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**Sep 27 2022**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM GREENVILLE COUNTY CIRCUIT COURT  
Letitia H. Verdin, Circuit Court Judge  
Case No. 2019-CP-23-7116

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Appellate Case No.: 2022-00011

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Jessie J. Carter, .....Appellant,

v.

Oscar Quirroga d/b/a Oscar Auto Sales and  
Marco A. Quiroga d/b/a Oscar Auto Sales and  
Palmetto Surety Corporation, ..... Respondents.

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SUPPLEMENTAL RECORD ON APPEAL

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Attorney For Respondent  
Palmetto Surety Corp.

Barrett Ray Brewer  
Brewer Law Firm, LLC  
PO Box 1847  
Mt. Pleasant, SC 29465-1847

Attorney For Oscar Quirroga  
d/b/a Oscar Auto Sales and  
Marco A. Quiroga d/b/a Oscar  
Auto Sales

James P. O'Connell  
139 Grace Dr.  
Easley, SC 29640

Attorney For Appellant

Matthew J. Kappel  
114 Whitsett St  
Greenville, SC 29601

INDEX

Plaintiff’s Return to PSC’s Motion to Dismiss and Motion for Summary Judgment with attached Exhibits ..... 1

Exhibit 1; Motor Vehicle Dealer and Wholesaler Surety Bond..... 11

Exhibit 2; Bill Of Sale ..... 15

Exhibit 3; Oscar Auto Sales Receipt # 670008 for Down Payment..... 16

Exhibit 4; Dealer Funding Request ..... 17

Exhibit 5; Oscar Auto Sales Check refunding Plaintiff his deposit ..... 18

Exhibit 6; Oscar Auto Sales August 31, 2019 Bank Statement ..... 19

Exhibit 7; Greenville County Vehicle Tax Information ..... 20

Exhibit 8; Oscar Auto Sales Spreadsheet ..... 21

Exhibit 9; Oscar Auto Sales July 31, 2019 Bank Statement ..... 22

Exhibit 10; Oscar Auto Sales September 30, 2019 Bank Statment..... 23

Exhibit 11; Oscar Auto Sales October 31, 2019 Bank Statement ..... 24

Exhibit 12; Oscar Auto Sales Receipts of Withdrawal ..... 25

Exhibit 13; Letter dated October 18, 2019 from Plaintiff’s counsel to Oscar Auto Sales ..... 26



The Defendant Oscar Quiroga d/b/a/ OAS and Defendant Marco Quiroga d/b/a/ OAS were located in Greenville County at 3501 White Horse Road, Greenville, SC 29611 and were in the business and trade of selling used vehicles. OAS was also in the business of directly financing the purchase of used vehicles or assisting customers with financing a purchase through third-party lending institutions. OAS closed during the course of this litigation on or before August 3, 2020.

Oscar Quiroga and Marco Quiroga were the owners and operators of OAS and upon information and belief are citizens and residents of Greenville County State of South Carolina.

The Defendant Palmetto Surety Corporation (hereinafter “PSC”) is a South Carolina Corporation that provides, *inter alia*, the surety bonds that all automobile dealers are required to obtain under the South Carolina Dealer Bond Statute (S.C. Code § 56-15-320 (B)) “as an indemnification for loss or damage suffered by an owner of a motor vehicle, or his legal representative.” PSC sold such a bond to OAS through bond number PS1-18517 in the amount of \$30,000.00 effective May 29, 2019. Exhibit 1.

Plaintiff entered into a contract with OAS on or about July 31, 2019 to purchase a 1999 Ford Mustang Cobra automobile (hereinafter “Cobra”) for \$5,500.00 (Exhibit 2)<sup>1</sup>. Plaintiff paid OAS a deposit of earnest money in the amount of \$500.00 leaving a balance of \$5,000.00. OAS gave the Plaintiff receipt #670008, dated July 31, 2019 and for a 1999 Ford Mustang purchase. (Exhibit 3). The parties agreed the remaining balance would be financed by United Services Automobile Association (“USAA”) as lender to Plaintiff. OAS agreed to produce

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<sup>1</sup> Plaintiff’s only copy of the Sales Contract is difficult to read. Plaintiff has requested discovery from the Defendant which would include Defendant’s copy of the original sales contract which presumably would be more legible. Defendant has refused to provide the documents and a motion to compel is forthcoming.

necessary funding documents and that would instruct USAA to pay \$5,000.00 directly to OAS and faxed the funding request on August 2, 2019. (Exhibit 4)

A few days passed and OAS had not contacted the Plaintiff about the sale. Plaintiff appeared at OAS on August 5, 2019 to see about the delay. An OAS employee informed the Plaintiff that there was a problem with his financing from USAA. OAS instructed Plaintiff to wait for another OAS employee to discuss it further. Plaintiff waited for over an hour without speaking with anyone else. Plaintiff became frustrated and determined to cancel the transaction.

OAS purported to accept Plaintiff's termination of the contract and refunded Plaintiff his \$500.00 earnest money deposit on August 5, 2019. (Exhibit 5). OAS, however, did not inform the Plaintiff that OAS had in fact faxed the Funding Request to USAA three days prior on August 2, 2019 and received the purchase money from USAA on August 5, 2019.

Plaintiff, believed the contract to be rescinded and reasonably and rightfully presumed the transaction to be a closed matter. In fact, the transaction was not a closed matter because OAS never returned the \$5,000.00 that USAA wired OAS in furtherance of the transaction.

The wire containing \$5,000.00 is indicated on OAS's August 2019 bank statement (Exhibit 6).

Approximately one month later, USAA notified the Plaintiff that his first loan payment was due. Plaintiff realized the loan proceeds had in fact been delivered to OAS and that he now had a \$5,000.00 loan for an automobile for purchase contract that he believed had been canceled.

