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.

FINAL BRIEF OF RESPONDENT

Caren D. Enloe, Esquire
P.O. Box 176010
Raleigh, NC 27619
(919) 250-2000
Attorney for Respondent
Admitted Pro Hac Vice

J. Ronald Jones, Jr., Esquire
171 Church Street, Suite 120C
Charleston, South Carolina 29401
(843) 714-2535
Attorney for Respondent

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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN ENTERING JUDGMENT IN FAVOR OF PRA ON ITS ACCOUNT STATED CLAIM?

2. DID THE TRIAL COURT ERR IN ENTERING JUDGMENT IN FAVOR OF PRA ON APPELLANT'S COUNTERCLAIMS?

3. DID THE TRIAL COURT ERR IN DENYING APPELLANT'S RULE 59 MOTION?

STATEMENT OF THE CASE

On January 4, 2017, Portfolio Recovery Associates, LLC as Assignee of Synchrony Bank/HH Gregg ("PRA") filed a Complaint against Jennifer Campney ("Appellant") under an account stated theory seeking to recover $4,236.78 owing on a credit card account (R. p. 85, ¶¶ 2-5; pp. 91-103). On or about February 8, 2017, Appellant, acting *pro se*, filed a form answer to the Complaint in which she denied liability (R. p. 104). The Magistrates' Court subsequently entered summary judgment in favor of PRA (R. pp. 6-8). However, that ruling was reversed on appeal to the Dorchester County Court of Common Pleas (R. pp. 1-5).

On February 20, 2018 and following remand of the case to the Magistrates' Court, Appellant filed Defendant's First Amended Answer and Counterclaims (hereinafter the "Counterclaim") (R. pp. 105-115).[1] In the Counterclaim, Appellant alleged that PRA violated various provisions of the South Carolina Consumer Protection Code, S.C. Code Ann. § 37-1-201 *et seq.* (the "SCCPC") and the federal Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (the "FDCPA"). Specifically, Appellant contended that PRA violated the SCCPC and the FDCPA by failing to send Appellant a "Notice of Consumer's Right to Cure" prior to filing the Complaint, and by falsely representing the amount owed by asserting two different amounts as being owed within its Complaint ($4,236.78) and its attached Affidavit of Sale ($4,274.78) (R. pp. 108-109, ¶¶ 19-21; p.110, ¶¶ 31-32).[2] On April 18, 2018, the case was transferred to the Dorchester County

[1] In addition to asserting counterclaims against Respondent, Appellant also asserted third-party claims against Third-Party Defendant Cooling & Winter, LLC. However, those third-party claims are not at issue in this appeal with respect to Respondent, and thus the adjudication and resolution of said third-party claims is omitted from this Statement of the Case.

[2] Appellant also advanced two additional claims for relief in her Counterclaim which are not at issue in this appeal.

Court of Common Pleas (the "Trial Court") due to the amount in controversy in the Counterclaim (R. pp. 9-10).

On October 23, 2019, a one-day bench trial was held (R. p. 116). At trial, PRA presented a single witness, Larry Andrews, a seventeen-year employee of PRA, who testified as a custodian of records (R. p. 132, line 18-p.134, line 20). Mr. Andrews testified that Appellant had a credit card under the brand name HH Gregg which was issued and originally owned by Synchrony Bank and subsequently sold to PRA on or about June 15, 2015 (R. p. 147, line 8-p. 155, line 1; pp. 321-372). Mr. Andrews further testified that the last payment made on the credit card was on October 15, 2014 and that Synchrony Bank charged off the account on May 22, 2015 (R. p. 154, line 20-p. 155, line 4; pp. 322-323). PRA additionally provided evidence that Synchrony Bank sent account statements to Appellant prior to selling the account to PRA (R. p. 160, line 16-p. 161, line 20; pp. 324-372). Appellant corroborated these facts, testifying that she "believe[d]" that she received the account statements for the credit card, and that she previously made payments on the credit card (R. p. 252, lines 8-12).

PRA's evidence further showed that the last account statement sent to Appellant by Synchrony Bank, dated April 23, 2015, reflected an outstanding balance of $4,236.78 (R. p. 163, line 9-p. 165, line 13; pp. 324-327). Mr. Andrews testified that PRA did not receive any payments on the account following its purchase of the same from Synchrony Bank (R. p. 162, lines 14-20; p. 165, lines 1–3). Appellant never disputed any charges on the credit card with Synchrony Bank, and it was not in dispute status when PRA purchased it (R. p. 164, lines 5-17). Appellant presented no evidence to controvert PRA's showing that the account had an outstanding balance of $4,236.78 as of April 23, 2015, that Appellant had received the billing statement reflecting this balance, that

Appellant had never disputed the amount owed to Synchrony Bank or to PRA, and that Appellant had failed to pay any portion of the $4,236.78 reflected on that statement.

At the conclusion of the trial, the presiding judge asked the parties to submit competing proposed orders (R. p. 318, lines 1-18). On December 11, 2019, an Order was entered granting judgment in favor of PRA on its claim against Appellant and on Appellant's Counterclaim (the "Trial Order") (R. pp. 11-21).

