

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

S.C. SUPREME COURT

R. Kirk Griffin, Circuit Court Judge

Case No. 2011-CP-10-07166
Appellate Case No. 2021-001443
Order Dismissing Appeal (S.C. Ct. App. filed March 10, 2022)

Supreme Court Case No. 2022-000838

Otha Delaney, Individually and on behalf of all others similarly situatedRespondent,

v.

First Financial of Charleston, Inc.Petitioner.

RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

TWENGE + TWOMBLEY LAW FIRM
J. Ashley Twombley, Esquire (SC Bar #72916)
311 Carteret Street
Beaufort, SC 29902
(843) 982-0100
twombley@twlawfirm.com

Attorneys for Respondent

Pursuant to Rule 242(f), SCACR, Respondent Otha Delaney (“Delaney”) submits this Return to the Petition. The Petition should be denied because there are no special or important reasons to justify an exercise of the Court’s discretion to grant a Petition for Certiorari. Even if such reasons were present, the Petition should be denied because the Court of Appeals properly concluded that the circuit court’s order denying a Motion to Dismiss is not immediately appealable.

COUNTER-STATEMENT OF QUESTION PRESENTED

- 1) Has Petitioner established special or important reasons to justify exercise of the Court’s discretion to grant a Petition for Certiorari?
- 2) Did the Court of Appeals properly dismiss this appeal because an order denying a motion to dismiss is not immediately appealable?

COUNTER-STATEMENT OF THE CASE

This is a consumer class action case under Chapter 9 of the SC UCC.¹ On October 4, **2011**, Delaney filed a putative class action complaint alleging Petitioner First Financial of Charleston (FFC) violated the South Carolina Uniform Commercial Code (the “SC UCC”) by taking possession of and selling vehicles without providing appropriate, statutorily mandated notices under Chapter 9 of the SC UCC. Because FFC engages in this conduct using “form” documents it sends to all South Carolina residents whose vehicles it repossesses and sells, Delaney sought class treatment on behalf of himself and others who experienced the same wrongful conduct from FFC.

¹ The SC UCC is codified as S.C. Code Ann. §§ 36-1-101 et seq. The SC UCC statutes most relevant to this case can be found in Part 6 of Chapter 9 (i.e., §§ 36-9-601 et seq.).

After this Court vacated the trial court's order dismissing Delaney's Original Complaint, Delaney filed an Amended Complaint. *See* FFC's App. p. 35.² In response to Delaney's Amended Class Action Complaint, FFC filed a partial motion to dismiss. An order denying the motion to dismiss was entered on August 19, 2021. *See* FFC's App. p. 298.³ An order denying FFC's motion to reconsider was entered November 8, 2021. *See* FFC's App. p. 325. (collectively, "Appealed Orders").

FFC filed a Notice of Appeal on December 8, 2021. On December 17, 2021, the Court of Appeals requested a memorandum on the appealability of the Appealed Orders. On March 10, 2022, the Court of Appeals dismissed the appeal following the well settled law that an order denying a motion to dismiss is not immediately appealable, and further finding, that none of the exceptions to the rule applied. *See* March 10, 2022 Order. The Court of Appeals denied FFC's Petition for Rehearing on May 17, 2022. *See* May 17, 2022 Order.

CONSIDERATIONS FOR GRANTING A WRIT

A writ of certiorari will be granted only where there are "special and important reasons." Rule 242(b), SCACR; see also *S.C. Dep't of Soc. Servs. v. Benjamin*, 430 S.C. at 236, 844 S.E.2d 373. In considering whether to grant a writ of certiorari, the Court considers the following reasons, which are "neither controlling nor fully measuring" of the Court's discretion or power to grant review in general: (1) where there are novel questions of law; (2) where there is a dissent in the

² Contrary to FFC's assertion, Delaney alleges that he suffered actual damages, *See* FFC's App. p. 45, but Delaney will likely choose to seek damages equal to the statutory minimum provided in § 36-9-625(c)(2) because quantifying actual damages is difficult and likely would require litigation expenses that would exceed any potential recovery. This is precisely why drafters of the UCC provided for a minimum statutory recovery. *See Cubler v. TruMark Fin. Credit Union*, 83 A.3d 235, 241 (Pa. Super. Ct. 2013) (explaining § 9-625(c)(2) permits statutory damages because the drafters of the UCC recognized "the inherent difficulty for a claimant to quantify and prove actual damages.").

decision of the Court of Appeals; (3) where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court; (4) where substantial constitutional issues are directly involved; and (5) where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court. Rule 242(b), SCACR.

