the last three years of
13 trying to find out how much money went out and how much
14 money came out, where it all went. She began writing
15 letters and making phone calls in late -- in late
16 August of 2010.

17 She initially asked for a full accounting and
18 she never got one. We asked for a full accounting I
19 believe in 2013, we -- at this point, we still have not
20 received an accounting that shows -- and even if you
21 look at the statement that Mr. Knowlton was talking
22 about, the statement does show \$500,000 -- a \$500,000
23 debit, but just looking at that statement you have no
24 idea what it is. I mean it could have been -- it could
25 have been a loan to Coach; it could have been a gift to

1 Coach; it could have been a deposit in some other
2 depository bank. It just says "debit". That's all it
3 says "debit" --

4 THE COURT: But there was no lawsuit filed then?

5 MR. SCOTT: There was no lawsuit filed then. But
6 all it says is miscellaneous debit. That's all it
7 said. I mean we take the position that -- that the
8 quote/unquote loan to Coach is not a loan. Mr.
9 Knowlton said something -- and I wanted to start off
10 with this, but you asked me about the statute of
11 limitations -- but he said that Mr. Hiatt had
12 previously worked for a forensic accountant and he had
13 that background of knowing how to pull all this stuff
14 off. Well, he had that background when they hired him.
15 That was information that -- I don't know if it was
16 known to them when they hired him, but it was available
17 to them. And had they wanted to find out and had they
18 wanted to vet him, they could have found that before
19 they set him up as a Senior Vice President and put him
20 in position to do all this stuff.

21 I'm not going to stand and say my client is, you
22 know, completely absolved because there is a POA. And
23 the POA is -- is a very broad POA. What -- what I do
24 disagree with that has been represented this morning --
25 this afternoon maybe -- about the POA is it did not

1 give him the authority to make gifts unless it was
2 to -- unless the beneficiary of that gift was somebody
3 she had a habit of giving gifts to. And I don't have
4 the POA here in front of me, but it was limited on
5 gifts by -- by writing Coach Crosby -- Cosby a check
6 for \$500,000, and by not taking a note and by not
7 setting up any type of interest rate, and by not
8 setting forth any type of a repayment plan or schedule
9 or anything else -- like everybody in this room has
10 taken out a loan know, that's what you got to do when
11 you take out a loan. They didn't do any of that stuff.
12 And this is a banker making this loan. That -- that
13 wasn't a loan, that was a gift. And the POA did not
14 give him the authority to make that gift I submit, Your
15 Honor.

16 As to their general statute of limitations
17 argument, if you'll agree with me in that the -- 4-406
18 does not -- does not control the statute of limitations
19 in this -- in this circumstance, Your Honor. There is
20 a myriad of cases about equitable tolling and we are --
21 I don't want use the L word, but fortunately for the
22 plaintiff lawyers, South Carolina courts seem to be in
23 tolling statute of limitations under circumstances that
24 that I submit we have in this case.

25 An inducement -- this is Hedgepath vs. American

1 Telephone & Telegraph Company. It's a 2001, 559 SE 2nd
2 337, an inducement for delay may consist of either an
3 express representation that the claim will be settled
4 without litigation or other conduct that suggest the
5 lawsuit is not necessary. The application of the
6 equitable estoppel does not require an intentional
7 misrepresentation, but is sufficient if the plaintiff
8 reasonably relied upon the words and conduct of the
9 defendant in allowing the limitation period to expire.
10 Where the defendant's actions lull the plaintiff into
11 is quote/unquote false sense of security -- I'm
12 sorry -- whether the defendant's action lull them into
13 a false sense of security is usually a question of
14 fact. However, summary judgment is proper when there
15 is no evidence of conduct on the defendant's part
16 warning them to stop. So there has got to be no
17 evidence that CFB or -- forget about Hiatt for a
18 minute, but the bank, there's got to be no evidence
19 that the bank did anything to lull her into a false
20 sense of security.

21 Kathleen McDaniel, the lawyer from Callas &
22 Tides (ph), started asking questions about this
23 \$500,000, she was initially told not only by Ben Hiatt,
24 but by -- by representatives of the bank, including Jim
25 Williams -- including Jim Williams, who is a lawyer,

1 that this \$500,000 was used buying an annuity for these
2 two children we've been talking about. They bought
3 two, \$250,000 notes --

4 THE COURT: What year was that?

5 MR. SCOTT: It would have been 2010, I believe --
6 2010, maybe 2011, but that annuities were bought. And
7 they even gave them the name of an annuity company,
8 Lafayette. And checked it out. There were no
9 annuities with Lafayette.

10 They went back and asked again, we can't find
11 any Lafayette annuity. I think Mrs. Brookshire
12 testified she didn't know what an annuity was, but that
13 -- that's never here nor there.

14 Then they give her the name of a separate -- a
15 second annuity issuance, they check with them. There's
16 no annuity with their company. They didn't -- they
17 then changed their story, the bank and Hiatt, and they
18 say, well, it wasn't an annuity, it was a loan to
19 Coach. The loan to Coach story came along probably
20 around 2013, July of 2013 is when the story was
21 changed -- remember we bought annuities with it, but we
22 loaned it to Coach.

23 And -- and it was represented to -- to Mrs.
24 Brookshire, and her representatives, that there was a
25 note. There was a promissory note executed by -- by

1 Crosby, which he flatly disputed in his deposition
2 testimony, and that a copy of that promissory note was
3 delivered to her. Just like the bank statements were
4 delivered to her, this promissory does not exist, Your
5 Honor. But -- the people at the bank -- insiders at
6 the bank, higher ups at the bank apart from Ben Hiatt,
7 had a course of conduct of telling her what they --
8 basically what they needed to tell her to throw her off
9 the trail if you will, Your Honor.

10 I -- I think that is some evidence of some
11 conduct on the -- on behalf of CFB and their agents
12 that is lulling her into a false sense of security such
13 that whether or not -- whether or not equitable tolling
14 applies here should be up to a jury. It should not be
15 decided as a matter of law.

16 THE COURT: So the threshold issue I've got to
17 determine is whether or not the statute of limitations
18 and statutes of repose apply?

19 MR. SCOTT: I think that's the first thing, Your
20 Honor, yes, sir.

21 THE COURT: Okay.

22 MR. KNOWLTON: Your Honor, one other threshold
23 issue I think is if you exercise this, pursuant to the
24 power of attorney, there is no liability period.

25 THE COURT: Well -- and I agree with you, the

1 problem is you have got a crook exercising it, who is
2 working for the bank. That -- that throws a little bit
3 of a wrench into my thought process. You have got a
4 guy who's basically stealing money from her. Listen --
5 I mean, I know none of y'all can prove it, but for
6 crying out loud, \$4 million goes in and \$4 million goes
7 out, and she has got nothing. And oh by the way, he
8 did a little federal time for doing it to other people,
9 it's not a great leap to figure that you know he -- he
10 -- the bad actor here is him. And, again, I'm not --
11 I'm just saying that I understand -- I understand your
12 position.

13 MR. KNOWLTON: Well, let me -- let me --

14 THE COURT: What I'm looking at is the summary
15 judgment issue. I'm trying to find -- I'm trying to
16 decide if there is a factual issue obviously, so --

17 MR. KNOWLTON: And I can get some of this down I
18 think to -- where I think it all kind of comes
19 together. Under -- under the law, we've cited SCN vs.
20 Berwell and other cases, you are charged with knowledge
21 of the contents of your agreements, your contracts.

22 Under the UCC, and pursuant to public policy and
23 law, you are charged with knowledge of the contents of
24 your statements, your account statements. Here the
25 four corners of the POA give no duties to the bank.

1 The bank is not serving as a power of attorney.

2 Two, the -- under the account agreement, the
3 four corners of that are clear and unambiguous, she's
4 serving as her own trustee. This is a checking account
5 and you're charged with knowledge of when these
6 statements come out. And she has already said as soon
7 as she saw that statement, she knew in her mind that
8 was inappropriate, and you're charged with knowledge of
9 that. And she says, again, she was violently upset as
10 early as 2010. We have other testimony -- I didn't put
11 it on my little chart, but in 2008 she starts
12 suspecting he was lying to her.

13 THE COURT: And I guess I am wondering why she
14 waited.

15 MR. GIESE: Your Honor, may I?

16 THE COURT: Sure.

17 MR. GIESE: Thank you. Your Honor, Mr. Knowlton
18 makes a point about 2010 is when she became aware -- or
19 she was aware that some of this money might have been
20 misspent, and what he doesn't tell you, and it is in
21 our brief, is that at that time she hired Kathy
22 McDaniel, who was a lawyer in Columbia, who then
23 immediately -- or fairly quickly sent a letter to
24 first -- I mean to the Community First Bank
25 specifically requesting a full accounting.

1 Now, that full accounting becomes important
2 later on because they don't send her a full accounting.
3 They send her a copy -- and I believe it's Defendant's
4 Exhibit No. 36 of -- and that shows you what they sent.
5 And all it says is this lady's debits and deposits. It
6 does not say where the money went.

7 So, Kathy McDaniel, in her testimony, says look,
8 this is not enough. This is not a full accounting. I
9 need a full accounting to know where the money went.
10 That was in 2010. It took until December 17th of
11 2013 -- and, Your Honor, it's in our brief, I believe
12 at least eight different requests for a full accounting
13 to get the paperwork to see where the \$4 million went.
14 It took them until December 17th of 2013 to give us a
15 quote/unquote full accounting.

16 Your Honor, that was not a full accounting. It
17 was \$500,000 that they did not give us, we did get
18 paperwork on. We did not know exactly where that
19 \$500,000 went. And, Your Honor, we believe that our
20 breach of contract of fraudulent act, the fraud
21 occurred at the beginning of it, during the deposits in
22 the account, and then ended on December of 2013. I say
23 "ended", the fraud continued because they didn't send
24 us everything.

25 They go -- I believe in their -- in their brief

1 they say, well, you know, we don't have to turn
2 everything over to you pre -- because of the discovery
3 rules. Your Honor, they are her records. She is
4 entitled to those records and they didn't turn them
5 over. And just so happens the stuff that they didn't
6 turn over was an \$85,000 deposit that left my client's
7 account and went into the Chairman of the Board's
8 account and never came back.

9 THE COURT: I mean -- say that again? The
10 Chairman of the Board of the bank?

11 MR. GIESE: Of the holding company at the bank, a
12 Mr. McCoy, \$85,000 of my client's money got transferred
13 into his account, and it was immediately offset -- it
14 was an offset into a bank account. That money never
15 came back. And -- and just coincidentally that's one
16 of the pieces of paper that they don't give us.

17 A lot of money -- and I forget the amount of
18 money -- a couple thousand dollars went into the
19 president of the bank, Mr. Sheppard's son account and
20 wife's account. That was not turned over to us. A
21 \$310,000 deposit from my client's account transferred
22 into one of the bank's accounts that sat there, didn't
23 quite make it either. So Your Honor it is our position
24 they never gave us a full accounting.

25 You ask why it took so long, we had nothing --

1 we had nothing to -- to file on. July of 2013 is the
2 first time we find out -- or Mrs. Brookshire finds out
3 that the \$500,000 is not in an annuity. It was a loan,
4 I'm sorry, we only lied to you three times -- four
5 times.

6 And, Your Honor, it was no loan. Under the
7 POA -- again, we didn't know that at the time. At the
8 time that it was a loan, under the POA, he had -- you
9 know, you don't have a cause of action.

