

# The Supreme Court of South Carolina

Robinson, McFadden & Moore

05/02/2012

## RECEIPT #64052

<b>Fee Type:</b>	Tape Fee
<b>Amount:</b>	\$20.00
<b>Payment Type:</b>	Check
<b>Reference No:</b>	24438
<b>Check/Money Order Date:</b>	05/02/2012
<b>Comments:</b>	



**ROBINSON MCFADDEN**  
ATTORNEYS AND COUNSELORS AT LAW

ROBINSON, MCFADDEN & MOORE, P.C.

COLUMBIA, SOUTH CAROLINA

May 2, 2012

**Frank R. Ellerbe, III**  
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**VIA HAND DELIVERY**

The Honorable Daniel E. Shearouse, Clerk of Court  
South Carolina Supreme Court  
1231 Gervais Street  
Columbia, SC 29201

**RECEIVED**

MAY - 2 2012

**S.C. Supreme Court**

**Re: Hook Point, LLC vs. BB&T, First Reliance Bank and Allan Risinger**  
**Case No. 2010-CP-32-05481**

Dear Mr. Shearouse:

This letter is to request a CD of the Oral Argument before the Court on March 21, 2012, in the above referenced case. Our \$20.00 check for the CD is enclosed. If you need additional information, please give me a call.

Yours truly,

ROBINSON, MCFADDEN & MOORE, P.C.

Frank R. Ellerbe, III

/tch

Enclosure

check# 24438

\$20.<sup>00</sup>



**ROBINSON MCFADDEN**  
ATTORNEYS AND COUNSELORS AT LAW

ROBINSON, MCFADDEN & MOORE, P.C.

COLUMBIA, SOUTH CAROLINA

April 27, 2012

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APR 27 2012

**S.C. Supreme Court**

Frank R. Ellerbe, III

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**VIA HAND DELIVERY**

The Honorable Daniel E. Shearouse, Clerk of Court  
South Carolina Supreme Court  
1231 Gervais Street  
Columbia, SC 29201

**Re: Hook Point, LLC vs. BB&T, First Reliance Bank and Allan Risinger  
Case No. 2010-CP-32-05481**

Dear Mr. Shearouse:

Enclosed for filing are the original and six (6) copies of the Return of Branch Banking & Trust Company to Respondent's Petition for Rehearing. Also enclosed is our Proof of Service.

Please file stamp the extra copy provided and return it with our courier. Thank you for your assistance. Should you have any questions, please call.

Yours truly,

ROBINSON, MCFADDEN & MOORE, P.C.

Frank R. Ellerbe, III

FRE/tch

Enclosures

cc w/enc:

Thornwell F. Sowell, Esquire  
Frederick A. Gertz, Esquire  
S. Jahue Moore, Sr., Esquire  
William P. Walker, Jr., Esquire



# The Supreme Court of South Carolina

Robinson, McFadden & Moore

04/27/2012

## RECEIPT #64011

<b>Case No:</b>	2011-185386
<b>Case Short Title:</b>	Hook Point, LLC v. Branch Banking
<b>Event:</b>	Motion - Received (Legacy)
<b>Fee Type:</b>	Motion Fee
<b>Amount:</b>	\$25.00
<b>Payment Type:</b>	Check
<b>Reference No:</b>	24358
<b>Check/Money Order Date:</b>	04/23/2012
<b>Comments:</b>	Hook v. BB&T



THORNWELL F. SOWELL  
Direct Dial 803 231.7835  
Direct Fax 803 231.7885  
Email bsowell@sowellgray.com

April 26, 2012

**RECEIVED**

APR 26 2012

**VIA HAND-DELIVERY**

The Honorable Daniel E. Shearouse, Clerk  
South Carolina Supreme Court  
1231 Gervais Street  
Columbia, South Carolina 29201

**S.C. Supreme Court**

RE: Hook Point, LLC vs. Branch Banking and Trust Company, First Reliance Bank, and Allan Risinger  
Civil Action No.: 2010-CP-32-05481  
Our File No.: 6338/1500

Dear Mr. Shearouse:

Enclosed are the original and seven (7) copies of Respondent's Petition for Rehearing and Memorandum in Support of Petition for Rehearing in the above-referenced matter along with this Firm's check in the amount of Twenty-Five and 0/100 Dollars (\$25.00) representative of the filing fee. I would appreciate your filing as appropriate and returning a clocked-in copy via our courier.

By copy of this letter and as evidenced by the Proof of Service, we are serving same on all counsel of record.

Thank you for your assistance. Please let me know should you have any questions.

Very truly yours,

Thornwell F. Sowell  
TFS:ksa

cc: Frank R. Ellerbe, III, Esquire  
S. Jahue Moore, Sr., Esquire



April 26, 2012  
Page 2

Litigation is our Business.

William P. Walker, Jr., Esquire  
S. Kirkpatrick Morgan, Jr., Esquire  
Frederick A. Gertz, Esquire



April 23, 2012

Frank R. Ellerbe, III

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RECEIVED

APR 23 2012

S.C. Supreme Court

VIA HAND DELIVERY

The Honorable Daniel E. Shearouse, Clerk of Court  
South Carolina Supreme Court  
1231 Gervais Street  
Columbia, SC 29201

**Re: Hook Point, LLC vs. BB&T, First Reliance Bank and Allan Risinger  
Case No. 2010-CP-32-05481**

Dear Mr. Shearouse:

Enclosed for filing are the original and six (6) copies of a Motion for Clarification filed on behalf of Appellant, Branch Banking & Trust Company in the above-referenced case. Our check in the amount of \$25.00 for the filing fee is also enclosed.

Please file stamp the extra copy provided and return it with our courier. Thank you for your assistance. Should you have any questions, please call.

Yours truly,

ROBINSON, MCFADDEN & MOORE, P.C.

Frank R. Ellerbe, III

FRE/tch

Enclosures

cc w/enc:

Thornwell F. Sowell, Esquire  
Frederick A. Gertz, Esquire  
S. Jahue Moore, Sr., Esquire  
William P. Walker, Jr., Esquire

**THE STATE OF SOUTH CAROLINA**  
**In The Supreme Court**

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Hook Point, LLC, Respondent,

v.

Branch Banking and Trust  
Company, First Reliance Bank,  
and Allan Risinger, Defendants,

Of Whom Branch Banking and  
Trust Company is, Appellant.

---

Appeal from Lexington County  
William P. Keesley, Circuit Court Judge

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Opinion No. 27115  
Heard March 21, 2012 – Filed April 11, 2012

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**REVERSED**

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Frank R. Ellerbe, III, and Wilson W. McDonald, both of Robinson,  
McFadden & Moore, of Columbia, for Appellant.

Frederick A. Gertz, of Gertz & Moore, of Columbia, Thornwell F.  
Sowell and David C. Dick, both of Sowell, Gray, Stepp & Laffitte,  
of Columbia, for Respondent.

---

**JUSTICE PLEICONES:** Respondent Hook Point, LLC (Hook Point) was granted a preliminary injunction preventing Appellant Branch Banking and Trust Company (BB&T) from drawing on, and defendant First Reliance Bank (First Reliance) from honoring, a \$1.5 million letter of credit. BB&T appeals. We reverse.

## FACTS

In late 2007, Hook Point sought a loan from BB&T for the purpose of developing a subdivision on property Hook Point owned on Lake Murray called Panama Pointe. BB&T issued a commitment letter to Hook Point in September 2007 indicating that it would loan the company \$5.1 million and establish a \$2 million line of credit to enable Hook Point to develop the subdivision. Security for the loan included a first mortgage on the Panama Pointe property, personal guarantees of Hook Point's four principals, and a \$1.5 million standby letter of credit issued by First Reliance in favor of BB&T.

Hook Point applied to and obtained a letter of credit (LC) from First Reliance that named BB&T as beneficiary.<sup>1</sup> The LC was secured by a cash deposit at First Reliance of approximately \$310,000, several real properties owned by a Hook Point affiliate, and personal guarantees of the Hook Point principals. Under the terms of the LC, BB&T was permitted to make draws upon presentation of a draft accompanied by

- 1) The original letter of credit. 2) A notarized, sworn statement by the Beneficiary, or an officer thereof, that: a) The Borrower has failed to perform its obligations to the Beneficiary under the Loan Agreement and Promissory Note dated November 16, 2007, executed by and between [Hook Point and BB&T] b) The amount of the draft does not exceed the amount due to the Beneficiary

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<sup>1</sup> A person who applies for a letter of credit is the applicant (in this case, Hook Point). The bank that issues the LC on behalf of the applicant is the issuer (First Reliance Bank). The entity that has the right to draw on the LC is the beneficiary (BB&T).

under the obligations; and; [sic] c) The signer has the authority to act for the Beneficiary with regard to the Letter of Credit.

The loan from BB&T to Hook Point was finalized in a loan agreement on the same day the LC was issued. Hook Point proceeded to complete infrastructure work in the development and began construction on the first home before determining that market conditions had become unfavorable to the project as originally contemplated. Hook Point defaulted on the Loan Agreement and related notes and loan documents by, among other things, failing to pay property taxes, to make interest payments due under the notes, or to pay the principal due under one note. BB&T gave Hook Point notice of default in September 2010 and accelerated the loans under the terms of the Loan Agreement on December 21, 2010. On the same day, BB&T tendered a demand letter to First Reliance, seeking to draw the full amount of the LC.

On December 23, Hook Point filed suit alleging several causes of action against BB&T, including for fraudulent misrepresentation by which BB&T induced Hook Point to enter the loan agreement. Hook Point admitted to being \$70,000 in arrears on interest but argued that the terms of the agreement did not permit BB&T to draw the full amount of the LC if that exceeded the amount of interest due. It also sought an ex parte temporary restraining order preventing First Reliance from honoring a draft on the LC by BB&T, which the court granted. After a hearing, the court also granted a preliminary injunction against drafts on or honor of the LC beyond amounts of accrued interest, requiring extension of the LC for one year, and requiring Hook Point to post a \$50,000 bond with the court. This appeal followed, and the case was transferred to this Court pursuant to Rule 204(b), SCACR.

## ISSUE

Did the circuit court err when it granted a preliminary injunction?

## STANDARD OF REVIEW

The grant of an injunction is reviewed for abuse of discretion. Strategic Resources Co. v. BCS Life Ins. Co., 367 S.C. 540, 544, 627 S.E.2d 687, 689

(2006). “An abuse of discretion occurs when the decision of the trial court is unsupported by the evidence or controlled by an error of law.” Peek v. Spartanburg Reg’l Healthcare Sys., 367 S.C. 450, 454, 626 S.E.2d 34, 36 (Ct. App. 2005).

## DISCUSSION

BB&T contends that the circuit court erred when it granted the preliminary injunction. We agree.

“A preliminary injunction should issue only if necessary to preserve the status quo ante, and only upon a showing by the moving party that without such relief it will suffer irreparable harm, that it has a likelihood of success on the merits, and that there is no adequate remedy at law.” Poynter Investments, Inc. v. Century Builders of Piedmont, Inc., 387 S.C. 583, 586-87, 694 S.E.2d 15, 17 (2010).

On the second element, likelihood of success on the merits, BB&T argues that the grounds for refusing to honor a letter of credit are exceedingly narrow and that Hook Point has failed to show it is likely to succeed on the merits under that standard. Thus, BB&T argues that the circuit court erred when it found that Hook Point had sufficiently established this element. We agree.

A letter of credit is a financial instrument designed to reduce the need for counterparties in a transaction to trust one another by adding an intermediary bank to the transaction. This intermediary bank extends credit to one party (typically the buyer in a sales transaction<sup>2</sup>) so that the other need not do so. In a sales transaction, the letter of credit typically requires a seller to represent that he has shipped goods under a sales contract and to document this representation with a bill of lading in order to draw on the LC provided by the buyer. This arrangement entails risk to the buyer, who is vulnerable to

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<sup>2</sup> Courts do not distinguish between types of LCs for purposes of analyzing whether a court should grant an injunction against honoring them. See New York Life Ins. Co. v. Hartford Nat’l Bank & Trust Co., 173 Conn. 492, 499-500, 378 A.2d 562, 566 (Conn. 1977).

loss should the seller present fraudulent documents or deliberately ship nonconforming goods. Nevertheless, the usefulness of a letter of credit depends on its being the virtual equivalent of cash. The judicial doctrine that has developed around letters of credit reflects courts' understanding of this background and the importance to commerce of respecting the terms of this financial instrument so that it remains available as a reliable means of shifting financial risk.