On December 23, 2019, Appellant filed a Notice of Motion and Motion to Alter or Amend and for Additional Findings of Fact and Conclusions of Law (the "Rule 59 Motion") (R. pp. 78-83). On May 26, 2020, the Trial Court entered an Order denying the Rule 59 Motion in its entirety (the "Rule 59 Order") (R. pp. 76-77) on the basis that "there is no material issue raised by [Appellant] that has not been previously raised and decided and the arguments made are consistent with those ruled upon by the Court." (R. p. 76).

On June 25, 2020, Appellant filed a Notice of Appeal with this Court, in which she appealed the Trial Order and the Rule 59 Order.[3] PRA was served with an electronic copy of the Notice of Appeal on June 25, 2020.

ARGUMENTS

I. THE TRIAL COURT PROPERLY ENTERED JUDGMENT IN FAVOR OF PRA ON ITS ACCOUNT STATED CLAIM

STANDARD OF REVIEW

Whether South Carolina recognizes a particular cause of action is a question of law. *See, e.g.*, *Lydia v. Horton*, 355 S.C. 36, 38, 583 S.E.2d 750, 751 (2003). Questions of law are subject

[3] Appellant initially also appealed a prior Order concerning a motion to compel discovery, but subsequently abandoned her appeal with respect to that order, and consequently it is not discussed in the Statement of the Case. *See* Appellant's Br. p. 4 ("Appellant now abandons this part of his [*sic*] appeal in regards to that discovery order.").

to de novo review by this Court. *Fesmire v. Digh*, 385 S.C. 296, 303, 683 S.E.2d 803, 807 (Ct. App. 2009) (citing *Fields v. J. Haynes Waters Builders, Inc.*, 376 S.C. 545, 564, 658 S.E.2d 80, 90 (2008)). *Accord Osprey, Inc. v. Cabana Ltd. P'ship*, 340 S.C. 367, 372, 532 S.E.2d 269, 272 (2000) (citing S.C. Const. art. V, §§ 5 and 9) ("We are free to decide a question of law with no particular deference to the lower court.").

An action to recover on an account stated is an action in equity. *Huggins v. Commercial & Sav. Bank*, 141 S.C. 480, 493–94, 140 S.E. 177, 181 (1927). "In an action in equity, tried by the judge alone, without a reference, the appellate court has jurisdiction to find facts in accordance with its own view of the preponderance of the evidence." *Moore v. Benson*, 390 S.C. 153, 160, 700 S.E.2d 273, 277 (2010) (citing *Townes Assocs., Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976)).[4]

A. THE TRIAL COURT PROPERLY CONCLUDED THAT AN ACCOUNT STATED CAUSE OF ACTION MAY BE USED TO COLLECT A CONSUMER CREDIT CARD DEBT

1. THE ACCOUNT STATED CAUSE OF ACTION IS NOT LIMITED TO ACCOUNTS BETWEEN MERCHANTS

The Trial Court correctly determined that an account stated cause of action is applicable to consumer credit card accounts. While the cause of action may have originally been limited to accounts between merchants, that restriction was abandoned in the early twentieth century. *Huggins v. Commercial & Sav. Bank*, 141 S.C. 480, 494, 140 S.E. 177, 181 (1927) (emphasis added) ("***Formerly*** it was the rule that accounts stated existed only between merchants."); *see also*

[4] It is important to note, however, that this "broad scope of review does not require an appellate court to disregard the findings below or ignore the fact that the trial judge is in the better position to assess the credibility of the witnesses." *Pinckney v. Warren*, 344 S.C. 382, 387, 544 S.E.2d 620, 623 (2001) (citing *Dorchester Cty. Dep't of Soc. Servs. v. Miller*, 324 S.C. 445, 452, 477 S.E.2d 476, 480 (Ct. App. 1996)). Further, "the appellant is not relieved of his burden of convincing the appellate court the trial judge committed error in his findings." *Id.* (citing *Miller*, 324 S.C. at 452, 477 S.E.2d at 480).

Gwathmey v. Burgiss, 104 S.C. 280, 282, 88 S.E. 816, 817 (1916). Indeed, none of the South Carolina cases setting forth the elements of an account stated limit the cause of action to accounts between merchants and Appellant has not cited any case to support such a restrictive approach. As explained by the South Carolina Supreme Court in *Gwathmey*:

> Where a creditor sends to his debtor a statement of the account between them and the debtor assents to the balance stated, then the account between them ceases to be an open account and becomes an account stated. The creditor can then bring his action upon the account stated as a liquidated demand, and he is entitled to interest from the date of the assent. ***This was at first confined to account between merchants. The trend of modern decisions is to open the doors to persons other than merchants*.**

Gwathmey, 104 S.C. at 282, 88 S.E. at 817 (emphasis added); *see also Brown v. Rogers*, 76 S.C. 180, 182, 56 S.E. 680, 681 (1907); *Wakefield v. Spoon*, 100 S.C. 100, 106, 84 S.E. 418, 420 (1915). Later cases further confirm that the account stated cause of action is not limited to actions between merchants. *See, e.g.*, *E. Sternberger Co. v. Summerford*, 134 S.C. 63, 131 S.E. 322 (1925) (merchant recovering on loan made to farmer); *Lowndes v. McCabe Fertilizer Co.*, 157 S.C. 371, 377–81, 154 S.E. 641, 643–44 (1930) (former employee seeking unpaid salary from employer); *Burnett Dubose Co. v. Starnes*, 284 S.C. 196, 197, 324 S.E.2d 651, 652 (Ct. App. 1984) (merchant seeking unpaid balance from individual purchaser). Further, the South Carolina legislature has not imposed any similar restrictions. *See, e.g.*, S.C. Code Ann. § 34-31-20(A) (providing for interest to accrue at the legal rate in cases where a sum certain is owed, including "[i]n all cases of accounts stated . . . .").

