

DAILY REPORT

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Court of Appeals Says Developer Must Pay \$21M to Failed Bank

KATHERYN HAYES TUCKER

ALMOST \$21 MILLION and a simple economic concept are riding on a recent Georgia Court of Appeals decision in a lending dispute: if you borrow money, you have to pay it back, and then some—even if the bank goes out of business.

If an opinion written by Judge Elizabeth Branch holds, the borrower, a real estate developer, will be on the hook for \$18 million for loans, interest and fees, plus approximately \$2.6 million in legal costs.

“At its heart, it’s a note and guaranty case—with really wealthy opposing parties,” said one of the winning lawyers, Kevin Ward of Schulten Ward & Turner, who handled the case with partner Andrea Pawlak.



Kevin Ward, of Schulten Ward & Turner

Rebecca Breyer

Although the developer complained that the bank neglected to follow through with all its promised funding, the court

held that the developer had to repay the bank because it failed to file an administrative complaint when the bank went under and the

Federal Deposit Insurance Corp. took over. The decision “benefits the taxpayers and the FDIC’s ability to insure all our accounts,” said Pawlak.

Former Georgia Gov. Roy Barnes of the Barnes Law Group argued the appeal for the losing side, Stonecrest Land. Barnes couldn’t be reached. But his team asked the Georgia Supreme Court on Aug. 4 to review Branch’s July opinion.

The dispute goes back to a 2007 loan—at the height of the real estate and lending boom that preceded the financial crash and recession the next year. Stonecrest Land and its investors signed an agreement with Integrity Bank to borrow \$16 million to build condominiums on 63 acres of land near Stonecrest Mall. The funds were “to be advanced as necessary,” Branch wrote in her opinion. The loan was set up for interest-only monthly installments with a two-year balloon payoff.

By early 2008, Integrity was showing signs of financial distress and executives were concerned about Stonecrest’s progress, Branch said. The bank stopped advancing principal, and the developer stopped making interest payments.

In fall 2008, Integrity was

placed into receivership with the FDIC. The FDIC published notice that “all creditors having claims against the failed institution must submit their claims in writing together with proof” by a December deadline.

The FDIC later formed joint ventures to collect payment on Integrity’s outstanding loans, as it has with other failed banks, according to Ward and Pawlak. The FDIC and Multibank formed a joint venture called RES-GA, which Pawlak said was solely devoted to collecting Integrity’s outstanding loans.

In 2012, RES-GA sued Stonecrest and its guarantors for “breach of the loan documents and guarantees,” Branch wrote. Stonecrest answered and offered a defense. Both sides filed cross motions for summary judgment.

Fulton County Superior Court Judge Ural Glanville at first denied both motions, then later granted summary judgment in favor of RES-GA after more discovery. Still, Glanville denied the lender’s request for attorney fees. Stonecrest appealed the summary judgment. RES-GA appealed the attorney fee award.

The Branch opinion upheld the bank’s summary judgment but reversed Glanville on the attorney

fees, which were set up with the loan. The guaranty provided for payment of attorney fees and court costs if the bank had to take legal actions to be paid.

Judge Carla McMillian concurred with Branch. Presiding Judge Anne Barnes concurred specially.

Barnes took issue with the court’s analysis on the borrower failing to exhaust its remedies in the FDIC administrative process. Barnes also disagreed with part of Glanville’s reasoning for granting summary judgment in favor of the bank. “Unlike counterclaims, affirmative defenses generally are not subject to the administrative exhaustion requirement,” Barnes wrote.

But she nevertheless agreed that the bank was entitled to summary judgment because it’s well established that “a trial court’s grant of summary judgment will be affirmed if right for any reason.”

The cases are: *RES-GA v. Stonecrest Land*, No. A15A0458 and *Stonecrest Land v. RES-GA*, No. A15A1438.