IN THE SUPREME COURT OF MISSISSIPPI
NO. 2010-CA-56

CAROLYN EPPERSON — **APPELLANT-PLAINTIFF**

vs.

SOUTHBANK — **APPELLEE-DEFENDANT**

Appeal from the Circuit Court of

Alcorn County, Mississippi

BRIEF OF APPELLEE SOUTHBANK

ORAL ARGUMENT NOT REQUESTED

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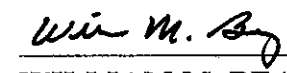
CERTIFICATE OF INTERESTED PARTIES

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 this Court may evaluate possible disqualification or recusal.

1. Carolyn Epperson, Appellant;
2. B. Sean Akins, Attorney for the Appellant;
3. SOUTHBank, Appellee;
4. William M. Beasley, Sr. of Phelps Dunbar LLP, Attorney for the Appellee;
5. William M. Beasley, Jr. of Phelps Dunbar LLP, Attorney for the Appellee;
6. Hon. Jim Pounds, Alcorn County Circuit Court Judge

SO CERTIFIED, this the 9th day of September, 2010.



WILLIAM M. BEASLEY, SR.

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INTRODUCTION

The only issue involved in this case is whether Appellee SOUTHBank ("SOUTHBank"), had authority to require that a certificate of deposit be presented before allowing an early withdrawal prior to the maturity of the certificate. The language in the Account Agreement clearly authorized SOUTHBank to follow this standard banking practice and this Court should affirm the Circuit Court's interpretation of the contract.

On October 21, 2005, Epperson, a joint-owner of several time-deposit accounts (CDs) with SOUTHBank, entered a local branch in Corinth, Mississippi and requested to withdraw funds. In accordance with long-standing bank policies, the SOUTHBank representative requested that Epperson present the certificate of deposit in order to withdraw the funds because the accounts had yet to mature. Epperson did not have possession of the CDs and therefore could not present the certificates. Accordingly, the representative was unable to approve the early withdrawal. Nearly four years later, and never having presented the CDs, Epperson filed suit alleging SOUTHBank breached its Consumer Account Agreement because it refused to approve her early withdrawal request in October of 2005. However, Epperson admits she never had possession of the certificates and, thus, did not present them to SOUTHBank representatives. After both parties filed competing motions for summary judgment, the trial court concluded SOUTHBank had not breached its agreement with Epperson and granted SOUTHBank's motion.

Epperson insists she was free to withdraw funds without presenting the CDs but in doing so asks this Court to disregard decades of banking practice and specific contract language that clearly states as follows:

> WITHDRAWALS – Unless otherwise clearly indicated on page 1, any one of you who signs this form including

> authorized signers, may withdraw or transfer all or any part of the account balance at any time ***on forms approved by us***.
>
> ***We reserve the right to refuse any withdrawal or transfer request*** **which is attempted by any method not specifically permitted**...
>
> **Withdrawals from a time deposit prior to maturity or prior to the expiration of any notice period *may be restricted* and may be subject to penalty.**
>
> 2:180, 184, 205, 215 (emphasis added).[1]

Based on this language, SOUTHBank was well within its rights to restrict any withdrawal request made prior to a time deposit's maturity date. Accordingly, because Epperson admits she did not possess the CDs and attempted to withdraw funds prior to maturity, SOUTHBank properly restricted Epperson's withdrawal, summary judgment for SOUTHBank was properly taken and this Court should affirm the Circuit Court.

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[1] All citations are to the record, volume and page number respectively, unless otherwise indicated.

STATEMENT OF THE ISSUE

Whether the consumer account agreement at issue, authorized SOUTHBank to require possession of the CDs, in order to withdraw funds prior to a CDs' maturity date.

