

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GEORGETOWN COUNTY  
Court of Common Pleas

W. Jeffrey Young, Circuit Court Judge

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Case No. 2011-CP-22-01330

Appellate Case No. 2013-000384

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Branch Banking and Trust  
Company,

Respondent,

v.

P. Jason Luquire

Appellant.

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**APPELLANT'S INITIAL REPLY BRIEF**

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## **ARGUMENT**

The Appellant, Jason P. Luquire ("Luquire"), in reply to the argument of the Respondent, Branch Banking and Trust Company ("BB&T"), replies as follows:

1. **BB&T'S ARGUMENT ABOUT FACTUAL DISTINCTIONS MISSES THE POINT THAT IT IS ESSENTIAL TO THE EXISTENCE OF A GUARANTY THAT THERE SHOULD BE SOMEONE LIABLE AS PRINCIPAL.**

BB&T spends much of its Argument I,A focusing on factual differences between this case and *Carroll County Sav. Bank of Uniontown v. Strother*, 22 S.C. 552 (1885).

However, BB&T fails to distinguish the fundamental legal principle in *Strother* that a guaranty is a collateral undertaking, and it is essential to the existence of a guaranty that there should be someone liable as principal, such that if there is no valid claim against the principal, then there is no existing contract of guaranty. *Id.* at 555-556.

In this case, BB&T merged its note into a deficiency judgment in the foreclosure action against a non-entity and despite being warned of that fact of the non-entity and despite being warned the non-entity did not own the property being foreclosed. Accordingly, the note was not valid as it did not have a valid maker. This is not a defense personal to the maker, but goes to the validity of the note itself and renders it void. Luquire cannot now be liable on the guaranty because there was no one liable as principal, as was judicially established by the deficiency judgment.

**2. BB&T FAILS TO RECOGNIZE THAT THE INDIGO, LTD., LLC NOTE WAS INCLUDED AS PART OF THE FORECLOSURE DEBT AND MERGED INTO THE JUDGMENT.**

In Argument I, BB&T argues even if BB&T's foreclosure action was asserted against a non-entity, Luquire remained liable to BB&T under the guaranty executed on behalf of Indigo, Ltd., LLC. BB&T further argues that it has the right to collect in this direct action without first obtaining a judgment against Indigo Ltd., LLC. This undoubtedly would be true if BB&T had not elected to include the Indigo Ltd. debt as part of its foreclosure action and judgment. (R. paragraphs 3, 8 and Exhibit B.) Having chosen to do so, the Indigo Ltd., LLC note merged into its judgment against Indigo Limited, LLC. *Schuler v. Israel*, 120 U.S. 506 (1887)(A judgment upon a note merges it and it becomes the only evidence of the debt.) Since the only evidence of the debt is a judgment against a non-entity and thus no one is liable as principal, Luquire's guaranty is not valid.

BB&T makes the same mistake in argument II when it states, "Assuming that Ltd. is a different entity than Limited,<sup>1</sup> the foreclosure action did not name Indigo, Ltd., LLC. Therefore, when this action was commenced any collection claim against Indigo Ltd., LLC was still viable without having been reduced to judgment." (Respondent's Brief, p. 8) While the foreclosure action did not name Indigo Ltd., as stated before, it was based on Ltd.'s note which merged into the deficiency judgment against Limited.

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<sup>1</sup> The court has no need to "assume" as this is a matter of public record and was disclosed to BB&T prior to its foreclosure hearing and judgment. (R. )

Indeed, BB&T cited to this deficiency judgment in its complaint. Therefore a collection action on the Ltd. note is not viable and a collection action on a guaranty without a viable principal is also not viable.

**CONCLUSION**

For the reasons set forth herein, and in Luquire's Initial Brief, this court should reverse the order of the trial court awarding judgment against Luquire for the amount of the deficiency judgment.

Respectfully submitted,

**TOBIAS G. WARD, JR., PA**



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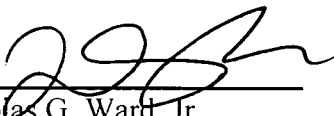
P. Jason Luquire

Appellant.

**PROOF OF SERVICE**

I certify that I have served the Appellants Initial Reply Brief on Branch Banking and Trust Company by depositing a copy of it in the United States Mail, postage prepaid, on August 8, 2013, addressed to his attorney of record, Clay Robinson, Post Office Box 944, Columbia, South Carolina 29202 .

August 8, 2013

  
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August 8, 2013

The Honorable Jenny Abbott Kitchings  
South Carolina Court of Appeals  
P.O. Box 11629  
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RE: Branch Banking and Trust Company v P. Jason Luquire  
Civil Action No.: 2011-CP-22-01330  
Case Tracking No. 2013-000384


Dear Ms. Kitchings:

Enclosed for filing are the original and one copy of the Appellant's Initial Reply Brief, and Proof of Service in the above referenced matter. Please file the original and return a clocked copy in the envelope provided.

Along with a copy of this correspondence we are serving other counsel of record.

Respectfully,

**TOBIAS G. WARD, JR., PA**



Tobias G. Ward, Jr.

Enclosures  
TGW,Jr.:wrc

cc: P. Jason Luquire (w / enclosures)  
Clay Robinson, Esquire(w / enclosures)

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