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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Honorable Thomas W. McGee, III

Case No. 2016-CP-40-02859

South Carolina Department of Consumer Affairs,Respondent,

v.

Cash Central of South Carolina, LLC,Appellant

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Did the circuit court err in finding that this statutory action brought by the Department of Consumer Affairs (“Department”) to recover alleged excess charges under the Consumer Protection Code (“Code”) is subject to the general three-year statute of limitations for contract actions found in S.C. Code Ann. § 15-3-530(1) rather than the one-year limitations period provided in S.C. Code Ann. § 37-5-202?

2. Is there a genuine question of fact that the voluntary payment doctrine may bar the Department’s claims where the unrefuted evidence demonstrates that the loan customers of Cash Central of South Carolina, LLC (“Cash Central”) received full disclosure of all material loan terms and received prominent disclosure of the exact statement required by S.C. Code Ann. § 37-3-305(3) and found on the maximum rate schedule issued by the Department?

STATEMENT OF THE CASE

On May 16, 2016, the Department filed this action against Cash Central on behalf of Cash Central's loan customers during the relevant time period. (R. at 35). The Department's claims are based solely upon Cash Central's inadvertent failure to file a single form with the Department and failure to post the Department's one-page maximum rate schedule. The Department seeks a refund of statutorily defined "excess charges," which in this case is all loan interest paid by any borrower over 18% per annum. (R. at 46-47). The Department's causes of action were brought in a representative capacity pursuant to S.C. Code Ann. § 37-6-113(A) on behalf of all of Cash Central's customers during the relevant time period. The Department does not allege that any Cash Central borrower was misled or deceived about their loan terms or that Cash Central engaged in any unfair or deceptive practices.

Cash Central answered the Department's Complaint on July 20, 2016, and filed amended answers on August 18, 2016, June 2, 2017, and September 11, 2024, each time adding additional affirmative defenses. (Answers, R. at 153-59, ____).

A trial was conducted on September 6-7, 2017, before Judge Robert Hood. At the time, Cash Central was prepared to submit evidence on the last six of its eight affirmative defenses including:

3. Bona Fide Error or Excusable Neglect, S.C. Code Ann. § 37-3-201(6)
4. Good Faith Error, S.C. Code Ann. § 37-5-202(7)
5. Substantial Compliance, *Davis v. NationsCredit Fin. Serv. Corp.*, 326 S.C. 83, 484 S.E.2d 471 (1997).
6. Set-off
7. Right to Recoupment and to Repayment
8. Statute of Limitations

The third, fourth, and fifth affirmative defenses (collectively, "good faith error defenses") if proved, would have precluded any liability on the Department's first and second causes of action

for failure to file and post the Department's required form. Cash Central's other affirmative defenses, statute of limitations, recoupment and set-off, if proved, apply to the Department's representative claims on behalf of some, but not all, of Cash Central's customers.

The first two days of trial were devoted to the Department's case in chief, and then Cash Central's testimony and documentary evidence regarding Cash Central's good faith error defenses.

At the end of these two days of trial, Judge Hood stated:

THE COURT: All right. Here's what I'm going to do. We've been going now for a few days and it's late. I'm going to take this matter under advisement. I want to read the stuff that's been presented to the Court; refresh myself about the information that I've taken in.

(Trial Transcript at 518, R. at ____). Before the parties left the courtroom, the following exchange between Judge Hood and Defense Counsel occurred:

MR. BECKER: Your Honor, could I -- one last thing?

THE COURT: Yes, sir.

MR. BECKER: I just wanted to confirm: We had -- we had asked that we bifurcate the issue of liability versus remedy. I do -- there are statute of limitations issues that have yet to be addressed by the Court. . . .

THE COURT: --- depending on -- on the information that I hope to get out in the next week or so, if the parties decide we need further hearings or testimony on that issue or affidavits or however that may be, that done. I -- I -- I'm not going to be, you know -- I'm not going to preclude you from presenting that information or making that. But let me -- I want to wrap my head around where I really am on the issue. And then, I think that'll help us all with narrowing down exactly where we are.

MR. BECKER: All right. Thank you, Your Honor.

(Trial Transcript at 520, R. at ____).

