

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas  
DeAndrea Benjamin, Circuit Court Judge  
and  
L. Casey Manning, Circuit Court Judge

---

Civil Action No. 2011-CP-40-01980

---

Robert S. Jones.....Plaintiff/Appellant  
v.  
Builders Investment Group, LLC,  
Brian D. Boone and Arden Homebuilders, LLC.....Defendants

Of Whom  
Builders Investment Group, LLC  
and Brian D. Boone are.....Respondents

---

**FINAL REPLY BRIEF OF APPELLANT**

---

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**ATTORNEYS FOR APPELLANT  
ROBERT S. JONES**

September 9, 2014

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September 9, 2014

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BUILDERS INVESTMENT GROUP, LLC  
AND BRIAN D. BOONE**

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## REPLY ARGUMENTS

Appellant Jones submits this Reply Brief in response to matters addressed in the Brief of Respondents. Appellant Jones will not restate each point from his Brief of Appellant but, instead, reincorporates and supplements those points herein.

The fundamental issue of this appeal is whether Appellant Jones' undertaking of his Personal Loan, which discharged the Arden Renewed Loan, was **payment** of the Arden Renewed Loan. In addition to those authorities cited in his Brief of Appellant, Appellant Jones would submit to this Court that the most basic definition of "payment" encompasses discharge of an obligation through means other than money. For example, Black's Law Dictionary defines payment as, "Performance of an obligation by the delivery of money or **some other valuable thing** accepted in partial or full **discharge of the obligation**." Black's Law Dictionary (9th ed. 2009) (emphasis added).

Another treatise is in harmony with this definition of payment:

"Payment" is defined as the discharge of a pecuniary obligation by money **or what is accepted as the equivalent** of a specific sum of money. It is a discharge of a debt by a compliance with the terms of the obligation. Stated more fully, **payment is the discharge of an obligation** by the actual or constructive delivery of money or its equivalent by an obligor or by someone for the obligor for the purpose of extinguishing an obligation, wholly or partially, and the acceptance of it by the obligee. Payment requires delivery by the debtor and acceptance by the creditor, both with common purpose.

60 Am. Jur. 2d *Payment* § 1 (internal citations omitted) (emphasis added).

As these two definitions of payment demonstrate, payment can be made in a form other than money. *Id.* Payment may be in a form equivalent to money so long as it is made with the purpose of discharging an obligation in part or in full. *Id.*

In this case, there is no dispute that Appellant Jones alone discharged Arden's responsibility for repayment of the Renewed Loan and that he did so by undertaking his Personal

Loan. Such undertaking was “some other valuable thing” and was “accepted as the equivalent of a specific sum of money” by Southern First Bank, N.A. (“Southern First”). Thus, Appellant Jones paid the Arden Renewed Loan by undertaking the Personal Loan and is entitled to contribution therefor.

Appellant Jones would also take this opportunity to clarify two statements of fact appearing in the Brief of Respondents. First, Respondents assert, “BIG and Boone were never asked to guaranty nor did they guaranty the loan from Southern First.” Br. of Resp. p. 2 line 16. This statement is not entirely accurate. Although a representative of Southern First testified that he did not ask Respondents to guaranty the Renewed Loan, Robert Kessler testified that he **did** ask Respondents to guaranty the Original Loan and that they refused to do so. Mr. Kessler testified in pertinent part:

Q. Is it still up there on your table? If not, I'll give you another one. September 25th, '07?

A. Yes, sir.

Q. You're familiar with that one?

A. Yes, sir.

Q. And we've already heard about who guaranteed it. You were one of the guarantors; right?

A. That's correct.

Q. Did you ask anybody else to guarantee it?

A. Yes, I did.

Q. Who did you ask?

A. Brian Boone and Builders Investment Group or Robert Boozer for Builders Investment Group.

Q. All right. What kind of response did you get?

A. Not a satisfactory response.

Q. Well, tell us what that means. Was the answer yes or no?

A. No.

Q. And that was on behalf of -- who said no?

A. Who said that?

Q. Who said no?

A. Brian Boone.

Q. What about Kathy Boozer Boone on behalf of BIG?

A. I figured once he said no, there's in [sic] reason to ask them.

(Test. of Kessler, Tr. of trial 92:3-93:2; R. p. 198, line 3-p. 199, line 2.) Thus, Respondents were asked to guaranty the loan and refused to do so in contravention of the requirements of the Operating Agreement.

