

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

REGIONS BANK, an Alabama state-chartered bank,  
as successor-in-interest to AmSouth Bank,

Plaintiff,

v.

CASE NO: 8:13-cv-2627-T-26TBM

BING CHARLES W. KEARNEY, and  
TONYA NUFHER KEARNEY,

Defendants.

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**ORDER**

**UPON DUE CONSIDERATION** of Defendants' Motion in Limine Regarding Confidential Settlement Discussions and Motion to Add Witnesses to Witness List (Dkt. 151) and Regions Bank's Response in Opposition (Dkt. 155), the Court finds the motion should be denied. Federal Rule of Evidence 408 prohibits only the admission of settlement discussions "either to prove or disprove the validity or amount of a disputed claim or to impeach . . ." The Bank argues that it is not attempting to introduce the Curtailment Meeting or any other communications for these purposes, but is using the Curtailment Meeting and related communications "to establish that Mr. Kearney was fully aware of the Collection Action and the fact that he was personally liable for several

million dollars as early as September 9, 2009.”<sup>1</sup> The evidence goes to the issue of Mr. Kearney’s fraudulent intent at the time of the transfer of assets to tenants by the entireties, and the issue of constructive fraudulent intent based on Mr. Kearney’s inability to pay the \$2,000,000.00 curtailment. In any event, Defendants waived this contention when all testified without objection regarding the Curtailment Meeting at the trial in the Collection Action. Accordingly, it is **ORDERED AND ADJUDGED** that Defendants’ Motion in Limine Regarding Confidential Settlement Discussions and Motion to Add Witnesses to Witness List (Dkt. 151) is **DENIED**.

**DONE AND ORDERED** at Tampa, Florida, on March 9, 2015.

*s/Richard A. Lazzara*  
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**RICHARD A. LAZZARA**  
**UNITED STATES DISTRICT JUDGE**

**COPIES FURNISHED TO:**  
Counsel of Record

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<sup>1</sup> See docket 155, para. 14.