

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
April 22, 2026 Session

FILED

10/12/2026

Clerk of the
Appellate Courts

**C. RANDOLPH BROWN, BY AND THROUGH HIS ATTORNEY-IN-FACT STUART
BROWN, AND STUART BROWN, INDIVIDUALLY v. FIFTH THIRD BANK**

**Appeal from the Chancery Court for Shelby County
No. CH-15-0580-3 JoeDae L. Jenkins, Chancellor**

No. W2025-00605-COA-R3-CV

This appeal arises from a suit filed by a borrower and his son against a mortgage lender in an attempt to avoid a foreclosure sale. The plaintiffs alleged that the lender breached a settlement agreement the parties entered into by unreasonably imposing an escrow account and by failing to provide a required notification to credit reporting agencies. After a bench trial, the trial court found in favor of the lender on both claims and dismissed the complaint. The plaintiffs appeal. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

CARMA DENNIS MCGEE, J., delivered the opinion of the court, in which JEFFREY USMAN and VALERIE L. SMITH, JJ., joined.

Webb A. Brewer, Memphis, Tennessee, for the appellants, John Stuart Brown, individually and as representative of the Estate of C. Randolph Brown.¹

¹ Stuart Brown originally filed this lawsuit individually and on behalf of his father, Randolph Brown, as his attorney-in-fact. Randolph Brown died while the case was pending, and plaintiffs' counsel filed a suggestion of death and motion to substitute a party pursuant to Tennessee Rule of Civil Procedure 25.01, stating that Stuart had petitioned to be the executor of the estate. After a status conference, the trial court entered an order stating that the Estate of Randolph Brown had been opened in Louisiana and that Stuart Brown was anticipated to be named the executor, although an order had not yet been entered. Thereafter, Stuart filed documents "individually and as representative for the estate of C. Randolph Brown," stating that "[h]e was authorized to represent the estate of C. Randolph Brown in this litigation by Order dated October, 2021." He stated that "[a]fter a Suggestion of Death and Motion to Substitute, the Court appointed Stuart Brown, who was already a Plaintiff in this action and was the administrator of the elder Mr. Brown's estate, to represent the estate of C. Randolph Brown." No order to that effect appears in the appellate record. However, another motion filed in the trial court by Stuart similarly recites that "Stuart Brown, the attorney-in-fact for C. Randolph Brown and executor of his estate was substituted for his father by Order of this Court." At trial, plaintiffs' counsel stated that "Your Honor appointed Stuart Brown . . . who was already in the case as his attorney-in-fact and who lived in the property. He represented the estate."

Lauren Paxton Roberts and Mason T. Scioneaux, Nashville, Tennessee, for the appellee, Fifth Third Bank.

OPINION

I. FACTS & PROCEDURAL HISTORY

This litigation was filed over a decade ago, in 2015, in an effort to halt a foreclosure sale. According to the complaint, C. Randolph Brown had purchased the property located at 2877 Central Avenue in Memphis in 2007. Randolph Brown resided in Louisiana, and his son, Stuart Brown, resided at the property in Memphis. The property was encumbered by a deed of trust naming Fifth Third Bank as the lender. The complaint alleges that a previous dispute had arisen between the plaintiffs and the Bank regarding the property, which resulted in litigation and the execution of a settlement agreement. That settlement agreement provided for execution of a loan modification agreement, which was fully executed by August 1, 2013. Those documents provided that the Bank would send a certain notice to credit reporting agencies. The pertinent provision stated:

As soon as reasonably practical following closing and receipt of all Signed documents and processing by Fifth Third of the Loan Modification Agreement, Fifth Third shall send notice to the credit reporting agencies that the Loan has been modified by a Loan Modification Agreement. Fifth Third shall verify to Jerry Taylor, attorney for the Browns, that the notice has been sent, along with a copy of the content contained in the notice.