STATEMENT OF THE CASE

Carolyn Epperson, is the biological daughter of C.K. Rickman and the stepdaughter of Juanita Rickman. 1:52. Randy Thompson is the biological son of Juanita Rickman, the stepson of C.K. Rickman and thus Epperson's step-brother. 1:54. On or about March 11, 1993, Epperson's father, C.K. Rickman, and stepmother, Juanita Rickman, purchased several certificates of deposit in the names of "C.K. Rickman or Juanita Rickman, Trustee for Carolyn Rickman Epperson." 1:6. CD #9019789 was titled "C.K. Rickman or Juanita Rickman, Trustee for Carolyn Rickman Epperson." 2:173. CD #9019797 was titled "C.K. Rickman or Juanita Rickman, Trustee for Randy Thompson." 2:186. CD #9019810 was titled "C.K. Rickman or Juanita Rickman, Trustees for Carolyn Epperson and Randy Thompson," 2:198, and CD #9021984 was titled "C.K. Rickman and Juanita Rickman POD to Carolyn Epperson and Randy Thompson." 2:210. These CDs contained language that the owner must "properly endorse the certificate and present it to us" in order to liquidate the funds. *See e.g.* 2:175, 193, 200.

Following the death of C. K. Rickman in January of 2000, Juanita Rickman, Carolyn Epperson and Randy Thompson signed new signature cards on the four CDs. 1:6. Each of the CDs was titled "Juanita Rickman or Carolyn Epperson or Randy Thompson." *Id.* By this date, SOUTHBank was using different contract forms which applied uniformly to all forms of accounts. The 2000 CD form contained the following language in reference to withdrawals prior to maturity:

> WITHDRAWALS – Unless otherwise clearly indicated on page 1, any one of you who signs this form including authorized signers, may withdraw or transfer all or any part of the account balance at any time on forms approved by us.

> We reserve the right to refuse any withdraw or transfer request which is attempted by any method not specifically permitted...
>
> Withdrawals from a time deposit prior to maturity or prior to the expiration of any notice period may be restricted and may be subject to penalty.

2:180, 184, 205, 215.

At some point following the creation of the 2000 CDs, Epperson's relationship with Rickman and Thompson became strained. *See* 1:55-57. Rickman moved in with her son and no longer wished to see Epperson. *Id.* While the reasons for this tension are disputed, there is no doubt Epperson was no longer on good terms with her step-mother and step-brother. 1:53, 55-57.

On February 15, 2005, Epperson entered a SOUTHBank branch and obtained a printout showing that all four of the 2000 CDs were still on deposit in the bank.[2] 1:78 However, on October 21, 2005, Epperson returned to the bank to again inquire about the CDs and was told that while three of the CDs were still on deposit, CD #9021984 had been cashed on March 8, 2005 for $51,866. 1:45. Epperson then requested that she be allowed to withdraw the remaining funds but was told by Margie Franks, a forty year employee and the bank's Senior Vice President of the CD Department, 1:108, that because the CD had yet to mature she would need to present the certificates of deposit before funds could be withdrawn. 1:79-80, 121-22, 143. Because Epperson acknowledged she did not possess the original certificates, Franks could not approve the withdrawal. *Id.*

On February 17, 2006, Juanita Rickman and Randy Thompson consolidated the remaining CDs into one CD in the amount of $234,000.00 and titled it "Juanita Rickman or

---

[2] According to Epperson, this was the first time she had ever stepped foot inside SOUTHBank's doors. 1:78

Randy Thompson or Doris Thompson." 1:132-33. As a result, Epperson was removed as a joint owner and could no longer withdraw any funds from the CDs.

SUMMARY OF THE ARGUMENT

"A court is obligated to enforce a contract executed by legally competent parties where the terms of the contract are clear and unambiguous." *Union Planters Nat'l Bank, N.A. v. Jetton*, 856 So. 2d 674, 678 (Miss. 2003). Epperson argues the trial court committed reversible error by interpreting SOUTHBank's consumer account agreement to require a party to present the original certificate of deposit when seeking to withdraw funds from a time deposit account prior to maturity. She bases her argument on language in the agreement concerning withdrawals which states "any one of you who signs this form including authorized signers, may withdraw or transfer all or any part of the account balance at any time on forms approved by us." 2:180, 184, 205, 215. Epperson insists that the "on forms approved by us" language relieve her from the obligation of presenting the original certificate of deposit because she claims the original CDs are not "forms." She bases her entire argument upon a very narrow construction of the words "on" and "forms" and chooses to ignore additional language in the agreement that clearly states "[w]ithdrawals from a time deposit prior to maturity or prior to the expiration of any notice period ***may be restricted*** and may be subject to penalty." *Id.* (emphasis added).

