

IN THE SUPREME COURT OF MISSISSIPPI

COMMUNITY BANK

PLAINTIFF/APPELLANT

v.

CAUSE NO. 2008-CA-01521

DONNA STUCKEY

DEFENDANT/APPELLEE

**INTERLOCUTORY APPEAL
FROM THE CIRCUIT COURT OF COVINGTON COUNTY**

**REPLY BRIEF OF
APPELLANT COMMUNITY BANK**

ORAL ARGUMENT REQUESTED

ALAN W. PERRY, [REDACTED]
J. CHASE BRYAN, [REDACTED]
MANDIE B. ROBINSON, [REDACTED]
FORMAN PERRY WATKINS KRUTZ & TARDY LLP
City Centre Bldg., Suite 100
200 South Lamar Street
Post Office Box 22608
Jackson, MS 39225-2608
(601) 960-8600

CLAY L. SLAY, MSB [REDACTED]
ADAMS & EDENS, P.A.
P.O. Box 400
Brandon, MS 39042
(601) 825-9505

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INTRODUCTION

After the Stuckeys defaulted on certain loans with Community Bank, the Bank filed this suit as a basic replevin action in an attempt to obtain possession of the property offered by Mike and Donna Stuckey ("the Stuckeys") as collateral in support of those loans made to their cattle business. (R. 7). In response, the Stuckeys each filed a separate counterclaim in which they alleged that a former Bank employee misrepresented certain aspects regarding an 11-acre parcel of property and convinced them to buy this parcel for residential development. (R. 81-83). They also allege that many of the signatures of Donna Stuckey are forged on certain loan documents. (R. 79).

The documents executing the purchase of this parcel of property were signed on May 12, 2003, and included an Arbitration Agreement ("agreement"). (R. 117; R.E. at C). The agreement provides, *inter alia*, as follows :

3. Dispute Resolution: Any claim, dispute or controversy between Customer and Bank, including Bank's employees, officers, directors, agents, parent companies, subsidiary companies, sister companies, successors, assigns, other affiliated entities or persons (collectively, "Covered Persons"), (whether in contract, tort, or otherwise, whether pre-existing, present or future, and including statutory, common law, intentional tort of equitable claims), arising from or relating to any matter, including, but not limited to, the Transaction, any past or future interactions, business or dealings between the parties or between Customer and the Covered Persons or any application, advertisements, promotions, or oral or written statements related to the Transaction, any goods or services furnished in connection with the Transaction or the terms of financing, the relationships with respect to the Transaction (including to the full extent permitted by applicable law, relationships and dealing with third parties who are not signatories to the Transaction or this Agreement) or the validity, enforceability or scope of this Agreement (collectively, "Claim"), shall be resolved, upon the unilateral or joint election of Customer or Bank or said Covered Persons, respectively, by binding arbitration, as hereinafter provided, pursuant to the Rules of the National Arbitration Forum ("NAF") in effect at the time the Claim is asserted. A party who has asserted a Claim in a lawsuit in court may elect arbitration with respect to any Claim(s) subsequently asserted in the lawsuit by any other party or parties.

...

(R. 117; R.E. at C). Donna Stuckey asserted her signature was forged on this arbitration agreement—despite the fact that she admitted being in the offices of Community Bank and signing the Deed of Trust involved in the May 12, 2003, loan on the same date. (R. 286-87).

At the hearing on Community Bank's motion to compel arbitration of all of Donna Stuckey's claims, the Court recognized that her signature on at least *one arbitration agreement* could be enough to compel arbitration of her claims regarding any past or future transactions. With respect to the arbitration agreement dated May 12, 2003, the trial court noted "I mean, if everything else was a forgery, this still might hook you, this arbitration agreement." (Transcript at 8; R.E. at G).

Donna Stuckey has now asserted claims against Community Bank based on the purchase of this property, as well as claims involving loans made to the family cattle business of which she is a part-owner. Donna Stuckey is bound to arbitrate these claims for three separate but equally applicable reasons: (1) she signed the arbitration agreement regarding the purchase of property on May 12, 2003; (2) she is a clear third-party beneficiary of all the loans keeping her cattle business afloat; and (3) she is equitably estopped from accepting the benefit of all the contracts at issue without also being bound by all contract terms.

ARGUMENT

I. DONNA STUCKEY SIGNED THE MAY 12, 2003, ARBITRATION AGREEMENT.

Donna Stuckey denies signing any arbitration agreement with Community Bank. However, the signatures on four separate arbitration documents are identical to the admitted signature of Donna Stuckey, both to the untrained eye, and to the handwriting expert retained by Community Bank to verify the authenticity of the signatures—Grant Sperry. In fact, Sperry concluded that the signature on several of the arbitration agreements *are the true and correct*

signatures of Donna Stuckey, including the arbitration agreement in connection with the May 12, 2003, Deed of Trust. (R. 327-29; R.E. at F).

