

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
In the Court of Common Pleas for the Ninth Circuit

RECEIVED

Roger M. Young, Circuit Court Judge

JUN 13 2016

SC Court of Appeals

Appellate Case No. 2015-001809

Skywaves I Corporation,Appellant/Respondent,

v.

Branch Banking & Trust Company, Successor in merger to Branch Banking & Trust
Company of SC, a/k/a BB&T,Respondent/Appellant

and James Edahl,Respondent.

APPELLANT/RESPONDENT'S AMENDED DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL (APPELLANT'S BRIEF)

M. Dawes Cooke, Jr., Esq.
John W. Fletcher, Esq.
Barnwell, Whaley, Patterson & Helms, LLC
288 Meeting Street (29401)
P. O. Drawer H
Charleston, SC 29402
(843) 577-7700 Fax: (843) 577-7708
mdc@barnwell-whaley.com
jfletcher@barwnwell-whaley.com
Attorneys for Appellants/Respondents

(continued on next page)

John P. Linton, Esq.
Brian C. Duffy, Esq.
Duffy & Young, LLC
96 Broad Street
Charleston, SC 29401
(843) 720-2044 Fax: (843) 720-2047
JLinton@DuffyAndYoung.com
BDuffy@DuffyAndYoung.com
Attorneys for Appellants/Respondents

Andrew K. Epting, Jr., Esq.
Andrew K. Epting, Jr., LLC
46A State Street
Charleston, SC 29401
(843) 377-1871 Fax: (843) 377-1310
AKE@Epting-Law.com
Attorneys for Appellants/Respondents

George J. Kefalos, Esq.
George J. Kefalos, PA
46A State Street
Charleston, SC 29401
(843) 722-6612 Fax: (843) 377-1310
Attorneys for Appellants/Respondents

(continued on next page)

Other Counsel of Record:

Molly Hughes Cherry, Esq.
Nexsen Pruet, LLC
P.O. Box 486
Charleston, SC 29402
(843) 720-1724 Fax: (843) 414-8209
MCherry@NexsenPruet.com

***Attorneys for Respondent/Appellant Branch
Banking & Trust Company, successor in
merger to Branch Banking and Trust Company
of SC, a/k/a BB&T***

Julio E. Mendoza, Esq.
Nexsen Pruet, LLC
1230 Main St., Suite 700 (29201)
Columbia, SC 29202

***Attorneys for Respondent/Appellant Branch
Banking & Trust Company, successor in
merger to Branch Banking and Trust Company
of SC, a/k/a BB&T***

J.W. Nelson Chandler, Esq.
Corrigan & Chandler, LLC
PO Box 547
Charleston, SC 29402

Attorneys for Respondent James Edahl

Appellant/Respondent, Skywaves I Corporation hereby amends its Designation of Matter to Be Included in the Record on Appeal (received by the Court of Appeals on January 15, 2016) and designates the following materials to be included in the Record on Appeal in this matter. Unless otherwise expressly stated, each item designated is to include *all* attachments or exhibits to the original of the referenced item, as well as any proofs of service. Respondent expressly reserves the right to seek supplementation to the record pursuant to Rules 209 and 212, SCACR. In addition to the matters which might be designated by Respondent or Respondent/Appellant, which designations are incorporated herein by reference, Appellant/Respondent designates the following matters for inclusion in the Record on Appeal:

1. 12/3/2009 Complaint
2. 2/12/2010 First Amended Complaint
3. 2/26/2010 BB&T Answer to First Amended Complaint
4. 6/21/2010 Order Remanding Case to State Court
5. 8/16/2010 Order Granting Attorneys' Fees in Removed Case
6. 3/28/2011 Order Granting Attorneys' Fees in Removed Case
7. 8/15/11 Transcript of Argument
8. 10/26/2011 ORDER GRANTING BRANCH BANKING AND TRUST COMPANY OF SC, a/k/a BB&T'S PARTIAL MOTION TO DISMISS AMENDED COMPLAINT AND JAMES EDAHL'S MOTION TO DISMISS AMENDED COMPLAINT WITH PREJUDICE
9. 11/18/2011 Skywaves' Motion to Reconsider, Alter or Amend Dismissal or for Relief from Judgment
10. 6/14/2012 ORDER GRANTING SKYWAVES MOTION TO RECONSIDER
11. 7/6/2012 Edahl Answer to First Amended Complaint (filed in federal court, later filed in state court)
12. 1/17/2014 Plaintiff's Motion to Strike (including all Exhibits)
13. 2/11/2014 Affidavit of Edahl
14. 2/25/2014 BB&T Motion to Amend Answer