SOUTHBank has a long-maintained policy, which follows standard banking practice for time deposit accounts, that requires the presentation of the original certificate of deposit before withdrawal requests made prior to maturity can be approved. 3:326-27, 344. This is why SOUTHBank's consumer account agreement clearly provides that early withdrawals from time deposit accounts "may be restricted." Epperson admits she attempted to withdraw funds prior to the subject accounts' maturity date and further admits she neither possessed, nor

presented the original CDs to SOUTHBank representatives. Accordingly, Epperson became subject to the bank's restrictive powers over early withdrawals and SOUTHBank chose to exercise this power in compliance with its restrictive authority, which is clearly enumerated in its consumer account agreement. The trial court's holding is consistent with this interpretation, therefore, this Court should affirm.

ARGUMENT

I. STANDARD OF REVIEW

This Court applies a *de novo* standard of review to a trial court's grant or denial of summary judgment. *Young v. Meacham*, 999 So. 2d 368, 371 (Miss.2008). "The evidence must be viewed in the light most favorable to the party against whom the motion has been made, and the moving party bears the burden of demonstrating that no genuine issue of fact exists." *Id.* (*citing Heigle v. Heigle*, 771 So. 2d 341, 345 (Miss.2000)). This Court looks at all evidentiary matters in the record, including pleadings, depositions, answers to interrogatories, admissions, affidavits, etc. *Young*, 999 So. 2d at 371; MISS. R. CIV. P. 56(c). If there is no genuine issue of material fact, then the moving party is entitled to judgment as a matter of law. MISS. R. CIV. P. 56(c). If there is doubt as to whether or not a fact exists, it should be resolved in favor of the nonmoving party. *Young*, 999 So. 2d at 371.

However, the issue here concerns the interpretation of a contract. When all the facts are undisputed, as is the case here, contract interpretation is inherently a question of law. *See Parkerson v. Smith*, 817 So. 2d 529, 532 (Miss. 2002) ("Questions concerning the construction of contracts are questions of law that are committed to the court rather than questions of fact committed to the fact-finder.") As the appellant correctly notes, the Mississippi Supreme Court employs the *de novo* standard of review for questions of law. *Starcher v. Byrne*, 687 So. 2d 737, 739 (Miss. 1997).

II. THE TRIAL COURT PROPERLY GRANTED SOUTHBANK'S MOTION FOR SUMMARY JUDGMENT

A bank's ability to restrict the withdrawal of funds from its certificates of deposit is purely contractual in nature. *Union Planters Nat'l Bank, N.A. v. Jetton*, 856 So. 2d 674, 677 (Miss. Ct. App. 2003). The contractual provisions of an agreement between the bank and its customer define the rights and responsibilities of each party with regard to certificates of deposit. *Id.* Therefore, pursuant to *Jetton*, in this case the determinative issue is whether the language in the written agreement at issue gave SOUTHBank the authority to restrict withdrawals from Epperson's account. Clearly it did.

A. The Trial Court Properly Held SOUTHBank Was Free to Restrict Early Withdrawals from its Time Deposit Accounts

The pertinent language in SOUTHBank's consumer account agreement states as follows:

> **WITHDRAWALS** – Unless otherwise clearly indicated on page 1, any one of you who signs this form including authorized signers, may withdraw or transfer all or any part of the account balance at any time ***on forms approved by us***.
>
> ***We reserve the right to refuse any withdrawal*** or transfer request which is attempted by any method not specifically permitted...
>
> ...
>
> Withdrawals from a time deposit prior to maturity or prior to the expiration of any notice period ***may be restricted*** and may be subject to penalty.
>
> 2:180, 184, 205, 215, (emphasis added).

