

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, ..... 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.

---

APPENDIX TO RECORD ON APPEAL

---

**RECEIVED**

MAY 27 2014

**SC Court of Appeals**

John Martin Foster  
Post Office Box 106  
Rock Hill, South Carolina 29731-6106  
(803) 324-8100  
Attorney for Appellant

James W. Sheedy  
Susan E. Driscoll  
Driscoll Sheedy, P.A.  
11520 N. Community House Rd, Suite 200  
Charlotte, N.C. 28277  
(704) 341-2102  
Attorneys for Respondent

INDEX

Verification of Memorandum on Applicability of C.J. Toal Administrative Order, filed July 18, 2011 .....1

Exhibit "C" to Complaint filed May 4, 2010 .....2

Certificate of Counsel .....6

STATE OF SOUTH CAROLINA )  
COUNTY OF CHESTERFIELD )

IN THE COURT OF COMMON PLEAS

American Community Bank, a division of Yadkin )  
Valley Bank & Trust, )  
Plaintiff, )


vs. )

Michael R. Brown; C. W. Horne; Shortt Auction )  
& Realty Co., Inc.; Bank of America, N.A.; and )  
Jaguar Portfolio, LLC, )  
Defendants. )

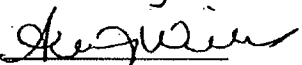
VERIFICATION OF MEMORANDUM

C.A. No.: 10-CP-13-164

BEFORE ME personally appeared Danny Hunter, who, on oath, says that he is OREO Manager, Special Assets, for Plaintiff; he has carefully read the Memorandum on Application of Administrative Order 2011-05-02-01; he knows of his own knowledge that Plaintiff has no policy, process or procedure for resolution of a foreclosure action by loan modification or other means of loss mitigation; the loan at issue in this proceeding has matured; and Plaintiff is not going to forgive the debt and satisfy the mortgage.

  
\_\_\_\_\_  
Danny Hunter,  
OREO Manager, Special Assets,  
Yadkin Valley Bank & Trust

Sworn to before me this 15<sup>th</sup>  
day of July, 2011.

  
Notary Public for North Carolina  
My Commission Expires: June 19, 2013

JUL 18 AM 10 38  
NOTARY PUBLIC  
STATE OF SOUTH CAROLINA

Driscoll Sheedy, P.A.  
Attorneys at Law

00096063.



A PROFESSIONAL ASSOCIATION | ATTORNEYS AT LAW

James W. Sheedy  
Lic. in SC Only  
Direct: 704 341 2102  
Fax: 704 341 2105  
jimshedy@driscollsheedy.com

Ballantyne: 11520 N. Community House Road  
Suite 200 | Charlotte, NC 28277  
South Carolina Office: 222 E. Main Street  
Suite 204 | Rock Hill, SC 29730  
www.driscollsheedy.com

February 23, 2010

Via Federal Express

Michael R. Brown  
2217 D Matthews Township Pkwy  
Apt. 113  
Matthews, NC 28105

**Re: \$150,000 Promissory Note dated December 29, 2000 (Note), secured by Mortgage dated December 29, 2000, recorded January 2, 2001 in Book 346 at Page 431, Office of the Clerk of Court, Chesterfield County, against 106.85 acres (the "Mortgage")**

Dear Mr. Brown:

I represent American Community Bank, a division of Yadkin Valley Bank & Trust (hereafter, Bank).

You entered into the commercial Note pursuant to which you promised to pay an estimated \$150,000 plus all accrued, unpaid interest thereon, at loan maturity. The Note calls for interest to accrue at the rate of 10% per annum, which on \$150,000 under the 365/360 basis set forth therein is \$41.67 per diem. The Note allows Bank to renew or extend without the consent of or notice to anyone. You acknowledged reading, understanding and agreeing to all of the provisions of the Note. Upon loan maturity, Bank is entitled to payment in full, failing which you are in default. In addition, Bank is entitled to reimbursement of its actual attorneys' fees and costs in connection with collection of the Note, including foreclosure of the Mortgage operating as security therefor. The Note was given under seal and was expressly intended to have the effect of a sealed instrument according to law. The Note is governed by North Carolina law.