10 THE COURT: Why -- why did it take so long for
11 them to get a full accounting? If they said they
12 askeded -- they asked, not askeded -- asked eight times
13 and it took three years, what was going on with the
14 bank? Was it internal.?

15 MR. KNOWLTON: Your Honor, I didn't live through
16 it, but they --

17 THE COURT: I imagine it was quite a time to live
18 through at that bank, I mean, you know, really.

19 MR. KNOWLTON: And, you know, the president is no
20 longer there. Mr. Hiatt is no longer there, so there's
21 been turnover.

22 THE COURT: Right.

23 MR. KNOWLTON: But this was the thing, the -- Mr.
24 Geise in his letter dated August 19, 2013, asked for
25 documents related to probably 100 different

1 transactions. Remember, at this point, they had
2 already given them a reprint of all the account
3 statements. And she has already said as soon as she
4 saw it, she knew that she thought that was
5 inappropriate. That was in -- the lawyer got it in
6 2010, she said she didn't get it until early 2011,
7 three and a half years after that is when they filed
8 suit. She's already on notice of a problem, and you
9 don't get full discovery on things before the statute
10 of limitations has run. She's already under an
11 objective test, she's already under the knowledge and
12 notice that she -- she may have a claim.

13 Now -- and it is -- and this is a checking
14 account, so it's not like, you know, there was an
15 on-going forensic analysis and they asked about
16 specific transactions, an employee at the bank
17 testified he spent a whole lot of time pulling each,
18 you know, bit of paper at the bank dealing with each of
19 these transactions, and they were produced.

20 Now, the ones he was just talking about weren't
21 on that list. And, you know, what -- I don't know --
22 you are not entitled to a full accounting -- whatever
23 that means -- for a checking account other than getting
24 your statements. You can ask for specific items or
25 whatever, but there -- that's what they, you know,

1 somebody spent a whole lot of time digging up the
2 paperwork for these items.

3 The \$310,000 was the -- the reversal that went
4 right back into the account a few days later. So, you
5 know, there's -- again why that happened, I don't --
6 nobody really knows, all we can see is the electronic
7 trail. There's not any paper work that goes with that,
8 it's just electronic book entry, but there is no
9 documentary evidence other than that.

10 MR. GIESE: Your Honor, as to -- I'm sorry.

11 THE COURT: No, go ahead.

12 MR. GIESE: As to the \$310,000, yeah, it went into
13 an account. It stayed in that account. It was
14 returned from a separate account, which is the
15 juggling. And it was returned not the next day, which
16 a reversed transaction would be, but some ten days
17 later.

18 Now, as to the what was turned over, not turned
19 over, Your Honor, there is direct testimony from Don
20 Jones, the man that he has been talking very highly
21 about, who says that he created what was going to be
22 turned over to my office, which was all of the
23 paperwork from her accountant, all of it.

24 He says that he is seating -- he's sitting
25 inside an office, and hears the president of the bank,

1 the CEO, Sheppard discussing with an internal auditor
2 what they were going to put in and what they were going
3 to take out of that binder -- of those binders. So not
4 only -- not only did he knowingly take them out, he
5 instructed someone to take them out. And that -- that
6 is the testimony from their -- their own auditor is
7 that it didn't -- you know, they decided not to put the
8 chairman of the board's in there.

9 Your Honor, the other thing too about it, when I
10 was first hired -- and I forget when it was, but --
11 exactly -- but all Ms. Brookshire hired me to do was
12 find the \$500,000 annuity. The \$500,000 annuity, she
13 figured at that point, if she -- that -- that would be
14 even, and that's what we tried to do, and all they did
15 was lie to us. I actually went and sat down with Ben
16 Hiatt at the bank in his bank office on the second
17 floor -- I passed it on the way coming in here -- and
18 he looked at me and said that \$500,000 transaction -- I
19 have an investigator with me -- that \$500,000
20 transaction was for an annuity. And he gave me the
21 name of the guy he gave the \$500,000 check to, a guy
22 named Holcomb -- Mr. Holcomb, whose sells insurance
23 here.

24 And, in fact, we went back and checked. And at
25 that point, there is no Mr. Holcomb. He didn't receive

1 a \$500,000 check. That's the first time we had an idea
2 there wasn't an annuity. I asked the lawyer from the
3 bank, please give me -- in writing, give me a full
4 accounting, I'm starting to worry about all the money
5 now. And it took them five months from that day to
6 turn over -- not a full accounting, but some of the
7 accounting. If that's not a delay, I don't know what
8 is, Your Honor.

9 THE COURT: Okay.

10 MR. HAWKINS: Your Honor, when we can, I want to
11 argue my motion.

12 THE COURT: Argue yours -- I get it. I'm going to
13 have to read through it. I -- I see what's going on
14 here. I mean, I'm -- and I have got to read all of
15 this, so go ahead and knock it out.

16 MR. HAWKINS: Thank you, Your Honor. I do have --
17 we have a little different perspective than the bank on
18 a number of issues. And the first thing that I would
19 say is that as -- as Mr. Hiatt's attorney, I don't
20 concede or agree that he misappropriated anybody's
21 monies anywhere along the trail in any part of this
22 case.

23 He had pled guilty in a federal action for a
24 federal prosecution regarding a totally unrelated
25 matter. It didn't have anything to do with this.

1 And -- and he has not admitted to doing anything wrong
2 in this case. Again, one of the reasons why we have
3 statutes of limitations so that the facts and the
4 information don't get stale and no longer easily
5 obtainable by a person who defends themselves when they
6 have been sued. If we were have had discovery back in
7 the day, when we believed we should have had it, I
8 think Mr. Hiatt would be able to show that every -- he
9 can account for all of the money, why it went from
10 wherever it went from to wherever it went to, and that
11 Mrs. Brookshire was aware of all those transactions and
12 she authorized these loans.

13 When they say there is no note, where is the
14 note, gosh, how can there not be a note. Well, let's
15 stop for a minute. When a loan is made, there is a
16 lender. There is a source of the funds. And when a
17 note is created, who gets that note? Does the middle
18 man get the note? Does the borrower get the note --
19 the original note I'm talking about -- no. The lender
20 gets the original note. And that would be the
21 testimony in this case. That's when the first loan was
22 made to Mr. Crosby, the note which would have had 20
23 percent interest, is what we would hear if we had a
24 chance to defend it back in the day -- when it was a
25 more reasonable time to do it, that it went to Ms.

1 Brookshire.

2 Now, just like she claimed she never ever in her
3 life ever got a bank statement -- until she hired
4 lawyers and three years later they got them -- or
5 whatever all her story is about that, she denies that
6 she has the note -- or any of the notes for the loan.

7 Well, she's the one -- our contention is --
8 she's the one that got them. Now, Crosby would have
9 had copies. Crosby went out of business. Crosby's
10 building that had his filing cabinets in it was
11 foreclosed on and he left everything he had there. It
12 is all gone. He doesn't know -- he doesn't have a clue
13 where his business records are.

14 So our contention is the utter unfairness of
15 this is that in January -- I'm sorry -- in June or so,
16 of 2007, Mrs. Brookshire's money was sitting in a bank
17 account. And Mr. Hiatt, who was just trying to do a
18 favor for a friend, has gone out and tried to invest
19 her money in a way to get a bigger return than what she
20 was getting at BB&T, which she was unhappy with what
21 BB&T was doing. So she searched around and found him
22 and asked him would he do it.

23 He didn't ask her if he could be a power of
24 attorney. He didn't ask her if he could invest her
25 money. He didn't ask her if he could have all this.

1 She came to him and said, will you do it. And so he
2 did.

3 And when you look through all of these
4 records -- if you look at all of these transactions, he
5 did a tremendous amount of work on her behalf. Monthly
6 phone calls, weekly phone calls, phone calls from
7 bankers, phone calls from auto people selling cars,
8 people all over the place trying to do business with
9 her. And her saying, well, call him. Call him.
10 Whatever it is along the way.

11 He is literally paying her car payment. He's
12 paying her utility bill. He's paying all kinds of
13 stuff for her. So, you know, he is painted as a very
14 bad guy, and I don't think that there is evidence that
15 he's a very bad guy as to what he did with her.

16 THE COURT: What about the CFB funds that he took
17 from the bank and put in her account?

18 MR. HAWKINS: Well, I don't know -- I understand
19 mathematically that this occurred, but I don't have any
20 knowledge of the factual background behind it. What I
21 understand is not really refutable. And if the
22 Plaintiffs -- so far as I know -- nowhere in their
23 memorandum, no where at any time in the case have they
24 made any argument that this money didn't come out of
25 somebody's account, other than hers at the bank, and

1 was transferred into her account.

2 So, in other words, this \$4 million we're
3 talking about includes \$880,000 that went in there that
4 she didn't put in there. She is not the source of
5 those funds, but she had the benefit of the funds at
6 time. And it didn't all come in at one time is my --
7 is my belief and understanding as well.

8 So what I want to go back to is the first focus
9 and talk about as -- as you sift through all of this,
10 you might decide for one reason or another, there is
11 some cause of action that you believe survives because
12 of whenever it may have arisen, but these payments that
13 took place in 2007, this \$500,000, the \$200,000, I
14 think the bulk of this \$353,000, those numbers are all
15 way before -- I mean, the statute of limitations have
16 run way before any kind of claims about tolling
17 argument.

18 All their equitable tolling arguments start in
19 2011 and '12, and '13. According to them, all I have
20 to do is sue a bank and go back 20 years and write a
21 letter to the president saying I want a full accounting
22 of my account for everything that ever happened here
23 for 20 years. And until you give me a full accounting,
24 no causes of action are running against me. I get to
25 wait until you give the accounting and then I can go

1 back as far as I want to, that's never been the law,
2 and it's not the law now.

3 There are sound public policy reasons for why
4 people are supposed to look at their bank statement.
5 And if they don't, where should the risk of laws falls
6 -- and common sense says it should fall on the person
7 who doesn't look at their bank statements.

8 The first thing that I would look at in this
9 case is that it's just a reasonable person thing to do.
10 If you have a bank account, you should look at the bank
11 statement. I'm supported in that by their expert
12 witness who said if you -- if you don't get your bank
13 statements in 90 days, you don't get -- you know, you
14 opened an account, you got over \$1 million in it, you
15 didn't get a bank statement for the first month. Well,
16 maybe you wonder about that. You're not too worried.
17 You have got Mr. Hiatt over there, you're not too
18 worried.

19 The second month goes by, you still don't get
20 one. Well, you should be thinking a little harder now
21 about what's going on here. When 90 days has passed,
22 and you haven't gotten any of those bank statements
23 that should have come out during that time, you -- you
24 now have a responsibility to look into that and go find
25 out where it is, where is my statement, what's going

1 on. I need it. All right. So that's just sort of a
2 common sense thing, and it's their expert witness on
3 bank accounts saying that's what ought to happen.

4 The second thing that says people -- you know,
5 we should look as a -- as a society, as a court,
6 looking at this case and say when does the statute of
7 limitations begin to run on that first \$500,000 that
8 left her account, and in her testimony, very
9 strenuously unauthorized to leave her account.

10 The second thing that comes up is the terms and
11 conditions of her bank account with CFB. The written
12 terms and conditions require that she look at her
13 statement within 14 days, and says that she will look
14 at it with reasonable promptness and no more -- no less
15 than 14 days after -- after it has come. So there's a
16 written agreement out here saying that you know you're
17 supposed to get a statement, she admits that. She said
18 she had bank statements back in the 1970s. She
19 understands how bank accounts work. She knows she
20 should have been getting statements.

