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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Bentley D. Price
South Carolina Circuit Court Judge

Appellate Case No. 2020-001204

TEMISAN ETIKERENTSE and IJOEMA ETIKERENTSE .....Appellants,

v.

SPECIALIZED LOAN SERVICING, LLC .. .. Respondent.

APPELLANTS' PETITON FOR REHEARING

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Pursuant to Rules 221 and 240 of the South Carolina Rules of Appellate Procedure, the Appellants Temisan Etikerentse and Ijoema Etikrentse ("Etikenrentses") moves the Court of Appeals for rehearing on its unpublished per curiam opinion, filed October 25, 2023, affirming the decision of the Honorable Bentley Price.

The Court of Appeals found Issues I and II were abandoned. They were not. Because Appellants raised pre-emption of South Carolina's regulatory or adjudicatory powers, "[s]uch a determination of congressional intent and of the boundaries and character of a pre-empting congressional enactment is one of federal law. Pre-emption, the practical manifestation of the Supremacy Clause, is always a federal question." *International Longshoremen's Ass'n, AFL-CIO v. Davis*, 476 U.S. 380, 388 (1986). Accordingly, Respondent's motion to strike portions of Appellant's designation of matter and of its argument, was misplaced. Appellant raised federal pre-emption, and pre-empted matters trump state rules of issue preservation and preclusion. In order for a South Carolina court to overcome deciding the **federal** question of jurisdiction, any "asserted non-federal ground must independently and adequately support the judgment." *Abie State Bank v. Bryan*, 282 U.S. 765, 773 (1931). To constitute an "independent" state bar, the state law basis for the decision must not be interwoven with federal law and rest purely on state law grounds. *Michigan v. Long*, 463 U.S. 1032, 1040-41 (1983); *Harris v. Reed*, 489 U.S. 255, 265 (1989). A state law or procedural rule is "adequate" if it is "firmly established" and "regularly followed." *Beard v. Kindler*, 558 U.S. 53, 60 (2009) (quoting *Lee v. Kemna*, 534 U.S. 362, 375 (2002)). Because "[t]he Supremacy Clause supplies a rule of priority," *Virginia Uranium, Inc. v. Warren*, 139 S.Ct. 1894, 1901 (2019), the court must first address the Appellant's question as to whether the Circuit Court has appellate jurisdiction over: (1) a final unappealed order of a federal bankruptcy court and (2) over a federal agency's findings in a Consent Order. *Ake v. Oklahoma*,

470 U.S. 68, 75 (1985) ("[W]hen resolution of the state procedural law question depends on a federal constitutional ruling, the state-law prong of the court's holding is not independent of federal law"). As "the point is not whether state law gives the state courts jurisdiction over particular controversies but whether jurisdiction provided by state law is itself pre-empted by federal law," any procedural ruling would therefore implicate an underlying question of federal law and state law is not an independent and adequate state ground to support the Circuit Court's judgment. *Longshoremen*, 476 U.S. at 388. In reality, Respondent wanted the court to invoke a state procedural rule *inapplicable* to claims of federal subject matter jurisdiction. *See* Toal *et al*., APPELLATE PRACTICE IN SOUTH CAROLINA 3D. (2016), at 190 (explicitly noting subject matter jurisdiction as the first exception to issue preservation rules). Also, in South Carolina, the trial court's lack of subject matter jurisdiction may be raised at any time, even for the first time on appeal. *See In re November 4, 2008 Bluffton Town Council Election*, 385 S.C. 632, 637, 686 S.E.2d. 683 (2009); *State v. Gentry*, 363 S.C. 93, 101-102, 610 S.E.2d 494, 499 (2005). Moreover, the lack of subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken notice of by this Court. *Anderson v. Anderson*, 299 S.C. 110, 115, 382 S.E.2d 897, 900 (1989). *State v. Gorie*, 256 S.C. 539, 541 183 S.E.2d 334 (1971). Because subject matter jurisdiction refers to a courts' power to hear and determine cases of a general class in which they belong, it is fundamental and cannot be waived. *Dove v. Gold-Kist Inc*. 314 S.C. 235, 238-239, 442 S.E.2d 556, 600-601 (1994).

