THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge

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S.C. SUPREME COURT

Appellate Case No. 2023-001601

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

REPLY TO ACA RETURN TO MOTION FOR SANCTIONS AGAINST ACA INTERNATIONAL

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Respondent Jennifer Campney ("Campney") files this Reply to ACA's Return to her Motion For Sanctions Against ACA International ("ACA") ("Motion") pursuant to Rule 269, SCACR[1]. ACA's Return was filed with this court on May 23, 2025, so Campney's Reply is timely pursuant to Rules 240(f) and 263(a), SCACR.

ACA claims in its Return that it did not violate the appellate court rules when filing its motion for leave to file an amicus brief on November 14, 2023, but Campney disagrees. Regarding the specific arguments raised by ACA in its Return, Campney responds as follows:

1. ACA contends that Rule 242 does not apply to the filing of an amicus brief, since Rule 213 does not mention Rule 242. Campney admits that Rule 213 does not specifically reference Rule 242 but believes that this court should find that Rule 242 still applies to amicus filings, at least to the extent it is applicable. Regarding the timing of the filing of the amicus brief issue, ACA cites the *Amazon Services* case for the proposition that it was proper for the amicus to file its brief before certiorari was granted, since such action was allowed in that case. However, ACA does not allege that the timing issue was actually argued or decided in that case, so the court's inaction on an issue that was not raised in that case does not provide ACA with any authority for its conclusion. Upon doing further legal research, Campney is unaware of any case authority in South Carolina on the issue of when an amicus brief may be filed. However, it appears that the issue is addressed in a treatise on appellate practice in South Carolina. According to Jean Hoefer Toal, et al., Appellate Practice in South Carolina (3rd ed. 2016), at page 370, Rule 213 "applies to any party filing a brief in support of a party's action in an appellate court, for example in support of a petition for writ of certiorari or of a petition for rehearing." However, no authority is cited in this treatise for that proposition. It may be that this court might wish to limit the timing of the filing of an amicus brief, although the rules do not appear to address the issue.

[1] Unless otherwise noted, all rules referenced shall be SCACR rules, and the rule may be referenced by rule number only without appending that designation.

2. ACA does not appear to raise any argument responding to Campney's claim in paragraph 2 of her Return to ACA's amicus motion, where Campney argued that ACA's amicus motion was presumptuous, since it attempted to address issues before the court determined which issues in the case it would allow to be argued in this court, if any. Since ACA does not appear to respond to this argument, Campney believes that the court should interpret Rule 240(e) to find that it is admitted without opposition.

3. ACA does not appear to raise any argument responding to Campney's claim in paragraph 3 of her Return to ACA's amicus motion, where Campney argued that ACA's premature briefing was contrary to the doctrine of judicial economy, since it attempted to brief issues before the court determined which issues in the case it would allow to be argued in this court, if any. Since ACA does not appear to respond to this argument, Campney believes that the court should interpret Rule 240(e) to find that it is admitted without opposition.

4. ACA's Return claims that its amicus brief argument did not go beyond the issues on appeal as presented by the parties, which is required of an amicus under Rule 213, as Campney alleged in paragraph 4 of her Return to ACA's amicus motion. However, Campney disagrees, and this is probably the most obvious reason why ACA has violated the appellate court rules and should be sanctioned under Rule 269 as Campney has requested. Attached for reference as an exhibit to this Reply is a copy of ACA's motion for leave to file an amicus brief, along with the attached proposed brief which was an exhibit to ACA's motion. ACA's proposed brief made the following arguments that went beyond the issues raised by PRA in their petition for certiorari:

    a. PRA argued only for NBA "conflict preemption" of state law, but ACA argued, in addition, for "complete preemption" and "field preemption." In PRA's certiorari petition, Campney can find no appearance of the terms "complete preemption" or "field preemption." Instead, PRA argues for conflict preemption (search for term "conflict" in PRA certiorari petition appearing

on pp. 5 and 9) pursuant to the established *Barnett Bank* standard for conflict preemption (see pp. 7, 8, and 15). However, the ACA argument went beyond conflict preemption to include complete preemption and field preemption.[2] Not only did this go beyond PRA's argument, but ACA's complete preemption[3] and field preemption claims are also frivolous. See SCDCA's filed amicus brief, p. 8, which establishes that only conflict preemption applies under the National Bank Act, not field preemption.[4]

b. ACA's proposed brief argued that the FDCPA preempts the South Carolina NORTC law (pp.20, 26-32). PRA didn't raise an argument under the FDCPA at all in its petition for certiorari, except to mention the trial court's dismissal of Campney's FDCPA action (see p. 3), which was not an issue on appeal and not related to ACA's new FDCPA preemption argument.

c. ACA's proposed brief raises a new issue regarding how the Court of Appeals decision will cost South Carolinians money and access to credit (pp. 32-37). Not only was this issue not raised by PRA in its petition for certiorari, it included citation to evidence not presented either in the trial or appellate court records that would have required extensive research and expert testimony for Campney to attempt to counter it, assuming that she even had the resources to do so or that it would have been appropriate for this new evidence to have been presented by PRA, which Campney believes PRA would not have been allowed to do. ACA should not be

[2] See ACA proposed brief at p. 20, footnote 7.

[3] Complete preemption is actually a federal removal jurisdiction doctrine that allows a wholly state law claim filed in state court to be removed to federal court under extremely limited circumstances. The doctrine is irrelevant in this case, which is not a federal court removal action. Its use in this case is therefore frivolous. To the extent that ACA may be attempting to conflate "complete preemption" with "field preemption," its argument appears to be deceptive and misleading. SCOTUS has only found complete preemption to apply under the NBA under §§ 85 & 86 of the NBA relating to state law usury limits, not § 25b(b) preemption standards. *Beneficial Nat. Bank v. Anderson*, 539 US 1, at 8 & 11 (2003)(complete preemption only as to NBA §§ 85 & 86). *Lontz v. Tharp,* 413 F. 3d 435, 440-41 (4th Cir. 2005)(improper to conflate complete preemption with other ordinary types of preemption). Ordinary preemption includes both field preemption and conflict preemption.

[4] Note that SCDCA cites *Cantero* to say that field preemption doesn't apply under the NBA. *Cantero* states "…Dodd-Frank ruled out field preemption. § 25b(b)(4) (federal banking law "does not occupy the field in any area of State law")." *Cantero v. Bank of America, NA*, 144 S. Ct. 1290, 1297 (2024).

allowed to introduce new evidence that PRA would not have been allowed to raise, and Campney believes that its attempt to do so violated Rule 213.

Rule 269 states that "[w]here an appeal, petition, **motion** or return is frivolous or taken solely for the purposes of delay, **or is not in compliance with these Rules**, the appellate court may upon its own motion or that of a party, after ten (10) days notice, impose upon offending attorneys or parties such sanctions as the circumstances of the case and discouragement of like conduct in the future may require." (emphasis added). The court should find that any of the above conduct of ACA that violates any of the rules of this court is sanctionable under Rule 269, SCACR. Campney therefore believes that this court should require ACA to take responsibility for its improper amicus motion by awarding Campney the relief requested in her motion for sanctions or such other relief as the court finds to be appropriate.

Dated this June 2, 2025.

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