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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
G.D. Morgan, Jr. Circuit Court Judge

Case No. 2023-CP-23-01039

Desimber Rose Wattleton.……..……..Appellant,

v.

A&K Auto Sales and Leasing, LLC,
Ameen Aljaouni, Tim Yarger, Tony Scott,
Ryan Little, Atlantic Acceptance Corp.,
Westlake Financial Services, Roy Owens
and Roy Ownes Towing, Defendants,

Of Which A&K Auto Sales and Leasing, LLC
and Westlake Financial Services are the
Respondents……...Respondents.

INITIAL BRIEF OF APPELLANT

Respectfully Submitted,

November 17, 2023

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STATEMENT OF THE CASE

On October 6, 2022, Plaintiff visited A&K Auto Sales dealership in Mauldin, South Carolina to inquire about the purchase of a vehicle following a live social media promotion by 96.3FM The Block Radio Personality, Oneshia "Lovely Big O" Edens, who is a personal friend of the Plaintiff. Upon arrival at the dealership, Plaintiff discussed her desire to purchase a vehicle for two reasons, first because she was in need of reliable transportation; second, because she was intentionally trying to rebuild her credit in order to purchase a home. Plaintiff informed the salesman named John that she had money for a down payment but did not wish to have a car note that exceeded $500.00 per month. To which John informed the Plaintiff he would be able to "work something out for her."

Plaintiff then completed a credit application for financing, including contact information for personal references. After approximately 15 minutes, Plaintiff was informed that she was approved for financing and that she could take a look at a few vehicles, at this time it was approaching 9:30pm.

After being shown a few vehicles by John and test driving a Ford Edge, Plaintiff decided to purchase the 2020 Ford Edge. John informed the Sales Manager of the vehicle Plaintiff had chosen, and after approximately 30 minutes, Plaintiff was informed that she was approved for financing through Atlantic Acceptance Corporation. Plaintiff put a $2,000 down payment on the vehicle, paid immediately via debit card to A&K Auto, and was informed that the cost of the vehicle would be approximately $25,000. However, due to the lateness of the hour, Plaintiff was asked to come back the following day to complete all the paperwork, but was allowed to place insurance on the vehicle and take the vehicle home that evening.

The following day, Plaintiff returned to A&K Auto and completed signing all of the necessary financing and purchase contracts (EXHIBIT A), including but not limited to a Retail Purchase Agreement, Retail Installment Sale Contract, and Affidavit and Notification of Sale of Motor Vehicle, all of which are dated October 8th, 2022. Plaintiff was informed that Atlantic Acceptance Corporation was the finance company and lien holder. The DMV received documentation from A&K Auto stating the same, as did Geico Insurance Company.

Following the purchase of the vehicle, Plaintiff was contacted via phone and email by Erma Vazquez of Atlantic Acceptance and by Westlake Financial on October 28th, 2022, informing her that her account was with Westlake Financial and that payments should be made to Westlake Financial for the loan pertaining to the purchase of the 2020 Ford Edge. (EXHIBIT B) Plaintiff followed the instructions of Westlake Financial and set up her account.

On January 4th, 2023, Plaintiff received 5 notifications from Credit Karma that hard credit inquiries were made to her Equifax Credit Report. On January 4th, 2023, Plaintiff also received a call from her friend, Stephania Priester, notifying her that she had received a call to verify her

relationship with me and to give a personal reference. On the evening of January 4th, 2023, Plaintiff sent a text message to Tony Scott, a salesperson with A&K Auto, demanding to know why her credit had been pulled without authorization three months after she had purchased the vehicle and informing Mr. Scott that these actions would not go unanswered. To which, Defendant Tony Scott responded, "Stop it december, everything is working in your favor, you are 100 per cent good, December, lol". The following day, January 5th, 2023, Plaintiff received 6 notifications from Experian that hard inquiries were made to her credit report.

Plaintiff called Defendant Tony Scott to confront him concerning the hard pulls to her credit 3 months following the purchase of the vehicle without her authorization. Defendant Tony Scott stated to Plaintiff that Atlantic Acceptance had "went belly up" and that A&K Auto had not received the payment for the vehicle, and that A&K had secured another lender and all Plaintiff had to do was return to the dealership to sign the paperwork. Plaintiff responded to Mr. Scott that she could not come that day but that she should be able to come Friday. Plaintiff then called Westlake Financial and informed them of what Mr. Scott stated. Westlake Financial was not aware of anything Mr. Scott alleged concerning Atlantic Acceptance and processed another payment from Plaintiff on that day.

Following the call with Westlake Financial, Plaintiff then contacted Mr. Scott via text and informed him not only does Westlake Financial not have any knowledge concerning the allegations of Mr. Scott that Atlantic Acceptance has been dissolved, but they also accepted payment from the Plaintiff. Therefore, Plaintiff would not return to the dealership to essentially purchase the vehicle a second time and demanded that Tony Scott and A&K Auto cease and desist contact with the Plaintiff. To which Defendant Tony Scott responded, "Ok, they will handel [handle] it frim [from]

here."

On February 7th, 2023, Plaintiff received notice from Experian that her FICO score had decreased. This is especially troubling to Plaintiff because Plaintiff specifically informed John, the initial salesperson, and Defendant Tim Yarger, that her goal was to improve her credit in order to purchase a home. There was zero contact between the Plaintiff and A&K Auto and its employees from January 6th, 2023, through February 26th, 2023, and no effort was made to remove the hard inquiries from Plaintiff's credit report by A&K Auto.

On the evening of Friday, February 25th, 2023, between 11:00pm and 12:00am, Roy Owens of Roy Owens Towing attempted to repossess the Ford Edge from Plaintiff's residence located at 702 E. Lee Road, Taylors, SC 20687. Plaintiff responded frantically to this attempt by running out of the front door through the yard around to the side of the house where the car was being removed by a tow truck. On the way through the front yard, Plaintiff stepped off an embankment in the yard, breaking her left foot in two places and severely spraining her ankle. Plaintiff confronted Roy Owens and demanded to see the claim and delivery documentation authorizing the repossession of the vehicle. Plaintiff informed Roy Owens that there was no legal right to repossess the vehicle because no Right to Cure had been sent or received and A&K Auto was not the lienholder of the vehicle. A dispute ensued between Roy Owens and the Plaintiff and Plaintiff would not allow Roy Owens to depart with the vehicle.

