

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

APR 26 2013
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

of whom

MICHAEL R. BROWN is the Appellant.

MOTION FOR EXTENSION OF TIME

Pursuant to Rules 240 and 263(b), S.C.A.C.R., the Appellant, by his counsel herein, moves this Court for an order granting him an extension of time in which to file his Initial Brief and Designation of Matter to be included in the Record on Appeal, on the grounds stated below:

1. The Notice of Appeal herein was filed on or around December 12, 2012.
2. On January 4, 2013, counsel for Appellant was incapacitated and underwent a heart bypass operation. After the operation and during recovery, he has been in a cardiac rehabilitation program: that program is slated to end in the coming week. He thus expects to be in his office on a full or part time basis beginning at that time.
3. After his operation, counsel (through his secretary) sent an e-mail to this Court and Clerk, among others, on January 8, 2013.
4. This e-mail was followed by others in February. In spite of such contacts, he received in February an order dismissing this appeal due to failure to supply the initial items required by the Rules of Appellate Procedure.
5. In response to that Order, counsel contacted this Court and was informed that the said Order was a mistake, which would be corrected. He recalls such conversation as being with Deputy Clerk Amelia Smith. A copy of his e-mail memorializing that event is attached and

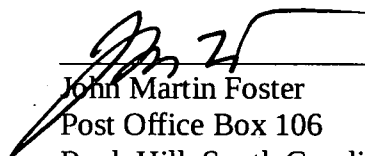
incorporated, together with other relevant communications.

6. By this Motion, and based upon the facts recited above, counsel for Appellant respectfully requests a reasonable extension of time to submit the Appellant's Initial Brief and Designation of Matter to be included in the Record.
7. To the extent necessary, the Appellant moves to reinstate this appeal and to recall any remittitur herein.

The basis of this Motion is the within-cited Rules, the records of this appeal, and any attached affidavit or stipulation of the undersigned, which items are hereby incorporated in this Motion.

WHEREFORE, the Appellant herein moves this Court to file his Initial Brief and Designation of Matter to be included in the Record on Appeal after a reasonable extension of time, and that the remittitur herein be recalled, as necessary, as set out above, pursuant to Rule 240 and 263(b), S.C.A.C.R.

February 3, 2012



John Martin Foster
Post Office Box 106
Rock Hill, South Carolina 29731
803 324-8100
Attorney for Appellant

Other Counsel of Record:

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

Harry R. Easterling
Goldberg & Easterling, P.A.
Post Office Drawer 655
Bennettsville, SC 29512-0655

Subject: Martin Foster, Dr's Letter
From: John Martin Foster <jmfoster@comporium.net>
Date: 01/08/2013 01:25 PM
Attachments: Dr's Letter.pdf (15.2 KB)
To: Chief Justice Jean Toal <jtoal@sccourts.org>, Daniel Shearouse <dshearouse@sccourts.org>, "Honorable Margaret B. Seymour" <margaret_seymour@scd.uscourts.gov>, Honorable John Few <jfew@sccourts.org>, "Hayes, The Honorable John C." <jhayesj@sccourts.org>, Lynn Strait <lynn.strait@yorkcountygov.com>, "The Honorable S. Jackson Kimball, III" <jack.kimball@yorkcountygov.com>, Maryann Motz <Maryann.Motz@yorkcountygov.com>, "The Honorable Carolyn W. Rogers" <carolyn.rogers@yorkcountygov.com>, "Berinsky, Clifford & Diane" <clifford.berinsky@yorkcountygov.com>, Patrick Martin <patrick@lazenbylawfirm.com>, "Leonard R. Jordan Jr." <LJordan@BQSLaw.com>, "Thomas L. Ogburn, III" <toburn@poynerspruill.com>, Keith Martens <KMartens@hmandb.com>, "Earl R. Gatlin" <ergat@comporium.net>, Jenny Kitchings <jkitchings@sccourts.org>, David Blackwell <david.blackwell@btmlaw.com>, Erin Urquhart <ErinU@mcdowlaw.com>, "Michael K. Hatch" <michael.hatch@mortongettys.com>, "Milton E. Hamilton" <mehsr@truvista.net>, Bob Marshall <bob@bobmarshall.com>

Your Honors, Colleagues:

Attached is the Doctor's letter confirming the information in the previous email.