FFC has not established that this case involves any of the stated reasons to grant a Petition for Certiorari. This appeal presents no novel questions of law, no federal question or constitutional issue, the decision of the Court of Appeals was unanimous and does not conflict with a prior decision of the Supreme Court, and the Court of Appeals correctly applied this Court's precedent in dismissing the appeal. There are no other special or important reasons to warrant invocation of the discretionary power to grant a Petition for Certiorari. To the contrary, the Petition requests review of orders denying a motion to dismiss, which are textbook examples of orders that cannot be appealed, much less reviewed by this Court through a Petition for Certiorari. Consequently, this Court should deny FFC's Petition.

Should this Court decide to address the merits of the appeal, it should affirm the Court of Appeals.

ARGUMENT

I. The Court should dismiss the Petition because there is no special or important reasons to warrant certiorari.

FFC filed a *Petition* for Writ of Certiorari ("Petition"). However, FFC never argues why this Court should grant the Petition. Rather, FFC only argues that (1) the trial court erroneously denied its Motions to Dismiss and Reconsider, and (2) the Court of Appeals erred in finding the trial court's order denying FFC's Motion to Dismiss was not immediately appealable. Even if FFC were correct about both, that is not sufficient ground to grant certiorari.

FFC argues in its Petition that the sole question presented to this Court is: “Did the Court of Appeals err in finding that the Appealed Orders are not immediately appealable under § 14-3-330 and dismissing FFC’s appeal?” *See* Petition at 7. But “[a] writ of certiorari is not a matter of right.” South Carolina’s Rules of Civil Procedure Rule 242. Petitions for a writ of certiorari “will be granted *only* where there are special and important reasons.” *Id.* (emphasis added). FFC does not argue there are “special and important reasons” here. Rather, FFC assumes the merits of its appealability argument must be resolved by this Court and submits its brief on the merits of what it would like to have this Court review. FFC does not explain why the facts of the case warrant review by this Court, at this stage of the proceedings. But Rule 242 is clear: a petitioner will only file a brief if its petition is granted, and the Clerk will “specify[] the question or questions to be considered.” Rule 242(i). This Court should deny FFC’s Petition⁴ because FFC fails to state why this Court should grant review.

Even if FFC were correct, and the trial court improperly denied the partial motion to dismiss, that does not mean this Court should correct the error now. Not only can FFC re-raise the issue later in the case, FFC can file an appeal at the conclusion of the case. Resolving those issues now is only proper if this Court finds there are “special and important” reasons for granting certiorari review. *S.C. Dep’t of Soc. Servs. v. Benjamin*, 430 S.C. 235, 236, 844 S.E.2d 373 (2020) (“This Court has held it will grant certiorari to the court of appeals only where special reasons justify the exercise of that discretion.”). Because FFC has not even attempted to explain why

⁴ Delaney expects FFC will raise new reasons that its Petition should be granted for the first time in its reply. But FFC should not be permitted to raise arguments for the first time in a memorandum. *McChurg v. Deaton*, 395 S.C. 85, 87 n.2, 716 S.E.2d 887, 888 n.2 (2011) (“It is axiomatic that an issue cannot be raised for the first time in a reply brief.”). FFC waived its right to advance arguments about why there are “special and important reasons” for this Court to grant an extraordinary writ of certiorari. *Chet Adams Co. v. James F. Pedersen Co.*, 307 S.C. 33, 37 (1992).

“special” or “important” reasons exists to grant a petition for certiorari, the Petition should be denied.

II. The Court should dismiss the Petition because the Court of Appeals correctly determined that the Appealed Orders are not immediately appealable.

Orders denying motions to dismiss under Rule 12(b) are not appealable before entry of a final judgment. *Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 93, 529 S.E.2d 11, 13 (2000) (“Currently, this Court does not allow immediate appellate review of the denial of *any* Rule 12(b), SCRCP.”) (emphasis added). The basic “policy behind denying immediate review of pretrial motions is avoidance of piecemeal litigation where the rights of the parties have not been substantially impacted.” *Id.* “A party who is denied a dismissal under Rule 12 has forfeited nothing, they must simply continue to trial.” *Mid-State Distributors, Inc. v. Century Importers, Inc.*, 310 S.C. 330, 334–35, 426 S.E.2d 777, 780 (1993). “[T]he denial of a motion to dismiss does not establish the law of the case and the issue raised by the motion can be raised again at a later stage of the proceedings. Therefore, the denial of a motion to dismiss is not directly appealable” *See Levi v. N. Anderson Cty. EMS*, 409 S.C. 374, 382, 762 S.E.2d 44, 48 (Ct. App. 2014) (quoting *McLendon v. S.C. Dep’t of Highways & Pub. Transp.*, 313 S.C. 525, 526 n.2, 443 S.E.2d 539, 540 n.2 (1994)).

a. The appealability exceptions found in S.C. Code § 14-3-330 do not apply.