The Greenville County Police Department was called out to the residence and Plaintiff continued to state to the officers present that the repossession was unlawful. Roy Owens maintained that the repossession was lawful and produced a Repossession Order Form dated February 23, 2023 which showed that the Creditor was A&K Auto, with a printed statement: "The undersigned

authority, personally came and appeared, South Eastern Auto Acceptance, LLC through its representative, who declared that it holds a chattel mortgage security agreement and is a perfected holder over the vehicle described about…and that South Eastern Auto Acceptance, LLC has taken possession of said vehicle peacefully with the knowledge and consent of the debt owner."

Following the request by Plaintiff to speak with the deputy's shift commander, the shift commander was contacted and then called Plaintiff to discuss the ongoing incident. Plaintiff again explained to the gentleman who identified himself as Lieutenant Decker, that A&K Auto did not have a legal right to repossess the vehicle, and that furthermore, Roy Owens Towing was not carrying out a peaceful repossession. Plaintiff informed Lieutenant Decker that she was not making payments to A&K Auto but to Westlake Financial according to her contract and that she had received no Right to Cure notice from Westlake Financial, Atlantic Acceptance, nor A&K Auto Sales and Leasing, LLC.

Lieutenant Decker informed Plaintiff that it was a civil matter and that she could seek remedy with the courts, but that he would allow Mr. Owens to proceed with the repossession since he had produced documentation authorizing the repossession of the vehicle. During the course of this altercation, Plaintiff's sister and children were also involved with this incident, fearful that the officers may arrest the Plaintiff, and trying to assist the Plaintiff with removing her belongings from the vehicle. During this incident multiple neighbors were also coming out of their homes to see what was going on. Following the call with Lieutenant Decker, Plaintiff did agree to exit the vehicle as instructed in order for Mr. Owens to effectuate the repossession of the vehicle.

On the evening of Friday, February 24, 2023 and the following day, Defendant Roy Owens posted pictures to his social media page stating, "Wild exciting night repossession gone wild lol but

I got it and police was very helpful." The following day, Saturday, February 24th, 2023, Plaintiff received a call from her mother stating that Defendant Tony Scott contacted her and stated, "Your daughter was treated unfairly regarding her vehicle and we would like to make it right today if you could please have her to contact me." Plaintiff called the number, 864-205-7588, but there was no answer.

Plaintiff then contacted a family friend who is familiar with consumer law who reached out to the dealership. Plaintiff was then contacted by the family friend and told to call Defendant Ameen Aljaouni at 864-569-5944, but it was Tim Yarger who answered. Mr. Yarger informed Plaintiff that Atlantic Acceptance had gone bankrupt and had "released the car back to" A&K Auto. Mr. Yarger further stated that A&K Auto had lost nearly $100,000 due to Atlantic Acceptance and there were about 5 vehicles caught up in this bankruptcy with Atlantic Acceptance. Mr. Yarger apologized for the behavior of Mr. Owens and stated he was trying to make this right and he could get Plaintiff refinanced at probably a better rate and that she just needed to come down to the dealership and get the paperwork done. Plaintiff informed Mr. Yarger that she would consider her options, to which Mr. Yarger said to follow up and let him know what she decided.

On Saturday, following the call with Mr. Yarger, Plaintiff researched the bankruptcy of Atlantic Acceptance and verified that Atlantic Acceptance had indeed filed for Chapter 11 Bankruptcy and that the Meeting of the Creditors had just taken place on Thursday, February 23, 2023, the same date on the Repossession Order Form. Also the Order Setting Chapter V Status Conference and Certificate of Service was filed by Atlantic Acceptance on Friday, February 24, 2023, the same day Plaintiff's vehicle was repossessed by Roy Owens Towing.

On Monday, February 28, 2023, Plaintiff was again contacted by Tim Yarger who inquired once again if Plaintiff had decided to come to the dealership and complete the paperwork for financing of the vehicle. Plaintiff informed Mr. Yarger that she did not know if she was willing to forfeit the payments that had already been made to Westlake Financial and start over with a new loan on the vehicle. To which Defendant Yarger responded that he could recoup the payments from Westlake Financial and deduct them from the cost of the vehicle but Plaintiff would have to refinance the vehicle with a new lender. Mr. Yarger further stated that no one else owns the vehicle except A&K Auto, and that Westlake Financial should not have been accepting payments to begin with because Atlantic Acceptance never paid A&K Auto for the vehicle and therefore A&K Auto retains the title to the vehicle, and that the only remedy for the Plaintiff was to come in and complete the finance process again and that he was just trying to help her resolve the situation and get her back into the vehicle.

Westlake Financial, although being made aware that the vehicle was repossessed in February 2023 and that Atlantic Acceptance Corp filed for bankruptcy and did not remit payment to the dealership for the vehicle, continued to report the vehicle as Delinquent to Experian, Equifax, and TransUnion until June 2023, which negatively impacted Plaintiff's credit and prevented her from obtaining financing for a vehicle until August 2023. For this reason, plaintiff was essentially stranded without transportation and had to rely on family and public transportation to get her children to school, to get to work, and to manage daily necessities such as grocery shopping and doctors appointments.

Due to the willful, malicious, and fraudulent actions of the Defendants, and the detrimental impact those actions have had on the Plaintiff personally, emotionally, and financially, including

the loss of finances in the form of the down payment and payments made, embarrassment of having her vehicle repossessed in front of her children and neighbors, the damage to Plaintiff's credit score due to several unlawful and unauthorized hard inquiries to her credit reports, and physical injury suffered as a result of Defendant's negligence, Plaintiff decided to pursue legal remedy for the causes of action set forth in her complaint.

