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BANKS REACH \$15M SETTLEMENT OVER ALLEGED MISCONDUCT OF TAMPA BANKER

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By **Christina Georgacopoulos** – Reporter, Tampa Bay Business Journal
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A six-year legal battle between Centennial Bank and ServisFirst Bank over Centennial's botched acquisition of Bay Cities Bank and alleged misconduct by Bay Cities Bank CEO Gregory Bryant has reached a conclusion.

Alabama-based ServisFirst is paying Arkansas-based Centennial \$15 million to settle claims in a lawsuit filed in the Middle District of Florida by Centennial. Centennial alleged that Bryant, who resigned three months after its acquisition of Bay Cities to join ServisFirst, poached customers and key banking executives.

Bryant maintains he did not violate his employment agreement with Centennial or interfere with the bank's business when he and three other Bay Cities executives resigned at the same time to join ServisFirst. He currently serves as ServisFirst's chief executive in west central Florida.

Centennial initially sought \$100 million in damages.



Greg Bryant

Centennial's main contention is that it never would have purchased Bay Cities if it knew Bryant and others would resign almost immediately after the deal closed and take customer relationships with them.

Centennial also argued in its complaint it would not have entertained the deal had it known of Bryant's "self-dealing and unethical conduct" while serving as Bay Cities' CEO. A judge ruled in favor of Centennial on this count.

Bryant breached his fiduciary duties and duty of loyalty to both Bay Cities and Centennial when he engaged in a self-serving lending agreement that exchanged millions of dollars in loans for an ownership interest in one of Bay Cities' largest client's business, a judge ruled by summary judgment in early October. Bryant concealed his financial interests as he personally advocated for and approved loans for the client while CEO of Bay Cities and failed to disclose the conflict of interest to Centennial throughout the deal process, according to the court order.

An attorney for Bryant did not immediately respond to a request for comment.

"If I were aware of all the ways in which Bryant ... were conflicted at any time from the onset of due diligence throughout the eve of closing, I have no doubt that Centennial would have backed out of the deal," the bank's chief lending officer, Kevin Hester, said in an affidavit in 2019. "Discovery of Bryant's cavalier attitude towards conflicts of interest and his obligations under the Bay Cities Ethics Code would have constituted a material adverse change."

Disputed and undisputed facts of the case

Centennial **purchased Bay Cities** in 2015 for \$101.6 million, a record price at the time for a community bank that size with \$540 million in assets.

Bryant signed an employment agreement with Centennial while assuring the bank's top executives, including Chairman John Allison, of his intention to stay at the bank post-merger, according to Centennial's original complaint. Centennial was a relative newcomer to the Tampa Bay market at the time, and Bryant, a well-known banker with a network of local contacts, was key to the bank's plans to grow commercial lending in the area, according to John Anthony, Centennial's lead attorney.

Bryant, however, approached at least eight other banks to solicit employment between the period the Bay Cities-Centennial deal was announced in June and its closing in October. On several occasions, he also brought along two of his most senior advisers at Bay Cities, Gwynn Davey and Patrick Murrin, who also signed employment contracts and are named defendants in the original complaint.

An attorney for Davey and Murrin did not immediately respond to a request for comment.

“When Bryant was most needed to facilitate an orderly transition toward merger, he instead spent his time interviewing at other banks,” Centennial said in an amended complaint filed in November 2016.



Gwynn Davey, ServisFirst's president of the Tampa Bay region.

The individuals Bryant approached in 2015 include the president of Fidelity Bank (now Ameris Bank), Palmer Proctor, who confirmed in a sworn affidavit in the case that Bryant planned to depart from Centennial with his colleagues after the deal closed. Proctor, as well as executives at the other banks approached by Bryant,

said he declined Bryant’s solicitations due to ethical and legal concerns about his, Davey, and Murrin’s non-solicitation and non-compete agreements with Centennial.



ServisFirst's Tampa Bay team at the time (from left) Pat Murrin, senior vice president and chief credit officer; Greg Bryant, Tampa Bay CEO; Jonathan Zunz, vice president and commercial banking officer; Gwynn Davey, Tampa Bay regional president; and Jennifer Noel, senior vice president and cash management officer.