Recognizing that the Appealed Orders are not immediately appealable as a final judgment, FFC attempts to fashion an argument that the Appealed Orders are immediately appealable under Section 14-3-330 because they are orders that a) “involve the merits,” b) deprive FFC of “a mode

of trial,” and c) effectively “strike[] out an answer or part thereof.” FFC is wrong; none of these exceptions apply.

i. *The Appealed Orders do not involve the merits.*

This Court has determined that for an interlocutory order “involves the merits” it must “finally determine some substantial matter forming the whole or a part of some cause of action or defense” *Mid-State Distributors, Inc.*, 310 S.C. at 334, 426 S.E.2d at 780. Here, the trial court simply denied FFC’s motion to dismiss under Rule 12. “[T]he denial of a motion to dismiss does not establish the law of the case and the issue raised by the motion can be raised again at a later stage of the proceedings. Therefore, the denial of a motion to dismiss is not directly appealable” *See Levi*, at 409 S.C. at 382.

FFC argues the trial court’s *explanation* for denying the motion to dismiss sets forth conclusions of law and reads as if certain issues have been finally determined. *See* Petition at 22. However, the Appealed Orders’ language does not override the well-established principal that the “denial of a motion to dismiss does not establish the law of the case and the issue raised by the motion can be raised again at a later stage of the proceedings.” *Id.* If it did, a trial court could never explain why it was denying a motion to dismiss, as any such explanation would become the law of the case.

FFC cites *Ex parte Cap. U-Drive-It, Inc.*, 369 S.C. 1, 630 S.E.2d 464, (2006) in support of its argument that the Appealed Orders involve the merits, but *U-Drive-It* is distinguishable. Petition at 17–18. *U-Drive-It* involved an action by *U-Drive-It* against a divorced man. 369 S.C. at 4. After suing the divorced-man for embezzlement related claims, *U-Drive-It* filed a petition in family court to unseal the divorced-man’s family court divorce records so they could be used in the embezzlement litigation. *Id.* at 4–5. The family court judge granted the motion and the divorced-man filed an appeal. *Id.* at 5. This Court determined the order was immediately appealable under § 14-3-330(1). In support, this Court found that the order “determined a

substantial matter forming the whole or part of the family court proceeding” and that no “further action is required in the family court to determine the parties’ rights” *Id.* at 7–8. This Court further noted that once the records were unsealed, “no appellate remedy [was] likely to repair any damage done by an improper disclosure.” *Id.* at 8 (quoting *Siedle v. Putnam Investments, Inc.*, 147 F.3d 7, 9 (1st Cir. 1998)) (“Compelling a party that disputes an unsealing order to forgo an appeal until the conclusion of the underlying litigation would let the cat out of the bag, without any effective way of recapturing it if the district court's directive was ultimately found to be erroneous.”). None of these factors are present here. The denial of a motion to dismiss is not a “final order,” FFC can continue to raise the defenses at issue at other stages in these proceedings, and FFC can ultimately obtain review of the issues addressed in the Appealed Orders after a final judgment and pursue a remedy to correct any errors in the Appealed Orders.

ii. *The Appealed Orders do not implicate a substantial right under § 14-3-330(2)(a).*