21 But she's got a written contract where the bank
22 is telling its depositors if there is a problem in your
23 account, you have got 14 days to find it and come tell
24 us about it. And there is a certain standard of care
25 that applies at that point, Your Honor, which is why

1 the 14 days means something.

2 Later in the same contract, this was -- I
3 believe it's Exhibit A to the original motion for
4 summary judgment by the defense, but we can certainly
5 pull out the terms and conditions of this statement.
6 It then says at 60 days, if you haven't told us within
7 60 days, then now the burden is really on -- on the
8 somebody else about a forgery or any kind of funny
9 business with your money.

10 So my point -- what I'm talking about now is
11 where in the world is there a duty or a responsibility
12 for a potential plaintiff ought to have looked at their
13 bank statement, all the law on equitable tolling and
14 all the law on the statute of limitation begins to run,
15 says that an ordinary person of reasonable
16 intelligence, there's supposed to exercise due
17 diligence and reasonable inquiries into their affairs
18 to discover whether they have been hurt, not hurt,
19 what's going on with you in your life. You can't sit
20 around and do nothing for years and years and years,
21 and wake up one day and decide to be diligent. All of
22 our cases say otherwise.

23 So, I'm going through the three reasons why
24 somebody should be looking at the bank statement within
25 the first month, two, or three months. And the third

1 one is the UCC, which Mr. Knowlton has already argued
2 to the court as to why that ought to be. But my point
3 of that is, Your Honor, to say that when the statement
4 came out in July of 2007, showing a \$500,000 debt,
5 there's a point on a timeline where the plaintiff in
6 this case had a responsibility to find that statement,
7 look at it, and realize that a half a million dollars
8 of her money was gone, and she didn't know where it
9 went and she had not authorized it. Now, whether
10 that's 14 days after the statement came out or 90 days
11 after the statement, as her expert witness says you
12 ought to be doing, you can give it six months. By the
13 time she gets around to hiring a lawyer, the statute of
14 limitation on this \$500,000 payment is gone, gone,
15 gone. It's ancient history. It's over with.

16 All this stuff about Mr. Giese going to talk to
17 Ben Hiatt in 2013, oh, he told me that he lied to me.
18 What does that have to do with the statute of
19 limitations on this \$500,000? You can't revive the
20 statute by saying six years later, I hired a lawyer to
21 look into it, to investigate it. And his investigation
22 led him to talk to this guy who then told us a fib
23 about where the \$500,000 was.

24 I'm going to add something to that. The only
25 thing they've ever said that they heard about the

1 \$500,000 is that it went into an annuity. They have
2 never said it was an annuity for Ms. Brookshire. As if
3 the money isn't really gone, I went out and put it in
4 some sort of an investment for you, Mrs. Brookshire, so
5 that you could have the benefit of this \$500,000. They
6 don't even almost argue that.

7 They admit that the first information they ever
8 had about an annuity is it was two children that aren't
9 even her children. These two kids, as I understand
10 it -- she had married Mr. Brookshire at some point in
11 history. Mr. Brookshire had relatives in another
12 state, I believe, Tennessee, but I might be proven
13 otherwise. They got into trouble with the law and the
14 parents went to prison. So they had to do something
15 with their children. So, they got a hold of Mr.
16 Brookshire, and said would you take our kids, and they
17 did.

18 And so they brought those children in, and I
19 presume at some point in history they got a custody
20 order that allowed them to have custody of the two
21 children. And I'm sure they loved the children as did
22 my client, Mr. Hiatt, who kept them for Christmas and
23 other things, and loved them, and wanted to do nice
24 things for them, took them perhaps in periods of time
25 when she wasn't capable of looking out for them or

1 whatever those situations may have been.

2 But the point of it is to say this \$500,000 in
3 an annuity, that doesn't lull somebody into not filing
4 a lawsuit. The money is not in her name, it's in
5 somebody else's name. So how does that say, well,
6 don't sue me because the money is still out here. It
7 wasn't in her account. It wasn't anywhere where she
8 could get her hands on it based on what the plaintiff
9 claims they were told.

10 So if you take that, and we say she should have
11 looked and she should have known and she should have
12 found out at this time period that this \$500,000 is
13 wrongfully gone from her account, that statute of
14 limitations is gone before they ever -- before she even
15 talks to Kathleen McDaniel or anybody else to try to
16 come be her lawyer and investigate.

17 The second point of this is all the law and
18 statutes of limitation says the statute does not begin
19 to run when you hire a lawyer. It's irrelevant. When
20 you hire a lawyer means nothing. It doesn't begin to
21 the run after you have done a full investigation. I
22 heard Mr. Geise say that over and over and over in his
23 argument. We didn't have a full accounting. We didn't
24 have a full accounting. We didn't have a full
25 accounting -- that doesn't mean anything. Not having a

1 full accounting does not toll the statute of
2 limitations.

3 Asking for an accounting does not toll the
4 statute of limitations. You have got to be given
5 something that makes you believe you don't need to file
6 a lawsuit. You've got to be given some kind of
7 information that says, don't sue me, I'm going to make
8 it right. There's a lot of money missing, but I'm
9 going to make it right. I know that I owe you that
10 \$500,000, and I promise you I'm going to pay you so do
11 not sue me, and there is no evidence of any of that in
12 this case, none. The only thing they have is that well
13 after the statute would have run on all of these major
14 things, they then started trying to investigate.

15 There's other evidence in the record that the
16 bank has attached, and we have relied on as well in
17 what we have submitted, that says in 2010 the plaintiff
18 in this case was telling other people that she didn't
19 believe Mr. Hiatt. She thought he was being untruthful
20 to her as to how much money was in her account, and she
21 thought that he was doing -- doing things that were
22 inappropriate. And there's testimony to that, that
23 testimony is in this record.

24 Well, if that's the case, then the statute of
25 limitations is running on her when she's telling these

1 people that this guy out here is doing something wrong
2 with my money, and he's lied to me about how much money
3 I have. Now, that doesn't mean that she has to know
4 that I'm going to sue him for \$4 million or \$500. It
5 means I believe he's stolen from me, or given money to
6 somebody else, and I'm going to sue him about it. And
7 then in the ensuing time, you can discover more facts,
8 but you don't get to wait years upon years upon years
9 to file your lawsuit.

10 If we take -- when she made those statements,
11 then that statute of limitations expired in 2013. And
12 yet still the lawsuit isn't filed until September of
13 2014. So Mrs. Brookshire not only wants a special rule
14 for her, she wants one that allows her to be
15 intentionally ignorant of whatever the facts are, and
16 that the statute never begins to run on her until in
17 fact, her lawyers have performed a full and complete
18 investigation and retained expert witnesses to be able
19 to testify about why it is that somebody did her wrong.
20 None of which is the current law of South Carolina, it
21 would require you to reverse those decisions of the
22 Supreme Court that say hiring a lawyer doesn't mean
23 anything, commencing an investigation doesn't mean
24 anything. And they have not put in front of you any
25 evidence that would save them on the statute.

1 The argument that they have made time and
2 again -- it's throughout their brief -- is that at some
3 point in time they are told that there's \$500,000 in an
4 annuity somewhere. If you accepted that, for whatever
5 reason, to say it tolls the statute of limitations,
6 Your Honor, it would only toll the statute as to a
7 \$500,000 payment that took place in June or July of
8 2007, and it wouldn't affect these other matters that
9 are all in controversy with this case.

10 Let's see what other things I've got. I didn't
11 get served on me all of these nice stacks of bound up
12 documents --

13 THE COURT: You can have mine if you want them
14 just to help you out.

15 MR. HAWKINS: But I do object to their documents
16 unless they serve me with a nice bound copy like they
17 gave to everybody, if they got a bound one anywhere,
18 but --

19 THE COURT: Oh, I hope they send you one. I hope
20 they do.

21 MR. HAWKINS: There you go. I think you should
22 not accept their evidence as something for you to
23 review until they have done what the rules says --
24 which they should have served it earlier, but I'm not
25 complaining about that. You know, this is a long

1 argument, I doubt you'll issue a decision this week, so
2 --

3 THE COURT: You're correct about that.

4 MR. HAWKINS: So I'm asking those documents to be
5 served on me.

6 MR. KNOWLTON: You are talking about the
7 plaintiff?

8 MR. HAWKINS: The plaintiff, correct. I have the
9 Defendant's Exhibits. They did give me a set of paper
10 copies of their defendant -- I'm sorry, I apologize --
11 of their exhibits.

12 I guess just a couple of clean-up items from my
13 perspective. As I hear arguments, there's a lot of
14 claim that Mr. Hiatt is supposed to be in -- what they
15 describe it, it's like he's her business manager and
16 her accountant and somebody whose supposed to take 100
17 percent care of her financial affairs. They talk
18 about, well, if he did a loan, well then he should have
19 kept copies of the note and all this other bunch of
20 stuff. All he had was a power of attorney.

21 And there has not even been testimony from Mrs.
22 Brookshire that she expected him to manage all of her
23 business affairs, make the decisions, and keep all the
24 bookkeeping records that would go with that. And so I
25 believe those arguments should not be accepted as some

1 duty or responsibility that Mr. Hiatt ever had. All he
2 agreed to do was what the power of attorney said he can
3 do, and it didn't require him to make any form of
4 accounting to her ever. It's not part of the power of
5 attorney.

6 She is trustee of this account, and I think
7 that's real critical for the court to consider.
8 Whether or not the bank had a trust Department, whether
9 the bank considered this particular account to be a
10 trust account is irrelevant when we look to the fact
11 that she called it a trust account. She created that
12 account, and she named herself as the trustee. And so
13 if somebody has responsibilities and obligations to
14 look at that bank statements, and analyze those
15 statements and see where that money went; and if you
16 can't tell where the money went, to make reasonable
17 inquiries to determine where it went, it has to be the
18 trustee of the account.

19 There's not one word in the power of attorney
20 that says Mr. Hiatt has that job, because she made
21 herself the trustee. And the trustee has to have that
22 responsibility which I suppose adds to another reason
23 of why she should promptly be looking at the checking
24 account statements to see what's going on in them
25 because that's her job. That is the trustees' job of

1 any account.

2 And -- and in this case, they want to put that
3 burden on somebody else and say not Ms. Brookshire, not
4 the trustee, just forget that she's the trustee. Let's
5 pretend she's not the trustee. They can't do that.

6 The evidence, when you look into it about what
7 her statements were in this 2010 period, right around
8 the time I guess -- or prior to it, when she hired a
9 Kathleen McDaniel, the lawyer with Callas & Tides to
10 begin an investigation, include that she was violently
11 upset with Hiatt, that -- that he was lying to her. I
12 mean those are strong terms to me that say, look, the
13 statute has got to be running when you're claiming that
14 the person that you now say you relied on for
15 everything forever was lying to you, and you knew that
16 and you believed that in 2010. The statute has to be
17 running when you're concerned about where your money is
18 and you're telling everybody else that he is lying to
19 you about it, and you are quote/unquote in somebody
20 else's words, who observed her at the time, violently
21 upset.

22 There's -- there's been no reasonable evidence
23 in this record to indicate that, in fact, Mrs.
24 Brookshire never received any of her bank statements.
25 The opposite is true. We know she received some

1 because they were produced, and Mr. Tabor said that she
2 gave them to him. He was her investigator, one of the
3 people she hired to do some of it -- for the value of
4 that to say that she's fibbing about a whole lot of
5 this, so there's evidence of it that she is. She said
6 she never got a statement, yet Mr. Tabor says, well,
7 she gave them to me. She gave me these and I ended up
8 producing them or allow -- helping them to be produced
9 in this lawsuit. And those are the very statements
10 that deal with these giant payments that went out.