For more than 30 days, Plaintiff attempted to resolve this matter with OAS by simply having OAS return the \$5,000.00 to USAA or directly to Plaintiff. OAS was unresponsive.

Sometime after Plaintiff's attempt to rescind the contract OAS sold the vehicle to another customer (Exhibit 7) and as it stands today, OAS sold the automobile twice with only one customer taking possession.

OAS bank records indicate from June 30, 2019 to May 31, 2020, OAS average ending statement balance was \$25,692.53 (Exhibit 8). The ending balance July 31, 2019, August 31, 2019, September 30, 2019 and October 31, 2019 was \$50,837.68, \$9,636.56, \$85,101.08 and \$4,820.71 respectively (Exhibits 9, 6, 10, and 11). Interestingly, OAS' October 31, 2019 balance was offset by \$51,300.00 in withdrawals, \$15,500.00 in cash and \$35,800.00 by way of cashier's check. (See Exhibit 12).

13. The Defendant refused to refund the \$5,000.00 to the Plaintiff or to USAA. After approximately 1 month to trying to resolve the matter, the Plaintiff hired counsel. Counsel drafted a demand letter requesting the Defendant return the \$5,000.00 plus interest and attorney's fees and costs which totaled \$5,909.37 (Exhibit 13). The demand letter was personally delivered to the Defendant on October 18, 2019. The demand was ignored.

14. The Plaintiff has now incurred more than \$14,000.00 in attorney's fees and costs and has paid \$752.10 in interest. The remaining balance on the Plaintiff's loan is \$3,097.49.

### **CAUSES OF ACTION**

The Plaintiff filed this suit in the Court of Common Pleas and alleged the following causes of action: Violation of the South Carolina Unfair Trade Practices Act; Breach of Contract; Breach of Fiduciary Duty; Conversion; Breach of Contract Accompanied by

Fraudulent Act and an Action Against Surety under S.C. Code § 56-15-320(B). The Plaintiff prayed for treble damages, reasonable attorney's fees and costs, actual and punitive damages, prejudgment interest as allowed by law and For an Order holding that the PSC must indemnify the Plaintiff for all losses and damages suffered in connection with this sale of a motor vehicle.

### **PSC'S MOTION TO DISMISS**

PSC filed a Motion to Dismiss on September 16, 2021. In its Motion, PSC argues that its "bond provides security or protection against the loss or damage due to fraud or fraudulent representation in relation to a sale or transfer of a motor vehicle by a licensed dealer . . ." PSC relies upon the notion that the Plaintiff believed that he "cancelled the transaction prior to purchasing the subject automobile from OAS" and that "there was no fraud or fraudulent representation on the part of the Defendants related to a completed sale or transfer."

Remarkably, PSC suggests "the claims by Plaintiff amount to no more than a dispute with his own financing company USAA and about USAA forwarding purchase money for a vehicle the Plaintiff never acquired title to or ownership of."

### **PLAINTIFF'S RETURN TO PSC'S MOTION TO DIMISS**

The Plaintiff and OAS signed a bill of sale for the purchase of a specific automobile, 1999 Ford Mustang Cobra, VIN #IFAFP46V6XF199472 for \$5,500.00. The Plaintiff paid a \$500 deposit and agreed to finance the balance through USAA. At this point in the transaction, the Plaintiff becomes an "Owner" in the sense that he acquired an ownership interest in this specific vehicle to the exclusion of anyone else. Plaintiff's ownership interest in this specific vehicle does not terminate until the contract is fully and completely rescinded. Rescission or cancellation of the contract requires returning the Plaintiff to the position he was in prior to entering the contract. In this case, the contract could only be cancelled after OAS

returned all of the money to the Plaintiff. **OAS cannot cancel the contract and keep the money.**

There is very little case law regarding SC Code Sec. § 56-15-320(B) as to who qualifies as an “Owner” and protection from fraud or fraudulent representations by way of the surety. The South Carolina Court of Appeals in Wachesaw Plantation East Community Services Association, Inc. v. Todd C. Alexander, 802 S.E.2d 635 (Ct App. 2017) involved the judicial sale of real property where the Plaintiff in that case attempted vacate the sale. In denying the Plaintiff relief, the Wachesaw court stated “when Bidder ‘became the successful bidder’ and paid the required deposit, **‘he became the equitable owner’ of the property.**” Wachesaw Plantation East Community Services Assoc., Inc. v. Todd C. Alexander, 420 S.C. at 262 (citing Parrott v. Dickson, 148 SE 704, 707 (SC 1929) (emphasis added).

The Plaintiff believes the Wachesaw and Parrott cases support the notion that the Plaintiff obtained ownership rights to the 1999 Ford Mustang Automobile to the exclusion of anyone else when he signed the bill of sale and paid the agreed upon deposit. Moreover, Plaintiff’s ownership in the vehicle can only be extinguished upon returning the Plaintiff to the position he was in prior to the contract which would require the return of all of the purchase money OAS received. PSC is arguing that there can be a partial rescission or cancellation, which the Plaintiff respectfully suggests is impossible. PSC is basically arguing that a party can cancel a sales contract without returning the purchase money and thus eliminate any subsequent action for breach of contract.

Finally, PSC’s comment that “the claims by Plaintiff amount to no more than a dispute with his own financing company USAA and about USAA forwarding purchase money for a vehicle the Plaintiff never acquired title to or ownership of” is not supported by law or by fact.