Specifically, this understanding is embodied in the independence principle, under which courts recognize that the obligations created in the letter of credit are independent of the obligations of the underlying contract. See, e.g., Intraworld Industries, Inc. v. Girard Trust Bank, 461 Pa. 343, 357, 336 A.2d 316, 323 (Pa. 1975) ("The primary purpose of a letter of credit is to provide assurance to the seller of goods . . . of prompt payment upon presentation of documents. A seller who would otherwise have only the solvency and good faith of his buyer as assurance of payment may, with a letter of credit, rely on the full responsibility of a bank. Promptness is assured by the engagement of the bank to honor drafts upon the presentation of documents. The great utility of letters of credit flows from the independence of the issuer-bank's engagement from the underlying contract between beneficiary and customer. Long-standing case law has established that, unless otherwise agreed, the issuer deals only in documents. If the documents presented conform to the requirements of the credit, the issuer may and must honor demands for payment, regardless of whether the goods conform to the underlying contract between beneficiary and customer."); Itek Corp. v. First Nat'l Bank of Boston, 730 F.2d 19 (1st Cir. 1984) (Breyer, J.) ("Parties to a contract may use a letter of credit in order to make certain that contractual disputes wend their way towards resolution with money in the beneficiary's pocket rather than in the pocket of the contracting party. Thus, courts typically have asserted that such letters of credit are 'independent' of the underlying contract. . . . And they have recognized that examining the rights and wrongs of a contract dispute to determine whether a letter of credit should be paid risks depriving its beneficiary of the very advantage for which he bargained, namely that the dispute would be resolved while he is in possession of the money." (citations omitted)); Roger J. Johns and Mark S. Blodgett, Fairness at the Expense of Commercial Certainty: The International Emergence of Unconscionability and Illegality As Exceptions to the

Independence Principle of Letters of Credit and Bank Guarantees, 31 N. ILL. U. L. REV. 297, 309 (2011) (“[T]he common concern among all stakeholders is that as the ease with which letters of credit . . . can be enjoined increases their commercial utility decreases.”).

Nevertheless, courts have carved out a very narrow exception to the independence principle. Aside from permitting the intermediary bank to refuse to honor forged documents presented in order to draw on the letter of credit, courts enjoin the payment of LCs for “fraud in the transaction” when “the beneficiary’s conduct has so vitiated the entire transaction that the legitimate purposes of the independence of the issuer’s obligation would no longer be served.” Itek, 730 F.2d at 25 (internal quotation marks and citations omitted).

Put simply, the cases in which the “fraud in the transaction” exception has been applied are those in which the underlying transaction or the demand for payment is clearly a sham, and it is apparent that rigid adherence to the independence principle would facilitate what amounts to a scheme to defraud. In the case that established the fraud in the transaction exception, the beneficiary made an actual shipment so that the shipping documents were real, but substituted “rubbish” in place of salable bristles. Sztejn v. J. Henry Schroder Banking Corp., 177 Misc. 719, 31 N.Y.S.2d 631 (Sup. Ct. 1941). In another leading case, the beneficiary was not permitted to collect on the LC because the fall of the Iranian government so altered conditions that the contract for military equipment could not be completed, and thus there was no possibility that the original purpose of the transaction of which the LC was a part could be accomplished. In addition, no other legal recourse was available to the applicant, and the applicant had cancelled the underlying contract in compliance with its force majeure provisions, which called for cancellation of the LC upon cancellation of the underlying contract. Itek, supra.

Several other cases also illustrate the narrowness of the fraud in the transaction exception. See Intraworld Industries, Inc. v. Girard Trust Bank, 461 Pa. 343, 357, 336 A.2d 316, 361 (Pa. 1975) (“We conclude that, if the documents presented by [the beneficiary of the LC] are genuine in the sense of having some basis in fact, an injunction must be refused. . . . [N]either the trial court nor this Court may attempt to determine [the beneficiary’s] actual

entitlement to payment under the lease.”); see also Roman Ceramics Corp. v. Peoples Nat. Bank, 714 F.2d 1207, 1209 (3d Cir. 1983) (permitting issuing bank to dishonor LC when it knew underlying invoice had been paid and that contrary certification was false); Dynamics Corp. of Am. v. Citizens & S. Nat. Bank, 356 F.Supp. 991, 999 (D.C. Ga. 1973) (describing court’s role as limited to ensuring that the defendant could not “run off with plaintiff’s money on a *pro forma* declaration which has absolutely no basis in fact”); Mid-America Tire, Inc. v. PTZ Trading Ltd., 95 Ohio 367, 392, 768 N.E.2d 619, 641 (Ohio 2002) (affirming injunction against honor of LC where defendants repeatedly lied to and misled plaintiffs about the tires available for sale in order to pressure them into making the LC available before they “could discover the truth”).

The Uniform Commercial Code (UCC) incorporated this judicially developed doctrine into Article 5, the UCC formulation of the law governing letters of credit. Thus, South Carolina’s adoption of the UCC incorporated into South Carolina law the same independence principle and narrow exception limiting the enjoinder of payment of LCs to instances of egregious fraud that operates to vitiate the entire transaction. In particular, UCC Article 5, S.C. Code §§ 36-5-101 through -119, governs letters of credit. S.C. Code Ann. § 36-5-109(b) (2003) sets forth the conditions under which a court may enjoin honor of a letter of credit as follows, in relevant part:

If an applicant claims that a required document is forged or materially fraudulent or that honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant, a court of competent jurisdiction may temporarily or permanently enjoin the issuer from honoring a presentation or grant similar relief against the issuer or other persons only if the court finds that:

...

(3) all of the conditions to entitle a person to the relief under the law of this State have been met; and

(4) on the basis of the information submitted to the court, the applicant is more likely than not to succeed under its claim of forgery or material fraud . . . .

For purposes of a preliminary injunction, subsection (3) effectively incorporates the requirements of the common law related to injunctions generally: that the movant show that irreparable harm will result and that no adequate remedy at law exists if the court refuses the injunction. Poynter Investments, supra.

Subsection (4) codifies not only the general common law requirement that the movant show a likelihood of success on the merits but also the special rule for letters of credit allowing only a narrow exception for fraud in the transaction, as discussed above. The Official Comment makes this codification explicit.<sup>3</sup>

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<sup>3</sup> The Official Comment states:

Material fraud by the beneficiary occurs only when the beneficiary has no colorable right to expect honor and where there is no basis in fact to support such a right to honor. The section indorses articulations such as those stated in *Intraworld Indus. v. Girard Trust Bank*, 336 A.2d 316 (Pa. 1975), *Roman Ceramics Corp. v. People's Nat. Bank*, 714 F.2d 1207 (3d Cir. 1983), and similar decisions and embraces certain decisions under Section 5-114 that relied upon the phrase "fraud in the transaction." Some of these decisions have been summarized as follows in *Ground Air Transfer v. Westate's Airlines*, 899 F.2d 1269, 1272-73 (1st Cir. 1990):

We have said throughout that courts may not "normally" issue an injunction because of an important exception to the general "no injunction" rule. The exception, as we also explained in *Itek*, 730 F.2d at 24-25, concerns "fraud" so serious as to make it obviously pointless and unjust to permit the beneficiary to obtain the money. Where the circumstances "plainly" show that the

In the present case, Hook Point argues that BB&T is not entitled to draw on the LC because the commitment letter described the LC as “to be used as last resort for interest carry.” Hook Point also seeks to construe as fraudulent BB&T’s demand on the LC. The LC, however, by its terms requires only that BB&T represent that “[t]he Borrower has failed to perform its obligations . . . under the Loan Agreement and Promissory Note” and that “[t]he amount of the draft does not exceed the amount due to the Beneficiary under the obligation.” Thus, contrary to Hook Point’s arguments, the plain language of the LC permitted BB&T to use it if Hook Point defaulted under any obligation of the loan agreement and note, including an acceleration clause. Furthermore, no term in the loan agreement or note to which the LC refers limits BB&T’s use of the LC to interest due. Thus, it is incontrovertible that BB&T had some basis in fact for the representations it made when it drew on the LC.

If there is any validity to Hook Point’s argument that the commitment letter limited the utilization of the LC exclusively to interest, that is an ordinary contract dispute that raises no implication of fraud by BB&T sufficient to trigger the narrow fraud exception. Dynamics Corp., *supra*. In fact, \$500,000 had been reserved by BB&T from the original \$5.1 million loan for the purpose of drawing down interest carry. A more plausible explanation for the “last resort” language in the commitment letter is that it

---

underlying contract forbids the beneficiary to call a letter of credit, Itek, 730 F.2d at 24; where they show that the contract deprives the beneficiary of even a “colorable” right to do so, *id.*, at 25; where the contract and circumstances reveal that the beneficiary’s demand for payment has “absolutely no basis in fact,” *id.*; see Dynamics Corp. of America, 356 F. Supp. at 999; where the beneficiary’s conduct has “so vitiated the entire transaction that the legitimate purposes of the independence of the issuer’s obligation would no longer be served,” Itek, 730 F.2d at 25 (quoting Roman Ceramics Corp. v. Peoples National Bank, 714 F.2d 1207, 1212 N.12, 1215 (3d Cir. 1983) (quoting Intraworld Indus., 336 A.2d at 324-25)); then a court may enjoin payment.

was intended merely as an accommodation to the principals that BB&T would not seek to draw on the LC for interest until the reserve had been exhausted. That language, whatever it meant, is a red herring in this case as the draw on the LC was sought not only to recoup interest but as a result of multiple defaults that caused BB&T to invoke the acceleration of the entire debt.

Indeed, Hook Point's admission that BB&T was entitled to any draw on the LC for past due interest was conclusive as to the issue whether honor of the LC should be enjoined, since BB&T's entitlement to past due interest is alone some basis in fact on which BB&T could demand payment under the LC. Moreover, the strict standard required under § 36-5-109(b)(4) is that the alleged fraud vitiate the entire transaction, that is, it deprives Hook Point of any benefit from the transaction. In this case, there is no dispute that Hook Point received \$5.1 million from BB&T. These facts hardly parallel the receipt of "rubbish" instead of bargained-for salable bristles. See Sztejn v. J. Henry Schroder Banking Corp., supra.

Thus, there is no evidence Hook Point is more likely than not to succeed on a claim of material fraud so egregious as to vitiate the entire transaction as required under § 36-5-109(b)(4), and the circuit court failed to evaluate the evidence under the strict standard required for injunctions against the honor of LCs. Under the proper standard, it is clear that BB&T had a sufficient basis in fact upon which to demand payment under the LC. Thus, the circuit court's finding was based upon an error of law.

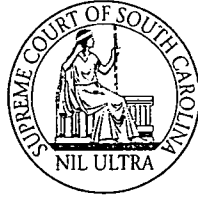
Because this issue is dispositive of the case, we need not address BB&T's remaining issues. Rule 220(b), SCACR; e.g., Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999).

## CONCLUSION

The standard under which a fraud in the transaction claim must be measured when deciding whether to enjoin honor of a letter of credit requires that the beneficiary have no colorable claim or basis in fact for asserting its rights under the letter of credit. In this case BB&T has, in our view, not only a colorable claim but an undeniable basis in fact for asserting its rights under

the letter of credit. Therefore, the circuit court erred when it granted the preliminary injunction. **REVERSED.**

**TOAL, C.J., BEATTY, HEARN, JJ., and Acting Justice James E. Moore, concur.**



# The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

March 13, 2012

Frank R. Ellerbe, III, Esquire  
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Robinson, McFadden & Moore  
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Columbia, SC 29202

Frederick A. Gertz, Esquire  
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Thornwell F. Sowell, Esquire  
David C. Dick, Esquire  
Sowell, Gray, Stepp & Laffitte, L.L.C.  
P. O. Box 11449  
Columbia, SC 29211

Re: Hook Point, LLC v. Branch Banking

Dear Counsel:

The record in the above case has been reviewed and the time allotment for oral argument for this case is as follows:

Appellant	10 minutes
Respondent	10 minutes
Appellant in Reply	5 minutes

This case is scheduled for hearing on Wednesday, March 21, 2012.