Security for the Note (including any renewals, extensions, modifications, or future advances) consists of the Mortgage. In addition to the Note, the Mortgage secures protective advances for taxes, insurance premiums, repairs, public assessments, court costs, and attorneys' fees, without limitation as to amount. You are required to pay all taxes and assessments, insurance and repair costs, failing which Bank may pay and add any amounts so paid to the debt secured by the Mortgage. If Bank chooses to pursue its remedy of foreclosure, Bank shall

Michael R. Brown  
February 23, 2010  
Page 2

recover the costs of any such action, including a reasonable attorneys' fee, which shall be secured by the Mortgage, and included in a judgment of foreclosure.

The Note has matured. You owe \$150,000. Bank is not presently inclined to add interest or attorneys' fees to the sum of \$150,000 unless you fail to pay this amount within fifteen (15) days of the date hereof, in which event interest will accrue thereafter at the per diem rate of \$41.67 and attorneys' fees and costs will be added until payment in full has been received by Bank. If you do not pay as hereby requested, Bank may pursue all of its legal remedies, including entry of a judgment against you and foreclosure of the Mortgage.

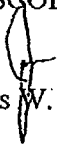
This notice is sent to you as a courtesy and is not an admission that any written notice is otherwise due you, nor is it an election of remedies or a waiver of Bank's right to exercise any prejudgment or self-help rights or remedies which may now or hereafter be available to Bank pursuant to the terms of the Note or Mortgage, or that are otherwise available at law or in equity. The listing herein of specific defaults, failures to perform, rights and remedies is without limitation of other defaults, failures to perform, rights and/or remedies which may exist. By not listing each and every specific default, failure to perform, right and remedy herein, Bank has not waived, and is not hereby waiving, any defaults, failures to perform, rights or remedies, and is instead reserving all such defaults, failures, rights and remedies and may assert such if payment and performance are not forthcoming. No delay by Bank in exercising any rights or remedies shall operate as a waiver of any rights or remedies it may have.

Your prompt payment is expected. If you have any questions or concerns about the correctness of the contents of this letter, please communicate directly with the undersigned. Any negotiations or discussions with any representative of Bank regarding the Note secured by the Mortgage shall not be binding upon Bank unless and until it is in writing and signed by an authorized representative of Bank.

With kindest regards, I remain

Respectfully,

DRISGOLL SHEEDY, P.A.

  
James W. Sheedy

cc: William Clewis

00093151.



## Shipment Receipt

## Address Information

**Ship to:**  
Michael R. Brown

2217 D Matthews  
Township Pkwy  
Apt. 113  
Matthews, NC  
28105  
US  
7043412101

**Ship from:**  
James W. Sheedy  
Driscoll Sheedy, P.A.  
11520 North Community  
House Road  
Suite 200  
Charlotte, NC  
28277  
US  
7043412101

## Shipping Information

Tracking number: 798414214957  
Ship date: 02/23/2010  
Estimated shipping charges: 24.77

## Package Information

Service type: Priority Overnight  
Package type: FedEx Envelope  
Number of packages: 1  
Total weight: 0.25LBS  
Declared value: 0.00USD  
Special Services: Adult signature required, Residential  
Delivery  
Pickup/Drop-off: Drop off package at FedEx location

## Billing Information

Bill transportation to: Sender  
Your reference: Brown  
P.O. no.:  
Invoice no.:  
Department no.:

Thank you for shipping online with FedEx ShipManager at [fedex.com](http://fedex.com).

## Please Note

FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$500, e.g., jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits. Consult the applicable FedEx Service Guide for details.

The estimated shipping charge may be different than the actual charges for your shipment. Differences may occur based on actual weight, dimensions, and other factors. Consult the applicable FedEx Service Guide or the FedEx Rate Sheets for details on how shipping charges are calculated.