OAS faxed the funding request directly to USAA so that it could receive \$5,000.00 as final payment for the 1999 Ford Mustang Cobra, VIN # IFAFP46V6XF199472. USAA acted upon OAS's instructions and was merely a conduit for providing the purchase price to complete the sale. Moreover, any action against USAA to the exclusion of the OAS would excuse the fraudulent acts perpetrated by OAS. Additionally, PSC's statement that USAA somehow acted improperly when it forwarded "purchase money for a vehicle the Plaintiff never acquired title to" is simply nonsensical. Generally speaking, automobile titles are typically not provided to a purchaser until after all of the purchase money has been paid. USAA was providing the purchase money on behalf of the Plaintiff and acting on OAS's instructions.

#### **SUMMARY JUDGMENT/LAW**

The judgment sought pursuant to Rule 56(c) shall be rendered when the pleadings, affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. In determining whether any triable issues of material fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. Fleming v. Rose, 350 S.C. 488, 493–94; 567 S.E.2d 857, 860 (S.C. 2002).

Upon review of the exhibits as well as the Plaintiff's affidavit in the light most favorable to the Defendants, eight issues are incontrovertible:

(1) OAS and the Plaintiff entered into a contract for the sale/purchase of a 1999 Ford Mustang Cobra, VIN # IFAFP46V6XF199472 and the Plaintiff paid a \$500 deposit to secure his ownership interest in this specific vehicle which is referenced on the bill of sale and receipt #670008.

(2) OAS faxed a funding request to USAA for the remaining balance of \$5,000.00. USAA complied with OAS's request and wired OAS \$5,000.00 on August 5, 2019.

(3) OAS purported to cancel the contract when it returned the Plaintiff his \$500 deposit for the vehicle. OAS, however, never refunded the \$5,000.00 it received from USAA;

(4) OAS sold the vehicle to another buyer on or before 11-1-2019 as is indicated by the Greenville County Tax Receipt in the name of Norris Don Franklin who is not related to or otherwise known to the Plaintiff;

(5) The Defendant's bank account had more than sufficient funds to reimburse the Plaintiff or USAA.

(6) OAS was engaged in a trade and commerce and breached the contract and committed an unfair, deceptive act and practice by refusing to return the Plaintiff's purchase money. OAS also committed an unfair and deceptive act and practice when it sold the same vehicle to another purchaser. All of these unfair, deceptive acts and practices constitute an unlawful trade practice which had an adverse impact on the public interest.

(7) The Plaintiff incurred attorney's fees and costs and has suffered otherwise a monetary loss that resulted from the use and employment of an unfair and deceptive act by the Defendant.

(8) The Plaintiff is an "owner" of the 1999 Ford Mustang Cobra VIN # IFAFP46V6XF199472 for purposes of satisfying § 56-15-320(B) in that the vehicle was specifically referenced on the bill of sale and the receipt of payment. When the Plaintiff signed the contract and paid the deposit he obtained rights of ownership of the vehicle to the exclusion

of anyone else. Plaintiff's ownership interest in the vehicle continued because OAS did not cancel contract when it refused to return the purchase money to the Plaintiff.

PSC argues the Plaintiff's ownership interest ceased to exist once the Plaintiff attempted to cancel the sale. Following PSC's argument to its logical conclusion, the Court must necessarily agree that OAS can cancel the purchase contract, eliminate Plaintiff's ownership rights to the vehicle and keep the purchase money. Alternatively, the Plaintiff believes that OAS cannot cancel the contract and keep the money. As the money has never been returned, Plaintiff's ownership interests in the vehicle remain.

An essential element required to cancel a purchase contract is to return the Plaintiff to the position he was in prior to the contract. Here, the Plaintiff is far from his original position as he is still paying on a \$5,000.00 loan to USAA for vehicle he does not possess.

THEREFORE, the Plaintiff moves for an Order of this Court for Summary Judgement as to all causes of action and award the following:

- a) Treble damages;
- b) Reasonable attorney's fees and costs associated with prosecution of this action;
- c) Actual and punitive damages;
- d) Prejudgment interest as allowed by law; and
- e) For an Order holding that the PSC must indemnify the Plaintiff for all losses and damages suffered in connection with this sale of a motor vehicle, and
- (f) For such other and further relief as the court may deem just and proper. including treble damages, attorney's fees, costs and prejudgment interest allowable by law.

Respectfully submitted,

October 22, 2020

s/ Matthew J. Kappel  
Matthew J. Kappel  
114 Whitsett Street  
Greenville, SC, 29601  
864-467-9595 (voice)

864-467-1945 (fax)  
SCBar # 15390



# South Carolina Department of Motor Vehicles Motor Vehicle Dealer and Wholesaler Surety Bond

Dealer Number: 18870

NOTE: Please read instructions on second page before executing bond.

Bond Number: PS1-18517 Effective Date: 5/29/2019 12:00:00 AM Time: 12:00  AM  PM

KNOW ALL MEN BY THESE PRESENTS: that we OSCAR'S AUTO SALES  
(Name of Dealership)

Conduct business at 3501 White Horse Rd, Greenville, SC 29611-5540

As Principal and Palmetto Surety Corporation as Surety

are duly authorized to do business within the State of South Carolina, are held and firmly bound unto the people of the State of South Carolina to indemnify any owner of a motor vehicle, or his legal representative, who may be aggrieved by any fraud, fraudulent representation or violation by said Principal, salesmen, or representatives acting for such Principal within the scope of employment of such salesmen or representatives, of any of the provisions of Title 56 of the South Carolina Code of Laws relating to Motor Vehicle Dealers and the sale and transfer of motor vehicles, in the aggregate liability amount of:

**CHECK ONE:**

- Thirty Thousand Dollars (\$30,000) – All dealers, wholesalers, or travel trailers
- Fifteen Thousand Dollars (\$15,000) – Wholesale Auto Auction, Motorcycle Dealers, and Motorcycle Wholesalers

lawful money of the United States of America, for which payment, well and truly to be made, we bind ourselves, jointly and severally, our joint and several heirs, executors, administrators, successors, and assigns, firmly by these presents.

