

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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Jul 14 2022

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Robert E. Hood, Circuit Court Judge

Case No. 2016-CP-40-02859

South Carolina Department of Consumer Affairs Respondent,

v.

Cash Central of South Carolina LLC Petitioner

**REPLY IN FURTHER SUPPORT OF MOTION FOR LEAVE TO FILE AN AMICUS
CURIAE BRIEF OF SOUTH CAROLINA AUTOMOBILE DEALERS ASSOCIATION
AND CAROLINAS INDEPENDENT AUTO DEALERS ASSOCIATION**

The South Carolina Automobile Dealers Association (“SCADA”) and Carolinas Independent Auto Dealers Association (“CIADA”) file this brief reply in further support of their motion for leave to submit an amicus curiae brief in this matter.

A party seeking to be a friend of the Court must identify the party’s interest and why an amicus brief is desirable. Rule 213, SCACR; *see also* Jean Hoefler Toal *et al.*, *Appellate Practice in South Carolina* 439 (3d ed. 2016). SCADA’s and CIADA’s interest in this case is clear: the Department is using this case to severely limit the practical benefits of the affirmative defenses provided by statute and the common law, as demonstrated by the Department’s actions against

members of these organizations following the decision of the Court of Appeals.¹ The Department does not deny that it has taken these actions, nor does it deny that it is using the decision of the Court of Appeals to justify these actions. Instead, it argues that it is improper for SCADA and CIADA to bring these matters to this Court's attention.

SCADA and CIADA would further note that if the Department's return were correct, no party would ever be allowed to file an amicus brief. The reason the Court considers amicus briefs is to be better informed about the implications of a decision, which necessarily means considering facts and scenarios outside the Record on Appeal. SCADA and CIADA contend their proposed brief shows why this Petition implicates a matter of significant public interest warranting consideration here. *See State v. Langford*, 400 S.C. 421, 432, 735 S.E.2d 471, 477 (2012). This is precisely the role of an amicus.

The Department's arguments in opposition to the SCADA and CIADA motion are completely misdirected.² SCADA and CIADA have not asked for any relief as to their members, instead they have asked this Court to grant the Petition and reverse the decision of the Court of Appeals in this case. SCADA and CIADA do not seek to try any new matters in the original jurisdiction of this Court, but rather to show that the decision of the Court of Appeals has ramifications beyond the limited facts of this case, including implications for the automotive sales industry. SCADA and CIADA do not advance new arguments; instead they offer an additional perspective on the same statutory and common law affirmative defenses that are the subject of the

¹ For example, the Department cited the decision in its September 23, 2021 correspondence regarding Patriot Chevrolet, in which it refused to consider a compromise refund proposal from Patriot, and quoted the following: "As the South Carolina Court of Appeals stated, 'there is no recognized doctrine of substantial compliance in this context[,] i.e. a regulatory filing.'" (SCADA and CIADA Motion, Proposed Amicus Brief, Exhibit A, pg. 33 of 52.)

² The Department's arguments along these lines elide the difference between benefiting from a favorable development in the law and obtaining relief in a particular case as a party.

decision of the Court of Appeals here. These defenses apply equally to alleged compliance failures regarding the consumer credit grantor and maximum rate filing statutes involved in this case as they do to alleged compliance failures regarding the closing fee statute.³ Most, if not all, automobile dealerships file annually with the Department for consumer credit grantor status and maximum rates and many also file for closing fees.

The Department's argument that Cash Central's counsel could and should have presented arguments at trial regarding whether "the closing fee statute provided some type of evidence of legislative intent as to the availability of certain defenses under the South Carolina Consumer Protection Code" reflects a fundamental misunderstanding of the relevant facts and legal arguments before the trial court in the Cash Central case. (Dept. Return at 3.) Cash Central is not an automobile dealer and does not charge closing fees. The closing fee statute was not at all an issue at trial, which the Department itself admits. *Id.* SCADA and CIADA, however, are uniquely well-positioned to demonstrate the effect of the decision of the Court of Appeals on its members. And as the proposed amicus brief demonstrates, the Department is now using that decision to deprive SCADA and CIADA members of those same statutory and common law defenses. It is this activity that SCADA and CIADA want this Court to know about in considering Cash Central's Petition.⁴

The Department is no ordinary litigant and, as a state agency, should, as a matter of policy, welcome the additional perspectives of others subject to its purview. Had the Department chosen

³ And in the case of the Bennettsville Ford dealership, both alleged compliance failures (regulatory filings for maximum rates and closing fees) are involved. (SCADA and CIADA Motion, Proposed Amicus Brief, Exhibit B, pgs. 37- 43 of 52.)

⁴ In addition, the Department's complaint that Cash Central is getting a "second bite at the apple" merits comment. This is not Cash Central's request. This is SCADA's and CIADA's motion for leave to be a friend of the Court to present the concerns of their members stemming from the decision of the Court of Appeals.

to adopt regulations addressing the applicability of the defenses described above, it would have sought those perspectives through the notice and comment process. Apparently, the Department has chosen to regulate by enforcement, and the Department now appears fixated on getting its own way rather than getting a definitive and fully informed determination as to the law pertaining to the defenses at issue here.

This is inappropriate for a state agency that is required to be concerned with how the law and the Department's own enforcement policies affect "legitimate and scrupulous creditors" as set forth in S.C. Code Ann. § 37-1-102(2)(d). This dismissiveness of the legitimate concerns of other regulated industries that are affected by the Court of Appeals decision demonstrates a win at all costs mentality, rather than the exercise of considered judgment, and it is precisely the reason SCADA and CIADA seek leave to file an amicus brief in this matter.

Respectfully submitted,

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Dated: July 14, 2022