

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Townes at Pelham Owners' Association, Inc.,
Respondent,

v.

Donna Boyd, Bank of America, N.A. by Assignment
From Mortgage Electronic Registration Systems,
Defendants,

And

Donna Boyd, Third Party Plaintiff

v.

Eric Hedrick, in his Individual and Official Capacity as
Owner or President of Cornerstone Realty, Inc. and
Cornerstone Realty, Inc., Third Party Defendants,

Of whom Donna Boyd is the Appellant

Appellate Case No. 2014-000701

The Honorable Charles B. Simmons, Jr.
Greenville County
Trial Court Case No. 2012CP2303686

**REPLY TO APPELLANT'S OPPOSITION TO
RESPONDENT'S MOTION TO HOLD CASE IN
ABEYANCE AND MOTION TO FILE OUT OF TIME**

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SC Court of Appeals

NOW COMES, the Respondent, Townes at Pelham Owners' Association, Inc., by and through its undersigned counsel, and hereby submits its Reply to Appellant's Opposition to Respondent's Motion to Hold Case in Abeyance and Motion to File out of Time.

Respondent has provided the Court most of the relevant facts and copies of the Court pleadings for Lakeview Loan Servicing, LLC ("Foreclosure Plaintiff") v. Donna Boyd, et. al., (Case No. 2104-CP-23-04648) currently pending before the Master in Equity for Greenville County.

Appellant has stated numerous unsubstantiated allegations in her Opposition to Respondent's Motion to Hold Case in Abeyance ("Opposition"). Regardless, Respondent will concentrate the majority of its Reply on the terms of the Maser Order and Judgment of Foreclosure and Sale ("Master's Order") in Case No. 2014-CP-23-04648 signed by Judge Charles B. Simmons, Jr. on February 24, 2015. A copy of said Order is attached hereto as Exhibit A and all its terms are incorporated herein by reference.

In the Opposition, Appellant "argues against the abeyance because it is unwarranted due to the fact that the property is subject to review for modification" and states that she "has spoken at great length with the Foreclosure Plaintiff who has expressed no desire to displace a retired disabled veteran." The Appellant also states her "aim is to retain her property and has taken the necessary steps to terminate the foreclosure."

Respondent has previously provided the Court a copy of the Notice of Denial of Loan Modification mailed to Appellant/Defendant Boyd by the Foreclosure Plaintiff on December 19, 2014. The Master's Order also cites this Notice of Denial of Loan Modification and states "the borrower(s) failed to file a response to the notice." Furthermore, the Appellant/Defendant is in

default and upon information and belief, she did not appear at the foreclosure hearing held on February 24, 2015, nor did she have counsel appear on her behalf. Appellant/Defendant has not presented any evidence of steps taken by her to terminate the foreclosure. Regardless, the foreclosure of the subject property against both Appellant and Respondent was granted by the Master in Equity for Greenville County on February 24, 2015.

The Master's Order also includes reference to Respondent and its pending Foreclosure Action bearing Case No. 2012-CP-23-3686 as a junior lienholder and a subordinate action to the Foreclosure Action brought by Lakeview Loan Servicing, LLC.

Respondent requests the Court take special notice of the following provisions contained in the Master's Order:

The Master's Order concluded:

"The Plaintiff (Lakeview Loan Servicing, LLC) should have judgment of foreclosure of the mortgage and the mortgaged property (subject property of this appeal) should be ordered sole at public auction after due advertisement."

The Master's Order further ordered:

"That the Defendants liable for the aforesaid mortgage debt shall, on or before the date of sale of the property hereinafter described, pay to the Plaintiff, or Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

"That on default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, be sold by

the Master in Equity at public auction at the County Court House in Greenville County, South Carolina...”

“And it is further ORDERED, ADJUDGED AND DECREED that each Defendant and all persons whomsoever claiming under him, her or them, be forever barred and foreclosed of all right, title, interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.”

Upon information and belief, Respondent further contends that the property is scheduled to be sold on April 6, 2015 by the Master in Equity for Greenville County.