WHEREAS, the above bounden Principal desires that a motor vehicle dealer's or wholesaler's license be issued and thereafter reissued from time to time by South Carolina Department of Motor Vehicles;

WHEREAS, this bond executed by the said Principal and Surety is filed with the South Carolina Department of Motor Vehicles, to enable said Principal to obtain a license from the Department under the provisions of that law.

NOW THEREFORE, the conditions of this obligation are such that if the Principal shall well and truly observe and strictly and faithfully comply with the aforesaid requirements of law and shall save and keep harmless any owner of a motor vehicle or his legal representation made to him by such Principal, such Principal's salesmen or representatives acting for the Principal or within the scope of the employment of such salesmen or representatives, or from any loss or damage suffered by reason of the violation such Principal or any such salesmen or representatives of any of the provisions of Title 56 of the South Carolina Code of Laws relating to Motor Vehicle Dealers and the sale and transfer of motor vehicles, then this obligation shall be null and void; otherwise it shall remain in full force and effect. It is understood that the injured party need not obtain a judgment against the Principal before making claim against the Surety on this bond.

This bond shall not automatically expire with the license for which it is initially issued, but shall continue indefinitely, from license year to license year, upon timely payment of the premium thereon. Before this bond may be cancelled, a thirty (30) day written notice must be given to the Department of Motor Vehicles. Such cancellation does not affect any liability incurred or accrued prior to cancellation.

Marco Quiroga

Printed Name of Owner or Authorized Corporate Officer (Entity Owned)

Scott Willis (Palmetto surety Corp.)

(Surety)

By: Scott Willis (AIF)  
(Title)

Signature of Owner or Authorized Corporate Officer





# South Carolina Department of Motor Vehicles

## Motor Vehicle Dealer's and Wholesaler's Surety Bond Instructions

**DLA-1B (IS)**  
(Rev. 11/17)

1. Every applicant for a motor vehicle dealer's and wholesaler's license must furnish the original Surety Bond for the amount required and Power of Attorney on a form to be prescribed by the Executive Director of the Department of Motor Vehicles. The purpose of the bond is to provide indemnity for loss or damage caused an individual due to fraud or fraudulent representation in relation to a sale or transfer of a motor vehicle by a licensed dealer, wholesaler or their employees.

<b>Surety Bond Amount</b>	<b>Which Dealers and Wholesalers must furnish a Surety Bond for this Amount</b>
Thirty Thousand Dollars (\$30,000)	All dealers, wholesalers, or Travel Trailers
Fifteen Thousand Dollars (\$15,000)	Wholesale Auto Auction, Motorcycle Dealers, or Motorcycle Wholesalers

2. The Executive Director of the Department of Motor Vehicles has prescribed a standard form of bond for motor vehicle dealers - Motor Vehicle Dealer and Wholesaler Surety Bond (Form DLA-1B), which is set forth on the reverse side hereof.
3. This bond must be executed by the applicant, as principal, and by a corporate surety company authorized to do business in this State, as surety, and given to the Department before the application can be acted upon.
4. This bond must be signed by either the owner, partner or corporate officer of the dealership (Principal) and an agent from your surety company.
5. The bond must be effective prior to or at the time of the granting of a license.
6. If the bonding company has changed, please submit a new original bond and Power of Attorney at the time of renewal.
7. If, during the license year, there is any change in a principal's name, address or ownership then an endorsement from the surety agent or a new bond will be required along with a new application for Dealer/Wholesaler License.

DATE AND ATTACHED TO ORIGINAL BOND  
PALMETTO SURETY CORPORATION INSURANCE COMPANY  
CHARLESTON, SOUTH CAROLINA  
POWER OF ATTORNEY

BOND NO. **PS1-18517**

KNOW ALL MEN BY THESE PRESENTS: That PALMETTO SURETY CORPORATION AT CHARLESTON, SOUTH CAROLINA, a South Carolina Corporation, having its principal office at Charleston, County of Berkeley, State of South Carolina, adopted the following Resolution by the directors of the company on February 10, 2003 to wit:

"RESOLVED, that the Chief Executive Officer or appointee of the company shall have the power and authority to appoint Attorneys-in-fact, and to authorize them to execute on behalf of the company, and attach the seal of the company thereto, bonds and undertaking, recognizances, contracts of indemnity, and other writings obligatory in the nature thereof. Signatures of officers and seal of company imprinted on such powers of attorney shall be as binding upon said companies, as fully and amply, to all intents and purposes.

Its true and lawful attorney(s)-in-fact, to execute, seal and deliver for and on its behalf as surety, and all bonds and undertaking, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, and the execution of such instrument(s) shall be as binding upon the Palmetto Surety Corporation Insurance Company at Charleston, South Carolina as fully amply, to all intents and purposes, as if the same had been duly executed and acknowledged by its regularly elected officers at its principal office.

IN WITNESS WHEREOF, the PALMETTO SURETY CORPORATION INSURANCE COMPANY AT CHARLESTON, SOUTH CAROLINA, has caused this to be signed by its authorized officer this 2nd day of January, 2019

Scott B. Willis, Chief Executive Officer



South Carolina  
County of Berkeley

On this 2nd day of January, 2019 before me personally came Scott B. Willis, to me know, who being duly sworn, did depose and say that they are Scott B. Willis, Chief Executive Officer of Palmetto Surety Corporation, the corporation described in and which executed the above instrument, that they know the seal of said corporation, that the seal affixed to said instrument is such Corporate Seal, and that they received said instrument on behalf of the corporation by authority of their office pursuant to a Resolution of the Board of Directors of said corporation.