The entire foundation of the Respondent's Motion to Strike and the Court of Appeals ruling was therefore inapplicable; "state courts may not avoid deciding federal issues by invoking procedural rules that they do not apply evenhandedly to all similar claims." *Hathorn v. Lovorn*, 457 U.S. 255, 263 (1982); *see also Barr* v. *City of Columbia*, 378 U. S. 146, 149 (1964) ("Our

decisions stress that a state procedural ground is not 'adequate' unless the procedural rule is 'strictly or regularly followed.'"). Assuming, *arguendo*, that subject matter jurisdiction could be waived – which the South Carolina courts deny – Respondent failed to provide any "strictly or regularly followed" rule requiring a court to strike exhibits based solely on a party's assertion that "these documents and their descriptions are insufficient to identify them with sufficient specificity." [Resp. Mot., at 3]. The proper relief appears to be that Appellant should supplement the record. *See* SOUTH CAROLINA APPELLATE PRACTICE 3D., at 406 ("Failing to be clear is a common cause of the need to supplement the record"). Respondent nor the Court of Appeals cannot cite state court rules of issue preservation to overcome an argument for lack of subject-matter jurisdiction – much less federal subject-matter jurisdiction.

Appellant's *Initial Brief* itself refutes Respondent's claim of lack of specificity for the designated materials. First, the "Chapter 7 Bankruptcy Petition" is referred to in its plain language with bankruptcy case (14-04497-dd) identified, as is the Discharge Order [ECF No. 24-2] and notification of the same sent to SLS and BANA [ECF No. 24-1]. SLS specifically pointed to this order in its two letters purported to have offered Appellant a modification. These items are "Undisputed Facts in Record" in the Circuit Court's Order. Similarly, the June 22, 2015 *Notice of Appearance and Request for Notice with Certificate of Service* was filed by attorney Lawrence Wilbur Johnson Jr., Esquire on behalf of *Specialized Loan Servicing LLC* as the "**creditor**," is identified as "[ECF No. 36]." So was the "Certification of Facts" attached thereto that specifically verifies under penalty of perjury that "movant" "has possession of the Note" and is "the assignee of the Mortgage," as "[ECF No. 37]." Both of these filings by SLS identified bankruptcy case 14-04497-dd in their headings, for which SLS was a party. Furthermore, "Administrative Proceeding File No. 2020-BCFP-0002, In the Matter of Specialized Loan Servicing, Consent Order dated May

7, 2020," is not only referenced in the Circuit Court's Order, it is specifically stated as being reviewed by the Court in its decision making. Thus, Appellant was at a loss to explain exactly how Respondent cannot identify these materials, which is the basis of Section I of its motion.

"Whenever the right to property is claimed to have been changed under a judgment or decree by a court, and it is set up as a defense in another court, the jurisdiction of the former may be inquired into." *Williamson v. Berry*, 49 U.S. 495, 543 (1850). Aside from the fact that "LPS 7907-7954" are discovery items produced by SLS in this action, they further reveal that SLS sought the jurisdiction of the Bankruptcy Court to determine that it "has possession of the Note" and is "the assignee of the Mortgage," as the basis for its relief from the automatic stay.

Therefore, Respondent's argument and the Court of Appeals finding is baseless. SLS asked the Court of Appeals to preclude evidence: (1) to establish the bankruptcy court's jurisdiction discharging Appellant under the Note, by finding it is has possession of the Note (i.e., it was the "holder"); and (2) was therefore the proper party to foreclose the mortgage; as well as (3) to ignore SLS acknowledged and sought such jurisdiction, which goes to proving lack of federal subject-matter jurisdiction. And SLS is asked the Court of Appeals to exclude this evidence on state court grounds. As demonstrated above, SLS's request is improper in this context.