15. 2/25/2014 Edahl Motion to Amend Answer
16. 3/13/2014 ORDER denying Plaintiff's Motion to Strike and granting Defendants' Motion to Amend Answers
17. 3/21/2014 Edahl Amended Answer
18. BB&T's Amended Answer
19. 7/24/2014 Defendant BB&T's Notice of Motion and Motion to Strike Demand for Jury Trial
20. 7/24/2014 Defendant BB&T's Notice of Motion and Motion for Summary Judgment
21. 7/28/2014 Defendant Edahl's Notice of Motion and Motion to Strike Demand for Jury Trial
22. 7/28/2014 Defendant Edahl's Notice of Motion and Motion for Summary Judgment
23. 12/2/2014 Amended Answer of Defendant BB&T
24. 1/12/2015 Skywaves' Memorandum in Opposition to Motions to Strike Jury Trial Demand (with all exhibits)
25. 1/13/2015 Skywaves' Letter Brief to the Trial Court in further opposition to Motion to Strike Jury Trial Demand
26. 1/15/2015 Defendants' Letter Brief to the Trial Court in further support of Motion to Strike Jury Trial Demand
27. 2/9/2015 ORDER GRANTING DEFENDANT BB&T AND DEFENDANT EDHAL'S (sic) MOTION TO STRIKE PLAINTIFF'S DEMAND FOR JURY TRIAL
28. 2/18/2015 Skywaves' Motion to Reconsider
29. 4/16/2015 Skywaves' Motion to Strike Answers of Defendant Based on Fraud Upon the Court and Unclean Hands and Violation of Rule 37 and Rule 11 and Incorporated Memorandum in Support (including all exhibits)
30. 4/23/2015 Skywaves' Memorandum in Opposition to Motion to Strike Demand for Jury Trial (including all Exhibits)
31. Skywaves' Notice of Filing Exhibits to Plaintiff's Memorandum in Opposition to Motions for Summary Judgment, including the following exhibits:

Exhibit 1 3/22/05 Factoring and Security Agreement


- Exhibit 2 2/27/15 Deposition of J. Frank Bullard, III Pages 8, 16
- Exhibit 3 Bullard Deposition Exhibit 1 – "More Insight. More Integration. More Bottom-Line Focus
- Exhibit 4 12/19/13 Deposition of Walter Denning Pages 15, 21, 26-27
- Exhibit 5 12/19/13 Deposition of Tol Broome Pages 21-22, 35, 37
- Exhibit 6 9/19/13 Deposition of James Edahl Pages 27, 29, 46-50, 52, 74, 78-81
- Exhibit 7 11/21/14 Deposition of James Edahl Pages 29, 32, 40, 47, 51, 62-63, 72-74, 91
- Exhibit 8 9/7/07 Email from Denning to Edahl
(CONFIDENTIAL) (BB&T/FC_000558)
- Exhibit 9 9/12/13 Deposition of Ronald D. Konersmann and
9/13/13 Deposition of Ronald D. Konersmann
Pages 22-23, 27-44, 51, 63, 110-11, 122-25, 132,
138, 152, 169-70, 191-92, 221, 250-51, 260, 267,
276-83, 301-04, 310, 316, 337, 342-43, 345
- Exhibit 10 2/28/14 Deposition of John Voytko Pages 25-26,
32, 36-37, 55, 59, 63-66, 68-69, 81-83, 86, 98-100,
103-04, 115, 118, 150-51, 169-70, 173, 175-76,
187-88, 194-95, 206-07
- Exhibit 11 3/27/06 Email from Voytko to Morris
- Exhibit 12 3/20/07 Email from Voytko to Morris
- Exhibit 13 2/11/08 Letter from Licata to Konersmann
(CONFIDENTIAL) (BB&T/FC_001131-1134)
- Exhibit 14 1/6/15 Deposition of BB&T Pursuant to Rule
30(b)(6) (Michael Hennessy) Pages 26-27, 31, 39-
40, 64-65, 107-08, 110, 144
- Exhibit 17 Affidavit of Ron Konersmann (and Ex. 1, Hunt
Capital Term Sheet)
- Exhibit 19 9/20/07 BB&T Memo from Edahl to Denning
(CONFIDENTIAL) (BB&T/FC_000523-524)

