

IN THE SUPREME COURT OF MISSISSIPPI

COMMUNITY BANK

PLAINTIFF/APPELLANT

V.

CAUSE NO.: 2008-CA-01521

DONNA STUCKEY

DEFENDANT/APPELLEE

BRIEF OF THE APPELLEE
DONNA STUCKEY

ORAL ARGUMENT IS NOT REQUESTED

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Donna Stuckey, Appellee;
2. David Shoemake, Shoemake & Blackledge, PLLC, Attorney for the Appellee;
3. A. Regnal Blackledge, Shoemake & Blackledge, PLLC, Attorney for the Appellee;
4. Community Bank, Appellant;
5. Directors of Community Bank of Mississippi: Thomas W. Colbert, Freddie J. Bagley, Darrell Brown, George W. Taylor, Jr., Chris Fountain, W. C. Haralson, Dr. John P. Lee, Norma Ruth Lee, Allan Matthews, Chip Miskelly, Greg Moore, Richard Ridgway, R. Faser Triplett, Jr., Dr. A. Wallace Conerly, Jr., Barry Prather, Don Griffin, Tammy Phillips, Charles W. Palmer, Dink R. Gibson, James V. Lackey
6. Chase Bryan, Alan W. Perry, and the law firm of Forman Perry Watkins Krutz & Tardy, LLP, Attorneys for the Appellants;
7. Clay L. Slay and the law firm of Adams & Edens, P. A., Attorneys for Appellants;
8. Mike Stuckey, husband of the Appellee and previously a co-defendant in the underlying replevin action filed by Community Bank;
9. William H. Jones, Attorney for Mike Stuckey.

10. Raymond McAlpin, former employee of Community Bank against whom the Stuckeys have asserted claims in this action; and
11. Gerald D. Garner, Esquire, Attorney for Raymond McAlpin.



DAVID SHOEMAKE

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STATEMENT OF ISSUES

ISSUE 1: Donna Stuckey did not sign arbitration agreements and is not bound to arbitrate her claims against Community Bank because of the forgeries of her signature.

ISSUE 2: Donna Stuckey was not a third party beneficiary of loans in issue and therefore, should not be compelled to arbitrate her claims.

ISSUE 3: Donna Stuckey was a victim of fraud and forgery and should not be compelled to arbitrate her claims under the doctrine of equitable estoppel.

STATEMENT OF THE CASE

A. Nature of the Case, Course of Proceedings and Disposition Below,

Community Bank of Mississippi, hereinafter, "Bank" sued Donna Stuckey, hereinafter "Donna" by filing a Complaint in Replevin alleging that she signed two (2) loan documents with Bank, loan document 6858317, (R-7, Exhibit "F" at R.56), and loan document 6803148. (R.-7, Exhibit "G" at R.64, 65) Mike Stuckey, Donna's husband, also a defendant, was sued on the basis of four (4) other loans. Donna has filed an Answer claiming the signatures on the loan documents are forgeries. (R.-79) Donna's Answer included a Counter-Complaint charging Raymond McAlpin and Community Bank with forgery, conversion, misrepresentation, breach of fiduciary duties, tortious breach of good faith and fair dealing, intentional/negligent infliction of emotional distress, damage to credit reputation, and gross negligence and/or intentional conduct. (R.-79) The aforementioned allegations were for the forgeries, breach of fiduciary duties and making the Bank officer a partner and the other abuses concerning cattle loans. In the Counter-Complaint, Donna Stuckey made a separate claim against the Defendants for the defects in the title to the eleven (11) acre parcel sold by the Defendants to Donna and her husband, and charged the Defendants with fraudulent misrepresentation for inducing them to purchase real property with defective title (R.-85)

After filing of the Counter-Complaint, the Bank filed a Motion to Compel Arbitration, on September 11, 2006, claiming the execution of approximately fifty-five (55) Arbitration Agreements over a two (2) year period. The Court allowed discovery to proceed on the arbitration issue alone and on September 17, 2007, Donna gave her deposition testimony that she had never signed an Arbitration Agreement at Community Bank. She testified that all purported signatures on those Arbitration Agreements were forgeries. (R.-315 and 441)

On August 6, 2008, after pleadings, briefs and oral arguments, the Circuit Court entered its

Order Denying the Bank's Motion to Compel Arbitration as to Donna Stuckey. (R -800) The Bank and McAlpin filed this appeal from that denial.