A 12(b)(6) Motion hearing was held on June 30, 2023, at which A&K Auto Sales and Westlake Financial requested a Dismissal under Rule 12(b)(6). Appellant was given 10 days to revise her complaint to clarify certain claims against both A&K Auto Sales and Westlake. Appellant filed her Second Amended Complaint on July 10, 2023. A subsequent motion hearing was held on September 14th, 2023, whereby A&K Auto Sales defended a Motion to Dismiss for Rule 15(a) and Westlake Financial defended a Motion to Dismiss for Rule 12(b)(6). On September 15, 2023, Defendant A&K Auto's Motion to Dismiss for Rule 15(a) was Granted in Part and Dismissed in Part and Defendant Westlake Financial's Motion to Dismiss for Rule 12(b)(6) was Granted. Appellant was notified of these orders on September 18, 2023, and this appeal followed.

STANDARD OF REVIEW

A. DISMISSAL UNDER SCRCP 12(b)(6)

"On appeal from the dismissal of a case pursuant to Rule 12(b)(6), an appellate court applies the same standard of review as the trial court." Rydde v. Morris , 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009). "In considering such a motion, the trial court must base its ruling solely on allegations set forth in the complaint." Spence v. Spence, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). "If the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss

for failure to state a claim is improper." Id. "At the Rule 12 stage, therefore, the first decision for the trial court is to decide only whether the pleading states a claim." Skydive Myrtle Beach, Inc. vs. Horry Cty., 426 S.C. 175, 180, 826 S.E.2d 585, 588 (2019).

The legal sufficiency of the Plaintiff's Complaint is measured by whether it meets the standards for a pleading set forth in Rule 8, which provides the general rules of pleading, and Rule 12(b)(6), which requires a complaint to state a claim upon which relief can be granted. Francis v. Giacomelli, 588 F.3d 186, 192 (4th Cir. 2009). Rule 8 provides that a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). While Rule 8 may have previously been interpreted as setting forth a "notice pleading" standard, the Supreme Court has since amplified this standard. To survive a motion to dismiss, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' " Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 554, 570 (2007)).

The purpose of a motion under Rule 12(b)(6) is "to test the formal sufficiency of the statement of the claim for relief; the motion is not a procedure for resolving a contest between the parties about the facts or the substantive merits of the plaintiff's case." NYU Law Review "REFLECTIONS ON FEDERAL PROCEDURE" Authur Wright (2013), 5B Wright & Miller § 1356. "[I]mportantly, [a Rule 12(b)(6) motion] does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses." Edwards v. City of Goldsboro, 178 F.3d 231, 243 (4th Cir. 1999). "Accordingly, a Rule 12(b)(6) motion should only be granted if, after accepting all well-pleaded allegations in the plaintiff's complaint as true and drawing all reasonable factual inferences from those facts in the plaintiff's favor, it appears certain that the plaintiff cannot prove any set of facts in support

of his claim entitling him to relief." Id.; Baird v. Charleston Cty., 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999).

The court should not dismiss a complaint under this rule when a plaintiff pleads facts sufficient to satisfy the Twombly-Iqbal standard but does not invoke the correct legal theory. Johnson v. City of Shelby, Mississippi, 135 S. Ct. 346, 347 (2014) (reversing trial court's dismissal for plaintiffs' failure to invoke § 1983 in their complaint). Therefore, a ruling on a 12(b)(6) motion to dismiss for failure to state a claim must be based solely upon allegations set forth on the face of a complaint. State Bd. of Med. Examiners of South Carolina, 300 S.C. at 276, 387 S.E.2d at 459; Toussaint v. Ham, 292 S.C. 415, 357 S.E.2d 8 (1987).

Only a mere scintilla of evidence is required to defeat a motion for summary judgment when the burden of proof is by a preponderance of the evidence. *Weston v. Kim's Dollar Store,* 385 S.C. 520, 684 S.E.2d 769 (S.C. App. 2009). In determining whether any triable issues of fact exist, the evidence and all inferences which can reasonably be drawn therefrom must be viewed by the court in the light most favorable to the non-moving party. **If triable issues exist, those issues must go to the jury**. *Pye v. Estate of Fox,* 369 S.C. 555, 633 S.E.2d 505 (S.C. 2006) (Emphasis Added). [All] ambiguities, conclusions and inferences arising from the evidence must be construed against the moving party. *City of Columbia v. Town of Irmo,* 316 S.C. 193, 195, 447 S.E.2d 855, 856 (1994).

B. SUMMARY JUDGMENT

When reviewing a grant of summary judgment, appellate courts apply the same standard applied by the trial court pursuant to Rule 56(c), SCRCP. Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). ("[Summary judgment] shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,

show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.") Id.; Rule 56(c), SCRCP.

"When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." Law v. S.C. Dep't of Corr., 368 S.C. 424, 434, 629 S.E.2d 642, 648 (2006). In order to withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence. Hancock v. Mid-South Mgmt Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

The court's determination is not whether the non-moving party "will ultimately prevail," but whether that party is "entitled to offer evidence to support the claims." United States ex rel. Wilkins v. UnitedHealth Grp., Inc., 659 F.3d 295, 302 (3d Cir. 2011). This "does not impose a probability requirement at the pleading stage," but instead "simply calls for enough facts to raise a reasonable expectation that discovery will reveal evidence of [the necessary element]." Phillips v. Cty. of Allegheny, 515 F.3d 224, 234 (3d Cir. 2008) (quoting Twombly, 550 U.S. at 556).

