

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

W. Jeffrey Young, Circuit Court Judge

Case No. 2011-CP-22-01330

Appellate Case No. 2013-000384

Branch Banking and Trust
Company,

Respondent,

v.

P. Jason Luquire

Appellant.

APPELLANT'S REPLY BRIEF

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Cases

Carroll County Sav. Bank of Uniontown v. Strother, 22 S.C. 552 (1885) 1

Schuler v. Israel, 120 U.S. 506 (1887) 2

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

ARGUMENT

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 its existence that there should be someone liable as principal; and if there be no valid claim against the principal, there is no existing contract of guaranty. *Id.* at 555-556.

In this case, BB&T obtained a deficiency judgment (R. 165) against a non-entity despite being warned of that fact and despite being warned that entity did not own the property resulting in the deficiency judgment. (R.200) Accordingly, the note is not valid as it does 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 be liable on the guaranty because there is no one liable as principal.

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

In Argument I, B 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. 197-198) 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 void judgment and no one is liable as principal, then 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,¹ 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 did include its debt which became part of the deficiency judgment against Limited. Indeed, BB&T cited to this deficiency judgment in its complaint. Therefore a collection action on the same note is not viable and a collection action on a guaranty without a viable principal is also not viable.

¹ 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. 183-184, 200)

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,
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Dated: Sept. 26, 2013

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CERTIFICATE OF COUNSEL

The undersigned certifies that the Appellant's Final Brief and the Appellant's Final Reply Brief comply with Rule 211(b). SCACR

September 26, 2013



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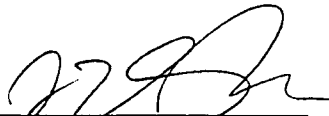
P. Jason Luquire

Appellant.

PROOF OF SERVICE

I certify that I have served a copy of the Final Brief of Appellant, Appellant's Reply Brief and Certificate of Counsel on Branch Banking and Trust Company by depositing a copy of each in the United States Mail, postage prepaid, on September 27, 2013, addressed to his attorney of record, Clay Robinson, Post Office Box 944, Columbia, South Carolina 29202.

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