

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

APPEAL FROM CHARLESTON COUNTY
In the Court of Common Pleas
Roger M. Young, Circuit Court Judge

MAY - 7 2014

S.C. Supreme Court

Lower Court Case Nos. 2009-CP-10-07515, -07517; 07518; and 2010-CP-10-09959
Appellate Court Case No. 2012-205647

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

v.

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

Ron Konersmann, Appellant,

v.

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

John Voytko, Appellant,

v.

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

Patricia Konersmann, Appellant,

v.

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

RECEIVED

MAY - 7 2014

RESPONDENTS' MOTION FOR COSTS

S.C. Supreme Court

On April 9, 2014, this Court affirmed the trial court's order in the above-captioned appeal, and the matter was remitted to the lower court on April 25, 2014. Accordingly, Respondents ask this Court to issue an order awarding costs to them in the amount of \$1,061.80, for attorney's fees and the cost of printing the Final Brief. These amounts are reflected in the attached statement of costs and are allowed pursuant to Rule 222, SCACR ("Unless otherwise ordered by the appellate court or agreed by the parties, costs shall be taxed against the appellant when the appeal is dismissed or judgment on appeal is affirmed.").

Rule 222, SCACR also allows additional costs "in the most extraordinary circumstances." Certain filings by Appellants shortly before oral argument was scheduled in this matter warrant the award of additional costs, pursuant to Rule 222.

This matter was argued before the Court on November 6, 2013. Approximately two weeks before oral argument, on October 22, 2013, several Appellants filed a motion to remand or in the alternative to supplement the record on appeal with deposition testimony that had been taken on September 19, 2013, in a completely different case (in which Appellants were not parties). The moving Appellants sought relief that bore no relation to the appeal, and they cited no rule, statute, or other authority upon which they based their request. In the midst of preparing for oral argument, Respondents filed an expedited return on October 28, 2013, as requested by the Supreme Court. The next day, on October 29, 2013, the Court denied the motion.

On October 30, 2013, approximately one week prior to oral argument and just one day after the Supreme Court had denied the motion to remand or supplement the record, two other

Appellants filed a similar, but not identical motion. Their motion was captioned “Motion to Amend, or in the alternative to Remand for Consideration of Amendment after Disposing of Pending Issues on Appeal, and to Supplement the Record with the Testimony of James Edahl, and Certain Emails Originating from BB&T and Letter between Counsel.” In that motion, different Appellants asked that the record on appeal be supplemented with the same deposition testimony that the other Appellants had already sought to include (and which the Supreme Court had already denied). Again, during preparation for oral argument, the Respondents had to review and analyze the motion and its attached exhibits, which were 167 pages in length; and they began to respond to it. Prior to Respondents’ filing a formal return, the Supreme Court issued an order on October 31, 2013, denying this second motion.

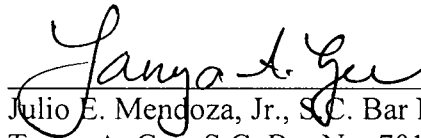
Undeterred, these two groups of Appellants continued, and each filed motions for reconsideration on November 12 and November 14, 2013. In an effort to contain costs, Respondents drafted one return, in which they responded to both motions. The Supreme Court denied Appellants’ motions for reconsideration, and, ultimately, affirmed the trial court’s order.

Given the timing of the Appellants’ motions for remand, their duplicative nature, and the irrelevant testimony they sought to interject into the appeal, it appears the motions may have been filed to cause disruptive effect. Accordingly, Respondents seek to recoup the costs they incurred for responding to these motions. *See* Rule 269, SCACR (allowing the appellate court to issue sanctions against a party for filing a motion that is “frivolous or taken solely for the purposes of delay, or is not in compliance with these Rules”). Based on the billing entries of Respondents’ counsel that relate only to responding to Appellants’ motions to remand,¹ Respondents incurred \$7,487.65 in attorneys’ fees to defend against these motions. These

¹ Respondents will file these billing entries under seal with the Court if it desires to review them.

extraordinary fees, combined with the \$1,061.80 routinely awarded in costs, amount to \$8,548.95 in costs. Alternatively, if this Court were to find that the multiple and duplicative motions were not frivolous or filed to be disruptive, Respondents ask to be awarded \$2,000 in attorney's fees rather than just \$1,000, in light of their need to respond to two, separate groups of Appellants during the pendency of the appeal.