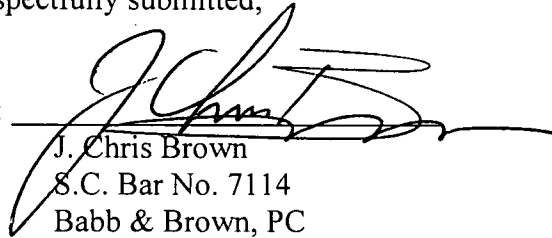
CONCLUSION

In conclusion, the Respondent asserts all the arguments previously stated in its Motion to Hold this Case in Abeyance (“Motion”) specifically referencing the Master’s Order that supports the arguments raised by Respondent in its Motion. Furthermore, the Master’s Order which includes the sale of the subject property supports the benefits that would accrue and the lack of prejudice that would result from holding this case in abeyance until the mortgage foreclosure action filed by the Lakeview Loan Servicing, LLC can be adjudicated by the Court of Common Pleas in Greenville County. Upon information and belief, the Foreclosure will conclude when the property is sold on April 6, 2015, and the Master in Equity signs the Master’s Foreclosure Deed divesting Appellant/Defendant of all interest in the subject property that is the subject of this appeal. Subsequently, neither Appellant nor Respondent will have proper standing to proceed with the appeal once Appellant and Respondent are divested of all interest in the subject property and Respondent will request the Court remove and/or withdraw the appeal from the Court docket.

DATED this 9 day of March, 2015.

Respectfully submitted,

By:



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*Attorney for Respondent, Townes at Pelham
Owners' Association, Inc. and Third-Party
Defendants, Eric Hedrick, in His Individual
Capacity as Owner or President of Cornerstone
Realty, Inc. and Cornerstone Realty, Inc.*

EXHIBIT A

FILED-CLERK OF COURT
GREENVILLE CO. S.C. IN THE COURT OF COMMON PLEAS
STATE OF SOUTH CAROLINA PAUL B. WICKENSIMMER
COUNTY OF GREENVILLE

2015 FEB 27 PM 2 45

Lakeview Loan Servicing, LLC,
PLAINTIFF,
vs.
Donna Boyd; The Townes at Pelham Owners'
Association, Inc.
DEFENDANT(S)

MASTER'S ORDER AND
JUDGMENT OF FORECLOSURE AND SALE
(NON-JURY MORTGAGE FORECLOSURE)

C/A NO: 2014-CP-23-04648

DEFICIENCY WAIVED

Non-eligible under the Home Affordable
Modification Program

Verified

TO:
Hutchens Law Firm
Attorney for Plaintiff

Pursuant to Rule 53 SCRPC, the above-entitled matter was referred to the undersigned to make appropriate findings of fact and conclusions of law with authority to enter a final judgment in the cause. Pursuant to the said Order of Reference a hearing was held, attended by the attorneys of record, the testimony was taken, which is reported herewith, and from the testimony and evidence, I find conclude and order as follows:

PROCEDURAL HISTORY

1. The Lis Pendens was filed on August 22, 2014.
2. The Summons and Complaint were filed on August 22, 2014.
3. Service was made upon the Defendant(s) named in this Order as is shown by the Proof(s) of Service filed herein.
4. That the Defendant(s) Donna Boyd and The Townes at Pelham Owners' Association, Inc., are in default as shown by the Affidavit of Default on file herein.
5. The Defendant(s) and/or all attorneys of record were notified of the time, date, and place of the hearing in this matter.
6. According to the Affidavit filed herein, no Defendant in default is in the Military Service of the United States of America, as contemplated under the Service members Civil Relief Act, and any amendments thereto.
7. The loan is no longer subject to the Supreme Court of South Carolina's Administrative Order 2011-05-02-01 because the Mortgagor(s) have been served with the required notice of rights, and more than 30 days have elapsed since service upon the Mortgagor(s).



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ENTERED COMPUTER

8. The Notice of Denial of Foreclosure Intervention was mailed to the borrowers on December 19, 2014, and the borrowers failed to file a response to the notice.

FINDINGS OF FACT

1. For value received, Donna Boyd made, executed and delivered a Note dated January 7, 2008, promising thereby to pay to the order of NVR Mortgage Finance, Inc. the sum of Two Hundred Twenty-Two Thousand Seven Hundred Ninety-Two Dollars and No Cents (\$222,792.00) with interest at 5.5 percent per annum. Other terms and conditions are stated in the Note, which is of record herein.

2. To better secure the payment of the Note described above, the said Donna Boyd made, executed and delivered to Mortgage Electronic Registration Systems, Inc., as nominee for NVR Mortgage Finance, Inc., its successors and assigns a mortgage in writing, dated January 7, 2008, covering real property in Greenville County, which is the same as that described in the Complaint. The mortgage was filed on January 9, 2008, and is of record in the Office of the Register of Deeds for Greenville County in Mortgage Book 4905 at page 464.

3. Thereafter, by virtue of an assignment dated April 19, 2012, recorded April 24, 2012, in Mortgage Book 5158 at page 5959, Mortgage Electronic Registration Systems, Inc., assigned said mortgage unto Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing, LP; however said assignment is invalid due to it fails to reference the mortgage book and page.