FFC suggests it has a right to immediate appeal under § 14-3-330(2)(a), asserting that the Appealed Orders implicate a substantial right, and cites *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 773 S.E.2d 144 (2015). *See* Petition at 18. *Morrow* is also inapposite. In *Morrow*, the plaintiff alleged that numerous corporate defendants were liable for personal injuries that occurred in a nursing home. In the complaint, the plaintiff brought vicarious liability claims and direct liability claims against several defendants. *Morrow*, 412 S.C. at 536. The defendants successfully moved the trial court to bifurcate the trial pursuant to Rule 42(b). In granting the motion to bifurcate the claims for trial, the trial court ruled that bifurcation was proper because the claims to be tried during the second trial (corporate negligence claims) were necessarily contingent upon the success of the negligence claims to be tried in the initial trial. *Id.* In other words, if the plaintiff lost on his negligence claims, there would be no second trial phase,

as the corporate negligence claims would fail as a matter of law. *Id.* The plaintiff appealed the interlocutory order bifurcating trial. *Id.* In finding that the bifurcation order was immediately appealable, this Court held the trial court “effectively granted” summary judgment by finding the corporate negligence claims at issue in the second trial were necessarily dependent on the success of the negligence claims at the first trial. *Id.* at 538–39. The Court reasoned, “the trial court's order fits neatly within the statutory provision allowing immediate appeals where a substantial right is implicated because “[t]he effect of this order is to prevent the Morrors from being architects of their own complaint, and deprives them of bringing their case against the defendant of their own choosing.” *Id.* at 539.

Here, the Appealed Orders FFC attempts to appeal do not decide any issue with finality. And the Appealed Orders cannot deprive them of being the “architects of their own complaint” because FFC is the defendant. Because the denial of FFC’s motion to dismiss has no legal finality, and further because these defenses can still be maintained and raised again, the Appealed Orders do not and cannot involve the merits.

iii. *The Appealed Orders do not deprive FFC of a mode of trial.*

FFC argues that “if [a certain defense] is meritorious,” it would not have to face a class action, and therefore, the Appealed Orders have denied FFC of a mode of trial to which it is entitled to as a matter of right and are therefore immediately appealable under §14-3-330(2).” Petition at 23. This argument is misplaced.

First, the exception to the general rule that only final orders are appealable, which exception is for orders that impact the mode of trial, is confined to orders that abridge a party’s constitutional right to trial by jury. *Fulmer v. Cain*, 380 S.C. 466, 470, 670 S.E.2d 652, 654 (2008) (“the ‘mode of trial’ exception to the general rule that only final orders are appealable is confined to orders which abridge a party’s constitutional right to trial by jury.”). The Appealed Orders in question do

not abridge FFC's right to a trial by jury. If anything, it gets FFC closer to the opportunity to exercise that right.

Second, as FFC acknowledges, immediate appeal under § 14-3-330(2) may only be proper “when a trial courts [sic] order deprives a party of a mode of trial to which it is entitled to as a matter of right.” Petition at 18. FFC claims the Court of Appeals erred by not finding its § 36-9-628(e) defense was meritorious because the defense shows “FFC has a right not to face a class action with respect to alleged § 36-9-625(c)(2) liability.” Petition at 23. As explained in Section iv below, this defense is frivolous, and in any event, FFC is *not* entitled to avoid class claims related to a violation of Section § 36-9-625(c)(2). Accordingly, no such “right” can be deprived.

Even if FFC has such a right, that right does not involve a mode of trial. Likewise, if FFC's “right not to face a class action” argument was accepted, then any order denying class certification would entitle a defendant to immediate appeal. Under FFC's logic, South Carolina's Appellate Courts would need to determine at the motion to dismiss stage whether a class action-defendant has a “right” not to face a class action before the case is resolved on its merits and a final judgment is entered. But “[t]he general rule established by this Court is that class certification orders are *not* immediately appealable.” *Salmonsens v. CGD, Inc.*, 377 S.C. 442, 457, 661 S.E.2d 81, 90-91 (2008) (emphasis added). FFC's manufactured “right not to face a class action” argument is no justification for immediate appeal under § 14-3-330, and even if it were, it would not help FFC here since the defense is meritless if not frivolous.

Third, even assuming FFC had a meritorious defense against a class action, “avoidance of a trial is not a sufficient reason to justify immediate appellate review.” *Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 94, 529 S.E.2d 11, 14 (2000). Otherwise, the denial of every motion to dismiss would be immediately appealable because – if decided differently – a litigant might avoid

a trial altogether. The Appealed Orders do not “deprive FFC of a mode of trial.” FFC has no right not to face class action and the trial court properly denied the motion to dismiss.

iv. The Appealed Orders do not strike a defense.

FFC next argues the “plain language” of the Appealed Orders suggest a final decision on its § 36-9-628(e) defense, and that this defense is “gone for good.” *See* Petition at 22. FFC further argues that “the trial court’s unequivocal answer to the pure question of law posed by FFC’s § 36-9-628(e) defense places the issue beyond the reach of any other trial judge going forward, as one circuit judge may not overrule another.” *See* Petition at 23. FFC misreads the Appealed Orders and is simply wrong about their effect.