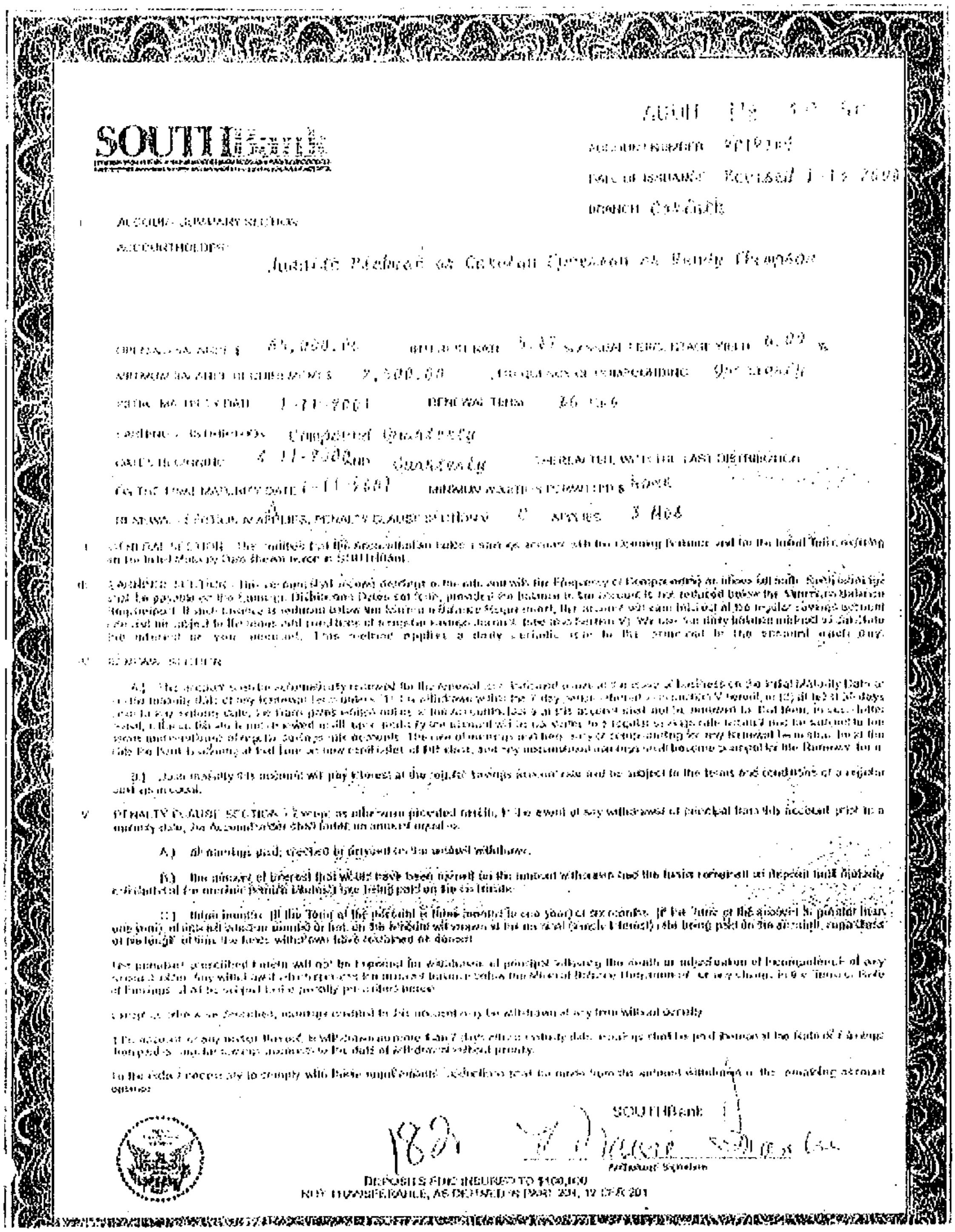
The trial court found SOUTHBank had authority to restrict Epperson's withdrawal for failing to present the original CD based on its interpretation of the first clause in the above language which states "any one of you who signs this form . . . may withdraw or transfer all or any part of the account balance at any time ***on forms approved by us***." *Id.*, *see also* 3:437.

According to the trial court, "[t]he Agreement clearly states that the party seeking the withdrawal of funds prior to maturity must present 'forms approved by us' prior to withdrawing the funds." 3:437. The trial court therefore held SOUTHBank had a right to require Epperson to present the original CD before it approved her withdrawal because "[t]he original CD is the 'forms' referred to in the CD." *Id.*

Epperson complains the trial court erred in granting summary judgment for SOUTHBank because the trial court misinterpreted the above language. Specifically she claims the phrase "on forms approved by us" does not require an individual to present anything in order to make a withdrawal because (1) she insists the original CD is not a "form" and (2) requiring a joint owner to present the original CD is inconsistent with joint ownership law. These arguments are wrong.