C. MOTION FOR DIRECTED VERDICT **(Fed. R. Civ. P. Rule 50)**

"In deciding a motion for directed verdict, the evidence and all reasonable inferences must be viewed in the light most favorable to the nonmoving party." Minter v. GOCT, Inc., 322 S.C. 525, 527, 473 S.E.2d 67, 69 (Ct. App. 1996). "If more than one inference can be drawn from the evidence, the case must be submitted to the jury." Id. "When considering directed verdict motions, neither the trial court nor the appellate court has authority to decide credibility issues or to resolve conflicts in the testimony or evidence." Harvey v. Strickland, 350 S.C. 303, 308, 566 S.E.2d 529, 532 (2002).

The court may not weigh the evidence, pass on the credibility of witnesses, or substitute its judgment of the facts for that of the jury. It must view the evidence most favorably to the party against whom the motion is made and give that party the benefit of all reasonable inferences that may be drawn from the evidence. The court must review all of the evidence in the record, not just the evidence favorable to the nonmoving party, Reeves v. Sanderson Plumbing Prods., 530 U.S. 133, 149-51 (2000).

D. DELEGATION OF PERFORMANCE

SCRCP § 36-2-210. Delegation of performance; assignment of rights.

(1) A party may perform his duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

(2) Unless otherwise agreed all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on him by his contract, or impair materially his chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of his entire obligation can be assigned despite agreement otherwise.

(3) Unless the circumstances indicate the contrary a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.

(4) An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as

in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by him to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

(5) **The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his rights against the assignor demand assurances from the assignee** (Section 36-2-609) (Emphasis added).

E. FAIR CREDIT REPORTING ACT

§ 616. Civil liability for willful noncompliance [15 U.S.C. § 1681n] (a) In general. Any person who willfully fails to comply with any requirement imposed under this title with respect to any consumer is liable to that consumer in an amount equal to the sum of (1) (A) any actual damages sustained by the consumer as a result of the failure or damages of not less than $100 and not more than $1,000; or (B) in the case of liability of a natural person for obtaining a consumer report under false pretenses or knowingly without a permissible purpose, actual damages sustained by the consumer as a result of the failure or $1,000, whichever is greater; (2) such amount of punitive damages as the court may allow; and (3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

§ 617. Civil liability for negligent noncompliance [15 U.S.C. § 1681o] (a) In general. Any person who is negligent in failing to comply with any requirement imposed under this title with respect to any consumer is liable to that consumer in an amount equal to the sum of (1) any actual damages sustained by the consumer as a result of the failure; and (2) in the case of any successful

action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court. (b) Attorney's fees. On a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with an action under this section was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney's fees reasonable in relation to the work expended in responding to the pleading, motion, or other paper. § 618. Jurisdiction of courts; limitation of actions [15 U.S.C. § 1681p] An action to enforce any liability created under this title may be brought in any appropriate United States district court, without regard to the amount in controversy, or in any other court of competent jurisdiction, not later than the earlier of (1) 2 years after the date of discovery by the plaintiff of the violation that is the basis for such liability; or (2) 5 years after the date on which the violation that is the basis for such liability occurs.

§ 618. Jurisdiction of courts; limitation of actions [15 U.S.C. § 1681p] An action to enforce any liability created under this title may be brought in any appropriate United States district court, without regard to the amount in controversy, or in any other court of competent jurisdiction, not later than the earlier of (1) 2 years after the date of discovery by the plaintiff of the violation that is the basis for such liability; or (2) 5 years after the date on which the violation that is the basis for such liability occurs.

FACTS

On October 6, 2023, Appellant purchased a 2020 Ford Edge from A&K Auto Sales, located in Mauldin, South Carolina. The purchase was financed by Atlantic Acceptance Corp. Immediately upon completion of underwriting for this purchase, the account was sold and/or transferred to Agora Data, Inc., who immediately assigned the responsibility of account

management, payment collection, and credit reporting to Westlake Financial Services. On February 20, 2023 Atlantic Acceptance Corp filed for bankruptcy with the Florida Southern Bankruptcy Court. On February 23rd, 2023 Atlantic Acceptance sent out a Notice of Meeting of Creditors. On February 25th, 2023, A&K Auto Sales repossessed the 2020 Ford Edge from the Appellant's home. A&K Auto Sales did not send a Notice of Right to Cure or any other notice to the Appellant preceding the repossession. During the course of the repossession, Appellant broke her foot in two places and sprained her ankle. On February 26th, 2023 Plaintiff notified Westlake Financial that the vehicle had been repossessed. On March 3rd, Appellant filed a Complaint against A&K Auto Sales and Westlake Financial. Appellant submitted multiple disputes to Experian and Credit Karma for submission to Transunion (Appellant's Designation of Matters No. 8). Westlake Financial, despite being directly aware of the bankruptcy of Atlantic Acceptance Corp and the status of Appellant's account as fictitious, continued to report a delinquent tradeline to Appellant's credit reports until June 2023. (See Westlake Financial Second Set of Admissions Page 1). Westlake Financial, accepted payments from Appellant which have not been refunded to date (See Westlake Financial Second Set of Admissions Page 2). Westlake Financial has refused to answer or acknowledge at what point they became aware of the bankruptcy filing of Atlantic Acceptance (See Westlake Financial First Set of Admissions Page 2). Westlake Financial has refused to provide and/or disclose its policies for handling fictitious accounts and consumer credit reporting (See Westlake Financial First Set of Admissions Page 3). The contract Appellant entered into with Atlantic Acceptance was immediately sold and/or assigned to Agora Data Inc. which then immediately assigned the service of that contract to Westlake Financial. Therefore, A&K Auto Sales and Westlake Financial have legally binding contractual obligations

to the Appellant which the Appellant is entitled to specific performance and civil remedy if either Respondent is found to have breached those contracts, violated any of the statutes governing the State of South Carolina, or failed in the performance of any of the terms, which entitles the Appellant to actual and consequential damages. Appellant unequivocally exceeded the standards set forth in SCRCP Rule 8 with the filing of her complaint in the Greenville County Court of Common Pleas and has a right to defend that complaint against A&K Auto Sales and Westlake Financial Services before a jury.