B. Statement of Facts

Donna's husband, Mike Stuckey, on or about January 27, 2003, made a large deposit with Community Bank in Raleigh, Mississippi. Raymond McAlpin, a loan officer, and Mike, became friends. The bank loan officer, hereinafter referred to as "McAlpin", made himself a partner in Mike Stuckey's cattle business. Raymond McAlpin handled all of the banking transactions, negotiations for the purchase of cattle, negotiations for the sale of cattle, and the writing of checks for cattle expenses out of funds on deposit at the bank in the name of Mike Stuckey. (R.-358) McAlpin received one-half of the profits from the partnership. Numerous loans were made by McAlpin to Mike Stuckey and by the time the relationship soured, Mike Stuckey found himself signed-off on and responsible for over \$500,000.00 in debt to Community Bank. Donna's forged signature appeared on numerous loans. However, McAlpin's signature does not appear and McAlpin is not responsible for any debt. McAlpin and other employees of Community Bank have forged Mike Stuckey's and Donna Stuckey's signature to numerous loan documents and arbitration documents. McAlpin directed Mike Stuckey to forge Donna's signature on numerous documents and according to Donna's handwriting expert, other persons have signed both Mike Stuckey's signature and Donna's signature on documents, including arbitration documents. (R. 420, p. 1, 2)

It is undisputed that the only claim against Donna stated in the Complaint in Replevin is based upon her "purported" signature on two loans, Loan 6858317, Exhibit "F" (R.-55) and Loan 6803148, Exhibit "G" (R.-62) to the Complaint in Replevin, (R.- 7) There has been no evidence offered on behalf of Community Bank to prove the "purported" signatures to be the true signatures of Donna. On the other hand, by deposition testimony, Donna Stuckey, Raymond McAlpin, and Joni

Thornton, a Community Bank employee, have all stated that the signatures are not the signatures of Donna.

The handwriting expert hired by Community Bank, Grant Sperry, filed an Affidavit and identified in his Affidavit the signatures he thought appeared to be signatures of Donna. He examined all loan documents and signatures purporting to bear the signature of Donna. He did not identify the signatures from loan numbers 6858317 and the signatures from loan number 6803148 as being the true signatures of Donna. (R-303, Exhibit "C" and R-577)

Further, Community Bank's expert, Grant Sperry, in his Affidavit failed to identify the complete Arbitration Agreement documents dated May 12, 2003, documents Bates Stamped 00098, 00099, 00100, 00101, 00102, and 00103. Mr. Sperry referenced only documents 00098, 00099, and 00103 and failed to give an opinion as to number 100, 101, and 102. (R-327, Affidavit of Grant Sperry) The Arbitration Agreement and Arbitration Disclosure dated May 12, 2003, consisted of six pages, Mr. Sperry only reference three of the six pages and failed to acknowledge the signatures on the remaining three pages of the documents, documents number 100, 101, and 102 which are obvious forgeries. (R.-775, 776, 777)

Donna's expert, Robert G. Foley, submitted an Affidavit dated July 11, 2008. (R.-763) Mr. Foley examined all of the documents produced in discovery pertaining to loan number 6803148 and determined that none of the documents had the true signature of Donna. He concluded that documents 3A, 3D through 3G, and 3I and 3L contained the forged signature of Donna forged by Mike Stuckey. He concluded that 3B, 3C, 3H, 3J and 3K, from loan number 6803148, had the forged signature of Donna forged by someone other than Mike Stuckey. (R.-763) Mr. Foley also examined the arbitration documents dated May 12, 2003, and found that there was a strong probability that the signer of the "Donna Stuckey" signature appearing on the Real Estate Deed of Trust dated May 12,

