



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

August 17, 2016

The Honorable Jeanette W. McBride
PO Box 2766
Columbia SC 29202-2766

REMITTITUR

Re: Branch Banking & Trust v. Elie Abikhaled
Lower Court Case No. 2014CP4002968
Appellate Case No. 2015-000158

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jay A. Kitchings".

CLERK

Enclosure

cc: Thomas E. Lydon, Esquire
Joseph Kershaw Spong, Esquire
Paul Hamilton Hoefler, Esquire

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Branch Banking and Trust Company, Respondent,

v.

Elie Abikhaled and Ghazi Abikhaled, Appellants.

Appellate Case No. 2015-000158

Appeal From Richland County
Deadra L. Jefferson, Circuit Court Judge

Unpublished Opinion No. 2016-UP-389
Submitted May 1, 2016 – Filed August 3, 2016

AFFIRMED

Thomas E. Lydon, of McAngus Goudelock & Courie,
LLC, of Columbia, for Appellants.

Joseph Kershaw Spong and Paul Hamilton Hoefer, both
of Robinson McFadden & Moore, PC, of Columbia, for
Respondent.

PER CURIAM: Elie and Ghazi Abikhaled (Appellants) appeal the circuit court's order granting Branch Banking and Trust Company's (BB&T) motion to strike Appellants' demand for a jury trial. Appellants contend the jury trial waiver clause found in the guaranty agreements between Appellants and BB&T was

unenforceable as to the underlying factual allegations supporting counterclaims pled before the circuit court. Appellants further argue any application of the clause to the allegations would be unconscionable. We find the plain and ordinary meaning of the clause encapsulates the factual allegations asserted by Appellants. *See Carolina First Bank v. BADD, L.L.C.*, 414 S.C. 289, 292, 778 S.E.2d 106, 108 (2015) ("Whether a party is entitled to a jury trial is a question of law, which this [c]ourt reviews de novo . . ."); *Beach Co. v. Twillman, Ltd.*, 351 S.C. 56, 63-64, 566 S.E.2d 863, 866 (Ct. App. 2002) ("A party may waive the right to a jury trial by contract. Such a waiver must be strictly construed as the right to trial by jury is a substantial right. However, terms in a contract provision must be construed using their plain, ordinary and popular meaning." (citations omitted)). We find the clause was not procured by any absence of meaningful choice, was conspicuously found in the guaranty, and was not unconscionable. *See Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 24-25, 644 S.E.2d 663, 668 (2007) ("In South Carolina, unconscionability is defined as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them."); *see also Gladden v. Boykin*, 402 S.C. 140, 146, 739 S.E.2d 882, 885 (2013) (stating a court should examine "whether an important clause was particularly inconspicuous, as if the drafter intended to obscure the term"). Accordingly, we affirm.¹

AFFIRMED.

HUFF, KONDUROS, and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.