FedEx Express  
Customer Support Trace  
3875 Airways Boulevard  
Module H, 4th Floor  
Memphis, TN 38116

U.S. Mail: PO Box 727  
Memphis, TN 38194-4643  
Telephone: 901-369-3600

March 1, 2010

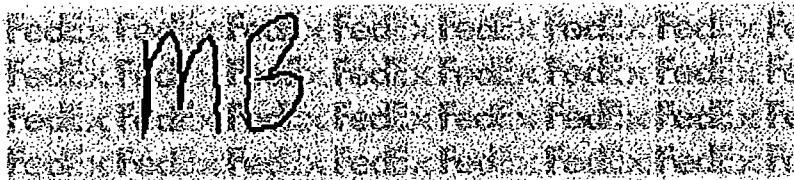
Dear Customer:

The following is the proof-of-delivery for tracking number 798414214957.

---

**Delivery Information:**

<b>Status:</b>	Delivered	<b>Delivery location:</b>	2217 D MATTHEWS TOWNSHIP PKWY Matthews, NC 28105
<b>Signed for by:</b>	M.BELL	<b>Delivery date:</b>	Feb 24, 2010 08:58
<b>Service type:</b>	Priority Envelope		



---

**Shipping Information:**

<b>Tracking number:</b>	798414214957	<b>Ship date:</b>	Feb 23, 2010
		<b>Weight:</b>	0.5 lbs/0.2 kg

**Recipient:**  
Michael R. Brown  
2217 D Matthews Township Pkwy  
Apt. 113  
Matthews, NC 28105 US

**Shipper:**  
James W. Sheedy  
Driscoll Sheedy, P.A.  
11520 North Community House Road  
Suite 200  
Charlotte, NC 28277 US

**Reference**

Brown

Thank you for choosing FedEx Express.

FedEx Worldwide Customer Service  
1.800.GoFedEx 1.800.463.3339

STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY  
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

**RECEIVED**

MAY 27 2014

Case No. 2010-CP-13-0064

**SC Court of Appeals**

AMERICAN COMMUNITY BANK, ..... Respondent,

vs.

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

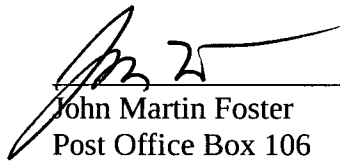
of whom

MICHAEL R. BROWN is the ..... Appellant.

CERTIFICATE OF APPELLANTS

The undersigned hereby certifies that the Appendix to the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

May 21, 2014

  
\_\_\_\_\_  
John Martin Foster  
Post Office Box 106  
Rock Hill, South Carolina 29731-6106  
(803) 324-8100  
Attorney for Appellants

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

---

**RECEIVED**  
MAY 27 2014  
**SC Court of Appeals**

AMERICAN COMMUNITY BANK, ..... 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 Appendix to the Record on Appeal, dated May 21, 2014,  
on the following counsel of record:

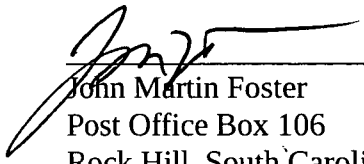
James W. Sheedy  
Susan E. Driscoll  
Driscoll Sheedy, P.A.  
11520 North Community House Road, Suite 200  
Charlotte, N.C. 28277

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 addressees) of those attorney(s) and/or persons set out below; or

by hand delivering copies of the same to the following persons, or by leaving the same at  
that person's office with that person's clerk or some other person in charge thereof, or by leaving

it in a conspicuous place therein; of if the office was closed or the person to be served has no office, by leaving a copy at that person's dwelling place or usual place of abode with some person of suitable age and discretion then residing therein, all pursuant to Rule 233(b), S.C.A.C.R.

May 22, 2014



---

John Martin Foster  
Post Office Box 106  
Rock Hill, South Carolina 29731-6106  
(803) 324-8100  
Attorney for Appellants