

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CENTENNIAL CASUALTY CO., INC.,)
)
Plaintiffs,)

CASE NO.: 2009-CP-10-6577

vs.)

WESTERN SURETY COMPANY, d/b/a)
CNA SURETY,)
)
Defendant.)

WESTERN SURETY COMPANY,)
d/b/a CNA SURETY,)
)
Defendant/Third-Party Plaintiff,)

vs.)

CHARLESTON AUTO AUCTION, A3)
AUTO CENTER, LLC and WYLIE)
MICKLE,)
)
Third-Party Defendants.)

FILED
2013 MAR -14 AM 9:41
JULIE J. ARSTRONG
CLERK OF COURT
BY _____

ORDER

The parties have submitted a stipulation of facts, legal memoranda, and exhibits in this action, and agree that the case is ripe for a decision. The Court has reviewed the briefs, exhibits, and relevant law, and rules as follows.

FINDINGS OF FACT

1. The Dealer Bond Statute


South Carolina's licensing statute for motor vehicle dealers requires a surety bond under S.C. Code § 56-15-320(B) (the "Dealer Bond Statute"). The Dealer Bond Statute

requires motor vehicle wholesalers or dealers to obtain a bond in order to, *inter alia*, indemnify:

for loss or damage suffered by an owner of a motor vehicle, or his legal representative, by reason of fraud practiced or fraudulent representation made in connection with the sale or transfer of a motor vehicle by a licensed dealer or wholesaler or the dealer's or wholesaler's agent acting for the dealer or wholesaler or within the scope of employment of the agent or loss or damage suffered by reason of the violation by the dealer or wholesaler or his agent of this chapter.

Id. (emphasis added). The statute allows that "An [automobile] owner or his legal representative who suffers the loss or damage has a right of action against the dealer or wholesaler and against the dealer's or wholesaler's surety upon the bond and may recover damages as provided in this chapter." *Id.*

2. Charleston Auto Auction and A3 Auto Center

The undisputed evidence shows that Charleston Auto Auction is a wholesale auctioneer that facilitates the sale and purchase of automobiles among dealers. Centennial and Charleston Auto Auction have submitted an affidavit and accompanying documents indicating that Charleston Auto Auction acts as the agent and legal representative for the dealerships in the transactions; collects and conveys the funds for the automobiles; and conveys (but does not assume) the title to the automobiles between the parties. *See* Pl. Mot. at Ex. 2 ¶ 3 (Affidavit of Laura Taylor).

That evidence shows that, before Charleston Auto Auction will facilitate the sale of an automobile to or from a dealer, dealers on both sides of the transaction must enter into a purchase and sale agreement with Charleston Auto Auction, which makes Charleston Auto Auction their legal representative in the transactions. *Id.* ¶ 4.

The undisputed evidence also shows that A3 Auto Center is an automobile dealer in South Carolina. In March 2008, A3 Auto Center purchased three automobiles using Charleston Auto Auction: a 2006 Dodge Magnum; a 2001 Oldsmobile Aurora; and a 2006 Ford F250 (collectively the "Vehicles"). A Plus Auto Sales, Priceless Automotive, and Automotive Rentals, Inc./ARI Fleet Ltd (collectively the "Selling Dealerships") each sold one of the Vehicles. *Id.* ¶ 5. Both the Selling Dealerships and A3 Auto Center made Charleston Auto Auction the "middle-man" auctioneer. *Id.* ¶ 6. Pursuant to the Dealer Bond Statute, A3 Auto Center obtained a Bond from CNA Surety under the Dealer Bond Statute. *See* Pl. Mot at Ex. 7.

A3 Auto Center paid for the Vehicles with worthless checks, causing at least \$35,305.00 in damage to the Selling Dealerships. Pl. Mot. at Ex. 2 ¶¶ 7-8 (Affidavit of Laura Taylor).

3. Charleston Auto Auction and Centennial's Dealer Bond claim

Charleston Auto Auction, as the Selling Dealerships' legal representative, seeks reimbursement under the Bond for A3 Auto Center's worthless checks. The undisputed evidence shows that Plaintiff Centennial insured Charleston Auto Auction against such losses, and has repaid Charleston Auto Auction on those claims. As the legal subrogee of Charleston Auto Auction, Centennial has the right to proceed in the place of Charleston Auto Auction in this matter. Centennial has made demands on Defendant for payment under the Bond, which CNA Surety has rejected. *See* Pl. Mot. at Ex. 8 (denial letter). CNA Surety's primary argument is that neither Centennial nor Charleston Auto Auction is the "owner" or "legal representative" as required by the Dealer Bond Statute. *See id.*

This is a legal issue of statutory interpretation, and is ripe for the Court to rule on as a matter of law.