2003, **did not sign** the “Donna Stuckey” signatures appearing on items 2A and 2B (which are the Bates Stamped documents 100 and 101). He stated the Donna Stuckey signatures appear to be signed by **someone other than Donna Stuckey**. He further stated that the signature purporting to be the signature of Mike Stuckey on these same documents were not the signature of Mike Stuckey. (emphasis added)

As pointed out by counsel for the Bank, the Court heard argument of counsel for both parties, examined copies of the Arbitration Agreements and did make a statement into the record as follows: *“I mean, if everything else is a forgery, this still might hook you, this arbitration agreement.”* (Transcript at 8; R.E. G) However, the Court heard counsel’s argument and examined the copies of the documents and learned that there were multiple signatures on the same date that did not appear to be the same. The Court was informed of the findings by the expert for the Bank and the expert for Donna and after hearing all of this and examining the documents made the decision that Donna did not sign an Arbitration Agreement on May 12, 2003, and denied the Bank’s Motion to Compel Arbitration. The Court **did not** find that Donna Stuckey signed an Arbitration Agreement on May 12, 2003. (T. 8, 9, 10) The Trial Court made a positive finding of forgeries of Donna’s signature. (T. 17-R.800)

A bank employee, Joni Thornton, in her deposition, on page 19, lines 19-22, examined the purported signature of Donna on page two of loan document 6858317 and stated that the signature did not appear to be Donna’s signature. On page 20 of her deposition, lines 19-25, she examined loan document 6803148 and examined the purported signature of Donna on page three of the loan, on the disbursement authorization of the same loan and on the UCC Financing Statement filed for the loan and stated *“the signatures do not appear to be Donna Stuckey’s”*. (R.-577, 578)

McAlpin, in his deposition, on pages 20 & 21 stated that he examined the purported signature

of Donna on loan documents for loan 6858317 and determined that the signature of Donna appeared to be signed by Mike Stuckey and not Donna. On page 26 of his deposition, he testified that the signature on page 2 of the Arbitration Agreement dated May 12, 2003, in reference to loan number 6858317 purporting to be the signature of Donna Stuckey, did not appear to be Mike Stuckey signing Donna Stuckey's name. On Page 27 of his deposition he testified that the signature purporting to be Donna Stuckey's signature on loan number 6803148 appeared to be the signature of Mike Stuckey. (R.-577) These two loan numbers referred to hereinabove, were the loans attached to the Complaint in Replevin with the forged signature of Donna.

In her Motion to Allow Discovery of Documents and Information on the Issue of Arbitration, Donna Stuckey stated that she had never signed an Arbitration Agreement with Community Bank. Further, she stated that according to her examination of all documents produced, her name was forged a total of seventeen (17) times on loan documents, four (4) times on modification documents and twenty-eight (28) times on Arbitration Agreements. (R.-354) (R.-313)

At his deposition, McAlpin, refused to answer, at the instruction of counsel, a question as to whether or not he was a partner with Mike Stuckey in the cattle business. (R.-471, 472, 473, & 474) Donna has submitted Affidavits, receipts, and invoices which evidence the fact that McAlpin made himself a partner with Mike Stuckey in the cattle business. (R-366-367; R.-368-384; R.-385-388; R.-389-393; and R.-394)

Why was Mike Stuckey signing his wife's signature to some of the documents? Mike Stuckey testified that he was told by McAlpin to sign Donna's signature. McAlpin testified in his deposition, on Page 44, lines 14-17, that it was common procedure in the bank. He testified as follows:

"Q: So it's up to you- it's up to the bank on whether or not to allow someone to sign someone else's signature on a modification agreement? A: We've allowed it to

happen before, yes." (R.-474, dep. P. 44, lines 14-25)

Counsel for Donna, in argument before the Court, pointed out that the deposition testimony reflected that the bank employee, Joni Thornton, saw Mr. Stuckey sign Donna's name to documents and that she advised McAlpin that bank employees are not taught to allow this, its against bank policy. (T. 12)

According to all pleadings filed by Donna, (R.-79; R.-420; R.-354; and R.-583) and the deposition of Donna, Donna was only in the office of Community Bank on one occasion, that being May 12, 2003. (R.-762) She signed only one document, and that was a Deed of Trust. (R.-313) Community Bank foreclosed on an eleven acre parcel of land in Smith County and sold that eleven acre piece of land to Mike Stuckey. It was necessary for Donna to sign the Deed of Trust even though she did not sign the Promissory Note. She testified and has pled that she did not sign any other documents on May 12, 2003, specifically an Arbitration Agreement or Disclosure.