The primary ground for summary judgment under Rule 14(a), SCRCP was predicated on the assertion by its Affiant Mark McCloskey that it "is not and has never been a party to the note or mortgage at issue in this action, or a successor thereto." [R. pp. 234-236]. SLS argued therefore "it cannot possibly be liable, in whole or in part, for Wilmington's foreclosure claim against the Plaintiffs." Under Rule 14, the third-party plaintiff [Etikerentse] must have a substantive claim against the third- party defendant founded upon derivative liability. *Smith v. Tiffany,* 419 S.C. 548, 560, 799 S.E.2d 479, 486 (2017). Both the term "servicer" and "servicing" are defined by

federal regulations promulgated under 12 U.S.C. § 2601, *et seq*., known as the "Real Estate Settlement Procedures Act of 1974" ("RESPA[1]"). *See* 12 C.F.R. § 1024.2(b). "Servicer means a person responsible for the servicing of a federally related mortgage loan." *Id.* Fatal to Respondent's position is its concession that "at all times, SLS has acted only as servicer of the note and mortgage on behalf of the holder [sic] of the same, which is [Wilmington Trust as Trustee]." [R. pp. 234-236]. Based on McCloskey's affidavit testimony SLS cannot pass the definition of a servicer who is also "the person who makes or holds such loan." *Id.*

It is therefore axiomatic that SLS's ability to receive "any scheduled periodic payments from a borrower pursuant to the terms of any federally related mortgage loan, including amounts for escrow accounts under section 10 of RESPA (12 U.S.C. § 2609), and making the payments to the owner of the loan or other third parties of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the…servicing contract," 12 C.F.R. § 1024.2(b)[2], are derivative of "the person who makes or holds such loan." *Id.*

What really matters was SLS' reliance upon its pecuniary interest as a servicer to both retain and direct Attorney Johnson to file bankruptcy court matters, as well as hire and direct attorney Wlodarczyk "to file a foreclosure action naming Wilmington Trust as the Plaintiff." *Companion Property Casualty Insurance Company v. U.S. Bank, National Association,* 2016 WL

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[1] RESPA is a remedial consumer protection statute, and it imposes obligations upon servicers of federally related mortgage loans. [*See* HAMP/SCUTPA/RESPA argument , p. 14, infra].

[2] 12 C.F.R. 1024.2(b) allows a servicer to "receive" payments and in no way authorizes a servicer (who is not the owner or holder of the loan) to enforce the Note and Mortgage. *See Butner* v. *United States,* 440 U. S. 48, 54-55 (1979), "[p]roperty interests are created and defined by state law. The justifications for application of state law are not limited to ownership interests, but apply with equal force to security interests, including the interest of a mortgagee." *Butner, supra,* at 55.

3027552, C/A 3:15-cv-01300-JMC (D.S.C. 2016) (declaring that "Third-Party Defendants need only have a 'pecuniary interest in the transaction.'"); *see also Roberts v. Peterson*, 292 S.C. 149, 152, 355 S.E.2d 280, 281 (Ct. App. 1987) (noting that where the state rule has adopted the language of a federal rule, federal cases interpreting the federal rule are persuasive).

There is no dispute that Bankruptcy Courts in South Carolina allow servicers to file *Motions for Relief from Stay* based on "[t] he general rule is that a mortgage servicer has standing by virtue of its pecuniary interest in collecting payments under the terms of the note and mortgage." *In re Woodberry*, 383 B.R. 373, 379 (Bankr. Ct. D.S.C. 2008). Absent the Bankruptcy Court's ruling, the Circuit Court would be without jurisdiction over the foreclosure action filed April 2016. *Kalb v. Feuerstein*, 308, U.S. 433, 439 (1940) ("The Constitution grants Congress exclusive power to regulate bankruptcy and under this power Congress can limit the jurisdiction which courts, state or federal, can exercise over the person and property of a debtor who duly invokes the bankruptcy law."); *Ritzen Group Inc. v. Jackson Masonry, LLC,* 140 S.Ct. 582, 585 (2020) (Under the Bankruptcy Code, Appellant's filing a Chapter 7 petition for bankruptcy automatically "'operates as a stay' of creditors' debt-collection efforts outside the umbrella of the bankruptcy case. 11 U.S.C. § 362(a)."; *see also Id.* at 590 (elucidating that a bankruptcy court's "[r]uling on a motion for stay relief, it is true, will determine where the adjudication of an adversary claim will take place—in the bankruptcy forum or state court.").