1. The Trial Court Properly Held SOUTHBank's Certificates of Deposit Constitute "Forms Approved by Us"

Epperson's contention that the original CD is not a "form" is misplaced. Epperson defines "form" as "a printed or typed document with blank spaces for insertion of required or requested information." Epperson's Br. at 15. Epperson insists SOUTHBank's certificates of deposit are not "forms" because they "show no blank spaces for the insertion of information" and "there is nothing on the Certificate of Deposit for the depositor to sign." *Id.* However, an examination of the CD clearly reveals multiple "blank spaces for the insertion of information." At the top of the certificate form there are spaces labeled "ACCOUNT NUMBER," "DATE OF ISSUANCE," "BRANCH," "ACCOUNT HOLDER," "OPENING BALANCE" and "INTEREST RATE" as well as many other "blank spaces for the insertion of information." *See e.g.* CD # 9019789 illustrated in Figure 1 below. 2:182.


SOUTHBank

DEPOSITS FDIC INSURED TO $100,000

NOT TRANSFERABLE, AS DEFINED IN PART 204, 12 CFR 204

FIGURE 1

These spaces may no longer be "blank" because they have been filled with Epperson's account information, but to argue the insertion of information into certain blanks disqualifies the certificate of deposit from being a "form" is absurd. Under this faulty logic SOUTHBank could not require its customers to fill out any documents prior to withdrawal because as soon as

the customer filled in any information, that document would no longer be a "form" since the spaces would no longer be blank.

Epperson attempts to bolster her flawed reasoning by continually pointing to the withdrawal process of checking and savings accounts throughout her brief but such a comparison only further undermines her position. In making her argument, Epperson explicitly acknowledges that the "on forms approved by us" language "requires depositors to use 'forms approved by us' to make a withdrawal." Epperson's Br. at 14. She then states "this means that if someone has a checking account, he must use checks approved by the Bank" and further acknowledges the "forms approved by us" language can require a savings account owner to present a signed "slip" to make a withdrawal. *Id.* However, approved checks and withdrawal slips are not specifically listed as "forms approved by us" anywhere in SOUTHBank's account agreement but Epperson acknowledges the bank can require its customers to execute such documents to make withdrawals nonetheless. Yet when it comes to certificates of deposit, she conveniently insists SOUTHBank could not require Epperson to present the CDs because "[t]here is nothing in the contract that [sic] requires the depositor to 'present' anything." *Id.* Such an argument is a complete contradiction.

The "forms approved by us" language grants SOUTHBank broad authority to require its customers to adhere to long-standing bank practices and procedure. To cash out CDs or withdraw funds from existing CDs ***prior to maturity***, standard banking practice has long required customers to present the original CD endorsed on the back by any owner making the withdrawal request. *See e.g.*. *Clark v. Young*, 21 So.2d 331, 334 (Ala. 1945) ("A bank is not bound to pay deposits evidenced by a certificate of deposit, except on production and surrender of the certificate properly indorsed, and acts at its peril in doing so."); *Le Zotte v. Bank of Del*

Norte, 278 P. 606, 607 (Colo. 1929) ("The general rule is that a bank is not bound to pay certificates of deposit, except upon production and surrender of the certificate properly indorsed."); *Dufresne v. American Nat'l. Bank and Trust Co.*,374 N.W.2d 763, 766 n.2 (Minn. Ct. App. 1985) ("[A] bank that pays a certificate of deposit without its surrender and endorsement acts at its peril and may remain liable on the certificate." (citing *Ritland v. Security State Bank*, 131 N.W.2d 464 (Iowa 1964)). Thus the "forms approved by us" for the withdrawal of funds from a CD prior to maturity is the original CD endorsed by the presenter who is one of the owners of the CD, just as the check and signed "slip" are the "forms approved by us" for the withdrawal of money from a checking or savings account. Because Epperson failed to present the original CD, her withdrawal request was properly denied in accordance with SOUTHBank's consumer account agreement. The trial court clearly recognized these facts and granted summary judgment appropriately.

