

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

BRANCH BANKING & TRUST  
COMPANY, a North Carolina corporation,

Appellant,

vs.

DOUGLAS D. GERRARD, ESQ.,  
individually; and GERRARD & COX, a  
Nevada professional corporation, d/b/a  
GERRARD COX & LARSEN; JOHN  
DOE INDIVIDUALS I-X; and ROE  
BUSINESS ENTITIES XI-XX,

Respondents.

Electronically Filed  
Nov 14 2018 10:31 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**Supreme Court No. 73848**

Clark County District Court  
Case No.: A-16-744561-C

---

**APPELLANT'S ERRATA TO REPLY BRIEF IN RESPONSE  
TO RESPONDENTS' ERRATA TO ANSWERING BRIEF**

---

The Respondents' Answering Brief, at pages 38-41, makes a series of arguments regarding the alleged weakness of the BB&T Petition for Writ of Certiorari to the U.S. Supreme Court. An Errata to that portion of the Respondent's Answering Brief, ostensibly correcting certain errors therein, has now been filed.

The Respondents' arguments were based upon a claim that said Writ Petition did not raise a federal question under federal law or a Constitutional question under the U.S. Constitution as required by 28 U.S.C. §1257. This was inaccurate, as the actual "Questions Presented" in the actual Writ Petition (inaccurately quoted in the RAB) would show.

More specifically, as shown by **Exhibit "A"** hereto, the actual "Questions

Presented” in the actual Writ Petition, were as follows:

- I. Whether the Nevada State District Court’s adjudication of substantial property rights without the property owner being named as a party violates the Due Process Clause of the Fourteenth Amendment by depriving a person of property rights without due process of law.
- II. Whether the Nevada State District Court’s interpretation of the FDIC’s Purchase and Assumption Agreement as requiring a specific assignment of individual assets is sufficiently at odds with other federal decisions interpreting the Purchase and Assumption Agreement to require this Court’s intervention to definitively interpret the Purchase and Assumption Agreement.

*See, Exhibit “A”* hereto, comprising the first three pages of the actual Writ Petition, at page 3. These “questions presented” clearly indicate that a Federal Constitutional claim is being raised, and also clearly indicate that a Federal Question is being raised.

The original RAB inaccurately contended otherwise, indicating for example at page 39 that “BB&T’s petition for writ of certiorari in the Priority Litigation did not involve any of these circumstances” [*i.e.*, those listed in 28 USC §1257.] In order to support this inaccurate assertion, the RAB purported to quote the questions presented in the Writ Petition, but failed to accurately or actually quote the Writ Petition, or the “Questions Presented” therein.

The Respondents have now filed an Errata, ostensibly to deal with this error. However, instead of correcting this inaccuracy by providing this Court with the actual questions presented in the actual BB&T Petition for Writ of Certiorari to the

U.S. Supreme Court, which are set forth above, the Errata simply identified another BB&T filing as the actual source of its incorrect quotations. The Errata however then reiterated and restated, without correction, the false assertion that “BB&T’s petition for writ of certiorari in the Priority Litigation did not involve any of these circumstances.” [*I.e.*, those identified in 28 USC §1257.] The Errata corrects two other sentences, but not this one, thereby trying to retain the basic thrust of the inaccurate arguments made at pages 38-41 of the RAB, which are not supported by the actual Writ Petition and which are inaccurate thereunder.

BB&T hereby reiterates its original arguments against this portion of the RAB, and also notes that these arguments are inappropriate on appeal from a motion to dismiss, in which the allegations of the pleading containing the claims (in this instance, the First Amended Complaint) must be assumed to be accurate (which is why the original Writ Petition was not fully included in the original appendix of the record on appeal—and its contents and strength should not have been raised as an issue on appeal).

It is respectfully submitted that reviewing the likely outcome of the Petition for Writ of Certiorari, or its strength or weakness, would be disastrous in the amount of ambiguity it would create on the question of whether or not a statute of limitations had begun to run. This Court’s cases, such as the *Semenza v. Nevada Medical Liability Ins. Co.*, 104 Nev. 666, 765 P.2d 184 (1993), decision quoted throughout the parties’ briefs, did not require any examination of the strength or merits of an appeal, but merely indicated that a claim accrues once any appeal (that automatically raises uncertainty as to the finality of damages) is rejected. *Semenza* should be construed as applying to any resort to a superior court, without the need


for ambiguous exercises in weighing the strength of an appeal, or, in this case, of a Writ Petition.

Nevertheless, if such a review is to be had, it should at least be accurate.