The complaint alleged that, upon information and belief, the Bank “never complied with the aforementioned credit reporting obligation.” In addition, the complaint alleged that the loan modification agreement provided that the plaintiffs would not be required to maintain an escrow account unless they defaulted on payments for property taxes or insurance. According to the complaint, a dispute had arisen regarding whether the Bank was entitled to impose an escrow account, which led to the Bank initiating foreclosure proceedings and scheduling a sale for May 1, 2015. The complaint alleged that the foreclosure sale was “premised upon an alleged default created by Fifth Third’s unilateral and improper imposition of an escrow account upon the Plaintiffs” despite their “continuing to pay

Stuart’s notice of appeal states that it was filed by him “individually and as representative for the estate of C. Randolph Brown.” The appellee’s brief likewise states that “Stuart Brown, the attorney-in-fact for C. Randolph Brown and executor of his estate, was subsequently substituted for his father by the Court” and that “Stuart Brown was substituted as representative of the estate.” Because the parties do not dispute that Stuart Brown was substituted as the executor of the Estate, we are proceeding with that understanding of the proceedings below. However, the style of this appeal tracks the language of the original complaint.

taxes.”² The plaintiffs sought injunctive relief regarding the foreclosure sale and asserted claims for breach of contract and breach of the covenant of good faith and fair dealing. After the entry of a temporary restraining order, an agreed order was entered continuing the sale. The trial court later entered a temporary injunction as well.

After years of litigation, the case was finally tried over the course of one day in November 2024. The trial judge heard testimony from Stuart Brown, the treasurer for the City of Memphis, a delinquent tax attorney employed by Shelby County, and a litigation analyst employed by the Bank. In March 2025, the trial court entered an order dismissing the plaintiffs’ claims upon finding that they had failed to prove them by a preponderance of the evidence. The court found that the plaintiffs’ attorney had received a letter from the Bank confirming its compliance with the notice requirement and included a copy of the notice that was sent, so the plaintiffs’ claim that the Bank failed to comply with that requirement was dismissed. As for the escrow account, the court found that only partial payments had been made for tax year 2013 on the county property taxes, the taxes were delinquent, and therefore, the plaintiffs were in default of their obligation to pay the taxes, rendering the Bank’s imposition of the escrow account reasonable. Thus, this claim for breach of contract was also dismissed. The plaintiffs timely filed a notice of appeal.

II. ISSUES PRESENTED

The plaintiffs present the following issues for review on appeal:

1. Whether the trial court erred in finding that the Defendant Bank did not breach the Settlement Agreement and Loan Modification Agreement executed between the parties and the Covenant of Good Faith and Fair Dealing that attaches to all Tennessee contracts by imposing an escrow account without default by the Plaintiffs and initiating foreclosure on the Plaintiffs’ property.
2. Whether the trial court erred in finding that the Defendant did not breach the Settlement Agreement and the Covenant of Good Faith and Fair Dealing by failing to provide effective notice to credit reporting agencies that the loan had been modified and was current under the facts and circumstances in evidence.

For the following reasons, the decision of the chancery court is hereby affirmed.

III. STANDARD OF REVIEW

In an appeal from a bench trial, our review “is *de novo* upon the record of the proceedings below with a presumption of correctness as to the findings of fact of the trial

² The imposition of the escrow account greatly increased the amount of the monthly payment.

court.” *Conder v. Salyers*, 421 S.W.3d 589, 592 (Tenn. Ct. App. 2013). However, “no presumption of correctness attaches to the trial court’s conclusions of law, and our review is de novo.” *Commerce Union Bank, Brentwood, Tenn. v. Bush*, 512 S.W.3d 217, 226 (Tenn. Ct. App. 2016).

IV. DISCUSSION

A. *Escrow Account*

On appeal, the plaintiffs admit that they were obligated to pay property taxes separately and directly in the absence of an escrow account. The settlement agreement provided:

The Browns shall not be required to maintain an escrow account on the Loan, as modified by the Loan Modification Agreement. Fifth Third retains the right, at its discretion, to require establishment of an escrow account should the Browns default on their requirements to make payments for insurance or taxes after the date of the closing of the Loan Modification Agreement.

The loan modification agreement similarly provided, “Borrower shall not be required to make escrow payments or maintain an escrow account, unless Fifth Third, in its discretion, determines that an account is required because of the Borrower’s default on payments for insurance or taxes.” There is no dispute regarding the insurance payments or the City of Memphis property taxes. The dispute arose regarding the payment of Shelby County property taxes for tax year 2013. The plaintiffs insist on appeal that “there had been no default” and therefore the Bank breached the agreement by “imposing an escrow account without default.” Thus, the pivotal issue is whether there had been a “default” on the plaintiffs’ requirement to make payments of the 2013 county property taxes.