2. SOUTHBank Properly Restricted Epperson's Request Even If Its Certificates of Deposit Are Not "Forms"

Alternatively, even if the "on forms approved by us" language could somehow be read to not grant SOUTHBank the ability to require a customer to present the original CD before approving a withdrawal request prior to maturity, summary judgment is still appropriate because other language in SOUTHBank's consumer account agreement clearly grants SOUTHBank the authority to restrict early withdrawals.[3] The final clause of the account agreement's withdrawal section provides SOUTHBank the following authority:

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[3] This Court has long held that it will affirm a decision granting summary judgment when the right result was reached, even if it disagrees with the lower court's reasoning. *See Kaigler v. City of Bay St. Louis*, 12 So.3d 577, 581 (Miss. Ct. App. 2009) ("On appeal, we will affirm a decision of the circuit court where the right result is reached even though we may disagree with the reason for that result."); *Brocato v. Miss. Publishers Corp.*, 503 So.2d 241, 244 (Miss.1987) ("The appellate court does not have to affirm a decision on a Rule 56 motion for the same reasons that persuaded the court below to grant

> ***Withdrawals from a time deposit prior to maturity*** or prior to the expiration of any notice period ***may be restricted*** and may be subject to penalty.
>
> 2:180, 184, 205, 215, (emphasis added).

Under this language, customers are clearly informed that attempts to withdraw funds from time deposits prior to maturity "may be restricted." There is no dispute that Epperson attempted to withdraw funds from a time deposit account prior to maturity. Therefore, she became subject to the agreement's authority to restrict early withdrawals. Because Epperson could not present the original CD, she did not comply with standard banking practice for early CD withdrawals. SOUTHBank exercised its power to restrict early withdrawals, a power that is clearly enumerated in the consumer account agreement, and refused to approve the transaction.

Epperson argues any restrictions had to be specifically listed in writing because the agreement states "[t]hese terms govern the operation of this account unless varied or supplemented in writing." Epperson's Br. at. 17. However, the "may be restricted" authority ***is already in writing*** and according to the "these terms govern" clause, is ***already*** a term that "govern[s] the operation of [the] account." The only way the "may be restricted" language would not "govern" would be if the restriction authority, as the agreement clearly states, was "varied or supplemented" in some way, meaning language was added to create an exception to the general rule or specifically modify it in some way. Moreover, if restrictions had to be specifically listed to be enforceable, as Epperson seems to allege, the "may be restricted" language would be utterly redundant because any restrictions would already be specifically listed.

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the motion. On the contrary, it can find another ground for concluding that the movant is entitled to judgment as a matter of law and ignore any erroneous basis that the district court may have employed.")

Epperson also seems to urge that SOUTHBank could not require the presentation of the original CD because the agreement states that "anyone of you who signs this form . . . may withdraw all or any part of the balance at any time . . ." Epperson's Br. at 15. However, Epperson mischaracterizes the provision as if it comes without limitations. As she readily acknowledges, when construing a contract, the court must "read the contract as a whole, so as to give effect to all its provisions," *Brown v. Hartford Ins. Co.* 606 So. 2d 122, 126 (Miss. 1992) (cited by Epperson), and if one continues to read the "WITHDRAWALS" section, the above language is clearly subject to the numerous caveats that follow the "anyone of you who signs this form" language and these caveats include the pre-maturity withdrawals "may be restricted" provision. *See* 2:180, 184, 205, 215.

Regardless of which specific language is examined, SOUTHBank's consumer account agreement grants bank officials broad authority under its terms to enforce bank policy and procedure and these procedures include restrictions on withdrawal requests from time deposit accounts that have not yet matured. Epperson acknowledges she attempted to withdraw funds prior to maturity and therefore, became subject to the restrictions SOUTHBank has long imposed on such withdrawal requests. Epperson's arguments that she is somehow immune from these restrictions are wholly without merit.

B. SOUTHBank's Policy Requiring the Presentation of the Original CD Does Not Conflict with Joint Ownership Rights

Epperson next maintains that requiring a joint-owner of a time deposit to present the original CD endorsed on the back undermines her joint ownership rights because she claims (1) possession of the CD was irrelevant to the bank and (2) such a requirement grants total control of the deposit to the holder of the original CD. Epperson's Br. at 15-16. However, these arguments are simply wrong.