- Exhibit 20 11/12/07 BB&T Memo from Edahl to Denning
(CONFIDENTIAL) (BB&T/FC_002378-2379)
- Exhibit 21 11/18/13 Deposition of Michael Burke Pages 21-27,
32-34, 50-51, 60, 62, 66, 78-80, 97-98
- Exhibit 22 5/6/14 Deposition of Castlen Morris Pages 31-32,
34-35, 42-44, 57-58, 64-67, 71-72, 87, 89
- Exhibit 23 12/2/13 Deposition of Frank Caple Pages 16, 39,
77-80
- Exhibit 24 12/19/13 Deposition of Tol Broome Pages 22, 35-
40
- Exhibit 27 1/18/08 Email from Hennessy to Licata
- Exhibit 29 12/18/13 Deposition of Michael Hennessy Pages
10, 23, 28-29, 52-53
- Exhibit 32 1/25/08 Letter from Hennessy to Skywaves
- Exhibit 35 1/24/08 BB&T Memo from Burke to Allard
(CONFIDENTIAL) (BB&T/FC_001252-1253)
- Exhibit 37 4/21/15 Affidavit of Ronald Konersmann
32. 7/23/2015 ORDER GRANTING IN PART DEFENDANT BB&T'S MOTION
FOR SUMMARY JUDGMENT; GRANTING DEFENDANT EDAHL'S
MOTION MOTION (sic) FOR SUMMARY JUDGMENT[;] DENYING
PLAINTIFF'S MOTION TO RECONSIDER; DENYING PLAINTIFF'S
MOTION TO AMEND THE COMPLAINT; AND DENYING PLAINTIFF'S
MOTION FOR COMMISSION OF (sic) ISSUANCE OF A SUBPOENA TO
DEPOSE JOHN ALLISON
33. Skywaves' Notice of Appeal
34. Skywaves' Amended and Supplemental Notice of Appeal
35. Exhibit 1 to Deposition of Frank Bullard February 27, 2015
36. Exhibit 1 to Deposition of Tol Broome December 19, 2013
37. The BB&T Philosophy

Appellant/Respondent certifies, pursuant to S.C.A.C.R., Rule 209(c), that the designations set forth above are relevant to the appeal in this matter, and that it has not designated any matter which is irrelevant to the issues before the Court.

June 10, 2016

BARNWELL WHALEY PATTERSON &
HELMS, LLC

By: 
M. Dawes Cooke, Jr., Esq.
John W. Fletcher, Esq.
288 Meeting Street, Ste 200
Charleston, SC 29401
(843) 577-7700 Fax: (843) 577-7708

George J. Kefalos, Esq.
George J. Kefalos, PA
46A State Street
Charleston, SC 29401
(843) 722-6612 Fax: (843) 377-1310

Brian C. Duffy, Esq.
John P. Linton, Esq.
Duffy & Young, LLC
96 Broad Street
Charleston, SC 29401
(843) 720-2044 Fax: (843) 720-2047

Andrew K. Epting, Jr., Esq.
Andrew K. Epting, Jr., LLC
46A State Street
Charleston, SC 29401
(843) 377-1871 Fax: (843) 377-1310

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
In the Court of Common Pleas for the Ninth Circuit

RECEIVED

Roger M. Young, Circuit Court Judge

JUN 13 2016

SC Court of Appeals

Appellate Case No. 2015-001809

Skywaves I Corporation,Appellant/Respondent,

v.

Branch Banking & Trust Company, Successor in merger to Branch Banking
& Trust Company of SC, a/k/a BB&T,Respondent/Appellant

and James Edahl,Respondent.

