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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court Of Appeals

APPEAL FROM THE COUNTY OF SPARTANBURG

Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No. 2023-CP-42-02216

Appellate Case No. 2024-002016

Founders' Federal Credit Union,

Respondent,

v.

Kyle Anthony Tracy,

Appellant,

REPLY BRIEF OF APPELLANT

Kyle Anthony Tracy (*Appearing Pro Sé*)

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Argument

As discussed herein, the Court should reject Founders' Federal Credit Union's arguments concerning the deficiency balance on the auto loan taken out on November 5, 2021 because the claims Founders' is arguing are erroneous according to the UCC and are making egregious claims that Tracy's arguments are not preserved. Indeed, Tracy did default on the auto loan given by Founders' Credit Federal Union but the steps following the repossession were not in accord

with the Uniform Commercial Code which has been the big point of argument since the appellate filed his Answer with the trial court. Further, Founders' defense fails to acknowledge their own contractual terms and the Uniform Commercial Codes rights granted to the consumer to protect them from unlawful practices. More specifically, the codes of the Uniform Commercial Code being referred to are: UCC § 9-610, UCC § 9-611, UCC § 36-9-614, and UCC § 9-623. The contractual term in reference is in the "Disposition of Collateral".

I. Founders' Initial Brief of Respondent tries but fails to argue that Tracy's arguments are unpreserved but there is evidence showing that the same disputes has been preserved since his Answer was filed in response to the Plaintiff's Verified Complaint…….

Founders' Initial Brief of Respondent fails to prove Tracy's arguments are unpreserved. Stating that the arguments are unpreserved does not show evidence that the claims were not made in the trial court. Before the initial hearing, dated September 13, 2023, Founders' defense never even read Tracy's Answer and when brought up during the hearing was not aware of any arguments made. Not reading the arguments does not hold evidence that the arguments were never made. In the Answer, Tracy "denies the allegations in paragraph 4 (Plaintiff's Verified Complaint, p.1) due to lack of information given to the Defendant in order to redeem the vehicle disregarding the right of redemption of the vehicle.". Therefore, preserving the #1 argument (Brief of Appellant, p. 4) made in the initial brief to the South Carolina Court of Appeals. Founders' defense claims that not only does Tracy fail to make an argument that was preserved at the trial court, but they are also meritless (reference Tracy's Answer, p. 2). Another argument pertaining to the sale being done in a commercially reasonable manner, "The car was repossessed in March and took five (5) months to sell the vehicle disregarding selling the vehicle in a

commercial manner." (Tracy's Answer, p. 2). Founders' defense argues "The adjuster for Traveler's closed the original claim due to the repossession, without notifying Founders'." (Initial Brief of Respondent, p. 3). However, Founders' was well aware of the damages to the vehicle, the insurance claim, and the time and date already scheduled, at the time of repossession, of the appointment with Caliber Collision to have the car repaired about a month after the repossession. A call was made to Traveler's to see if the repair was ever done around the time of the scheduled repair and they did not make any statement pertaining to the claim being closed due to repossession and said the repair was never made. Another argument preserved by Tracy (Tracy's Answer, p. 2), "The Defendant denies the allegations in paragraph 10 (Plaintiff's Verified Complaint, p. 3) due to damages the vehicle incurred while in possession of the Plaintiff, does not reflect the amount being penalized for." After the trial hearing on September, 13, 2023, following the filing for the evidence Plaintiff's Affidavit in Support of Motion for Summary Judgement ("Exhibit D") (Designation of Matter, article #3), the defense then submits paperwork in addition to the already submitted evidence in the Verified Complaint from Carolina Pro Recovery that there were more than just body damages to the vehicle. They stated the following lights appeared on the dashboard "ABS light on, Brake light on, Check Engine light on, Tire light flashing, Traction Control light on" then followed with "It will be assumed by the client, and for all legal purposes, that any damages depicted herein are the result of mistreatment by the borrower. Carolina Pro Recovery LLC accepts no responsibility for the overall condition of this vehicle shown and client agrees to hold Carolina Pro Recovery LLC harmless of any and all claims related to the vehicle's condition." Carolina Pro Recovery LLC has stated they accept no responsibility for the condition of the vehicle, it falls to the client (Founders', who hired them via. third party) thus responsibility falls onto Founders' Federal

Credit Union. Therefore, holding Tracy reliable for any damages to the vehicle past the insurance claim is not in accord with UCC Article 9. Thus, shows merit and preservation of argument #3 in Tracy's Answer.

II. Founders' Initial Brief of Respondent tries but fails to argue that Founders' provided all required notices, including the redemption of vehicle but there is no evidence to support……..

