

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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OCT 19 2015

S.C. Supreme Court

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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

RECEIVED
JUN 06 2014
By _____

of whom
MICHAEL R. BROWN is the Appellant.

APPENDIX TO RECORD ON APPEAL

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

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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

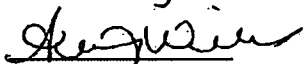
C.A. No.: 10-CP-13-164

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 15th
day of July, 2011.


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

CLERK OF COURT, S.C. & C.S.
CHESTERFIELD COUNTY, S.C.

A True Copy Request
Stage 1 of 10/10/11

CHESTERFIELD COUNTY, S.C.

JUL 18 AM 10 38

Driscoll Sheedy, P.A.
Attorneys at Law

00096063.



A PROFESSIONAL ASSOCIATION | ATTORNEYS AT LAW

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Lic. in SC Only
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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

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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



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.

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

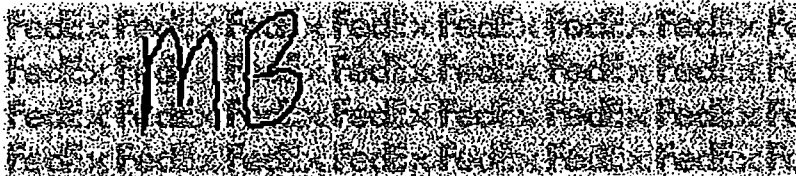
March 1, 2010

Dear Customer:

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

Delivery Information:

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



Shipping Information:

Tracking number:	798414214957	Ship date:	Feb 23, 2010
		Weight:	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

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In The Court of Appeals

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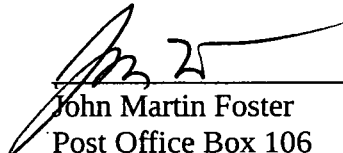
of whom

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

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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:

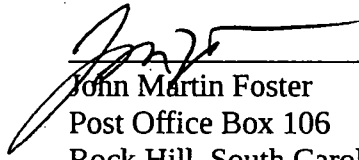
James W. Sheedy
Susan E. Driscoll
Driscoll Sheedy, P.A.
11520 North Community House Road, Suite 200
Charlotte, N.C. 28277

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
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(803) 324-8100
Attorney for Appellants