CONCLUSIONS OF LAW

1. "Legal Representative" under the Dealer Bond Statute

The primary issue is whether Charleston Auto Auction (or Centennial as its subrogee) is a "legal representative" under the Dealer Bond Statute. The South Carolina Supreme Court has stated:

When § 56-15-320 is read in its entirety, it is clear the legislature intended to provide only the owner of a motor vehicle, or the owner's legal representative, with a cause of action against the surety on a bond issued pursuant to that statute.

Mid-State Auto Auction v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996) (emphasis added).



Each vehicle's Bill of Sale made Charleston Auto Auction the seller and buyer's "legal representative" by stating: "Seller and Buyer each appoint Auction Company as their agent and legal representative for the purpose of processing this transaction through Auction Company. . . ." Pl. Mot. at Ex. 3 (terms of Purchase Agreement and Bill of Sale (p. 4, para. 2); emphasis added); Pl. Mot. at Ex. 4 (title clerk authorizations); cf. *McNeill v. Electric Storage Battery Co.*, 96 S.E. 134, 135 (S.C. 1918) (agency relationship may be created by contract); *Love v. Gamble*, 316 S.C. 203, 213, 448 S.E.2d 876, 881 (S.C. App. 1994) (citing *McNeill* for the legal rule that "If provisions of contract make it one of agency, it is immaterial by what names the parties call themselves in the contract"); *State ex rel. McLeod v. C & L Corp., Inc.*, 280 S.C. 519, 313 S.E.2d 334 (Ct. App. 1984) (an independent contractor can also be an agent; the two are not mutually exclusive.) The term "legal representative" is commonly understood to mean "one who


stands in place of, and represents the interests of, another. . . ." *Black's Law Dictionary* 896 (6th ed. 1990).

In this matter, the Court finds that Charleston Auto Auction (and Centennial as its subrogee¹) was the legal representative under the Dealer Bond Statute for the purposes of the transactions. In addition to its explicit designation as "legal representative" in the relevant contract (see Pl. Mot. at Exs. 3-4), Charleston Auto Auction acts as the dealerships' representative and agent in the transactions it facilitates by (among other things) collecting and conveying the funds for the automobiles, and by conveying (but not assuming) the title for the automobiles between the parties. Pl. Mot. at Ex. 2 ¶¶ 3-4, 6 (Affidavit of Laura Taylor). These facts qualify Charleston Auto Auction and its subrogee as a "legal representative" for purposes of the Dealer Bond Statute.

CNA Surety's primary argument is that the Dealer Bond Statute provision does not apply when fraud is committed in the purchase of a motor vehicle. See Def. Mot. at pp. 2-3. This argument is based on a sentence in *Connecticut Indemnity Co. v. Burdette Chrysler Dodge Corp.*, 317 S.C. 406, 453 S.E.2d 902 (Ct. App. 1994), *overruled*, *Mid-State Auto*, 476 S.C. 406, 453 S.E.2d 902. As an initial matter, *Burdette* has been overruled by the South Carolina Supreme Court. See *id.* Moreover, the sentence referred to by CNA Surety appears in the context of a discussion of the definition of "fraud"; in that discussion in *Burdette*, the Court of Appeals indicated there was no fraud because there was a pre-existing debt. See *id.* at 409, 453 S.E.2d at 904. In contrast, here there is no dispute that there is no pre-existing debt. See Pl. Mot. at Ex. 2 ¶ 7. Additionally, the

¹ See, e.g., Am. Jur. *Subrog.* § 61 ("Subrogation contemplates full substitution and places the party subrogated in the shoes of the creditor. Generally speaking, the party subrogated acquires all the rights, securities, and remedies the creditor has against the debtor who is primarily liable.") (internal citations omitted).

Dealer Bond Statute's language is broad and includes fraud "in connection with the sale or transfer" of a motor vehicle, as well as "loss or damage suffered by reason of the violation by the dealer or wholesaler or his agent of this chapter." S.C. Code § 56-15-320. This language is expansive and covers situation such as this one, where a motor vehicle is being sold or transferred. There is no indication in the Dealer Bond Statute that the South Carolina Legislature intended to only cover fraud by the seller—but meant to exclude fraud by the purchaser—when it enacted the language in the Dealer Bond Statute.

 CNA Surety also argues that "legal representative" under the Dealer Bond Statute does not include Charleston Auto Auction. The Dealer Bond Statute does not define the term "legal representative," and outside legal research shows that the definition of "legal representative" can vary depending on the context. As discussed above, the undisputed evidence here shows that both the selling and purchasing dealers made Charleston Auto Auction their "agent and legal representative." See Pl. Mot. at Ex. 3. In opposition, CNA Surety points to the use of "legal representatives" in other contexts, such as probate and bankruptcy. See Def. Mot. at pp. 5-6 (citing probate code § 62-3-703 and federal bankruptcy law). However, those examples are specific to specialized areas of law, and in those contexts the "legal representative" generally is created by a statutory definition for purposes of the specific probate or bankruptcy proceedings. There is no indication that the South Carolina Legislature intended to incorporate other statutes' specific definitions (such as probate or bankruptcy) into the Dealer Bond Statute. The undisputed evidence here shows that a purpose of the auction company is to transact business for the buying and selling dealers. See Pl. Mot. at Ex. 2 ¶¶ 3-6 (describing function of auction

company in these transactions).

