

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
Edward W. Miller, Circuit Court Judge

RECEIVED

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S.C. Supreme Court

Case No. 2011-CP-23-8578
Appellate Case No. 2014-002638

Francis P. Maybank and Jane H.P. Maybank, as trustee for
the Francis P. Maybank Family Insurance Trust,Plaintiffs

Of whom Francis P. Maybank is.....Respondent/Appellant,

v.

BB&T Corporation, Branch Banking & Trust Company,
successor in merger to Branch Banking & Trust Company of
SC, and Sterling Capital Management, LLC, successor in
merger to BB&T Asset Management, LLCAppellants/Respondents.

Designation of Matter to be Included in the Record on Appeal

Pursuant to Rule 209, SCACR, Appellants/Respondents designate the following material for inclusion in the record on appeal. Undersigned counsel certifies, pursuant to Rule 209(c), SCACR, that the designation contains no matter which is irrelevant to this appeal.

Orders & Verdict Form

1. Verdict Form, dated June 30, 2014
2. Order and Final Judgment, filed November 10, 2014.
3. Order denying Motion to Alter or Amend the Order and Final Judgment, filed December 4, 2014
4. Order Granting Leave to Deposit Judgment Funds, filed November 20, 2014

5. Federal Court Remand Order, filed August 3, 2012
6. Federal Court Order filed August 20, 2013 (denying fees for remand)
7. Form 4 Order, filed June 6, 2014
8. Third Amended Scheduling Order, filed April 30, 2014

Pleadings

9. Complaint, filed December 22, 2011
10. Defendants' Answer, filed February 15, 2012
11. Defendants' Answer to First Amended Complaint, filed March 14, 2012
12. Second Amended Complaint, filed May 22, 2014
13. Defendants' Answer to Second Amended Complaint, filed June 6, 2014

Motions, Supporting Memoranda & Other Filings

14. Notice of Removal, filed January 23, 2012
15. Defendant BB&T Corp's Motion to Dismiss, filed May 7, 2014
16. Defendants' First Motion for Summary Judgment (Securities Act), filed May 7, 2014
17. Defendants' Reply in Support of First Motion for Summary Judgment (Securities Act), filed May 27, 2014
18. Defendants' Second Motion for Summary Judgment (Damages Waiver), filed May 7, 2014
19. Defendants' Reply in Support of Second Motion for Summary Judgment (Damages Waiver), filed May 27, 2014
20. Defendants' Fifth Motion for Summary Judgment (Managed Portfolio Damages), filed May 7, 2014
21. Defendants' Reply in Support of Fifth Motion for Summary Judgment (Managed Portfolio Damages), filed May 27, 2014

22. Defendants' Sixth Motion for Summary Judgment (BB&T Corp), filed May 7, 2014
23. Defendants' Reply in Support of Sixth Motion for Summary Judgment (BB&T Corp), filed May 27, 2014
24. Defendants' Seventh Motion for Summary Judgment (UTPA), filed May 7, 2014
25. Defendants' Reply in Support of Seventh Motion for Summary Judgment (UTPA), filed May 27, 2014
26. Defendants Memorandum in Opposition to Plaintiff's Summary Judgment Motion, filed May 22, 2014
27. Defendants' Supplemental Memorandum in Opposition to Plaintiff's Summary Judgment Motion, filed May 23, 2014
28. Defendants' Motion for Directed Verdict, submitted June 23, 2014
29. Defendants' Motion for JNOV and New Trial, filed July 10, 2014
30. Defendants' Memorandum in Support of Mot. for JNOV and New Trial, filed August 15, 2014
31. Plaintiff's Opposition to Defs.' Motion for JNOV and New Trial, filed July 10, 2014
32. Defendants' Motion for Election of Remedies, filed July 10, 2014
33. Plaintiff's Motion for Prejudgment Interest, filed July 10, 2014
34. Defendants' Opposition to Pls. Motion for Prejudgment Interest, filed August 15, 2014
35. Plaintiff's Motion for Attorneys' Fees and Costs, filed July 10, 2014
36. Defendants' Opposition to Pls.' Motion for Attorneys' Fees and Costs, filed August 15, 2014
37. Plaintiff's Motion for Treble Damages, filed July 10, 2014
38. Defendants' Opposition to Pls. Motion for Treble Damages, filed August 15, 2014
39. Defendants' Motion to Postpone Consideration of Motion for Attorneys Fees and Treble Damages, filed August 5, 2014