DOLLIE T. PILSON  
Notary Public, State of South Carolina  
My Commission Expires April 16, 2023

Dollie Pilson, Notary Public

State of South Carolina  
County of Berkeley

I, the Chairman of the Board of Palmetto Surety Corporation, do hereby certify that the authority to issue a power of attorney as approved by the Board of Directors resolution shall remain in full force and effect as written and has not been revoked and the resolution as set forth are now in force.

Signed and sealed at Charleston, South Carolina. Dated this 11th day of June, 2019



Not valid if iBond Verified seal and Bond Number not in Color



PALMETTO SURETY  
CORPORATION

Where the Agents and Agencies are First and Foremost.

**All Forms Must Be Printed In Color  
To Be Valid**

**Palmetto Surety Instruction Page:**

This page will provide information to explain the bond forms you have just printed out. There are three very important forms you must understand.

**The Power of Attorney**

This document represents Palmetto Surety Corporation as an approved Insurance Carrier in the state of the bond purchased. This document must be provided to the party requesting the bond along with the surety bond form.

**Surety Bond Form**

This document represents you, as the principle, will follow all rules and guidelines. This form provides all parties involved to this agreement. This document also must be provided to the party requesting the bond along with the Power of Attorney.

**Indemnity Agreement**

This form represents your obligation to the surety and actions taken by the surety if a claim is issued for your actions. You have accepted this agreement by purchasing this bond. Once submitted to the obligee this bond is considered an active policy.

**Complete the Following:**

**The Surety Bond Form will require your signature in the principle section. In some cases certain surety bond forms will also require a notary to your signature. Please review this form in its entirety to make sure all information is correct.**

If you should have any problems submitting the following forms, or a mistake is made on one of the forms, please contact Palmetto Surety Corporation at 843-971-5441.

We would like to thank you for choosing Palmetto Surety Corporation as your Surety Bond provider. You will receive an electronic notice annually for your bond renewal. We hope our services meet your expectations.



**Exhibit 2** AFFIDAVIT & NOTIFICATION OF SALE OF MOTOR VEHICLE  
 Plaintiff's Return to PSC's Motion to Dismiss and Plaintiff's Motion for Summary Judgment

No. 31922079

ELECTRONICALLY FILED - 2021 Oct 22 4:52 PM - GREENVILLE - COMMON PLEAS - CASE #2019CP2307116

Personally appeared before me \_\_\_\_\_ (Seller) \_\_\_\_\_ (Dealer Retail Tax #)  
 \_\_\_\_\_ (Address)  
 who being duly sworn, deposes and says that on the \_\_\_\_\_ day of \_\_\_\_\_ Yr. \_\_\_\_\_  
 he sold the following motor vehicle: Make \_\_\_\_\_ Model \_\_\_\_\_  
 Year \_\_\_\_\_ Identification (Serial) No. \_\_\_\_\_  
 License No. \_\_\_\_\_ to \_\_\_\_\_ (Buyer)  
 \_\_\_\_\_ (Street) \_\_\_\_\_ (City) \_\_\_\_\_ (County) \_\_\_\_\_ (State) \_\_\_\_\_ (Zip)

Special Mailing Address

Deponent further states that there are no liens or encumbrances on the said vehicle except as listed below:

Lienholder	_____	Amount	_____
Address	_____	Date	_____

I certify that the odometer now reads \_\_\_\_\_ (no tenths) miles and to the best of my knowledge that it reflects the actual mileage of the vehicle described below, unless one of the following statements is checked.

- (1) I hereby certify that to the best of my knowledge, the odometer reading reflects the amount of mileage in excess of its mechanical limits.
- (2) I hereby certify that the odometer reading is NOT the actual mileage. **WARNING - ODOMETER DISCREPANCY**

Federal law (and State law, if applicable) requires that you state the mileage upon transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

\_\_\_\_\_  
 (Signature of Seller)

\_\_\_\_\_  
 (Print Seller's Name)

\_\_\_\_\_  
 (Signature of Buyer)

\_\_\_\_\_  
 (Print Buyer's Name)

Property Tax Section  
 Check One:

\_\_\_\_\_ Purchase License Plate

D. L. Number \_\_\_\_\_

License Plate Issued \_\_\_\_\_

Transfer License Plate

Signature of Buyer/if purchasing plates  
 Property taxes will be due in 120 days

# RECEIPT

No. 670008

DATE 07/31/14

FROM Jesse James \$500

five hundred - DOLLARS

FOR RENT 10pp1 Ford Mustang purchase

ACCT. PAID DUE \$500 \$500 \$500  
 CASH  
 CHECK  
 MONEY ORDER  
 CREDIT CARD  
FROM [Signature] AUTO SALE  
1 WHITE HORSE F  
GREENVILLE, SC 29615

## Exhibit 3

Plaintiff's Return to PSC's Motion to Dismiss and Plaintiff's Motion for Summary Judgment

ELECTRONICALLY FILED - 2021 Oct 22 4:52 PM - GREENVILLE - COMMON PLEAS - CASE#2019CP2307116

# Dealer Funding Request

#2

ELECTRONICALLY FILED - 2021 Oct 22 4:52 PM - GREENVILLE - COMMON PLEAS - CASE#2016CP2307116

Approval Code: CL73AE706950CE  
 USAA Member Number: [REDACTED]  
 Borrower Name(s): JESSIE CARTER

Exhibit 4

Plaintiff's Return to PSC's Motion to Dismiss and Plaintiff's Motion for Summary Judgment

Form Number: 66995-0918-LN1113228926

**Dealer: Fax these documents to 877-832-3052 to receive funding**

We usually send the funds within 1-2 business days of receiving all of the following documents.