On September 28, 2017, Judge Hood issued an order ("2017 Order") granting judgment to Cash Central on each of its good faith error affirmative defenses and ordering Cash Central to pay

a civil penalty of \$15,000 to the Department.¹ (R. at 5). Following the denial of a motion to alter or amend, the Department filed a notice of appeal on November 28, 2017. (Notice of Appeal, ____). The Department did not request further proceedings before the trial court on any other claims, defenses, or issues prior to filing its notice of appeal.

The sole issues in *Cash Central I* pertained to the good faith error defenses. (Briefs, R. at ____). On September 1, 2021, the Court of Appeals reversed, holding that the good faith error defenses were not applicable on the facts of this case. *S.C. Dep't of Consumer Affs. v. Cash Cent. of S.C. LLC*, 435 S.C. 192, 865 S.E.2d 789 (Ct. App. 2021). Following the denial of a petition for a writ of certiorari filed by Cash Central, this case was remitted to the circuit court for further proceedings on July 5, 2023. (Remittitur, R. at ____).

On January 9, 2024, Cash Central filed a motion for leave to file a third amended answer, which would add three additional affirmative defenses, two stemming from bankruptcy and the voluntary payment doctrine. (Motion, R. at ____). The motion for leave was granted by Judge Daniel Coble on September 10, 2024. (Order, R. at ____). In that order, Judge Coble found that Cash Central's affirmative defenses, other than the good faith error defenses that were the subject of the earlier appeal, remained to be decided. As found by Judge Coble,

The appellate ruling in this case, like Judge Hood's order, addresses only Cash Central's third, fourth, and fifth "good faith error" affirmative defenses. Cash Central has not yet presented its [remaining] affirmative defenses to the trial court, and the viability of those defenses must be resolved in further court proceedings that will determine whether a particular customer is entitled to a refund of interest, or not, and if so, how much. . . . All that was decided on appeal is that Cash Central's three good faith error defenses – the bona fide error defense, substantial compliance defense, and the excusable neglect defense – shall not apply in this case.

¹ Cash Central promptly paid the civil penalty to the Department.

(Order, pp. 7–8 (emphasis in original), R. at ____). Cash Central filed its Third Amended Answer on September 11, 2024. (Answer, R. at ____).

On January 31, 2025, the Department filed a motion for summary judgment regarding four of the remaining affirmative defenses pled by Cash Central: statute of limitations, voluntary payment doctrine, res judicata related to consumer bankruptcies, and discharge in consumer bankruptcies. (Motion, R. at ____). Cash Central submitted a memorandum in opposition supported by exhibits on February 28, 2025. (Memo, R. at ____). After a hearing, the circuit court granted the Department’s motion on June 25, 2025, as to all of the defenses. (Order, R. at ____). Cash Central filed a timely motion to alter or amend on Monday, July 7, 2025. (Motion, R. at ____). In its motion, Cash Central clarified the procedural history and claims in this matter and argued that the circuit court failed to consider S.C. Code Ann. § 37-5-202 as a whole. Cash Central further argued that the circuit court failed to consider the implications of S.C. Code Ann. § 37-6-113, which allows the Department to proceed as a representative plaintiff but preserves any defense a lender may have had against an individual borrower, which would include the Code’s statute of limitations. The circuit court denied Cash Central’s motion to alter or amend on July 24, 2025. (Order, R. at ____). This appeal followed.

FACTS

I. The Parties.

Cash Central is a web-based lender providing short-term and medium-term loans ranging from \$750 to \$5,000. (R. at 9 ¶ 1; 629; 647). Cash Central focuses on meeting customers’ immediate, temporary financial needs, while helping them build good credit for the future. (R. at 439:9-442:13).

The Department is a government agency created by S.C. Code Ann. § 37-6-501. Through its Administrator and under the supervision of the South Carolina Commission on Consumer Affairs, the Department is responsible for administering and enforcing the provisions of the Code. S.C. Code Ann. § 37-6-506. A primary purpose of the Code is “to protect consumer buyers, lessees, and borrowers against unfair practices by some suppliers of consumer credit, *having due regard for the interests of legitimate and scrupulous creditors.*” S.C. Code Ann. § 37-1-102 (emphasis added).