Very truly yours,

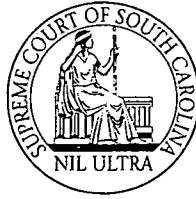
Daniel E. Shearouse, Clerk

By Debbie M. Hopkins

Administrative Assistant

DES/dmh

cc: S. Jahue Moore, Esquire



# The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

January 26, 2012

Frank R. Ellerbe, III, Esquire  
Wilson W. McDonald, Esquire  
Robinson, McFadden & Moore  
P. O. Box 944  
Columbia, SC 29202

Re: Hook Point, LLC v. Branch Banking

Dear Counsel:

The following Order has been endorsed on your Motion to Amend Order on Appeal in the above entitled case on appeal.

“Motion denied.

s/ Jean H. Toal C.J.  
For the Court

Justice John W. Kittredge,  
not participating

January 26, 2012.”

By copy of this letter we are advising all interested parties of the action of the Court in this matter.

Hook Point, LLC v. Branch Banking  
Page Two  
January 26, 2012

Very truly yours,

*Daniel E. Shearouse*  
35

CLERK

DES/dmh

cc: Frederick A. Gertz, Esquire  
Thornwell F. Sowell, Esquire  
David C. Dick, Esquire  
S. Jahue Moore, Esquire

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Case No. 2010-CP-32-05481

**RECEIVED**

DEC 30 2011

S.C. Supreme Court

Hook Point, LLC,

Respondent

v.

Branch Banking and Trust Company, First  
Reliance Bank, and Allan Risinger,

Defendants,

Of Whom Branch Banking and Trust  
Company is,

Appellant.

Motion to Amend Order on Appeal

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, the Appellant, Branch Banking and Trust Company, ("BB&T") moves the court for an order amending the order on appeal. That order granted a preliminary injunction prohibiting BB&T from exercising certain rights under a letter of credit. BB&T's appeal requests that the prohibitions be reversed. The appealed order also required the letter of credit to be extended for one year until February 13, 2012. By this motion BB&T requests that the order be amended to require a further extension of the letter of credit.

## **Background**

The action giving rise to the appeal arose from a real estate development loan made by BB&T to respondent Hook Point, LLC (“Hook Point”) that closed in November 2007. (ROA, pp.81-118). Among the documents required for the closing of the loan was a letter of credit in the amount of \$1,500,000 issued by defendant First Reliance Bank to Hook Point in favor of BB&T. (ROA, pp. 98-99). In December 2010 BB&T submitted a demand to First Reliance for the full amount of the letter of credit. (ROA, p. 100-102). Hook Point then filed the underlying action (ROA, pp. 18-27) and obtained a preliminary injunction preventing payment of the full amount of the letter of credit. (ROA, pp. 8-17). BB&T has appealed the order granting the preliminary injunction.

At the time the action was commenced the expiration date of the letter of credit was February 13, 2011 (ROA p. 48). As part of the order granting the preliminary injunction the circuit court required the letter of credit to be extended for one year until February 13, 2012. (ROA, p. 16). This appeal was filed in the Court of Appeals and argued in that Court on November 15, 2011. On November 28, 2011 the Court of Appeals sought certification of the appeal to this Court pursuant to Rule 204(b). On December 1, 2011 the Chief Justice issued an order accepting the case.

## **Argument and Request for Relief**

Because of the transfer of the appeal from the Court of Appeals to this Court it appears that the appeal may not be decided before the current date on which the letter of credit will expire. While BB&T does not concede that it will lose any of its rights under the letter of credit if it is not extended<sup>1</sup>, there will be some ambiguity created if the expiration date of February 13,

---

<sup>1</sup> It is clear that BB&T made a timely and complete demand for full payment of the letter of credit well before it expired.

2012 passes and the letter of credit has not been paid. In the proceedings before the Circuit Court it was recognized that an extension of the letter of credit was appropriate and counsel for Hook Point assured the circuit court that the extension had been requested. (ROA, p. 142). The same grounds for the extension exist now.

Counsel for BB&T has contacted counsel for the other parties to request a voluntary extension but no extension has been made. Accordingly, BB&T requests an order of this Court requiring the letter of credit be extended for another year or dissolving the injunction if the extension is not made.

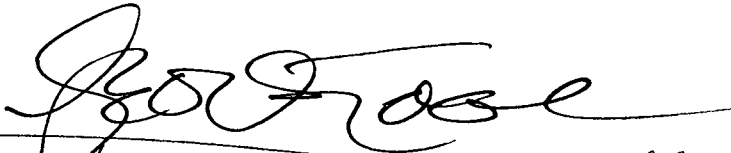


---

Frank R. Ellerbe, III  
Wilson W. McDonald  
ROBINSON, MCFADDEN & MOORE, P.C.  
Post Office Box 944  
Columbia, SC 29202  
(803) 779-8900  
Attorneys for Appellant

December 30, 2011

*Motion denied.*



---

*For the Court* *C.J.*

*Justice John W. Kittredge, not participating*

*January 26, 2012*

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Case No. 2010-CP-32-05481

RECEIVED

DEC 30 2011

S.C. Supreme Court

Hook Point, LLC.....Respondent,

v.

Branch Banking and Trust Company, First  
Reliance Bank, and Allan Risinger.....Defendants,

Of whom Branch Banking and Trust  
Company is.....Appellant.

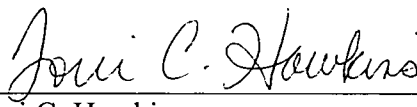
CERTIFICATE OF SERVICE

This is to certify that I, Toni Hawkins, paralegal with the law firm of Robinson, McFadden & Moore, P.C., have this day caused to be served upon the person(s) named below the **Motion to Amend Order on Appeal** in the foregoing matter by placing copies of same in the United States Mail, postage prepaid, in envelopes addressed as:

Thornwell F. Sowell, Esquire  
David C. Dick, Esquire  
Sowell Gray Stepp & Laffitte, LLC  
1310 Gadsden Street  
Post Office Box 11449  
Columbia, SC 29211

Frederick A. Gertz, Esquire  
Gertz & Moore  
1416 Laurel Street  
P.O. Box 456  
Columbia, SC 29202

Dated at Columbia, South Carolina, this 30<sup>th</sup> day of December, 2011.

---

Toni C. Hawkins

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

William P. Keesley, Circuit Court Judge

**RECEIVED**

JAN - 9 2012

S.C. Supreme Court

Case No. 2010-CP-32-05481

Hook Point, LLC,.....Respondent

v.

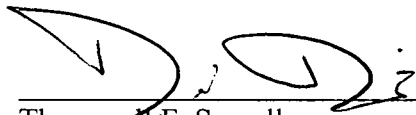
Branch Banking and Trust Company, First  
Reliance Bank, and Allan Risinger,..... Defendants,

Of Whom Branch Banking and Trust  
Company is, ..... Appellant.

Return to Motion to Amend Order on Appeal

Pursuant to Rule 240(d) of the South Carolina Appellate Court Rules, the Respondent, Hook Point, LLC (“Hook Point”) hereby responds to Appellant’s Motion to Amend Order on Appeal.

Respondent Hook Point, LLC, has no objection to an order of this Court requiring the letter of credit issued by First Reliance Bank to Hook Point in favor of BB&T to be extended beyond its current expiration date of February 13, 2012.



---

Thornwell F. Sowell  
David C. Dick  
SOWELL GRAY STEPP & LAFFITTE, L.L.C.  
Post Office Box 11449  
Columbia, South Carolina 29211  
(803) 929-1400

and

Frederick A. Gertz  
GERTZ & MOORE  
Post Office Box 456  
Columbia, South Carolina 29202  
(803) 252-1524

**Attorneys for Respondent**

January 9, 2012

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

---

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

William P. Keesley, Circuit Court Judge

---

Case No. 2010-CP-32-05481

---

Hook Point, LLC,.....Respondent

v.

Branch Banking and Trust Company, First  
Reliance Bank, and Allan Risinger,..... Defendants,

Of Whom Branch Banking and Trust  
Company is,..... Appellant.

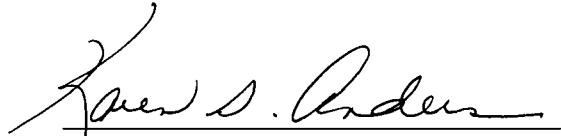
---

PROOF OF SERVICE

---

This is to certify that on Monday, January 9, 2012, I, Karen Anders, Paralegal with the law firm of Sowell Gray Stepp & Laffitte, LLC, attorneys for Respondent, served upon the person(s) named below the Return to Motion to Amend Order on Appeal in the above-captioned matter by placing copies of same in the United States Mail, postage prepaid, addressed as follows:

Frank R. Ellerbe, III, Esquire  
Robinson, McFadden & Moore, P.C.  
Post Office Box 944  
Columbia, South Carolina 29202



---

Karen S. Anders

January 9, 2012



# The South Carolina Supreme Court

DANIEL E. SHEAROUSE  
CLERK OF COURT  
BRENDA F. SHEALY  
DEPUTY CLERK

P.O. BOX 11330  
COLUMBIA, S.C. 29211  
PHONE NO. 734-1080

To: Thornwell F. Sowell, Esquire  
David C. Dick, Esquire  
From: Daniel E. Shearouse  
Date: January 24, 2012  
RE: March Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the March 2012 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

Court will meet the days of March 6, 7, 8, 20 and 21. Please notify this office in writing prior to January 31, 2012 as to any scheduling conflicts for the March term, and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict, please advise as to the specific nature of the conflict.

Hook Point, LLC v. Branch Banking



# The South Carolina Supreme Court

DANIEL E. SHEAROUSE  
CLERK OF COURT  
BRENDA F. SHEALY  
DEPUTY CLERK

P.O. BOX 11330  
COLUMBIA, S.C. 29211  
PHONE NO. 734-1080

To: S. Jahue Moore, Esquire  
From: Daniel E. Shearouse  
Date: January 24, 2012  
RE: March Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the March 2012 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

Court will meet the days of March 6, 7, 8, 20 and 21. Please notify this office in writing prior to January 31, 2012 as to any scheduling conflicts for the March term, and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict, please advise as to the specific nature of the conflict.

Hook Point, LLC v. Branch Banking



# The South Carolina Supreme Court

DANIEL E. SHEAROUSE  
CLERK OF COURT  
BRENDA F. SHEALY  
DEPUTY CLERK

P.O. BOX 11330  
COLUMBIA, S.C. 29211  
PHONE NO. 734-1080

To: Frederick A. Gertz, Esquire  
From: Daniel E. Shearouse  
Date: January 24, 2012  
RE: March Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the March 2012 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

Court will meet the days of March 6, 7, 8, 20 and 21. Please notify this office in writing prior to January 31, 2012 as to any scheduling conflicts for the March term, and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict, please advise as to the specific nature of the conflict.

Hook Point, LLC v. Branch Banking



# The South Carolina Supreme Court

DANIEL E. SHEAROUSE  
CLERK OF COURT  
BRENDA F. SHEALY  
DEPUTY CLERK

P.O. BOX 11330  
COLUMBIA, S.C. 29211  
PHONE NO. 734-1080

To: Frank R. Ellerbe, III, Esquire  
Wilson W. McDonald, Esquire  
From: Daniel E. Shearouse  
Date: January 24, 2012  
RE: March Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the March 2012 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

Court will meet the days of March 6, 7, 8, 20 and 21. Please notify this office in writing prior to January 31, 2012 as to any scheduling conflicts for the March term, and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict, please advise as to the specific nature of the conflict.

Hook Point, LLC v. Branch Banking



THORNWELL F. SOWELL  
Direct Dial 803 231.7835  
Direct Fax 803 231.7885  
Email bsowell@sowellgray.com

January 9, 2012

**VIA HAND-DELIVERY**

The Honorable Daniel E. Shearouse, Clerk  
South Carolina Supreme Court  
1231 Gervais Street  
Columbia, South Carolina 29201

RE: Hook Point, LLC vs. Branch Banking and Trust Company, First Reliance Bank, and Allan Risinger  
Civil Action No.: 2010-CP-32-05481  
Our File No.: 6338/1500

Dear Mr. Shearouse:

Enclosed are the original and seven (7) copies of Return to Motion to Amend Order on Appeal on behalf of Respondent, Hook Point, LLC, in the above-referenced matter. I would appreciate your filing as appropriate and returning a clocked-in copy via our courier.