- This Dealer Funding Request form (send as page 1).
- Borrower signed purchase agreement including any adjustments for trades and/or down payments.
- Title application (for each titled collateral) listing at least one of the above borrowers as a registered owner AND showing USAA Federal Savings Bank as lien holder according to the lien information below. The dealership agrees to submit all necessary titling paperwork to the appropriate State agency within 10 days of the purchase date.

**USAA Federal Savings Bank**  
 PO Box 25145  
 Lehigh Valley, PA 18002-5145

In certain states, the lien filing for titled collaterals must include a lien code from the table below.

State	Lien Code	State	Lien Code	State	Lien Code	State	Lien Code
AL	71-00116-00	ID	74-6393739	NH	102	SC	32915673
AZ	E00150962	LA	ESUA	NJ	930-338761-18070	SD	746393739
CA	ACB	MA	C/23831	NV	US0010	TX	74639373900
CO	E7463937390001	MS	90004628000	NY	42480	VA	FM27USAELT70
FL	201882743	MT	74-6393739	OH	E09098	WA	USA
GA	001100054842	NC	000020096936	OR	6049184	WI	10081
IA	74639373900	NE	40583765	PA	31407426901		

**Dealership Information**

Dealership Name: OSCAR'S CREDIT SCARS  
 Contact Name: DIANA  
 Phone: (847) 269-1077  
 Fax: (847) 269-1066

(Include DBA name if applicable)

**Funding Information**

Funding Information for a 2011 or older vehicle

Purchase Date: 01/31/19  
 Balance Due to Dealer: \$ 5000 (minimum \$5,000)  
 This should match the balance due/balance to finance listed on the Purchase Agreement  
 Dealer's Bank Account Number: 30092452  
 Dealer's Bank (ACH) Routing Number: 0532017371

Important: USAA reserves the right to delay payment, refuse payment, or pay a lesser amount if the requested amount exceeds loan approval amount, the requested amount does not meet USAA collateral value requirements, or USAA suspects fraud. USAA reserves the right to delay or refuse payment if USAA suspects fraud.



66995-0918

Supp ROA 000017

Aug 02 19:27:09

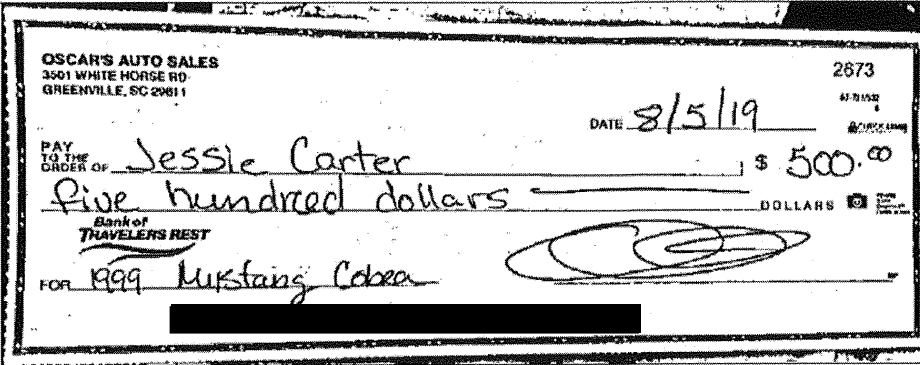
045779102000000

0760776111

30092452

Exhibit 5

Plaintiff's Return to PSC's Motion to Dismiss and Plaintiff's Motion for Summary Judgment



2673 \$500.00 8/9/2019



# EXHIBIT 7

Plaintiff's Return to PSC's Motion to Dismiss and Plaintiff's Motion for Summary Judgment

The service fee for Hospitality Taxes will also be waived until further notice.



## Vehicle Tax Detail Information

Details for Vehicle

### Basic Information

**Name:** NORRIS DON FRANKLIN  
**Levy Year:** 2018  
**Account #:** 2019 00 4578195 01 001



### Vehicle Information

Year	Make	Model	Body	Wgt	Gross Wgt	VIN #	District
1999	FORD		CN	0	0	1FAFP46V6XF199472	367

<b>Exp Date:</b>		<b>Assessment:</b> 50
<b>Date Paid:</b> 11/01/2019		<b># Months:</b> 12
<b>Status:</b>		<b># Miles:</b> 0

### Tax Summary

County Millage: 309.90  
 City Millage: 0

**Total Taxes:** \$15.50  
 Road Fee: 25.00  
 DMV Decal Fee: 0  
 NSF Fee:  
 High Mile Credit: 0

Total Billed: \$40.50  
 Total Paid: \$40.50

EXHIBIT 8

Plaintiff's Return to PSC's Motion  
to Dismiss and Plaintiff's Motion for  
Summary Judgment

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Amended Complaint

OAS ENDING BALANCE

Checking Account XXXX		
30-Jun-19	\$	26,440.82
31-Jul-19	\$	50,837.68
31-Aug-19	\$	9,636.56
30-Sep-19	\$	85,101.08
31-Oct-19	\$	4,820.71
30-Nov-19	\$	8,373.79
31-Dec-19	\$	17,163.22
31-Jan-20	\$	5,317.81
29-Feb-20	\$	26,736.40
31-Mar-20	\$	12,583.98
30-Apr-20	\$	30,054.71
31-May-20	\$	31,243.54
<b>AVERAGE</b>	<b>\$</b>	<b>25,692.53</b>



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# EXHIBIT 9

Plaintiff's Return to PSC's Motion  
to Dismiss and Plaintiff's Motion for  
Summary Judgment