II. Cash Central begins doing business in South Carolina.

Cash Central received its supervised lending license from the South Carolina State Board of Financial Institutions — Consumer Finance Division (“Board”) on October 2, 2013. (R. at 217:18-22; 304:18-19). All of Cash Central’s loan products and interest rates, including its maximum interest rates for all loans, were submitted to and fully approved by the Board. (R. at 10-11).

Prior to commencing lending operations in South Carolina on or about October 25, 2013, Cash Central inadvertently failed to file a single-page form document, known as a maximum rate schedule, with the Department and to post the Department issued maximum rate certificate on its website in a conspicuous location as required by S.C. Code Ann. § 37-3-305. (R. at 11, 22). Cash Central’s failure to file and post this form was discovered in a routine audit by the Board in the spring of 2015. (*Id.*) Cash Central corrected the error within a week’s time of the discovery and properly filed the maximum rate schedule on April 10, 2015. (*Id.*)

Cash Central does not dispute that it failed to file and post the maximum rate schedule with the Department on three occasions during the relevant period of October 24, 2013, to April 10, 2015. (2017 Order, p. 11, ¶ 21, R. at ____). It is undisputed that the failure to file the form was

the result of inadvertent, human error and was not intentional. (R. at 18 ¶ 27). The Department never received any consumer complaint related to Cash Central's failure to file or post the maximum rate schedule. (2017 Order, p. 14, ¶ 3, R. at ____). And the Department does not deny that the loan interest rates charged to Cash Central's customers were examined and approved by the Board and would have been accepted by the Department if the required form had been filed. (Trial Transcript, R. at 246).

III. Cash Central's customers received full information about their loans and neither Cash Central nor the Department received any complaints about the information and disclosures provided.

It is undisputed that Cash Central's borrowers received full and complete disclosure of their material loan terms, including the payment schedule, annual percentage interest rate, and periodic payment amount for their individual loan. (*Id.* p. 10, ¶ 17 R. at ____). Cash Central's website, its only portal for interaction with the public, provided Cash Central's customers (and its competitors) direct and easy access to a South Carolina specific web page titled "South Carolina Fee Schedule" with statutorily compliant disclosures and an interactive, customizable loan calculator for selection and disclosure of all significant financial terms for each customer's specific loan. (R. at 648-670). An example of the webpage as it existed in November 2013 is below:

[Remainder of page intentionally left blank.]

South Carolina Fee Schedule

Click [here](#) if you reside in a different state.

[View Signature Fees](#)

Signature Installment Loan Fees

South Carolina Signature Installment loans are available in amounts from \$750.00 up to \$5000.00 based on your qualification. Cash Central Signature Installment loans are paid in regular payments over 6, 12, 18, 24 months based on your selection of terms in either monthly or bi-weekly payments with finance fees calculated daily. Early loan repayment reduces overall finance fees. Late payments accrue additional finance fees and charges.

Representative Example of Signature Installment Loan Fees:

12 month Signature Installment Loan of \$1500.00 Loan Amount would require 12 payments of \$319.12. APR: 238.00%*.

To view specific examples of a Signature Installment Loan, select from the drop down menus below. Your results will be shown below once you selected Loan Amount, 1st Payment Date, Payment Schedule, and Loan Duration and click the 'Submit' button.

Loan Amount:	1st Payment Date:	Payment Schedule:	Loan Duration (Months):
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="button" value="Submit"/>			

Available selected terms are based on qualification

Payment in Months	Payment Cycle	APR	Finance Charge	Amount Financed	Total Payments
6	Monthly	239.99%	\$804.18	\$1,000.00	\$1,804.18
6	Bi-Weekly	239.72%	\$768.35	\$1,000.00	\$1,768.35
12	Monthly	239.99%	\$1,702.89	\$1,000.00	\$2,702.89
12	Bi-Weekly	239.81%	\$1,684.75	\$1,000.00	\$2,684.75
12	Monthly	180.00%	\$2,427.42	\$2,000.00	\$4,427.42
12	Bi-Weekly	179.90%	\$2,385.85	\$2,000.00	\$4,385.85
24	Monthly	150.00%	\$8,755.00	\$4,000.00	\$12,755.00
24	Bi-Weekly	149.95%	\$8,735.31	\$4,000.00	\$12,735.31

† The above APR is based on the first payment date 30 days from funding for monthly payments and 15 days for bi-weekly.