Rhonda Driskell
For Martin Foster

-- Your Honors, Colleagues:

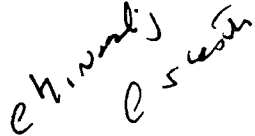
After more than a week with chest pains, my doctor on Friday, January 5, had me driven by ambulance to Piedmont Medical Center. After catheterization, the surgeon concluded I had a ninety percent occlusion and ordered an immediate surgery. This was a triple by-pass. I am told I will be out for an undetermined period, probably one to two months. If I can get the doctor's letter to confirm these facts it will accompany this email.

This email is to inform the courts and opposing counsel that I must ask for a continuance of hearings in that period and for extensions of appellate deadlines in the same period.

I apologize for doing this by email but I felt I had a duty to inform all as soon as possible. A revised version of this email naming all cases should follow.

At the courts requests, I will be happy to send a formal motion to that effect together with any required fees. I thank you all for the consideration in this situation.

Respectfully Yours,



John Martin Foster, Attorney
as dictated to Rhonda Driskell

JOHN MARTIN FOSTER jmfoster@comporium.net

THE GUARDIAN BUILDING

223 E MAIN ST SUITE 520 ROCK HILL SC 29730

P O Box 106 ROCK HILL SC 29731-6106



**CATAWBA-PIEDMONT
CARDIOTHORACIC &
VASCULAR SURGERY**

Affiliated with **PMC Physician Network**

David Savage, MD | Keith Menes, MD

January 8, 2012

To Whom It May Concern:

John Foster is a patient of Dr. Savage's, and underwent emergency heart surgery on Friday January 4th, 2013. The expected recovery time for this procedure is approximately 12 weeks. We will be seeing Mr. Foster in a few weeks in the office and will know better at that time when he will be able to resume full activities.

Thank you,

David H. Savage, M.D.

200 South Herlong Avenue, Suite E-1 | Rock Hill, SC 29732
Phone: 803-324-1950 | Fax: 803-324-1933
www.catawbacardi thoracic.com

The South Carolina Court of Appeals

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

v.

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 Appellant.

Appellate Case No. 2012-213587

ORDER

Appellant has failed to provide information regarding the transcript and/or has failed to serve and file the appellant's initial brief and designation of matter, as required by Rules 203, 208, and 209 of the South Carolina Appellate Court Rules. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY *V. Claire Allen, Deputy*
CLERK

Columbia, South Carolina

cc:

John Martin Foster

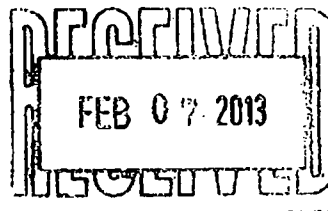
James W. Sheedy

Susan Elizabeth Driscoll

Harry R. Easterling

FILED

2/4/13 AT



Subject: Appellate Case No. 2012-213587

From: "Ellen N. Smith" <ensmith@comporium.net>

Date: 02/08/2013 11:15 AM

To: jfew@sccourts.org, gandelaw@bellsouth.net, jimsheedy@driscollsheedy.com, callen@sccourts.org

Dear Judge Few, Mr. Easterling, Mr. Sheedy, and Ms. Allen:

Concerning the Above Appellate Case, American Community Bank, a division of Yadkin Valley Bank & Trust v. Michael R. Brown; C. W. Horne; Shortt Auction & Realty Co., Inc., Bank of America, N.A.; and Jaguar Portfolio, LLC, please see the attachment regarding Attorney Martin Foster and respond if more information is required.