40. Defendants' Motion to Compel Additional Information regarding Motion for Attorneys' Fees, filed August 5, 2014
41. Defendants' Motion to Strike Affidavit of John Freeman, filed August 6, 2014
42. Plaintiff's Proposed Order and Final Judgment, submitted October 9, 2014
43. Defendants' Objections to Pls.' Proposed Order and Final Judgment, filed October 16, 2014
44. Plaintiff's Revised Proposed Order and Final Judgment, submitted October 17, 2014
45. Defendants' Objections to Pls.' Revised Proposed Order and Final Judgment, filed October 21, 2014
46. Motion to Alter or Amend the Order and Final Judgment, filed November 10, 2014

Transcripts

47. Trial Transcript, June 16, 2014 - June 30, 2014; pages: 1, 277-285, 288-292, 309-312, 318-320, 323-336, 351-353, 362-365, 371-373, 380-382, 384-407, 411-432, 435-491, 494-499, 502-515, 520-525, 643-646, 660-662, 665-716, 720-723, 773-783, 883-888, 906-933, 936-941, 1007-1012, 1015-1025, 1032-1037, 1040-1051, 1063-1064, 1082-1085, 1105-1108, 1110-1118, 1130-1132, 1135-1137, 1172-1183, 1189-1197, 1286-1288, 1293-1298, 1303-1334, 1392-1395, 1402-1405, 1429-1434, 1522-1529, 1545-1555, 1559-1577, 1594-1615, 1619-1621, 1723-1731, 1769-1773, 1784-1796, 1800-1830, 1914-1918, 1922, 1930-1937, 1940-41, 1947-1948, 1950-1951, 2096
48. Deposition of Clayton Shawn Gibson, dated March 10, 2014: pages: 22-35, 55-80, 72, 78-94, 173, 237
49. Deposition of David W. Fisher (personal), dated November 20, 2013: pages 44, 47
50. Deposition of David W. Fisher (Rule 30(b)(6) – BB&T Bank), dated November 20, 2013: pages 20-23
51. Deposition of Ross Walters (Rule 30(b)(6) – BB&T Bank), dated March 20, 2014: pages 225-226
52. Deposition of Ross Walters (personal), dated September 30, 2013: pages 192-194, 199

53. Deposition of Ralph Borello, dated January 9, 2013: pages 7-8, 16-27
54. Transcript from August 19, 2014 Hearing

Trial Exhibits

55. Agreed Exhibit 3, 2006 Concentrated Stock Risk Management Addendum, dated July 10, 2006, Bates No. Maybank 000018-20
56. Agreed Exhibit 5, Scott & Stringfellow Pre-Paid Variable Forward Contracts Overview, undated, Bates No. Maybank 001859-66
57. Agreed Exhibit 6, BB&T Code of Ethics, Undated, Bates No. Maybank 000032-45
58. Agreed Exhibit 7, General Counsel Disclosure Letter, All Versions, dated August 11, 2006, Bates No. Maybank 1746-47 and Bates No. BB&T 130-31
59. Agreed Exhibit 9, 2006 PVFC with Bear Stearns, dated August 23, 2006, Bates No. BB&T 00116-26
60. Agreed Exhibit 14, 2006 Wealth Management Agreement, dated August 23, 2006, Bates No. Maybank 00008-17
61. Agreed Exhibit 16, 2006 Investment Objectives, dated August 23, 2006, Bates No. Maybank 00016
62. Agreed Exhibit 24, Investment Objectives, dated June 5, 2008, Bates No. BB&T 01481
63. Agreed Exhibit 28, 2008 Investment Objectives, dated December 22, 2008, Bates No. BB&T 01461
64. Agreed Exhibit 30, Deal emails to Mahfood and Lackey, dated January 1, 2009, Bates No. BB&T 19197 (Under Seal)
65. Agreed Exhibit 31, Deal email transmitting settlement overview, dated January 8, 2009, Bates No. BB&T 19198-99 (Under Seal)
66. Agreed Exhibit 32, Deal email dated January 12, 2009, Bates No. BB&T 19201
67. Agreed Exhibit 34, 2009 Concentrated Stock Risk Management Addendum, dated January 15, 2009, Bates No. BB&T 01969
68. Agreed Exhibit 35, 2009 Concentrated Stock Risk Management Addendum, dated January 15, 2009, Bates No. BB&T 01240

