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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

Diane Goodstein, Circuit Court Judge

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Case No. 2018-CP-18-00729  
Appellate Case No. 2023-001601

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

v.

Jennifer Campney, Respondent,

and

Jennifer Campney, Third-party Plaintiff,

v.

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

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**REPLY BRIEF OF THE PETITIONER**

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**NOW COMES** the petitioner, Portfolio Recovery Associates, LLC as Assignee of Synchrony Bank/HH Gregg (“PRA”), and submits its reply to the arguments raised by the Respondent Jennifer Campney (“Campney”). PRA additionally relies upon the detailed arguments previously set forth in Brief of the Petitioner (the “Initial Brief”) and those it raised in the Court of Appeals.

The overarching question presented to this Court is a simple but significant one—whether the assignee of a national bank is required to send a Notice of Right to Cure when the account it purchased was charged off prior to assignment. PRA urges the Court to answer the question in the negative and reverse the Court of Appeals for the reasons set forth in the Initial Brief. Campney meanwhile asks the Court to disregard four of the five questions certified for review and, with regard to the remaining question (Question III), to cast aside the qualifying language set forth in the definition of creditor (S.C. Code § 37-1-301(13)). PRA will address these points in turn.

## **ARGUMENT**

### **I. EACH OF THE QUESTIONS PRESENTED IS PROPERLY BEFORE THE COURT.**

On October 3, 2024, this Court certified for review each of the five issues presented in the Petition for Writ of Certiorari. That should be the end of the story; however, Campney devotes a significant portion of her present brief to rehashed protestations. (Br. of Resp’t, pp. 14-25). Her protests fail, however, because each of the issues certified is supported by the record on appeal, was raised in the Court of Appeals, was preserved in PRA’s Petition for Rehearing, and was presented to this Court for consideration in the Petition for Writ of Certiorari. The Court of Appeals twice considered motions to strike PRA’s arguments and twice denied such motions, instead allowing supplemental submissions of authority post oral argument. *See* Order Denying Motion to File Reply Brief at 1, Oct. 18, 2021; Order Denying Appellant’s Motion to Strike and

in Limine at 1, Apr. 19, 2023 (“After careful consideration, the Court denies Appellant’s motion and it will consider what, if any, arguments are relevant in this case.”). *See also* Resp’ts Submission of Suppl. Authority, May 12, 2023.

Each of the questions certified was placed before the Court of Appeals either by virtue of Campney’s broad-based statement of the issues in her Final Brief (Final Br. of Appellant, p. 4) or by virtue of the amicus brief (Br. of Amicus Curiae S.C. Department of Consumer Affairs, pp. 12-19) (the “Amicus Brief”). Those issues were appropriately responded to by PRA and again raised by PRA in its Petition for Rehearing and its Petition for Writ of Certiorari. Appropriate citations to the record on appeal were contained within both Petitions and tied to the briefs submitted in the Court of Appeals. *I’on, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 420, 526 S.E.2d 716 (2000). Accordingly, each of PRA’s five questions was preserved for this Court’s consideration and properly accepted by this Court. And, because each involves an issue of statutory interpretation, each is subject to a *de novo* review. *Coastal Fed. Credit Union v. Brown*, 417 S.C. 544, 548, 790 S.E.2d 417 (Ct. App. 2019) (quoting *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 109, 662 S.E.2d 40, 41 (2008)).

**A. PRA, as the Prevailing Party in the Circuit Court, Does Not Bear the Same Preservation Burden as Campney.**

Campney additionally conflates the parties’ preservation obligations, going as far as to suggest PRA, as the prevailing party, was required to raise those issues in the trial court. (Br. of Resp’t, p. 14). Not so. As this Court made clear in *I’on*, the preservation requirements are different for the respondent and the appellant. “[A] respondent – the ‘winner’ in the lower court – may raise on appeal any additional reasons the appellate court should affirm the lower court’s ruling, regardless of whether those reasons have been presented to or ruled on by the lower court.” *Ion*, 338 S.C. at 419. “The appellate court may review *respondent’s* additional reasons and, if

convinced it is proper and fair to do so, rely on them *or any other reason* appearing in the record to affirm the lower court's judgment." *Id.* 338 S.C. at 420 (emphases added). *Ion*, therefore, makes two things clear: first, PRA, as the prevailing party at the trial level, can raise additional sustaining grounds at the appellate level; and second, this Court, in its discretion, can rely on *any* reason appearing in the record as an additional sustaining ground. As stated previously, each of the questions presented was raised in the Court of Appeals and supported by the record on appeal. This Court, therefore, can consider each question presented and, additionally, any other reason appearing in the record to aid in its determination that the Court of Appeals erred in reversing the Circuit Court's finding that no notice of right to cure was required under the facts presented in this case.