Regards,

Rhonda Driskell

-----Attachments:-----

DOC020713-02072013114616.pdf

50.2 KB

Subject: Appellate Case No. 2012-213587

From: "Jim Sheedy" <JimSheedy@Driscollsheedy.com>

Date: 02/08/2013 11:32 AM

To: <ensmith@comporium.net>

CC: <jfew@sccourts.org>, <callen@sccourts.org>, <gandelaw@bellsouth.net>, "John Martin Foster" <jmfoster@comporium.net>

On behalf of ACB, I do not intend to oppose a reasonable request for a continuance. Should Martin's recovery time extend beyond the end of March (Dr. Savage's projected recovery time), I would ask that Martin associate counsel to complete this appeal. Wishing you, Martin, only the most successful recovery,

Jim

-----Original Message-----

From: Ellen N. Smith [<mailto:ensmith@comporium.net>]

Sent: Friday, February 08, 2013 11:15 AM

To: jfew@sccourts.org; gandelaw@bellsouth.net; Jim Sheedy; callen@sccourts.org

Subject: Appellate Case No. 2012-213587

Dear Judge Few, Mr. Easterling, Mr. Sheedy, and Ms. Allen:

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Regards,

Rhonda Driskell

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The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

February 20, 2013

The Honorable Faye L. Sellers
PO Box 529
Chesterfield SC 29709-0529

REMITTITUR

Re: American Community Bank v. Michael R. Brown
Lower Court Case No. 2010cp1300064
Appellate Case No. 2012-213587

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

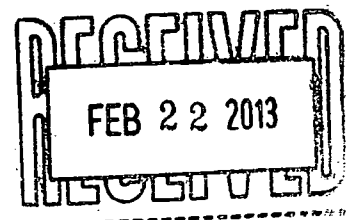
Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: John Martin Foster
James W. Sheedy
Susan Elizabeth Driscoll
Harry R. Easterling



The South Carolina Court of Appeals

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

v.

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Of Whom Michael R. Brown is Appellant.

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FOR THE COURT

BY *V. Claire Allen, Deputy*
CLERK

Columbia, South Carolina

cc:

John Martin Foster

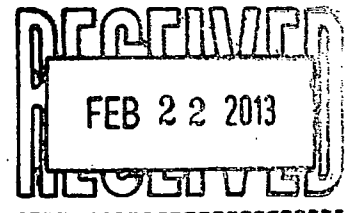
James W. Sheedy

Susan Elizabeth Driscoll

Harry R. Easterling

FILED

2/4/13 AT



Subject: Appellate Case No. 2012-213587

From: "Jim Sheedy" <JimSheedy@Driscollsheedy.com>

Date: 02/22/2013 03:36 PM

To: <ensmith@comporium.net>, "John Martin Foster" <jmfoster@comporium.net>

CC: <gandelaw@bellsouth.net>

Apparently the court is inclined to dismiss the appeal. While I would like to be flexible here, I have done all that I think I can ethically do, so I have to move forward now.

-----Original Message-----

From: Jim Sheedy

Sent: Friday, February 08, 2013 11:33 AM

To: 'ensmith@comporium.net'

Cc: 'ifew@sccourts.org'; 'callen@sccourts.org';

'gandelaw@bellsouth.net'; 'John Martin Foster'

Subject: Appellate Case No. 2012-213587

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Regards,

Rhonda Driskell

-----Attachments:-----

Brown.pdf

296 KB

Subject: Fwd: Re: Appellate Case No. 2012-213587
From: John Martin Foster <jmfoster@comporium.net>
Date: 04/17/2013 12:56 PM
To: "ellen >> \"Ellen N. Smith\" <ensmith@comporium.net>

----- Original Message -----

Subject: Re: Appellate Case No. 2012-213587
Date: Fri, 22 Feb 2013 15:57:28 -0500
From: John Martin Foster <jmfoster@comporium.net>
To: Jim Sheedy <jimSheedy@Driscollsheedy.com>

Jim:

I talked to the Clerk's office this morning. The Deputy Clerk acknowledged the dismissal was a mistake and said it would be corrected. If I (or I assume, that office) can add anything, let us know.

