

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**NO. 2008-CA-01521-COA**

**COMMUNITY BANK OF MISSISSIPPI AND  
RAYMON MCALPIN A/K/A RAYMOND  
MCALPIN**

**APPELLANTS**

**v.**

**DONNA STUCKEY**

**APPELLEE**

DATE OF JUDGMENT:	08/06/2008
TRIAL JUDGE:	HON. ROBERT G. EVANS
COURT FROM WHICH APPEALED:	COVINGTON COUNTY CIRCUIT COURT
ATTORNEYS FOR APPELLANTS:	ALAN W. PERRY J. CHASE BRYAN AMANDA BARDIN ROBINSON CLAY L. SLAY
ATTORNEY FOR APPELLEE:	DAVID SHOEMAKE
NATURE OF THE CASE:	CIVIL – CONTRACT
TRIAL COURT DISPOSITION:	MOTION TO COMPEL ARBITRATION DENIED
DISPOSITION:	REVERSED AND REMANDED – 12/01/2009
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

**BEFORE LEE, P.J., GRIFFIS AND ROBERTS, JJ.**

**LEE, P.J., FOR THE COURT:**

**PROCEDURAL HISTORY**

¶1. Mike and Donna Stuckey offered certain personal property to Community Bank of Mississippi as collateral for loans made in connection with their cattle business. After the Stuckeys defaulted on the loans, Community Bank filed a replevin action in the Circuit Court

of Covington County against the Stuckeys to obtain the property. Donna filed a separate answer and counter-complaint, alleging the following claims against Community Bank and Raymond McAlpin, one of its employees: forgery; conversion; misrepresentation; breach of fiduciary duties; tortious breach of good faith and fair dealing; tortious breach of warranty; intentional/negligent infliction of emotional distress; damage to credit reputation; and grossly negligent and/or intentional conduct. Mike also filed an answer and counter-complaint. However, this appeal only relates to claims made by Donna.

¶2. Community Bank answered Donna’s counter-complaint and requested that the trial court compel arbitration against Donna. Community Bank also filed a motion to compel arbitration and to stay the proceedings. Donna responded that she was not subject to arbitration because she did not sign an arbitration agreement. Donna asserts that although her name appears on approximately fifty-five documents containing arbitration agreements signed over a two-year period, she only went to Community Bank one time to sign a deed of trust. The deed of trust, which was dated May 12, 2003, conveyed an eleven-acre parcel of property from Community Bank to the Stuckeys. She asserts that the signature on the arbitration agreement attached to the deed of trust was a forgery.

¶3. The trial court agreed with Donna and found that “there does not exist convincing evidence that Donna Stuckey executed any of the subject arbitration agreements.” The trial court further found that the cattle business was entered into between Mike and McAlpin, a bank employee, and Donna had no interest in the business. Therefore, the trial court found that Donna was not a third-party beneficiary to the agreement.

¶4. Community Bank now appeals, asserting the following issues: (1) the trial court erred

in finding that Donna did not sign the arbitration agreements; (2) in the alternative, even if her signatures were found to be forged, Donna is bound to arbitrate because she was a third-party beneficiary of the loans; and (3) in the alternative, Donna is bound to arbitrate under the doctrine of equitable estoppel.

## FACTS

¶5. The Stuckeys operated a cattle business named Stuckey Farms. According to Donna, her husband, Mike, met McAlpin, a loan officer, while making a large deposit at Community Bank in Raleigh, Mississippi. The two became friends, and McAlpin was made a partner in Mike's cattle business. McAlpin handled the banking transactions, negotiations for the purchase and sale of cattle, and wrote checks for expenses out of Mike's account. McAlpin received one-half of the profits from the partnership. McAlpin made loans to Mike totaling over \$500,000. Donna asserts that McAlpin and other bank employees forged her and Mike's names on many of the loan documents. Also, she alleges that McAlpin directed Mike to forge her name on numerous documents. Donna testified through her deposition that she did not know her signature was forged until she received a document in the mail reflecting that a loan had been paid off. Her name was signed on the document, but she testified it was not her handwriting. She confronted McAlpin, who was with Mike on the farm, and he stated that his secretary had signed Donna's name to the document. She told him that he did not have permission to have someone sign for her, and that he was not to allow anyone to sign her name to any documents again. McAlpin's signature does not appear on any of the loan documents.