Appellant Jones would also call the Court's attention to the fact that Southern First continues to seek payment from Appellant Jones on his Personal Loan. In their Brief of Respondents, the Respondents appear to argue that Southern First no longer intends to hold Appellant Jones responsible for payment on his Personal Loan. Br. of Resp. p. 4 line 13. This is not accurate. Even though Southern First "charged off" some portion of the Personal Loan in 2007, Southern First thereafter obtained a judgment against Appellant Jones in the amount of \$449,326.33 on November 8, 2012. (Confession of Judgment; R. pp. 562-564; Test. of Strickland, Tr. of trial 192:1-11; R. 338, lines 1-11.) Justin Strickland, banker with Southern First, testified about bank's efforts to pursue Appellant Jones on the Personal Loan as follows:

A. We were having conversations with Mr. Jones. We did not pursue legal action immediately.

Q. But, eventually, you did?

A. Yes.

Q. And you sued him on that promissory note?

A. We did.

(Test. of Strickland, Tr. of trial 177:5-10; R. p. 323, lines 5-10.) Thus, although Southern First may have charged off some portion of the Personal Loan for the bank's accounting purposes, Southern First has continued to hold Appellant Jones responsible on the Personal Loan.

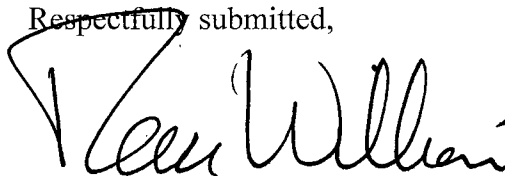
Based upon this testimony and that detailed in the Brief of Appellant, there was more than enough evidence in the record to reasonably support the jury's verdict in favor of Appellant Jones. Further, the weight of authority demonstrates that as a matter of law, Appellant Jones' undertaking of a Personal Loan so as to discharge Arden from responsibility for the Renewed Loan was payment entitling him to contribution. Accordingly, the trial court erred in granting Respondents' motion for judgment notwithstanding the verdict.

### **CONCLUSION**

Based upon the foregoing, Appellant Jones again requests that this Court reverse the trial court's grant of the Respondents' motion for judgment notwithstanding the verdict, rule that Appellant Jones paid more than his pro-rata share of the Renewed Loan when he undertook the Personal Loan, that Respondents BIG and Boone are required by the Operating Agreement to pay their proportionate share of the Renewed Loan, and that Appellant Jones is entitled to contribution from Respondents BIG and Boone.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. Reece Williams, III". The signature is written in a cursive style with a large, stylized initial "D".

---

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**PROOF OF SERVICE**

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I certify that I have served the FINAL REPLY BRIEF OF APPELLANT on the following by causing a copy to be mailed via U.S. Mail, postage pre-paid, to Counsel for the Respondents on September 9, 2014, at the addresses shown below:

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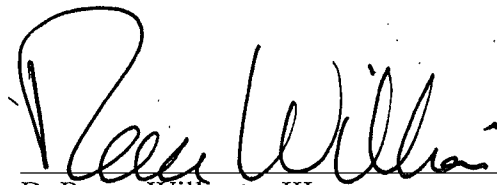
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[SIGNATURE PAGE TO FOLLOW]

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**CERTIFICATE OF COUNSEL**

I hereby certify that the Final Reply Brief of the Appellant filed and served on September 9, 2014 complies with Rule 211(b), SCACR.



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November 10, 2014

The Honorable Jenny Abbott Kitchings  
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**SC Court of Appeals**

**RE: Robert S. Jones v. Builders Investment Group, LLC, et al.**  
**Case No: 2011-CP-40-1980**  
**Appellate Case No: 2013-002673**  
**Our File No: 5262.002**

Dear Ms. Kitchings:

Enclosed please find the original and one copy of the Certificate of Counsel for the Appellant's Final Reply Brief and Proof of Service in the above-referenced matter. Please file the originals and return the clocked-in copies to our office using the self-address envelope.

If you should have any questions, please do not hesitate to contact me.

With kind regards, I am

Sincerely,

CALLISON TIGHE & ROBINSON, LLC



Kathleen McDaniel

KMM/cnc  
Enclosures

cc: Thornwell "Biff" Sowell, Esquire (w/ encl.)  
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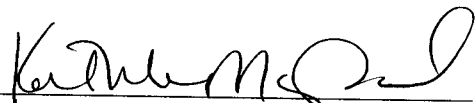
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I certify that I have served the Certificate of Counsel for the Appellant's Final Reply Brief on the following parties by causing a copy to be mailed to the parties on November 10, 2014, at the addresses shown below:

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