11 When the plaintiff argues that -- when he --
12 their lawyer saw this \$500,000 miscellaneous statement,
13 that it didn't tell them anything. It just calls it a
14 miscellaneous debit, so that makes it worse not better
15 that it's called a miscellaneous debit. You know, she
16 knows she never agreed for anybody to get \$500,000. So
17 whenever anybody saw that statement, and saw that
18 statement -- and in my mind, the fact that it doesn't
19 tell you where it went increases -- should increase
20 ones concerned and worried about what happened to it.
21 You know, if the evidence she got at that time said
22 this was a \$500,000 loan at 20 percent interest, it
23 has got to be repaid within three years -- or things of
24 that nature, you might be less concerned and you would
25 want to talk about it and know it. All she knew is

1 it's gone. My money is gone, half a million dollars is
2 gone.

3 And the -- the notion that this \$4 million went
4 it and it came out, and she didn't get anything, that's
5 a long ways from being accurate as well. Because she
6 got all kinds of things. You know, she got rent
7 payments. She got cars. She got things that were, in
8 fact, purchased with all of that, and she had a
9 substantial amount of assets at the -- at the time that
10 that all ended. And she got the \$285,000 no matter
11 where it came from.

12 You know, there's an issue about -- I don't see
13 it on here right now, but I know it's in there
14 somewhere in one of these -- I guess it's in this one
15 maybe -- the bank account funds that were given to her
16 at the very end when the check was written and sent to
17 Kathleen McDaniel's office, she certainly got that
18 money. And that's not peanuts, \$285,000.

19 In any event, I guess my final comments in there
20 would be that asking for things like an accounting do
21 not toll the statute of limitations, and there's no
22 case in South Carolina that says it does, nor am I
23 aware of any cases anywhere. And I -- we deal with
24 statute of limitations questions too much. I wish I
25 had fewer cases coming to me where somebody had a

1 problem with the statute, that -- I thank you for your
2 attention, Your Honor.

3 THE COURT: No, no problem. Well, y'all are going
4 to have to give me some time to read through all of
5 this. I see what -- I mean I get it.

6 MR. GIESE: Your Honor, if I could just say one
7 last thing?

8 THE COURT: Yeah. July.

9 MR. GIESE: I just have to respond for just a
10 second to Mr. Hawkins, who I respect. He claims that
11 Mr. Hiatt got both nothing out of these different
12 transactions, to put in his pocket. And that might be
13 true, but he certainly put it into his families'
14 pockets.

15 The one last thing -- and I misspoke earlier and
16 I wanted to clear this up -- when we're talking about
17 the -- the fraud that we believe the bank committed
18 against Mrs. Brookshire, the actual bit of fraud
19 happened in this case -- in our opinion happened in
20 August of the year of 2011, she closes her account in
21 February of 2011. She terminates her POA with Mr.
22 Hiatt in -- in April of 2011.

23 And then in August of 2011, some four months
24 after the POA has been terminated, he sells or actually
25 transfers 16,000 shares of stock in Community First

1 Bank that only he could transfer, as he did at the
2 bank, he was able to transfer stock and deal with that
3 stock, and that was in his position at the bank. He
4 transferred 16,000 shares of her stock at the time
5 worth about \$75,000, and transferred it into his
6 brother -- his brother's business -- I forget the name
7 of the business -- it was Hill Top, Incorporated in
8 this area, so that was the actual last bit of fraud
9 that the bank committed, we believe, and Mr. Hiatt
10 committed against our client which we now believe is --
11 is very relevant in the case.

12 And the last, you know, Mr. Hawkins keeps
13 talking about this loan and the 20 percent, and all
14 that, and you know unfortunately, he not at Coach's
15 deposition. Coach was very specific, there was no
16 loan. And, in fact, if you look at some of his -- his
17 testimony, he basically says there is no paperwork and
18 it was no -- it was no note. He never signed a note.
19 So, I don't know where Mr. Hawkins is getting Mrs.
20 Brookshire should have the note. She's the lender.
21 There was no note. We didn't find that out until three
22 years after we were told there was a loan and a note.

23 THE COURT: Okay.

24 MR. HAWKINS: Just a comment there that I'm sure
25 is a mistake, Mr. Giese didn't mean to say that he said

1 there was no loan. Coach -- he said he did think it
2 was loan, in my belief, but that he did not have a
3 note.

4 MR. GIESE: Correct.

5 THE COURT: Right. There is no note?

6 MR. GIESE: Yes.

7 MR. HAWKINS: Correct.

8 THE COURT: Okay. I assume all these people are
9 still alive and floating around, right?

10 MR. HAWKINS: But the stock is not in the
11 complaint. I do not believe there is any allegation
12 related to the stock.

13 MR. GIESE: Your Honor, because we didn't find
14 that out until the discovery process when we were --
15 40,000 pages were turned over to us by PCS, which is
16 the people that did their audit, and we found it in
17 that several months after we filed the suit.

18 MR. HAWKINS: Well, they might want to amend, but
19 it's not in the Complaint that we're here on today.

20 MR. KNOWLTON: Well it's not in complaint, and
21 it's also -- transfer online, if you get -- most stocks
22 certificates these days are street name, electronic,
23 book form.

24 THE COURT: Right.

25 MR. KNOWLTON: But if you have a stock certificate

1 that's issued in the name of Bob Knowlton, and you want
2 to sell it to Elizabeth Black, you have got to get a
3 transfer agent to say here's the stock certificate,
4 let's surrender that and issue a new one to Elizabeth
5 Black. And anybody can do that. You don't have to be
6 a banker to do that. You don't have -- Mr. Hiatt --

7 THE COURT: Sure.

8 MR. KNOWLTON: And the paperwork for that does not
9 mention the bank. It is Mr. Hiatt doing it and the POA
10 give him authority to deal with it.

11 Your Honor, one quick point that I think goes to
12 one of the questions you had, and that deals with the
13 application of the UCC. And one of the comments made
14 was maybe this only implies to forgeries. 36-4-406
15 says it applies to unauthorized signatures. And an
16 unauthorized signature -- and this is on page 18, and
17 footnote 19 of our original memo, and that defines that
18 an unauthorized signature is one made without actual,
19 implied or apparent authority and includes a forgery.

20 COURT REPORTER: Includes a what?

21 MR. KNOWLTON: Includes a forgery. So if it
22 includes a forgery, but it includes any matter of
23 unauthorized signatures -- which was brought here --
24 and so if there's any way in which you contend that he
25 lacked authority to make a disbursement reflected on

1 any of these statements, your time runs with this
2 account agreement, 60 days, the outside limit on the
3 UCC.

4 THE COURT: Now, just as a closing, how close are
5 y'all to being able to try this assuming I don't kick
6 either one -- I mean, you said you might need a day
7 certain?

8 MR. KNOWLTON: Well, Your Honor, discovery is
9 over.

10 THE COURT: Okay.

11 MR. KNOWLTON: And we have a scheduling order in
12 the case, I don't think it is subject to trial until
13 January or sometime -- and -- but I do think it's
14 probably worth a pretrial, you know, whatever ruling
15 you decide --

16 THE COURT: Yeah.

17 MR. KNOWLTON: We have to figure out --

18 THE COURT: Yeah, and I'll let you know.

19 MR. KNOWLTON: If this whole thing went forward, I
20 don't think we could fit it into a week. Mrs.
21 Brookshire's deposition alone took two days, so it's --
22 if we have to deal with all 115 transactions, I'm
23 afraid we would need a special term because I don't --
24 I'm not sure we can get this done in a week. You can
25 see from the volume of the documents.

1 THE COURT: Okay. All right. Give me a little
2 bit to check over this. And you're right, don't expect
3 it next week. Okay. Thanks. I appreciate it.

4 MR. HAWKINS: Thank you.

5 MR. GIESE: Thank you.

6 MR. KNOWLTON: Thank you.

7 (Whereupon, the hearing was adjourned.)

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CERTIFICATE OF REPORTER

I, SHARON D. JONES, CERTIFIED COURT REPORTER,
DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE,
ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF
THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE FAMILY
COURT FOR CHARLESTON COUNTY ON THE 9TH OF MARCH, 2017.

I DO FURTHER CERTIFY THAT I AM NEITHER OF
KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO..

6/28/2019

Sharon D. Jones

SHARON D. JONES,
CERTIFIED COURT REPORTER
COMMISSION EXPIRES 9.22.2024

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

DEBI BAKER BROOKSHIRE,
PLAINTIFF,

vs.

COMMUNITY FIRST BANK AND
BENJAMIN HIOTT,
DEFENDANTS.

COURT OF COMMON PLEAS
2014-CP-37-00526

TRANSCRIPT OF RECORD

ORIGINAL

December 6, 2017
Walhalla, South Carolina

B E F O R E:

THE HONORABLE J. CORDELL MADDOX, JR., JUDGE.

A P P E A R A N C E S:

M. DAVID SCOTT, ESQ.
Attorney for the Plaintiff

ROBERT Y. KNOWLTON, ESQ.
Attorney for Defendant Community First Bank

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(There were no witnesses called.)

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
(Court's Exhibits)			
C-1	Selected Damages Issues.....	29.....	29

All Exhibits were retained by the Clerk of Court for
Ocone County.

P R O C E E D I N G S

1
2 THE COURT: One of the reasons I want to keep this on
3 the record today is -- and I've said before y'all got here,
4 I -- I'm a little embarrassed about this. There are three
5 cases that I know of that spanned the early leaving of a law
6 clerk, and a period of time without one, and then a new law
7 clerk, who is just getting his air under his wings. And
8 this is one of them. And that's why it took so long.

9 And after reading through everything, I wanted to
10 give y'all an opportunity to make a good record and, also,
11 quite frankly, I mean, let's face it, most 59(e)
12 motions -- when I graduated -- when we graduated from law
13 school, there wasn't even such a thing as a 59(e). That
14 always sort of -- I was practicing in the time when the
15 case came out that, basically, required you to file a
16 59(e) motion or you hadn't preserved your appeal rights on
17 certain issues. And that always terrified me. And most
18 of them are just that.

19 But, quite frankly, this one is one that, again, I
20 heard back in 2016. There was some inexplicable reason
21 for waiting around, sitting around undealt with. It's my
22 fault. I'll take the blame for it. But it may be one
23 that I need to alter.

24 So I'm perfectly willing for y'all to let me -- just
25 let me have it. Tell me where I'm wrong.

1 MR. SCOTT: Your Honor, if it please the Court --

2 THE COURT: I've got no problem with it.

3 Yes, sir.

4 MR. SCOTT: If it please the Court, Your Honor.

5 David Scott on behalf of Plaintiff. I'm here with
6 Barney Giese and Jonathan Waller.

7 THE COURT: How long did it take y'all to get up
8 here?

9 MR. SCOTT: It took me about two hours and 45 minutes
10 from Columbia.

11 And I apologize that I -- I'm the reason that we
12 couldn't do it tomorrow --

13 THE COURT: No, no --

14 MR. SCOTT: -- because I've got a hearing scheduled
15 in Lexington that's been scheduled --

16 THE COURT: Court fell apart yesterday. We tried --
17 picked the jury Monday, tried it, got a jury verdict by
18 lunch Tuesday. And so we were through. I was just trying
19 to condense it, but we worked it out.

