

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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

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MAY 20 2014

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

S.C. Supreme Court

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.

REPLY TO RETURN TO
RESPONDENTS' MOTION FOR COSTS

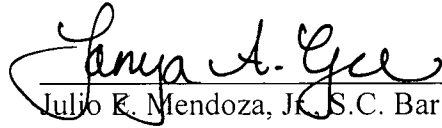
Appellants have filed a return to Respondents' motion for costs, arguing that they should not have to reimburse Respondents for the costs they incurred defending Appellants' two, nearly duplicate motions seeking to interject the deposition testimony of Mr. Edahl, which was taken in a different case after the Notice of Appeal was filed.¹ Appellants argue the motions were not frivolous, they were well-reasoned, and they sought relief that was within this Court's discretion. These arguments are belied by the following:

- Mr. Edahl's deposition testimony was irrelevant to this appeal, which, as this Court recognized, was limited to determining "whether these plaintiffs – as investors, directors, officers, and shareholders of Skywaves – may maintain a lawsuit separate from the one brought by the company itself, for what amounts to breach of the contract between Skywaves and BB&T." *Kerr v. Branch Banking & Trust Co.*, Op. No. 27379 (S.C. Sup. Ct. filed April 9, 2014 Shearouse Adv. Sh. No. 14 at 57).
- The Appellants' second motion seeking to interject the same deposition testimony was filed *after* the Supreme Court had already denied their first motion.
- In addition to filing one motion that was irrelevant and another motion that was both irrelevant and duplicative, Appellants then filed two petitions for rehearing asking this Court to reconsider the denial of those motions. These petitions for rehearing were filed even though Rule 221(c), SCACR explains that "[t]he appellate court will not entertain petitions for rehearing on a motion or petition unless the action of the court on the motion or petition has the effect of dismissing or finally deciding a party's appeal."

Considering the timing of Appellants' motions (which were filed shortly before oral argument), the irrelevance of the issue raised in those motions, and the relentlessness with which Appellants pursued these motions, Respondents ask this Court to exercise its discretion and award additional costs on appeal, limited to the actual costs it incurred defending these motions.

¹ Appellants return does not address Respondents' alternative request to award them \$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,



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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 20, 2014

THE STATE OF SOUTH CAROLINA
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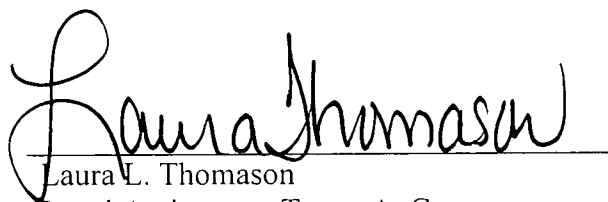
PROOF OF SERVICE

I, Laura L. Thomason, hereby certify that a copy of the Reply to the Return to 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 e-mail and by depositing a copy of the same, first-class postage prepaid, in the United States Mail, on the 20th day of May 2014 to the addresses shown below:

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A handwritten signature in black ink that reads "Laura L. Thomason". The signature is written in a cursive style and is positioned above a horizontal line.

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