In support of her position, Appellant cites *Huggins* for the proposition that South Carolina has never expanded the account stated cause of action to "cover debt collection actions between a merchant and a consumer . . . ." Appellant's Br. p. 6. Appellant's reliance, however, is misplaced, and *Huggins* is distinguishable on its facts. In *Huggins*, the Court declined to expand the account

stated theory to a depositor's account with his bank based upon the unique characteristics of the depositor-bank relationship and the Court's desire to protect depositors. *Huggins*, 141 S.C. at 495–97, 140 S.E. at 181–82. Critically, the Court distinguished the depositor-bank relationship from the ordinary debtor-creditor relationship based on two key differences: banks play a dual role as both debtor and agent of their depositors, and depositors are entitled to demand repayment of their deposits at any time. *Id.* at 496, 140 S.E. at 182. Thus, the *Huggins* Court's reticence to expand the account stated cause of action did not arise in the merchant-consumer context, and was based upon considerations completely absent here—debt collectors are not agents of their debtors, and notes payable on demand are uncommon in the consumer credit industry.

Because accounts stated are not limited to accounts between merchants,[5] the Trial Court did not err in concluding that PRA was entitled to assert an account stated cause of action against Appellant.

2. PRA IS NOT PRECLUDED FROM ASSERTING AN ACCOUNT STATED BECAUSE OF ITS STATUS AS AN ASSIGNEE OF THE CREDITOR

As the assignee of Synchrony Bank, PRA is entitled to pursue an account stated that arose between its predecessor in interest and the Appellant. An account stated is a chose in action. *See, e.g., Narruhn v. Alea London Ltd.*, 404 S.C. 337, 343 n.3, 745 S.E.2d 90, 93 n.3 (2013) (quoting *Chose in Action, Black's Law Dictionary* (9th ed. 2009)) (Defining "chose in action" as, among

[5] Numerous other jurisdictions have held that an account stated is a proper cause of action to recover an unpaid credit card obligation. *See, e.g.*, *Cook v. Midland Funding, LLC*, 208 So. 3d 1153 (Ala. Civ. App. 2016) (Alabama); *Credit One, LLC v. Head*, 977 A.2d 767 (Conn. App. Ct. 2009) (Connecticut); *Farley v. Chase Bank, U.S.A., N.A.*, 37 So. 3d 936 (Fla. Dist. Ct. App. 2010) (Florida); *Capital One Bank (USA), N.A. v. Denboer*, 791 N.W.2d 264 (Iowa Ct. App. 2010) (Iowa); *Carpenter v. Monroe Fin. Recovery Grp., LLC*, 119 F. Supp. 3d 623 (E.D. Mich. 2015) (Michigan); *Citibank (S.D.), N.A. v. Runfola*, 708 N.Y.S.2d 517 (N.Y. App. Div. 2000) (New York); *Capital One Bank (USA) N.A. v. Ryan*, 2014-Ohio-3932 (Ohio Ct. App. 2014) (Ohio); *Portfolio Recovery Assocs., LLC v. Sanders*, 462 P.3d 263 (Or. 2020) (Oregon); *Busch v. Hudson & Keyse, LLC*, 312 S.W.3d 294 (Tex. App. 2010) (Texas).

other things, "a debt owed by another person," and the "right to bring an action to recover a debt, money, or thing."). "South Carolina jurisprudence has long recognized that a chose in action can be validly assigned in either law or equity." *Moore v. Weinberg*, 373 S.C. 209, 220, 644 S.E.2d 740, 745 (Ct. App. 2007).

Here, PRA presented uncontroverted evidence that Appellant's account with Synchrony Bank and all rights thereto were sold and assigned to PRA (R. p. 137, line 13-p. 155, line 13; pp. 321-323). As such, PRA was entitled to "stand . . . in the shoes of its assignor." *Twelfth RMA Partners, L.P. v. Nat'l Safe Corp.*, 335 S.C. 635, 639–40, 518 S.E.2d 44, 46 (Ct. App. 1999) (quoting *Singletary v. Aetna Cas. & Sur. Co.*, 316 S.C. 199, 201, 447 S.E.2d 869, 870 (Ct. App. 1994)). Because PRA was undisputedly the purchaser and assignee of Appellant's account from Synchrony Bank, PRA assumed all of Synchrony Bank's right, title, and interest in the account, including Synchrony Bank's account stated claim against Appellant for the outstanding balance.