All of the documents supposedly signed on May 12, 2003, were identified in discovery as being Bates Stamped 00099-00103. Community Bank's expert, Grant Sperry, failed to identify the arbitration documents dated May 12, 2003, as being documents that had the true signature of Donna Stuckey. Mr. Sperry referenced only documents 00098, 00099, and 00103 and failed to give an opinion as to number 100, 101, and 102. (R.-327) On the other hand, Mr. Foley, the hand writing expert for the forensic document examiner for Donna Stuckey, examined these documents and found the signature purported to be "Donna Stuckey's signatures" were not signed by "Donna Stuckey" and that they did not appear to be the signatures of "Mike Stuckey".

Further, Mr. Foley determined that the Arbitration Agreement and the Arbitration Disclosure identified in the above paragraph did not contain the true signature of Mike Stuckey. (R.-627) So, not only was Donna's signature forged, Mike Stuckey's signature was forged. An examination of

all of the May 12, 2003, documents will show completely different handwriting styles for the purported signatures of Donna. It is evident that the arbitration documents were made up after the fact and back-dated and forged in an attempt to have Donna held responsible. The transaction for which Donna signed a Deed of Trust, the eleven acre parcel, has nothing to do with the cattle business, the equipment loans and other loans sued upon in the Complaint in Replevin.

How did Donna Stuckey learn that her name was being forged to loan documents at Community Bank? On or about April 20, 2004, a paid off loan came to her residence from Community Bank. The note was only in Mike Stuckey's name. However, attached to that loan was an Arbitration Agreement purportedly bearing the signature of Donna Stuckey. When Donna Stuckey opened the mail, she confronted Raymond McAlpin, who was at their farm, and asked him who signed her name to this document. Raymond McAlpin replied "**my secretary Joni Thornton**". (R-443, Affidavit of Donna Stuckey and 480 Affidavit of Wesley Stuckey)

SUMMARY OF ARGUMENT

Because forgeries were proven by reports of both experts and admitted in Bank's pleadings and in deposition of Bank's employees, the Trial Court found that Donna did not sign an Arbitration Agreement on May 12, 2003. She admitted signing a Deed of Trust on May 12, 2003, concerning the purchase of a parcel of property from the bank. When the replevin suit was filed against her, she responded with a Counter-Complaint after learning of the numerous forgeries. She did make a claim for the failure of title and fraud in the sale of the eleven acre parcel to her and her husband but that claim is a separate claim from the forgeries on the notes that were attached to the Complaint in Replevin and all of the other notes that had her forged signatures. Additionally, a bank officer made himself a partner in her husband's business, took one half of the profits and left the Stuckey family with the responsibility of over \$500,000.00 in debt. Certainly, Donna Stuckey was not a third party

beneficiary of the loan contracts with the Bank and the doctrine of equitable estoppel does not apply.

ARGUMENT

I.

DONNA STUCKEY DID NOT SIGN ANY ARBITRATION AGREEMENTS AND IS NOT BOUND TO ARBITRATE HER CLAIMS AGAINST COMMUNITY BANK BECAUSE OF THE FORGERIES OF HER SIGNATURE

Donna Stuckey's signature on the May 12, 2003, Arbitration Agreement was forged.

