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Apr 14 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
Appellate Case No. 2020-000935

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge, Dorchester County
Maite Murphy, Circuit Court Judge, Dorchester County

Case No. 2018-CP-18-00729

Portfolio Recovery Associates, LLC Assignee of Synchrony Bank/HH Gregg
Respondent,

v.

Jennifer Campney, Defendant

and

Jennifer Campney, Third-party Plaintiff,

v.

Cooling & Winter, LLC, Third-party Defendant, of whom Jennifer Campney is the Appellant.

RESPONDENT’S RESPONSE IN OPPOSITION TO APPELLANT’S MOTION TO STRIKE
AND MOTION IN LIMINE

Pursuant to Rule 240(e), SCACR, Respondent Portfolio Recovery Associates, LLC Assignee of Synchrony Bank/HH Gregg (“Respondent”) submits this Response in opposition to the Motion to Strike and In Limine (“Motion”) filed with this Court by the Appellant, Jennifer Campney (“Appellant”) on April 7, 2023. In opposition to the relief sought by Appellant in the Motion, Respondent shows unto this Court as follows:

Appellant urges this Court to “strike”¹ Respondent’s Response to the Brief of Amicus Curiae South Carolina Department of Consumer Affairs (the “Response to Amicus Brief”) and to disregard any argument contained therein because Appellant was not given an opportunity to respond to those arguments. However, Appellant’s Motion fails to set forth any legal basis for the relief it seeks. As the South Carolina Supreme Court has made clear, in a case such as this, where there are “additional sustaining grounds” submitted by a respondent seeking to uphold a judgment on appeal, “[i]t is within the appellate court’s discretion whether to address any additional sustaining grounds.” *I’On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (S.C. 2000). Accordingly, whether to consider all or any portion of the argument set forth in Respondent’s Response to Amicus Brief is entrusted to the sound discretion of this Court. *Sims v. Amisub of S.C., Inc.*, 408 S.C. 202, 214–15, 758 S.E.2d 187, 194 (Ct. App. 2014) (emphasis added) (quoting *I’On*, 338 S.C. at 419, 526 S.E.2d at 723). That discretion is best exercised when this Court rules on the merits of this appeal, not in a peremptory manner through motions practice as sought by Appellant.

Moreover, the Response to Amicus Brief was just that—a response to the Amicus Brief filed by the South Carolina Department of Consumer Affairs (“SCDCA”). The SCDCA, as is its prerogative, advanced a broader policy argument in its Amicus Brief than what was previously briefed by the parties, suggesting that the notice and cure requirements apply to *all* consumer credit transactions (Amicus Br. p. 13) and to *all* assignees of consumer credit transactions (*Id.* p. 15)

¹ Appellant appears to rely on Rule 12(f), SCRCF, for her request to strike Respondent’s Response to Amicus Brief and the arguments set forth therein. (Motion p. 2). However, the South Carolina Rules of Civil Procedure do not apply to the appellate courts. *See* Rule 81, SCRCF (emphasis added) (“These rules, or any of them, shall apply to every *trial court* of civil jurisdiction within this state, within the limits of the jurisdiction and powers of the court provided by law . . .”). *Compare id. with* Rule 101(a), SCACR (“Part II governs practice and procedure in appeals, petitions, and motions in the Supreme Court and the Court of Appeals.”).

while ignoring the potential preemptive effect of certain federal statutes and regulations.

These legal issues are matters of significant public interest and as such, are within this Court's discretion to consider. Indeed, the SCDC acknowledged that a ruling in favor of Respondent on this issue would potentially place "severe restrictions on the Department's mission to administer and enforce the SCCPC," which it contends would be to the "detriment of South Carolina consumers." (Amicus Br. p. 3). Respondent acknowledges that an amicus curiae brief is typically required to be "limited to argument of the issues on appeal as preserved by the parties" Rule 213, SCACR. However, as with additional sustaining grounds, this Court has discretion to consider an issue raised *only* in an amicus curiae brief when the issue is a "matter of significant public interest." *State v. Langford*, 400 S.C. 421, 432, 735 S.E.2d 471, 477 (S.C. 2012) (quoting *Ex Parte Brown*, 393 S.C. 214, 216, 711 S.E.2d 899, 900 (2011)). Again, that discretion should be exercised by this Court when it decides this appeal, not through pre-argument motions practice.

Finally, Appellant's concerns regarding the length of time allotted to the parties for oral argument are misplaced. Appellant is not entitled to a "preview" of this Court's decision by seeking a ruling on her Motion which would, in effect, constitute a partial decision on the merits of this appeal. *See* Rule 220(a), SCACR (requiring decisions of appeals to be set forth in a written opinion). Appellant may well have legitimate concerns about her ability to present her case at oral argument within the time period allotted. However, the appropriate remedy for such a concern is a request to this Court to enlarge the time allotted for oral argument. *See* Rule 218(c), SCACR (providing that the Court determines the length of time allotted for oral argument). Seeking an Order from this Court, in advance of a written opinion, disclosing whether the Court will exercise its discretion to consider any additional sustaining grounds set forth by Respondent is neither

necessary nor proper. Furthermore, contrary to Appellant’s due process concerns, oral argument is for the benefit of this Court, not the parties. *See* Rule 215, SCACR (emphasis added) (providing that an appellate court may decide a case without oral argument “if it determines that oral argument **would not aid the court** in resolving the issues.”). Accordingly, Appellant is not entitled to an Order from this Court previewing how this Court will ultimately decide this appeal, including whether this Court will exercise its discretion to consider any additional sustaining grounds submitted by Respondent.

WHEREFORE, and for the reasons set forth above, the Motion should be **DENIED** in its entirety.²

Respectfully submitted,

April 14, 2023

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² The Motion additionally sought to strike Respondent’s filed briefs on the basis that they lacked signatures from all attorneys required under Rule 404(i), SCACR. However, that issue was resolved by the Court’s Order dated April 13, 2023.

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CERTIFICATE OF SERVICE

I certify that I have on this day served a copy of the foregoing **RESPONDENT'S RESPONSE IN OPPOSITION TO APPELLANT'S MOTION TO STRIKE AND MOTION IN LIMINE** upon all parties to this action by email at the following addresses:

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Dated this, the 14th day of April, 2023.

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