Consumers: All supervised and restricted creditors making consumer loans in South Carolina are required by law to post a schedule showing the maximum rate of LOAN FINANCE CHARGES stated as ANNUAL PERCENTAGE RATES that the creditor intends to charge for various types of consumer credit transactions.

The purpose of this requirement is to assist you in comparing the maximum rates that creditors charge, thereby furthering your understanding of the terms of consumer credit transactions and helping you to avoid the uninformed use of credit.

NOTE: Creditors are prohibited only from granting consumer credit at rates higher than those specified above. A creditor may be willing to grant you credit at rates that are lower than those specified, depending on the amount, terms, collateral and your credit worthiness.

If you have any questions or concerns regarding your Cash Central loan, please feel free to call us at 1-800-460-4356 or [contact us via email, chat, fax, or standard mail.](#)

*APR may change based on first payment date selected. Administrative/Origination fee may be included in the calculation of finance charges.

(R. at 648–670). The South Carolina specific page was easily accessible to consumers from the www.cashcentral.com “home” page, and many other pages on the website, through the same or

very similar tabs or hyperlinks, with just one or two mouse clicks. (R. at 399:21–400:5; 410:10–24; 648–653). The “South Carolina Fee Schedule” page includes loan terms that were on file with the Board and were the same or substantially similar rates that would have been filed by Cash Central with the Department in late 2013. (R. at 217:7–22; 412:9–415:23; 629–37; 654–61). The “South Carolina Fee Schedule” page also contained the exact 127-word statement required by Section 37-3-305(3). (R. at 654–61).

Cash Central presented evidence that its website included this information throughout almost the entire relevant time period from October 24, 2013, when Cash Central first began making loans in South Carolina, and April 10, 2014, when the Department first issued a maximum rate schedule for Cash Central. Examples of the “South Carolina Fee Schedule” page as it existed in November 2013, April 2014, and on or about October 10, 2014, March 27, 2015, April 26, 2015, and June 16, 2015 are found in the record. (R. at 648–61; 693–94; 344:13–346:6; 404:9–407:5; 693–94).

In addition to providing the rate chart and 127-word disclosure statement, the website included an interactive, customizable loan calculator which allowed a customer to input various loan terms for a loan best suited to their needs, including the loan amount and payment schedule. These variables then produced a custom rate correlating to the terms of the loan the customer sought. (R. at 308:7–309:7; 383–84; 412–15). Any customer interested in a loan would be automatically presented with a loan cost disclosure and calculated interest rate specific to the customer’s desired loan. (R. at 656). This loan calculator could be used by any visitor to the website before entering any personal information or applying for a loan. (R. at 334:4–335:16). Additionally, once a customer was approved to borrow and began the five-step process to complete

their loan transaction, the loan calculator would automatically appear in step one of the process. (R. at 308:7–309:7; 412–15; 662–70).

In contrast to the loan disclosures provided by Cash Central, the maximum rate schedule issued by the Department included only the 127-word disclosure and a single line of information about the highest rate loan of the many loans that Cash Central offered to its customers.



SOUTH CAROLINA DEPARTMENT OF CONSUMER AFFAIRS

Maximum Rate Schedule

Registration #: CLL-123409 Date Issued: 12/18/2015 Expiration Date: 01/31/2017

CASH CENTRAL OF SOUTH CAROLINA LLC

84 E 2400 N

NORTH LOGAN, UT 84341-2902

CONSUMERS: All Creditors, including supervised and restricted lenders making consumer loans in South Carolina* are required by law to post a schedule showing the maximum rate of LOAN FINANCE CHARGES stated as an ANNUAL PERCENTAGE that the creditor intends to charge for various types of consumer credit transactions. The purpose of this requirement is to assist you in comparing the maximum rates that creditors charge, thereby furthering your understanding of the terms of consumer credit transactions and helping you to avoid the uninformed use of credit.

NOTE: Creditors are prohibited only from granting consumer credit at rates higher than those specified below. A creditor may be willing to grant you credit rate that are lower than those specified, depending on the amount, terms, collateral and your creditworthiness.