Greg Gallagher, the delinquent tax attorney for Shelby County, testified at trial. He testified that a tax lien attaches each year on January 1, and the assessor sends out assessments to taxpayers around February or March, but taxpayers will then have a period of time to challenge the assessment by asking for an inquiry or a hearing. He testified that county taxes are “due” the first Monday in October every year. However, Mr. Gallagher testified that unpaid taxes do not begin to incur interest until March 1 of the following year. So, for example, he explained that 2013 taxes would be due the first Monday in October 2013, but interest of 1.5% would not begin accruing until March 1 of the next year. Mr. Gallagher also testified that “the lien survives up until the entire amount of the tax is paid,” so partial payments do not stop enforcement or remove the tax lien.

The parties signed the settlement agreement in July 2013. Although the precise figure is not clear from the record, the county property tax owed on this property for tax

year 2013 was around \$6,700.³ Stuart Brown testified as to his payment history. He admitted that by March 1, 2014, he had not paid any of the 2013 county property taxes. Mr. Brown testified that he made his first payment toward the 2013 county property taxes on April 8, 2014, and it was a partial payment of \$1,300, which did not cover his entire tax obligation. He admitted that he was incurring interest “on top of the taxes” by that point. Mr. Brown testified that he made a second partial payment of \$3,000 on May 27, 2014. He testified that he made a third payment of \$1,770 on November 14, 2014. According to Mr. Brown, these three partial payments, when combined, put him “\$98 shy of the full amount” due for 2013. Thus, Mr. Brown conceded that he had not paid “the full amount” of his county taxes for 2013.

The Bank had sent a notice addressed to Randolph Brown, dated July 29, 2014, stating that it was imposing an escrow account because of his “delinquent property taxes” and that the Bank had been required to advance funds to pay the outstanding balance. Mr. Brown admitted at trial that only about two-thirds of his property tax obligation had been paid by the date of that letter. Michelle Hopkins, litigation analyst for the Bank, testified that the Bank had paid \$2,856.68 toward Mr. Brown’s remaining tax obligation in July 2014 and imposed the escrow account at that time. Mr. Brown acknowledged that his November 2014 payment of \$1,770 may have been credited to tax year 2014 based on records from Shelby County.

Thus, based on the evidence presented at trial, the 2013 county tax obligation was due in October 2013, it began accruing interest on March 1, 2014, and Mr. Brown had still not fully paid it by November 2014. The trial court found that the plaintiffs knew that the taxes were delinquent and that only partial payments were being made. It found that the Bank’s imposition of the escrow account was reasonable under the circumstances and that the plaintiffs “were in default of the settlement agreement for not paying the 2013 property taxes.” We agree and conclude that the plaintiffs were in default of their obligation to make payments when the Bank imposed the escrow account and paid the taxes in July 2014.⁴ On appeal, the plaintiffs assert that “the Bank’s premature imposition of an escrow account deprived the Browns of a reasonable opportunity to pay their county taxes.” The record does not support this assertion. The plaintiffs were in default of their payment obligation, and the taxes were delinquent and accruing interest. “Default has been defined as ‘the omission or failure to perform a legal or contractual duty.’” *Childress v. Sullivan Cnty. Bd. of Educ.*, 771 S.W.2d 411, 416 (Tenn. Ct. App. 1988) (quoting *Black’s Law Dictionary* 376 (5th ed. 1979)). The current edition of *Black’s Law Dictionary* defines “default” as “[t]he omission or failure to perform a legal or contractual duty; esp., the failure to pay a debt when due.” *Black’s Law Dictionary* (12th ed. 2024).

³ In a declaration Stuart Brown filed in the trial court, he listed the amount as roughly \$15 higher than that listed in the escrow statement provided by the Bank.

⁴ We express no opinion as to whether the plaintiffs were in default at any earlier date.

