

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION**

ONESOUTH BANK,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 5:20-cv-00379
	)	
HERMAN CURT TITSHAW; CRISP	)	
MELONS, INC.; SUMMER TIME	)	
MELONS, LLC; GLOBAL	)	
PRODUCE SALES, INC.; STEPHEN ROSS	)	
NICHOLS; LEE ALLEN WROTEN, III; and,	)	
MARK A. ELLIOTT,	)	
Defendants.	)	

**COMPLAINT**

1. For its Complaint against Defendants, Herman Curt Titshaw (“Titshaw”); Crisp Melons, Inc. (“Crisp”); Summer Time Melons, LLC (“Summer Time”); Global Produce Sales, Inc. (“Global”); Stephen Ross Nichols (“Nichols”); Lee Allen Wroten, III (“Wroten”); and Mark A. Elliott (“Elliott”) (Crisp, Summer Time, Global, Nichols, Wroten, and Elliott are sometimes collectively referred to as the “Buyer Defendants”), Plaintiff OneSouth Bank states as follows:

**JURISDICTION AND VENUE**

2. This Court has original jurisdiction over this action pursuant to 7 U.S.C. § 1631, the Food Security Act, and supplemental jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338 as this action alleges third party misappropriation of property

that was subject to a perfected security interest under 7 U.S.C. § 1631. This Court has supplemental jurisdiction over the Bank's related state and common law claims pursuant to 28 U.S.C. §§ 1338 and 1367 as the state and common law claims arise out of the common nucleus of operative facts.

3. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2), as a substantial part of the events or omissions giving rise to the claim occurred in this District.

### **PARTIES**

4. Plaintiff OneSouth Bank ("Bank") is a state-chartered bank organized and existing under the laws of the State of Georgia (Control Number J715964) with its principal place of business located at 12347 Columbia Street, Blakely, Georgia 39823.

5. Defendant Herman Curt Titshaw ("Titshaw") is a resident of the State of Georgia with his principal place of residence located at 2016 16<sup>th</sup> Ave E., Cordele, Georgia 31015.

6. Defendant Crisp Melons, Inc. ("Crisp") is a corporation organized and existing under the laws of the State of Georgia (Control Number 0001485) with its principal office address located at PO Box 827, Lakeland, Florida 33815 and its registered agent, Stephen Ross Nichols, located at 1176 Highway 280 W., Cordele, Georgia 31015.

7. Defendant Summer Time Melons, LLC (“Summer Time”) is a limited liability company organized and existing under the laws of the State of Georgia (Control Number 17029120) with its principal office address located at 1176 Highway 280 West, Cordele, Georgia 31015 and its registered agent, J. Mitchell Gibbs, located at 109 E. 14<sup>th</sup> Ave., Cordele, Georgia 31015.

8. Defendant Global Produce Sales, Inc. (“Global”) is a corporation organized and existing under the laws of the State of Florida with its principal address located at 1018 E. Oleander Street, Lakeland, Florida 33815 and its registered agent, Mark A. Elliott, located at 1018 E. Oleander Street, Lakeland, Florida 33801.

9. On information and belief, Defendant Stephen Ross Nichols (“Nichols”) is a resident of the State of Florida who may be served at 5025 Lake in the Woods Blvd., Lakeland, Florida 33813.

10. On information and belief, Defendant Lee Allen Wroten, III (“Wroten”) is a resident of the State of Florida who may be served at 6065 Mountain Lake Dr., Lakeland, Florida 33813.

11. On information and belief, Defendant Mark A. Elliott (“Elliott”) is a resident of the State of Florida who may be served at 1398 Grove Ter., Winter Park, Florida 32789.

### **FACTUAL ALLEGATIONS**

### **The Loan and Promissory Note**

12. On information and belief, Herman Curt Titshaw is an agricultural producer specializing in watermelon production.
13. Titshaw is, and at all times relevant hereto has been, a resident of Crisp County, Georgia.
14. On November 29, 2018, Titshaw executed a promissory note (the "Note"), loan agreement (the "Loan Agreement"), a commercial loan agreement (the "Commercial Loan Agreement"), and security agreement (the "Security Agreement") in favor of the Bank in exchange for the operating funds necessary to conduct his 2019 watermelon production.
15. The Note is in the face amount of \$1,300,000.00 and has a maturity date of November 29, 2019. The Note required Titshaw to make a single payment of all unpaid principal and accrued interest on or before said maturity date with an interest rate of 7.25%. A true and accurate copy of the Note is attached hereto as Exhibit A.
16. The Loan Agreement and the Commercial Loan Agreement provide the terms and conditions under which the Note is governed and the referenced loan is to be administered. A true and accurate copy of the Loan Agreement is attached hereto as Exhibit B and a true and accurate copy of the Commercial Loan Agreement is attached hereto as Exhibit C.

17. The Loan Agreement, with reference to the Note, contains the following provisions regarding the Loan that are pertinent to this matter:

a) Security - To secure payment of the [N]ote and all modifications, extensions, renewals, and obligations, Titshaw granted the Bank a first lien security interest in all of Titshaw's then owned and thereafter acquired interests in the collateral as described in the corresponding Security Agreement. Titshaw further granted the Bank a security interest in that real property owned by Titshaw and located in Land Lot 168, District 10, Crisp County, Georgia that is perfected by that Security Deed to the Bank recorded in Book 993, Page 153, Land Records of Crisp County, Georgia.

(b) Loan Purpose - Titshaw certified that that proceeds from the [N]ote were being used for 2019 Crop Production.

(c) Affirmative Covenants - In addition to all of the other covenants set forth in the [N]ote, corresponding Loan Agreement and Security Agreement, or other obligations, Titshaw represented and warranted that Titshaw would maintain proper books, records, and accounts of his operation, would provide annual financial statements and tax returns to the Bank, would advise the Bank of any change or event which will materially affect the financial condition or performance of Titshaw, would timely pay to the Bank the proceeds derived from any sale or other disposition of the crops subject to the security interest described herein, and that Titshaw would immediately report to the Bank any crop loss or other collateral loss.

(d) Events of Default - Upon the occurrence of an "Event of Default," as defined in the corresponding Loan Agreement or other obligations, the Bank could, at its option, without any demand or notice whatsoever, declare the [N]ote and all other obligations to be fully due and payable in their aggregate amount, together with accrued interest and all prepayment premiums, fees, and charges applicable thereto.

(e) Remedies - Upon the occurrence of an "Event of Default," the Bank could, at its option, cease making advances under the [N]ote (if the [N]ote allowed for such advances), declare the [N]ote and all

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.