Appellant's argument that PRA should be bound to prove that there was an account stated between PRA and Appellant (as opposed to Synchrony Bank and Appellant) is without merit. First, Appellant ignores the captioning and clear language in the Complaint. PRA initiated this action as "Portfolio Recovery Associates, LLC ***Assignee of Synchrony Bank/HH Gregg***." (R. p. 85) (emphasis added). Furthermore, the Complaint plainly alleged that PRA's "***assignor*** provided credit to the Defendant" and that PRA was the assignee of Synchrony Bank and included the Bill of Sale and Appellant's account information as an exhibit. (R. p. 85, ¶ 4; pp. 100-103) (emphasis added). At trial, Appellant did not offer any evidence to refute the uncontroverted testimony of PRA's witness, who verified that PRA was assigned all right, title, and interest in the account at issue from Synchrony Bank (R. p. 137, line 13-p. 139, line 13; p. 147, line 9-p. 150, line 14; p.

153, line 18-p. 155, line 13).[6]

Secondly, in suggesting that an account stated must arise between the Appellant and the assignee (PRA), Appellant misconstrues existing case law. *See* Appellant's Br. p. 7. In *Meredith v. Fretwell*, the Court enforced an account stated ***brought by an assignee of the original creditor***. 128 S.C. 267, 269, 122 S.E. 767, 767 (1924). Thus, and contrary to Appellant's characterization, when the *Fretwell* Court announced that an "account stated implies some previous transaction or indebtedness ***between the parties***," it was referring to the parties to the account, not the parties to any eventual lawsuit seeking to enforce the account. *Id.* at 269, 122 S.E. at 767 (emphasis added) (quoting *Wakefield v. Spoon*, 100 S.C. 100, 84 S.E. 418 (1915)).

Accordingly, and as demonstrated by *Fretwell*, South Carolina has long recognized the right of an assignee to enforce an account stated by its assignor and the Trial Court properly held that PRA was entitled to recover from Appellant under an account stated by Synchrony Bank.

B. THE TRIAL COURT PROPERLY FOUND THAT PRA INTRODUCED SUFFICIENT EVIDENCE TO PROVE ITS ACCOUNT STATED CLAIM

In order to recover on an account stated, the plaintiff is required to prove "(1) that the account is actually stated; and (2) that the parties either expressly or impliedly agreed that it is a true statement and is due to be paid then or at some other specified time." *S. Welding Works, Inc. v. K&S Constr. Co.*, 286 S.C. 158, 164, 332 S.E.2d 102, 106 (Ct. App. 1985) (citing *Wakefield v. Spoon*, 100 S.C. 100, 84 S.E. 418 (1915)). PRA presented competent evidence to prove both elements of its account stated claim and the Trial Court properly found in PRA's favor.

1. THE TRIAL COURT PROPERLY OVERRULED APPELLANT'S OBJECTIONS IN ADMITTING EXHIBIT P-3 INTO EVIDENCE

[6] PRA notes further that Appellant has not assigned as error the Trial Court's implicit conclusion that PRA is the assignee of Synchrony Bank.

"The admission or exclusion of evidence is within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion." *S.C. Dep't of Transp. v. Hood*, 381 S.C. 318, 320, 672 S.E.2d 595, 596 (Ct. App. 2009) (citing *Conner v. City of Forest Acres*, 363 S.C. 460, 467, 611 S.E.2d 905, 908 (2005)). "An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion without evidentiary support." *Id.* (quoting *Conner*, 363 S.C. at 467, 611 S.E.2d at 908).

Appellant assigns as error the admissibility of Exhibit P-3 (consisting of the Synchrony Bank account statements dated between May 23, 2014 and April 23, 2015) (R. pp. 324-372). At trial, Appellant objected to the admissibility of the account statements on multiple grounds—relevance, hearsay, lack of personal knowledge, lack of authentication, and improper summary (R. p. 157, line 20-p. 159, line 20). On appeal, however, Appellant has abandoned her assignments of error on any grounds other than authentication.[7] For the reasons set forth below, Exhibit P-3 was properly authenticated and admitted into evidence.

Rule 901 of the South Carolina Rules of Evidence requires, as a condition precedent to the admissibility of an item of evidence, that a proponent produce "evidence sufficient to support a finding that the matter in question is what its proponent claims." Rule 901, SCRE. Among other

[7] The only objection Appellant argues at any length in her brief is her view that PRA's witness, Mr. Andrews, was not competent to authenticate Exhibit P-3. *See* Appellant's Br. pp. 9–11. Because Appellant fails to cite any authority, or even develop any argument as to how Exhibit P-3 should have been excluded on any grounds other than authentication, she should be deemed to have abandoned those issues on appeal. *See, e.g.*, *Bennett v. Investors Title Ins. Co.*, 370 S.C. 578, 599, 635 S.E.2d 649, 660 (Ct. App. 2006) (citing *Mulherin-Howell v. Cobb*, 362 S.C. 588, 600, 608 S.E.2d 587, 593–94 (Ct. App. 2005)) ("Appellants fail to cite any case law for this proposition and make only conclusory arguments in support thereof. Thus, Appellants abandoned this issue on appeal."). *See also Judy v. Judy*, 384 S.C. 634, 644, 682 S.E.2d 836, 841 (Ct. App. 2009) (finding argument abandoned on appeal where appellant "cited no legal authority to support the argument that this was an error of law.").

things, this standard may be met by proffering "[t]estimony that a matter is what it is claimed to be." Rule 901(b)(1), SCRE. Nothing in Rule 901 or applicable case law requires that the person who authenticates a document be the person who initially prepared it. In fact, an assignee is competent to authenticate the records of its assignor. *Deep Keel, LLC v. Atl. Private Equity Grp., LLC*, 413 S.C. 58, 64–69, 773 S.E.2d 607, 610–13 (Ct. App. 2015) (holding that assignee satisfied its burden of authenticating loan documents prepared by its assignor because its witness "demonstrated he had personal knowledge that the loan documents admitted into evidence were the same ones CresCom Bank provided to him when Deep Keel purchased the asset the loan documents represent.").

