

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

Case No. 2010-CP-13-0064

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SC Court of Appeals

72200

AMERICAN COMMUNITY BANK,
a division of Yadkin Valley Bank & Trust, Respondent,

vs.

MICHAEL R. BROWN,
C.W. HORNE,
SHORTT AUCTION & REALTY CO., INC.,
BANK OF AMERICA, N.A., and
JAGUAR PORTFOLIO, LLC

of whom

MICHAEL R. BROWN is the Appellant.

MOTION TO SUPPLEMENT RECORD

Pursuant to Rules 240 and 212(b), S.C.A.C.R., the Appellant, by his counsel herein, moves this Court for an order allowing him to file a Supplemental Record on Appeal, on the grounds stated below:

1. Subject to the Court's approval, the Appellant served the Record on Appeal by mailing dated April 25, 2014.
2. By correspondence after receipt of the said Record on Appeal, counsel for Respondent made the Movant aware of items omitted from the said Record.
3. The items in question were omitted owing to their lack of availability to counsel for Movant, or through inadvertence. The items in question are:
 - a) a portion of an attached exhibit to the Complaint herein; and
 - b) an exhibit to the Plaintiff's Memorandum on the applicability of Justice Toal's

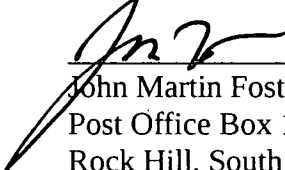
Administrative Order as to foreclosure proceedings.

4. The parties are agreed and consent to the filing of a Supplemental Record including the items above. This consent is shown by the e-mail of opposing counsel attached hereto and incorporated herein.
5. The Defendant stands ready to bear the cost of such Supplemental Record on Appeal
6. Pursuant to Rule 212(b), S.C.A.C.R., the movant understands this procedure to be allowed and timely.
7. The Movant prays for an extension of time for both parties to serve and file their final Briefs until the resolution of this Motion and the speedy filing of the Supplemental Record on Appeal.

The basis of this Motion is the within-cited Rules, the records of this appeal, and any attached affidavit or stipulation of the undersigned, which items are hereby incorporated in this Motion.

WHEREFORE, the Appellant herein moves this Court to for an order allowing him to file a Supplemental Record on Appeal, pursuant to Rules 240 and 212(b), S.C.A.C.R.

May 13, 2014



John Martin Foster
Post Office Box 106
Rock Hill, South Carolina 29731
803 324-8100
Attorney for Appellant

Other Counsel of Record:

James W. Sheedy
Susan E. Driscoll
Driscoll Sheedy, P.A.
11520 North Community House Road, Suite 200
Charlotte, N.C. 28277

Subject: American Comm Bank v Brown 10-CP-13-0164
From: "Susan Driscoll" <SDriscoll@Driscollsheedy.com>
Date: 05/09/2014 11:29 AM
To: "John Martin Foster" <jmfoster@comporium.net>
CC: "Jim Sheedy" <JimSheedy@Driscollsheedy.com>

Martin,

If these two documents are included in a supplement, so that the Record on Appeal is complete, then there will be no need for us to file a motion.

Susan

From: John Martin Foster [mailto:jmfoster@comporium.net]
Sent: Friday, May '09, 2014 11:14 AM
To: Susan Driscoll
Subject: Re: American Comm Bank v Brown 10-CP-13-0164

Susan:

Thank you for the documents, but I need more clarity. Are you saying that a Supplement including the attached items will resolve your concerns? Or is this preliminary to a Motion raising your other points?

If we are resolved, I will prepare a stipulation to allow the Supplement. If not, I believe your Motion should precede any printing.

Please let me know.

On 05/09/2014 09:39 AM, Susan Driscoll wrote:

Martin,

See attached for Exhibit C to the Complaint and Tab C to the Memorandum.

Susan

From: John Martin Foster [mailto:jmfoster@comporium.net]
Sent: Friday, May 02, 2014 1:47 PM
To: Susan Driscoll
Subject: American Comm Bank v Brown 10-CP-13-0164

Susan:

In response to your e-mail of 04/28/14:

I am sorry that the items in pages 16 thru 20 were jumbled, but, as you

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note, they are included. If the Court requires a reprinting or a supplement, that will be done. As it stands, I see no need.

My client's copy of your Complaint does not contain the demand letter under Exhibit C; if supplied, we will place that in a Supplement.

I know of no reason why the captions of the depositions, or the caption for the hearing transcript, need to be included. The items are identified in the Index, and persons (deposed or speaking) are adequately identified. I read Rules 209 and 210 as requiring only the relevant portions of documents.

The omitted tabs to your memorandum on the applicability of Justice Toal's Administrative Order are:

- B: Mr. Brown's deposition, which is identified in the Motion and printed in the Record;
- C: Your Bank's one-page verification of its lack of foreclosure procedures;
- D: A cited case.

I see no point in reprinting B., or including D, since the citation of the case in your Memorandum is sufficient. If your position is that C., the verification, has relevance, I will include it in a Supplement.

I fear, from past dealings, that assume the above will not be a matter we can settle, and that you will be filing a Motion. In that case, I ask that you include this response as an attachment.