20 So, like I said, I didn't want to put this off
21 because I do have some concerns about it.

22 So, yes, sir.

23 MR. SCOTT: And, Judge, I'd start off with what I
24 started off with in the memo. And I -- I'm not going to
25 read the -- reread the memo. But I think there's a --

1 there's a flaw in the order in that there's a statute of
2 limitations with -- the Plaintiff's whole case was thrown
3 out based in a large part on --

4 THE COURT: On the statute --

5 MR. SCOTT: -- the lapsing of the statute of
6 limitations.

7 Our client, Ms. Brookshire, was a customer of the
8 bank. She did have a POA executed -- a power of attorney
9 executed in favor of a bank employee, Ben Hiott, that I
10 would submit, even with that power of attorney, she was
11 operating with less than full information.

12 The bank, on the other hand, was the depository.
13 They had the money. They had her money. Their
14 counterclaims are based on, as they put it -- I don't want
15 to say something that's wrong. They say on eight
16 different occasions from July 2008 until February of 2011,
17 it is undisputed that Ben Hiott, the co-defendant -- the
18 bank's co-defendant here and their vice president and the
19 guy who had the POA, deposited a total of \$880,855.58 of
20 funds belonging to Community First into the account. The
21 account they're talking about is Ms. Brookshire's account.

22 THE COURT: So the last date could have been February
23 of '11?

24 MR. SCOTT: The last possible date could have been
25 February of 2011.

1 And the bank has not raised -- to my knowledge
2 anyway, the bank hasn't raised any tolling argument, any
3 equitable tolling, any reason that -- any reason for
4 tolling the statute of limitations as to the bank's
5 counterclaims. The -- the account was, actually, closed
6 by -- by Ms. Brookshire by her attorney on October of 20
7 -- in October of 2010.

8 So before this last February deposit was put in
9 there, her account had been closed for three months. Ben
10 Hiott on his own accord, I suppose, but, certainly, acting
11 through mechanisms made available to him through the bank
12 and not through the power of attorney that Ms. Brookshire
13 had executed in his favor reopened that account in
14 February of 2011, and deposited some money in it, and then
15 withdrew that money, I think, the next day -- the same day
16 or the next day. But the last possible date would be
17 February of 2011.

18 Ms. Brookshire revoked the power of attorney on April
19 the 6th of 2011. My client filed her action in September
20 of 2014. The bank asserted its counterclaims and its
21 responsive pleading -- and I think these probably would
22 have been compulsory counterclaims. But they asserted
23 those counterclaims in a filing -- in an answer that was
24 filed on October the 9th of 2014. That's four years after
25 the account was closed. That's four years, less three

1 months. So what -- what is that? 45 months after the
2 last February 2011 alleged transfer into the account that
3 had already been closed three months prior.

4 I know of -- I know of no -- I know of no law that
5 would -- that would allow the bank to claim that one
6 statute of limitations applies to Ms. Brookshire's claim,
7 particularly in light of the fact that she's one person
8 with limited information and the bank is a sophisticated
9 entity. I mean, the whole purpose of a bank is to keep
10 track of -- is to keep track of money. That's why we have
11 banks. And if Ms. Brookshire was on notice, then the bank
12 necessarily had to be on notice.

13 Something about -- there -- there seems to be a -- I
14 mean, an allegation of contention that we have that the
15 Plaintiff has conceded that the bank didn't know until
16 2013. And they take that from Page 3 of our memorandum
17 opposing their memorandum for summary judgment.

18 And it does say, Defendant CFB, Community First Bank,
19 did not discover the misappropriations committed by senior
20 vice president Hiott until the Brookshire investigation in
21 2013. But that's a subjective test. That's when they
22 subjectively discovered it. And they didn't discover it
23 until it was brought to their attention, ironically
24 enough, by Ms. Brookshire's counsel.

25 But the -- but the discovery rules are not subjective

1 as they -- as they ably argue in their -- in their summary
2 judgment motion and memo. It is an objective test. And
3 that test is when they knew or in the exercise of due
4 diligence they should have known. And I submit that they
5 should have known at the very latest in February of 2011.

6 And kind of the first order of business is that I
7 would implore Your Honor to alter, or amend, reconsider
8 the order, which seems to apply two different standards
9 for the statute of limitations. And I think if -- and I'm
10 going to get -- I'm going to get to the -- why -- why I
11 think you ought to reverse it to summary judgment as to
12 Ms. Brookshire's claims, but, at least, as to the bank's
13 counterclaims, they have to be barred by the statute of
14 limitations.

15 I mean, there's -- there's no argument that a statute
16 of limitations longer than three years applies. And
17 there's no -- there's no dispute of fact that it was more
18 than three years from the time the last alleged transfer
19 was made until they -- they alleged their counterclaim.

20 THE COURT: Okay. Well, and I'd like to hear -- let
21 me tell you the two things that bother me. Number one is
22 the statute of limitations application with a knew or
23 should have known standard. And, also, the amounts were
24 different. And -- and I, for the life of me, can't figure
25 out why one's 780 and one's 880. And I didn't catch that.

1 I mean, that, again, is my fault.

2 But that's not something I would really -- but --
3 address why wouldn't the statute of limitations apply both
4 ways and both of you guys just be out of luck?

5 MR. KNOWLTON: Thank you --

6 THE COURT: And, again, thank y'all for coming up,
7 too. Because I know it's a haul.

8 MR. KNOWLTON: We're happy to do it and appreciate
9 you hearing us today.

10 THE COURT: I mean, the statute of limitations issue,
11 is one that really -- because it either -- after -- I
12 mean, and, again, I'm not -- I'll take the heat for it.

13 But if it does apply to bar their claims, why
14 wouldn't it, also, bar yours? Or if it didn't bar -- bar,
15 then why wouldn't I just lift that summary judgment,
16 change that one, and let you guys argue to a jury?
17 Because it's -- I mean, that's where I -- just so you know
18 where I'm thinking. I'm trying to be fair about it.

19 MR. KNOWLTON: Right. I see the facial appeal.

20 Well, let me -- let me refresh Your Honor a little
21 bit about --

22 THE COURT: Okay.

23 MR. KNOWLTON: -- why we were granted summary
24 judgment on the Plaintiff's claims. First of all, we had
25 undisputed evidence that in 2010, the Plaintiff said I

1 think Ben Hiott has stolen my money when the account was
2 closed. It was closed again in 2011. And she said, I
3 think something's wrong here. I think I'm -- I think
4 Mr. Hiott has stolen my money.

5 So she was on absolute notice that she had a problem.
6 And she didn't file suit for another three and a half
7 years in 2014. So that's --

8 THE COURT: All right. Now, let me stop you. And I
9 don't want to stop you too much because I -- I don't want
10 to be butting in, too.

11 But why wouldn't that, also, put the bank on notice
12 that, oh, this is a lot of money and --

13 MR. KNOWLTON: And -- and let me -- well, let me
14 finish with --

15 THE COURT: Yeah. Go ahead.

16 MR. KNOWLTON: -- with Ms. Hiott first -- I mean
17 Ms. Brookshire first.

18 THE COURT: Okay.

19 MR. KNOWLTON: So that's -- that's the general
20 statute of limitations, three year statute of limitations.
21 There is, also, a UCC statute of limitations that we --
22 that we briefed and you ruled upon. And in that -- under
23 that statute, a customer is given the duty to read
24 statements, and if there's something inappropriate in the
25 statements to report it within one -- one year. And that

1 is a statute of repose. And that's a -- that doesn't
2 impose a duty on the bank. It imposes a duty on the
3 customer to review those statements.

4 And the testimony was undisputed. Ms. Brookshire was
5 confronted with some of the these statements. For
6 example, a very -- in the first few months, there was a
7 \$500,000 disbursement to Crosby [phonetic], and a \$200,000
8 disbursement shortly thereafter to Crosby.

9 And when we showed them to her -- and she, actually,
10 produced the original statements in discovery. And she
11 said, Had I read those, I would have known immediately
12 that that was inappropriate. And -- and so we think
13 the -- the -- it's -- it's a one-sided thing, the UCC.
14 You've got a duty to read the statements. And she didn't
15 do it. The statute of repose bars those claims.

16 And so -- so that's one thing is that that only
17 applies one way to the customer, not to the bank.

18 THE COURT: Okay.

19 MR. KNOWLTON: And -- and, now, let me talk about
20 notice of the problem, the evidence I just recited to you
21 is undisputed that Ms. Brookshire knew or believed that
22 she had money stolen from her. What -- the bank didn't
23 understand what had gone on in her account.

24 You know, some of these monies were made to pay her
25 bills, went directly to her, and the third -- you know,

1 the bank didn't have knowledge of who those people were
2 and whether it was appropriate or not. And then still --

3 THE COURT: And they were written under a power of
4 attorney --

5 MR. KNOWLTON: They were written under a power of
6 attorney.

7 And what -- when they began investigating
8 Ms. Brookshire's claims -- and this is undisputed, too, is
9 that they found out that Mr. Hiott had stolen money from
10 the bank and deposited it into this account. That went on
11 for -- and so that's a discovery rule. We just didn't
12 know. We have internal auditors and external auditors, as
13 well as our regulators who review our books and records
14 every year. Nobody caught it, despite best efforts.

15 And when it came up -- when it was discovered in
16 2013 -- and as they said in their brief, that is when we
17 discovered it. And that is the undisputed evidence that's
18 in the record is that that's when we found out about it.
19 They filed the suit in 2014. And we counterclaimed for
20 that money.

21 THE COURT: Well, what -- what physically happened in
22 2010 when she came to the bank and said, hey, I think
23 somebody -- I mean, look, this is -- this case is confused
24 by the fact that you've got a woman who, obviously, is
25 not -- who has -- who has given her trust to somebody she

1 shouldn't have. And I think everybody can agree that she
2 has been cheated out of her money.

3 But I'm wondering, in 2010, what physically happened
4 at the bank when she came and said, I think somebody stole
5 my money. And I realize she had an obligation here. I
6 mean, she's not faultless. Let's put it that way.

7 MR. KNOWLTON: Can I hand up a -- a document --

8 THE COURT: Sure.

9 MR. KNOWLTON: -- that may help some?

10 And this is a -- an excerpt of some of the exhibits
11 we've already given you.

12 THE COURT: Okay. Yeah. I appreciate that.

13 MR. KNOWLTON: Now, in -- in 2010, Ms. Brookshire,
14 first of all, had been given -- a big package of all of
15 her statements was given to her -- to her lawyer. But she
16 came to Mr. Hiott and said, Close my account.

17 And a -- first of all, you'll -- you'll see in the
18 summer of 2010 on July 29th, Mr. Hiott misappropriated
19 \$188,000 and deposited it into her account. And then a
20 couple of weeks later on August 11th, he dispersed
21 \$202,928 to her. And then shortly after, he closed the
22 account. And -- and we've, also, got, you know, documents
23 in the evidence -- in the record that says she had
24 thought -- that was represented to her that's all your
25 money.

1 Later on, after she continued to complain to
2 Mr. Hiott, Mr. Hiott reopened the account, stole \$285,000
3 and some odd dollars and put it into the account, gave it
4 to her the same day, and then closed the account again.

5 THE COURT: Where'd he get the 285?

6 MR. KNOWLTON: He -- he stole it from the bank.

7 THE COURT: Stole it from the bank.

8 MR. KNOWLTON: What he did -- and he was -- he was
9 somebody trained who was trained as an auditor and --

10 THE COURT: Yeah.

11 MR. KNOWLTON: -- he knew how to disguise things.
12 And he -- what he did is offset it with a fake purchase of
13 federal securities. And it took this internal auditor --
14 with a heads up from Ms. Brookshire, something's wrong
15 here. And when he looked into it, it took him about a
16 year to complete the investigation. And when he figured
17 it out, he said, you know, this -- this is what happened.