By copy of this letter and as evidenced by the Proof of Service, we are serving same on all counsel of record.

Thank you for your assistance. Please let me know should you have any questions.

Very truly yours,

Thornwell F. Sowell  
TFS:ksa

cc: Frank R. Ellerbe, III, Esquire  
S. Jahue Moore, Sr., Esquire

**RECEIVED**

'JAN - 9 2012

**S.C. Supreme Court**

William P. Walker, Jr., Esquire  
S. Kirkpatrick Morgan, Jr., Esquire  
Frederick A. Gertz, Esquire



December 30, 2011

Frank R. Ellerbe, III

1901 MAIN STREET, SUITE 1200

POST OFFICE BOX 944

COLUMBIA, SOUTH CAROLINA 29202

PH

(803) 779-8900 | (803) 227-1112 *direct*

FAX

(803) 252-0724 | (803) 744-1556 *direct*

fellerbe@robinsonlaw.com

**VIA HAND DELIVERY**

The Honorable Daniel E. Shearouse, Clerk of Court  
South Carolina Supreme Court  
1231 Gervais Street  
Columbia, SC 29201

**Re: Hook Point, LLC vs. BB&T, First Reliance Bank and Allan Risinger  
Case No. 2010-CP-32-05481**

Dear Mr. Shearouse:

Enclosed for filing are the original and six (6) copies of a Motion to Amend Order on Appeal filed on behalf of Appellant, Branch Banking & Trust Company in the above-referenced case. Our check in the amount of \$25.00 for the filing fee is also enclosed.

Please file stamp the extra copy provided and return it with our courier. Thank you for your assistance. Should you have any questions, please call.

Yours truly,

ROBINSON, MCFADDEN & MOORE, P.C.

Frank R. Ellerbe, III

FRE/tch  
Enclosures  
cc w/enc:

Thornwell F. Sowell, Esquire  
Frederick A. Gertz, Esquire  
S. Jahue Moore, Sr., Esquire  
William P. Walker, Jr., Esquire  
S. Kirkpatrick Morgan, Jr., Esquire

**RECEIVED**

DEC 30 2011

**S.C. Supreme Court**

The Supreme Court of South Carolina

Hook Point, LLC, Respondent,

v.

Branch Banking and Trust  
Company, First Reliance Bank,  
and Allan Risinger,

Defendants,

Of Whom Branch Banking and  
Trust Company is,

Appellant.

The Honorable William P. Keesley  
Lexington County  
Trial Court Case No. 2010-CP-325481

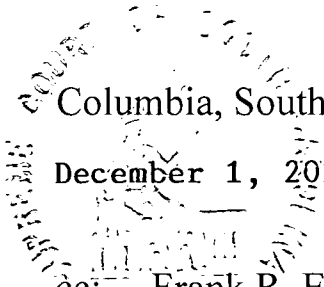
ORDER

Pursuant to Rule 204(b) of the South Carolina Appellate Court Rules,  
this appeal is hereby certified for review by the South Carolina Supreme  
Court. Upon receipt of this order, the Court of Appeals is hereby directed to  
forward the case file, all records and briefs and any exhibits in file to this  
Court.

IT IS SO ORDERED.

  
FOR THE COURT





Columbia, South Carolina

December 1, 2011

cc: Frank R. Ellerbe, III, Esquire  
Wilson W. McDonald, Esquire  
Frederick A. Gertz, Esquire  
Thornwell F. Sowell, Esquire  
David C. Dick, Esquire  
S. Jahue Moore, Esquire  
The Honorable Tanya Gee

# The Supreme Court of South Carolina

Hook Point, LLC,

Respondent,

v.

Branch Banking and Trust  
Company, First Reliance Bank,  
and Allan Risinger,

Defendants,

Of Whom Branch Banking and  
Trust Company is,

Appellant.

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DEC 02 2011

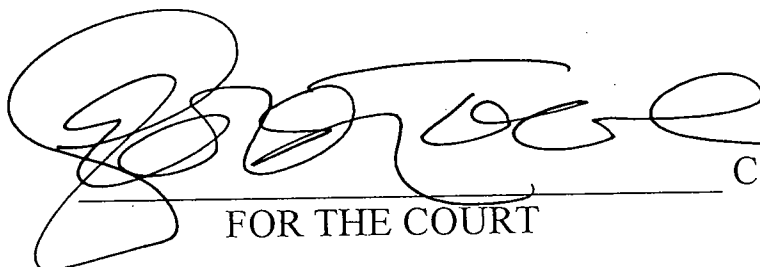
SC Court of Appeals

The Honorable William P. Keesley  
Lexington County  
Trial Court Case No. 2010-CP-32-05481

\_\_\_\_\_  
ORDER  
\_\_\_\_\_

Pursuant to Rule 204(b) of the South Carolina Appellate Court Rules,  
this appeal is hereby certified for review by the South Carolina Supreme  
Court. Upon receipt of this order, the Court of Appeals is hereby directed to  
forward the case file, all records and briefs and any exhibits on file to this  
Court.

IT IS SO ORDERED.

  
\_\_\_\_\_  
FOR THE COURT C.J.

Columbia, South Carolina

December 1, 2011

cc: Frank R. Ellerbe, III, Esquire  
Wilson W. McDonald, Esquire  
Frederick A. Gertz, Esquire  
Thornwell F. Sowell, Esquire  
David C. Dick, Esquire  
S. Jahue Moore, Esquire  
The Honorable Tanya Gee



# The South Carolina Court of Appeals

TANYA A. GEE  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1015 SUMTER STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
[www.sccourts.org](http://www.sccourts.org)

November 28, 2011

Frank R. Ellerbe, III, Esquire  
Wilson W. McDonald, Esquire  
Robinson, McFadden & Moore  
P O Box 944  
Columbia, SC 29202

Frederick A. Gertz, Esquire  
Gertz & Moore  
P.O. Box 456  
Columbia, SC 29202

Thornwell F. Sowell, Esquire  
David C. Dick, Esquire  
Sowell, Gray, Stepp  
& Laffitte, L.L.C.  
P O Box 11449  
Columbia, SC 29211

S. Jahue Moore, Esquire  
Moore, Taylor & Thomas, P.A.  
P.O. Box 5709  
West Columbia, SC 29171

Re: Hook Point, LLC v. Branch Banking

Dear Counsel:

The Court of Appeals has decided to seek certification from the Supreme Court for this case. It will be held in abeyance pending a decision by the Supreme Court. You will be notified of the decision on the certification request.

Very truly yours,

*V. Claire Allen, Deputy*  
CLERK

PRIORITY: LETTER OF 2/11/11: This is an appeal from an order granting a temporary injunction and the interlocutory appeal is permitted by S.C. Code Section 14-3-330(4). We request that this appeal be given scheduling precedence over other matters pursuant to Section 14-3-620(3).



**ROBINSON MCFADDEN**  
ATTORNEYS AND COUNSELORS AT LAW

ROBINSON, MCFADDEN & MOORE, P.C.

COLUMBIA, SOUTH CAROLINA

**RECEIVED**

JUL 19 2011

**SC Court of Appeals**

**Frank R. Ellerbe, III**

1901 MAIN STREET, SUITE 1200

POST OFFICE BOX 944

COLUMBIA, SOUTH CAROLINA 29202

PH  
(803) 779-8900

FAX  
(803) 252-0724

July 19, 2011

**VIA HAND DELIVERY**

The Honorable Tanya Gee, Clerk of Court  
South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, SC 29201

**Re: Hook Point, LLC v. BB&T, First Reliance Bank, and Allan Risinger  
Case No. 2011185386**

Dear Ms. Gee:

Enclosed for filing please find the original (unbound) and 14 copies each of the Appellant's Brief, Reply Brief and Record on Appeal. Also enclosed are the Rule 211(b) Certificate and Certificate of Service. By copy of this letter we are serving three copies of each brief on counsel for the Respondent. As required by Rule 210(a) of the Appellate Court Rules, three copies of the Record on Appeal were served by mail on June 30, 2011.

Please file stamp the extra copies provided and return them with our courier. Thank you for your assistance. Should you have any questions, please call.

Yours truly,

ROBINSON, MCFADDEN & MOORE, P.C.

Frank R. Ellerbe, III

FRE/ach

Enclosures

cc w/enc:

Thornwell F. Sowell, Esquire  
Frederick A. Gertz, Esquire  
S. Jahue Moore, Esquire

July 18, 2011

**RECEIVED**

JUL 18 2011

**SC Court of Appeals**

**VIA HAND DELIVERY**

The Honorable Tonya Gee  
Clerk, South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, South Carolina 29201

RE: Hook Point, LLC vs. Branch Banking and Trust Company, First Reliance Bank, and Allan Risinger  
Civil Action No.: 2010-CP-32-05481  
Our File No.: 6338/1500

Dear Ms. Gee:

Enclosed please find the original, unbound, and 17 copies, bound, of the Final Brief of Respondent in the above-referenced matter. Also enclosed is the original and one copy of Proof of Service.

I would appreciate your filing as appropriate and returning three (3) clocked-in copies of Final Brief of Respondent and one (1) clocked-in copy of Proof of Service via our courier.

By copy of this letter and as evidenced by the Proof of Service, a copy of same is being served upon all counsel.

Thank you for your assistance in this matter.

Very truly yours,



David Dick  
DCD:ksa  
Enclosures

cc: Frank R. Ellerbe, III, Esquire  
S. Jahue Moore, Esquire



**ROBINSON MCFADDEN**  
ATTORNEYS AND COUNSELORS AT LAW

ROBINSON, MCFADDEN & MOORE, P.C.

COLUMBIA, SOUTH CAROLINA

**Frank R. Ellerbe, III**

1901 MAIN STREET, SUITE 1200

POST OFFICE BOX 944

COLUMBIA, SOUTH CAROLINA 29202

PH

(803) 227-1112

FAX

(803) 744-1556

June 30, 2011

The Honorable Tanya Gee, Clerk of Court  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211

**RECEIVED**  
JUL 05 2011  
**SC COURT OF APPEALS**

**Re: Hook Point, LLC v. BB&T, First Reliance Bank, and Allan Risinger  
Case No. 2011185386**

Dear Ms. Gee:

In accordance with Rule 210(a) of the Appellate Court Rules, we have served three copies of the Record on Appeal on each party that has served a brief in the above-referenced case and I enclose for filing the Proof of Service. Please file stamp the extra copy provided and return it in the envelope provided.

Thank you for your assistance. Should you have any questions, please call.

Yours truly,

ROBINSON, MCFADDEN & MOORE, P.C.

Frank R. Ellerbe, III

FRE/lla

Enclosures

cc w/enc: Thornwell F. Sowell, Esquire  
Frederick A. Gertz, Esquire



# The South Carolina Court of Appeals

TANYA A. GEE  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1015 SUMTER STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
[www.sccourts.org](http://www.sccourts.org)

June 17, 2011

Frank R. Ellerbe, III, Esquire  
Wilson W. McDonald, Esquire  
Robinson, McFadden & Moore  
P O Box 944  
Columbia, SC 29202

Frederick A. Gertz, Esquire  
Gertz & Moore  
P.O. Box 456  
Columbia, SC 29202

Thornwell F. Sowell, Esquire  
David C. Dick, Esquire  
Sowell, Gray, Stepp & Laffitte, L.L.C.  
P O Box 11449  
Columbia, SC 29211

Re: Hook Point, LLC v. Branch Banking  
**2011185386**

Dear Counsel:

All parties are advised that the originals of all records on appeal and final briefs filed with the appellate courts are scanned. Therefore, in accordance with the May 1, 2008 Amendments to the South Carolina Appellate Court Rules, DO NOT staple, spiral bind, velobind, or otherwise permanently bind the ORIGINALS of these documents. The original brief(s) and record on appeal should still have front and back covers in compliance with Rule 267(e) of the South Carolina Appellate Court Rules, but should not be bound. You may secure the originals with paper clips, binder clips, rubber bands, by placing them in large envelopes, or by any other similar means that will keep the pages together without binding or hole-punching. All COPIES of the record on appeal and final briefs should be bound as specified in the South Carolina Appellate Court Rules.

