

INSIDE BUSINESS

Printer Version Of Inside
Business - Hampton Roads

COVER STORY

Resource and Monarch courtroom drama

Was harm done when many employees left one bank for the other?

by **Michael schwartz**

Monday June 25, 2007

Talk about getting your money's worth out of a classified ad.

On May 3, Monarch Bank announced in a classified advertisement in The Virginian-Pilot that it was expanding its mortgage division.

The ad, which ran for just one day, said the Chesapeake-based bank was seeking experienced and qualified applicants to fill numerous positions, including president and COO.

According to a lawsuit filed a little more than a month later, Monarch's mortgage division had either hired, or was in the process of hiring, more than 70 employees, who one lawyer said responded to that May 3 ad. All were former employees of Resource Mortgage.

On June 11, 14 of those new employees were named as defendants in a lawsuit filed by Resource Bank, alleging the new Monarch employees, led by former Resource Mortgage President Ted Yoder and COO William Morrison, carried out a preconceived mass resignation and exodus to Monarch and in the process removed documents that Resource believes will cause it irreparable harm.

That single classified ad and those two words, "irreparable harm," were the focus of an emotional last-minute hearing in Virginia Beach Circuit Court late on June 15, in which Resource sought an injunction to have the documents returned.

The hearing featured video and blown-up photos of security surveillance footage, a crying witness and a yelling bank president. Watergate was even mentioned.

The hearing began with George Kostel, lead attorney for Fulton Financial, Resource's Pennsylvania-based parent company, setting up the video.

"The videotape I will show will shock you," Kostel said.

After Kostel and the bailiff figured out how to work the DVD player, the video depicted several of the defendants walking out of Resource's

Virginia Beach office after hours, carrying various boxes and other articles.

"Under the cover of darkness," Kostel said, these employees came in and removed what Resource believes were documents that could cause the company harm. "Only a day later they all resigned."

While the security footage continued to play, lawyers from Monarch's side chimed in.

"There weren't any break-ins. This wasn't Watergate or anything," said Moody "Sonny" Stallings, from Stallings & Bischoff, representing Morrison.

Tracy Elza, Resource's head of security, was called to the stand to narrate the video. And while Elza could identify the people caught on tape and tell when they had resigned and whether they were now employed with Monarch, she and Resource's attorneys were unable to prove what the boxes contained.

The defense attorneys jumped all over it.

"We've been called here on a Friday afternoon because there is supposed to be an emergency," Stallings said. "Can we get to that?"

And that question was the theme of the afternoon. Over and over the judge asked Kostel to concentrate on the irreparable harm issue.

"Let's get to why I need to do something today," Judge Thomas Shadrick said.

Try as they might, Resource's legal team was incapable of proving exactly what was in the boxes that left its offices and therefore, irreparable harm could not be determined.

In his first trip to the witness stand, Ted Grell, president and CEO of Resource, testified that on June 14, the day before the expedited hearing, someone delivered 10 boxes from Monarch to Resource. "We suspected customer information was leaving property," Grell said.

In those boxes, Grell said, Resource employees found documents that contained customer information that for regulatory and privacy purposes should not have left the premises.

He then explained what regulatory requirements the bank follows concerning the protection of customer information and that Resource has reported the events listed in this case to the Virginia State Corporation Commission and the Federal Reserve.

Grell also said he saw Monarch's classified ad in the paper, just two days after Yoder submitted his resignation to Resource. "Yoder indicated he was thinking about leaving and taking a portion of the business with him," Grell said.

At one point, Stallings stood up and shouted, "That's what this is about;

they're upset that employees left."

Then came the testimony of Crystal Breeden, an accounts coordinator from Resource. With the first question she was asked, before she even began to answer, her eyes filled with tears and her voice was choked with emotion.

"I was asked by my manager, Clayton Hicks, if I could stay late and asked if I would copy some documents," Breeden said. Hicks, a defendant, is a former Resource employee and is now employed at Monarch.

But it kept coming back to showing the irreparable harm. "If you don't get to something that has to do with irreparable harm pretty soon, I'm going to end this hearing," the judge said.

Kevin Martingayle, an attorney with Stallings & Bischoff, put the nail in the coffin as far as Resource's injunction was concerned when he cross examined Shelly Armitrout, a compliance officer at Resource.

"You don't know if any ongoing harm is occurring to Resource do you?" Martingayle asked Armitrout.

Her answer was no.

In a last minute attempt to prove irreparable harm, Grell was called back to the stand. Grell said he personally viewed the contents of the 10 boxes that were returned to Resource from Monarch and some did contain customers' personal information.

"When word gets out on the street that we let all these files get out," Grell said, "that's irreparable harm to our reputation."

After nearly two and half hours, Shadrick had heard enough. He said he understood the importance of the cases for all involved. He said he recognized what a difficult position Resource was in after losing so many employees and fiduciary responsibilities Resource has regarding its customers information.

"Evidence here today indicates some files were taken and returned," Shadrick said. "I understand the reason for Resource asking for an injunction."

Resource lost its request for the injunction but did persuade the judge to order any previous employees who have in their possession any property belonging to Resource Bank to return that property as it could be argued as grand larceny or embezzlement.

"Return it immediately or face the repercussions," Shadrick ordered.

Where the case goes from here is unclear. Martingayle suggested a settlement between Resource and Monarch, which was being openly negotiated before the suit was filed, may still be on the table.

"I always advise people to keep settlement open as an option,"

Martingayle said.

But he said Resource actions thus far have not been conducive to an amicable resolution.

"They need to calm down and back off for a deal to be struck," Martingayle said.

A few questions remain.

If all the employees came to Monarch in an above-board manner, why choose to settle?

Martingayle said if there is a settlement, "it won't be because Monarch has done anything wrong."

It may also be more cost-effective to settle, if multi-billion dollar Fulton really is the Goliath to Monarch's David, as Monarch claims it is.

Past events show that perhaps Resource Mortgage grew through a similar type of mass recruiting once again led by Yoder and Morrison.

According to press reports, Yoder has a track record of jumping ship and taking his employees with him.

Yoder joined Resource in 1999 along with Morrison, after both left First Coastal Mortgage in Virginia Beach. In an April 4, 1999, article, The Virginian-Pilot reported that "all but one of the 36 employees at First Coastal Mortgage," joined Yoder and Morrison at Resource.

Does Monarch think it is in the clear because this past event was not challenged legally?

Or does Resource see this as a precedent and grounds for claiming conspiracy?

Martingayle believes he has an answer. "Resource has enjoyed living by the sword, but doesn't enjoy dying by the sword."

A service of Richmond.com

All material ©1999-2007 by Richmond.com or its partners. All rights reserved.