** and intending to charge more than 18%*

CATEGORY	DESCRIPTION	MAXIMUM APR FOR PERSONAL LOANS	
Unsecured	Selected dollar amounts for loans \$750.00 - \$5,000.00	246.9%	FIXED

(R. at 680).

Professor Victor Stango, a professor of behavioral economics at the University of California, Davis, an expert in the field of consumer behavior and consumer decision making, testified that Cash Central’s disclosures and website tools were more comprehensive, specific, and consumer-friendly than the maximum rate schedule issued by the Department. (R. at 466–472; 704–722). Specifically, “because the disclosures provided by Cash Central are both interactive

and customizable, those disclosures provided comprehensive and specific terms of any Cash Central loan about which a consumer wanted to become more informed, for the purposes of using credit or comparing terms across lenders.” (R. at 710 ¶ 17; 466–72). In contrast, Stango testified that the maximum rate schedule issued by the Department did not provide complete information, did not provide information specific to any consumer, and did not promote the informed use of credit. (R. at 467:21–471:24; 710–11 ¶¶ 18–22).

The Department presented no witness in rebuttal to Professor Stango, and it has not disputed any of the facts set forth above. Nor has any evidence been presented that any customer complained or indicated that payment was not being voluntarily made.

STANDARD OF REVIEW

On appeal from a grant of summary judgment, this Court’s standard of review is the same as that of the circuit court. *David v. McLeod Reg’l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). Summary judgment is appropriate if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Rule 56(c), SCRPC. “Summary judgment is appropriate in those cases in which plain, palpable and indisputable facts exist on which reasonable minds cannot differ.” *Main v. Corley*, 281 S.C. 525, 526, 316 S.E.2d 406, 407 (1984).

This Court must view the facts and inferences in the light most favorable to the nonmoving party. *See, e.g., Thomas v. Waters*, 315 S.C. 524, 526, 445 S.E.2d 659, 661 (Ct. App. 1994). When the nonmoving party bears the burden of proof on an issue, the moving party is entitled to summary judgment only if “there is an absence of evidence to support the nonmoving party’s case.” *Richardson v. State-Record Co.*, 330 S.C. 562, 566, 499 S.E.2d 822, 825 (Ct. App. 1998).

Questions of law, such as the construction of a statute, are reviewed *de novo*. See *Boggero v. S. Carolina Dep't of Revenue*, 414 S.C. 277, 280, 777 S.E.2d 842, 843 (Ct. App. 2015); *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008) (“Determining the proper interpretation of a statute is a question of law, and this Court reviews questions of law *de novo*.”).

ARGUMENT

As an initial matter, this case was not “remanded to the circuit court for the calculation of excess charges to be refunded by Cash Central to South Carolina consumers.” (Order, p. 3, R. at ____). Instead, this Court reversed an order finding in favor of Cash Central on its good faith error defenses based on its ruling that none of those three defenses “excused” Cash Central from refunding excess charges. *Cash Central I*, 435 S.C. at 207, 865 S.E.2d at 797 (“We therefore conclude that even assuming a defense of substantial compliance were applicable, the record does not support the circuit court’s finding that the fee schedule posted on Cash Central’s website substantially complied with the SCCPC’s statutory filing and posting requirements.”); *id.* at 209, 865 S.E.2d at 798 (“[T]he circuit court erred in concluding subsection 37-3-201(6) excused Cash Central from refunding excess charges.”); *id.* at 213, 865 S.E.2d at 800 (“Therefore, we find the circuit court erred in concluding Cash Central’s failure to file was a bona fide error and that it was excused from refunding excess charges.” (interpreting section 37-5-202(7))). Thus, the issue of any remaining defenses remained for the circuit court.

Cash Central has filed this appeal contending that the circuit court made an error of law in finding that the general three-year statute of limitations for contracts applies to this case rather than the one-year period provided in the Code. Cash Central further contends that it was error for the

circuit court to grant summary judgment in the Department's favor on the voluntary payment doctrine. Cash Central does not appeal the ruling as to the bankruptcy defenses.