If you have any questions, please do not hesitate to contact this office.

Very truly yours,

*V. Claire Allen, Deputy*  
CLERK

TAG/laf



**ROBINSON MCFADDEN**  
ATTORNEYS AND COUNSELORS AT LAW

ROBINSON, MCFADDEN & MOORE, P.C.

COLUMBIA, SOUTH CAROLINA

**Frank R. Ellerbe, III**

1901 MAIN STREET, SUITE 1200

POST OFFICE BOX 944

COLUMBIA, SOUTH CAROLINA 29202

PH  
(803) 779-8900

FAX  
(803) 252-0724

June 16, 2011

**VIA HAND DELIVERY**

The Honorable Tanya Gee, Clerk of Court  
South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, SC 29201

**Re: Hook Point, LLC v. BB&T, First Reliance Bank, and Allan Risinger  
Case No. 2011185386**

Dear Ms. Gee:

Enclosed for filing please find the Appellant's Initial Reply Brief and Certificate of Service in the above-referenced case.

Please file stamp the extra copies provided and return them with our courier. Thank you for your assistance. Should you have any questions, please call.

Yours truly,

ROBINSON, MCFADDEN & MOORE, P.C.

Frank R. Ellerbe, III

FRE/ach

Enclosures

cc w/enc: Thornwell F. Sowell, Esquire  
Frederick A. Gertz, Esquire  
S. Jahue Moore, Esquire

**RECEIVED**  
JUN 16 2011  
SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

William P. Keesley, Circuit Court Judge

---

Case No. 2010-CP-32-05481

---

RECEIVED  
JUN 06 2011  
SC Court of Appeals

Hook Point, LLC.....Respondent,

v.

Branch Banking and Trust Company, First Reliance Bank,  
and Allan Risinger, Defendants,  
of whom Branch Banking and Trust Company is.....Appellant.

---

DESIGNATION OF MATTER  
TO BE INCLUDED IN THE RECORD ON APPEAL

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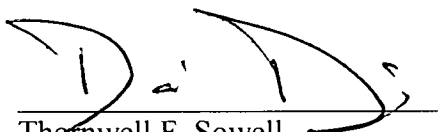
Respondent proposes the following be included in the Record on Appeal:

1. Complaint with exhibits, filed December 23, 2010;
2. Plaintiff's Motion for Ex Parte Temporary Restraining Order and Preliminary Injunction filed December 23, 2010;
3. Affidavit of Hook Point, LLC with exhibits, filed December 23, 2010;
4. Ex Parte Temporary Restraining Order of the Honorable R. Knox McMahon filed December 23, 2010;

5. Plaintiff's Memorandum in Support of Plaintiff's Motion for Preliminary Injunction filed January 4, 2010;
6. Supplemental Affidavit of Hook Point, LLC filed January 4, 2010;
7. Transcript of Hearing, January 4, 2011, pp. 1-66;
8. Order Granting Preliminary Injunction of the Honorable William P. Keesley, dated January 7, 2011 and filed January 12, 2011;
9. Proof of Bond; Court's Receipt for \$50,000.00 dated January 21, 2011;
10. Letter dated February 7, 2011 from Frank Ellerbe to Thornwell F. Sowell, Esquire, and S. Jahue Moore, Jr., Esquire, advising of information that \$70,000 payment from the First Reliance Letter of Credit has been received by BB&T;
11. Renewed Irrevocable Letter of Credit issued to Hook Point LLC by First Reliance Bank dated February 11, 2011;
12. Letter dated March 17, 2011 from Donald E. Layden to Mr. Richard McIntyre Re: First Reliance Irrevocable Letter of Credit No. 970001231 with enclosures.

I certify that this designation contains no matter which is irrelevant to this appeal.

June 6, 2011



Thornwell F. Sowell  
David C. Dick  
SOWELL GRAY STEPP & LAFFITTE, L.L.C.  
Post Office Box 11449  
Columbia, South Carolina 29211  
(803) 929-1400

and

Frederick A. Gertz  
GERTZ & MOORE  
Post Office Box 456  
Columbia, South Carolina 29202  
(803) 252-1524

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

William P. Keesley, Circuit Court Judge

---

Case No. 2010-CP-32-05481

---

RECEIVED  
JUN 06 2011  
SC Court of Appeals

Hook Point, LLC.....Respondent,

v.

Branch Banking and Trust Company, First Reliance Bank,  
and Allan Risinger, Defendants,  
of whom Branch Banking and Trust Company is.....Appellant.

---

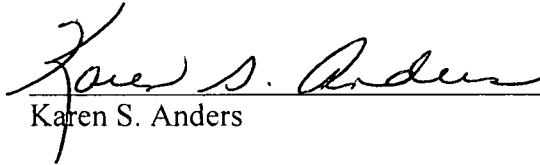
PROOF OF SERVICE

---

I, the undersigned Paralegal of the law firm of Sowell Gray Stepp & Laffitte, LLC, attorneys for the Respondent in the above-referenced matter, certify that I have served the Initial Brief of Respondent and Designation of Matter to be Included in the Record on Appeal on the person(s) named below by placing a copy of same in the United States Mail on June 6, 2011, postage prepaid, addressed as follows:

Frank R. Ellerbe, III, Esquire  
Wilson W. McDonald, Esquire  
ROBINSON, McFADDEN & MOORE, P.C.  
Post Office Box 944  
Columbia, South Carolina 29202

S. Jahue Moore, Esquire  
MOORE, TAYLOR & THOMAS, P.A.  
Post Office Box 5709  
West Columbia, South Carolina 29171

  
\_\_\_\_\_  
Karen S. Anders

June 6, 2011

June 6, 2011

**VIA HAND DELIVERY**

The Honorable Tonya Gee  
Clerk, South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, South Carolina 29201

RE: Hook Point, LLC vs. Branch Banking and Trust Company, First Reliance Bank, and Allan  
Risinger  
Civil Action No.: 2010-CP-32-05481  
Our File No.: 6338/1500

Dear Ms. Gee:

Enclosed please find the original and one copy of Initial Brief of Respondent, Designation of Matter to be Included in the Record on Appeal and Proof of Service in the above-referenced matter. I would appreciate your filing as appropriate and returning a clocked-in copy of each via our courier.

By copy of this letter and as evidenced by the Proof of Service, a copy of same is being served upon all counsel.

Thank you for your assistance in this matter.

Very truly yours,



David Dick  
DCD:ksa  
Enclosures

cc: Frank R. Ellerbe, III, Esquire  
S. Jahue Moore, Esquire

**RECEIVED**  
JUN 06 2011  
SC Court of Appeals

S. JAHUE MOORE  
J. MARK TAYLOR\*  
DAVID L. THOMAS†  
C. VANCE STRICKLIN, JR.  
JAMES EDWARD BRADLEY  
SHEILA McNAIR ROBINSON  
ROBERT D. HAZEL  
CHRISTIAN G. SPRADLEY††  
C. DAVID SAWYER, JR.††  
WILLIAM H. EDWARDS  
STANLEY L. MYERS  
JANE H. DOWNEY\*\*  
S. JAHUE MOORE, JR.



1700 SUNSET BOULEVARD (HWY. 378)  
POST OFFICE BOX 5709  
WEST COLUMBIA, SOUTH CAROLINA 29171  
TELEPHONE (803) 796-9160  
FAX (803) 791-8410

MELISSA K. MOORE  
WILLIAM B. FORTINO  
R. NICHOLS "NICK" RILEY, JR.  
JONATHAN M. GOODE  
M. BROOKS BIEDIGER

RETIRED:  
BILLY C. COLEMAN††

††SALUDA OFFICE:  
(864) 445-4544 OR (866) 604-4544  
†GREENVILLE OFFICE:  
(864) 271-6371

May 5, 2011

Tanya Gee  
Clerk of Court  
South Carolina Court of Appeals  
1015 Sumter St # 5  
Columbia, SC 29201

**RECEIVED**  
MAY 09 2011  
**SC Court of Appeals**

RE: Hook Point Hook Point, LLC vs. Branch Banking and Trust Company, First  
Reliance Bank and Allan Risinger  
C.A. No.: 2010-CP-32-05481

Dear Mrs. Gee:

This law firm has the pleasure of representing First Reliance Bank in the above case. First Reliance is a co-defendant of the appellant, BB&T.

BB&T did not name First Reliance as a respondent in its appeal. It is our understanding that we are not to file an appellate brief because we are not a party to the appeal.

We respectfully request this Court notify us when oral arguments will be heard.

Thank you very much for your consideration in this matter. Please contact me if you have any questions.

Yours very truly,

S. Jahue Moore

SJM/mbb  
cc: First Reliance Bank

# The South Carolina Court of Appeals

Hook Point, LLC,

Respondent

v.

Branch Banking and Trust Company,  
First Reliance Bank, and Allan  
Risinger,

Defendants,

Of Whom Branch Banking and Trust  
Company is,

Appellant.

The Honorable William P. Keesley  
Lexington County  
Trial Court Case No. 2010-CP-32-05481

---

## ORDER

---

For good cause having been shown, the time for the Respondent's Initial Brief and Designation of Matter to be served and filed in the above entitled matter is hereby extended until June 6, 2011.

IT IS SO ORDERED.

JOHN CANNON FEW, CHIEF JUDGE  
For the Court

BY *V. Claire Allen, Deputy*  
CLERK

Columbia, South Carolina

cc: Frank R. Ellerbe, III, Esquire  
Wilson W. McDonald, Esquire  
Frederick A. Gertz, Esquire

**FILED**

*4/29/11*

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Case No. 2010-CP-32-05481

RECEIVED  
APR 28 2011  
SC Court of Appeals

Hook Point, LLC.....Respondent,

v.

Branch Banking and Trust Company, First Reliance Bank,  
and Allan Risinger, Defendants,  
of whom Branch Banking and Trust Company is.....Appellant.

**RESPONDENT'S MOTION FOR EXTENSION OF TIME**

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, the undersigned, as attorney for the Respondent, hereby moves for a thirty (30) day extension of time in which to file and serve the Initial Brief of Respondent and Respondent's Designation of Matter to be Included in the Record on Appeal.

The grounds for this motion are prior and other matter commitments of the undersigned attorney.

Respondent's Initial Brief and Designation of Matter to be Included in the Record on Appeal is currently due May 6, 2011. With the requested extension, Respondent's

5-6-11 1st motion  
6-6-11

Initial Brief and Designation of Matter to be Included in the Record on Appeal will be due on or before June 6, 2011.

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

A handwritten signature in black ink, appearing to read "T F Sowell", written over a horizontal line.

Thornwell F. Sowell

David C. Dick

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

Post Office Box 11449

Columbia, South Carolina 29211

(803) 929-1400

and

Frederick A. Gertz

GERTZ & MOORE

Post Office Box 456

Columbia, South Carolina 29202

(803) 252-1524

**Attorneys for Respondent**

April 28, 2011

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Case No. 2010-CP-32-05481

RECEIVED  
APR 28 2011  
SC Court of Appeals

Hook Point, LLC.....Respondent,

v.

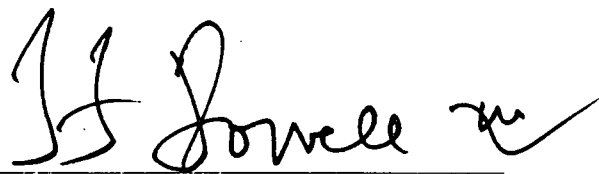
Branch Banking and Trust Company, First Reliance Bank,  
and Allan Risinger, Defendants,  
of whom Branch Banking and Trust Company is.....Appellant.