4. Thereafter, by virtue of a corrective assignment dated May 1, 2014, recorded May 14, 2014, in Mortgage Book MO 5265 at page 0533, Mortgage Electronic Registration Systems, Inc., as nominee for NVR Mortgage Finance, Inc., its successors and assigns, assigned said mortgage unto Bank of America, N.A.


5. Thereafter, by virtue of an assignment dated July 21, 2014, recorded August 18, 2014, in Mortgage Book MO 5265 at page 2158; Bank of America, N.A. by Manufacturers and Traders Trust Company, a/k/a M&T Bank, A New York Corporation, as Attorney in Fact for Bank of America, National Association pursuant to a Limited Power of Attorney Dated July 3, 2013 from Bank of America, National Association to Manufacturers and Traders Trust Company a/k/a M&T Bank, assigned said mortgage unto Lakeview Loan Servicing, LLC.

6. The above referenced instrument constitutes a purchase money mortgage with the proceeds of the loan being used to purchase the property.

7. Payment due on the Note has not been made as provided for therein, and the Plaintiff, as the holder thereof, has elected to require immediate payment of the entire amount due thereon and has placed the Note and Mortgage in the hands of the attorney herein for collection.

8. I find that since the inception of this action, plaintiff's attorney has assumed responsibility for the institution of this action and has searched and updated the title on the subject property from the

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date the current owner received the property or the date the mortgage was executed to the date of the filing of the Lis Pendens.

The Firm has been responsible for the preparation of the following pleadings:


1. Notice of Foreclosure Intervention
2. Lis Pendens
3. Summons and Complaint
4. Affidavit of Default
5. Order of Reference
6. Notice of Hearing
7. Proposed Master's Order and Judgment of Foreclosure and Sale
8. Notice of Sale
9. Record of Hearing
10. Other documents as applicable pertaining to service, foreclosure intervention and prosecution of the action.

Additionally, the Firm has arranged for service of process on the Defendant(s), has scheduled and attended the hearing in the matter, has provided reinstatement/payoff figures to the primary Defendant(s), if requested, and has had telephone conversations with the Defendant(s), if requested. Future duties include forwarding copies of the Master's Order and Judgment of Foreclosure and Sale to the Defendant(s), advising the Defendant(s) of the date that the property will be sold, arranging and coordinating the amount to be bid by Plaintiff, representation of Plaintiff at sale and preparation of after sale documentation as required. In light of the potential liabilities inherent in a foreclosure matter, the attendant responsibilities and the outcome obtained for the Plaintiff, I find that the contractual attorneys' fees in the amount of One Thousand Six Hundred Fifty Dollars and No Cents (\$1,650.00) are reasonable.

9. The amount due and owing on the Note, with interest at the rate provided in the Note, and other costs and expenses of collection, including attorneys' fees, secured by the Note and Mortgage, is as follows:

(a)	Total Principal due as of February 1, 2012	\$	209,911.64
(b)	Interest from January 1, 2012 through February 24, 2015 @ 5.50	\$	36,324.83
(c)	Escrow adjustments (debits or credits)	\$	1,757.72
	Hazard Insurance	\$	1,859.66
	Escrow Credit	(\$	101.94)
(d)	Late Charges	\$	259.65
(e)	Property Inspections	\$	493.00
(f)	Foreclosure Costs	\$	710.00

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(g)	Attorney's Fee-Foreclosure	\$	1,650.00
	TOTAL DEBT	\$	251,106.84

Interest for the period from the date shown in (b) above, through the date of this Judgment at the above stated rate to be added to the above stated "Total Debt" to comprise the amount of the judgment debt entered herein and interest after the date of judgment at the rate of Five and 50/100 (5.5%) per annum (pursuant to the terms of the Note and Mortgage) on the judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the mortgage through the date to which such interest is computed.

10. That The Townes at Pelham Owners' Association, Inc. is made a party by virtue of the following:

(a) Notice of Lien filed by The Townes at Pelham Owners' Association, Inc. against Donna Boyd, dated November 10, 2009, recorded November 11, 2009 in Book 5062 at Page 18, in the amount of \$805.54

(b) Default Judgment filed by The Townes at Pelham Owners' Association, Inc. against Donna Boyd dated December 15, 2010 and recorded December 23, 2010 in the amount of \$6,699.36 and identified as Judgment Roll/Case # 10-CP-23-10365.

(c) Pending Foreclosure Action filed by The Townes at Pelham Owners' Association, Inc. against Donna Boyd, et al in the Court of Common Pleas for Greenville County bearing C/A No. 2012-CP-23-3686.