Contrary to the arguments of Appellant, PRA's witness was competent to authenticate the account statements. Mr. Andrews testified that he had been employed by PRA for seventeen years, the past eight as its custodian of records[8] (R. p. 133, line 3-p. 134, line 25). Mr. Andrews explained the process whereby PRA purchases delinquent debt from lenders in bulk, and how each account is transmitted from the seller to PRA (R. p. 137, line 13-p. 138, line 11). He identified Exhibit P-3 as statements which were produced by Synchrony Bank and transmitted to PRA as part of its sale of Appellant's delinquent account to PRA (R. p. 155, line 21-p. 157, line 19). PRA therefore offered testimonial evidence sufficient to support a finding that Exhibit P-3 is what it purports to be: account statements for Appellant's HH Gregg account which were prepared by Synchrony Bank and provided to PRA when it purchased Appellant's account from Synchrony Bank.

[8] Appellant mistakenly focuses on Mr. Andrew's prior employment with GE Capital. The relevant testimony, however, was that Mr. Andrews, as the custodian of records of PRA, had received the documents comprising Exhibit P-3 directly from Synchrony as part of Synchrony's sale of Appellant's account to PRA (R. p. 157, lines 2-19).

Accordingly, PRA satisfied its burden of authenticating Exhibit P-3, and the Trial Court properly admitted it.

2. PRA INTRODUCED SUFFICIENT EVIDENCE TO PROVE PRESENTMENT

"Where a creditor sends to his debtor a statement of the account between them and the debtor assents to the balance stated, then the account between them ceases to be an open account and becomes an account stated." *Gwathmey v. Burgiss*, 104 S.C. 280, 282, 88 S.E. 816, 817 (1916). "In civil matters, the mailing of a properly stamped and addressed letter which is not returned by the postal authorities gives rise to a rebuttable presumption that the letter was received by the addressee in the due course of mail." *State v. Langston*, 275 S.C. 439, 441, 272 S.E.2d 436, 437 (1980) (citing *Calder v. Commercial Cas. Ins. Co.*, 182 S.C. 240, 188 S.E. 864 (1936)).

Here, Appellant mistakenly contends that PRA "has no admissible evidence that the account statement was actually presented to Appellant." Appellant's Br. p. 11. On the contrary, Appellant herself testified at Trial that she "believe[d]" that she had received "the billing statements from HH Gregg." (R. p. 252, lines 8-10). She further admitted to making payments on the HH Gregg account and admitted that she had an HH Gregg credit card. (R. p. 252, lines 11-14). Appellant confirmed that her mailing address was 4976 Wescott Boulevard, Apartment 934, and that she had lived at that address "a little over seven years." (R. p. 252, lines 1-3). Additionally, PRA's witness, Mr. Andrews, testified that he was familiar with how credit card statements were generated and that the statements would normally be mailed "to the address on the statement[]." (R. p. 161, lines 13-20). The address on every statement in Exhibit P-3, including the statement dated April 23, 2015, matches the address at which Appellant admitted to having lived for the past seven years, at which she received mail, and at which she "believe[d]" she had received the statements at issue (R. p. 252, lines 8-10).Thus, not only did Mr. Andrews' testimony permit the

Court to draw the plausible inference that each of the statements in Exhibit P-3, including the statement dated April 23, 2015, were in fact mailed to Appellant, which Appellant did not dispute, Appellant herself admitted to receiving statements at her address. Accordingly, PRA met its burden of proving that Appellant received the statements in Exhibit P-3 from Synchrony and has accordingly satisfied the element of presentment.

3. PRA INTRODUCED SUFFICIENT EVIDENCE TO PROVE AN IMPLICIT AGREEMENT TO PAY

An agreement to pay a statement of account may be implied from the circumstances, "such as a promise to pay the stated balance; long retention of the account without question of the balance ***and the like***." *Gwathmey*, 104 S.C. at 282, 88 S.E. at 817 (emphasis added). While such implicit assent may arise where a merchant retains an account sent by another merchant without objection for two or three years, this is by no means the exclusive method of proving implicit assent. *Id.* at 282, 88 S.E. at 817 (citing *Pratt v. Weyman*, 6 S.C. Eq. (1 McCord Eq.) 156 (1825)). The *Gwathmey* Court's use of the expansive term "and the like" makes clear that its recitation of circumstances which might rise to implicit assent was intended to be illustrative, not exhaustive.