First, there is nothing unique about the language used by the trial court in describing its rejection of FFC’s § 36-9-628(e) defense argument. The trial court was necessarily required to comment on the arguments made by the parties and has the right to explain its rationale for rejecting FFC’s motion to dismiss related to § 36-9-628(e).

Second, despite FFC’s bald assertion that the order “reads as a judgment,” the law in South Carolina regarding the order’s effect (or lack thereof) is clear. “[T]he denial of a motion to dismiss does not establish the law of the case and the issue raised by the motion can be raised again at a later stage of the proceedings. Therefore, the denial of a motion to dismiss is not directly appealable” *Levi*, 409 S.C. at 382, 762 S.E.2d at 48 (quoting *McLendon v. S.C. Dep't of Highways & Pub. Transp.*, 313 S.C. 525, 526 n.2, 443 S.E.2d 539, 540 n.2 (1994)).

The Court should end its analysis here and dismiss this appeal. Delaney is not required to show that FFC’s arguments related to the merits are invalid, but he can.

II. There are other practical reasons to dismiss the appeal.

a. FFC's interpretation of § 36-9-628(e) is nonsensical.

FFC argues it cannot be liable under Section 36-9-625(c)(2) more than “once with respect to any one secured obligation,” *See* Petition at 14. Delaney agrees, and it is clear that Delaney and the class members only seek damages under § 36-9-625(c)(2) once per secured obligation. Each class member has their own secured obligation for each loan. And each individual class member seeks damages up to the minimal amount allowed under § 36-9-625(c)(2) once per secured obligation.

The language protecting secured parties like FFC from liability more than once with respect to “any one secured obligation” under Section 36-9-628(e) is there to prevent multiple co-borrowers or guarantors from seeking multiple recoveries under Section 36-9-625(c)(2). For example, if A, B, C were co-debtors/guarantors on a single vehicle loan that resulted in the improper repossession and sale of their vehicle in violation of Article 9, without the enactment of § 36-9-628(e), the secured party could be liable three times (once to A, once to B, and once to C) under § 36-9-625(c)(2) for the same, single, secured obligation. Section § 36-9-628(e) now simply requires A, B, and C to share/split damages they might recover as provided by § 36-9-625(c)(2)'s formula. *See Singleton v. Stokes Motors, Inc.*, 358 S.C. 369, 377–78, 595 S.E.2d 461 (2004) (explaining both co-debtors were entitled to recover minimum statutory damages under § 36-9-625(c)(2)'s predecessor (§ 36-9-507(1) of Former Article 9) while acknowledging “the outcome in this case would be different if the underlying action were brought [after § 36-9-628(e)'s effective date].” *See also Crane v. Citicorp Nat. Services, Inc.*, 313 S.C. 70, 437 S.E.2d 50, 53 (1993) (before July 1, 2001 “there [was] no limit to the number of co-obligors liable on a contract,” and therefore, a secured party's “liability could be great in cases with multiple guarantors.”

The trial court did not error by properly interpreting § 36-9-628(e), and even if it did, FFC is not entitled to review of any such error now.

b. UCC Article 9 does not prevent class actions.

If FFC's argument were correct, § 36-9-628(e) would bar all class actions seeking damages under § 36-9-625(c)(2) and absolve FFC of liability for violating the rights of hundreds if not thousands of South Carolinians. But the plain language of the SC UCC does not prevent class actions, and in fact, is drafted to ensure that a notice of disposition lacking the required information is "insufficient as a matter of law" and the minimum statutory damage is "designed to ensure that every noncompliance with the requirements of Part 6 in a consumer-goods transaction results in liability" Official Comment 4 to S.C. Code Ann. § 36-9-625 (emphasis added). FFC obtains a security interest in each vehicle it services subject to the UCC. The legislature has enacted laws with which FFC must comply and has further provided a formula for a minimum amount of statutory damages when it does not comply. Describing the rationale for the statutory damages, this Court has explained that "the statutory penalty is evidence of the legislature's recognition that the small amount of compensatory damages that may be proven in a consumer goods repossession and sale would be insufficient to ensure creditor compliance with the Code's provisions." *Singleton v. Stokes Motors, Inc.*, 358 S.C. 369, 376, 595 S.E.2d 461, 465 (2004) (quoting *Crane v. Citicorp Nat'l Serv., Inc.*, 313 S.C. 70, 437 S.E.2d 50 (1993)) (superseded by statute on other grounds). And if the Legislature had intended prohibit class actions, it would have made a non-uniform amendment to the Official Text of the UCC when it enacted § 36-9-625. *Cf.* § 810 ILCS 5/9-625 (Illinois's adoption of UCC § 9-625(c)(2) and non-uniform amendment) (stating a consumer-debtor may recover the statutory minimum "in any *individual* action") (emphasis added); *see also* North Dakota Code § 41-09-120(3)(b) (North Dakota's adoption of UCC § 9-625(c)(2) and non-uniform amendment) ("If the collateral is consumer goods, a person that was a debtor or a