18 And I've, also, included in this little package the
19 testimony from Don Jones, who is this forensic accountant
20 who looked at it. It says, you know, attached is -- and
21 this is Exhibit 49 is his little testimony. But it
22 confirms that the last document, which was Exhibit 50 to
23 summary judgment, these are the misappropriated funds.

24 And, again, Mr. Hiott was terminated and prosecuted
25 for this and went to prison for this.

1 THE COURT: Right.

2 MR. KNOWLTON: These are the funds that were
3 misappropriated into -- and put into this account. He,
4 also, stole other money that was not put into her account.

5 Now -- and, again, so the bank just had no knowledge
6 that this had happened, obviously, and, obviously, wished
7 it had learned earlier that this fraudulent concealment --
8 she, obviously, had her statements and, you know, hey,
9 where'd I get \$285,000 from.

10 But the bank had no idea that had happened. And the
11 bank doesn't have this sort of countervailing duty to go
12 through every statement and figure out whether some
13 deposit was inappropriate. You just can't tell that from
14 the paper like you can if it's your personal statement
15 getting \$285,000, manna from heaven like that.

16 Now -- and let me -- let me briefly explain the
17 difference in the 780 and the 880.

18 THE COURT: Right.

19 MR. KNOWLTON: We -- we had asked for an offset or
20 counterclaim. And it's -- and it's a little bit
21 confusing. But Ms. Brookshire was saying every dollar
22 that went into my account was improperly dispersed. Well,
23 we said, well, we -- \$880,000 was put into your account
24 that was stolen. So at -- at a minimum, we need an offset
25 for that because that wasn't your money. And a hundred of

1 that went back to the bank.

2 THE COURT: Okay.

3 MR. KNOWLTON: And you'll see the last two entries
4 that are highlighted on this last page.

5 THE COURT: Yeah.

6 MR. KNOWLTON: Well, they're not highlighted. Right
7 at -- right at the bottom, you'll see two credits, one for
8 15 and one for 85,000.

9 THE COURT: Right.

10 MR. KNOWLTON: That leaves you with the number that
11 was the subject of the judgment of the counter claim, the
12 780,000. But that's that \$100,000 discrepancy. The
13 records got all of that in there. And, you know, we'll be
14 happy to take 880, if that's what they prefer.

15 But, no, Your Honor, that's the proper amount for the
16 counterclaim. It would not have been the proper amount
17 for the offset. Because the -- the money that came in,
18 some of it went back. But we just wanted to make sure --

19 THE COURT: I think -- I mean, I think -- okay. That
20 answers my question. I know it may not answer y'all's.
21 But that -- that gives me an answer to the different
22 amount. Okay.

23 MR. KNOWLTON: And, Your Honor, you know, also, this
24 same exhibit shows that just those last two -- there --
25 there was a pattern of when this money would get low in

1 this account, Mr. Hiott would steal money and put it in
2 there. And these last two entries, the 200 -- I'm sorry,
3 the 188,000 and some odd dollars and the \$285,000, that's
4 two thirds of the -- of the 780 that was the subject of
5 the counterclaim that went directly to her in checks
6 within two weeks of the money being stolen and put into
7 her account. It was then dispersed directly to her or put
8 into her account at a different bank.

9 THE COURT: Have y'all figured out amongst you how
10 much she lost, I mean, because of this co-mingling? I'm
11 just kind of curious.

12 I mean, the money that was put in and put out as
13 different funds -- this Hiott guy is, obviously, the bad
14 seed here. I'm just trying to figure out how much of her
15 money was written to the ether and gone.

16 MR. KNOWLTON: Well, there -- there were disputes on
17 that.

18 THE COURT: Yeah.

19 MR. KNOWLTON: It depends on what you characterize as
20 money that was inappropriately spent. Now, a whole lot of
21 money -- probably a hundred -- a million seven, I think,
22 was undisputed. And a lot of that on top of that was --
23 about \$350,000 -- I had a little summary of some of that
24 to kind of take you through, you know. \$350,000 or so was
25 all -- you know, they went back and changed the entry --

1 THE COURT: Right.

2 MR. KNOWLTON: -- reduced it. Some of it went to pay
3 her bills, it was undisputed.

4 THE COURT: Right.

5 MR. KNOWLTON: Some of it -- they didn't like all the
6 documentation. But the undisputed evidence is it went to
7 her account. And I can hand up what we handed up as a
8 summary -- exhibit at summary judgment, Your Honor, that
9 kind of --

10 THE COURT: I've got that. No, I've got that back --
11 well, you know what, yeah, actually, do make that a part
12 of the record just so y'all are all protected. And I
13 think that was entered last time.

14 MR. KNOWLTON: It was. And I had it on a poster,
15 Your Honor, and I didn't...

16 THE COURT: Okay. Sorry about that.

17 I mean, how much do y'all think she lost?

18 MR. SCOTT: Somewhere in the neighborhood of a little
19 bit less than 2 million bucks, Your Honor, about
20 \$1,900,000 is the difference between how much she put in
21 and the -- how much she got out either through him paying
22 her taxes, through him paying bills, or through his
23 writing her a check, about \$1.9 million. Now --

24 THE COURT: And Hiott went to jail and he's -- is he
25 still in jail --

1 MR. SCOTT: I think he's out now. But I'm sure he's
2 government proof. And they've argued successfully, at
3 this point, that everything he did at the bank was made
4 possible through this power of attorney. Now, we -- we
5 don't concede that.

6 THE COURT: Right.

7 MR. SCOTT: We think that they still -- they had an
8 independent duty to kind of keep a -- keep a watch on him.
9 He wasn't doing this to just her. He was doing this to
10 other bank customers. We've asked for -- we've got other
11 account numbers that we know this kind of hanky panky was
12 going on with.

13 We've asked in discovery, but they've not --

14 THE COURT: Well, that's other peoples accounts --

15 MR. SCOTT: Exactly. So there's an arguable -- you
16 know, there's an --

17 THE COURT: Y'all agree that this guy did this to
18 other people?

19 MR. KNOWLTON: No, we don't, Your Honor.

20 THE COURT: Oh, you don't?

21 MR. KNOWLTON: This is the only customer who's --
22 who's made a claim. He stole money from the bank.

23 THE COURT: But were there other people -- other
24 third parties that he acted as power of attorney? I mean,
25 do y'all know?

1 MR. KNOWLTON: No --

2 THE COURT: Okay.

3 MR. KNOWLTON: -- he did not. Well, there's -- that
4 has not surfaced if he did.

5 But this is the only customer who's brought a claim.
6 There may be some other litigation. But it isn't -- it's
7 not by a customer who lost any money. This is the only
8 customer I'm aware of who lost money as a result of
9 Mr. Hiott's conduct.

10 THE COURT: Okay. I'm sorry. I didn't mean to
11 interrupt you.

12 MR. SCOTT: No. That's all right, Your Honor.

13 The -- the point I was going to make is that a power
14 of attorney may have enabled him to bilk her of the money
15 that he bilked her from -- of. But the power of attorney
16 didn't let him take the bank's money and do with it what
17 he wants -- what he wanted to do with it, whether it was
18 deposit it in her account or deposit it in some other
19 account holders account.

20 And -- and that's what they're -- I mean, they seem
21 to be admitting that Hiott is the -- kind of the bad guy
22 here. But they want my lady to suffer the consequences
23 for it. Not to mention that the -- that the conduct that
24 they're complaining about happened four years before
25 they -- they brought a counter claim.

1 Now, they may have not known it until 2013. But they
2 should have known it no later than February of 2011 when
3 the account was, finally, and for once and forever closed
4 at -- at the -- at the request of her attorney. At the
5 time, Kathleen McDaniel was her attorney.

6 And if Your Honor will humor me.

7 THE COURT: Sure.

8 MR. SCOTT: The \$500,000 that Mr. Knowlton talked
9 about, which was one of the first things that came out --
10 and there was -- there was some representations made that
11 it was a -- that it was a loan to a guy named Crosby. It
12 was \$500,000.

13 THE COURT: Yeah. On July 10th, 2007.

14 MR. SCOTT: And there were allegations that -- or
15 Hiott said that there was a -- that Crosby issued a note
16 payable to her -- payable to Brookshire. And when Crosby
17 took his -- when we took Crosby's deposition or Mr. Giese
18 took Crosby's deposition, he said he never signed a note.

19 I bring that up because in Kathleen -- Kathleen
20 McDaniel was trying to get to the bottom of this before we
21 got involved. And in 2013, which would have been within
22 the statute, in her deposition testimony, she testified
23 that either Ben Hiott or -- or an attorney for the bank
24 named James Williams told her that that \$500,000 that is
25 now being represented as a loan to Crosby, but that Crosby

1 denied ever executing a note on, that they represented to
2 her that that half million dollars was -- was used to buy
3 annuities for her children.

4 And the -- and the reason I think that is of -- of
5 crucial importance is because this is summary judgment.
6 They moved for summary judgment. So -- so the evidence
7 and all inferences to be drawn therefrom are to be
8 construed in the light most favorable to my lady.

9 So if you take Kathleen McDaniel's testimony, which
10 nobody's disputed that I know of, either Hiott or the --
11 or the lawyer for the bank represented to her that this
12 half million was used to buy annuities. In the light most
13 favorable to her, Williams said since -- that's one of the
14 two constructions of Kathleen McDaniel's testimony.

15 So it -- as late as 2013, bank officers, other than
16 Ben Hiott, are representing to -- to the attorney for
17 Debra Brookshire that this half million dollars was not
18 loaned out to Crosby like the claim -- like the claim
19 they're -- they're clinging to now, but that it was spent
20 for her -- the benefit of her children.

21 I think that is enough to -- to trigger equitable
22 estoppel because they're making representations to her
23 that this money's still out there for your benefit or, at
24 least, for the benefit of your children, so.

25 THE COURT: What ever happened to that money?

1 MR. SCOTT: It's gone, just like all of it is.

2 It's --

3 THE COURT: I mean, the way I'm looking at this
4 thing, it looks like it was \$500,000 to Crosby. And then
5 in November of 2007, there was another 200,000 to him, and
6 then additionally in 2008. So he -- they -- he's a
7 million and 53.

8 Am I reading that right?

9 MR. KNOWLTON: I think that's right, Your Honor.

10 And Mr. Crosby said he understood it was a loan for
11 his business. And he lost it and -- the business lost it,
12 so. He had some spice company he was trying to build
13 and -- back in the day, he was -- actually, he was on TV
14 and, you know, had -- there was a lot of buzz about his
15 industry. When the financial crisis hit, he lost
16 everything.

17 THE COURT: Well, now, you're going to have to
18 remember this was 2007 to 2008 when everything was going
19 to hell in a hand basket. I just wondered who he was. He
20 seemed to have convinced somebody he -- wow.

21 MR. KNOWLTON: And, Your Honor, on the 500,000, that
22 was -- Ms. Brookshire said that wasn't anything he could
23 have done that was appropriate with 500,000. He didn't --
24 you know, it was, apparently, unknown to her whatever he
25 did. And whatever he did was inappropriate.

1 And, again, this was 2010. And she had the complete
2 belief that her money had been misappropriated. The bank
3 had no way to figure out what had happened. You just --
4 all they had were the bank statements. And Mr. Hiott was
5 the one that had done it. They were relaying what he had
6 said. They just didn't know.