**B. Campney Has Not Been Deprived of Her Procedural Due Process Rights.**

Nor has Campney been deprived of her procedural due process rights as she suggests (Br. of Resp't, p. 22). A procedural due process claim requires two elements: (1) the existence of a protected interest; and (2) the deprivation of that interest without due process of law. *See, e.g., Doherty v. City of Chicago*, 75 F.3d 318, 322 (7th Cir. 1996) (citing *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428 (1982)). Campney has failed to identify any property or liberty interest which was denied to her without procedural due process. Moreover, Campney suffered no deprivation of any such interest because the Court of Appeals resolved this issue in Campney's favor. Likewise, Campney has been provided an opportunity, both in her response to the Petition for Writ of Certiorari and in her current Response Brief to fully address the issues presented.

**II. BOTH CAMPNEY AND THE COURT OF APPEALS ERRONEOUSLY CAST ASIDE PORTIONS OF THE DEFINITION OF A CREDITOR SET FORTH IN SECTION 37-1-301.**

**A. Timing Matters.**

Both the Court of Appeals and Campney overlook the timing and impact of the account's

charge off on PRA’s obligations to comply with the right to cure provisions. Simply put, timing matters. Section 37-1-301(13) of the South Carolina Consumer Protection Code (the “SCCPC”) defines a “creditor” as being “the person who grants credit in a consumer credit transaction or, except as otherwise provided, an assignee of a creditor’s right to payment, **but use of the term does not in itself impose on an assignee any obligation of his assignor.**” (emphasis added). South Carolina chose to adopt the Uniform Consumer Credit Code’s (the “Uniform Code”) definition verbatim. The comments to both the SCCPC and the Uniform Code make clear the role timing of the assignment plays—assignees are only responsible for obligations which arise “**after** their assignment unless the SCCPC provides otherwise . . . .” Kathleen Goodpasture Smith, *The South Carolina Consumer Protection Code: Text with Comments*, p. 65, cmt. subsection 13 (4th ed. 2001) (emphasis added). The Uniform Code commentary explains further: “[t]hough assignees take all rights conferred by this Act on creditors, they are liable for the obligations imposed on creditors by this Act only with respect to occurrences after assignment unless the Act provides otherwise.” Uniform Consumer Credit Code, cmt. to § 1.301(18) (Unif. L. Comm’n 1974).

The importance of timing also is made clear in Section 37-5-110 of the SCCPC, which addresses *when* a notice of right to cure must be sent. A notice of right to cure must be sent *before* the creditor accelerates the debt and *before* the creditor enforces a security interest. A creditor “may neither **accelerate** maturity of the unpaid balance of the obligation, **nor take possession of or otherwise enforce a security interest** in goods that are collateral until twenty days **after** a notice of the consumer’s right to cure . . . is given.” S.C. Code Ann. § 37-5-111(1) (emphases added). In other words, the notice of right to cure serves as a condition precedent for either of those two events to occur.<sup>1</sup> And this makes sense. The purpose of the right to cure provisions is to provide

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<sup>1</sup> This, of course, assumes there are no preemption concerns.

the consumer an opportunity to cure his default and restore his rights under the agreement as though the defaults had not occurred. *Id.* Accordingly, the SCCPC makes two things clear: (a) an assignee only assumes obligations which arise after the assignment; and (b) an assignee may neither accelerate the debt nor enforce a security interest without sending a notice of right to cure where such obligation exists.

Applying that analysis to the hypothetical presented by Campney dispels any notion that giving full meaning to the definition of creditor renders Section 37-5-110 “absolutely meaningless.” (Br. of Resp’t, p. 11). To the contrary, application of the full definition imposes the same obligation on the assignee to provide a notice of right to cure as the original creditor. Why? Because the obligation to do so arises *after* the assignment. Under the Respondent’s hypothetical, “[a] consumer purchases a car from a dealership and gets approved for financing while at the dealership. The contract is immediately assigned to the financing company.” (Br. of Resp’t, p. 11). At that point, the SCCPC’s definition of creditor makes sense—the assignee/financing company steps into the shoes of the creditor as to any occurrences after assignment. Therefore, when the consumer subsequently defaults, an occurrence *after* assignment, the financing company must send a notice of right to cure as a condition precedent to its acceleration of the debt or repossession of the vehicle.<sup>2</sup> By contrast, PRA was not required to send a notice of right cure because: (a) the obligation to do so, if any existed, arose prior to the assignment; and (b) PRA neither accelerated the debt nor sought to enforce a security interest.