ARGUMENTS

I. BECAUSE RESPONDENT A&K AUTO SALES FILED A MOTION TO QUASH THE SECOND AMENDED COMPLAINT IN ITS ENTIRETY DUE TO VIOLATION OF RULE 15(A), NOT A MOTION TO DISMISS UNDER RULE 12(B)(6), WAS NOT NAMED IN THE SECOND CAUSE OF ACTION, AND HAS CONCEDED THERE IS A TRIABLE MATTER WHERE BREACH OF CONTRACT IS ALLEGED, WHICH ENCOMPASSES BREACH OF GOOD FAITH AND FAIR DEALING, THE TRIAL COURT ERRED WHEN IT RENDERED AN ORDER DISMISSING A&K AUTO SALES FROM THE SECOND CAUSE OF ACTION.

A party, in replying to a preceding pleading, shall affirmatively set forth his defenses to the opposing party's complaint. Rule 8(c), SCRCP. "Every defense, in law or fact, to a cause of action in any pleading… shall be asserted in the responsive pleading thereto...." Rule 12(b), SCRCP. Generally, affirmative defenses to a cause of action in any pleading must be asserted in a party's responsive pleading. Strickland v. Strickland, 375 S.C. 76, 85, 650 S.E.2d 465, 470 (2007)

Counsel for A&K Auto Sales did not file a Motion to Dismiss under rule 12(b)(6) in response to Appellant's Second Amended Complaint, nor did A&K Auto Sales assert an affirmative defense of Appellant's Second Cause of Action in its Motion to Quash Plaintiff's Second Amended

Complaint. In addition, Appellant did not name A&K Auto Sales in the Second Cause of Action; however, A&K Auto Sales is named in the First Cause of Action for Breach of Contract, which encompasses Breach of Good Faith and Fair Dealing. Since counsel for A&K Auto Sales did not assert an affirmative defense of Appellant's Second Cause of Action in its Motion to Quash, the right to assert one was waived. By allowing the Appellant to proceed against A&K Auto Sales with the First Cause of Action for Breach of Contract, the trial court has contradicted itself by dismissing A&K Auto Sales from Breach of Good Faith and Fair Dealing if in fact one automatically precipitates the other and they are taken together as one and the same. Respectfully, as a matter of accuracy of the judicial record, it is Appellant's argument that the appropriate Order of the trial court in response to Respondent A&K Auto Sales' Motion to Quash Plaintiff's Second Amended Complaint under Rule 15(a) is an unconditional Dismissal of Respondent's Motion to Quash Plaintiff's Second Amended Complaint, without reference to the Second Cause of Action.

II. BECAUSE RESPONDENT WESTLAKE FINANCIAL IS REPRESENTED BY COUNSEL SHANON N. PEAKE, NOT COUNSEL ROBERT C. CHILDS, AND DID NOT ARGUE ITS OWN DEFENSES IN REGARD TO THE SECOND CAUSE OF ACTION, THE TRIAL COURT ERRED IN ALLOWING THE COUNSEL FOR A&K AUTO SALES TO REPRESENT WESTLAKE FINANCIAL SERVICES IN DEFENSE OF THE SECOND CAUSE OF ACTION AND TO BENEFIT FROM THE SAME.

Robert C. Childs, III has submitted a Notice of Appearance for Respondent A&K Auto Sales, LLC. Shanon N. Peak has submitted a Notice of Appearance for Respondent Westlake Financial. However, during the Motion Hearing on September 14, 2023 before the Honorable Judge G.D. Morgan, Jr., Counsel for A&K Auto Sales represented Shanon N. Peake and Westlake Financial in its defense against Appellant's Second Cause of Action for Breach of Good Faith and Fair Dealing. **(See September 15, 2023 Motion Hearing Page 6, Lines 10-11; Page 13, Lines 1-**

5); Shanon N. Peake did not defend this cause of action on her own accord on behalf of Respondent Westlake Financial, but did reap the benefits of that defense provided by Robert C. Childs for a Cause of Action in which his client was neither directly accused nor named. Respectfully, the Honorable Judge G.D. Morgan, Jr. should not have allowed counsel for A&K Auto Sales to defend Westlake Financial, and should have required Shanon N. Peake to make her own argument in defense of her client Westlake Financial.

III. BECAUSE WESTLAKE FINANCIAL, BY ITS OWN ADMISSION, IS AN ASSIGNEE BY DELEGATION OF AGORA DATA INC. OF RESPONSIBILITIES PERTAINING TO ITS CONTRACT WITH APPELLANT DESIMBER ROSE WATTLETON, AND THEREFORE HAS LEGALLY BINDING AND ENFORCEABLE CONTRACTUAL OBLIGATIONS TO APPELLANT DESIMBER ROSE WATTLETON, THE TRIAL COURT ERRED IN DISMISSING WESTLAKE FINANCIAL FROM THE BREACH OF CONTRACT CAUSE OF ACTION, THEN SUBSEQUENTLY FROM BREACH OF GOOD FAITH AND FAIR DEALING, AND FURTHERMORE MISADVISING APPELLANT OF THE LAW AND HER RIGHTS PERTAINING TO THE SAME.

Rule 8(b), SCRCP, requires that a defendant provide a statement in short and plain terms [of] the facts constituting his defenses to each cause of action asserted. The Rule further mandates that a pleading contain ultimate facts rather than evidentiary facts to state a cause of action. Watts v. Metro Sec. Agency, 346 S.C. 235, 240, 550 S.E.2d 869, 871 (Ct. App. 2001). Appellant Desimber Rose Wattleton complied with Rule 8(b) when she filed a complaint against the Respondents providing statements in "short and plain terms of the facts constituting her defenses to each cause of action asserted." Specifically, Appellant alleges that Westlake Financial breached the covenant of "Good Faith and Fair Dealing" implied in the contract when Westlake Financial received payments from the Appellant for a fictitious loan and account. Furthermore, Westlake Financial reported that fictitious account with a derogatory tradeline to the Appellant's Credit Reports with Experian,

Transunion, and Equifax. Even after Westlake Financial and Agora Data Inc., the company that assigned the account to Westlake Financial, were informed that the original creditor filed bankruptcy in February 2023, and in fact did not submit payment as agreed to the dealership on behalf of Appellant Desimber Rose, Westlake Financial did not refund the payments made by the Appellant and continued to report a delinquent tradeline to Appellant's credit reports through June 2023, slandering Appellant's credit and thereby preventing Appellant from being able to obtain a new vehicle through auto financing with any lender, as her credit reports were showing she was currently delinquent on an auto loan 90 days after Westlake Financial became aware that the account was fictitious.