PROOF OF SERVICE

I certify that I have served the Respondent's Motion for Extension of Time on the person(s) named below by placing a copy of same in the United States Mail, postage prepaid, addressed as follows:

Frank R. Ellerbe, III, Esquire  
Wilson W. McDonald, Esquire  
ROBINSON, McFADDEN & MOORE, P.C.  
Post Office Box 944  
Columbia, South Carolina 29202

S. Jahue Moore, Esquire  
MOORE, TAYLOR & THOMAS, P.A.  
Post Office Box 5709  
West Columbia, South Carolina 29171

A handwritten signature in black ink, appearing to read "T. Sowell" with a stylized flourish at the end.

---

Thornwell F. Sowell  
SOWELL GRAY STEPP & LAFFITTE, L.L.C.  
Post Office Box 11449  
Columbia, South Carolina 29211  
Attorneys for the Respondent

April 28, 2011

April 28, 2011

**VIA HAND DELIVERY**

The Honorable Tonya Gee  
Clerk, South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, South Carolina 29201

**RECEIVED**

APR 28 2011

**SC Court of Appeals**

RE: Hook Point, LLC vs. Branch Banking and Trust Company, First Reliance Bank, and Allan Risinger  
Civil Action No.: 2010-CP-32-05481  
Our File No.: 6338/1500

Dear Ms. Gee:

Enclosed please find the original and seven (7) copies of Respondent's Motion for Extension of Time in the above-referenced matter. I would appreciate your filing as appropriate and returning a clocked-in via our courier.

Thank you for your assistance in this matter.

Very truly yours,



Thornwell F. Sowell

TFS:ksa

Enclosure

cc: Frank R. Ellerbe, III, Esquire  
S. Jahue Moore, Esquire



# The South Carolina Court of Appeals

TANYA A. GEE  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1015 SUMTER STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
www.sccourts.org

April 11, 2011

Frank Rogers Ellerbe, III, Esquire  
Robinson McFadden & Moore, PC  
P.O. Box 944  
Columbia, SC 29202

Re: Hook Point, LLC v. Branch Banking  
Case #2011185386

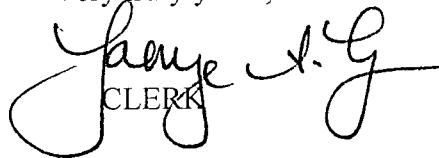
Dear Mr. Ellerbe:

We have received the Initial Brief of the Appellant in the above entitled case on appeal. According to our records, the caption in this appeal should read exactly as follows:

Hook Point, LLC,	v.	Respondent
Branch Banking and Trust Company, First Reliance Bank, and Allan Risinger,		Defendants,
Of Whom Branch Banking and Trust Company is,		Appellant.

All future filings by any party to this appeal must feature the above caption.

Very truly yours,

  
CLERK

TAG/jt

cc: Frederick A. Gertz, Esquire

**THE STATE OF SOUTH CAROLINA**

**In The Court of Appeals**

---

**APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas**

**William P. Keesley, Circuit Court Judge**

---

**Case No. 2010-CP-32-05481**

---

**Hook Point, LLC.....Respondent,**

**v.**

**Branch Banking and Trust Company, First Reliance Bank,  
and Allan Risinger, Defendants, of whom  
Branch Banking and Trust Company is.....Appellant.**

---

**APPELLANT'S DESIGNATION OF MATTER  
TO BE INCLUDED IN THE RECORD ON APPEAL**

---

**Frank R. Ellerbe, III  
Wilson W. McDonald  
ROBINSON, MCFADDEN & MOORE, P.C.  
Post Office Box 944  
Columbia, SC 29202  
(803) 779-8900**

**Attorneys for Appellant**

**RECEIVED  
APR 06 2011  
SC Court of Appeals**

Appellant proposes the following to be included in the Record on Appeal:

1. Complaint and exhibits, dated December 23, 2010;
2. Plaintiff's Motion for Temporary Injunction, affidavit and exhibits dated December 23, 2010.
3. Defendants' memorandum in opposition to the motion for temporary injunction.
4. Affidavit of Don Layden and exhibits, dated January 3, 2011.
5. Plaintiff's memorandum in support dated January 3, 2011.
6. Plaintiff's supplemental affidavit dated January 3, 2011.
7. Order of the Honorable William P. Keesley, dated January 7, 2011 and filed January 14, 2011.
8. Transcript of Hearing, January 4, 2011, pp. 1-33; 38, li.24 – p. 42, li. 21; 52 – 61, li.16.
9. Notice of Appeal, February 11, 2011.

I certify that this designation contains no matter which is irrelevant to this appeal.

Dated: April 6, 2011

By: \_\_\_\_\_



Frank R. Ellerbe, III  
Wilson W. McDonald  
ROBINSON, MCFADDEN & MOORE, P.C.  
Post Office Box 944  
Columbia, SC 29202  
(803) 779-8900

Attorneys for Appellant

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Case No. 2010-CP-32-05481

Hook Point, LLC.....Respondent,

v.

Branch Banking and Trust Company, First Reliance Bank,  
and Allan Risinger, Defendants,  
of whom Branch Banking and Trust Company.....Appellant.

CERTIFICATE OF SERVICE

This is to certify that I, Antoinette C. Hawkins, paralegal with the law firm of Robinson, McFadden & Moore, P.C., have this day caused to be served upon the person(s) named below the **Initial Brief of Appellant and Designation of Matter to be Included in the Record on Appeal** in the foregoing matter by placing a copy of same in the United States Mail, postage prepaid, in an envelope addressed as:

Thornwell F. Sowell, Esquire  
David C. Dick, Esquire  
Sowell Gray Stepp & Laffitte, LLC  
1310 Gadsden Street  
Post Office Box 11449  
Columbia, SC 29211

Frederick A. Gertz, Esquire  
Gertz & Moore  
1416 Laurel Street  
P.O. Box 456  
Columbia, SC 29202

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APR 06 2011  
SC Court of Appeals

S. Jahue Moore, Esquire  
Moore, Taylor & Thomas, PA  
1700 Sunset Boulevard  
Post Office Box 5709  
West Columbia, SC 29171

Dated at Columbia, South Carolina, this 6<sup>th</sup> day of April, 2011.

  
Antoinette C. Hawkins  
Antoinette C. Hawkins



**ROBINSON MCFADDEN**  
ATTORNEYS AND COUNSELORS AT LAW

ROBINSON, MCFADDEN & MOORE, P.C.

COLUMBIA, SOUTH CAROLINA

**Frank R. Ellerbe, III**

1901 MAIN STREET, SUITE 1200

POST OFFICE BOX 944

COLUMBIA, SOUTH CAROLINA 29202

PH

(803) 779-8900

FAX

(803) 252-0724

**RECEIVED**

APR 06 2011

**SC Court of Appeals**

April 6, 2011

**VIA HAND DELIVERY**

The Honorable Tanya Gee, Clerk of Court  
South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, SC 29201

**Re: Hook Point, LLC v. BB&T, First Reliance Bank, and Allan Risinger  
Case No. 2011185386**

Dear Ms. Gee:

Enclosed for filing please find the Initial Brief of Appellant, Designation of Matter to be Included in the Record and Certificate of Service in the above-referenced case.

Please file stamp the extra copies provided and return them with our courier. Thank you for your assistance. Should you have any questions, please call.

Yours truly,

ROBINSON, MCFADDEN & MOORE, P.C.

Frank R. Ellerbe, III

FRE/ach

Enclosures

cc w/enc: Thornwell F. Sowell, Esquire  
Frederick A. Gertz, Esquire  
S. Jahue Moore, Esquire



**ROBINSON MCFADDEN**  
ATTORNEYS AND COUNSELORS AT LAW

ROBINSON, MCFADDEN & MOORE, P.C.

COLUMBIA, SOUTH CAROLINA

**Frank R. Ellerbe, III**

1901 MAIN STREET, SUITE 1200

POST OFFICE BOX 944

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(803) 779-8900

FAX  
(803) 252-0724

April 4, 2011

V. Claire Allen, Deputy Clerk  
South Carolina Court of Appeals  
PO Box 11629  
Columbia, SC 29201

**Re: Hook Point, LLC v. BB&T, First Reliance Bank, and Allan Risinger  
Case No. 2011185386**

Dear Ms. Allen:

I am writing in response to your letter of April 1, 2011 about the transcript in the referenced case. We received the transcript on March 7, 2011. We will be filing our initial brief and designation of matter to be included in the record on or before April 6, 2011. Please let me know if you need anything else from us.

Yours truly,

ROBINSON, MCFADDEN & MOORE, P.C.

Frank R. Ellerbe, III

FRE/tch

cc: Thornwell F. Sowell, Esquire  
Frederick A. Gertz, Esquire  
S. Jahue Moore, Esquire

**RECEIVED**

APR 05 2011

**SC Court of Appeals**



# The South Carolina Court of Appeals

TANYA A. GEE  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1015 SUMTER STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
WWW.SCCOURTS.ORG

April 1, 2011

Frank Rogers Ellerbe, III, Esquire  
Robinson McFadden & Moore, PC  
P.O. Box 944  
Columbia, SC 29202

Re: Hook Point, LLC v. Branch Banking  
**2011185386**

Dear Mr. Ellerbe:

Our records indicate that the transcript in the above matter should have been delivered by March 7, 2011. As of today's date, we have received no information that the court reporter has been granted an extension, nor have we received your initial brief.

If you have not yet received the transcript, you must contact the Office of Court Administration per Rule 207 of the South Carolina Appellate Court Rules. The address for Court Administration is as follows:

South Carolina Office of Court Administration  
1015 Sumter Street, Suite 201  
Columbia, SC 29201

Be sure to copy the Court and opposing counsel with all correspondence concerning the transcript.

Please advise the Court of the status of the transcript with ten (10) days of the date of this letter, or your appeal may be dismissed.

Very truly yours,

*V. Claire Allen, Deputy*  
Deputy Clerk

TAG/laf

cc: Frederick A. Gertz, Esquire



**ROBINSON MCFADDEN**  
ATTORNEYS AND COUNSELORS AT LAW

ROBINSON, MCFADDEN & MOORE, P.C.

COLUMBIA, SOUTH CAROLINA

**Frank R. Ellerbe, III**

1901 MAIN STREET, SUITE 1200

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COLUMBIA, SOUTH CAROLINA 29202

PH  
(803) 779-8900

FAX  
(803) 252-0724

February 23, 2011

V. Claire Allen, Deputy Clerk  
South Carolina Court of Appeals  
PO Box 11629  
Columbia, SC 29201

**Re: Hook Point, LLC v. BB&T, First Reliance Bank, and Allan Risinger  
Case No. 2011185386**

Dear Ms. Allen:

As requested in your letter of February 22, enclosed please find copies of correspondence with the court reporter, Stacy Sheppard, regarding our request for delivery of the transcript of the hearing held January 4, 2011 and our agreement to pay for the transcript.

Yours truly,

ROBINSON, MCFADDEN & MOORE, P.C.

Frank R. Ellerbe, III

FRE/tch

cc w/enc: Office of Court Administration  
Thornwell F. Sowell, Esquire  
Frederick A. Gertz, Esquire  
S. Jahue Moore, Esquire  
Ms. Stacy L. Sheppard

**RECEIVED**  
FEB 24 2011  
SC Court of Appeals



# The South Carolina Court of Appeals

TANYA A. GEE  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1015 SUMNER STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
[www.sccourts.org](http://www.sccourts.org)

February 22, 2011

Frank Rogers Ellerbe, III, Esquire  
Robinson McFadden & Moore, PC  
P.O. Box 944  
Columbia, SC 29202

Re: Hook Point, LLC v. Branch Banking  
**2011185386**

Dear Mr. Ellerbe:

We have received your letter dated February 16, 2011 in the above case. However, according to Rule 207 of the SCACR, appellant shall contemporaneously furnish all counsel of record, the Office of Court Administration, and the clerk of the appellate court with copies of all correspondence with the court reporter, including an agreement regarding payment for the transcript. Within ten days of this letter please provide a copy of the correspondence with the court reporter regarding your request for the transcript.

Very truly yours,

*V. Claire Allen, Deputy*  
CLERK

TAG/laf

cc: Frederick A. Gertz, Esquire



ROBINSON MCFADDEN  
ATTORNEYS AND COUNSELORS AT LAW

ROBINSON, MCFADDEN & MOORE, P.C.