Bryant “always had planned to collect his windfall from the Bay Cities sale and then immediately relocate with members of senior management that he personally recruited,” Centennial alleged in the complaint. He personally had a hand in securing “golden parachutes” for himself and his team, including primarily Murrin and Davey, in the sale of Bay Cities, Centennial claimed.

Bryant, in particular, made \$2.1 million from an exit package following the sale of Bay Cities, Centennial stated in the complaint.

Bryant’s negotiations with ServisFirst began in early October 2015, around two weeks after the deal with Centennial closed. He engaged ServisFirst’s chairman and CEO, Thomas Broughton, plus other key executives at the bank, and entered contract negotiations, according to sworn statements submitted by the defendants in early 2016.

Notably, ServisFirst offered Bryant, Davey and Murrin indemnification as part of their employment agreements, or promised to stand behind them in the event that Centennial sued for breach of contract, ServisFirst CEO Tom Broughton told the Tampa Bay Business Journal.

“ServisFirst has hired numerous employees over the years who have noncompete agreements and understands that, depending on who their former employer is, ex-employees can get sued even if they don’t do anything wrong,” Broughton said. “ServisFirst agreed to indemnify Greg, Gwynn, and Pat against claims that they breached their non-compete and non-solicitation obligations as long as they followed certain steps to comply with those obligations,” Broughton said.

In November, about a month after the deal with Bay Cities closed, Bryant sent an email to Davey and Murrin recounting a conversation with ServisFirst’s lead attorney, Michael Sansbury, who counseled Bryant on the orchestrated departure of him and his colleagues from Centennial that would ultimately take place the next month.

When Bryant asked about communicating with ex-customers, Sansbury told him to “keep it very general” and “to be careful not to ask for business,” Bryant recounted in the email, which was submitted to the court as evidence. Centennial attorney Anthony claims the email is proof that ServisFirst executives conspired with the defendants to leave Centennial.

“The conspiracy email reflects that a ServisFirst lawyer was designated by ServisFirst’s chairman to communicate and advise Bryant, Centennial’s most senior officer in Tampa,” Anthony said. “That same lawyer argued to the court that the indemnification agreements were drafted ‘in anticipation of litigation.’”

Centennial chairman Allison added in a statement to the Business Journal that “in all the years that Centennial has been operating, we had never initiated a lawsuit apart from routine loan enforcement actions. However, we are committed to protecting the interests of our business and our shareholders where those interests are undermined.”

Bryant, Davey and Murrin accepted employment offers with ServisFirst in mid-December and then collectively resigned on New Year’s Eve in 2015. Centennial filed its suit about two weeks later.

Just before they resigned from Centennial, however, one of Bryant's subordinates confirmed in a sworn statement that he emailed confidential information on both banks' customers to his personal computer. Jonathan Zunz, formerly a Bay Cities vice president who worked closely with Bryant and is also a named defendant in the case, presumably took the information to recruit customers to ServisFirst upon the bankers' eventual employment, Centennial claimed in its complaint.

An attorney for Zunz declined a request for comment.

Numerous customers who left Centennial for ServisFirst testified that Bryant, Davey and Murrin did not solicit their business, however. Instead, they became dissatisfied with the service at Centennial and decided to leave of their own volition. Therein lies ServisFirst's defense: Bryant, Davey, Murrin and Zunz were predisposed to leave Centennial due to low morale caused by poor decision-making after the deal with Bay Cities, according to a sworn statement Bryant submitted to the court.

Bryant said in his statement that Centennial "immediately began exerting control" over his responsibilities at the bank and shifted Bay Cities' business model from a focus "on service and personal attention to customers" to Centennial's "cost-cutting" model. Those measures "had a drastic negative impact on both employee morale and the level of services customers were accustomed to," Bryant claimed.

Centennial filed its complaint within weeks of the resignations and later issued subpoenas to investigate data on the defendants' devices. A forensic analyst, Dwayne Denny, found that Davey and Murrin went to great lengths to destroy data related to their time at Centennial, according to a sworn statement Denny submitted to the court.