In a similar vein, had SLS not relied on *Bank of America v. Draper,* 405 S.C. 214, 222, 746 S.E.2d 478, 482 (Ct. App. 2013), where the S.C. Court of Appeals ignored its Constitutional duty to be bound by decisions of the U.S and S.C. Supreme Courts, and agreed with the "general view, which has been accepted in this jurisdiction and others, that a loan servicer is a 'party in interest' and has standing by virtue of its pecuniary interest in collecting payments under the

terms of the note and mortgage" then *no* foreclosure action would have been filed at all. Testimony exists from the attorney for the purported foreclosing party that SLS *alone*: (1) retained and paid the RPL Firm and (2) directed him "to file a foreclosure action naming Wilmington Trust as the Plaintiff."

Consequently, a non-party is subject to impleader only if there is a basis to assert that he is liable to the named defendant(s) for all or part of the plaintiff's claim. *Smith v. Tiffany*, 419 S.C. at 560, 799 S.E.2d at 486 (2017). The outcome of the principal claim must impact the third-party defendant's liability. *First Gen. Serv. of Charleston v. Miller*, 314 S.C. 349, 341-342, 445 S.E. 2d 446, 447 (1994). A foreclosure action presents just such an imminent loss to the mortgagor.

The only question before this Court is whether the United States Bankruptcy Court had jurisdiction to issue the Order. *See Williamson v. Berry*, 49 U.S. 495, 543 (1850), ("[w]henever the right to property is claimed to have been changed under a judgment or decree by a court, and it is set up as a defense in another court, the jurisdiction of the former may be inquired into."). Clearly, because a bankruptcy court's order resolving a creditor's motion for relief from the automatic stay constitutes a final order, then under the United States Supreme Court's decision *Ritzen Group,* the bankruptcy court's jurisdiction cannot be questioned. 140 S.Ct. at 585. SLS therefore cannot now assert it alone has not caused Appellant to face the very real danger of foreclosure. Here, there is more than enough basis to assert the claim against SLS, because: (1) there is not a lawyer truly representing Wilmington, nor is Wilmington really involved; (2) SLS is paying and directing both sets of lawyers; (3) there are no Wilmington documents supporting the foreclosure, but in fact all of the relevant documents produced in the case are from SLS; (4) even the lawyer for "Wilmington" is also asking for summary judgment based on SLS's affidavit; and (5) controlling the foreclosure process by hiring the RPL Firm (purported counsel for

Wilmington Trust). Thus, SLS cannot prevail on its Rule 14 and the circuit court should be reversed in its grant of summary judgment to SLS.

The Court of Appeals also ruled that SLS was entitled to Summary Judgment for violations of HAMP, SCUTPA and RESPA.

The Appellant also alleges that the foreclosure action would have never occurred if Respondent had properly fulfilled its disclosure requirements pertaining to loss mitigation options under 12 C.F.R.§ 1024.41. This is a question of federal law and some background is necessary: In the wake of the 2008 financial crisis, Congress established the Consumer Financial Protection Bureau ("CFPB"), an independent regulatory agency tasked with ensuring that consumer debt products are safe and transparent. *See* Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), 124 Stat. 1376. In addition, Congress enacted a new prohibition on "any unfair, deceptive, or abusive act or practice" by certain participants in the consumer-finance sector, 12 U.S.C. § 5536(a)(1)(B), as well as transferred the administration of 18 existing federal statutes to the CFPB, including 12 U.S.C. § 2601, *et seq*. known as the Real Estate Settlement Procedures Act of 1974 ("RESPA"). *See* 12 U.S.C. §§ 5512(a), 5481(12), (14). Citing "widespread concern among mortgage market participants, consumer advocates, and policymakers regarding pervasive problems with servicers' performance of loss mitigation activity in connection with the financial crisis, including lost documents, non-responsive servicers, and unwillingness to work with borrowers to reach agreement on loss mitigation options," 78 F.R. 10816, the Consumer Finance Protection Bureau added 12 C.F.R. § 1024.41 "Loss Mitigation Procedures" to RESPA in 2013. Those problems are incorporated in the Appellant's Third-Party claims against Respondent.

The record reveals that on December 12, 2014, SLS notified Etikerentse that he had been approved for a "Standard Modification Program," not HAMP. Section 524 of the Bankruptcy Code sets forth the effects of a discharge. Pursuant to § 524(c), reaffirmation agreements made after the granting of a discharge under § 727 are unenforceable without bankruptcy court notice and approval. The bankruptcy court was not notified of the attempted re-affirmation. No record of the modification offer appears anywhere on the bankruptcy record.

