

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas

The Honorable J. Michael Baxley, Circuit Court Judge

Appellate Case No. 2012-213587

RECEIVED

JUL 27 2015

SC Court of Appeals

American Community Bank, a division of Yadkin Valley
Bank and Trust, Respondent,

vs.

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

Of which Michael R. Brown is the Appellant.

RETURN TO PETITION FOR REHEARING

This Return is filed pursuant to Rule 240(e), SCACR. Because a return has not been requested by this Court, the Return is not mandatory. The Return is submitted as a precatory filing under the Rule. On July 15, 2015, Appellant served Respondent with a copy of the Petition for Rehearing including Memorandum on Petition for Rehearing. Therefore, this Return is timely filed.

A petition for rehearing “shall state with particularity the points supposed to have been overlooked or misapprehended by the court.” Rule 221(a), SCACR. Appellant asserts he presented evidence that Bank waived collection of the loan and there was impact on the public interest sufficient for a UTPA claim. To present a question of fact, a party must put

forward evidence of those facts. Appellant did not on either of his grounds for reconsideration.

This Court was correct in its ruling that “Brown presented no evidence that the Bank waived its right to collect the outstanding balance on its loan.” *American Community Bank v. Brown*, Unpublished Opinion No. 2015-UP-320, p.1. The only evidence Appellant presented was a 2007 Form 1098 Mortgage Interest Statement (the “Form”). The Form reflects the amount of deductible mortgage interest that may be claimed on Appellant’s tax return. The Form shows that \$87,400 in interest was received by Respondent. (R. p. 331). The Form is devoid of any language that Respondent was forgiving the loan. (*Id.*).

Appellant admitted the Form did not show the Note had been paid in full. The Form showed the payment of interest. (R. pp. 393-94). Appellant knew the Form was an interest statement for the Note, not a statement marking the Note paid in full. (*Id.*). Specifically, Appellant testified “That’s not the pay off. . . . That is the interest statement.” (R. p. 393). Appellant’s own words show that he knew and understood the content of the Form and that it was not a loan forgiveness.

Whether Appellant signed the loan modification that corresponded with the Form does not mean the original note secured by the mortgage was forgiven. Respondent sued on the original note. Appellant did not produce a Form 1099, which is issued by financial institutions upon forgiveness of a debt to disclose the amount of ordinary income which must be included for tax purposes on an individual’s tax return. The Court was correct - Appellant produced no evidence of waiver.

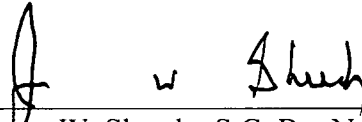
Under South Carolina law, there can be no impact upon the public interest when the acts complained of relate solely to an individual loan transaction. *See Regions Bank v. College Ave. Development, L.L.C.*, 2010 WL 973480, *5 (D.S.C. 2010); *Schnellmann v. Roettger*, 368 S.C. 17, 23, 627 S.E.2d 724, 746 (Ct. App. 2006), *aff'd as modified* 373 S.C. 379, 645 S.E.2d 239 (2007). Absent evidence that the same kind of unfair or deceptive actions occurred in the past or that some procedure creates a possibility of repetition, grounds for a UTPA claim do not exist.

Appellant argues two grounds for impact on the public interest. First, he argues the loan to him was treated as a commercial loan. (Memorandum, p.4). Assuming, *arguendo*, Appellant living at a winery makes the loan not commercial, his point references only the individual transaction and is not evidence of prior actions by or procedures of Respondent. Second, Appellant argues he did not receive preference of legal counsel and a three day right of rescission. This is Appellant's counterclaim under TILA. S.C. Code Ann. § 37-10-102(a) and 15 U.S.C. § 1638(b). The TILA claim was not the subject of Respondent's motion for summary judgment, nor was it ruled upon by the Trial Court. (R. pp. 3, 10, 12). So neither the TILA claim itself nor the factual basis therefor is at issue in this appeal. Even if it were, Appellant's allegations about preference as to legal counsel and the three day right of rescission on one loan shows no impact upon the public interest. This Court correctly ruled that Appellant presented no evidence of impact upon the public interest.

The Petition should be denied. This Court did not overlook or misapprehend the arguments of Appellant. Appellant had no evidence to support his appealed claims.

Date: 7/23/15

Respectfully submitted,



James W. Sheedy, S.C. Bar No. 5052
Susan E. Driscoll, S.C. Bar No. 71447
Driscoll Sheedy, P.A.
11520 N. Community House Road
Suite 200
Charlotte, N.C. 28277
(704) 341-2101 - Telephone
(704) 341-2015 - Facsimile
jimsheedy@driscollsheedy.com
sdriscoll@driscollsheedy.com

Attorneys for Respondent

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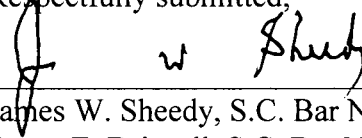
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date indicated below he served counsel for Appellant with a copy of the *Return to Petition for Rehearing* by mailing a copy of the same via First Class, U.S. Mail, postage-paid on the date set forth below.

John Martin Foster, Esq.
The Guardian Building
223 East Main Street, Suite 520
Rock Hill, SC 29730

Date: 7/23/15

Respectfully submitted,



James W. Sheedy, S.C. Bar No. 5052
Susan E. Driscoll, S.C. Bar No. 71447
Driscoll Sheedy, P.A.
11520 N. Community House Road
Suite 200
Charlotte, N.C. 28277
(704) 341-2101 - Telephone
(704) 341-2015 - Facsimile
jimsheedy@driscollsheedy.com
sdriscoll@driscollsheedy.com

Attorneys for Respondent

Driscoll SHEEDY

A PROFESSIONAL ASSOCIATION | ATTORNEYS AT LAW

James W. Sheedy
Lic. in NC & SC
Direct: 704 341 2102
Fax: 704 341 2105
jimsheedy@driscollsheedy.com

Ballantyne: 11520 N. Community House Road
Suite 200 | Charlotte, NC 28277
South Carolina Office: 331 E. Main Street
Fountain Park Business Center
Suite 235 | Rock Hill, SC 29730
PO Box 4589 | Rock Hill, SC 29732
www.driscollsheedy.com

July 23, 2015

RECEIVED

JUL 27 2015

SC Court of Appeals

Honorable Jenny Abbot Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, S.C. 29201

**Re: American Community Bank, a division of Yadkin Valley Bank & Trust v.
Michael R. Brown, et al.
Appellate Case No. 2012-213587**

Dear Ms. Kitchings:


Enclosed please find the original and seven (7) copies of the Return to Petition for Rehearing and a Certificate of Service in the above captioned matter. Please return a filed copy to me in the enclosed envelope

By copy of this letter, I am serving the Return to Petition for Rehearing on opposing counsel.

With kindest regards, I remain

Respectfully,

DRISCOLL SHEEDY, P.A.


James W. Sheedy

cc: William Clewis
J. Martin Foster, Esq.