I. This case is subject to the one-year statute of limitations found in the Code.

The circuit court erred in finding that the general three-year statute of limitations applicable to contract actions found in S.C. Code Ann. § 15-3-530(1) applies to the Department's statutory claims under the Code for a refund of excess charges paid by Cash Central's loan customers because "[t]he Department's case . . . is an action upon a contract, obligation or liability." (Order, p. 7, R. at ____). Section 15-3-530 resides in the portion of the code concerning "Civil Remedies and Procedures." Subsection 530(1) establishes a three-year limitations period for "an action upon a contract, obligation, or liability, express or implied." S.C. Code Ann. § 15-3-530(1). This case was not brought upon a contract but was rather brought to enforce rights and remedies under the Code. In a case like this one, the Code provides a one-year statute of limitations in the same code section that provides consumers with a right to recover excess charges. S.C. Code Ann. § 37-5-202.²

Under the rules of statutory construction, a specific statutory provision should govern over a more general statutory provision. *Denman v. City of Columbia*, 387 S.C. 131, 138, 691 S.E.2d 465, 468 (2010) ("Where there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect." (quoting *Spectre, LLC v. S.C. Dept. of Health and Env't'l. Control*, 386 S.C. 357, 688

² The Department has brought this claim in a representative capacity under S.C. Code Ann. § 37-6-113(A) to pursue excess charges on behalf of Cash Central borrowers. In this capacity, the Department stands in the shoes of the borrowers and is subject to any defense that may have applied to the borrower.

S.E.2d 844, 851 (2010)); *Duke Power Co. v. S.C. Pub. Serv. Comm'n*, 284 S.C. 81, 88, 326 S.E.2d 395, 399 (1985). Accordingly, the specific limitations period found in Section 37-5-202 should apply over the general statute of limitations provision applicable to all contracts.

A. The Department's *right of action* exists by operation of S.C Code Ann. §§ 37-6-113(A) and 37-5-202(1) or (3).

In its order, the circuit court wrongly states, “[t]he Department filed this action pursuant to S.C. Code Ann. § 37-6-113(A) based on a consumer’s right to refund of excess charges as established by Section 37-5-202(2). The Court of Appeals acknowledged and reiterated this in its decision.” (Order, p. 5, R. at ____). More accurately, this Court found in *Cash Central I* that “[t]he Department then brought this action against Cash Central on behalf of South Carolina consumers pursuant to Section 37-6-113(A) of the SCCPC for violations of Sections 37-3-201 and 37-3-305 of the SCCPC and sought a refund of excess charges.” *Cash Central I*, 435 S.C. at 199, 865 S.E.2d at 793.

Section 37-3-201 of the Code requires supervised lenders charging more than 18% per annum to comply with S.C. Code Ann. § 37-3-305, which requires filing of the maximum rate schedule and posting of the certificate issued by the Department. These two Code sections are the statutory basis for the Department’s claims and are the code sections with which Cash Central failed to strictly comply. The Department’s first cause of action is for the failure to *file* the Department’s maximum rate form, and the second cause of action is for the failure to *post* the Department issued certificate. (Complaint, pp. 4, 6, R. at ____). While the Department now *claims* that it is pursuing a consumer’s *right of recovery or remedy* pursuant to S.C. Code Ann. § 37-5-202(2), the Department’s complaint never mentions subsection 2, or any other subsection. Rather, the Complaint references S.C. Code Ann. § 37-5-202 only once for the simple proposition that “a

consumer is not obligated to pay” and “has a right of refund of any excess charge paid.” (Complaint ¶ 7, R. at ____).

By all accounts, the Department is proceeding here pursuant to its authority under S.C. Code Ann. § 37-6-113(A), as a representative plaintiff “on behalf of a class of” all customers of Cash Central who have the right to recover excess charges paid to Cash Central under S.C. Code Ann. § 37-5-202. (Complaint ¶¶ 6-7, R. at ____). Section 37-6-113(A), entitled “Civil actions by administrator,” provides “the administrator may bring a civil action against a creditor or a person subject to this title to recover actual damages sustained and excess charges paid by one or more consumers who have a *right to recover explicitly granted by this title.*” S.C. Code Ann. § 37-6-113(A) (emphasis added). “In a civil action pursuant to this subsection, penalties must not be recovered by the administrator.” *Id.* When the Department proceeds in a representative capacity, “a defense available to a [creditor] in a civil action brought by a consumer under this title is available to him in a civil action brought pursuant to this subsection.” *Id.* The Official Comment to S.C. Code Ann. § 37-6-113(A) states:

*Whether the Administrator’s action is on behalf of a single consumer or a class of consumers, it is subject to the same limitations as if brought by the consumer or consumers. For example, if a defense of the running of the statute of limitations would be available to a creditor in an action brought pursuant to § 37-5-201, it is available to the creditor to the same extent in an action brought under subsection [A] by the Administrator.*³

Kathleen G. Smith, *The South Carolina Consumer Protection Code*, p. 343, 4th ed. (2001) (emphasis added).