On 02/22/2013 03:36 PM, Jim Sheedy wrote:

Apparently the court is inclined to dismiss the appeal. While I would like to be flexible here, I have done all that I think I can ethically do, so I have to move forward now.

-----Original Message-----

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Sent: Friday, February 08, 2013 11:33 AM
To: 'ensmith@comporium.net'
Cc: 'jfew@sccourts.org'; 'callen@sccourts.org';
'gandelaw@bellsouth.net'; 'John Martin Foster'
Subject: Appellate Case No. 2012-213587

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Jim

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Sent: Friday, February 08, 2013 11:15 AM
To: jfew@sccourts.org; gandelaw@bellsouth.net; Jim Sheedy;
callen@sccourts.org
Subject: Appellate Case No. 2012-213587

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Foster and respond if more information is required.

Regards,

Rhonda Driskell

--
JOHN MARTIN FOSTER jmfooster@comporium.net

THE GUARDIAN BUILDING

223 E MAIN ST SUITE 520 ROCK HILL SC 29730

P O Box 106 ROCK HILL SC 29731-6106

803 324-8100

803 324-8109 FAX

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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

RECEIVED

APR 22 2013

35 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

of whom

MICHAEL R. BROWN is the Appellant.

PROOF OF SERVICE

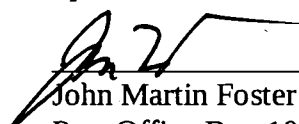
I certify that I have served the Motion for Extension of Time dated April 17, 2013, on the following counsel or persons of record:

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

Harry R. Easterling
Goldberg & Easterling, P.A.
Post Office Drawer 655
Bennettsville, SC 29512-0655

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 above, pursuant to Rule 262, S.C.A.C.R.

April 17, 2013



John Martin Foster
Post Office Box 106
Rock Hill, S. C. 29731-6106
803 324-8100
Attorney for Appellant

JOHN MARTIN FOSTER
Attorney at law

The Guardian Building	PO Box 106	803 324 8100
223 East Main Street Suite 520	Rock Hill SC	803 324 8109 Fax
Rock Hill South Carolina 29730	29731-6106	jmfoster@comporium.net

April 17, 2013

The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
1015 Sumter Street
Post Office Box 11629
Columbia, SC 29211

Re: American Community Bank, Respondent
v. Michael E. Brown, et al., of whom Michael E. Brown is Appellant
Civil Action No. 10-CP-13-0164

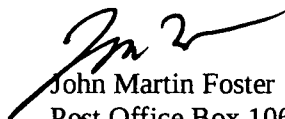
Dear Ms. Kitchings:

In accordance with Rules 240 and 263(a), S.C.A.C.R., enclosed herewith please find the original and seven (7) copies of the Appellant's Motion for Extension of Time and to recall Remittitur, together with Certificate of Service for the same in the above referenced case. I also enclose our check for the Motion fee of \$25.00.

By copy of this letter, I am serving the attorney for the Respondents with copies of the said Motion, as evidenced by the Certificate of Service.

Please return the extra conformed copy to my office in the enclosed self-addressed, stamped envelope. As always, thank you, and your staff, for your assistance in these matters.

Sincerely,



John Martin Foster
Post Office Box 106
Rock Hill, South Carolina 29731
803 324-8100
Attorney for Appellant

RECEIVED

APR 22 2013

SC Court of Appeals

jmf/
enclosures

Other counsel of record:

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

Harry R. Easterling
Goldberg & Easterling, P.A.
Post Office Drawer 655
Bennettsville, SC 29512-0655