At the motion hearing on June 30, 2023, Appellant was ordered to clarify her causes of action against Westlake Financial, but misunderstood the directive to merge the Cause of Action for Breach of Contract with the Cause of Action for Breach of Good Faith and Fair Dealing. When Appellant filed the Second Amended Complaint, she instead separated the allegations against A&K Auto Sales to Breach of Contract and Westlake Financial to Breach of Good Faith and Fair Dealing since Westlake Financial was assigned its contractual responsibility by another entity, Agora Data, Inc. While this may have been a formatting error by the Appellant, it still did not fail to meet the standards set forth in Rule 8(b) to state the claims against Westlake Financial in a clear and succinct manner, complete with multiple exhibits to support those claims. In addition, Shanon N. Peake admitted during that hearing that she did not know where Appellant's payments were going or what happened to them **(See June 30, 2023 Motion Hearing Page 23, Lines 1-11)**, which only further verified the allegations of the Appellant. Even though it was evident by Respondent's own admission that funds were received for a debt that did not exist, that those funds were unaccounted for, and that

those payments had not been refunded, Respondent Westlake Financial maintained that it had no contractual obligation to the Appellant, which the Trial Court accepted at face value in spite of all the evidence submitted to the contrary. In addition, the court advised Appellant that she did not have a claim against Westlake Financial if Westlake did not have a contract with the Appellant. However, the law actually does provide legal recourse for the Appellant against Westlake Financial as an assignee of the contract with Agora Data, Inc. outlined in SCRCP § 36-2-210, which states in pertinent part – "An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and **its acceptance by the assignee constitutes a promise by him to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.** The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his rights against the assignor demand assurances from the assignee (Section 28:2-609)." (Emphasis added).

While the Appellant did not expect unreasonably lenient treatment as a pro se Plaintiff, Appellant does have the right to expect the court not to place an unduly burdensome requirement upon the Plaintiff to be prepared without notice to prove the merit of her entire case at a Motion 12(b)(6) hearing when the Respondents had no motion before the Court for Summary Judgment. Furthermore, South Carolina law has given room in SCRCP 15(a) for situations such as this in the interest of justice, where a Plaintiff may have a legitimate cause of action but has failed to cite the specific law pertaining to such cause, specifically stating in pertinent part that "leave shall be freely given when justice requires and amendment does not prejudice any other party." Appellant maintains

it would not have prejudiced either party to amend the complaint by removing the heading and Second Cause of Action for “Breach of Good Faith and Fair Dealing” and including Westlake Financial in the First Cause of Action for Breach of Contract, as no new evidence or information would have been presented or submitted and it would have literally been a simple formatting revision.

Appellant was unfairly disadvantaged by the Trial Court when the Respondent’s claims as to the merits of the case were taken at face value as truth by the presiding judge and the Appellant was unfairly held to a standard of technical perfection in contrary to the spirit of the law as echoed by the statement of the Supreme Court of the United States in 1962, “It is too late in the day and entirely contrary to the spirit of the ... Rules of Civil Procedure for decisions on the merits to be avoided on the basis of such mere technicalities.” The ... Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." *Foman*, 371 U.S. at 181–82, 83 S.Ct. at 230, 9 L.Ed.2d at 225 (quoting *Conley v. Gibson* , 355 U.S. 41, 48, 78 S.Ct. 99, 103, 2 L.Ed.2d 80, 86 (1957); 3 Cyclopedia of Federal Procedure § 8.2 (3d ed., rev. 2017) ("The spirit of the Rules is to settle controversies upon their merits rather than to dismiss actions on technical grounds, to permit amendments liberally, and to avoid, if possible, depriving a litigant of a chance to bring a case to trial.").

As it pertains to the Appellant’s consent to dismiss the Second Cause of Action, this decision was made after receiving what the Appellant believes was erroneous information from the trial court in that the presiding judge agreed with Respondent Westlake Financial that there was no contractual obligation and advised Appellant of the same on the false premise that since there was no direct contract between Westlake Financial and the Appellant, that there existed no contractual

responsibility or liability on the part of Westlake Financial to the Appellant even though Westlake Financial collected payments from the Appellant and reported erroneous information to Appellant's credit reports. **(See September 15, 2023 Motion Hearing Pages 9-12)**; However, this is not true, as the Appellant has a right to pursue action against Westlake Financial as an assignee of Agora Data Inc. with a duty of performance pertaining to the Appellant according to S.C. Code Ann. § 36-2-210.

Beyond the damage done to Appellant's credit by Westlake Financial; if Appellant is able to prove through the discovery process that Westlake Financial was actually informed of the bankruptcy prior to the repossession of the vehicle, and thereby informed that the account being serviced was fictitious and void, then subsequently failed to unwind the account and notify Appellant of the same, which resulted in the sequence of events leading up to the filing of this lawsuit, up to and including the injury sustained by the Appellant, "The general rule is that for a breach of contract the defendant is liable for whatever damages follow as a natural consequence and a proximate result of such breach." Id. "The purpose of an award of damages for breach of contract is to put the plaintiff in as good a position as he would have been in if the contract had been performed." Minter v. GOCT, Inc., 322 S.C. 525, 528, 473 S.E.2d 67, 70 (Ct. App. 1996). "The proper measure of compensation is the loss actually suffered by the plaintiff as a result of the breach."