(d) Any homeowners liens or assessments recorded or unrecorded that are due or that may become due in the future.

11. That the Plaintiff specifically waives its rights to a deficiency judgment in the event the sale of the real estate herein does not yield a sum sufficient to satisfy all indebtedness due to the Plaintiff, including costs and attorney fees.

12. Since a personal or deficiency judgment is being waived, the bidding will not remain open but compliance with the bid may be made immediately.

13. That the servicer is participating in the Home Affordable Modification Program (HMP). The loan is not subject to the HMP because it is a VA loan.

CONCLUSION OF LAW

I, therefore, conclude as follows:

1. The Plaintiff should have judgment of foreclosure of the mortgage and the mortgaged property should be ordered sold at public auction after due advertisement.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. There is due to the Plaintiff on the obligation and mortgage set forth in the Complaint the sum of Two Hundred Fifty-One Thousand One Hundred Six Dollars and 84/100 Dollars (\$251,106.84)

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representing the "Total Debt" due Plaintiff as set forth supra, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.

2. The amount due in the preceding paragraph (the "Total Debt" as set forth supra and later accrued interest on the principal) shall constitute the total judgment debt due the Plaintiff and shall bear interest hereafter at the rate of 5.5% percent per annum.

3. That the Defendants liable for the aforesaid mortgage debt shall, on or before the date of sale of the property hereinafter described, pay to the Plaintiff, or Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

4. That on default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, be sold by the Master in Equity at public auction at the County Court House in Greenville County, South Carolina, on some convenient sales day hereafter, on the following terms, that is to say:

A. FOR CASH: The Master in Equity will require a deposit of Five percent (5%) on the amount of the bid (in cash or equivalent) at the time of the sale, same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within Twenty (20) days same to be forfeited and applied to the costs and Plaintiff's debt.

B. The sale shall be subject to taxes and assessments, existing easements and easements and restrictions of record.

C. The above referenced instrument constitutes a purchase money mortgage with the proceeds of the loan being used to purchase the property.

D. The Purchaser is to pay for the deed preparation, for Deed Stamps and costs of recording the Deed.

5. If Plaintiff be the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of the Plaintiff in full, Plaintiff may pay to the undersigned Master in Equity only the amount of the costs and expenses crediting the balance of the bid on Plaintiff's indebtedness.

6. Personal or deficiency judgment having been waived, the bidding will not remain open after the date of sale and compliance with the bid may be made immediately.

7. That the Master in Equity will, by advertisement according to law, give notice of the time, and place of sale, and the terms thereof; and will execute to the Purchaser, or Purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, may become a purchaser at such sale, and that if, upon such sale being made, the Purchaser, or Purchasers, should fail to comply with the terms thereof within Twenty (20) days after date of sale, then the Master in Equity may advertise the said premises for sale on the next, or some other subsequent sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured.

8. That the Master in Equity will apply the proceeds of the sale as follows:



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FIRST: To payment of the amount of the costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court.

NEXT: To the payment to the Plaintiff or Plaintiff's attorney, of the amount of Plaintiff's debt and interest, so much thereof as the purchase money will pay on the same.

NEXT: Any surplus will be held pending further order of the court.

9. It is further ORDERED, ADJUDGED AND DECREED that in the event the successful bidder to whom the deed of conveyance has been issued subsequent to the sale is other than the Defendants in possession herein, the Sheriff of Greenville County is ordered and directed to eject and remove from the premises the occupants of the property sold, together with all personal property located thereon, and put the successful bidder to whom the deed of conveyance has been issued or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.

10. And it is further ORDERED, ADJUDGED AND DECREED that each Defendant and all persons whomsoever claiming under him, her or them, be forever barred and foreclosed of all right, title, interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.

11. And it is further ORDERED, ADJUDGED AND DECREED that any prior lien that has been paid in full is hereby satisfied and canceled of record.

12. IT IS FURTHER ORDERED that the Deed of conveyance made pursuant to said sale shall contain the names of only the first named Plaintiff and the first named Defendant and the Defendant who was the titleholder of the mortgaged property at the time of filing of the Notice of Pendency of the within action, and the name of the Grantee, and the Master in Equity is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said Deed.

13. The Master in Equity will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance.

14. Upon issuance of a Master in Equity's Report on Sale and Disbursements, the Register of Deeds is directed to release of record the mortgage lien being foreclosed, which mortgage lien is described as follows:

That Mortgage originally given to Mortgage Electronic Registration Systems, Inc., as nominee for NVR Mortgage Finance, Inc., its successors and assigns by Donna Boyd, dated January 7, 2008 and recorded January 9, 2008, in Mortgage Book 4905 at page 464 .