--

JOHN MARTIN FOSTER JMFOSTER@COMPORIUM.NET

223 EAST MAIN STREET SUITE 520 ROCK HILL SC 29730

POST OFFICE BOX 106 ROCK HILL SC 29731-6106

803 324-8100 803 324-8109: FAX

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IRS CIRCULAR 230 DISCLOSURE: To ensure compliance with requirements imposed by the IRS, we inform you that any US federal tax advice contained in this document is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code Section 6662(d) or (ii) promoting, marketing or recommending to another party any transaction or matter that is contained in this document.

--
JOHN MARTIN FOSTER JMFOSTER@COMPORIUM.NET

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Subject: RE: American Comm. Bank v Brown; Proposed Motion
From: "Susan Driscoll" <SDriscoll@Driscollsheedy.com>
Date: 05/12/2014 04:12 PM
To: "John Martin Foster" <jmfoster@comporium.net>

Martin,

I'm fine if you indicate we have consented in the body of the motion to the supplement. I don't think we will need to file anything additionally on our side.

Susan

From: John Martin Foster [mailto:jmfoster@comporium.net]
Sent: Monday, May 12, 2014 4:11 PM
To: Susan Driscoll
Subject: Re: American Comm. Bank v Brown; Proposed Motion

Susan:

I will give the thing a spell-check.

Rule 212 speaks of consent, and I described the matter as a stipulation. Do I understand that you wish me to file, and have your agreement as a separate doc coming from you?

On 05/12/2014 04:01 PM, Susan Driscoll wrote:

Martin,

There are a few mistakes in your motion that will most likely be caught by spell check on the final draft.

Jim and I should not be signatories on the motion.

Susan

From: John Martin Foster [mailto:jmfoster@comporium.net]
Sent: Monday, May 12, 2014 2:32 PM
To: Susan Driscoll
Subject: American Comm. Bank v Brown; Proposed Motion

Susan:

Please let me know if the attached is sufficient or acceptable.

--

JOHN MARTIN FOSTER JMFOSTER@COMPORIUM.NET

223 EAST MAIN STREET SUITE 520 ROCK HILL SC 29730

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--

JOHN MARTIN FOSTER JMFOSTER@COMPORIUM.NET

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STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

Case No. 2010-CP-13-0064

AMERICAN COMMUNITY BANK,
a division of Yadkin Valley Bank & Trust, Respondent,
vs.

MICHAEL R. BROWN,
C.W. HORNE,
SHORTT AUCTION & REALTY CO., INC.,
BANK OF AMERICA, N.A., and
JAGUAR PORTFOLIO, LLC

of whom
MICHAEL R. BROWN is the Appellant.

PROOF OF SERVICE

I certify that I have served the Motion to Supplement Record dated May 13, 2014, on the following counsel or persons of record:

James W. Sheedy
Susan E. Driscoll
Driscoll Sheedy, P.A.
11520 North Community House Road, Suite 200
Charlotte, N.C. 28277

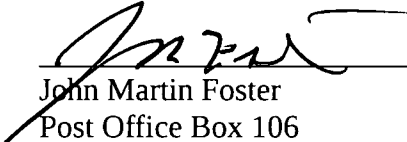
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by depositing the same with the United States mail, with sufficient first class postage attached, properly addressed to the clerk of the Court, and with a copy also directed to the respective last known address(es) of those attorney(s) and/or persons set out above, pursuant to Rule 262, S.C.A.C.R.

May 13, 2014


John Martin Foster
Post Office Box 106
Rock Hill, S. C. 29731-6106
803 324-8100
Attorney for Appellant

JOHN MARTIN FOSTER
Attorney at law

The Guardian Building	PO Box 106	803 324 8100
223 East Main Street Suite 520	Rock Hill SC	803 324 8109 Fax
Rock Hill South Carolina 29730	29731-6106	jmfooster@comporium.net

May 13, 2014

The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
1015 Sumter Street
Post Office Box 11629
Columbia, SC 29211

Re: American Community Bank, Respondent
v. Michael E. Brown, et al., of whom Michael E. Brown is Appellant
Civil Action No. 10-CP-13-0164

Dear Ms. Kitchings:

In accordance with Rules 240 and 212(b), S.C.A.C.R., enclosed herewith please find the original and seven (7) copies of the Appellant's Motion to Supplement Record, together with Certificate of Service for the same in the above referenced case. I also enclose our check for the Motion fee of \$25.00.

By copy of this letter, I am serving the attorney for the Respondents with copies of the said Motion, as evidenced by the Certificate of Service.

Please return the extra conformed copy to my office in the enclosed self-addressed, stamped envelope. As always, thank you, and your staff, for your assistance in these matters.

Sincerely,



John Martin Foster
Post Office Box 106
Rock Hill, South Carolina 29731
803 324-8100
Attorney for Appellant

jmf/
enclosures

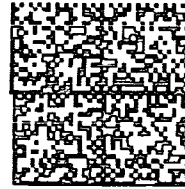
Other counsel of record:

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TO: THE HONORABLE JENNY ABBOTT KITCHINGS
CLERK OF THE COURT OF APPEALS
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COLUMBIA, S.C. 29211