¶6. Donna also asserts that McAlpin made misrepresentations to convince them to

purchase an eleven-acre parcel of property in Smith County from the bank for residential development. Donna admits to signing the deed of trust in connection with the purchase of this property, but she denies signing any documents that contain arbitration clauses. The Stuckeys purchased the land and constructed one home on the property, but they were unable to sell it. Donna asserts that McAlpin represented to her and Mike that the land was prime property for residential development and that the property was worth more than the bank's asking price. When Mike began to develop the land, he and Donna were sued by the Board of Supervisors of Smith County for damaging a public road while performing dirt work. Donna asserts that McAlpin was present when the dirt work was being performed and failed to tell Mike that the road into the property was a public road. She also asserts that McAlpin failed to tell Mike that the local water company would not provide water to the property. Donna asserts that she and Mike sustained losses for the purchase price of the property, the cost of the dirt work to prepare the lots, and the construction of one completed home.

¶7. Community Bank argues that it was error for the trial court to find that Donna had signed the May 12, 2003, loan documents but not the arbitration agreement in connection with that loan. It asserts that the documents were in one package, and it is not likely that Donna signed one document without signing the others. Community Bank retained a handwriting expert, Grant Sperry, to review the alleged forged signatures. Sperry found that many of the signatures were forged by Mike. However, Sperry found that the signatures on several of the loan documents, including several arbitration agreements, were signed by Donna. He found that the arbitration agreement in connection with the May 12, 2003, deed of trust was signed by Donna. Donna's handwriting expert, however, found that the

signature on the same arbitration agreement was a forgery.

## STANDARD OF REVIEW

¶8. The standard of review for a denial of a motion to compel arbitration is de novo. *United Credit Corp. v. Hubbard*, 905 So. 2d 1176, 1177 (¶7) (Miss. 2004).

### I. SIGNATURES ON LOAN DOCUMENTS

¶9. Conflicting testimony was presented regarding who had signed the arbitration agreements. Community Bank argues that the testimony showed that Donna had signed at least one arbitration agreement, which was sufficient to make the arbitration agreement enforceable. However, for purposes relating to the enforcement of arbitration, we find it is unnecessary to determine which documents Donna did or did not sign. As will be discussed in issue two, we find that Donna is subject to arbitration as a third-party beneficiary.

### II. THIRD-PARTY BENEFICIARY

¶10. Community Bank argues that regardless of whether Donna signed any of the arbitration agreements, she is still bound to arbitrate as a third-party beneficiary. Community Bank asserts that Donna cannot take the benefit of the agreement without subjecting herself to the arbitration agreements as a third-party beneficiary.

¶11. The supreme court has recognized that “arbitration agreements can be enforced against non-signatories if such non-signatory is a third-party beneficiary.” *Adams v. Greenpoint Credit, LLC*, 943 So. 2d 703, 708 (¶15) (Miss. 2006) (citing *Smith Barney, Inc. v. Henry*, 775 So. 2d 722, 727 (¶¶18-20) (Miss. 2001)). The supreme court set forth factors to consider to determine whether someone is a third-party beneficiary:

In order for the third[-]person beneficiary to have a cause of action, *the*

*contracts between the original parties must have been entered for his benefit, or at least such benefit must be the direct result of the performance within the contemplation of the parties as shown by its terms. There must have been a legal obligation or duty on the part of the promisee to such third[-]person beneficiary. The obligation must have been a legal duty which connects the beneficiary with the contract. In other words, the right of the third[-]party beneficiary to maintain an action on the contract must spring from the terms of the contract itself.* 17A C.J.S. *Contracts* 519(4) (1963).

*Adams*, 943 So. 2d at 708-09 (¶15) (quoting *Burns v. Washington Sav.*, 251 Miss. 789, 796, 171 So. 2d 322, 325 (1965)).