COLUMBIA, SOUTH CAROLINA

Frank R. Ellerbe, III

1901 MAIN STREET, SUITE 1200

POST OFFICE BOX 944

COLUMBIA, SOUTH CAROLINA 29202

February 16, 2011

PH  
(803) 779-8900

FAX  
(803) 252-0724

The Honorable Tanya Gee, Clerk of Court  
South Carolina Court of Appeals  
PO Box 11620  
Columbia, SC 29201

**Re: Hook Point, LLC v. BB&T, First Reliance Bank, and Allan Risinger  
Case No. 2010-CP-32-05481**

Dear Ms. Gee:

On February 11, 2011, we filed a Notice of Appeal on behalf of Branch Banking & Trust Company in the above-referenced case. We wish to notify the court that the transcript of record was ordered from the court reporter, Stacy Sheppard, following the January 4, 2011, hearing before Judge Keesley. Ms. Sheppard has also been notified of the filing of this appeal and the request for scheduling precedence.

Yours truly,

ROBINSON, MCFADDEN & MOORE, P.C.

Frank R. Ellerbe, III

FRE/tch

cc: Thornwell F. Sowell, Esquire  
Frederick A. Gertz, Esquire  
S. Jahue Moore, Esquire  
Ms. Stacy L. Sheppard

**RECEIVED**

FEB 17 2011

**SC Court of Appeals**

PM 2/11/11  
POS 2/11/11

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Case No. 2010-CP-32-05481

Hook Point, LLC.....Respondent,

v.

Branch Banking and Trust Company, First Reliance Bank,  
and Allan Risinger, Defendants,  
of whom Branch Banking and Trust Company.....Appellant.

NOTICE OF APPEAL

Branch Banking and Trust Company appeals the order of the Honorable William P. Keesley dated January 7, 2011. Appellant received written notice of entry of this order on January 19, 2011.

February 11, 2011

**RECEIVED**

FEB 11 2011

**SC Court of Appeals**



Frank R. Ellerbe, III  
Wilson W. McDonald  
ROBINSON, MCFADDEN & MOORE, P.C.  
Post Office Box 944  
Columbia, SC 29202  
(803) 779-8900  
ATTORNEYS FOR APPELLANT

Other Counsel of Record:

Thornwell F. Sowell, Esquire  
David C. Dick, Esquire  
Sowell Gray Stepp & Laffitte, LLC  
1310 Gadsden Street  
Post Office Box 11449  
Columbia, SC 29211

Frederick A. Gertz, Esquire  
Gertz & Moore  
1416 Laurel Street  
P.O. Box 456  
Columbia, SC 29202  
Attorneys for Respondent

S. Jahue Moore, Esquire  
Moore, Taylor & Thomas, PA  
1700 Sunset Boulevard  
Post Office Box 5709  
West Columbia, SC 29171  
Attorney for First Reliance Bank

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Case No. 2010-CP-32-05481

RECEIVED  
FEB 11 2011  
SC COURT OF APPEALS

Hook Point, LLC.....Respondent,

v.

Branch Banking and Trust Company, First Reliance Bank,  
and Allan Risinger, Defendants,  
of whom Branch Banking and Trust Company.....Appellant.

CERTIFICATE OF SERVICE

This is to certify that I, Leslie L. Allen, legal assistant with the law firm of Robinson, McFadden & Moore, P.C., have this day caused to be served upon the person(s) named below the **Notice of Appeal** in the foregoing matter by placing a copy of same in the United States Mail, postage prepaid, in an envelope addressed as:

Thornwell F. Sowell, Esquire  
David C. Dick, Esquire  
Sowell Gray Stepp & Laffitte, LLC  
1310 Gadsden Street  
Post Office Box 11449  
Columbia, SC 29211

Frederick A. Gertz, Esquire  
Gertz & Moore  
1416 Laurel Street  
P.O. Box 456  
Columbia, SC 29202

S. Jahue Moore, Esquire  
Moore, Taylor & Thomas, PA  
1700 Sunset Boulevard  
Post Office Box 5709  
West Columbia, SC 29171

Dated at Columbia, South Carolina, this 11<sup>th</sup> day of February, 2011.

A handwritten signature in cursive script that reads "Leslie Allen". The signature is written in black ink and is positioned above a horizontal line.

Leslie L. Allen



**ROBINSON MCFADDEN**  
ATTORNEYS AND COUNSELORS AT LAW

ROBINSON, MCFADDEN & MOORE, P.C.

COLUMBIA, SOUTH CAROLINA

**Frank R. Ellerbe, III**

1901 MAIN STREET, SUITE 1200

POST OFFICE BOX 944

COLUMBIA, SOUTH CAROLINA 29202

February 11, 2011

PH  
(803) 779-8900

FAX  
(803) 252-0724

**VIA HAND DELIVERY**

The Honorable Tanya Gee, Clerk of Court  
South Carolina Court of Appeals  
1015 Sumter Street  
PO Box 11629  
Columbia, SC 29201

**Re: Hook Point, LLC v. BB&T, First Reliance Bank, and Allan Risinger  
Case No. 2010-CP-32-05481**

Dear Ms. Gee:

Enclosed for filing please find the Notice of Appeal on behalf of Branch Banking & Trust Company in the above-referenced matter and a copy of the order on appeal. Also enclosed is our check for \$100 for the filing fee requirement. Please file stamp the extra copy provided and return it with our courier.

This is an appeal from an order granting a temporary injunction and the interlocutory appeal is permitted by S.C. Code Section 14-3-330(4). We request that this appeal be given scheduling precedence over other matters pursuant to Section 14-3-620(3).

**RECEIVED**

FEB 11 2011

**SC Court of Appeals**

Yours truly,

ROBINSON, MCFADDEN & MOORE, P.C.

Frank R. Ellerbe, III

FRE/tch

Enclosures

cc: Thornwell F. Sowell, Esquire  
Frederick A. Gertz, Esquire  
S. Jahue Moore, Esquire

**ORIGINAL**

STATE OF SOUTH CAROLINA )  
 ) IN THE COURT OF COMMON PLEAS  
 COUNTY OF LEXINGTON )  
 Hook Point, LLC, ) Civil Action No.: 2010-CP-32-05481  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Branch Banking and Trust Company, First )  
 Reliance Bank, and Allan Risinger, )  
 )  
 Defendants. )

**ORDER GRANTING  
 PRELIMINARY INJUNCTION**

DETH A. STANFORD  
 CLERK OF COURT  
 LEXINGTON, SC  
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This matter is before the Court on the motion of the Plaintiff Hook Point, LLC ("Hook Point") for a Preliminary Injunction enjoining: [i] the Defendant Branch Banking and Trust Company ("BB&T") from drawing on a letter of credit issued by the Defendant First Reliance Bank ("First Reliance"); and [ii] the Defendant First Reliance from paying BB&T under the letter of credit.

WAC #1

***Procedural Background***

This action was commenced by a summons and complaint filed December 23, 2010 asserting seven causes of action alleging typical lender liability claims. On the same day Plaintiff Hook Point sought and obtained a temporary restraining order pursuant to the Order of the Hon. R. Knox McMahon, which provided *inter alia* for a hearing on Plaintiff's motion for a preliminary injunction on Friday, December 31, 2010, which was continued until Tuesday, January 4, 2011 by agreement of the parties.

SC Court of Appeals

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***Facts***

The underlying facts relevant to the present motion are largely undisputed. Hook Point is the developer of a single residential subdivision located on approximately 19

acres fronting on Lake Murray on S.C. Highway #378 known as "Panama Pointe." In order to finance the required subdivision improvements and to retire a prior acquisition loan, Hook Point sought a loan from BB&T. On or about September 6, 2007, BB&T issued a Commitment Letter to Hook Point. The Commitment Letter agreed to lend Hook Point \$5,100,000 for the completion of "development and residential lots at Panama Pointe" and to provide a line of credit in the maximum amount of \$2,000,000 for the construction of houses upon certain terms and conditions. The Commitment Letter listed the collateral for the loan as:

*3. Collateral: The Loan will be secured by a first lien mortgage (the "Mortgage") on Panama Pointe with all lots and improvements near Lexington, South Carolina and an assignment of all architectural/engineering documents and construction contracts. (the "Collateral").*

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In addition, the Commitment Letter required a \$1,500,000 letter of credit approved by BB&T as follows:

*23. Covenants: The Borrower shall adhere to the following covenants, which shall be included, along with other covenants, in a loan agreement to be executed by the Bank and the Borrower at or prior to the Loan closing:*

*(A) Other: Collateral/Interest Reserve Option:*

*Presales of 50% \$750,000 L/C, Presales of 40% \$900,000 L/C, Presales of 30% \$1,050,000 L/C, Presales of 20% \$1,200,000 L/C. \$1,500,000 L/C with less than 20% presales. 10% deposit required on all pre sales*

*Letter of Credit approved by BB&T and issuing bank with unconditional draws. Maturity of letter to extend 90 days after loan maturity. Letter of credit to be used as last resort for interest carry.*

Subsequently, on November 16, 2007, Hook Point and BB&T entered into a formal loan agreement (the "Loan Agreement"). On the same day, First Reliance Bank issued the Letter of Credit which is the subject of this action (the "Letter of Credit"). The Letter of Credit allows draws and partial draws on presentation of a draft accompanied by:

1) *The original letter of credit.* 2) *A notarized, sworn statement by the Beneficiary, or an officer thereof, that a) The Borrower has failed to perform its obligations to the Beneficiary under the Loan Agreement and Promissory Note dated November 16, 2007, executed by and between Hook Point, LLC as Borrower and Branch Banking & Trust Company as Lender b) The amount of the draft does not exceed the amount due to the Beneficiary under the obligation; and; c) The signer has the authority to act for the Beneficiary with regards to the Letter of Credit.*

The Letter of Credit is secured by a deposit of roughly \$310,000 in cash on deposit with First Reliance, and several real properties owned by an affiliate of Hook Point. In the event of a draw on the Letter of Credit, First Reliance has the right to foreclose on these properties and take the cash deposit.

On December 21, 2010, BB&T delivered to First Reliance a demand letter seeking to draw the full amount of the Letter of Credit, i.e. \$1,500,000. The demand states that its presentment is accompanied by:

- WPA  
#3
1. *The Sight Draw as required by the Letter of Credit;*
  2. *The original Letter of Credit; and*
  3. *A notarized statement from BB&T officer that (a) Hook Point, LLC ("Borrower") has failed to perform its obligations under the Loan Agreement and Promissory Note dated November 16, 2007, (b) the draw amount does not exceed the obligations of Borrower to BB&T and (c) as signor, I have authority to act for BB&T as it relates to the Letter of Credit.*

The Letter of Credit expires, by its terms, on February 13, 2010. First Reliance, through its counsel, has agreed to extend the Letter of Credit for up to one (1) year.

Hook Point and BB&T differ in numerous respects as to their relative culpability and the status of the Loan; however, they are in agreement that there is at least \$70,000 in interest due and owing under the terms of the Loan Documents. There may be a conflict in logic concerning admitted amounts that are due and challenges to the validity of the transactions themselves; but, the court finds that it is reasonable at this point to accept the positions taken at the hearing.

### *Plaintiff's Position*

Hook Point contends in its pleadings, affidavits and testimony of one of its members that BB&T, to the extent any draw would be proper, is limited solely to accrued and unpaid interest and not the full amount of the Letter of Credit. Hook Point seeks a Preliminary Injunction seeking to enjoin BB&T from claiming any more than the accrued and unpaid interest and seeking to enjoin First Reliance from paying any more than such amount. Hook Point concedes that BB&T is entitled to make a partial draw on the Letter of Credit for the accrued and unpaid interest.

### *Application of Law*

WAM #4

The Letter of Credit states that it shall be “governed by federal law applicable to the Lender and, to the extent not preempted by federal law, the laws of the State of South Carolina . . . except to the extent that such laws are inconsistent with the 2006 Revision of Uniform Customs and Practice for Documentary Credits . . . .” The laws of South Carolina governing letters of credit are found in Article 5 of the Uniform Commercial Code, South Carolina Code Ann. § 36-5-101, *et seq.* (1976) (the “UCC”). (There are no federal laws preempting or conflicting with the laws of South Carolina on the relevant issues.)