Donna Stuckey admits the following signatures are authentic:

- 1) Affidavit dated December 27, 2006. (R. 330-31).


DONNA STUCKEY

- 2) Real Estate Deed of Trust (signed in two places) dated May 12, 2003. (R. 332-38).


(Signature) DONNA STUCKEY


DONNA STUCKEY

In undisputed¹ expert testimony, Sperry found the signatures below to be the true and correct signatures of Donna Stuckey:

- 1) Arbitration Agreement dated May 12, 2003. (R. 339-40).

BY: 

- 2) Arbitration Disclosure dated May 12, 2003 (R. 341).

BY: 

- 3) Real Estate Deed of Trust (signed in two places) dated June 16, 2003. (R. 342-48).


(Signature) DONNA STUCKEY

¹ Although Donna Stuckey disputes she signed these documents, her handwriting expert does not.

Donna Stuckey
DONNA STUCKEY

4) Arbitration Agreement dated June 16, 2003. (R. 349-50).

BY: Donna Stuckey
DONNA STUCKEY

5) Arbitration Disclosure dated June 16, 2003. (R. 351).

BY: Donna Stuckey
DONNA STUCKEY

6) Undated LLC Authorization. (R. 352).

x Donna Stuckey
..

It is obvious to even a lay person that Donna Stuckey signed these arbitration agreements.

Examples of the signatures that Donna Stuckey's handwriting expert, Robert Foley, concluded were not Donna's signature include:

1) Arbitration Agreement dated April 29, 2005 (R. 606-07).

BY: Donna Stuckey
DONNA STUCKEY


2) Arbitration Disclosure dated April 29, 2005 (R. 608).

BY: Donna Stuckey
DONNA STUCKEY

3) Arbitration Agreement dated June 16, 2003. (R. 609-10).

BY: Donna Stuckey
DONNA STUCKEY

4) Arbitration Disclosure dated June 16, 2003. (R. 611).²

BY: 
DONNA STUCKEY

Despite Donna Stuckey's untruthful claim that she did not sign any arbitration agreements or other loan documents, the truth is that she ***signed*** several of the agreements.

There is undisputed expert testimony that Donna Stuckey did sign an arbitration agreement with the bank. Indeed, Stuckey's ***own handwriting expert does not support her claim that these signatures were forged***. Instead, there are two arbitration agreements dated May 12, 2003. Community Bank and its expert, Sperry, have asserted the signature of Donna Stuckey is true and correct on one of them – originally Bates Numbered ORG 00098, 00099, and 00103. (R. 339-342; R.E. at F). The second arbitration agreement dated the same date contains subtle differences, and was originally Bates Numbered ORG 00100, 00101, 00102. (R. 775-777). For example, on the agreement numbered ORG 00099 (R. 340), the signature line lists Donna Stuckey first as the “Vice-President” and “Member” of Appleridge Estates, LLC, but the title “Vice-President” was then crossed out, and verified with her initials. On the second agreement, numbered ORG 00101 (R. 777), Donna Stuckey is listed only as signing as a “Member” of Appleridge Estates, LLC.

Foley claims that both Donna and Mike's signatures were forged on ***this second agreement***. However he ***does not dispute that the signatures are genuine on the Arbitration Agreement and Disclosure numbered ORG 00098, 00099, and 00103***. (R. 588). In fact, a review of his Affidavit listing the documents he was provided to review show that he was ***not***

² In fact, Mike Stuckey testified that he repeatedly signed his wife's name to numerous documents at the bank, including both these Arbitration Agreement and Arbitration Disclosures dated June 16, 2003. See Deposition of Mike Stuckey at p. 68-69. In doing so, it is obvious he did not try to duplicate his wife's true signature in any way.

even provided a copy of the documents Bates Numbered ORG 00098, 00099, and 00103 by Donna Stuckey's counsel. This is despite the fact that these are the documents which Community Bank's expert had already identified as bearing the true signature of Donna Stuckey. Indeed, according to Foley's Affidavit, not one of the six separate documents which Sperry had identified as having one or more true signatures of Donna Stuckey was even provided to Foley for his comparison. (R. 588).