The Complaint in Replevin was filed on June 16, 2006, and Donna's Answer and Counter-Complaint claiming forgery and fraud was filed on August 8, 2006. During discovery, Donna learned that there were Seventeen (17) loan documents and Twenty-eight (28) Arbitration Agreements/Disclosures containing her "purported signature". One year and four months after the filing of the Complaint in Replevin, the Bank produced a handwriting expert to report about his findings concerning the signature of Donna. The Bank's own expert found that out of Fifty-five (55) Arbitration Agreements and Twenty-Five (25) Loans, he could only say that five (5) signatures appeared to be the true signature of Donna. According to the pleadings filed by the Bank, their expert examined ALL of the signatures of Donna and by not identifying them as true signatures he finds them to be forgeries. (R.-417) Donna has conceded that her husband, Mike Stuckey, did forge her signature to some documents. However, her handwriting expert, Robert G. Foley, found that numerous signatures purporting to be the signature of Donna were signed by others. He also found that Mike Stuckey's signature had been forged. (R-627)

The Bank tries to over play the fact that Donna admits signing her signature to a Deed of Trust on May 12, 2003. As mentioned earlier, this was for the purchase of an eleven acre parcel of land. Out of the five (5) signatures claimed by the bank to be signed by Donna, on May 12, 2003, only one is admitted by Donna, that being the one on the Deed of Trust.

In Donna's deposition she testified that she was in the bank only one time, that being May 12, 2003, and that she signed **only** a real estate Deed of Trust. In her deposition, she clearly stated that she did not sign any of the arbitration agreements. The bank claims an Arbitration Agreement was signed on May 12, 2003, and Donna denies signing an Arbitration Agreement on that date or any other date. In the Bank's Amended Motion to compel arbitration, the Bank failed to attach all copies of the documents claimed to be signed on May 12, 2003. Those documents, being a part of loan number 67986486, clearly show purported signatures of Donna which have been identified by the two bank employees as not being her true signatures. They identified the signatures on the documents Bates Stamped 000100, 000101, and 00102 as being **obviously not her signatures**. (R-578) Why would you have one legitimate signature on the same package of documents and three forgeries in the same package all on the same date. If any of the signatures were legitimate, why would it be necessary to forge her name in other places on the same documents for the same loan number? (R-577) The Bank also claims that documents were signed on June 12, 2003, by Donna. Donna was not in the bank on June 12, 2003, and has clearly stated as much in her deposition. No witnesses have come forward from the bank to claim that she was in the bank on June 16, 2003. Further, the two employees of the Bank have stated that the signatures on those documents dated June 16, 2003, do not appear similar to Donna's true signature. (R-424 & 425)

After the pleadings, the briefing, and the argument before the Trial Court and after having examined the documents, the Court entered its Order on August 6, 2008, denying the Bank's Motion to Compel Arbitration as to Donna and finding affirmatively: *"There does not exist convincing evidence that Donna Stuckey executed any of the subject Arbitration Agreements;"* (R-800)

Because she has admitted her signature on a Deed of Trust dated May 12, 2003, the Bank claims that she has waived her right to make her legal claims in the Trial Court against the Bank for

fraud and forgery on over \$500,000.00 worth of debt.

In the recent case of *Byrd, et al v. Simmons*, No. 2007-IA-01673-SCT (Miss. 2009),

"The Federal Arbitration Act requires that this Court first determine whether or not the parties intended to arbitrate the dispute in order to decide whether an arbitration agreement should be enforced. See, e. g., Grenada Living Ctr., 961 So. 2d at 36. In order to conclude that there was an agreement to arbitrate, there must be a valid contract. Grenada Living Ctr., 961 So. 2d at 36-37. "A valid contract must have (1) two or more contracting parties, (2) consideration, (3) an agreement that is sufficiently definite, (4) parties with legal capacity to make a contract, (5) mutual assent, and (6) no legal prohibition precluding contract formation." Id. at 37 (citing Rotenberry v. Hooker, 864 So. 2d 266, 270 (Miss.2003). The Supreme Court and this Court have held that "arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." Pre-Paid Legal Servs., Inc., 873 So. 2d at 83 (citations omitted); see also AT&T Techs., Inc. v. Commc 'ns Workers of Am., 475 U. S. 643, 648, 106 S. Ct. 1415, 1418, 89 L. Ed. 2d 648, 655 (1986)). At paragraph 11.

In this case, it is certain that there was no intent by Donna to enter into an Arbitration Agreement with Community Bank.

