

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

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|--------------------------|---|--------------------|
| UNITED STATES OF AMERICA |) | CR. NO. _____ |
| |) | 18 USC § 1349 |
| |) | 18 USC § 1344 |
| vs. |) | 18 USC § 982(a)(2) |
| |) | 28 USC § 2461(c) |
| |) | |
| JAMES BYRD |) | |
| ERIC BYRD |) | <u>INFORMATION</u> |

Count One
Conspiracy to Commit Bank Fraud

THE UNITED STATES ATTORNEY CHARGES:

1. That at all times relevant to this Information, SunTrust Bank, Greenville First Bank, Palmetto First Bank, Carolina First Bank, Blue Ridge Bank, National Bank of South Carolina (NBSC), and South Carolina Bank & Trust (SCB&T) (hereafter the Banks) were financial institutions doing business in the District of South Carolina with deposits insured by the Federal Deposit Insurance Corporation.

2. That beginning in or about early 2001 and continuing up until the date of this Information, in the District of South Carolina, the defendants, JAMES BYRD and ERIC BYRD, knowingly and willfully did combine, conspire, confederate, agree and have a tacit understanding with each other and with others known and unknown to the Grand Jury to devise a scheme and artifice to defraud banks insured by the Federal Deposit Insurance Corporation and to obtain monies and funds owned by and under the custody and control of such banks by means of materially false and fraudulent pretenses, representations, and promises, in violation of Title 18, United States Code, Section 1344.

MANNER AND MEANS OF THE CONSPIRACY

3. Beginning in or around early 1998, JAMES BYRD began operating a real estate business where he would borrow money from banks to purchase residential real estate properties or commercial properties and either renovate such properties or build a new building or residence on such properties for purposes of reselling them for a profit.

4. In order to fund the above stated real estate ventures, JAMES BYRD and ERIC BYRD would obtain loans from the banks, other financial institutions or individuals and pledge as collateral the property that they were purchasing.

5. To qualify for such loans, JAMES BYRD and ERIC BYRD would submit personal financial statements and appraisals to the banks so that it could determine their credit worthiness and the value of the property.

6. Beginning in or around early 2001 and during the course of their business, JAMES BYRD and ERIC BYRD had reached their maximum borrowing limit, and they became over-extended with their credit and could not borrow additional funds to either purchase new properties, renovate existing properties, or to service existing debt.

7. In furtherance of the conspiracy, JAMES BYRD and ERIC BYRD devised and conducted the following fraudulent schemes and artifices used together or individually so as to deceive the aforesaid lenders and induce them to lend money in an effort to continue their business and to derive profits from the bank loans.

a. JAMES BYRD and ERIC BYRD would obtain appraisals for residential properties that exceeded the actual value of the property and knowing such appraisal to be false would obtain a loan from the banks in the amount of the inflated value.

b. JAMES BYRD and ERIC BYRD would sell the properties from one corporate entity owned by them to another corporate entity owned by them and during each sale, inflate the value of the property through an inflated appraisal and by doing so receive a loan in an amount that was much more than the fair market value of the property.

c. JAMES BYRD and ERIC BYRD convinced family members and friends to obtain loans from the above stated banks and guaranteed such family members and friends that they would cover any payments of interest on the loans.

d. JAMES BYRD and ERIC BYRD would provide falsified financial statements in the names of their family and friends to the banks in an effort to secure loans in those names. Such falsified financial statements included inflated monthly income, assets, or failure to list existing liabilities such as outstanding loans.

e. JAMES BYRD and ERIC BYRD, through a coconspirator attorney, would transfer properties into numerous corporate entities knowing that credit reporting agencies do not report loans in the names of different corporate entities and the Byrds would not report outstanding loans in the names of such corporate entities to such banks knowing that this would increase their credit worthiness and the credit worthiness of their family members and friends.

f. JAMES BYRD and ERIC BYRD would obtain construction loans from the above stated banks to perform renovations on residential houses or commercial properties and on occasion perform construction on the house or commercial property which was pledged as collateral.