Statement Date	Page No.
Jul 31, 2019	1 of 6

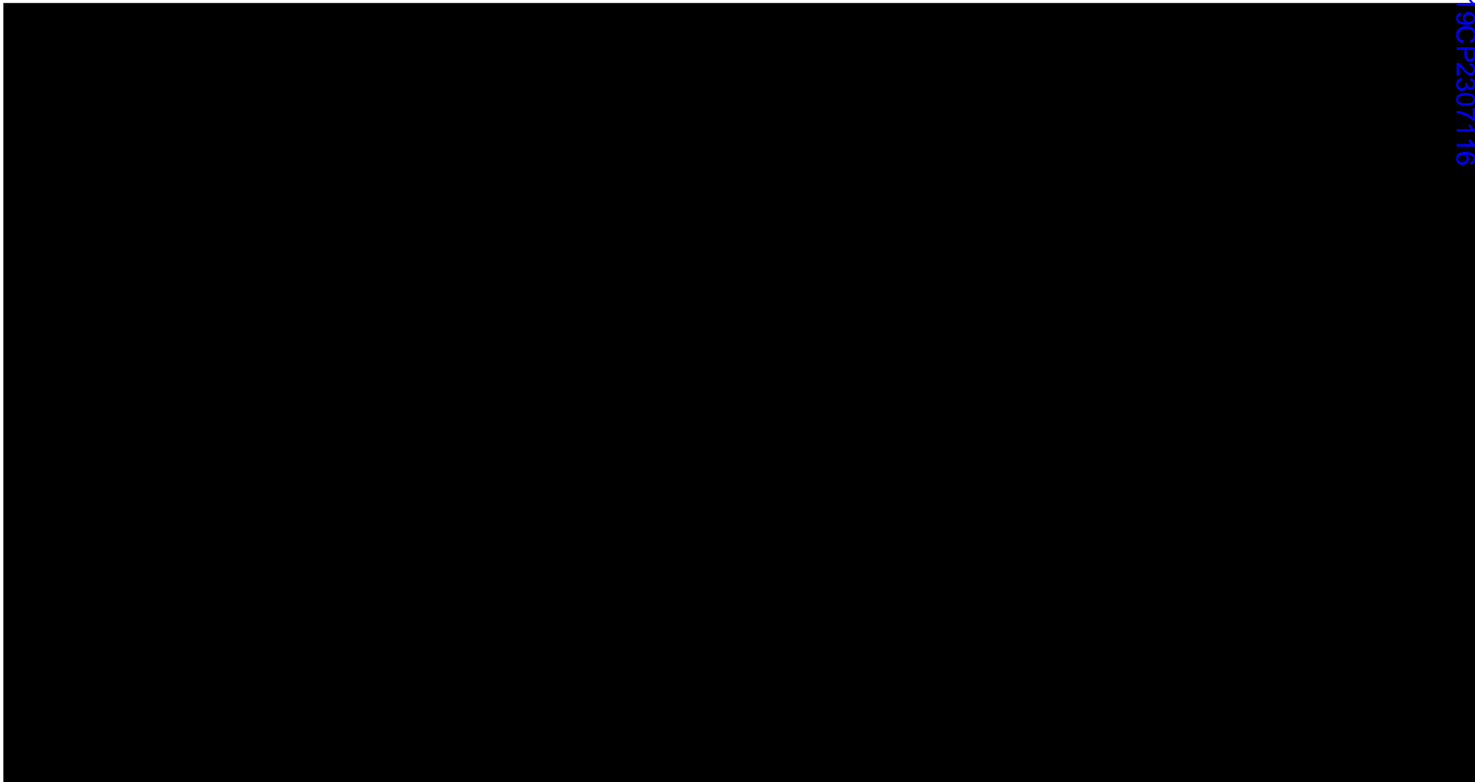
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38 115499 R P0 T0  
MARCO A QUIROGA  
DBA OSCAR'S AUTO SALES  
3501 WHITE HORSE RD  
GREENVILLE SC 29611

BASIC BUSINESS CHECKING - XXXXXX				
Beginning Balance	75 Deposits/Credits	180 Withdrawals/Debits	Days This Period	Ending Balance
\$26,440.82	+ \$276,889.17	- \$252,492.31	31	\$50,837.68







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# EXHIBIT 11

Plaintiff's Return to PSC's Motion to Dismiss and Plaintiff's Motion for Summary Judgment

Statement Date	Page No.
Oct 31, 2019	1 of 5

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1357 116430 \*\*AUTO5-DIGIT 29611 R P1 T6  
 MARCO A QUIROGA  
 DBA OSCAR'S AUTO SALES  
 3501 WHITE HORSE RD  
 GREENVILLE SC 29611

BASIC BUSINESS CHECKING - XXXXX				
Beginning Balance	68 Deposits/Credits	162 Withdrawals/Debits	Days This Period	Ending Balance
\$85,101.08	+ \$182,219.87	- \$262,500.24	31	\$4,820.71

Date	DEPOSITS / OTHER CREDITS	Amount
[REDACTED]		

# EXHIBIT 12

Plaintiff's Return to PSC's Motion  
to Dismiss and Plaintiff's Motion for  
Summary Judgment

## Oscar Auto Sales Withdrawals

Oct-19

10/2/2019	\$	35,800.00	Cashier's Chk
10/9/2019	\$	2,500.00	Cash
10/18/2019	\$	3,000.00	Cash
10/23/2019	\$	4,000.00	Cash
10/24/2019	\$	6,000.00	Cash

**\$ 51,300.00**

**DDA DEBIT TRANSACTIONS** Oscar Auto Sales. DATE 9/27/19.

EFFECTIVE DATE \_\_\_\_\_

DRAWN BY Marco A. Quiroga ACCOUNT NUMBER \* [REDACTED]

NAME [REDACTED]

SELECTOR \*115

\$ 35,800.00

100 Deposit Forwarded 150 MMDA Withdrawal  
105 Debit Adjustment 144 HSA Distribution  
107 Telephone Trf W/D 148 Closing Withdrawal  
109 Transfer Withdrawal 147 Auto Closing Withdrawal  
115 Withdrawal