Here, Appellant testified that she had an HH Gregg credit card, that she made payments on it, and that she "believe[d]" that she received the billing statements from HH Gregg, including the statements comprising Exhibit P-3 (R. p. 252, lines 8-10). The billing statements comprising Exhibit P-3 show that Appellant previously made payments on the account, with the last payment in the amount of $81.00 being made on or about October 15, 2014 (R. p. 351). Further, the final statement, dated April 23, 2015 and upon which PRA based its account stated claim, shows that Appellant was required to remit a minimum payment of $1,042.00 on or before May 16, 2015 (R. p. 324).

Appellant implicitly agreed that each statement was a correct statement of account, because she never disputed any portion of the balance with Synchrony Bank. Critically, each statement in Exhibit P-3 informed Appellant, on the reverse side, of how to dispute any asserted error on each statement, and further informed Appellant that she was required to submit any such dispute to Synchrony Bank "within 60 days after the error appeared on your statement." (R. pp. 325, 329, 333, 339, 343, 347, 354, 358, 362, 366, 370). Appellant presented no evidence that she ever disputed any statement she received. The April 23, 2015 statement further informed Appellant that she was entitled to pay the entire outstanding balance at any time without incurring a prepayment penalty, and that failing to pay the minimum balance on or before May 16, 2015 would result in a late charge of up to $38.00 being added to the account (R. p. 324).

Appellant, by her prior conduct in making purchases with, and payments on the account, together with her failure to dispute any amount on any of the statements, impliedly acknowledged that the statement dated April 23, 2015 was correct and that the statement balance was due and owing. Based upon the admissible and competent evidence presented, the Trial Court correctly concluded that Appellant impliedly acknowledged that she was indebted to PRA's assignor in the amount of $4,236.78.

II. THE TRIAL COURT CORRECTLY ENTERED JUDGMENT IN FAVOR OF PRA ON APPELLANT'S COUNTERCLAIMS

STANDARD OF REVIEW

"In an action at law, the trial court's factual findings will not be disturbed upon appeal unless found to be without evidence which reasonably supports the trial court's findings." *Fesmire v. Digh*, 385 S.C. 296, 303, 683 S.E.2d 803, 807 (Ct. App. 2009) (citing *Townes Assocs., Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976)). "Determining the proper interpretation of a statute is a question of law, and this court reviews questions of law de novo."

Coastal Fed. Credit Union v. Brown, 417 S.C. 544, 548, 790 S.E.2d 417, 419 (Ct. App. 2016) (quoting *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 109, 662 S.E.2d 40, 41 (2008)). *Accord Citizens for Quality Rural Living, Inc. v. Greenville Cty. Planning Comm'n*, 426 S.C. 97, 102, 825 S.E.2d 721, 724 (Ct. App. 2019) (quoting *Lightner v. Hampton Hall Club, Inc.*, 419 S.C. 357, 363, 798 S.E.2d 555, 558 (2017)) ("An issue regarding statutory interpretation is a question of law.").

A. THE TRIAL COURT CORRECTLY RULED THAT THE SCCPC DID NOT APPLY TO PRA'S COLLECTION OF THE CREDIT CARD ACCOUNT

As correctly concluded by the Trial Court, PRA was not required to send a notice of right to cure pursuant to S.C. Code Ann. § 37-5-110 because Appellant's use of the HH Gregg credit card was not a "consumer credit transaction" and because PRA was not the credit grantor.

1. THE CREDIT CARD ACCOUNT IS NOT A CONSUMER CREDIT TRANSACTION WHICH REQUIRES A NOTICE OF RIGHT TO CURE

The SCCPC requires a creditor to provide a notice of right to cure only with respect to certain "secured or unsecured ***consumer credit transactions***"—specifically, those "payable in two or more installments," where the consumer has been in default for more than ten days and has not surrendered any collateral securing repayment of the loan. S.C. Code Ann. § 37-5-110(1) (emphasis added). A "consumer credit transaction," in turn, is limited to a "consumer credit sale," "consumer loan," "consumer lease," or "consumer rental-purchase agreement." S.C. Code Ann. § 37-1-301(11).[9] A "consumer credit sale" expressly ***excludes*** any sale "in which a seller allows the buyer to purchase goods or services pursuant to a lender credit card or similar arrangement . . . ." S.C. Code Ann. § 37-2-104(2)(a).

[9] The remaining three transactions included within the definition of "consumer credit transaction" are inapplicable here.

Here, the Trial Court correctly concluded that Appellant's HH Gregg credit card was a "lender credit card," which excluded it from the definition of "consumer credit sale," and, therefore, her use of the card was not a covered "consumer credit transaction." (R. pp. 14-15). Appellant's HH Gregg credit card falls squarely within the definition of a "lender credit card or similar arrangement" because it was an "open-end credit arrangement . . . pursuant to which a lender gives a debtor the privilege of using a credit card . . . in transactions out of which debt arises . . . ." and it was not a "seller credit card." S.C. Code Ann. § 37-1-301(16). *See also* (R. pp. 325, 329, 333, 339, 343, 347, 354, 358, 362, 366, 370) (disclosing, on the reverse of each statement, that "[y]our account is owned and serviced by Synchrony Bank.").