Tennessee Code Annotated section 67-1-702(a) provides that “[e]very taxpayer shall pay state, county, municipal, highway, school and all of such taxpayer’s property taxes to the county trustee, except when otherwise provided by law, and such taxes shall be due and payable on the first Monday in October of each year.” Tennessee Code Annotated section 67-5-2010 provides for “[i]nterest on delinquent taxes,” specifying its rate and when it is calculated. The statute provides,

To the amount of tax due and payable, interest of one and one-half percent (1.5%) shall be added on March 1, following the tax due date and on the first day of each succeeding month, except as otherwise provided in regard to municipal taxes. Any county having a population in excess of eight hundred thousand (800,000), according to the 1980 federal census or any subsequent federal census establishing tax due dates other than the first Monday in October in each year, in accordance with § 67-1-701(a), shall have the authority to establish the date that interest shall begin to accrue as the date of delinquency in lieu of March 1.

Tenn. Code Ann. § 67-5-2010(a)(1). Thus, the “date of delinquency” is March 1, and taxes are delinquent when they are unpaid thereafter and accruing interest. *See U.S. v. Hall*, 877 F.3d 676, 685 (6th Cir. 2017) (“Tennessee’s tax code calls for interest to accrue monthly on delinquent taxes, *see* Tenn. Code Ann. § 67-5-2010.”); *In re Pioneer Inv. Servs. Co.*, 21 F.3d 428 (Table), 1994 WL 134683, at *6 (6th Cir. 1994) (“Tennessee law states that all state and local taxes ‘shall be due and payable on the first Monday in October,’ Tenn. Code Ann. § 67-1-702(a); however, unpaid taxes do not become ‘delinquent’ and subject to accrual of interest and imposition of penalties until the March 1 following each tax year, Tenn. Code Ann. § 67-5-2010(b)(2).”); *State, ex rel. Williamson Cnty. v. Jesus Christ’s Church at Liberty Church Rd.*, No. M2009-02439-COA-R3-CV, 2011 WL 251212, at *4 (Tenn. Ct. App. Jan. 13, 2011) (“Penalty and interest are incurred on delinquent taxes pursuant to Tenn. Code Ann. § 67-5-2010; once suit to enforce a tax lien is filed, additional penalties, fees and costs accrue in accordance with Tenn. Code Ann. § 67-5-2410.”); Tenn. Op. Atty. Gen. No. 92-03 (Jan. 14, 1992) (“T.C.A. § 67-5-2010(a)(1) establishes March 1 as the date upon which property taxes become delinquent; that is, the date on which penalty and interest begin to be added to unpaid taxes.”).⁵

⁵ When asked to describe his work as a delinquent tax attorney, Mr. Gallagher testified that “we collect for the city and the County when they go to -- when -- when the taxes become delinquent, which is two years after the date they become due.” He said the “annual lawsuit” is filed “in order to effect the tax lien on properties and . . . that’s filed between February the 1st and April the 1st two years after the taxes become due.” Thus, he explained that, “by statute, it has to be two years old in order to be delinquent taxes for us to be able to collect it.” On appeal, the plaintiffs interpret this testimony to mean that unpaid taxes do not become delinquent until two years after they are due. However, we interpret the aforementioned testimony as referencing the meaning of delinquent taxes for purposes of conducting an annual sale. For instance, Mr. Gallagher also testified that Mr. Brown was late in paying the 2013 taxes, but “it wasn’t delinquent long enough to be included in the annual lawsuit.” *Cf.* Tenn. Op. Atty. Gen. No. 90-35 (Mar.

The plaintiffs contend that “it could be credibly argued that ‘default’ meant the date at which the Property would be included in the Annual Tax Lawsuit, rather than the date at which interest began to accrue.” They argue that no action could have been taken to include the property in a tax sale until two years after the taxes became due, so they did not “jeopardize the property.” The plaintiffs suggest that the Bank could have waited until it had notice of a tax sale and then “taken steps to protect its interest, if necessary.” They also complain that the Bank did not give them a “warning.” The plaintiffs admit that the Bank had a valid interest in protecting its collateral but claim that it “went far beyond acting reasonably to secure its interest in the property,” violating its duty of good faith and fair dealing.⁶ Again, we disagree.