15. The following is a description of the premises herein ordered to be sold:
All that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Greenville being shown and designated as Lot 1 of The Townes at Pelham as shown on plat thereof being recorded in Plat Book 1029 at Page 25 and being shown and designated on a new plat prepared by Sinclair & Associates, LLC for Donna Boyd being recorded in Plat Book 67 at Page 8 and having, according to said plat, metes and bounds as shown thereon.

This being the same property conveyed to Donna Boyd by virtue of a Deed from NVR, Inc., a Virginia Corporation, dated January 7, 2008 and recorded January 9, 2008, in Book 2308 at Page 734 in the

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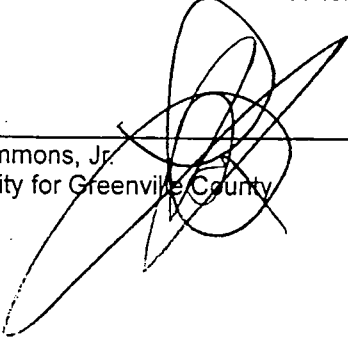


Office of the Register of Deeds for Greenville County, South Carolina.

6 Pelham Townes Drive, Greenville, SC 29615

6 Pelham Townes Drive
Greenville, SC 29615
TMS# 054045-01-028-00

16. IT IS FURTHER ORDERED that if the Plaintiff or the Plaintiff's representative does not appear at the scheduled sale of the above-described property, then the sale of the property will be null, void and of no force and effect. In such event, the sale will be rescheduled for the next available sales day.



Charles B. Simmons, Jr.
Master in Equity for Greenville County

Greenville, South Carolina

2/24 2015.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Circuit Court Judge

Case No. 2014-000701

Townes at Pelham Owners'
Association, Inc.

Respondent,

v.

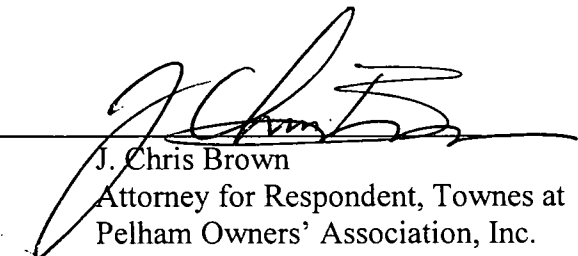
Donna Boyd

Appellant

PROOF OF SERVICE

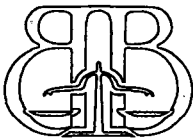
I certify that I have served the Reply to Appellant's Opposition to Respondent's Motion to Hold Case in Abeyance and Motion to File Out of Time for the above-referenced action by overnight delivery to the South Carolina Court of Appeals at 1015 Sumter Street, Columbia, SC, 29201 and by depositing a copy of it in the United States Mail, postage prepaid on Monday, March 9, 2015, addressed to the Appellant, Donna Boyd, at Post Office Box 1168, Mauldin, South Carolina, 29662.

March 9, 2015


J. Chris Brown
Attorney for Respondent, Townes at
Pelham Owners' Association, Inc.
505 W. Butler Road
Greenville, SC 29607

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MAR 10 2015

SC Court of Appeals



BABB & BROWN, P.C.
ATTORNEYS AT LAW

ATTORNEYS
EVERETTE H. BABB
J. CHRIS BROWN*
H. STEWART JAMES
*ALSO LICENCED IN GEORGIA

March 9, 2015

VIA OVERNIGHT DELIVERY

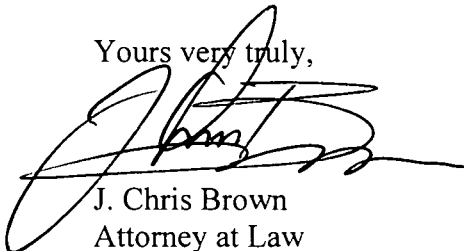
Ms. Jenny Abbott Kitchings
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

RE: Townes at Pelham v. Donna Boyd
Appellate Case No. 2014-000701

Dear Ms. Kitchings:

I have enclosed an original and one copy of a Reply to Appellant's Opposition to Respondent's Motion to Hold Case in Abeyance and Motion to File Out of Time and Proof of Service for the above-referenced matter. Please file the original documents and clock and return the copy to me in the stamped, self-addressed envelope provided. If you have any questions, please contact me at your earliest convenience.

Yours very truly,



J. Chris Brown
Attorney at Law

JCB:ah

Enclosures

RECEIVED
MAR 10 2015
SC Court of Appeals