Finally, CNA Surety points to a definition of "wholesaler motor vehicle auction" and statutory provisions stating that the auction is not the owner of a vehicle simply because it transfers the title. *See* Def. Mot. at p. 5. Those definitions and provisions do not prohibit an auction company from being the "legal representative" of a vehicle's owner, which is the crux of the argument here. Moreover, a primary purpose of those cited provisions is to prevent an auction company from being the owner of a motor vehicle for purposes of property taxation. There is no indication that those provisions affect whether an auction company is a "legal representative" under § 56-15-320.

2. The remaining elements of the Dealer Bond Statute are satisfied.

The remaining elements of the Statute also are satisfied. Section 56-15-320(B) requires:

- "*Loss or damage suffered*": The evidence establishes that the worthless checks caused loss or damage. *See* Pl. Mot. at Ex. 2 ¶¶ 7-8 (Affidavit of Laura Taylor).
- "*by reason of fraud practiced or fraudulent representation made*": The passing of worthless checks, which is undisputed here, constitutes fraud as a matter of law. *Cf.* S.C. Code § 34-11-60 (the giving of a check where the maker lacks sufficient funds to pay the check is *prima facie* evidence of fraud, except when, *inter alia*, the check is given in full or partial payment of a preexisting debt); *see also* Pl. Mot. at Ex. 5 (returned checks). There was no preexisting debt in this case. Pl. Mot. at Ex. 2 ¶ 7 (Affidavit of Laura Taylor).

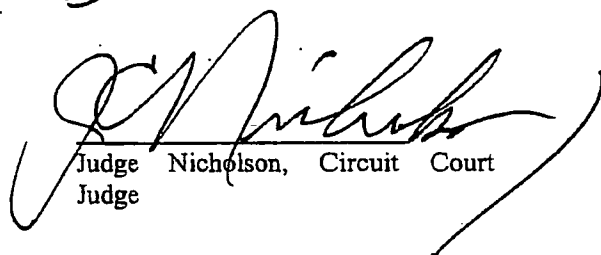
- *“made in connection with the sale or transfer of a motor vehicle by a licensed dealer or wholesaler or the dealer's or wholesaler's agent”*

These transactions were made in connection with the sale or transfer of the Vehicles. See Pl. Mot. at Ex. 2 ¶ 9 (Affidavit of Laura Taylor).

CONCLUSION

For these reasons, the Court finds in favor of Plaintiff Centennial Casualty Company and Charleston Auto Auction. Judgment is granted in favor of Plaintiff on the full amount of the bond at issue.

So ordered this 20 day of ~~June~~ ^{Feb.} 2013.


Judge Nicholson, Circuit Court
Judge

Charleston, South Carolina

STATE OF SOUTH CAROLINA
 COUNTY OF CHARLESTON
 IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2009-CP-10-6577

Centennial Casualty
 PLAINTIFF(S)

Western Surety Company
 DEFENDANT(S)

Submitted by: _____ Attorney for : Plaintiff Defendant
 or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other _____

FILED
 JULIE J. ARMSTRONG
 CLERK OF COURT
 2013 MAR -1 AM 9:41

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order: _____ _____		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

[Signature]
 Circuit Court Judge

2117
 Judge Code

2/25/13
 Date

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258
RETURN SERVICE REQUESTED



www3.charlestoncounty.org

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SIDNEY MARKEY STUBBS
PO BOX 8057
COLUMBIA SC 29202-8057

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

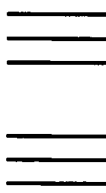
Order/Motion for reconsideration is denied

CASE NO: 2009CP1006577

Centennial Casualty Co Inc VS Western Surety Company Etc, defendant, et al

This judgment was entered on the 08th day of May, 2013, and a copy mailed first class on Thursday, May 09, 2013, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at www3.charlestoncounty.org.



Centennial Casualty
 PLAINTIFF(S)

Western Surety
 DEFENDANT(S)

Submitted by: _____ Attorney for : Plaintiff Defendant
 or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
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- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other _____

FILED
 2013 MAY - 8 PM 3:04
 JULIE J. ARMSTRONG
 CLERK OF COURT

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

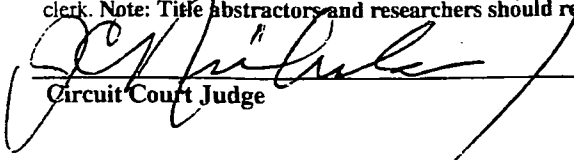
IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: Motion for Reconsideration is **Denied**.

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order: _____		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


 Circuit Court Judge

2117
 Judge Code

5/7/13
 Date