

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM CHESTERFIELD COUNTY  
Court of Common Pleas

MAY 16 2016

J. Michael Baxley, Circuit Court Judge

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**S.C. SUPREME COURT**

Unpublished Opinion No. 2015-UP-320 (S.C. Ct. App. filed July 1, 2015)

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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, ..... Defendants,

of whom MICHAEL R. BROWN is ..... Petitioner.

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MOTION TO RECONSIDER  
DENIAL OF WRIT OF *CERTIORARI*

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Attorney for Petitioner

Other Counsel of Record:

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Pursuant to Rule 242, S.C.A.C.R, the Petitioner has petitioned for the issuance of a writ of *certiorari* to review the final decision of the Court of Appeals in the matter above.

The Petitioner contends that this matter deals with what are, in South Carolina precedent, novel questions of law.

To the extent allowed, the Petitioner has restated and by that reference reargued all matter set out in his Briefs and referenced in the Record on Appeal and in the Appendix submitted.

By its Order dated May 5, 2016, this Court has denied the Petition for a writ of *certiorari*

### BACKGROUND

Petitioner BROWN borrowed \$150,000.00 from the predecessor of Respondent AMERICAN COMMUNITY BANK, secured by a Note and Mortgage on 106.85 acres in Chesterfield County, dated December 29, 2000. The Note was guaranteed by Defendant HORNE. By an Assignment of the same date, HORNE's wife assigned a CD account as security.

A "Disbursement Request and Authorization" purportedly signed by BROWN lists the "primary purpose" of the loan as "Business". The Lender's Title Insurance binder on the loan contained language identifying it as for residential property. The Petitioner alleges the property is and was his residence. No attorney preference was given or received. No three day waiting period was observed before disbursement of the loan proceeds.

Petitioner's response to the Respondent Bank's foreclosure action set forth defenses and counterclaims for Truth-in-Lending violations, unfair and deceptive trade practices, waiver, and a failure to satisfy the mortgage.

The Circuit Court granted the Respondent summary judgment as to unfair and deceptive trade practices, waiver, and failure to satisfy the mortgage by its Order dated July 27, 2012. This was confirmed by its Order disposing of the Petitioner's Motion under Rule 59, S.C.R.C.P. After receipt of the later Order on November 27, 2012, this appeal was filed by Notice mailed December 11, 2012.

The unreported decision of the Court of Appeals affirming the decision of the Circuit Court was filed July 1<sup>st</sup>, 2015.

### SECOND GROUND FOR APPELLATE DECISION

Without abandoning his other grounds, the Petitioner re-urges the South Carolina Unfair and Deceptive Practices Act as a basis for *Certiorari*. The *per curiam* decision of the Court of Appeals panel disposes of the Petitioner's claim of a SCUPTA violation on the following basis:

3. We find the trial court properly granted summary judgment as to Issue 3 because Brown presented no evidence that his claims impacted the public interest. . . .

[*American Community Bank v. Brown*, Unpublished Opinion No. 2015-UP-320, p. 1.]

The Petitioner has presented uncontradicted evidence that the Respondent Bank has engaged in the following actions, among others, which are alleged as a basis for his claim under SCUPTA:

b. Treating the transaction as commercial in nature, despite its knowledge that the subject real property had been, and would be, used by BROWN for his personal, family and household use;

c. Failing to ascertain prior to closing the preference of BROWN as the borrower as to the legal counsel that was to be employed to represent the debtor in all matters of the transaction relating to the closing of the transaction, in violation of S.C. Code § 37-10-102(a) (West);

[RECORD ON APPEAL, Answer, Counterclaims and Crossclaim, p.78-79.]

Uncontradicted evidence exists that the Respondent Bank was aware that BROWN occupied the premises to be mortgaged as his residence.<sup>1</sup> This fact was reflected in the language of the Title Policy issued to the Bank. Despite this evidence, it is uncontested that the Bank never offered BROWN his preference of legal counsel, nor provided a three-day right of rescission as required under Federal law.

The Respondent has failed to follow the statutory law. The Respondent submits that a failure to adhere to the statutory law (which law governs the activities complained of) is or embodies, *prima facie*, a public interest. The Bank failed to comply with S.C. Code § 37-10-102(a) (West). It failed to offer the Petitioner the right of rescission required by 15 U.S.C. § 1638(b) and Regulation Z § 226.17(b). There is no question in this action of proof of a public interest in the violations of SCUPTA as plead.

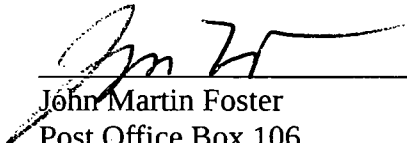
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1 In this regard, the Petitioner would remind the Court that the same facts recited are recognized by the Circuit Court as a basis for the Petitioner's Truth in Lending Defense, which defense was not dismissed by that Court's Order for Summary Judgment.

CONCLUSION

For all the reasons set out and referenced above, the Petitioner requests that this Court reconsider its denial of the Writ of *Certiorari* and hear this appeal, and for any other relief to which the Petitioner may be entitled in law or equity.

Respectfully submitted,

  
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May 13, 2016

Rock Hill, South Carolina

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM CHESTERFIELD COUNTY  
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

Appellate Case No. 2012-213587

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**S.C. SUPREME COURT**

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

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SHORTT AUCTION & REALTY CO., INC.;  
BANK OF AMERICA, N.A.; and  
JAGUAR PORTFOLIO, LLC, ..... Defendants,

of whom MICHAEL R. BROWN is ..... Petitioner.

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CERTIFICATE OF SERVICE

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I certify that on May 13, 2016, I served the Motion to Reconsider the Denial of *Certiorari* and this Certificate of Service on the following counsel of record, parties or persons:

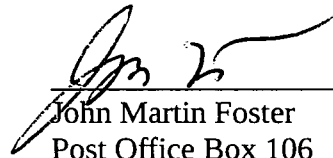
James W. Sheedy  
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by depositing the same with the United States mail, with sufficient first class postage attached, properly addressed to the clerk of the Court, and with a copy also directed to the respective last known address(es) of those attorney(s) and/or persons set out 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 13, 2016



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**TO:**

The Honorable Daniel E. Shearouse  
Clerk of the South Carolina Supreme Court  
1231 Gervais Street  
Post Office Box 11330  
Columbia, SC 29211