7 But she was, certainly, on notice. And under the
8 UCC, the clock is running. And under the statute of
9 limitations, she's, obviously, under notice that she
10 thinks her money has been -- has been taken
11 inappropriately.

12 THE COURT: Well, what about the statute of repose
13 issue under the UCC? Because that -- that's something
14 that, quite frankly, you know, everybody hates the UCC,
15 but, I mean, you know. We had to learn it at one point in
16 your life.

17 MR. SCOTT: And, Your Honor, I would submit that
18 whole UCC argument stands or falls on how you -- how
19 you -- how this account is -- is classified. Because the
20 UCC applies to a checking account. But represent --
21 again, representations were made to Debi Brookshire that
22 this was a trust account.

23 Now, the bank says they could not have made that
24 representation because they did not have a trust
25 department. But the fact that they didn't have a trust

1 department doesn't stop them from representing to her that
2 this was a trust account.

3 And it was Carol Wilson's deposition -- and we went
4 through it at length. But there was about a 12-page
5 agreement -- account agreement. And I think on every page
6 of those 12 pages somewhere it said, trust or trust
7 account. So it was represented to her that it was a trust
8 account.

9 Now, they're saying we're not in the trust business.
10 They may well not be in the trust business. I think
11 they're telling the truth when they say they're not in the
12 trust business. But that's not what they told Debi
13 Brookshire. And the paperwork that they gave her -- the
14 account paperwork that they gave her -- and it's in --
15 it's in our exhibits says, trust account. And the UCC
16 doesn't apply to trust accounts.

17 THE COURT: What about that?

18 MR. KNOWLTON: Well, Your Honor, these aren't -- he
19 keeps raising issues that aren't in the Rule 59 motion.

20 THE COURT: I know, but I -- and I understand. I
21 mean, look, I want to make sure I get this, at least, as
22 close to right as I can.

23 MR. KNOWLTON: But going -- going back to that issue
24 that we fully briefed and that you've ruled on it. You
25 look at the account agreement, it's a checking account.

1 It's a checking account in the name of a trust with
2 Brookshire as the trustee for Debi Baker Brookshire trust.

3 So -- but if you read the account agreement, it's a
4 checking account. And there are a lot of trusts that
5 don't -- have a checking account. I'm a trustee for a --
6 a trust that has -- I've got a checking account --

7 THE COURT: Okay. So you're saying it was a checking
8 account for an ongoing trust.

9 MR. KNOWLTON: It's in the name of a trust. It was
10 opened as -- in her name as trustee --

11 THE COURT: I got you.

12 MR. KNOWLTON: -- on behalf of a trust and the Debi
13 Baker Brookshire trust. And she, you know, got the
14 statements. It's [inaudible] whether she got them or not.
15 And we've included the account agreement with Exhibit --
16 part of Exhibit 24, which is Exhibit 7 to the affidavit of
17 Carol Wilson.

18 And Carol Wilson explains how, you know, this is a
19 checking agreement. There are -- no trust fees were ever
20 charged. The bank doesn't even have trust powers. It's
21 not a -- they don't have a trust department. It is not a
22 trust account.

23 In fact, the other -- some other evidence we have in
24 the file is that she used to have a trust account with
25 BB&T. And she didn't like them telling her to do -- what

1 to do with her money. That's when she contacted Mr. Hiott
2 and just gave him a POA. And she avoided the trustee
3 fees.

4 And, you know, one of the things she was buying was a
5 \$250,000 motor home. And the trustees were flipping out
6 about that saying, don't -- you know, we strongly urge you
7 not to do that and that's bad and -- and she, finally,
8 said, all right, I'm out of here. I'm going to give
9 Mr. -- Mr. Hiott a POA and put this -- and they put all
10 this money into a checking account that he operated on
11 with no trustee's fee. But it's not a trust agreement.
12 It was -- Debi Baker was the -- listed as the trustee.
13 And all this is in the -- in the record. But it's an
14 account agreement for a checking account.

15 THE COURT: Okay. And, again, for the purposes of
16 today, can y'all make a copy of that and send that to me,
17 just e-mail it to me?

18 I mean, obviously, that's important. If it's a trust
19 agreement, the UCC doesn't apply. If it's a banking
20 account for an ongoing trust, then I think the UCC does
21 apply. And -- and I just don't have it. And, to be
22 honest with you, I don't have the ability to get to it
23 because of computer issues. But just --

24 MR. KNOWLTON: I can hand one up for you to look at
25 now or --

1 THE COURT: No. Just send it to me. I'm going to
2 take -- I mean, I've got all my notes back there. I mean,
3 part of the problem here, look, is this seems inherently
4 unfair what's happened that -- I mean, the way I ruled. I
5 was doing my best to rule under the law.

6 The more I look at it, this woman was taken advantage
7 of by an employee of the bank. I mean, it -- there's
8 just -- I'm -- that's what bothered me. That's what
9 bothered me. Maybe I'm getting soft, I mean, you know.
10 Maybe I'm returning to human. But, I mean, it bothered me
11 that the way I applied the statute of limitations,
12 basically, allowed the bank to continue on -- the UCC and
13 the statute of limitations issue causes Ms. Brookshire to,
14 basically, have no recourse at all except against
15 Mr. Hiott, who I think everybody admits who's at fault
16 here.

17 Like I said, I want to make sure I got this one right
18 because it sat forever. And it really still bothers me
19 how long it sat. And that's not y'all's fault. That's
20 mine.

21 Anything else you need to jog my memory -- I mean, I
22 remember this one because this is one of those judge
23 heart [phonetic] nonjury days. I'm going to look back
24 through everything.

25 I'm going to make this a Court's Exhibit.

1 (WHEREUPON, Court's Exhibit No. 1 was marked for
2 identification and admitted into evidence.)

3 THE COURT: I'm going to look back through
4 everything. But, I mean, y'all's -- both of your memos
5 were good. Y'all are both -- y'all are all lawyers that I
6 trust and respect. And however I rule, obviously, if your
7 clients get mad at you, I'll be happy to call them
8 personally and tell them that y'all were -- you know, if I
9 was in the same boat, I'd hire you.

10 I just want to make sure I'm right on this one. It
11 was a lot of money. The facts as they're set up -- the
12 result appears to me, quite frankly, to injure the least
13 able to handle the punishment. That didn't -- I'm trying
14 to say it the right way without saying too much. But I
15 don't think I can -- I mean, just because banks have
16 money; you know.

17 Now, let's say if I withdrew -- let's say I changed
18 my mind and -- and didn't grant either summary judgment,
19 let's just say that that's what I did and allowed a jury
20 to decide, I don't know how you would try this case.
21 Literally, I don't know how. I mean, I'm not a dummy.
22 And, again, this thing crinkled a little with age. But
23 this is just almost -- I mean, this is a complicated mess,
24 which is one of the reasons why I looked at it so hard
25 when we finally -- when it, finally, was listed to be --

1 be right. Because, Lord have mercy, if you tried to try
2 this in front of a jury, it would be awful.

3 Have y'all thought about that?

4 MR. KNOWLTON: Well, Your Honor, that's one reason we
5 gave you a robust record --

6 THE COURT: You did.

7 MR. KNOWLTON: -- for summary judgment. Because when
8 you drill down -- if -- if the case was -- there were --
9 there were things that should not never have been
10 disputed. Because she got the benefit of the money -- or
11 received the money directly.

12 And another thing, I -- I think the law is crystal
13 clear with regard to the -- I mean, the evidence was
14 undisputed as far as she really thought the money had been
15 stolen. And she sat on her rights for four years. And
16 I -- you know, I -- so I think it would be a waste to try
17 it, everybody spend a whole lot of money with -- with that
18 legal issue is -- I think a bullet to the heart and, you
19 know, DOA and then spend all this resources trying a case
20 that --

21 THE COURT: Yeah. I agree. I mean, I'm trying to --
22 I'm just trying to make sure I'm right. I mean, I almost
23 think your best argument is the statute of repose with the
24 UCC.

25 MR. KNOWLTON: I agree. I mean --

1 THE COURT: Which, quite frankly, wasn't the one that
2 jumped to my head first.

3 MR. KNOWLTON: Well, the statute of repose is -- it
4 might be tough, but it's a statute of repose. And it's
5 unforgiving and she -- it's, basically, made a very --
6 if I had ever read these statements, I would have known.

7 THE COURT: And y'all's position, I would assume, is
8 that -- that her -- that the statute of repose -- that
9 point that she went to the bank in 2010 and said there's a
10 problem, which we would all sort of agree began her
11 statute of repose, assuming she read it. She had one year
12 to read it. And it was within that year.

13 Your position is that, also, started the clock
14 ticking on their statute of limitations. Because at that
15 point, they knew or should have known there was a problem
16 with the account.

17 MR. SCOTT: Yes, Your Honor.

18 That -- they're saying that money was taken from a
19 bank account and put into her account. And that would
20 have necessarily had to have happened more than three
21 years before they asserted their claim necessarily.

22 If -- if they didn't -- they're saying she slept on
23 her rights. But if the bank's trying to recoup that money
24 from her, they, certainly, slept on their rights. They've
25 got better information than she does. They've got a --

1 computers. They've got the records of every account, I
2 mean, but --

3 THE COURT: It's amazing to me that it would take a
4 bank examiner -- or a forensic examiner as long as it did.
5 I mean, obviously, this Hiott guy was pretty good at being
6 a crook.

7 MR. SCOTT: And -- and that goes to our negligence
8 supervision claim, Your Honor. I mean, that -- that is
9 our argument for negligent supervision, that they should
10 have been -- and even Fred Shepherd, who was the president
11 of the bank at the time -- and I think it was in an
12 insurance deposition or a statement to an insurance
13 adjuster made a statement -- and this is in the record as
14 well -- that I should have kept a closer eye on him, you
15 know, I trusted him too much, which is, to me, an
16 admission that they supervised him negligently. They did
17 not exercise a degree of care necessary that they should
18 have --

19 THE COURT: How dare he be honest in a deposition.

20 MR. SCOTT: I'm sorry.

21 THE COURT: How dare he be honest in a deposition.

22 MR. SCOTT: Exactly.

23 MR. KNOWLTON: Your Honor, one -- let me make one
24 other point on the statute of repose.

25 THE COURT: Yes, sir.

1 MR. KNOWLTON: That runs every month from each
2 statement.

3 THE COURT: Okay.

4 MR. KNOWLTON: So the 2007 transactions, for example,
5 were barred in 2008.

6 MR. SCOTT: But only if there's a checking account,
7 Your Honor. And my -- my trusty co-counsel over here
8 directed me --

9 THE COURT: Yeah. I'll let y'all look. I mean,
10 obviously, you know, to be honest with you, for me to be
11 able to sleep at night, I've got to, at least, think that
12 I did the best I could. I want to look at those. And --
13 but I've got to tell you, if it is a checking account in
14 the name of an ongoing trust -- if we were all in a room
15 and we didn't have clients, we might all admit that the
16 UCC applied.

17 If it was a document creating a trust to be managed
18 by the bank, then I think we'd all agree in a room without
19 clients that that UCC doesn't apply. So it may be that
20 simple, quite frankly. And -- and I won't make you do it
21 now. You can do it later.

