



**BAKER  
DONELSON**  
BEARMAN, CALDWELL  
& BERKOWITZ, PC

TRI-CITIES TENNESSEE/VIRGINIA  
100 MED TECH PARKWAY  
SUITE 200  
JOHNSON CITY, TENNESSEE 37604  
PHONE: 423.928.0181  
FAX: 423.928.5694  
KINGSPORT: 423.246.6191  
MAILING ADDRESS:  
P. O. BOX 3038  
JOHNSON CITY, TENNESSEE 37602

www.bakerdonelson.com

BRENT B. YOUNG \*  
Direct Fax: (423) 979-7654  
E-Mail Address: byoung@bakerdonelson.com

\* Admitted in Tennessee & South Carolina

February 10, 2015

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

**RECEIVED**  
FEB 12 2015  
SC Court of Appeals

RE: *DRV Fontaine, LLC vs. Fontaine Business Park, LLC, et al.*  
Appellate Case No. 2014-000377

Dear Ms. Kitchings:

Respondent filed a letter with you pursuant to Rule 208(b)(7), SCACR, to bring to the Court's attention the recently decided case of *Carolina First Bank v. BADD, LLC*, Op. No. 27486 (S.C. Sup. Ct. Jan. 28, 2015) in connection with the above-captioned appeal. Respondent explained that the related decision is pertinent and significant because it stands for the proposition that the assertion of a legal and permissive counterclaim in a mortgage foreclosure action resulted in a waiver of any right to a jury trial on the counterclaim. Appellants respectfully disagree.

First, the cited case involved counterclaims in a foreclosure proceeding filed by guarantors concerning guaranty agreements--not the related note and loan agreement (as is the case in the instant appeal). Second, the cited case does not announce any new rule or a change in the law that would be applicable here. As affirmed in the Briefs of both sides to this appeal, the above-captioned case is governed by *Wachovia Bank Nat. Ass'n v. Blackburn*, 407 S.C. 321, 755 S.E.2d 437 (2014). Respectfully, Respondent's letter of supplemental authority is, therefore, inapposite, and should not be considered.

Sincerely,

Brent B. Young

Tucker S. Player, Esq.  
Robert L. Widener, Esq.  
Paul D. Harrell, Esq.