On March 16, 2015, SLS again wrote Etikerentse. Thereafter, on June 22, 2015 a Notice of Appearance and Request for Notice with Certificate of Service Filed by Lawrence Wilbur Johnson Jr. on behalf of Specialized Loan Servicing LLC as the "creditor." [ECF No. 36]. On the same date Johnson filed a Motion for Relief from Stay pursuant to 11 U.S.C. § 362, "[f]or cause, lack of adequate protection 362(d)(1); lack of equity, lack of necessity to reorganization, Section 362(d)(2); lack of adequate protection, Section 363(c)" on behalf of Specialized Loan Servicing LLC, as servicing agent for Wilmington Trust, National Association, as Trustee to Citibank, N.A., as Trustee for Bear Stearns Asset Backed Securities Trust 2007-2, Asset Back Certificates, Series 2007-2. Johnson identifies SLS as the "creditor," "movant" and "a party in interest." [ECF No. 37]. Moreover, Johnson is aware of the fact that neither the bankruptcy court nor Appellant has received any paperwork in December 2014 to complete the modification process.

Missing from the record was any evidence that the modification documents were in fact overnighted to Appellant or his attorney. Moreover, Administrative Proceeding File No. 2020-BCFP-0002 establishes that Aldridge lacked any reasonable basis to assert "these are stall tactics." In fact, as shown below, SLS has conceded that it failed to maintain these records.

Under RESPA, "the [Consumer Financial Protection] Bureau did not intend to create a private right of action for borrowers to enforce, in private litigation, any requirements that are

imposed by owners or assignees of mortgage loans (including investors or guarantors) on servicers to mitigate losses for such parties." 78 F.R. 10822. That was not what is happening here. Rather, the Bureau intended that borrowers could enforce the loss mitigation procedures against servicers to ensure that servicers complied with the appropriate procedural steps before commencing or completing the foreclosure process when a borrower had submitted a complete loss mitigation application." Appellants clearly alleged and the record supports that his action is grounded in the fact that when, like here, a servicer fails to provide documents to the borrower to complete the loss mitigation process. *See* 12 C.F.R. § 1024.41(b)(4).

Congress also vested the CFPB with potent enforcement powers. The agency has the authority to conduct investigations, issue subpoenas and civil investigative demands, initiate administrative adjudications, and prosecute civil actions in federal court. 12 U.S.C. §§ 5562, 5564(a), (f). In doing so, Congress gave the CFPB extensive rulemaking, enforcement, and adjudicatory powers, including the authority to conduct investigations, issue subpoenas and civil investigative demands, initiate administrative adjudications, prosecute civil actions in federal court, and issue binding decisions in administrative proceedings. The CFPB may seek restitution, disgorgement, injunctive relief, and significant civil penalties for violations of the 19 federal statutes under its purview. Importantly, on April 23, 2020, SLS executed a "Stipulation and Consent to the Issuance of a Consent Order." ["Stipulation"]. By this Stipulation, SLS has consented to the issuance of Administrative Proceeding File No. 2020-BCFP-0002, *In the Matter of: Specialized Loan Servicing, Consent Order* dated May 7, 2020, ("Consent Order") and "the facts necessary to establish the [Bureau of Financial Protection's] jurisdiction over Respondent and the subject matter of this action." under 12 U.S.C. §§ 5563 & 5565.

SLS has admitted "the following law violations: (1) Respondent violated the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. § 2601 *et seq*., its implementing regulation, Regulation X, 12 C.F.R. part 1024, and the Consumer Financial Protection Act of 2010 (CFPA) by taking prohibited foreclosure actions against certain borrowers, in violation of 12 C.F.R. § 1024.41(f)(2) and (g); and (2) Respondent violated RESPA, Regulation X, and the CFPA by failing to send or timely send evaluation notices to certain borrowers, in violation of 12 C.F.R. § 1024.41(c)(1)." *Id*. ¶. 1. Moreover, pursuant to Section VII of the Consent Order, SLS has been ordered to engage in a comprehensive plan to *identify* and compensate those harmed and in the interim, "no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order or to review, modify, suspend, terminate, or set aside any such notice or order." 12 U.S.C. § 5563(d)(4). Simply put, SLS agreed, in consideration for a smaller fine, that it was liable because it failed to maintain records to support any assertion that it had complied with 12 C.F.R. § 1024.41. SLS cannot now ask the Circuit Court to find such compliance ***now*** when it already admitted to its regulator that it did not comply, just last year. SLS's own discovery states that what it asserts to be a modification approval was in fact, sent for "informational purposes only."