³ The Official Comment refers to subsection (1) of the official text of the Uniform Consumer Credit Code which is subsection (A) of the South Carolina Consumer Protection Code.

In this representative capacity, the Department seeks to assert the borrower's rights as provided in S.C. Code Ann. § 37-5-202. Section 37-5-202 is found in Part 2 of the Code ("Debtor's Remedies"). It is titled "Effect of violations on rights of parties," and it provides, in pertinent part, as follows:

(1) If a creditor has violated any provisions of this title applying to . . . *schedule of maximum loan finance charges to be filed and posted (Sections 37-2-305 and 37-3-305)*⁴ . . . *the consumer has a cause of action to recover actual damages* and also a right in an action other than a class action, to recover from the person violating this title a penalty in an amount determined by the court not less than one hundred dollars nor more than one thousand dollars. *With respect to violations arising from [] consumer credit transactions [other than revolving charge or revolving loan accounts], no action pursuant to this subsection may be brought more than one year after the scheduled or accelerated maturity of the debt.*

(2) *A consumer is not obligated to pay a charge in excess of that allowed by this title and has a right of refund of any excess charge paid. . . . If the consumer has paid an amount in excess of the lawful obligation under the agreement, the consumer may recover the excess amount from the person who made the excess charge*

(3) *If a creditor has contracted for or received a charge in excess of that allowed by this title, or if a consumer is entitled to a refund and a person liable to the consumer refuses to make a refund within a reasonable time after demand, the consumer may recover from the creditor or the person liable in an action other than a class action a penalty in an amount determined by the court not less than one hundred nor more than one thousand dollars. . . . With respect to excess charges arising from [] consumer credit transactions [other than revolving charge or revolving loan accounts], no action pursuant to this subsection may be brought more than one year after the scheduled or accelerated maturity of the debt.*

S.C. Code Ann. § 37-5-202 (emphasis added).

The reporter's Comment to S.C. Code Ann. § 37-5-202 further provides:

1. *Rights* that are accompanied by inadequate *remedies*, or no remedy at all, and limitations on agreements and practices that do not provide for sufficient penalties, or for any penalty at all, are generally ineffective to accomplish their

⁴ S.C. Code Ann. § 37-2-305 applies to credit sales and S.C. Code Ann. § 37-3-305 refers to unsecured installment loans, such as the loans at issue in this case. The requirements of both sections are essentially identical.

intended purpose. . . . In order to protect rights created, and to deter provisions of agreements and practices proscribed by legislation, suitable remedies and penalties must exist. Since an aggrieved party is one of the persons best able to enforce violations of rights and limitations, this section sets forth *a right of action* in the consumer in the event of violation by the creditor of each section of this Title that does not include its own provision for infraction, and better to deter such practices, even of some that do, as in the case of referral sales and leases. (§ 37-2-411).

2. Subsection (1) lists the sections of this Title and different kinds of *violations for the contravention of which actual damages and a penalty can be recovered*. . . . the penalty is designed not only to provide a deterrent to potential violators, but also an incentive to a consumer to bring an action when a violation has occurred.

3. *Subsections (2) and (3) set forth the rights of the consumer with respect to excess charges by the creditor*. . . . Subsection (3) imposes the same penalty on those who make excess charges or refuse to make refunds to which a consumer is entitled, as that for violators of provisions listed in subsection (1).

Kathleen G. Smith, *The South Carolina Consumer Protection Code*, p. 317 4th ed. (2001) (emphasis added).