II.

DONNA STUCKEY WAS NOT A THIRD PARTY BENEFICIARY OF LOANS IN ISSUE AND THEREFORE, SHOULD NOT BE COMPELLED TO ARBITRATE HER CLAIMS

Donna is not a third party beneficiary of the loans at issue. The Trial Court's Order, entered on August 6, 2008, found that Donna Stuckey was not a third party beneficiary and found as follows:

"That the business enterprise entered into by Raymond McAlpin and Mike Stuckey for cattle in which Donna Stuckey had no interest and she is not, therefore, a third party beneficiary of said enterprise; and that the claims stated in Donna Stuckey's Counter-claim are outside the scope of the Arbitration Agreement." (See Rogers-Dabbs Chevrolet-Hummer, Inc., v. Blakeney, (S.Ct.Miss. 2005-IA-00125-SCT, Feb. 22, 2007). (R.-800)

Mike Stuckey was in the cattle business and McAlpin made himself a partner with Mike Stuckey. McAlpin handled all of the banking transactions, writing checks, directing debit memorandums, calling feed lots, calling livestock yards, ordering cattle, and negotiating for the

purchase of cattle. As a result of this partnership, there were approximately twenty-five (25) loans made in the names of Mike Stuckey and Donna Stuckey, containing forged signatures of both Donna Stuckey and Mike Stuckey, which totaled \$734,230.82. Out of these loans, McAlpin's name did not appear on any of the loans, nor did he have any collateral placed against the loans as security. Now, after this Complaint in Replevin has been filed attaching to it as exhibits, loan documents which all witnesses say are forgeries, Donna has learned of the large number of forgeries of her signature attempting to make her responsible for a tremendous debt which she had no knowledge. She filed a Counter-Complaint against the Bank and McAlpin, for forgery, conversion, misrepresentation, breach of fiduciary duties, tortious breach of good faith and fair dealing, intentional/negligent infliction of emotional distress, damage to credit reputation, and gross negligent and/or intentional conduct. (R.-79) The cattle loans and equipment loans have absolutely nothing to do with the eleven (11) acre parcel sold by the Bank to Mike and Donna on May 12, 2003. Donna's claim against the Defendant concerning the Deed of Trust that she admits she signed on May 12, 2003, is separate from her claims against the Defendants for forgery and fraud. In her Counter-Complaint Donna states that the Defendants were guilty of misrepresentation of the title of the property sold to Donna and Mike. The only claim against the Defendants concerning the Deed of Trust is for misrepresentation, breach of good faith and fair dealings and breach of warranty. (R.-85) It is incredible to believe that the fraud and forgery involved, admittedly by the Bank, of Donna's signature on twenty-five loan documents and fifty-five Arbitration Agreements, is within the scope of the May 12, 2003, Deed of Trust transaction. Even if there exists a valid signature of Donna on an Arbitration Agreement concerning the real estate purchase on May 12, 2003, that Arbitration Agreement would apply only to the facts and circumstances of that real estate purchase and loan. Her signature on such a document is denied but even if it did exist, she did not give her permission to

the repeated forgery of her name to other loan documents concerning cattle, etc. As the Court pointed out in (*Rogers-Dabbs Chevrolet-Hummer, Inc., v. Blakeney*, 957 So. 2d 170, 177 (Miss. 2007),

"We have made it clear in prior cases that , when we are called upon to consider whether legal constraints exist external to the agreement which might invalidate the arbitration provisions, the existence of fraud in the formation of the contract may be considered. (citations omitted) However, today's case does not involve a claim of fraud in the inducement of the formation of the contract containing the arbitration clause, all in an effort invalidate the arbitration agreement. While Blakeney no doubt agreed to arbitrate claims that originated from the sale of the vehicle or related to the sale of the vehicle, no reasonable person would agree to submit to arbitration any claims concerning a Hummer to which he would never receive a title; a scheme of using his name to forge vehicle titles and bills of sale to sell stolen vehicles; and the commission of civil fraud against him by misappropriating his title to the Hummer he purchased and forging his name on fake titles and bills of sale on various stolen vehicles-actions of which Blakeney was presumedly totally unaware at the time of the execution of the documents in question, including the arbitration agreement."