g. JAMES BYRD and ERIC BYRD borrowed money from a particular bank and such bank would secure such loan with a first mortgage. Later, JAMES BYRD and ERIC BYRD would obtain a loan from a different bank and facilitate the falsifying of title searches and HUD statements through a coconspirator attorney and at the conclusion of the closing, obtain an additional mortgage on such property without paying off the first position and fraudulently lead the second bank to believe that it had a first mortgage lien knowing that such bank had a second position, and obtain what is commonly referred to as double first mortgage.

h. JAMES BYRD and ERIC BYRD would engage in what is commonly referred to as a flip when they would purchase a property and then resell the property to a family member or corporate entity owned by them. The second purchase would fund the first transaction thereby defrauding the lender in the first purchase.

i. JAMES BYRD and ERIC BYRD would inflate their bank accounts by borrowing money from their coconspirator attorney or other individual for a short term thereby giving the appearance that their bank accounts contained money when, in fact, the money was only in the bank account for a short period of time.

OVERT ACTS

8. In furtherance of the conspiracy and to effect its goals, the following overt acts were committed in the District of South Carolina:

a. On or about March 18, 2003, JAMES BYRD and ERIC BYRD purchased a property located at 101 Arlington Road, Greenville, South Carolina, for \$18,000 and then JAMES BYRD and ERIC BYRD through a individual working on their behalf obtained a loan for the same property through the use of an inflated appraisal for approximately \$125,000 thereby defrauding the lender.

b. On or about November 23, 2005, JAMES BYRD and ERIC BYRD purchased a property located at 45 Woodside Drive in Greenville, South Carolina, and then sold such property to an individual working on their behalf for an inflated value and helped such individual to obtain construction loans on such property and converted the use of the construction loans to their own personal use or in furtherance of their business.

c. On or about December 8, 2005, JAMES BYRD and ERIC BYRD obtained a mortgage on a property located at 405 Houston Street, Greenville, South Carolina. JAMES BYRD and ERIC BYRD did represent to such lender that it would be given a first mortgage on such residence located at 405 Houston Street in Greenville County by paying off the first and second mortgage. However, the defendants only paid off the first mortgage but never paid off the second mortgage holder with funds from the December 8th loan.

d. On or about April 24, 2003, JAMES BYRD and ERIC BYRD through a legal entity controlled by them, purchased two properties located at 114 E. Morgan Street and 110 E. Morgan Street and the next day sold such properties to ERIC BYRD and he obtained a mortgage

on such properties from a lender when in fact the loan from the lender actually funded the first purchase of the property by the legal entity.

e. On or about December 13, 2004 JAMES BYRD and ERIC BYRD borrowed money from a coconspirator attorney's trust account by conducting a false refinance of 117 Asbury Street located in Greenville, South Carolina, whereby they represented that one legal entity controlled by them was purchasing a property owned by another legal entity controlled by them when in fact money from the attorney coconspirator's trust account was being loaned to them for purposes of showing cash in their bank accounts so that they could borrow more money.

f. On or about January 28, 2005, JAMES BYRD and ERIC BYRD did represent to Carolina First Bank that it would be given a first mortgage on a residential home located in Greenville County when in actuality the defendants never paid off the first lien holder with funds from the loan from Carolina First Bank thereby defrauding them and creating a double first mortgage in the amount of approximately one million three hundred eighty seven thousand dollars (\$1,387,000).

All in violation of Title 18, United States Code, Section 1349.

Count Two
Bank Fraud

THE UNITED STATES ATTORNEY FURTHER CHARGES:

1. That at all times relevant to this Information, the defendants, JAMES BYRD and ERIC BYRD:

a. maintained personal and business checking accounts at the SunTrust Bank in the names of Eric Byrd, James Byrd, Dionne Byrd, Ideal Mortgage, Legal Holdings, Next Generation, L.P., Belgium Properties, and Property Centre; and

b. maintained personal checking accounts at Palmetto Bank in the names of Eric Byrd, James Byrd, and Dionne Byrd.

2. Beginning in or about April 2005 and continuing through on or about November 9, 2005, in the District of South Carolina, the defendants, JAMES BYRD and ERIC BYRD, devised a scheme and artifice:

a. to defraud the Banks; and

b. to obtain monies and funds owned by and under the custody and control of the Banks by means of false and fraudulent pretenses, representations, and promises.