Similarly, the credit card was not a "seller credit card" because it was not issued by Synchrony Bank "primarily for the purpose of purchasing or leasing goods or services" from Synchrony Bank or any related entity. S.C. Code Ann. § 37-1-301 (26). *See also Bracken v. Simmons First Nat'l Bank*, No. 6:13-1377-TMC-KFM, 2014 U.S. Dist. LEXIS 78974, at *12–13 (D.S.C. May 6, 2014), *adopted in full*, 2014 U.S. Dist. LEXIS 78025, at*2 (D.S.C. June 9, 2014) (concluding that a consumer credit card is not subject to the SCCPC). Because the HH Gregg credit card was a "lender credit card or similar arrangement," any purchase made with it was expressly excluded from the definition of a "consumer credit sale" unless such a sale was explicitly subject to the SCCPC by agreement. S.C. Code Ann. § 37-2-104(2)(a). Appellant presented no evidence of any such agreement. Consequently, each such purchase was not a "consumer credit transaction" because it did not fall within one of the four categories of covered transactions, and therefore no notice of right to cure was required under the SCCPC.[10]

2. ANY DUTY CREATED BY THE SCCPC WAS IMPOSED UPON THE

[10] The Trial Court's determination that PRA was not subject to the SCCPC rendered Appellant's remaining claim under the SCCPC moot.

ORIGINAL CREDITOR, NOT ON PRA

Even if Appellant's use of the HH Gregg credit card constituted a "consumer credit transaction," such a designation imposed no duties upon PRA. Section 37-5-110(1) requires a ***creditor*** to send a notice of right to cure in the circumstances set forth therein. The Consumer Protection Code specifically defines "creditor" as "the person who grants credit in a credit transaction or, except as otherwise provided, an assignee of a creditor's right to payment, ***but the use of the term does not in itself impose on an assignee any obligation of his assignor***." S.C. Code Ann. § 37-1-301(13) (emphasis added). This definition makes two things perfectly clear: (1) the South Carolina legislature understood how to distinguish a creditor from an assignee, and how to draft a statute to ensure that any duty created thereunder applied to either a creditor and its assignee, or to a creditor only, as the legislature saw fit; and (2) even though the term "creditor" includes a creditor's assignee unless expressly stated otherwise, the inclusion of assignees within the definition of creditor does not, ***without more***, impose any duty of a creditor on its assignee.

Section 37-5-110(1) contains no additional language to indicate that its imposition of a duty upon a "creditor" in certain circumstances also applies to an assignee. Therefore, no such duty applies to a creditor's assignee. It is undisputed that PRA is the assignee of Synchrony Bank, and not the "person who grant[ed] credit" to Appellant. S.C. Code Ann. § 37-1-301(13). Accordingly, even if Appellant's use of the HH Gregg credit card constituted a "consumer credit transaction" under section 37-5-110, any duty to provide a notice of right to cure fell solely upon Synchrony Bank, not upon PRA.

Because Appellant's use of the HH Gregg credit card was not a "consumer credit transaction," no duty arose under which Appellant was entitled to any notice of right to cure. Further, even if Appellant's use of the HH Gregg credit card entitled her to a notice of right to cure, the duty to provide such notice extended only to Synchrony Bank, the creditor who issued

the card, not to PRA, its assignee. Therefore, the Trial Court correctly entered judgment for PRA on Appellant's counterclaims under the South Carolina Consumer Protection Code, and that judgment should be affirmed.

B. THE TRIAL COURT CORRECTLY RULED THAT APPELLANT'S FDCPA CLAIMS WERE TIME-BARRED

The Trial Court correctly ruled that Appellant's FDCPA counterclaims were time-barred because they were not brought within one year from the date on which the alleged violations occurred (R. p. 13). Any action seeking to enforce liability created under the FDCPA must be brought "within one year from the date on which the violation occurs." 15 U.S.C. § 1692k(d). This statute of limitations "begins to run on the date on which the alleged FDCPA violation occurs, not the date on which the violation is discovered." *Rotkiske v. Klemm*, 140 S. Ct. 355, 358 (2019) (declining to construe 15 U.S.C. § 1692k(d) to include a "general discovery rule as a principle of statutory interpretation." *Id.* at 360).

Here, Appellant alleged that PRA's filing of the Complaint, and the affidavit attached thereto, violated the FDCPA (R. pp. 110-111, ¶¶ 26-36). The Complaint was filed on January 4, 2017 (R. p. 85). Appellant was served with the Complaint and summons on January 10, 2017. On February 8, 2017, Appellant filed her original answer (R. p. 104). The Counterclaim, however, was not filed until thirteen months later—on March 13, 2018, more than one year after Appellant was served with copies of the Complaint and affidavit she alleges violated the FDCPA and more than a year after Appellant's original Answer was filed (R. p. 105). Accordingly, the Trial Court correctly held that Appellant's FDCPA claims were time-barred.