If in fact she signed an Arbitration Agreement concerning the Deed of Trust on May 12, 2003, her forged signature on twenty-five (25) other loans and numerous Arbitration Agreements and other documents totaling over seven-hundred thousand dollars in debt, is something that no reasonable person would agree to submit to arbitration.

III.

DONNA STUCKEY WAS A VICTIM OF FRAUD AND FORGERY **SHE SHOULD NOT BE COMPELLED TO ARBITRATE HER CLAIMS UNDER THE** **DOCTRINE OF EQUITABLE ESTOPPEL**

The Bank filed a Complaint in Replevin against Mike Stuckey and Donna Stuckey. The Complaint was based on seven (7) promissory notes exhibits "A" through "G" attached to the Complaint. (R-7)

Exhibit "A" was loan number 6870740 in the name of Mike Stuckey, only. The collateral for this note was a tractor. (R-15). Exhibit "B" is loan number 6819303 in the name of Mike Stuckey, only, and the collateral is a 4-Wheel Drive Pick up. (R-22). Exhibit "C" is loan number 6933785 in

the name of Mike Stuckey, only, and the collateral is the same 4-wheel drive pickup, the same tractor, and two more tractors. (R-31). Exhibit "D" is loan number 6842712 in the name of Mike Stuckey, only, and the collateral is one of the same tractors. (R-37) Exhibit "E" is loan number 6789412 in the name of Mike Stuckey, only, and the collateral is an assignment of a CD#98087 that is in the name of Mike Stuckey, only. (R-44) Exhibit "F" is loan number 6858317 in the name of Mike Stuckey, only, and it list the collateral as the same truck, tractors and is a second mortgage on real estate. (R-55) Donna's signature was forged on the second page of Exhibit "F".

Exhibit "G" is loan number 6803148 and is in the name of Donna Stuckey, only. The collateral is all of the equipment heretofore listed and cattle. (R-62)

As mentioned heretofore, the signatures claimed to be Donna's on the second page of Exhibit "F" (R-56) and on the third page of Exhibit "G" (R-64 & 65) have been examined and found not to be her true signatures.

a) The Bank's pleadings state that their handwriting expert has examined **all** signatures of Donna Stuckey and determined that they were not her true signatures. (R-578)

b) Joni Thornton examined Donna's signatures on Exhibit "F" and "G" and determined that they did not appear to be her true signatures. (R-577)

c) McAlpin examined Donna's signatures on Exhibit "F" and "G" and determined that they did not appear to be her true signatures. ®-578)

d) Donna stated in her deposition that she had signed only one Deed of Trust with Community Bank, that being the Deed of Trust dated May 12, 2003, and that she had not signed any other documents with Community Bank. (R-315 & R-441)

e) Mike Stuckey testified during his deposition that he signed Donna Stuckey's name on loan documents and arbitration documents at the instruction of McAlpin without the knowledge of Donna. (T. 18)

Therefore, the only document supporting the Bank's Complaint in Replevin against Donna's signature is a document containing the forged name of Donna. In the case of, Eddie Adams and Beth

Brown v. Greenpoint Credit, LLC and Security Bank of Amory, 943 So. 2d 703, (Miss. 2006), Greenpoint filed a Motion to Compel Arbitration on very similar facts, claiming that a party, Beth Brown, was a non-signatory third party beneficiary and was also bound by equitable estoppel. In that case, Mr. Adams and his wife, Linda Adams, purchased a mobile home and signed a contract with the Bank of America. The contract contained an arbitration clause. The Bank of America assigned their interest to Greenpoint Credit, LLC. Linda Adams died. Mr. Adams and his daughter, Beth Brown, were on a checking account together and Greenpoint, after the death of Linda Adams, drafted an amount from the account belonging to Mr. Adams and Ms. Brown. Ms. Brown filed a complaint alleging fraud.