This apparent attempt to deceive the court into believing that the experts disagree over whether the signatures are authentic is shocking. Community Bank's expert identified six documents containing one or more true signatures. Despite these documents having been identified, Donna Stuckey's expert was not even provided those documents to review. Therefore, there is no "battle of the experts" over the authenticity of the signatures, and this Court should disregard Donna Stuckey's self-serving and demonstrably false denial.

The truth of the matter is that Donna Stuckey signed six documents in connection with numerous transactions with Community Bank, including *two sets* of arbitration agreements and disclosures (each dated May 12, 2003, and June 16, 2003). (R. 339-41, and 349-51; R.E at F). Because Donna Stuckey signed arbitration agreements with Community Bank, any claims involving the opening and handling of all accounts with Community Bank are subject to arbitration.

II. DONNA STUCKEY IS BOUND TO ARBITRATE BECAUSE SHE IS A THIRD-PARTY BENEFICIARY OF THE LOANS AT ISSUE

There is no dispute that Donna Stuckey was a *direct* beneficiary of the loan involving the real estate purchase which (1) she admitted signing; and (2) upon which she has based several claims. *See* Appellee's Brief at 12 (listing Donna's claims based on the sale of property). Indeed, she has claimed she sustained losses and damage in the amount of the purchase price of

the 11-acre parcel, \$30,000 for money spent in dirt work to prepare the lots, and \$75,000 for the construction of the one completed residential home. (R. 81-83). Clearly, Donna Stuckey was a *direct* beneficiary of the May 12, 2003, loan as she now owns that piece of property, and cannot assert claims based on that very loan without accepting the arbitration agreement which was part of the loan documents giving her that ownership interest.

In addition, Donna Stuckey has admitted that she is a *co-owner* of the cattle farm which the remaining loans were made to sustain. Her Answer stated “the cattle operation was in the name of Stuckey Farms” and “Donna Stuckey, was an owner of an interest in Stuckey Farms.” (R. 83). However, when faced with the truth that she would be considered a third-party beneficiary of those loans based on that fact, she incorrectly asserted these loans were “for cattle in which Donna Stuckey had no interest.” *See* Response to Community Bank’s Amended Motion to Compel Arbitration (R. 422)

The truth is that Donna Stuckey was a co-owner of the cattle operation, and the loans at issue provided operating capital that kept the cattle farm in business. Obviously, those loans provided benefits and income to the Stuckeys.

It is well-settled under Mississippi law, that “arbitration agreements can be enforced against non-signatories if such non-signatory is a third-party beneficiary.” *Trinity Mission of Clinton, LLC v. Barber*, 2007 WL 2421720, at ¶ 21 (Miss. Ct. App. Aug. 28, 2007)(attached in the Appendix of Authorities)(quoting *Adams v. Greenpoint Credit, LLC*, 943 So. 2d 703, 708 (Miss. 2006)). According to this Court, “the *right of the third party beneficiary* to maintain an action on the contract *must spring from the terms of the contract itself*.” *Adams*, 943 So. 2d at 708-09 (emphasis in original) (citing 17A C.J.S. *Contracts* 519(4) (1963); *see also International Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411 (4th Cir. 2000)(noting

a Second Circuit opinion finding that a non-signatory can be bound by showing a “direct benefit” from or “pursuing a ‘claim . . . integrally related to the contract containing the arbitration clause.’”)(attached in the Appendix of Authorities).

In this case, Donna Stuckey has accepted the benefits of all of the loans containing the arbitration agreements and cannot reject the burden of arbitration when it does not suit her needs. *See, American Bureau of Shipping v. Tencara Shipyard S.P.A.*, 170 F.3d 349, 353 (2d Cir. 1999)(attached in the Appendix of Authorities).

III. DONNA STUCKEY IS BOUND TO ARBITRATE UNDER THE DOCTRINE OF EQUITABLE ESTOPPEL

Donna Stuckey is also equitably estopped from claiming that the arbitration agreements at issue do not apply to her, when she has brought her causes of action ***based on the loans containing the very arbitration agreements she attempts to disclaim.*** Indeed, she admits that “her claims result from McAlpin making himself a partner in Mike Stuckey’s cattle business.” Appellee’s Brief at 15. Yet, she could not assert such claims at all if she had no interest in the cattle business to protect. She also brings claims concerning the loan for the Deed of Trust for “misrepresentation, breach of good faith and fair dealings and breach of warranty.” Appellee’s Brief at 12. But these claims refer to the misrepresentations “in the inducement” of a contract, and breach of good faith and fair dealings “in the performance” of a contract. Naturally, such claims depend upon the existence of the loan contract for the sale of the property.