secondary obligor at the time a secured party failed to comply with this part may recover in an *individual action* for that failure in any event an amount not less than the credit service charge plus ten percent of the principal amount of the obligation or the time-price differential plus ten percent of the cash price.”). Notably, despite amending their versions of the Official Text of UCC § 9-625(c)(2) to prohibit minimum statutory damages in class actions, Illinois and North Dakota retained the *identical* relevant statutory language FFC relies on here: “A secured party is not liable under [the State’s version of UCC § 9-625(c)(2)] more than once with respect to any one secured obligation.” *See* S.C. Code Ann. § 36-9-628; *see* Official Text of the UCC § 9-628(e); *see* North Dakota Code § 41-09-123(4); *see* § 810 ILCS 5/9-628(e).

FFC’s tortured reading of § 36-9-628(e) is meritless.

c. Delaney still has class claims that FFC does not challenge in this attempted appeal.

FFC’s attempt to appeal certain class claims is odd, as Delaney has other class claims FFC does not attempt to appeal.

In the amended complaint, Delaney seeks damages on behalf of the class in addition to those at issue in FFC’s attempted appeal. Section 36-9-628(e) provides that “[a] secured party is not liable *under Section 36-9-625(c)(2)* more than once with respect to any one secured obligation[.]” *See* § 36-9-628(e) (emphasis added). But Delaney and the Class also seek other class wide damages of a) \$500 per post-sale notice (i.e., per each violation of § 36-9-616) under § 36-9-625(e)(5)); b) declarations that both FFC’s presale and post-sale notices are deficient and bar FFC from recovering on alleged deficiencies⁵; and c) injunctive relief based on FFC’s inaccurate credit reporting. *See* FFC’s App. pp. 45–46. None of these forms of relief are mentioned in § 36-

⁵ A secured party’s failure to send a proper presale notice before selling a consumer-debtor’s collateral is barred from recovering an alleged deficiency. *See GMAC v. Carter*, 290 S.C. 216, 349 S.E.2d 342 (1986) (vacated as a condition of settlement).

9-628(e)), and FFC does not seek to appeal the portions of the trial court’s order allowing these class claims to proceed. In other words, even if this writ were granted and FFC’s appeal was decided in its favor, Delaney seeks other damages on behalf of the class that FFC does not attempt to challenge. FFC merely claims, “if FFC’s § 36-9-628(e) defense is meritorious, it means that FFC has a right not to face a class action *with respect to alleged § 36-9-625(c)(2) liability*.” See FFC’s Brief p. 18 (emphasis added).

Thus, even if this Court agreed with FFC on its appealability and merits arguments, the effect would be to prevent Delaney from seeking *part of* the class relief that is sought—that is, relief based on § 36-9-625(c)(2)—and the case would presumably be remanded for Delaney and the class to pursue the other pending class claims. This is precisely the type of piecemeal appeals the rules were designed to prevent, particularly in a case that is now 11 years old.

CONCLUSION

For the above reasons, FFC’s Petition for Certiorari should be denied because Petitioner has not established special or important reasons to justify exercise of the Court’s discretion to grant a Petition for Certiorari. The Petition should also be denied because the Court of Appeals properly dismissed the appeal. This Court should deny FFC’s Petition so the parties can proceed before the trial court.

TWENGE + TWOMBLEY LAW FIRM

BY: s/J. Ashley Twombley
J. Ashley Twombley, Esquire (SC Bar #72916)
311 Carteret Street
Beaufort, SC 29902
(843) 982-0100
twombley@twlawfirm.com
Attorneys for Respondent

Beaufort, South Carolina

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