

THE STATE OF SOUTH CAROLINA
South Carolina Supreme Court
No. 2012-205647

APPEAL FROM CHARLESTON COUNTY
In The Court of Common Pleas

The Honorable Roger M. Young, Circuit Court Judge

Cases 2009-CP-10-7515, 2009-CP-10-7517,
2009-CP-10-7518, and 2010 CP-10-9959

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S.C. Supreme Court

2009-CP-10-7515

James J. Kerr, Crayton Walters, and J.T. Main, LLC..... Appellants,

v.

Branch Banking & Trust Company, successor in merger to Branch Banking & Trust
Company of SC, a/k/a BB&T, and James Edahl. Respondents.

2009-CP-10-7517

Ron Konersman Appellant,

v.

Branch Banking & Trust Company, successor in merger to Branch Banking & Trust
Company of SC, a/k/a BB&T, and James Edahl, Respondents.

2009-CP-10-7518

John Voytko Appellant,

v.

Branch Banking & Trust Company, successor in merger to Branch Banking & Trust
Company of SC, a/k/a BB&T, and James Edahl, Respondents.

2010-CP-10-9959

Patricia Konersman..... Appellant,

v.

Branch Banking & Trust Company, successor in merger to Branch Banking & Trust
Company of SC, a/k/a BB&T, and James Edahl, Respondents.

**APPELLANTS KONERSMAN AND VOYTKO MOVE FOR CLARIFICATION
OF THE ORDER ENTERED OCTOBER 31, 2013 BY CHIEF JUSTICE JEAN H.
TOAL, AND FOR REHEARING OR RECONSIDERATION BY ENTIRE COURT
OF THE MOTIONS FOR REMAND SET FORTH IN ATTACHED
MEMORANDUM**

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YOU WILL PLEASE TAKE NOTICE that Plaintiffs move before the Supreme Court of South Carolina, for an order, pursuant to Rule 221(c) SCRPC and the general powers granted to this court to do substantial justice and SC Supreme Court Rules 212(b) and SC Supreme Court Rules 240(a), to rehear order on motion to amend complaint or in the alternative to remand which was denied on October 31, 2013 or in the alternative clarification of the order in the matter captioned above.

This motion is made on the basis of legal precedent, which has been erroneously construed, misapplied, or overlooked by the court in the following respects:

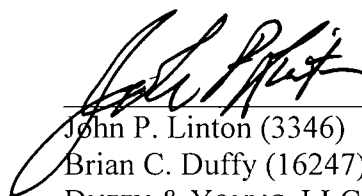
a. *Springfield v. Williams Plumbing Supply Co.*, 249 S.C. 130, 153 S.E.2d 184 (1967) states “where there is cause for doubt, or it is clear that ends of justice may be promoted by trial on merits, demurrer should be denied where novel issues are present or are involved.”

b. *Spence v. Spence*, 368 S.C. 106, 129, 628 S.E.2d 869, 881 (2006), states “an appellate court should follow this procedure when the plaintiff presents additional factual allegations or a different theory of recovery which, taken as true in a well-pleaded complaint, may state a claim upon which relief may be granted.”

c. The Order is unclear whether the Motion to Amend was denied with or without prejudice to be re-filed upon remand or after the Court issues its opinion, but before remittitur has been issued.

This motion is supported by an internal email of BB&T (Exhibit A), a letter exchanged between counsel for Voytko and Konersman (Exhibit B). The memorandum of law is attached to further support this motion.

WHEREFORE, the appellant respectfully requests the Court to reconsider its opinion and rule in favor of the appellant.



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November 14, 2013
Charleston, South Carolina

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PROOF OF SERVICE

I, John P. Linton, of Duffy & Young, LLC, certify that I have served the **APPELLANTS' MOTION FOR CLARIFICATION OF THE ORDER ENTERED OCTOBER 31, 2013 BY CHIEF JUSTICE JEAN H. TOAL, AND FOR REHEARING OR RECONSIDERATION BY ENTIRE COURT OF THE MOTIONS FOR REMAND AND MEMORANDUM IN SUPPORT THEREOF** on Respondents and Appellants by delivery to their attorneys of record in the following manner:

VIA U.S. MAIL AND E-MAIL:

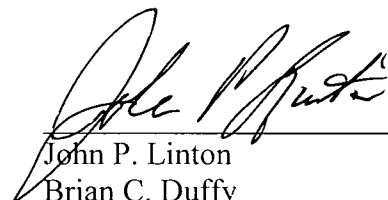
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