0 \$35,800.00 10/2/2019

Received From **BANK OF TRAVELERS REST** CHECKING WITHDRAWAL  
TRAVELERS REST, SC 29690

Date 10/9/19 \* [REDACTED]

twenty five hundred Dollars \$ 2,500.00  
Marco Quiroga

Print Name [REDACTED]  
Signature [REDACTED]

0 \$2,500.00 10/9/2019

Received From **BANK OF TRAVELERS REST** CHECKING WITHDRAWAL  
TRAVELERS REST, SC 29690

Date 10/18/19 \* [REDACTED]

Three thousand 00/100 Dollars \$ 3,000.00

Print Name [REDACTED]  
Signature [REDACTED]

0 \$3,000.00 10/18/2019

Received From **BANK OF TRAVELERS REST** CHECKING WITHDRAWAL  
TRAVELERS REST, SC 29690

Date Oct. 23, 19 \* [REDACTED]

Dollars \$ 4,000.00

Print Name [REDACTED]  
Signature [REDACTED]

0 \$4,000.00 10/23/2019

Received From **BANK OF TRAVELERS REST** CHECKING WITHDRAWAL  
TRAVELERS REST, SC 29690

Date 10/24/2019 \* [REDACTED]

six thousand Dollars \$ 6,000.00

Print Name [REDACTED]  
Signature [REDACTED]

0 \$6,000.00 10/24/2019

LAW OFFICES OF  
MATTHEW J. KAPPEL, P.C.  
ATTORNEY AT LAW  
114 WHITSETT STREET  
GREENVILLE, SOUTH CAROLINA 29601  
WEBSITE: KAPPELLAW.COM  
EMAIL: MATT@KAPPELLAW.COM

*Also Licensed to Practice in North Carolina*

TELEPHONE: (864) 467-9595

TELECOPIER: (864) 467-1945

October 18, 2019

By Personal Service (SC Process Service and Investigations, Inc.)

Oscar Auto Sales  
3501 White Horse Road  
Greenville, SC 29611

RE: Jessie Carter  
1999 Mustang Cobra

Dear Sir or Madam:

In my 20 years of practicing criminal, civil and family law, I have never seen something quite like this.

My client, Jessie Carter attempted to purchase a 1999 Mustang Cobra from Oscar Auto Sales ("OSA") a couple of months ago and even paid a \$500 cash deposit. Prior to making the deposit, Jessie lined up financing through USAA and was prepared to authorize USAA to wire the funds to OSA upon closing the deal. OSA, however, contacted Jessie within a few days of paying the deposit to inform him there was a problem with the paperwork and the financing from USAA could not be accessed. Jessie eventually became frustrated with OSA and canceled the purchase on August 2d. OSA appeared to accept Jessie's cancellation and REFUNDED his deposit on on August 5, 2019. Please see attached hereto check # 2673 from OSA in the amount of \$500.00 as Exhibit #1. OSA, however, submitted the "Dealer Funding Request" on August 1 without informing Jessie no did OSA advise USAA that Jessie canceled the deal. See "Dealer Funding Request" as Exhibit #2.

Several weeks after OSA returned Jessie's deposit money, USAA contacted him about paying the loan. Jessie did not sign any additional documents nor did he authorize the disbursement of the loan proceeds. Somehow the loan proceeds were accessed by OSA even though he did not purchase or take possession of the vehicle. Jessie is now left with the ridiculous situation of having a \$5,000.00 loan with no vehicle attached thereto and OSA "walking away" with a financial windfall. Please see attached Affidavit & Notification of Sale of Motor Vehicle" and Exhibit #3;

Of course, Jessie and his wife tried contacting OSA for a full refund of \$5,000.00 so they can reimburse USAA and close out the loan. Sadly, however, no one at OSA is interesting in speaking with them or fixing the problem. Jessie is left with no option but to hire my firm to resolve the problem.

Oscar Auto Sales  
 October 18, 2019  
 Page 2

OSA is evidently taking the highly unusual position that its okay to take loan proceeds without selling and transferring the vehicle to the customer. OSA also appears to be engaged in questionable practices in handling loan applications and correspondence with creditors. All of which in my view is improper and in violation of the South Carolina Unfair Trade Practices Act ("SCUTPA"). See § 35-5-10, et seq. of the South Carolina Code of Laws. In particular, violations of the SCUTPA will result in treble damages and attorney's fees. See § 39-5-140(a) that states

If the court finds that the use or employment of the unfair or deceptive method, act or practice was a willful or knowing violation of Section 39-5-20, the court **shall award three times the actual damages sustained** and . . . **shall award reasonable attorney's fees and costs** (emphasis added).

I believe this case is a prototypical violation of the SCUTPA and that my client will be awarded \$15,000.00 plus reasonable attorneys fees. To avoid litigation, however, Jessie has authorized me to make the following offer to OSA:

1 <sup>st</sup> Loan Payment (9/15/19)	\$102.29
2 <sup>nd</sup> Loan Payment (10/15/19)	\$102.29
Loan Balance	<u>\$4,879.79</u>
	\$5,084.37
Attorney's Fees	\$750.00
Process Server	\$75.00
TOTAL:	<u>\$5,909.37</u>

Deliver a cashier's check to my law office within 7 days of this letter in the amount of \$5,909.37 payable to the Law Office of Mathew J. Kappel and REMOVE Jessie's name from the title if a title was issued. If payment is not received and Jessies name is not removed from the title within 7 days, we will file an action in the Court of Common Pleas and pray for a judgment against OSA in the amount of \$15,253.11 (\$5,084.37 x 3) and attorney's fees and costs.

I look forward to hearing from you.

Sincerely yours,



Matthew J. Kappel

Enclosures  
 cc.: Jessie Carter  
 MK/sk