In *Washington Mutual Finance Group, LLC v. Bailey*, 364 F.3d 260 (5th Cir. 2004), the court addressed the specific application of the doctrine of estoppel to whether a non-signatory could be bound to arbitrate claims. The court explained:

In the arbitration context, the doctrine [of estoppel] recognizes that a party may be estopped from asserting that the lack of signature on a written contract precludes enforcement of the contract’s arbitration clause when he has consistently

maintained that other provisions of the same contract should be enforced to benefit him. To allow [a plaintiff] to claim the benefit of the contract and simultaneously avoid its burdens would both disregard equity and contravene the purposes underlying enactment of the Arbitration Agreement.

Id. at 268 (attached in the appendix of authorities)).

Clearly, Donna Stuckey's claims are inextricably interwoven with those of Mike Stuckey. They involve the same contracts, the same factual allegations, the same loan proceeds applied to the same joint cattle operation, the joint purchase of one parcel of property, and the same allegations of fraudulent inducement by the same former Bank employee. As Mike and Donna Stuckey clearly jointly owned and operated the cattle operation as *one farm* for purposes of obtaining these loans, then the operation should be treated as *one farm* for purposes of suing on the same loans. See *Terminex International, Inc. v. Rice*, 904 So. 2d 1051, 1058 (Miss. Dec. 9, 2004)(finding the non-signatory wife's claims were subject to arbitration under equitable estoppel because the claims were related to the contract between the signatories); *Smith Barney v. Henry*, 775 So. 2d 722 (Miss. 2001)(holding that the non-signatory plaintiff, as the heir and/or successor of the signatory, was bound by the arbitration agreements signed by her daughter who opened the Smith Barney accounts because her claims were dependent upon the existence of those accounts).

As Donna Stuckey received the benefits of all loans made to support the cattle farm and the purchase and ownership of the 11-acre parcel of property, and has now filed suit alleging breaches of duties allegedly created by those loan contracts, then she is equitably estopped from asserting that her claims are not also covered by the Arbitration Agreements at issue in this case.

CONCLUSION

Donna Stuckey is bound to arbitrate her claims based on her signature on the May 12, 2003, Arbitration Provision. However, even if this Court finds her signature on that agreement is

a forgery, then Donna Stuckey is still bound to arbitrate her claims on either the basis that she is a third-party beneficiary of all the loans at issue in this suit, or that she is equitably estopped from bringing a cause of action against Community Bank based on these loans without accepting the arbitration agreement that is an inseparable part of these loans. Based on the foregoing, this Court should reverse the trial Court's ruling and hold that Donna Stuckey's claims must be submitted in arbitration.

This the 16 day of April, 2009.

Respectfully submitted,

COMMUNITY BANK OF MISSISSIPPI

By: J. Chase Bryan
Chase Bryan

OF COUNSEL:

ALAN W. PERRY, [REDACTED]
J. CHASE BRYAN, [REDACTED]
FORMAN PERRY WATKINS KRUTZ & TARDY LLP
City Centre Bldg., Suite 100
200 South Lamar Street
Post Office Box 22608
Jackson, MS 39225-2608
(601) 960-8600

CLAY L. SLAY
ADAMS & EDENS, P.A.
P.O. Box 400
Brandon, MS 39042
(601) 825-9505

CERTIFICATE OF SERVICE

I, J. Chase Bryan, certify that a copy of the foregoing document was served upon the parties below, by depositing same in the United States Mail, first-class postage prepaid:

HONORABLE ROBERT G. EVANS
CIRCUIT COURT JUDGE OF SMITH COUNTY
P. O. BOX 545
RALEIGH, MS 39153
Trial Court Judge

William H. Jones, Esq.
P.O. Box 282
Petal, MS 39465-0282
Attorney for Mike Stuckey

David Shoemake
Shoemake & Blackledge, PLLC
P.O. Box 1678
Collins, MS 39428
Attorney for Donna Stuckey

Gerald D. Garner, Esq.
124 Main Street
P. O. Box 789
Raleigh, MS 39153
Attorney for Raymond McAlpin

THIS, the 16 day of April, 2009.



J. CHASE BRYAN

APPENDIX AUTHORITIES

Cases

<i>American Bureau of Shipping v. Tencara Shipyard S.P.A.</i> , 170 F.3d 349, 353 (2d Cir. 1999)	A
<i>International Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH</i> , 206 F.3d 411 (4th Cir. 2000)	B
<i>Trinity Mission of Clinton, LLC v. Barber</i> , 2007 WL 2421720, at ¶ 21 (Miss. Ct. App. Aug. 28, 2007)	C
<i>Washington Mutual Finance Group, LLC v. Bailey</i> , 364 F.3d 260, 268 (5th Cir. 2004)	D