Davey deleted hundreds of text messages and emails she exchanged with Centennial employees and clients during the period in question, Denny said in the statement.

"In my 14 years of experience as a digital forensics examiner, I have never experienced a case where a defendant has taken such significant steps to subvert a court order. Davey willfully withheld data on devices she failed to disclose and destroyed large amounts of data in the devices she produced," according to Denny's sworn statement.

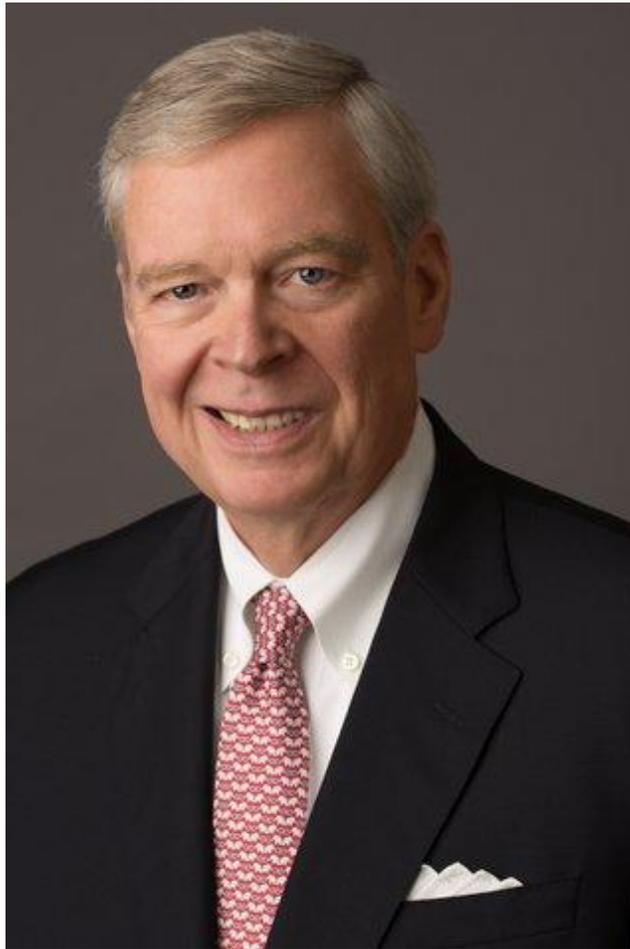
Denny said Murrin also took “extraordinary steps” to destroy significant amounts of data from multiple storage locations. According to Denny’s statement, Murrin Googled instructions for how to delete emails from a device and searched for a location to dispose of his computer in Tampa shortly before receiving a subpoena to turn over his devices to investigators. Murrin later failed to produce his desktop computer for the investigation and said in a sworn statement that it was no longer in his possession.

The settlement

Presiding Judge Charlene Honeywell ruled by summary judgment earlier this month that the defendants ultimately did not tortiously interfere with Centennial’s business by stealing customers and former Bay Cities executives because Centennial failed to provide sufficient evidence that it suffered monetary damages from the misconduct.

Centennial is, however, owed repayment in relation to damages incurred by Bryant’s breach of fiduciary duties, which will be covered by a portion of the settlement amount.

“Greg Bryant is a valuable employee of ServisFirst and a great leader of its West Central Florida Region. ServisFirst respectfully disagrees with the Court’s ruling that any duties to Bay Cities Bank were breached and expects all of its employees, including Greg, to fulfill their duties to ServisFirst,” CEO Broughton said.



Tom Broughton is CEO of ServisFirst Bank.

COURTESY OF SERVISFIRST BANK.

Without a settlement, 16 additional counts would have been heard by a jury at trial.

“Regardless of what might have happened at trial, this case presents a number of key lessons for executives, their employers, and lawyers on both sides,” Anthony told the Business Journal.

“A potential new employer must think twice before indemnifying an incoming senior executive who may be betraying fiduciary duties to his former employer,” Anthony said. “These are costly lessons to learn the hard way.”