Greenpoint acknowledged that Beth Brown did not sign the contract or the arbitration agreement. In our present case, it is undisputed that the name of Donna Stuckey was forged on Exhibit "F" & Exhibit "G".

The Court found that Brown's lawsuit was not an action to "maintain a claim for its breach" and that she was not a party to the contract. In this case, Donna is not filing a suit against Community Bank for a breach of any of the loans attached as exhibits to the Complaint in Replevin and specifically Exhibit "F" & "G" that contain her forged signatures. She is not making a claim to enforce any of the contracts. Her claims result from McAlpin making himself a partner in Mike Stuckey's cattle business, taking one half of the profits and leaving Mike and Donna with all of the debt and for the fraud and forgery in having Donna's name forged to numerous loan documents and arbitration documents.

In the Adams v. Greenpoint case, the Court held as follows:

"However, arbitration agreements can be enforced against non-signatories if such non-signatory is a third-party beneficiary, See Smith Barney, Inc. v. Henry, 775 So.2d 722, 727 (Miss. 2001). In Burns, this Court stated: The principle that one not a party or privy to a contract but who is the beneficiary thereof is entitled to

maintain an action for its breach is not so far extended to give a third person who is only indirectly and incidentally benefitted by the contract the right to sue upon it. A mere incidental, collateral, or consequential benefit which may accrue to a third person by reason of the performance of the contract, or the mere fact that he has been injured by the breach thereof, is not sufficient to enable him to maintain an action on the contract. Where the contract is primarily for the benefit of the parties thereto, the mere fact that a third person would be incidentally benefitted does not give him a right to sue for its breach...

Nothing in the plain language of the arbitration provision indicates a clear intent of the parties to make Brown a third-party beneficiary. She did not sign the contract, was in no way alluded to in the contract, and, based on the record before us, received no benefits from the contract. As a non-signatory non-third-party beneficiary, Brown is effectively a stranger to the contract. Furthermore, her suit is not "to maintain an action for its breach;" ... (Page 708, paragraph 15)

In the same case, the Court addressed *Greenpoint's* claim of equitable estoppel and held:

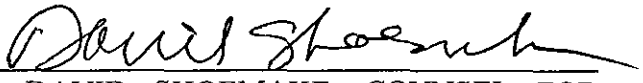
"Neither does the record support binding Brown to the arbitration provision under the doctrine of equitable estoppel, which is an extraordinary remedy to be used with caution. See B.C. Rogers, 1911 So.2d at 491. In B.C. Rogers, this Court stated that "equitable estoppel exists where there is a 1) belief or reliance on some representation; 2) a change of position as a result thereof; and 3) detriment or prejudice caused by the change of position." Id. at 492. That test is not satisfied, as GreenPoint has not asserted facts to support its application. The record does not reflect that GreenPoint relied upon and detrimentally changed its position as a result of representations made by Brown." (709, Paragraph 16)


CONCLUSION

In the present case, the Bank has failed to offer evidence of any of the three elements necessary to prove equitable estoppel. Donna Stuckey is not bound to arbitrate her claims because her claims are outside the scope of the transactions that the arbitration agreements were designed to accompany. She is not a non-signatory third party beneficiary and the Bank cannot, by any stretch of the imagination, claim that it relied on some representation by Donna, or changed its position as a result of a representation by Donna or that there was a detriment caused by such change of position. This Court should affirm.

THIS THE 18th Day of April, 2009.

Respectfully submitted,
DONNA STUCKEY

BY: 
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CERTIFICATE OF SERVICE

I, David Shoemaker, counsel for the Appellee, do hereby certify that I have this day mailed a true and correct copy of the above and foregoing pleading to the following:

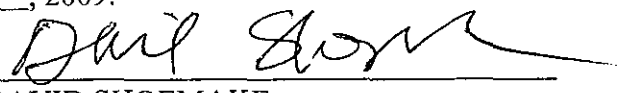
Honorable Robert G. Evans
Circuit Court Judge Thirteenth District
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Trial Court Judge

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THIS THE 18 day of Jan, 2009.


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s/stuckey/donna/community/supreme/statement.issues