69. Agreed Exhibit 39, 2009 VPFC Rollover, dated January 23, 2009, Bates No. Maybank 005220-29
70. Agreed Exhibit 42, 2009 Wealth Management Agreement, dated November 2, 2009, Bates No. Maybank 000085-88
71. Agreed Exhibit 50, Fee Refund Letter from Ralph Borello, dated November 29, 2012, Bates No. 00001-03
72. Agreed Exhibit 65.26, Wealth Management Account Statement September 2008, dated September -08, Bates No. Maybank 691-700
73. Agreed Exhibit 65.27, Wealth Management Account Statement October 2008, dated October -08, Bates No. Maybank 702-10
74. Agreed Exhibit 65.29, Wealth Management Account Statement December 2008, dated December -08, Bates No. Maybank 720-31
75. Agreed Exhibit 66.1, Bear Stearns PVFC Statement August 2006, dated August -06, Bates No. Maybank 914-19
76. Agreed Exhibit 67.1, Deutsche Bank Securities, Inc. PVFC Statement January 2009, dated January 30, 2009, Bates Maybank 001134-1135
77. Agreed Exhibit 72 [sub-Exhibits 3,4,8 and 9), Spreadsheets of Dr. Craig McCann, dated December 3, 2014, Bates No. Maybank 008948-8951, 008955-008956
78. Defendants' Exhibit 2, Scott & Stringfellow Overview of Pre-Paid Contracts, Bates No. Maybank 1859-1866
79. Defendants' Exhibit 10, Email from Mahfood to Gibson, dated April 27, 2007, Bates No. BB&T 36956 (Under Seal)
80. Defendants' Exhibit 15, Settlement Overview Proposal for 2004 Pre-Paid, Bates No. BB&T 04256-04257
81. Defendants' Exhibit 16, Settlement Overview 2006 Pre-Paid, Bates No. 09650
82. Defendants' Exhibit 20, Concentrated Stock Risk Management Addendum, dated July 10, 2006, Bates No. BB&T 00105-107
83. Defendants' Exhibit 23, Instructions to Deliver Shares, dated August 11, 2006, Bates No. BB&T 00132

84. Defendants' Exhibit 25, Wire Instructions, dated August 15, 2006, Bates No. BB&T 00127
85. Defendants' Exhibit 26, Standing Wire Instructions, dated August 15, 2006, Bates No. BB&T 00128
86. Defendants' Exhibit 32, Client Investment Objective Form, dated December 22, 2008, Bates No. Maybank 000120
87. Defendants' Exhibit 36, Handwritten Notes of Mike Lackey, dated January 9, 2009, Bates No. BB&T 01137
88. Defendants' Exhibit 43, Settlement Overview, Bates No. ARGO (BB&T) 02081
89. Defendants' Exhibit 57, Settlement Overview 2009 Pre-Paid, dated January 21, 2009, Bates No. BB&T 01929
90. Defendants' Exhibit 58, Written instructions from Frank Maybank to sell positions, dated June 17, 2009, Bates No. BB&T 44989
91. Defendants' Exhibit 59, Wealth Management Agreement, dated November 2, 2009, Bates No. Maybank 000085-0089
92. Defendants' Exhibit 63-17, BB&T Managed Portfolio Account Statement, dated December 31, 2007, Bates No. BB&T 02231 - 02242
93. Defendants' Exhibit 63-25, BB&T Managed Portfolio Account Statement, dated August 31, 2008, Bates No. BB&T 02416 - 02420
94. Defendants' Exhibit 64, Scott & Stringfellow Account Statement, dated January 31, 2003, Bates No. BB&T 03358 - 03360
95. Defendants' Exhibit 64-11, Scott & Stringfellow Account Statement, dated December 31, 2003, Bates No. BB&T 03404-03407
96. Defendants' Exhibit 64-23, Scott & Stringfellow Account Statement, dated December 31, 2004, Bates No. BB&T 03454-03458
97. Defendants' Exhibit 64-35, Scott & Stringfellow Account Statement, dated December 31, 2005, Bates No. 03492-03494
98. Defendants' Exhibit 64-42, Scott & Stringfellow Account Statement, dated July 31, 2006, Bates No. BB&T 03514-03519
99. Defendants' Exhibit 64-44, Scott & Stringfellow Account Statement, dated September 31, 2006, Bates No. BB&T 03520-03522

