

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas

C. Heath Ruffner, Special Referee

Case No. 2010-CP-13-0164
Appellate Case No.: 2016-001838

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 the Appellant.

REPLY TO RETURN OF APPELLANT

Pursuant to Rule 240(e), SCACR, Respondent (Bank) hereby replies to the Return to Motion to Dismiss Appeal (Return).

The Return relies exclusively on Rule 71(a), SCRCR, and argues that the Rule requires a “determination of all indebtedness owed by or to the parties prior to the imposition of foreclosure.” (Return, p.3.) In essence, Appellant argues that his TILA claim should not have been heard as a separate claim, but rather as part of the foreclosure action to set-off the indebtedness owed to Bank. As set forth in the Motion, Appellant lost his right to raise this point

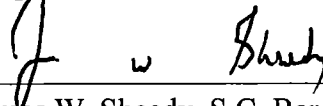
when he failed to make this argument in his appeal of the Order Granting Summary Judgment on Borrower's Affirmative Defenses and Counterclaims (SJ Order).

Judge Baxley split the TILA claim from the foreclosure action, because "the proper procedure is for separate trials of the legal and equitable claims, pursuant to Rule 42(b), SCRCP." (SJ Order, p. 10.) Had Appellant disagreed with Judge Baxley's finding as to the proper procedure and wanted his TILA claim tried as a setoff in the foreclosure action, he should have raised Rule 71(a), SCRCP, to this Court in his appeal of the SJ Order. He did not and is now precluded from doing so. "Failure to challenge the ruling is an abandonment of the issue and precludes consideration on appeal. The unchallenged ruling, right or wrong, is the law of the case and requires affirmance." *First Union Nat. Bank of South Carolina v. Soden*, 333 S.C. 554, 566, 511 S.E.2d 372, 378 (Ct. App. 1998). Thus, the TILA claim has been finally adjudicated as a counterclaim, not a setoff, which necessarily means the claim does not have to be liquidated and offset against the indebtedness under Rule 71(a).

WHEREFORE, Bank respectfully requests this Court dismiss the appeal with prejudice.

Date: 11/2/16

Respectfully submitted,



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Attorneys for Respondent Bank

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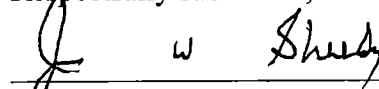
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date indicated below he served counsel for Appellant with a copy of the *Reply to Return of Appellant* 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: 11/2/16

Respectfully submitted,



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November 2, 2016

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

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**Re: American Community Bank, a division of Yadkin Valley Bank & Trust v.
Michael R. Brown, et al.
Appellate Case No. 2016-001838**

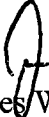
Dear Ms. Kitchings:

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

With kindest regards, I remain

Respectfully,

DRISCOLL SHEEDY, P.A.


James W. Sheedy

cc: Danny Hunter
J. Martin Foster, Esq.

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