¶12. Donna argues that if she is found to be a third-party beneficiary, arbitration is limited to the deed of trust because that is the only document she admits to having signed. Community Bank argues that Donna is a third-party beneficiary to the deed of trust and the cattle loans. In support of its argument that Donna is a third-party beneficiary to the cattle loans, Community Bank cites to Donna's answer and counterclaim, in which Donna states that she was an owner of an interest in Stuckey Farms, and that she suffered personal detriment and damage when McAlpin took profits from the sale of cattle without her knowledge or permission.

¶13. On the issue of whether Donna was a third-party beneficiary, the trial court found as follows:

That the business enterprise entered into by Raymond McAlpin and Mike Stuckey was 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.

¶14. We cannot agree with the trial court that Donna had no interest in the cattle operation. Donna repeatedly states throughout the pleadings that she is a co-owner of and interest holder

in Stuckey Farms. In her counter-complaint, Donna specifically alleges: “Raymond McAlpin, [sic] took profits from the sale of cattle by Stuckey Farms to the detriment and damage of Donna Stuckey, all without the knowledge or permission of Donna Stuckey.” In her deposition she states that her name is on the business checking account, and she writes payroll checks. The cattle company that McAlpin was made a partner in was referred to as either “M&R” (Mike and Raymond) or “MDR” (Mike, Donna, and Raymond). The cattle were branded either M&R or MDR.

¶15. Since Donna was a co-owner in the cattle operation and claims that she suffered because of the relationship with McAlpin, we find that Donna is a third-party beneficiary to the loan agreements. We further find that Donna is a third-party beneficiary to the deed of trust. Donna was a co-owner of the eleven-acre parcel purchased through the deed of trust and now claims detriment because of misrepresentations made by McAlpin in association with the development of the land. Therefore, we find that the trial court erred in denying Community Bank’s motion to compel arbitration.

### III. EQUITABLE ESTOPPEL

¶16. We find that Donna is equitably estopped from bringing an action based on the loan documents.

¶17. The supreme court has found that:

In the arbitration context, the doctrine of estoppel recognizes that a party may be estopped from asserting that the lack of his 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 Act.

*Terminix Intern., Inc. v. Rice*, 904 So. 2d 1051, 1058 (¶28) (Miss. 2004) (quoting *Washington Mut. Fin. Group, LLC v. Bailey*, 364 F.3d 260, 268 (5th Cir. 2004)).

¶18. As discussed above, we find that Donna is a third-party beneficiary to the loan agreements. Therefore, Donna is estopped from filing suit based on breaches of duties associated with the loan documents and at the same time claiming that she is not bound by the provisions in the documents.

¶19. Therefore, we find that the trial court erred in denying Community Bank’s motion to compel arbitration. We reverse the judgment of the trial court and remand this case with instructions to the trial court to enforce the arbitration agreement.

**¶20. THE JUDGMENT OF THE CIRCUIT COURT OF COVINGTON COUNTY IS REVERSED, AND THIS CASE IS REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. ALL COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLEE.**

**MYERS, P.J., GRIFFIS, ISHEE, ROBERTS, CARLTON AND MAXWELL, JJ., CONCUR. IRVING, J., CONCURS IN RESULT ONLY. KING, C.J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY BARNES, J.**

**KING, C.J., DISSENTING:**

¶21. I dissent from the majority opinion herein.

¶22. On June 26, 2006, the Community Bank of Mississippi filed a “Complaint In Replevin” against Mike Stuckey and his wife, Donna Stuckey. The complaint alleged that Mike had executed promissory notes and security agreements associated with loan numbers 6870740, 6819303, 6933785, 6842712, 6789412, and 6858317. The complaint alleged that Donna had executed a promissory note and security agreement associated with loan 6803148. The following were identified as security for loan number 6803148: a “Massey Ferguson 383

Tractor S/N EO-2047, with Massey Ferguson 236 front-End Loader S/N 116798; [a]ll cattle, and the increase thereof, branded or unbranded. Such cattle, if owned and subsequently acquired, may be branded or unbranded, and the increase and products there of are expressly covered.”