Aside from a contract assignment, which includes a promise of performance, there is no other instrument that enabled Westlake Financial to collect money from the Appellant and report derogatory information to her credit reports. In addition to this, Appellant submitted exhibits with her complaint that show she was informed by Westlake Financial that they were managing her account and not once had the Appellant received any contract, documentation, notice of any kind, at any time, from Agora Data, Inc. Appellant had never been contacted by Agora Data Inc., and

Westlake Financial is the only entity that has been in contact with the Appellant by phone, email, and U.S. Mail since the purchase of the vehicle up to the present. Furthermore, Appellant only recently became aware of the existence of Agora Data, Inc. and its relation to her purchase of the vehicle and Westlake Financial during discovery.

The theory proposed by Westlake Financial is that despite having been assigned specific contractual performance pertaining to the Appellant, having been the only entity in contact with the Appellant following the purchase of the vehicle, having collected payments from the Appellant, and having reported negatively to the Appellant's credit reports, there never existed any contract that would either allow them to do that so they should not be held responsible, nor was there any contract that would allow the Appellant to seek remedy. This theory is absurd and blatantly false, yet it was accepted by the Trial Court and the Appellant was misadvised of the same. Therefore, the consent to dismiss the Second Cause of Action against Respondent Westlake Financial should be set aside, the Appellant should be allowed to proceed with her complaint against Westlake Financial for Breach of Contract, the just application of the law pertaining to the assignment of debt and account management services and contractual performance should be upheld, and the validity of Appellant's claims and penalty for any proven violations thereof should be subject to the determination of a jury.

IV. BECAUSE THE APPELLANT'S COMPLAINT WAS FILED IN COMPLIANCE WITH SCRCP RULE 8, INCLUDING CLEAR AND SUCCINCT CAUSES OF ACTION INCLUDING EVIDENCE OF THE SAME, BECAUSE WESTLAKE DID NOT FILE A MOTION FOR SUMMARY JUDGMENT, AND BECAUSE WESTLAKE FINANCIAL FAILED TO MEET THE STANDARD OF A DISMISSAL ON THE PREMISE OF RULE 12(B)(6), THE TRIAL COURT ERRED IN ISSUING AN ORDER OF DISMISSAL OF APPELLANT'S COMPLAINT AGAINST WESTLAKE FINANCIAL.

The purpose of a motion under Rule 12(b)(6) is "to test the formal sufficiency of the statement of the claim for relief; the motion is not a procedure for resolving a contest between the

parties about the facts or the substantive merits of the plaintiff's case." 5B Wright & Miller § 1356. **"[I]mportantly, [a Rule 12(b)(6) motion] does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses."** Edwards v. City of Goldsboro, 178 F.3d 231, 243 (4th Cir. 1999) (Emphasis Added). "Accordingly, a Rule 12(b)(6) motion should only be granted if, after accepting all well-pleaded allegations in the plaintiff's complaint as true and drawing all reasonable factual inferences from those facts in the plaintiff's favor, it appears certain that the plaintiff cannot prove any set of facts in support of his claim entitling him to relief." Id.; Baird v. Charleston Cty., 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999).

Appellant has filed a Complaint including statements in short and plain terms as required by SCRCP 8, alleging actions by the Respondents that resulted in both financial and physical damages being sustained by the Appellant. As it pertains to Fourth Cause of Action for violation of the Fair Credit Reporting Act by Respondent Westlake Financial, Appellant is not required to prove the entire case with the filing of her initial pleading, nor was she required to do so at a hearing for a 12(b)(6) Motion to Dismiss. Furthermore, the Order of Dismissal drafted by counsel for Westlake set out an entire defense on the merits as if this was a Motion for Summary Judgment. In fact, the Honorable G.D. Morgan effectively converted Respondent Westlake Financial's 12(b)(6) Motion to Dismiss to a Motion for Summary Judgment when he accepted the argument of Westlake Financial at face value, without regard to the evidence, that it had no contractual obligations to the Appellant, and further accepted that there were no claims for relief that Appellant could make under the Fair Credit Reporting Act, when in fact Respondent Westlake Financial literally outlined the claim for which the Appellant could seek remedy under the FCRA in the Order itself, where it states on Page 5, Second Paragraph of the Order, "The FCRA explicitly bars private suits for violations of § 1681s–

2(a), **but consumers can still bring private suits for violations of § 1681s-2(b)." Id. at 149.** Therefore, there is no civil liability for alleged violations of § 1681s-2(a). **A private cause of action only exists under the FCRA pursuant to 15 U.S.C. § 1681s-2(b).**" (Emphasis Added) Clearly, there does in fact exist a claim for relief that the Appellant is legally entitled to bring against Respondent Westlake Financial under the FCRA, specifically Section 1681s-2(b). Furthermore, the FCRA outlines specific remedies for civil liability in **15 U.S.C. § 1681n, 16810, and 1681p** to which Appellant would be entitled should she prevail.

Under the FCRA pursuant to 15 U.S.C. § 1681s-2(b), Appellant has a right to seek remedy if a debt furnisher fails to "investigate after receiving notice of a dispute regarding the accuracy of information," with this responsibility not being "triggered until it receives notification of a dispute from a consumer reporting agency." In order to justify nullifying Appellant's right to bring this claim against Westlake Financial, the Order states on Page 5, 2nd Paragraph, "Therefore, to state a claim under the FCRA, Plaintiff must allege that (1) she disputed specific information on her credit report with a consumer reporting agency, (2) the consumer reporting agency notified Westlake about the dispute, and (3) Westlake failed to reasonably investigate the dispute." However, the Appellant is not obligated to make those specific allegations in her pleading. It is not required by Rule 8 that the Appellant outline every step and itemize how the Respondent violated the FCRA. Appellant provided "a statement in short and plain terms of the facts constituting her defenses" as required, and because there exists a cause of action under the FCRA by which Appellant can bring a claim, specifically Section 1681s-2(b) which directly pertains to the responsibilities of a debt furnisher to investigate and report accurately, this constitutes a "Plausible" claim, which is the standard Westlake Financial should have had to overcome with a Motion 12(b)6) Dismissal.