100. Defendants' Exhibit 64-65, Scott & Stringfellow Account Statement, dated June 30, 2008, Bates No. BB&T 03582-03585
101. Defendants' Exhibit 65-2, Charles Schwab Account Statement 2681, dated December 31, 2012, Bates No. Schwab Sub Resp. 00015-24
102. Defendants' Exhibit 65-7, Charles Schwab Account Statement 2681, dated May 31, 2013, Bates No. Schwab Sub Resp. 00067-76
103. Defendants' Exhibit 67, BB&T Credit Line Transaction Summary, Bates No. BB&T 41513-41515
104. Defendants' Exhibit 72, Itemized Categories Report, 2002, Bates No. ARGO (BB&T) 04321-04341
105. Defendants' Exhibit 73, Itemized Categories Report, 2004, Bates No. ARGO (BB&T) 00166-00183
106. Defendants' Exhibit 74, Itemized Categories Report, 2005, Bates No. ARGO (BB&T) 00283-00305
107. Defendants' Exhibit 75, Itemized Categories Report, 2006, Bates No. ARGO (BB&T) 00429-00445
108. Defendants' Exhibit 76, Itemized Categories Report, 2008, Bates No. ARGO (BB&T) 01004-01019
109. Defendants' Exhibit 77, Itemized Categories Report, 2009, Bates No. ARGO (BB&T) 02265-02280
110. Defendants' Exhibit 79, Handwritten notes of Keith Gray, dated August 9, 2006, Bates No. Argo(BB&T) 004357
111. Defendants' Exhibit 80, Handwritten notes of Keith Gray, dated January 12, 2009, Bates No. Argo(BB&T) 002440
112. Defendants' Exhibit 94, Listing of Employees & Job Description for BB&T's Greenville Wealth Division, Bates No. BB&T 48080-48082
113. Defendants' Exhibit 96, email from Mahfood to Deal, dated January 13, 2009, Bates No. BB&T 05273-5274
114. Defendants' Exhibit 167, Lackey and Deal emails, dated August 7, 2009, Bates No. BB&T 01155 (Under Seal)

115. Defendants' Exhibit 170, VPFC Presentation, undated, Bates No. BB&T 02723-2755 (Under Seal)
116. Defendants; Exhibit 172, Scott & Stringfellow Record of Transaction, dated September 27, 2006, Bates No. Maybank 001272
117. Defendants' Exhibit 173, Comparison of PVFC to Outright Stock Sale Hypothetical
118. Defendants' Exhibit 174, Hugh Penny Exhibit 1, dated April 28, 2014, Bates No. BB&T 48090
119. Defendants' Exhibit 175, Hugh Penny Exhibit III, dated April 28, 2014, Bates No. BB&T 48092
120. Defendants' Exhibit 177, Email from Mahfood to Gibson dated July 14, 2006, Bates No. BB&T 10472 (Under Seal)
121. Defendants' Exhibit 178, Email from Gibson to Mahfood with attachment, dated August 14, 2008, Bates No. BB&T 9649-9650 (Under Seal)
122. Defendants' Exhibit 180, Email from Lackey to Mahfood, dated December 23, 2009, Bates No. BB&T 5238
123. Defendants' Exhibit 182, Email from Lackey to Deal, dated December 29, 2008, Bates No. BB&T 5239 (Under Seal)
124. Defendants' Exhibit 188, Email from Mahfood to Deal, dated April 21, 2009, Bates No. BB&T 5454-5455 (Under Seal)
125. Defendants' Exhibit 192, Email from Mahfood to Deal, dated April 23, 2009, Bates No. BB&T 5723
126. Defendants' Exhibit 194, email from Deal to Mahfood, Lackey, with attachments (attachments produced natively), dated January 14, 2009, Bates No. BB&T 35325
127. Defendants' Exhibit 197, Edgar Norris & Co. Statement, dated March 1997, Bates No. BB&T 39671-39672
128. Defendants' Exhibit 198, Schedule C Horse Racing (Maybank Deposition Exhibit 24), Bates Nos. ARGO (BB&T) 4579-4581, 4676-4678, 4872-4874, 4979-4981, 5063-5064, 5168-5169, 5327-5328, 5552-5553
129. Defendants' Exhibit 199, Bear Stearns Risk Disclosure, dated July 10, 2006, Bates No. Maybank 1750-1751