PROOF OF SERVICE

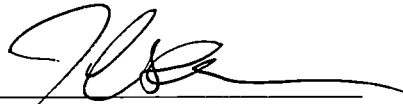
I certify that I have served the Appellant/Respondent's Designation of Matter to be Included in the Record on Appeal (Appellant's Brief) on the above-referenced Respondent/Appellant and Respondent by depositing a copy of it in the United States Mail, postage prepaid, on June 10, 2016, addressed to their attorneys of record:

Molly Hughes Cherry, Esq.
Nexsen Pruet, LLC
P.O. Box 486
Charleston, SC 29402
(843) 720-1724 Fax: (843) 414-8209
MCherry@NexsenPruet.com
**Attorneys for Respondent/Appellant Branch Banking & Trust Company,
successor in merger to Branch Banking and Trust Company of SC, a/k/a BB&T**

Julio E. Mendoza, Esq.
Nexsen Pruet, LLC
1230 Main St., Suite 700 (29201)
Columbia, SC 29202
**Attorneys for Respondent/Appellant Branch Banking & Trust Company,
successor in merger to Branch Banking and Trust Company of SC, a/k/a BB&T**

J.W. Nelson Chandler, Esq.
Corrigan & Chandler, LLC
PO Box 547
Charleston, SC 29402
Attorneys for Respondent James Edahl

BARNWELL WHALEY PATTERSON &
HELMS, LLC

By: 
M. Dawes Cooke, Jr., Esq.
John W. Fletcher, Esq.
288 Meeting Street, Ste 200
Charleston, SC 29401
(843) 577-7700 Fax: (843) 577-7708

George J. Kefalos, Esq.
George J. Kefalos, PA
46A State Street
Charleston, SC 29401
(843) 722-6612 Fax: (843) 377-1310

Brian C. Duffy, Esq.
John P. Linton, Esq.
Duffy & Young, LLC
96 Broad Street
Charleston, SC 29401
(843) 720-2044 Fax: (843) 720-2047

Andrew K. Epting, Jr., Esq.
Andrew K. Epting, Jr., LLC
46A State Street
Charleston, SC 29401
(843) 377-1871 Fax: (843) 377-1310



John W. Fletcher, Esquire
jfletcher@barnwell-whaley.com

June 10, 2016

RECEIVED

JUN 13 2016

SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RE: Skywaves I Corporation vs. Branch Banking & Trust Company and James Edahl
Appellate Case No.: 2015-001809
BWPH File No.: 3496.001

Dear Ms. Kitchings:

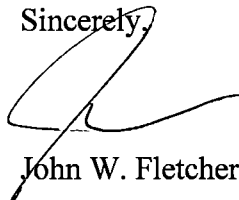
Enclosed for filing please find the original and one (1) copy of each of the following:

- (1) Appellant/Respondent's Amended Designation of Matter to be Included in the Record on Appeal (Appellant's Brief);
- (2) Appellant/Respondent's Amended Designation of Matter to be Included in the Records on Appeal (Respondent's Brief); and,
- (3) Appellant/Respondent's Amended Designation of Matter to be Included in the Record on Appeal (Appellant's Reply Brief).

We would appreciate if you would file the original documents and return the filed, stamped copies to us in the self-addressed, stamped envelope provided.

By copy of this letter, we are serving copies of the enclosures upon counsel of record.

Sincerely,



John W. Fletcher

JWF/jgc
Enclosures

www.barnwell-whaley.com

SOUTH CAROLINA OFFICE:
288 Meeting Street, Suite 200, Charleston, SC 29401
P 843.577.7700 F 843.577.7708

NORTH CAROLINA OFFICE:
1427 Military Cutoff Road, Suite 202, Wilmington, NC 28403
P 910.679.1388 F 910.679.4663

REPRESENTING CLIENTS IN ALL COURTS IN SOUTH CAROLINA AND NORTH CAROLINA AND IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

cc: Molly Hughes Cherry, Esquire
Julio E. Mendoza, Esquire
J.W. Nelson Chandler, Esquire
Kirsten Elena Small, Esquire
John P. Linton, Sr., Esquire
Andrew K. Epting, Jr., Esquire
Brian C. Duffy, Esquire
George J. Kefalos, Esquire
Michelle Nicole Endemann, Esquire



**BARNWELL
WHALEY** | **75** 1938-2013
PATTERSON & HELMS LLC | YEARS ■

P.O. Drawer H, Charleston, SC 29402-0197

3496.001
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RECEIVED

JUN 10 2013

SC Court of Appeals