3. It was part of the scheme and artifice to defraud and to obtain monies and funds by means of false and fraudulent pretenses, representations, and promises that the defendants, JAMES BYRD and ERIC BYRD, engaged in "check kiting" which was carried out as follows:

a. The defendants, JAMES BYRD and ERIC BYRD, would take checks drawn on the Palmetto Bank accounts and exchange them for SunTrust Bank certified funds. The certified funds would then be redeposited back into the Palmetto Bank account. By engaging in this conduct, the defendants, JAMES BYRD and ERIC BYRD, created false and inflated balances in each account and obtained immediate credit in the Palmetto Bank bank accounts, even though there were insufficient funds in the Palmetto Bank bank accounts to cover the SunTrust official checks.

b. By exchanging worthless checks written on the Palmetto Bank accounts for

certified funds from SunTrust, the defendants, JAMES BYRD and ERIC BYRD, were able to fraudulently obtain one million two hundred thousand dollars (\$1,200,000) from SunTrust Bank.

4. On or about November 8, 2005, in the District of South Carolina, the defendants, JAMES BYRD and ERIC BYRD, did knowingly execute and attempt to execute the above described scheme and artifice to defraud and to obtain monies and funds by means of false pretenses, representations and promises in that JAMES BYRD and ERIC BYRD personally or through their agents presented a Palmetto Bank check drawn on the account of Eric Byrd and made payable to Next Generation in the amount of one hundred thousand dollars (\$100,000) in exchange for a SunTrust official check in the amount of one hundred thousand dollars (\$100,000) purchased by Next Generation (a corporate entity owned by James Byrd and Eric Byrd) and made payable to James Byrd, well knowing that there were insufficient funds to cover the check.

All in violation of Title 18, United States Code, Section 1344.

FORFEITURE

A. **CONSPIRACY TO COMMIT BANK FRAUD / BANK FRAUD OFFENSE:**

1. Upon conviction for violation of Title 18, United States Code, Section 1349 (conspiracy to commit bank fraud) as charged in Count 1 of this Information, or upon conviction of Title 18, United States Code, Section 1344 (bank fraud), as charged in Count 2 of this Information, the Defendants, JAMES BYRD and ERIC BYRD, shall forfeit to the United States any property, real or personal, constituting or derived from proceeds the Defendants obtained, directly or indirectly, as the result of such violations, and all property traceable to such property including, but not limited to, the following:

(a) **Cash Proceeds / Money Judgment:**

A sum of money equal to all proceeds the Defendants, obtained directly or indirectly from the offenses charged in Counts 1 and 2 of this Information, that is, a minimum of approximately \$5,000,000.00 in United States currency, and all interest and proceeds traceable thereto;

B. **SUBSTITUTE ASSETS:**

1. If any of the property described above as being subject to forfeiture, as a result of any act or omission of the Defendants –

- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred or sold to, or deposited with, a third person;
- (c) has been placed beyond the jurisdiction of the Court;
- (d) has been substantially diminished in value; or
- (e) has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), as incorporated by 18 U.S.C. § 982(b)(1), and 28 U.S.C. § 2461(c), to seek forfeiture of any other property of the said Defendants up to the value of the above described forfeitable property;

Pursuant to Title 18, United States Code, Sections 982(a)(2) and Title 28, United States Code, Section 2461(c).

s/ Reginald I. Lloyd
Reginald I. Lloyd (www)
United States Attorney

MAXIMUM PENALTIES FOR 18 USC 1349 - COUNT 1
CONSPIRACY TO COMMIT BANK FRAUD

FINE OF \$1,000,000 (18 USC 3571) AND/OR
IMPRISONMENT FOR 30 YEARS AND A TERM
OF SUPERVISED RELEASE OF 5 YEARS (18 USC 3583)
SPECIAL ASSESSMENT \$100.00 (18 U.S.C. § 3013)

MAXIMUM PENALTIES FOR 18 USC 1344 - COUNT 2

FINE OF \$1,000,000 (18 USC 3571) AND/OR
IMPRISONMENT FOR 30 YEARS AND A TERM
OF SUPERVISED RELEASE OF 5 YEARS (18 USC 3583)
SPECIAL ASSESSMENT \$100.00 (18 U.S.C. § 3013)