

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

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JUN 16 2014

SC Court of Appeals

Branch Banking and Trust Company, Respondent,

vs.

P. Jason Luquire Appellant.

RETURN TO PETITION FOR REHEARING

Pursuant to Rules 221 and 240 of the South Carolina Rules of Appellate Procedure, respondent Branch Banking and Trust Company ("BB&T") submits this return to the Petition for Rehearing ("Petition") filed by appellant P. Jason Luquire ("Luquire"). The Petition fails to show that the court's decision overlooked or misapprehended any matters relevant to its ruling.

The court neither overlooked nor misapprehended straightforward facts that were largely undisputed. The court properly recognized Luquire's

contractual obligation as a guarantor was separate and distinct from the borrower's obligation to repay the note.

Luquire applied for and received a loan from BB&T under the name "Indigo Limited, LLC" and gave a mortgage to secure that loan on property he titled under the name "Indigo Limited, LLC." Luquire verified the existence of the limited liability company and individually guaranteed the loan made to "Indigo Limited, LLC." Luquire extended the loan through a modification with the borrower identified as "Indigo Ltd. LLC." Again, Luquire personally guaranteed the obligation for "Indigo Ltd. LLC" and verified the existence of the entity with the same taxpayer identification number he had provided for "Indigo Limited, LLC."

Undisputedly, the borrower failed to repay the note and BB&T pursued recovery against the borrower by seeking to foreclose on the real property securing the loan. The Court of Appeals was not required to address the correctness of BB&T's foreclosure action against the borrower and the land securing the loan. BB&T's action against the borrower was not opposed by the borrower.

Luquire was personally served with notice of the foreclosure action and he retained counsel on behalf of "Indigo Limited, LLC," who filed a notice of appearance. No responsive pleading was filed by Indigo Limited, LLC. To allow Luquire in this action to challenge the conduct of BB&T against the borrower in another action directly violates *Citizens and Southern Nat'l Bank v. Lanford*, 313 S.C. 540, 443 S.E.2d 549, 551 (1994) and the Court of Appeals correctly so found.

The Court of Appeals and the trial court declined to rule that Luquire should be relieved of liability under his two guaranty agreements by the name game arguments asserted at the trial and on appeal. The trial record reflects Luquire's alternative use of "Indigo Limited, LLC" and "Indigo Ltd. LLC" before and after signing the promissory notes to BB&T. Luquire continued this practice even after the modified note matured.

The Court of Appeals correctly declined to find legal significance to Luquire's "warning" to BB&T not to proceed against Indigo Limited, LLC. Luquire chose not to oppose the foreclosure action. Luquire's "warning" to BB&T that it should not seek repayment by the judicial sale of the mortgaged property did not occur until after the Master-in-Equity's notice of a foreclosure sale. Odd advice given that Luquire had titled the property and mortgaged the property under the name of "Indigo Limited, LLC."

Luquire's obligations as a guarantor for a loan were intended to, and did, survive the collection action against the borrower, even if Luquire now attempts to challenge the legitimacy of the action against the borrower. The Court of Appeals correctly held that the action against Luquire on his guaranty agreement was proper.

Luquire's reliance on *CoastalStates Bank v. Hanover Homes of South Carolina, LLC* (Opinion No. 5211 (Ct. App. Heard January 14, 2014 – Filed March 26, 2014, Withdrawn, Substituted and Refiled June 11, 2014)) is misplaced for a few reasons.

First, the text cited by Luquire was removed from the substituted opinion. The quotes attributed to the court at page 3 of Luquire's Petition are actually quotes from an article published by the lawyer of the guarantor in the case. The text appearing in the withdrawn opinion was merely a summary of the guarantor's arguments. The court reached no conclusions regarding the commentary.

Next, *CoastalStates* clearly turned on the lender's release of the borrower. There has been no such release of the borrower in this dispute. To the contrary, BB&T pursued the claims against the borrower to the fullest extent permitted by law, culminating in a deficiency judgment after a foreclosure sale.

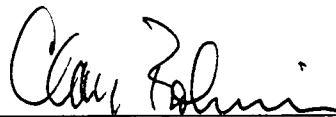
Next, the guaranty language in *CoastalStates* was narrower than the guaranty language executed on two occasions by Luquire. Under the summary judgment analysis, the *CoastalStates* guaranty was interpreted to be restricted to the borrower's liability. The *CoastalStates* court concluded that an ambiguity in the guaranty language suggested that the guarantor may have been released by the release of the borrower. Thus, the case was remanded. Luquire's guaranty agreements to BB&T provide that he assumed responsibility "for all indebtedness, obligations and liabilities." Simply stated, Luquire's guaranty obligation is broader than the guaranty in the *CoastalStates* dispute.

Luquire's dilemma is more comparable to *TranSouth Fin. Corp. v. Cochran*, 324 S.C. 290, 478 S.E.2d 63 (Ct. App. 1996). There, TranSouth obtained a judgment against a borrower for a debt guaranteed by Cochran. When the judgment against the borrower expired, TranSouth initiated an action against Cochran under his guaranty. Cochran, like Luquire, argued that when

the borrower's obligation became unenforceable, the guaranty obligation, too, became unenforceable. The court disagreed, relying on the language used in the guaranty, which was broader than the borrower's liability. There, Cochran's guaranty included losses sustained by the bank. Luquire's guaranty includes all indebtedness, which is also broader than a liability. Luquire's obligation would continue *even if* BB&T had not obtained a judgment against the borrower.

Conclusion

The Petition should be denied. Luquire has failed to show that this court misapprehended or overlooked any relevant aspect of this case. The case was properly decided and there is no need for a rehearing.



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June 13, 2014

Attorney for Respondent

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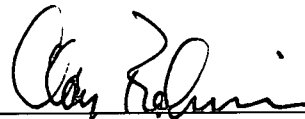
Branch Banking and Trust Company, Respondent,

v.

P. Jason Luquire, Appellant.

PROOF OF SERVICE

I certify that I have served the Respondent's Return to Petition for Rehearing by depositing a copy of it in the United States Mail, postage prepaid, on June 13, 2014, addressed to his attorneys of record, Tobias G. Ward, Jr. and J. Derrick Jackson, Tobias G. Ward, Jr., PA, Post Office Box 6138, Columbia, South Carolina 29260.



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June 13, 2014

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June 13, 2014

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals Clerk of Court
P.O. Box 11629
Columbia SC 29211

Re: Branch Banking and Trust Company v. P. Jason Luquire
Civil Action No. 2011-CP-22-01330
Appellate Case No.: 2013-000384

Ms. Kitchings:

Enclosed for filing are the original and seven copies of the Respondent's Return to Petition for Rehearing and a Proof of Service. Please file the original and return a clocked copy in the envelope provided.

Thank you for your assistance.

Sincerely,

ROBINSON, MCFADDEN & MOORE, P.C.

Clay Robinson

/aak

Enclosures

cc: Tobias G. Ward, Jr., Esquire (w/ enclosure)
J. Derrick Jackson, Esquire (w/ enclosure)

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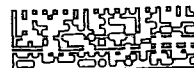
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