22 MR. SCOTT: I mean, I have --

23 THE COURT: Have you got it?

24 MR. SCOTT: He found it for me. It is under tab C
25 of --

1 THE COURT: Can y'all make another copy?

2 Again, we're having computer issues that have
3 nothing -- have to do more with e-filing. Can y'all --
4 and I'll give you a second. Take your time. Just agree
5 that that's the account that y'all think --

6 MR. KNOWLTON: Well, we can -- I mean --

7 THE COURT: Why don't I do this? I don't want to put
8 you on the spot now. Here's -- here's the main issue with
9 me now. I'm more concerned about the statute of repose
10 and the UCC.

11 So rather than put you on the spot now and having you
12 do that, if y'all can between now and the beginning of the
13 year agree that that account statement is the one we're
14 talking about, the one you're holding. Again, I'll give
15 you time to look at it and think.

16 MR. KNOWLTON: Well, yeah. And what -- what's he's
17 handing you is not an agreement. There's some paperwork
18 about setting up the account. The account --

19 THE COURT: Which -- which, I think, I would need,
20 too. And y'all get together and figure that out and get
21 me a packet.

22 MR. KNOWLTON: Okay.

23 THE COURT: Specifically, to the UCC issue.

24 MR. KNOWLTON: And I think we've got an affidavit
25 with all that neatly all attached.

1 THE COURT: Yeah. Anything you want to send is fine
2 with me. I mean, I -- this is now -- the UCC concerns me.
3 And driving up here today, I had in my head -- I had notes
4 about the -- why the statute of limitations didn't apply
5 and would have, could have, and, also, the amount. The
6 UCC, quite frankly, wasn't at the top of my brain pan.

7 So why don't y'all take some time and make sure that
8 y'all are comfortable with what you tell me. And then if
9 you can't agree, I'm perfectly willing the next time I'm
10 up here to -- or do it in Anderson, hold a hearing. And
11 I -- because I want to see -- make sure those documents
12 are right.

13 MR. SCOTT: May -- let me let Bob look at this and
14 maybe we can resolve it now.

15 THE COURT: Yeah.

16 (Pause.)

17 MR. KNOWLTON: Yeah. We'll -- we'll get it -- we'll
18 get you a copy, Your Honor.

19 THE COURT: Yeah. I'm -- I'm more -- quite frankly,
20 at this point, I'm more worried about your travel. You
21 better get out of here. Because if you've ever driven
22 through Seneca at 5:00, which I've had to do many a time,
23 wear your seat belts.

24 MR. KNOWLTON: We're -- we're fine on the time. I
25 just -- but we'll -- we'll get you a clear package of not

1 only the account agreement, but the other documents
2 associated with creating the account.

3 THE COURT: Yeah. Y'all know where I'm headed. I
4 want to see if the UCC -- I mean, that will obviously --
5 it doesn't help your client much. But it, also, will give
6 me some comfort.

7 And, then again, on some of these issues, I really
8 want to think about them. I mean, this one bothers me.
9 This one is complicated. And -- and I want to make sure
10 it's right. I want to make sure the record's right so
11 that when you go up that everybody is clear.

12 There have been a couple of cases that were not mine,
13 thank goodness, that -- where records have been not as
14 complete as they have been -- should have been. And I
15 want to make sure this isn't one of them. It's a lot of
16 money. And -- you know, and y'all have good lawyers. So
17 I want to make sure I have got that clear.

18 So take some time. Heck, I mean, I say the first of
19 the year, January -- by January 15th. I know people have
20 travel plans. See if you can get me a packet, or an
21 agreement, or a request for a hearing for me to look at
22 it.

23 Does that work?

24 MR. SCOTT: It does, Your Honor.

25 MR. KNOWLTON: Absolutely. We can probably have it a

1 lot quicker than that --

2 THE COURT: Yeah. I'll just set that as a way
3 outside limit. So, I mean, you know, I -- I don't want to
4 put -- at this time of year, it's very difficult for me to
5 force y'all to do something in a hurry. I wouldn't like
6 it. And I'm not going to make y'all do it. Okay.

7 *****END OF TRANSCRIPT OF RECORD*****
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CERTIFICATE OF REPORTER

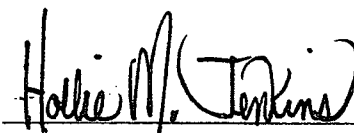
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of Common Pleas for Oconee County, South Carolina, on the 6th day of December, 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

June 24, 2019

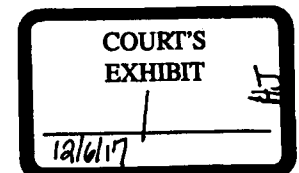
A handwritten signature in cursive script that reads "Hollie M. Jenkins". The signature is written in dark ink and is positioned above a horizontal line.

Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

Selected Damages Issues

Description	Source	Amount	Remaining Balance in Dispute
Total Deposited Into/Disbursed Out of Account	Exhibit 18	\$ 4,057,114.34	\$4,057,114.34
Undisputed Disbursements	Exhibit 41	-\$1,865,761.69	\$2,191,352.65
Transaction Reversals	Exhibit 43	-\$351,246.57	\$1,840,106.08
Transfers to Plaintiff's BB&T Accounts	Exhibit 44	-\$182,998.57	\$1,657,107.51
Car Payments	Exhibit 45	-\$7,823.14	\$1,649,284.37
CFB Credit Card Payments	Exhibit 46	-\$7,224.74	\$1,642,059.63
Insurance	Exhibit 47	-\$6,079.17	\$1,635,980.46
Logan Voxx	Exhibit 48	-\$1,600.00	\$1,634,380.46
CFB Funds into Account	Exhibit 50	-\$880,855.58	\$753,524.88
July 10, 2007 to Crosby	Exhibit 52	-\$500,000.00	\$253,524.88
November 28, 2007 to Crosby	Exhibit 42	-\$200,000.00	\$53,524.88
Additional to Crosby in 2008	Exhibit 42	-\$353,437.39	(\$299,912.51)



Subject: Debi Baker Brookshire VS Community First Bank Inc., et al Case No.: 2014CP3700526
Date: Monday, April 17, 2017 at 2:31:05 PM Eastern Daylight Time
From: Maddox, J. Cordell Law Clerk (Courtney Huether)
To: barneygiese@gmail.com, David Scott (dscott@jrlawsc.com), eblack@hsblawfirm.com, dgh@dghlaw.net, bknowlton@hsblawfirm.com ('bknowlton@hsblawfirm.com')

All,

Judge Maddox has reached a decision in the above referenced case, which was taken under advisement by him on December 13, 2016 in Oconee County. Judge Maddox is denying Benjamin Lee Holt's motion for summary judgment and granting Community First's motion for summary judgment. I believe Elizabeth Black and Robert Knowlton represent Community First. Please submit a proposed order to our office no later than May 31, 2017. Email the proposed order to our administrative assistant, Cindy Hicks, as Judge Maddox will not have a law clerk beginning at the end of April. Her email is listed below.

Thank you for your patience with this matter and please let me know if I may be of further assistance.

Best regards,

Courtney R. Huether

Law Clerk to the Honorable J. Cordell Maddox, Jr.
Tenth Judicial Circuit
100 S. Main Street
P.O.Box 8002
Anderson, SC 29624 (29622)
Phone: (864) 260-4636
Fax: (864) 260-6348
cmaddoxlc@sscourts.org

PLEASE NOTE: Beginning April 24, 2017, please send all correspondence to our Administrative Assistant, Cindy Hicks, at cmaddoxsc@sscourts.org.

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**Subject:** Rule 59(e), Brookshire

**Date:** Thursday, October 19, 2017 at 2:55:13 PM Eastern Daylight Time

**From:** David Scott

**To:** Black, Elizabeth, Daryl G. Hawkins (dgh@dghlaw.net)

**CC:** barneygiese@gmail.com, Justin Kata, jonathan@wallergroupsc.com

Elizabeth and Daryl, see attached letter that I sent to Judge Maddox today along with a courtesy copy of our Rule 59(e) Motion, which you should have received earlier from the efilng system.

Thanks,

M. David Scott  
Attorney at Law

J | R | S LAW  
Jordan, Rauton & Scott, LLC  
109-B Vista Oaks Drive  
Post Office Box 948  
Lexington, SC 29071  
(803) 785-7878  
Fax: (803) 785-7880  
[dscott@jrslawsc.com](mailto:dscott@jrslawsc.com)

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P.O. Box 948 (29071)

(803) 785-7878

J R S | LAW

Jordan, Rauton | Scott, LLC

NANCY T. JORDAN

KATHRYN M. RAUTON

M. DAVID SCOTT

October 19, 2017

The Honorable J. Cordell Maddox, Jr.  
Presiding Judge  
Tenth Judicial Circuit  
P.O. Box 8002  
Anderson, SC 29622

Re: Debi Baker Brookshire vs. Community First Bank, Inc. and Benjamin Lee Hiott  
C/A No: 2013-CP-38-0720

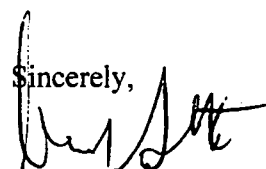
Dear Judge Maddox:

I represent the Plaintiff in the above-referenced action. You issued an Order Granting Defendant Community First Bank, Inc.'s Motion for Summary Judgment and Denying Defendant Benjamin Lee Hiott's Motion for Summary Judgment filed September 26, 2017. I filed a Motion to Alter or Amend the Judgment Pursuant to Rule 59(e), SCRPC, on October 6, 2017.

I have enclosed a copy of the filed 59(e) motion for your review. I am copying Counsel for the Defendants on this letter and have previously electronically served filed copies of the motion on them as well.

If you have any questions, please do not hesitate to ask. My telephone number is 803-454-1200.

Sincerely,

  
M. David Scott

Enclosures

Cc: Elizabeth Black, *via email only*  
Daryl G. Hawkins, *via email only*

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Debi Baker Brookshire,

Plaintiff,

vs.

Community First Bank, Inc. and

Benjamin Lee Hiott,

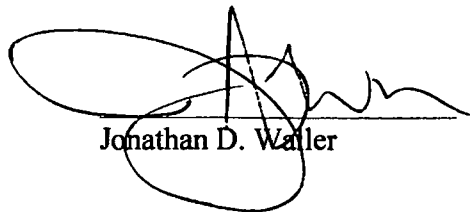
Defendants.

IN THE COURT OF COMMON PLEAS  
10TH JUDICIAL CIRCUIT

**CERTIFICATE OF SERVICE**

Case No. 2014-CP-37-526

I certify that on this date I served a copy the Plaintiff's Motion to Alter or Amend the Judgment Pursuant to Rule 59(e), SCRPC and Supporting Memorandum in this case on the presiding judge by delivering a copy of same to the Judge's chambers by delivering by the United States Postal Service, in a sealed envelope clearly bearing a return address with adequate first class postage affixed thereon, said copy to his chambers located at P.O. Box 8002, Anderson, SC 29622, and addressed to his attention.



Jonathan D. Waller

Columbia, South Carolina

This 19 day of October, 2017



THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM OCONEE COUNTY  
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 2014-CP-37-00526  
Appellate Case No. 2019-000614

Debi Baker Brookshire,

Appellant,

v.

Community First Bank and  
Benjamin Hiott,

Defendants,

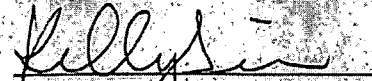
Of Which, Community First  
Bank is

Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

January 2, 2020

  
Kelly L. Giese, SC Bar No. 100089  
THE GIESE LAW FIRM, LLC  
1315 Blanding Street  
Columbia, SC 29201  
(803) 708-6767  
(803) 708-6769 (facsimile)  
klg@thegieselawfirm.com

ATTORNEY FOR APPELLANT