**B. Campney’s Reliance on *Behena* is Misplaced.**

Respondent’s reliance on the rationale set forth by the Wisconsin courts in *Behena v. Jefferson Capital Systems, L.L.C.*, 363 F. Supp. 3d 914 (W.D. Wis. 2019) is misplaced. Wisconsin

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<sup>2</sup> This, of course, assumes there are no preemption concerns.

and South Carolina’s versions of the Consumer Credit Code are materially different. While South Carolina’s version of the Consumer Credit Code closely aligns with the Uniform Code, Wisconsin’s does not. This is evidenced in Wisconsin’s treatment of assignees and comes into play in two critical respects.

First, Wisconsin expands the obligations of assignees. Unlike South Carolina, Wisconsin does not limit or qualify the extent to which an assignee is bound to perform the obligations of its assignor. Compare Wis. Stat. § 421.301(25) with S.C. Code Ann. § 37-1-301(13) (“‘Creditor’ means the person who grants credit in a credit transaction or, except as otherwise provided, an assignee of a creditor’s right to payment, *but use of the term does not in itself impose on an assignee any obligation of his assignor.*”) (emphasis added). Wisconsin’s notice of right to cure statute<sup>3</sup> applies to all “merchants.” “Merchant” is defined to include “a seller, lessor, manufacturer, creditor, arranger of credit and *any assignee of or successor to such person.*” Wis. Stat. § 421.301(25) (emphasis added). The absence of the qualifying phrase in Wisconsin’s definition makes clear—in Wisconsin, an assignee’s obligation to provide a notice of right to cure includes occurrences that predate the assignment. Therefore, Wisconsin’s right to cure statute is more universally applicable to assignees.

Second, Wisconsin’s notice of right to cure statute expands when a notice of right to cure is required. Under Wisconsin’s version of the Uniform Code, notice is a condition precedent to filing suit, not just as a precondition to accelerating the debt or repossessing collateral. Compare Wis. Stat. § 425.105(1) (emphasis added) (“A merchant may not accelerate the maturity of a consumer credit transaction, *commence any action* . . . or demand or take possession of collateral or goods”) with S.C. Code Ann. § 37-5-111(1) (a creditor “may neither accelerate maturity of the

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<sup>3</sup> See Wis. Stat. §§ 425.104(1), 425.105(1).

unpaid balance of the obligation, nor take possession of or otherwise enforce a security interest in goods that are collateral until twenty days after a notice of the consumer's right to cure . . . is given.”). Accordingly, an assignee may be required to send a notice of right to cure in Wisconsin as a condition precedent to suit. *But see Lako v. Portfolio Recovery Associates, LLC*, No. 20-cv-355-wmc, 2021 WL 3403632, 2021 U.S. Dist. LEXIS 145776, at \*19 (W.D. Wis. Aug. 4, 2021) (holding that the obligation to send a notice of right to cure was preempted where the original creditor was a national bank). No such language is included in the SCCPC.

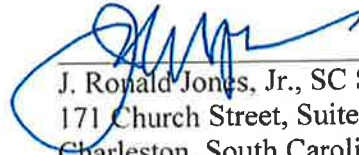
Simply put, the differences in the two statutory schemes reflect a difference in legislative intent. “A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.” *State v. Smith (In re Decker)*, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995) (citation omitted). Unlike Wisconsin, South Carolina placed qualifications on *when* an assignee assumes the obligations of its assignor. That qualifying language—*use of the term does not in itself impose on an assignee any obligation of his assignor*—temporally limits the obligations of assignees to those which arose “*after* their assignment unless the SCCPC provides otherwise . . . .” Kathleen Goodpasture Smith, *The South Carolina Consumer Protection Code: Text with Comments*, p. 65, cmt. subsection 13 (4th ed. 2001) (emphasis added); *see also* Uniform Consumer Credit Code, cmt. to § 1.301(18) (Unif. L. Comm’n 1974). And, South Carolina additionally limited the events which would trigger the requirement to send a right to cure notice to acceleration and repossession. Importantly, a right to cure notice is not a statutory condition precedent to filing suit in South Carolina. Where, as here, any obligation to provide notice arose prior to the assignment, and absent an express provision imputing that obligation to PRA, none existed. For the reasons previously stated in the Initial Brief, PRA was not required to send Campney a notice of right to cure.

**CONCLUSION**

For the reasons set forth herein and in the Initial Brief, Portfolio Recovery Associates, LLC respectfully requests the Court reverse the Court of Appeals' holding and affirm the circuit court's dismissal of Campney's First Counterclaim.



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