Additionally, both because the RPL Firm and Nelson Mullins had "actual notice" of the Consent Order, they must engage in certain "affirmative actions" prior to proceeding with motions for summary judgement on behalf of their client, SLS. Clearly, if Nelson Mullins, as argued in SLS' Motion, is not aware that 12 C.F.R. § 1024.41 is a regulation promulgated under RESPA, then no such affirmative review occurred. Thus, SLS cannot proceed, nor its lawyers can proceed on behalf of their client, in the instant motions.

Nor can the Circuit Court reverse the shifting of the burden requiring SLS to determine damages it caused the Appellant. In analyzing the same language in a similar statute [12 U.S.C. § 1818(i)(1)] the United States Supreme Court had declared: "Congress has spoken clearly and directly: '[N]o court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any [Board] notice or order under this section.'" *Board of Governors, FRS v. MCorp Financial, Inc.,* 502 U.S. 32, 44 (1991). The Board [and SLS] came up with both the fine and the findings of violations; SLS cannot pretend it did not happen, nor can SLS try to mislead the Circuit Court – nor can the Circuit Court enter an Order which absolves SLS of what it admitted to.

Having established under the issuance of the Consent Order with its federal regulator (Administrative Proceeding File No. 2020-BCFP-0002) that SLS failed to adhere to its loss mitigation obligations under RESPA, the Court's finding that Appellant has "failed to establish any genuine issues of material fact as to any RESPA violation by SLS or related damages" necessarily fails as a matter of law. The South Carolina Unfair Trade Practices Act ("SCUPTA"), S.C. Code § 39-5-10 *et seq.*, provides for both civil actions brought by private citizens and enforcement actions brought by the Attorney General on behalf of the State. S.C. Code Ann. §§ 39-5-50(a), -110(a), -140(a) (1985); *State ex rel. Wilson v. Ortho-McNeil-Janssen Pharm., Inc.*, 414 S.C. 33, 57, 777 S.E.2d 176, 189 (2015). S.C. Code Ann. § 39-5-140(a) requires no more than "any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of an unfair or deceptive method, act or practice declared unlawful by Section 39-5-20 may bring an action individually, but not in a representative capacity, to recover actual damages." *See Freemantle v. Preston,* 398 S.C. 186, 194-95, 728 S.E.2d 40, 44 (2012) (holding that where the appellant asserted he was a citizen of South Carolina, then

"[n]othing more" was required under statute). The terms "unfair" and "deceptive" are not defined in SCUTPA; rather, in section 39-5-20(b) of the Act, the General Assembly directs that in construing those terms, the courts of our state "will be guided by" decisions from the federal courts, the Federal Trade Commission Act (FTCA), and interpretations given by the Federal Trade Commission (FTC). That reason is simple – Congress has authorized the FTC, not state courts, to decide what constitutes unfair, deceptive and abusive practices as they relate to interstate commerce. Equally clear is that violations of the procedures, as alleged by the Appellant, are indeed considered unfair and deceptive by the FTC and made enforceable under 12 U.S.C. § 2605(f). *See* 12 C.F.R. § 1024.41(a). Thus, SLS's Consent Order "shall be prima facie evidence in an action brought under Section 39-5-140 that the respondent used or employed a method, act or practice declared unlawful by Section 39-5-20." S.C. Code Ann. § 39-5-140(c).

CONCLUSION

For the foregoing reasons, the South Carolina Court of Appeals should reverse its Opinion of August 16, 2023.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the ***Appellants' Petition for Rehearing*** in the above referenced case has been served upon counsel of record by mailing a copy in an envelope properly addressed with postage prepaid on this day to the following, on the 10 Day of November 2023:

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