First, possession of the original certificates was far from irrelevant; the policy is integral to SOUTHBank security procedure. As previously discussed, requiring the presentation of an original CD properly endorsed prior to withdrawal from a time deposit account is a standard banking practice. *See Clark*, 21 So.2d at 334; *Le Zotte*, 278 P. at 607; *Dufresne*, 374 N.W.2d at 766 n.2; *Ritland*, 131 N.W.2d 464. While not specifically required by law, this internal banking procedure exists to insure that the issuing bank does not make payment to an individual that is not a joint-owner and thus not entitled to make a withdrawal. *See Dejean v. Dejean*, 982 So. 2d 443, 450 (Miss. Ct. App. 2007) *cert. denied*, 981 So. 2d 298 (Miss. 2008); *see also Peters v. Peters*, 443 S.E. 2d 213 (W. Va. 1994). Since such a procedure is an internal policy designed to protect the bank, it may be applied or waived as the bank sees fit.

In this case, Epperson admitted that prior to her two visits to the SOUTHBank branch in Corinth, she had never set foot inside a SOUTHBank branch in her life. 1:78. Likewise, Ms. Franks testified she did not know Epperson. 3:313, 316. Therefore, Epperson was required to present the endorsed CD to insure she was in fact Carolyn Epperson, a proper joint owner of the CDs. Epperson seems to argue presentation was unnecessary because Mississippi law grants immunity to banks that release money held in a joint account to a single depositor, Appellant's Br. at 16, but the immunity only applies if the money is paid to a proper depositor. *See* MISS. CODE ANN. § 81-5-63. Requiring the presentation of the CD is a valuable security procedure designed to insure that a depositor is in fact, a depositor, and is hardly irrelevant as Epperson alleges.

Furthermore, SOUTHBank's policy is completely consistent with joint ownership rights because it applies to each joint owner. Joint ownership simply allows a depositor to treat joint property as if it were her own, *Drummonds v. Drummonds*, 156 So.2d 819, 821 (Miss. 1963),

meaning each joint owner must be given equal access to the funds. Requiring possession of the original CD does not undermine joint rights because this restriction, based on the plain language of the account agreements and longstanding bank policy, applied to all three joint owners equally, as Epperson's counsel elicited during Franks' deposition:

> Q. Okay. And so any of the three individuals here, Juanita Rickman or Carolyn Epperson or Randy Thompson, could have come in the bank, ***brought the CD in*** and cashed it in?
>
> A. Correct.
>
> Q. And you would have given any one of them all of that money?
>
> A. Right.
>
> 3:332.

Such a policy is completely consistent with joint ownership and any argument to the contrary is simply a mischaracterization of joint ownership law.

C. Epperson's Other Arguments Are of No Merit to the Issue

Epperson argues from a number of cases to support the proposition that she was not allowed to sue her joint depositors. *See* Epperson's Br. at 17-19. However, none of these cases have anything to do with the issue before this Court. The dispositive legal issue in this case is whether there was language in the account agreement that gave SOUTHBank the authority to restrict withdrawals from the account. Clearly there was and Epperson cites no authority that would render these restrictions invalid.

The only case she cites that is even arguably applicable is *Dejean*, but to the extent it is relevant, it supports SOUTHBank. Unlike the other cases cited, *Dejean*, as noted above, does concern CD requirements, but in that case the appellant argued that a bank improperly waived enforcement of an endorsement requirement on a CD before it was redeemed. *Dejean*, 982 So.

2d at 450. In other words, the bank failed to require a joint-owner to sign the CD. The bank, however, ***voluntarily waived*** that requirement. *Id.* ("Hancock Bank...did waive the endorsement requirement..."). The law did not compel the bank to waive the requirement. Accordingly, SOUTHBank was within its rights to abide by the contract terms and follow its standard practices and procedures to restrict early withdrawals. Nothing in the law renders these restrictions invalid and citations to authorities that concern joint-ownership law are completely irrelevant to this Court's analysis.

Epperson finally maintains the speculative fiction that SOUTHBank would have refused to approve her withdrawal under any circumstances, meaning whether she presented the CD or not, because Ms. Franks believed the funds belonged to Juanita Rickman. *See* Epperson's Br. at 6-7, 19-20. However, this supposition is hyperbole based upon a gross exaggeration of Ms. Franks' testimony. In support of her argument Epperson cites the following lines of testimony:

> Q. Okay, what would have happened if Carolyn Epperson or Randy Thompson or Juanita Rickman had said we've lost those CDs?
>
> A. Well, we do have a form for lost CDs.
>
> Q. Okay.
>
> A. But we do have to know that it's Ms. Rickman or whoever owned the CD is signing it.
>
> Q. Okay.
>
> A. I mean, Carolyn couldn't have come in here and said we've lost these CDs.
>
> Q. Okay.
>
> A. The real owner of it would have to come in and say they are lost.