Moreover, there is nothing in the FDCPA which provides Appellant with set off rights or the right to assert her time-barred FDCPA claim as an affirmative defense. *Compare* 15 U.S.C. § 1692k(d) *with* 15 U.S.C. § 1640(e) (expressly excepting from TILA's one year statute of

limitations any claim asserted "as a matter of defense by recoupment or set-off . . . ."). Accordingly, the Trial Court correctly entered judgment for PRA on Appellant's FDCPA claims because they were time-barred.[11]

III. THE TRIAL COURT CORRECTLY DENIED APPELLANT'S RULE 59 MOTION

STANDARD OF REVIEW

"The decision to grant or deny a motion for relief from judgment lies within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion." *Smith v. Fedor*, 422 S.C. 118, 124, 809 S.E.2d 612, 615 (Ct. App. 2017) (quoting *Stearns Bank Nat'l Ass'n v. Glenwood Falls, LP*, 373 S.C. 331, 336, 644 S.E.2d 793, 795 (Ct. App. 2007)). "An abuse of discretion arises where the judge issuing the order was controlled by an error of law or where the order is based on factual conclusions that are without evidentiary support." *Id.* (citing *Glenwood Falls*, 373 S.C. at 336, 644 S.E.2d at 795).

Here, Appellant's Rule 59 Motion does not cite any authority to support its arguments (R. pp. 78-83). Further, Appellant purported to reserve her right to file a memorandum of law in support of her Rule 59 Motion, but apparently elected not to do so (R. p. 79). Appellant argues that the Trial Court's Rule 59 Order lacks a "discernable reason" and is therefore an abuse of discretion. Appellant's Br. p. 15 (citing *Lollis v. Dutton*, 421 S.C. 467, 807 S.E.2d 723 (Ct. App. 2017)). However, reference to the Rule 59 Order itself belies Appellant's argument. The Trial Court denied Appellant's Rule 59 Motion because there was "no material issue raised by [Appellant] that has

[11] The Trial Court also correctly ruled that even if Appellant's FDCPA claims were not time-barred, they nevertheless failed on the merits, because although two different balances were disclosed by PRA with respect to the credit card, both amounts were "'correct' amounts due, albeit under different legal theories." (R. p. 16) (comparing charge off balance on Exhibit P-2 with balance on last account statement sent contained in Exhibit P-3, and explaining that the former was recoverable under a breach of contract theory, while the latter was recoverable under an account stated theory).

not been previously raised and decided and the arguments made are consistent with those ruled upon by the Court." (R. p. 76). Thus, the Trial Court did not deny the Rule 59 Motion without a "discernable reason." On the contrary, the Trial Court explained that each argument Appellant raised in her Rule 59 Motion had already been considered and ruled upon.

Finally, Appellant fails to set forth in detail any argument as to which specific errors the Trial Court allegedly committed in the Rule 59 Order, nor does she cite to any authority to support such arguments. Accordingly, this issue should be deemed abandoned on appeal. *See, e.g.*, *Bennett v. Investors Title Ins. Co.*, 370 S.C. 578, 599, 635 S.E.2d 649, 660 (Ct. App. 2006). Moreover, Appellant's attempt to incorporate documents into her brief by reference and directing this Court to refer to those documents for Appellant's argument not only violates Rule 208(b)(1)(E) of the South Carolina Appellate Court Rules, but also has the effect of exceeding the page limits on briefs. *See* Rule 208(b)(5), SCACR. Therefore, this Court should consider Appellant's arguments abandoned and should not consider arguments which are not set forth in the body of Appellant's Brief.

Because the Trial Court did not abuse its discretion in denying Appellant's Rule 59 Motion, the Rule 59 Order should be affirmed.

CONCLUSION

For the reasons set forth herein, this Court should affirm the judgment of the Trial Court granting judgment in favor of PRA on the claim set forth in the Complaint and dismissing Appellant's Counterclaims, and should further affirm the Trial Court's denial of Appellant's Rule 59 Motion.

Respectfully submitted,

March 26, 2021

/s/ Caren D. Enloe

Caren D. Enloe, Esquire
P.O. Box 176010
Raleigh, NC 27619
(919) 250-2000
Attorney for Respondent
Admitted Pro Hac Vice

J. Ronald Jones, Jr., Esquire
171 Church Street, Suite 120C
Charleston, South Carolina 29401
(843) 714-2535
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appellate Case No. 2020-00935

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.

CERTIFICATE OF COMPLIANCE WITH RULE 211(b), SCACR

The undersigned certifies that the foregoing Final Brief of Respondent is identical to the Initial Brief of Respondent filed on December 16, 2020 in the above-referenced appeal, except that references in the Initial Brief of Respondent have been updated in the Final Brief of Respondent to reflect the location of the cited material in the filed Record on Appeal, obvious typographical errors and misspellings in the Initial Brief of Respondent have been corrected (as applicable), and the Table of Contents and Table of Authorities were updated to reflect any change in pagination

resulting from the addition of references to the Record on Appeal (as applicable). No other changes to the Final Brief of Respondent have been made, and the foregoing Final Brief of Respondent in all respects complies with the provisions of Rule 211(b), SCACR.

March 26, 2021

/s/ Caren D. Enloe
Caren D. Enloe, Esquire
P.O. Box 176010
Raleigh, NC 27619
(919) 250-2000
Attorney for Respondent
Admitted Pro Hac Vice

J. Ronald Jones, Jr., Esquire
171 Church Street, Suite 120C
Charleston, South Carolina 29401
(843) 714-2535
Attorney for Respondent