Respectfully submitted,



Julio E. Mendoza, Jr., S.C. Bar No. 3937

Tanya A. Gee, S.C. Bar No. 70191

Nexsen Pruet, LLC

1230 Main Street, Suite 700

Columbia, South Carolina 29201

803-771-8900 (t) 803-253-8277 (f)

rmendoza@nexsenpruet.com

tgee@nexsenpruet.com

Molly Hughes Cherry, S.C. Bar No. 11188

NEXSEN PRUET, LLC

205 King Street, Suite 400 (29401)

P.O. Box 486

Charleston, South Carolina 29402

843-577-9940 (t) 843-414-8209 (f)

mcherry@nexsenpruet.com

ATTORNEYS FOR RESPONDENTS
BRANCH BANKING AND TRUST COMPANY,
SUCCESSOR IN MERGER TO BRANCH
BANKING AND TRUST COMPANY OF SC,
A/K/A BB&T, AND JAMES EDAHL

May 7, 2014

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

MAY - 7 2014

APPEAL FROM CHARLESTON COUNTY
In the Court of Common Pleas
Roger M. Young, Circuit Court Judge

S.C. Supreme Court

Lower Court Case Nos. 2009-CP-10-07515, -07517; 07518; and 2010-CP-10-09959
Appellate Court Case No. 2012-205647

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

v.

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

Ron Konersmann, Appellant,

v.

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

John Voytko, Appellant,

v.

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

Patricia Konersmann, Appellant,

v.

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

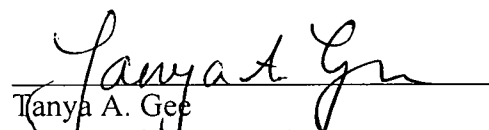
ITEMIZED STATEMENT OF COSTS

The South Carolina Supreme Court is requested to tax the following costs against

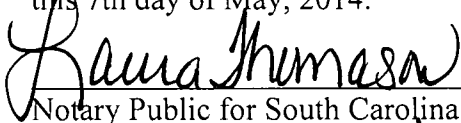
Appellants:

COSTS TAXABLE UNDER RULE 222, SCACR	NO. OF PAGES	RATE	REQUESTED	ALLOWED (For Court Use Only)
Cost of Printing or Copying Final Brief	613	0.10	\$ 61.30	
Attorney's Fee Provided by Rule 222(b), SCACR			\$1,000.00	
Portion of Attorneys' Fee incurred to defend against frivolous motion			\$7,487.65	
Total			\$8,548.95	

I, Tanya A. Gee, do swear or affirm that the foregoing costs are correct and were necessarily incurred in this action. A copy of this statement was mailed to opposing counsel.


 Tanya A. Gee
 Attorney for Respondents

Subscribed and sworn to before me
 this 7th day of May, 2014.


 Notary Public for South Carolina
 My Commission Expires: 3/25/23

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

MAY - 7 2014

APPEAL FROM CHARLESTON COUNTY
In the Court of Common Pleas
Roger M. Young, Circuit Court Judge

S.C. Supreme Court

Lower Court Case Nos. 2009-CP-10-07515, -07517; 07518; and 2010-CP-10-09959
Appellate Court Case No. 2012-205647

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

v.

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

Ron Konersmann, Appellant,

v.

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

John Voytko, Appellant,

v.

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

Patricia Konersmann, Appellant,

v.

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

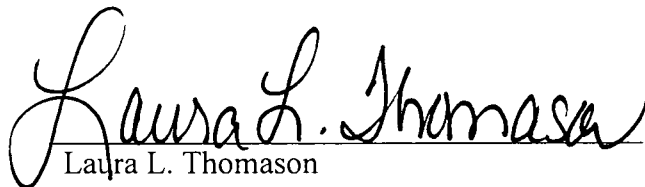
PROOF OF SERVICE

I, Laura L. Thomason, hereby certify that a copy of the Motion for Costs of Respondents Branch Banking and Trust Company, Successor in merger to Branch Banking and Trust Company of SC, a/k/a BB&T, and James Edahl has been served upon counsel of record by depositing a copy of the same, first-class postage prepaid, in the United States Mail, on the 7th day of May 2014 to the addresses shown below:

M. Dawes Cooke, Jr., Esquire
John W. Fletcher, Esquire
Barnwell Whaley Patterson & Helms, LLC
P.O. Drawer H
Charleston, SC 29402

John P. Linton, Esquire
Brian C. Duffy, Esquire
Duffy & Young, LLC
96 Broad Street
Charleston, SC 29401

Andrew K. Epting, Jr., Esquire
Andrew K. Epting, Jr., LLC
46A State Street
Charleston, SC 29401



Laura L. Thomason
Legal Assistant to Tanya A. Gee
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202
(803) 771-8900