¶23. Donna responded to the complaint of Community Bank and filed a counterclaim wherein she alleged that she did not sign any of the documents associated with loan number 6803148, and that her signature had been forged by Community Bank and its agent Raymond McAlpin on those documents, as well as on the documents associated with loan numbers 6858317 and 6782779. Donna also alleged that Community Bank removed funds from her bank account to pay on these forged loans.

¶24. Community Bank responded to the counterclaim, it stated that Donna had agreed to arbitrate all disputes with Community Bank and asked the trial court to force mandatory arbitration pursuant to the FAA.

¶25. In denying arbitration, the trial judge stated:

1. That there does not exist convincing evidence that [Donna] executed any of the subject arbitration agreements;
2. That the business enterprise entered into by [McAlpin] and [Mike] was for cattle in which [Donna] had no interest, and she is not, therefore, a third-party beneficiary of said enterprise; and that the claims stated in [Donna’s] counterclaim are outside the scope of the arbitration agreement (*[s]ee Rogers-Dabbs Chevrolet-Hummer, Inc v. Blakeney*, (S. Ct. Mis. 2005-IA-00125-SCT, Feb. 22, 2007)).

I believe that holding to be incorrect.

¶26. This case involves a significant number of promissory notes, deeds of trust, and arbitration agreements. Donna alleges that she signed only one deed of trust and one

arbitration agreement. Donna argues that her signature was forged on all of the other deeds of trust and arbitration agreements. In reversing the judgment of the trial court, the majority holds that it is unnecessary to determine whether Donna's signature was forged on all or any of the loan documents. Instead, the majority holds that Donna was a third-party beneficiary of all of the loans; therefore, it finds that Donna should be compelled to arbitrate.

¶27. To the extent that the issues which are the focus of the case flow from that deed of trust and arbitration agreement that Donna signed, she may be compelled to arbitrate. To the extent that the issues in this case flow from the deeds of trust and arbitration agreements to which Donna is not a party, she may not be compelled to arbitrate, unless it is shown that the transactions were lawful as they relate to her, and that she was in fact a beneficiary of the documents that she did not sign. The burden of proving the transactions to be lawful as they relate to Donna and proving that Donna is a third-party beneficiary rested upon Community Bank. I am not satisfied that Community Bank has met its burden.

¶28. Indeed, reading the majority opinion, I do not see any real evidence discussed that establishes that Donna was in fact a third-party beneficiary and, therefore, subject to mandatory arbitration. The majority simply determines that as an one-half owner of Stuckey Farms, Donna automatically received the benefit of all of the loans and was of necessity a third-party beneficiary. While both the majority and Community Bank make this assertion, there is no hard evidence to support this finding. Without more, I believe that the proof is fatally flawed.

¶29. But there is another aspect of the majority holding which is a matter of significant concern to me. The FAA was intended to aid in the resolution of disputes arising out of

lawful transactions. I am unaware of anything that even remotely suggests the FAA has any application to an unlawful transaction. A transaction which is predicated upon a forged signature is by definition an unlawful transaction. A forged signature is one done without the person's consent and without authority. There is nothing in the record before this Court to infer or establish that McAlpin, or any other employee of Community Bank, was authorized to affix Donna's name to any contract. Nor does the record contain any evidence to establish or even infer that Mike was authorized to affix Donna's name to any contract. It appears that Community Bank now seeks to absolve itself of any responsibility for the actions of its employees in participation in an unlawful act, the forgery of Donna's signature, by claiming her to be a third-party beneficiary to the document. An unlawful transaction may not be made lawful and legitimized by calling the person whose signature was forged a third-party beneficiary. While I am unaware of any cases where a party whose signature was forged has been compelled to arbitrate, at a bare minimum, I believe that legitimization of such an unlawful transaction would require an affirmative validation of the act by the victim. The majority does not suggest validation of the unlawful transaction by Donna, nor have I seen anything in the record that would seem to establish validation of the unlawful act by Donna.

¶30. For these reasons, I dissent and would affirm the judgment of the trial court.

**BARNES, J., JOINS THIS OPINION.**