> Q. Okay. And in the case of the CDs that Mrs. Epperson was asking about on October 21 of 2005, I mean, in that case Juanita Rickman was the real owner of those CDs?
>
> A. Right.
>
> Q. Okay. And then based on that she would have been the only person who could have gotten that money.
>
> A. Right.

Epperson's Br. at 6.

Epperson then claims that "[a]s far as Ms. Franks was concerned, the money did not belong to Ms. Epperson and Ms. Franks was not going to let anyone except Ms. Juanita Rickman withdraw the money." *Id.* at 7. However, the above testimony concerns bank procedures for dealing with lost CDs, where the original owner of the funds *is* required to notify the Bank that the original CDs are lost. The issue here is not lost CDs, but withdrawals from CDs prior to maturity and Franks explains in the next few lines of testimony, which Epperson conveniently omits, that in that situation, even though Juanita Rickman was the owner, Epperson or Thompson "could have gotten the money if they had the CD." 3:345. Franks noted this position earlier in her testimony when she explained that if Epperson – or any of the other signatories – had presented the original CDs then the funds could have been withdrawn prior to maturity. 3:332.

Finally, even if Franks' motives for adhering to procedure were less than pure, they are irrelevant. Motive is not the issue in this case; the terms of the agreement are the issue. The courts of this state have long held that parole evidence is not admissible where the terms of a contract are clear and unambiguous. *Dixie S. Indus. Coating, Inc. v. Miss. Power Co.*, 872 So.

2d 769, 772 (Miss. Ct. App. 2004). The account agreement's terms clearly state withdrawal requests made prior to maturity "may be restricted" and Epperson cannot escape this language.

Carolyn Epperson's claims against SOUTHBank are without merit. The certificates of deposit and decades-long bank practice required Epperson to present the original certificates of deposit in order to withdraw funds prior to maturity. Epperson admits she did not do this. As a result, SOUTHBank properly refused Epperson's request to withdraw funds and summary judgment was proper. Accordingly, this Court should affirm.

CONCLUSION

Based on the foregoing, SOUTHBank respectfully request that this Court affirm the Circuit Court's ruling granting summary judgment. Consumer account agreements are purely contractual documents and banks are free to restrict withdrawals according to their agreements' terms. SOUTHBank's agreement with Epperson clearly states withdrawal requests from time deposit accounts made prior to maturity may be restricted. The Circuit Court clearly recognized these facts and granted summary judgment appropriately. Epperson claims error but her arguments ignore the plain language of her account agreement.

RESPECTFULLY SUBMITTED, this the 9th day of September, 2010.

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CERTIFICATE OF SERVICE

This will certify that undersigned counsel for Appellee has this day delivered a true and correct copy of the above and foregoing **Brief of Appellee** to the following individuals by placing said copy in the United States Mail, postage-prepaid, addressed as follows:

B. Sean Akins, Esquire
Akins & Adams, P.A.
108 East Jefferson Street
Ripley, MS 38663-2016

Honorable Jim S. Pounds
Circuit Court Judge
First Circuit Court District of Mississippi
Post Office Box 316
Booneville, MS 38829

DATED, this the 9th day of September, 2010.

WILLIAM M. BEASLEY, SR., MB[redacted]
Attorney for Appellee

CERTIFICATE OF FILING

Pursuant to MISS. R. APP. P. 25(a), undersigned counsel for Appellee certifies that he has this day filed the above and foregoing **Brief of Appellee** by delivering the original and three (3) copies of said document to the Clerk of the Court, via Federal Express next-day service, addressed as follows:

Kathy Gillis, Supreme Court Clerk
Court of Appeals of the State of Mississippi
450 High Street
Jackson, MS 39201-1082

DATED, this the 9th day of September, 2010.

WILLIAM M. BEASLEY, SR., MB[redacted]
Attorney for Appellee