130. Defendants' Exhibit 200, Pre-Paid Illustration, Bates No. Maybank 1745
131. Defendants' Exhibit 201, 2006 Pre-Paid Confirmation, Bates No. Maybank 1847-1848
132. Defendants' Exhibit 202, Settlement Overview (Maybank Deposition Exhibit 114), Bates No. Maybank 2115
133. Defendants' Exhibit 203, Settlement Overview (Maybank Deposition Exhibit 115), Bates No. Maybank 2142
134. Defendants' Exhibit 204, Settlement Overview (Maybank Deposition Exhibit 116), Bates No. Maybank 5470
135. Defendants' Exhibit 205, Settlement Overview (Maybank Deposition Exhibit 117), Bates No. Maybank 5555
136. Defendants' Exhibit 207, Deutsche Bank Letter, dated December 13, 2010, Bates No. Argo(BB&T) 04428-4431
137. Defendants' Exhibit 208, Deutsche Bank Letter, dated December 13, 2010, Bates No. Argo(BB&T) 04432-4439
138. Defendants' Exhibit 209, Deutsche Bank Letter, dated August 16, 2011, Bates No. Maybank 005649-5653
139. Defendants' Exhibit 210, Deutsche Bank Letter, dated August 15, 2011, Bates No. Maybank 005713-5720
140. Defendants' Exhibit 211, Deutsche Bank Letter, dated January 4, 2012, Bates No. Argo(BB&T) 04093-4096
141. Defendants' Exhibit 212, Deutsche Bank Letter, dated January 3, 2012, Bates No. Argo(BB&T) 04097-4104
142. Defendants' Exhibit 214, Email from Kapoor to Anderson, dated July 14, 2006, Bates No. BB&T 04041 (Under Seal)
143. Defendants' Exhibit 216, Settlement Overview, Bates No. BB&T 19023, BB&T 19025
144. Defendants' Exhibit 222, Teachy Spreadsheet BB&T
145. Plaintiff's Exhibit 76, BB&T Corp 2005 Annual Review

146. Plaintiff's Exhibit 77, BB&T Corp 2006 Annual Review
147. Plaintiff's Exhibit 78, BB&T Corp 2007 Annual Review
148. Plaintiff's Exhibit 79, BB&T Corp 2008 Annual Review
149. Plaintiff's Exhibit 80, BB&T Corp 2009 Annual Review
150. Plaintiff's Exhibit 81, BB&T Corp 2010 Annual Review
151. Plaintiff's Exhibit 82, BB&T Corp 2010 Form 10-K
152. Plaintiff's Exhibit 83, BB&T Corp 2011 Form 10-K
153. Plaintiff's Exhibit 84, BB&T Corp 2012 Form 10-K
154. Plaintiff's Exhibit 85, BB&T Corp 2013 Form 10-K
155. Plaintiff's Exhibit 92, Value-Added Applications of Equity Derivatives
(Under Seal)

Other Documents

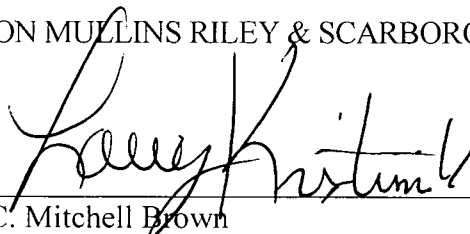
156. Defendants' Notice of Appeal, filed December 9, 2014
157. Plaintiff's Notice of Cross-Appeal, filed December 16, 2014
158. Order certifying, filed March 5, 2015

Signature Page Attached

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____


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Management, LLC

July 24, 2015

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
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Francis P. Maybank and Jane H.P.
Maybank, as trustee for the Francis P.
Maybank Family Insurance Trust, Plaintiffs,
Of whom Francis P. Maybank is the, Respondent/Appellant,

v.

BB&T Corporation, Branch Banking and
Trust Company, Successor in merger to
Branch Banking and Trust Company of SC,
and Sterling Capital Management, LLC,
Successor in merger to BB&T Asset
Management, LLC, Appellants/Respondents.

PROOF OF SERVICE

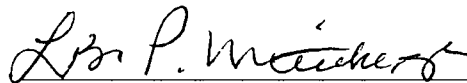
I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Appellants/Respondents, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy to the following address(es):

Pleadings: Designation of Matter to be Included in the Record on Appeal

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July 24, 2015