That such a review is inappropriate, is, however, clear. Indeed, as Respondents themselves aver elsewhere in their own RAB: rejection of the Writ Petition is not to be construed as equivalent to affirmance on the merits; thus, its rejection should simply be treated in a straightforward manner, as the date on which BB&T's damages became certain.

DATED this 13<sup>th</sup> day of November, 2018.

**ALBRIGHT, STODDARD, WARNICK &  
ALBRIGHT**

A handwritten signature in black ink, appearing to read 'D. Chris Albright', is written over a horizontal line.

G. MARK ALBRIGHT, ESQ., #001394

D. CHRIS ALBRIGHT, ESQ., #004904

801 South Rancho Drive, Suite D-4

Las Vegas, Nevada 89106

Tel: (702) 384-7111

[gma@albrightstoddard.com](mailto:gma@albrightstoddard.com)

[dca@albrightstoddard.com](mailto:dca@albrightstoddard.com)

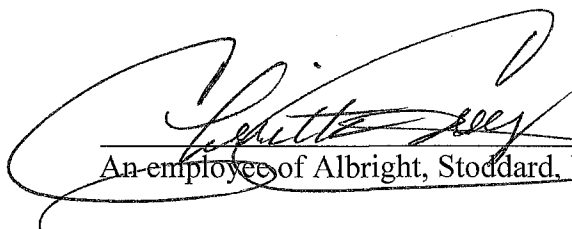
*Counsel for Appellant*

### CERTIFICATE OF SERVICE

Pursuant to NRAP 25(c), I hereby certify that I am an employee of ALBRIGHT, STODDARD, WARNICK & ALBRIGHT, and that on this 14/11 day of November, 2018, the foregoing **APPELLANT'S ERRATA TO REPLY BRIEF IN RESPONSE TO RESPONDENTS' ERRATA TO ANSWERING BRIEF**, was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

Craig J. Mariam, Esq., #10926  
Robert S. Larsen, Esq., #7785  
Wing Yan Wong, Esq., #13622  
**GORDON & REES LLP**  
300 South Fourth Street, Suite 1550  
Las Vegas, Nevada 89101  
Tel: 702.577.9310  
Fax: 702.255.2858  
[cmariam@gordonrees.com](mailto:cmariam@gordonrees.com)  
[rlarsen@gordonrees.com](mailto:rlarsen@gordonrees.com)  
[wwong@gordonrees.com](mailto:wwong@gordonrees.com)  
*Attorney for Respondents*

<u>      </u>	Certified Mail
<u>  X  </u>	Electronic Filing/Service
<u>      </u>	Email
<u>      </u>	Facsimile
<u>      </u>	Hand Delivery
<u>      </u>	Regular Mail

  
An employee of Albright, Stoddard, Warnick & Albright

-----

**EXHIBIT "A"**

13-1413  
No. \_\_\_\_\_

FILED

MAY 22 2014

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

**In The  
Supreme Court of the United States**

BRANCH BANKING & TRUST COMPANY, AS  
SUCCESSOR IN INTEREST TO THE FEDERAL  
DEPOSIT INSURANCE CORPORATION AS  
RECEIVER OF COLONIAL BANK, N.A.,

*Petitioner,*

v.

R & S ST. ROSE LENDERS LLC, A NEVADA LIMITED  
LIABILITY COMPANY; COMMONWEALTH  
LAND TITLE INSURANCE COMPANY, AS  
ASSIGNEE OF ROBERT E. MURDOCK, ESQ.;  
AND ECKLEY M. KEACH, ESQ.,

*Respondents.*

**On Petition For Writ Of Certiorari  
To The Supreme Court Of The State Of Nevada**

**PETITION FOR WRIT OF CERTIORARI**

GLENN F. MEIER, ESQ.  
*Counsel of Record*  
RACHEL DONN, ESQ.  
MEIER & FINE, LLC  
2300 W. Sahara Ave., Suite 1150  
Las Vegas, NV 89102  
(702) 673-1000  
gmeier@nvbusinesslawyers.com

**BLANK PAGE**



**QUESTIONS PRESENTED**

Whether the Nevada State District Court's adjudication of substantial property rights without the property owner being named as a party violates the Due Process Clause of the Fourteenth Amendment by depriving a person of property rights without due process of law.

Whether the Nevada State District Court's interpretation of the FDIC's Purchase and Assumption Agreement as requiring a specific assignment of individual assets is sufficiently at odds with other federal decisions interpreting the Purchase and Assumption Agreement to require this Court's intervention to definitively interpret the Purchase and Assumption Agreement.