Founders' Initial Brief of Respondent tries but fails to argue that Founders' provided all required notices, including the redemption of vehicle but has not provided sufficient evidence to support this claim. Indeed, due to Tracy defaulting on the auto loan from Founders', Founders' had all legal right to collect on the collateral attached to the loan (per UCC § 9-610(a)). However, according to UCC § 9-611(b), it states "Except as otherwise provided in subsection (d), a secured party that disposes of collateral under Section 9-610 shall send to the persons specified in subsection (c) a reasonably authenticated notification of disposition.". The exception to this rule is only applicable IF, "Subsection (b) does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market."(UCC § 9-611(d)). This rule is not applicable because according to Founders' defense, the car sold was at the anticipated value and within a commercially reasonable time limit. The only notice of sale from Founders', which was not even submitted as evidence from their defense, stated that the sale of the vehicle would occur in either private or public auction 10 days after the repossession. The car was not sold within 10 days, in fact it was sold approximately 175 days after the repossession. According to UCC § 36-9-612(b), "In a transaction other than a consumer transaction, a notification of disposition sent after default and ten days or more before the earliest time of disposition set forth in the notification is sent within a reasonable time before

the disposition." Upon the time of disposition of the vehicle, Tracy was not notified of said disposition, the type of sale, time, nor date of the sale. Therefore, making this sale of the vehicle a violation of the Uniform Commercial Code. See Singleton v. Stokes Motors, Inc., 359 S.C. 450, 595 S.E.2d 461, 466 (2004). Founders' defense also argues, "Tracy had over five (5) months to redeem the collateral, which is more than sufficient time to redeem a vehicle" (per Initial Response of Defendant, p. 11). However, a Founders' associate who was in charge of the repossession of the vehicle, stated that Tracy only had two (2) weeks from the time of repossession to come up with the funds to redeem the vehicle, after that they would no longer honor that offer. Therefore, making that claim inaccurate or misleading, furthering Tracy's claim of a UCC violation. In terms of the contract, in Founders' contract regarding the auto loan:

"Disposition of Collateral: If a default under the Plan occurs, [Founders] may repossess and sell the [BMW] in a lawful manner…. *If [Founders] decide[s] to sell the [BMW] at a public sale, private sale, or otherwise dispose of the [BMW], [Founders] will provide reasonable notice if required by law and will otherwise comply with applicable state law.* If [Founders] sell[s] or otherwise dispose[s] of the [BMW] [Founders] may collect from [Tracy] reasonable expenses incurred in the retaking, holding, and preparing the [BMW] for and arranging the sale of the [BMW], as well as any deficiency balance as allowed under applicable law. [Founders] may also collect reasonable attorney's fees and legal expenses permitted by applicable law, incurred in connection with disposition of the [BMW]"
UCC § 9-611(b) is the applicable law in this case.

III. Founders' Initial Brief of Respondent tries but fails to argue that the trial court properly granted Summary Judgement because it fails to acknowledge the court's initial declination of the Summary Judgement……

Founders' Initial Brief of Respondent fails at their argument that the trial court properly granted Summary Judgement because it simply fails to acknowledge the court's initial declination of the first Summary Judgement after the hearing on September, 13 2023. After that hearing, the Honorable J. Derham Cole, ruled in the favor of Mr. Tracy because:

> "It appears from the pleadings that there does exist issues of fact which, if decided in favor of the defendant, would establish at the least a reduction in the amount of recovery sought by the plaintiff. As such the plaintiff is not entitled to judgment based upon the pleadings.".

Since this time, Founders' and their defense has failed at making any attempt in discussing a possible resolution. Mr. Tracy only received one phone call from Mr. Petkoff (Founders' defense representative) to skip an update hearing which Mr. Tracy agreed due to being out of town and unaware a meeting was even set with the court. Founders' has not attempted to make a resolution outside of motion for Summary Judgement which is why it should be declined once again for this Summary Judgement.

CONCLUSION

For the reasons stated herein and those presented in Mr. Tracy's appellant reply, the court should reverse the Summary Judgement granted to Founders' Federal Credit Union.

Respectfully submitted,

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November 5, 2025

Spartanburg, SC

Kylee Tracy

STATE OF SOUTH CAROLINA

Appellate Case No. 2024-002016

COUNTY OF SPARTANBURG

Founders Federal Credit Union,
Respondent,

Vs.

Kyle Anthony Tracy,
Appellant,

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I, Kyle Anthony Tracy, do hereby certify that a copy of the revised version of the document titled "**REPLY BRIEF OF APPELLANT**" has been served upon the following via email to the following listed below, addressed to following as shown below this 5th day of November 2025.

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