In addition to giving a clear allegation under the appropriate law, notwithstanding Westlake's erroneous claim that Appellant was obligated to itemize every single step constituting the allegation in the pleading, Appellant also provided multiple exhibits regarding the negative impact of the delinquent tradelines reported to her credit reports for 90 days after Westlake Financial was informed that the original finance company filed Bankruptcy and defaulted on the debt, therefore nullifying the account in its entirety. The Appellant can only prove that the tradelines were disputed with the credit bureaus via Experian and Credit Karma, as Appellant has had an Identity Theft and Credit Reporting monitor on her credit reports through Experian and Credit Karma since 2020, and has disputed every negative tradeline consistently as Appellant has been actively and intentionally working on her credit since she endured identity theft and was working to purchase a home **(See Designation of Matter No. 8)**.

Not only is not required, but it is also impossible for Appellant to prove that those disputes were submitted to Westlake Financial by the consumer reporting agencies without going through the discovery process. At this stage, Appellant can only prove that the tradelines were disputed and that they were not deleted until 90 days later. However, Westlake Financial should not have needed any sort of notice from any entity because Westlake has verified direct information from Agora Data Inc. and the Southern Bankruptcy Court of Florida that the finance company filed for bankruptcy in February 2023, but failed to remove the negative tradelines until June 2023, and has admitted to the same in discovery **(See Westlake Financial Second Set of Admissions Page 1).** There is nothing in the FCRA or any other law that places the burden upon the Appellant to prove that Westlake Financial received her dispute directly from any consumer reporting agency, nor can she prove that "Westlake failed to reasonably investigate the dispute" without going through the subpoena and

discovery process.

The law is clear where a Directed Verdict is being requested or applied, in this case a Directed Verdict on the merits of Appellant's complaint were applied by the Honorable Judge G.D. Morgan, Jr. when he converted Respondent Westlake Financial's 12(b)6) Motion to a Summary Judgment by accepting at face value each and every defense of Westlake as truth and determining that Appellant's claims against Westlake were meritless. Respectfully, there were multiple inferences that could be drawn from the Motion hearing and even moreso from the evidence and discovery; Therefore, this case should have been allowed to proceed to a jury trial. Whether being scrutinized under the lens of a circuit court or an appeals court, the law concerning this situation is settled, that "In deciding a motion for directed verdict, the evidence and all reasonable inferences must be viewed in the light most favorable to the nonmoving party." Minter v. GOCT, Inc., 322 S.C. 525, 527, 473 S.E.2d 67, 69 (Ct. App. 1996). "If more than one inference can be drawn from the evidence, the case must be submitted to the jury." Id. Additionally, "When considering directed verdict motions, neither the trial court nor the appellate court has authority to decide credibility issues or to resolve conflicts in the testimony or evidence." Harvey v. Strickland, 350 S.C. 303, 308, 566 S.E.2d 529, 532 (2002).

The fact that the Order itself states the section of the FCRA under which Appellant can bring a claim against Westlake Financial, contradicts a dismissal on the grounds of Rule 12(b)(6), for the simple fact that Appellant did in fact bring a claim against the Respondent for "Violation of the Fair Credit Reporting Act." The Order was written entirely by counsel for Westlake Financial in the light most favorable to Westlake Financial, having omitted any facts and information Westlake is well aware directly contradict a 12(b)(6) Motion to Dismiss, and since it has been accepted as fact, by and

through signature and submission by the Honorable G.D. Morgan, Jr., this Order of Dismissal under Rule 12(b)(6) constitutes a Directed Verdict on Summary Judgment. Respectfully, the trial court erred in converting the 12(b)(6) Motion to Dismiss to a Summary Judgment, which should only be done when and "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Id.; Rule 56(c), SCRCP. The Honorable Judge G.D. Morgan, Jr. did not take into consideration any of the evidence, exhibits, or discovery in the decision to Dismiss Appellant's Complaint, instead Respondent Westlake Financials statements made in court were given merit and accepted as fact by Judge Morgan at face value, contrary to the clear and established standard of law and precedent that "When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." Law v. S.C. Dep't of Corr., 368 S.C. 424, 434, 629 S.E.2d 642, 648 (2006).

Respondent Westlake Financial did not file a Motion for Summary Judgment, neither was the Appellant given notice of a Motion for Summary Judgment, otherwise she would have been able to adequately prepare to defend the merit of her entire case. However, even in this situation, Westlake Financial failed to meet the standard of a Summary Judgment which is clear that "In order to withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence. Hancock v. Mid-South Mgmt Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). The Appellant exceeded the minimum requirement to submit a "mere scintilla of evidence", as a thoroughly pled Twenty-Page Complaint was filed in compliance with Rule 8, including an Index of

11 Exhibits totaling over 70 pages.

The Trial Court erred in taking all claims and statements of Respondent Westlake Financial at face value as truth and determining Appellant's claims were meritless without taking into consideration any of the evidence, exhibits, discovery, or even clearly applicable laws, and in the process disregarded the rules of civil procedure by requiring that Appellant defend the entirety of her complaint without notice at a Motion 12(b)(6) hearing where the determination and veracity of disputed facts and merit are not before the Court. Therefore, the Order of Dismissal is arbitrary and capricious and should be set aside. The Appellant should be allowed to proceed with her complaint against Westlake Financial for Breach of Contract, Violation of the Fair Credit Reporting Act, Credit Slander, the just application of the law pertaining to the responsibilities of Contract Assignees to execute and perform their assigned duties, and Debt Furnishers to both report accurate information and adequately investigate and resolve consumer disputes, and the penalties and damages for any violations thereof should be decided by a jury.

CONCLUSION

For all the foregoing reasons, Appellant respectfully requests that this Court reverse both of the Circuit Court's orders pertaining to the Appellant's derivative action.

Respectfully submitted,

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