The parties’ settlement agreement, to which both parties agreed, expressly provided that the Bank “retains the right, at its discretion, to require establishment of an escrow account should the Browns default on their requirements to make payments for insurance or taxes after the date of the closing of the Loan Modification Agreement.” The loan modification agreement likewise provided that the borrower was not required to make escrow payments or maintain an escrow account unless the Bank determined “that an account is required because of the Borrower’s default on payments for insurance or taxes.” The plaintiffs did default on their requirement to make payments for taxes, as they were delinquent at the point when the Bank imposed the escrow account requirement. We find no support for Mr. Brown’s suggestion that the Bank was required to wait until the property was in jeopardy of being sold at a tax sale before taking steps to impose an escrow account to protect its interest in the property. At that point, imposing an escrow account would serve little purpose. The Bank’s actions were entirely reasonable and did not demonstrate bad faith.⁷ We affirm the trial court’s decision to dismiss the breach of contract claim regarding imposition of the escrow account.

16, 1990) (noting that “a delinquent tax, for purposes of part 22, must be an obligation, secured by a lien on real property, due and payable for at least two years,” but that definition “sets it apart from a common understanding of the phrase delinquent tax as used in other parts of the Code,” and concluding that “§ 67-5-1806 uses the term ‘delinquent’ as it is more generally understood and accepted under our law as referring to the date on which interest and penalties begin to accrue,” and “March 1, following the first Monday in October when the taxes become due, is the date on which unpaid taxes become ‘delinquent’”).

⁶ The plaintiffs argue on appeal that “[e]ven if this Court does not accept that the Bank’s conduct constitutes a breach of contract, it was at least a breach of the Covenant of Good Faith and Fair Dealing.” However, “[a] claim based on the implied covenant of good faith and fair dealing is not a stand alone claim; rather, it is part of an overall breach of contract claim.” *Cadence Bank, N.A. v. The Alpha Tr.*, 473 S.W.3d 756, 773 (Tenn. Ct. App. 2015) (quoting *Jones v. LeMoyne-Owen College*, 308 S.W.3d 894, 907 (Tenn. Ct. App. 2009)).

⁷ As additional evidence of bad faith, the plaintiffs point to conduct that allegedly occurred in the separate lawsuit between them and the Bank. However, the only record citation they provide is to Stuart Brown’s trial testimony that he became aware of a motion filed in the separate lawsuit, the “gist of that was that the Fifth Third Bank was asking the Court to grant permission to impose on this loan,” and to his knowledge it was never heard. This does not demonstrate bad faith.

B. Notice to Credit Reporting Agencies

The parties agree that the previous dispute between the Bank and the plaintiffs arose from the Bank's mistaken withdrawal of mortgage payments from the account of Stuart Brown rather than Randolph Brown, which led to an alleged mortgage default and erroneous reports to credit reporting agencies. As a result, the settlement agreement provided:

As soon as reasonably practical following closing and receipt of all signed documents and processing by Fifth Third of the Loan Modification Agreement, Fifth Third shall send notice to the credit reporting agencies that the Loan has been modified by a Loan Modification Agreement. Fifth Third shall verify to Jerry Taylor, attorney for the Browns, that the notice has been sent, along with a copy of the content contained in the notice.

At trial, the Bank's litigation analyst testified that its records contained a letter from the Bank from 2013, which was addressed to plaintiffs' counsel and stated that the attached notice had been sent to credit reporting agencies, notifying them of the modification of the mortgage. She testified that the form attached to the letter, entitled a "Uniform Data Form," was universally used within the United States to provide information to the major credit reporting agencies. The witness testified that this form was, to her knowledge, the only acceptable way to submit information to credit reporting agencies. She said the form listed the name of the person who submitted it at the bottom of the page and indicated that it was submitted on August 26, 2013. She testified that the Bank's letter to plaintiffs' counsel explained about the coding used on the universal data form and noted that the particular codes used indicated that the loan had been modified and "made current." This letter and the attached data form was also made an exhibit at trial. During Stuart's testimony, he testified that he had no reason to dispute that the letter was in fact sent to his attorney.

The trial court dismissed this claim for breach of contract. It noted the testimony that plaintiffs' then-counsel received a letter dated September 30, 2013, confirming the Bank's compliance with the provision requiring notice to credit reporting agencies regarding the modification of the mortgage. The court also noted that the letter included a copy of the universal data form sent to the agencies.