The Uniform Customs and Practice for Documentary Credits (“UCP”) is silent as to the impact of fraud in the presentation of documents under a letter of credit. The South Carolina Uniform Commercial Code does provide specific rules governing such fraud which are not inconsistent with the UCP’s silence and therefore govern this transaction.

South Carolina Code Ann. § 36-5-109(b) (1976) provides that:

*If an applicant claims that a required document is forged or materially fraudulent or that honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant, a court of competent jurisdiction may*

*temporarily or permanently enjoin the issuer from honoring a presentation or grant similar relief against the issuer or other persons only if the court finds that:*

*(1) the relief is not prohibited under the law applicable to an accepted draft or deferred obligation incurred by the issuer;*

*(2) a beneficiary, issuer, or nominated person who may be adversely affected is adequately protected against loss that it may suffer because the relief is granted;*

*(3) all of the conditions to entitle a person to the relief under the law of this State have been met; and*

*(4) on the basis of the information submitted to the court, the applicant is more likely than not to succeed under its claim of forgery or material fraud and the person demanding honor does not qualify for protection under subsection (a)(1).*

Even if it were to be argued that the UCP's silence is somehow inconsistent with the UCC, the overwhelming weight of authority provides that Section 5-109's fraud exception continues to apply in credit transactions made subject to the UCP.<sup>1</sup> "Although there is a dearth of case law in South Carolina dealing with the limited fraud exception under [former fraud section of the S.C. Code], the Court can look with some assurance to other jurisdictions because all other states have, like South Carolina, adopted substantially verbatim the U.C.C. provisions concerning letters of credit." *Airline Reporting Corp. v. First Nat. Bank of Holly Hill*, 832 F.2d 823, 827 (4th Cir. 1987) (applying South Carolina law).

<sup>1</sup> *Mid-America Tire, Inc. v. PTZ Trading Ltd.*, 95 Ohio St.3d 367, 385, 768 N.E.2d 619, 635 - 636 (Ohio 2002); *W. Sur. Co. v. Bank of S. Oregon*, 257 F.3d 933 (C.A. 9 2001); *3Com Corp. v. Banco do Brasil, S.A.*, 171 F.3d 739, 747 (C.A. 2 1999); *E & H Partners v. Broadway Natl. Bank*, 39 F.Supp.2d 275, 285 (S.D.N.Y. 1998); *Prairie State Bank v. Universal Bonding Ins. Co.*, 24 Kan.App.2d 740, 746, 953 P.2d 1047 (1998); *Offshore Trading Co., Inc. v. Citizens Natl. Bank of Fort Scott, Kansas*, 650 F.Supp. 1487, 1491-1492 (D.C. Kan. 1987); *First Commercial Bank v. Gotham Originals, Inc.*, 64 N.Y.2d 287, 295, 486 N.Y.S.2d 715, 719, 475 N.E.2d 1255, fn. 4 (1985); *Wyle v. Bank Melli of Tehran, Iran*, 577 F.Supp. 1148, 1164 (N.D. Ca. 1983); *Harris Corp. v. Natl. Iranian Radio & Television*, 691 F.2d 1344, 1354-1355, fn. 19 (C.A. 11 1982); *Cappaert Ent. v. Citizens & S. Internatl. Bank of New Orleans*, 486 F.Supp. 819, 829 (E.D. La. 1980); *KMW Internatl. v. Chase Manhattan Bank, N.A.*, 606 F.2d 10, 15, fn. 3 (C.A. 2 1979); *Stromberg-Carlson Corp. v. Bank Melli Iran*, 467 F.Supp. 530, 532, fn. 5 (S.D.N.Y. 1979); *United Bank Ltd. v. Cambridge Sporting Goods Corp.*, 41 N.Y.2d 254, 258, 392 N.Y.S.2d 265, 360 N.E.2d 943, fn. 2 (1976); *Intraworld Indus., Inc.*, 461 Pa. 343, 336 A.2d 316. See, also, 7A Lawrence 430, Section 5-101:23, and at 435, Section 5-101:30 (Rev. 2001); 6B Hawkland & Miller, at 5-47, Section 5-103:3 (Rev. 2001).

Section 36-5-109 provides that the Court may issue an injunction when an applicant makes a claim of fraud and certain criteria are met. In this case, Hook Point has alleged fraud in its complaint, affidavits, and testimony. Hook Point has asserted fraud in the inducement to provide the Letter of Credit and fraud in the presentation by BB&T. Therefore, the Court must examine the four prerequisites for the granting of a preliminary injunction listed in Section 36-5-109.

Hook Point seeks a preliminary injunction to prevent BB&T from drawing on the Letter of Credit, and First Reliance from paying on the Letter of Credit in excess of the interest accrued and owing. The relief sought is not prohibited under the law applicable to an accepted draft or deferred obligation incurred by the issuer, and thus meets the first prerequisite under the statute.

As to the second prerequisite, BB&T will not be adversely affected and is adequately protected against any loss that it may suffer if the injunction is granted if the Letter of Credit is extended and if the Court requires a bond to protect BB&T from any loss of the use of funds if it is ultimately determined that it should have been allowed to draw the full amount under the Letter of Credit.

To analyze the third criteria of the U.C.C., the Court must look at the common law requirements for a temporary injunction. The issuance of a preliminary injunction is authorized by Rule 65, SCRPC. The purpose of a preliminary injunction is to avoid irreparable injury to a plaintiff before final adjudication of an action. *Hesel v. City of North Myrtle Beach*, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1992) (citing *Powell v. Immanuel Baptist Church*, 261 S.C. 219, 221, 199 S.E.2d 60, 61 (1973)). South Carolina courts have established two conditions for the granting of a temporary injunction. First,

the complaint must allege facts sufficient to constitute a cause of action for injunctive relief. *Columbia Broadcasting Sys., Inc. v. Custom Recording Co., Inc.*, 258 S.C. 465, 471, 189 S.E.2d 305, 308 (1972) (quoting *Childs v. City of Columbia*, 87 S.C. 566, 70 S.E. 296 (1911)). Second, when all of the circumstances are considered, it must appear that “the injunction is reasonably necessary to protect the legal rights of the plaintiff pending the litigation.” *Id.* In making this determination, courts consider (1) the likelihood of irreparable harm if the injunction is denied; (2) the relative harm to the plaintiff if the injunction is not granted and to the defendant if it is granted; (3) plaintiff’s likelihood of success on the merits; and (4) the public interest. Flanagan, James F., *South Carolina Civil Procedure*, 508 (2<sup>nd</sup> ed. 1996); *Wynock v. Carroll*, 289 S.C. 338, 340, 345 S.E.2d 503, 504 (Ct. App. 1986).

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Irreparable harm means that the injunction is reasonably necessary to protect the rights of the plaintiff pending the litigation. *Johnson v. Phillips*, 315 S.C. 407, 433 S.E.2d 895 (Ct. App. 1993). It does not mean that the injury is beyond the possibility of compensation in damages. Flanagan at 508, citing *Bethel Methodist Episcopal Church v. Greenville*, 211 S.C. 442, 45 S.E.2d 841 (1947).

In this case, the Plaintiff has sufficiently established that it will be significantly and irreparably harmed if the injunction is not granted. The Letter of Credit with First Reliance is secured by certain cash and real property. If the Letter of Credit is fully drawn upon, First Reliance indicates that it will foreclose on the properties securing the Letter of Credit. Once the properties are foreclosed on and/or sold, these properties are lost to the Plaintiff and undermine any realistic ability to continue as a viable entity. Additionally, the Plaintiff is like to lose money or other deposits it has with First

Reliance. The Plaintiff will suffer significant irreparable harm if the injunction is not granted, and the inability to continue business means that it has no adequate remedy at law.

On the other hand, it is not likely that BB&T will be harmed if the injunction is granted, as long as First Reliance follows through with its agreement to extend the Letter of Credit for up to one year, and the Court will require a bond to cover any additional potential losses. These measures effectively remove substantial risk facing BB&T.

The third South Carolina common law requirement for an injunction is the same as the fourth prerequisite of Section 36-5-109. The Plaintiff is required to show a likelihood of success on the merits. While the court has concerns about this prong, the Plaintiff has a document signed by the bank which contains the express condition that the Plaintiff alleges fraudulently induced it into the transaction and which Plaintiff claims was violated in BB&T's attempted draw on the Letter of Credit. The testimony offered by the witness, Mr. Dooley, seems the most reasonable explanation of why the commitment letter even had language about using the Letter of Credit for accumulated interest and only as a last resort was included. Other courts have held that "fraud in the inducement of the issuance of a letter of credit is grounds for a court to grant injunctive relief against the payment of such letter of credit to the beneficiary who perpetrated such fraud." *Mid-America Tire, Inc. v. PTZ Trading Ltd.*, 768 N.E.2d 619, 628 (Ohio 2002).

The Letter of Credit provides that BB&T must confirm that "[t]he amount of the draft does not exceed the amount due to the Beneficiary under the obligations." Plaintiff contends BB&T provided a fraudulent affidavit that incorrectly confirmed the amount of the draft did not exceed the amount due under the obligations because of the limitation in

the Commitment Letter which specifically provides that the Letter of Credit will only be used as a last resort for interest payments. Thus, Plaintiff contends that the presentation of the Letter of Credit was fraudulent, and Plaintiff has presented sufficient evidence of a likelihood of success on the merits.

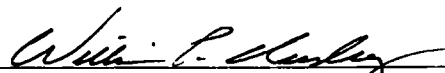
As a final prerequisite, the Plaintiff must show that it is not against public policy to grant the injunction. Here, it is in the public's interest to make sure fraud is not committed. Section 36-5-109 is based on the premise that although letters of credit are generally payable on their face, fraud is a viable defense. Indeed, 36-5-109 specifically grants the Court the authority to issue an injunction when fraud is claimed. It is in the public's best interest to allow this injunction so that a hearing on the merits of the fraud allegations can be decided before allowing BB&T to draw on the Letter of Credit.

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**NOW THEREFORE, IT IS ORDERED ADJUDGED AND DECREED** that Plaintiff's motion for a preliminary injunction is granted SUBJECT TO THE FOLLOWING that: [1] BB&T be permitted to immediately draw on the Letter of Credit in the amount of \$70,000.00 representing the minimum amount of accrued and unpaid interest that was admitted on the record; [2] the expiration of the Letter of Credit is extended for one (1) year from its current expiration date; and [3] within ten (10) days of the filing hereof Hook Point shall post a bond in the amount of \$50,000 pending the outcome of this action to secure any losses that BB&T may suffer as a result of a delayed payment under the Letter of Credit and the loss of having the present use of those funds. Nothing contained in this order prevents BB&T from submitting future drafts on the Letter of Credit, so long as those submissions are only for accrued interest, to the extent

that such interest continues to be unpaid. The court was advised after the hearing (though not on the record) that the actual accrued interest is currently \$83,892.04.

**AND IT IS SO ORDERED.**



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The Honorable William P. Keesley  
Judge, Eleventh Judicial Circuit

Lexington, South Carolina

January 7, 2011

#10

FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-32-5481

Hook Point LLC  
\_\_\_\_\_  
\_\_\_\_\_

Branch Banking & Trust Company  
\_\_\_\_\_  
\_\_\_\_\_

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED** (CHECK REASON):  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other \_\_\_\_\_.
- ACTION STRICKEN** (CHECK REASON):  Rule 40(j) SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other \_\_\_\_\_.

IT IS ORDERED AND ADJUDGED:  See attached order;  Statement of Judgment by the Court:

Order Granting Preliminary Injunction

Dated at Lexington, South Carolina, this 7 day of Jan, 20 11.

\_\_\_\_\_  
PRESIDING JUDGE

This judgment was entered on the \_\_\_ day of \_\_\_\_\_, 20 \_\_, and a copy mailed first class this 14 day of Jan, 20 11 to attorneys of record or to parties (when appearing pro se) as follows:

Therrell Sewell #1  
\_\_\_\_\_  
\_\_\_\_\_

Jahue Moore  
\_\_\_\_\_  
\_\_\_\_\_

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Copies & mailed on 1/13/11  
LCF 583 (11/00)

Beth A. Carney  
CLERK OF COURT