On appeal, the plaintiffs argue that the Bank failed to send "effective" notice to the credit reporting agencies that the loan was modified. They admit in their brief that in the notice sent to their attorney in 2013, "Fifth Third sent confirmation that the credit reporting agencies have been notified of the Loan Modification Agreement." Still, they claim that the universal data form "was insufficient" to satisfy the settlement agreement. They argue that the "the form does not state in plain English that the loan had been modified as part of a negotiated settlement agreement or that the loan was current as of the date the information

was provided.” Of course, the litigation analyst for the Bank testified that the two codes used on the form did convey just that – (1) the loan had been modified, and (2) it had been made current. She also testified that the universal data form used by credit reporting agencies was the only accepted way to convey such information. The plaintiffs presented no proof to the contrary. Notably, the settlement agreement only required the Bank to “send notice to the credit reporting agencies that the Loan has been modified by a Loan Modification Agreement” and then verify to plaintiffs’ counsel “that the notice has been sent, along with a copy of the content contained in the notice.” The proof at trial shows that the Bank complied with this provision. The plaintiffs admit in their brief that the settlement agreement “did not specify a particular means or manner for Fifth Third to report the existence of the modification” but suggest that “it would have been a reasonable expectation that these facts would have been stated in plain English,” again citing the duty of good faith and fair dealing. They acknowledge that the Bank’s letter to counsel “did include a very brief description of several ‘codes’ in the form.” However, they claim the form itself has “little discernable information, at least to one not versed in credit reporting” and complain that “a layperson would have no means to tell whether these codes reflected that the loan was modified.” The purpose of the notice provision, however, was to inform “the credit reporting agencies.” Therefore, these arguments are not persuasive. Finally, the plaintiffs argue that there was no “confirmation of receipt or change of status of the account,” and they note Stuart’s position that there was no improvement in his father’s credit score. The plaintiffs contend that “the Covenant of Good Faith would have required some follow up effort such as a plain English letter or request for confirmation of the use of the change of Mr. Brown’s reported information based upon the information in the form.” However, those additional actions were not required by the notice provision in the parties’ agreement. The implied covenant of good faith and fair dealing “protects the parties’ reasonable expectations as well as their right to receive the benefits of their agreement,” but it “does not create new contractual rights or obligations.” *Tenn. State Bank v. Mashek*, 616 S.W.3d 777, 807 (Tenn. Ct. App. 2020). “Whether a party acted in good faith in performing a contract ‘is measured by the terms of the contract.’” *Gregg v. Estate of Cupit*, No. M2018-00379-COA-R3-CV, 2018 WL 5733289, at *5 (Tenn. Ct. App. Oct. 31, 2018) (quoting *Isaac v. Ctr. For Spine, Joint, & Neuromuscular Rehab., P.C.*, No. M2010-01333-COA-R3-CV, 2011 WL 2176578, at *4 (Tenn. Ct. App. June 1, 2011)). We affirm the trial court’s dismissal of the claim for breach of contract regarding the notice provision.⁸

⁸ In the conclusion section of its brief on appeal, the Bank asks that this Court “award costs of appeal to Appellee pursuant to Tennessee law and the Settlement Agreement.” To the extent that this constitutes a request for attorney fees on appeal, we deem the issue waived for failure to construct an argument in support of the request. *Charles v. McQueen*, 693 S.W.3d 262, 284 (Tenn. 2024) (“When a request for appellate attorney’s fees does not seek relief from the judgment below, an appellee is not required to include the request in the statement of issues. Tenn. R. App. P. 27(b). But an appellee is required to present the request to the appellate court by raising it in the body of the brief, adequately developing the argument, and specifying that relief in the brief’s conclusion. See Tenn. R. App. P. 27(a)(7)(A), (a)(8), (b).”). Even the “mandatory nature” of an attorney fee provision “does not relieve a party of the

V. CONCLUSION

For the aforementioned reasons, the decision of the chancery court is affirmed and remanded. Costs of this appeal are taxed to the appellant, John Stuart Brown, individually and as representative of the Estate of C. Randolph Brown, for which execution may issue if necessary.

s/ Carma Dennis McGee
CARMA DENNIS MCGEE, JUDGE

responsibility to properly present the request to the court.” *Id.* at 284 n.7.