Subsection 2 defines the consumer’s measure of damages or remedy for a failure to comply with the Code, *i.e.*, a right to recover “excess charges” paid to the creditor. S.C. Code Ann. § 37-5-202(2). Here, that amount is the difference between 18% per annum, the amount any supervised lender can charge without registering a higher maximum rate with the Department, and the actual interest rate on the borrower’s loan contract. S.C. Code Ann. §37-3-201; S.C. Code Ann. §37-3-305.

Subsection 1 provides the consumer’s “right” or “cause of action” in the event of liability for an excess charge, and states, in relevant part: “[i]f a creditor has violated any provisions of this title applying to . . . [the] schedule of maximum loan finance charges to be filed and posted (Sections 37-2-305 and 37-3-305), . . . *the consumer has a cause of action to recover actual damages* and also a right in an action other than a class action, to recover from the person violating

this title a penalty in an amount determined by the court not less than one hundred dollars nor more than one thousand dollars.” S.C. Code Ann. § 37-5-202(1) (emphasis added).⁵

Subsection 3 provides “[i]f a creditor has contracted for or received a charge in excess of that allowed by this title, or if a consumer is entitled to a refund and a person liable to the consumer refuses to make a refund within a reasonable time after demand, the consumer may recover from the creditor . . . in an action other than a class action a penalty in an amount determined by the court not less than one hundred nor more than one thousand dollars. . . .” S.C. Code Ann. § 37-5-202(3).

Whether the consumer’s action arises from subsection (1) or (3), the relevant and statute-specific limitations period for the consumer’s right of action is found in the last sentence of each subsection and plainly states “[w]ith respect to [*violations or excess charges*] arising from . . . *consumer credit transactions* [other than revolving charge or revolving loan accounts, which are not applicable here] *no action pursuant to this subsection may be brought more than one year after the scheduled or accelerated maturity of the debt.*” S.C. Code Ann. § 37-5-202(1) and (3) (emphasis added).⁶ Thus, the limitations period for the action is found in the same statutory section that creates the right of action, and the Department is subject to the same defenses that would apply to the borrower, including the statute of limitations.

⁵ In its complaint, the Department has not sought recovery of penalties on behalf of Cash Central customers.

⁶ It is undisputed that Cash Central’s loans during the relevant time period qualify as “consumer credit transaction[s],” as defined in S.C. Code Ann. § 37-1-301(11) and are not “revolving charge or revolving loan accounts.”

In granting summary judgment in the Department's favor on this issue, the circuit court failed to consider the above provisions as a whole and within the context provided by the Code.

This was error. As this Court has stated:

“The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) “The goal of statutory construction is to harmonize conflicting statutes whenever possible and to prevent an interpretation that would lead to a result that is plainly absurd.” *Id.* at 91, 533 S.E.2d at 584. “What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will.” *Miller Constr. Co. v. PC Constr. of Greenwood, Inc.*, 418 S.C. 186, 204, 791 S.E.2d 321, 331 (Ct. App. 2016) (quoting *State v. Elwell*, 403 S.C. 606, 612, 743 S.E.2d 802, 806 (2013)).

Bessinger v. R-N-M Builders & Assocs., LLC, 421 S.C. 349, 358, 806 S.E.2d 731, 735–36 (Ct. App. 2017). In this case, the legislature created the right, created the remedy, and provided a limitations period for borrowers (and by extension, the Department when proceeding in a representative capacity). A consumer is subject to the same one-year statute of limitations on a claim against the creditor either for a recovery of damages, excess charges, or for a penalty under S.C. Code Ann. § 37-5-202(1) or (3). As explained by the Reporter's Comment quoted above, the three subsections are interrelated and designed to work together because subsection (2) would create a remedy without a right of action in the absence of subsection (1) or (3).

The circuit court impermissibly divorced subsection (2) from subsections (1) and (3). Under these subsections, both a consumer and the Department are subject to a one-year limitations period because the Department is proceeding in the shoes of the consumer. It would make no sense and yield a result which is plainly absurd, for the Department, with its superior knowledge and resources, to have a longer statute of limitations than the consumer would have in an individual action against a creditor. *See, Smith, The South Carolina Consumer Protection Code* at 343 (stating “in some number of these cases the Administrator may be the only person with the

necessary informational or monetary resources properly to prosecute an action [or] may be the only person who can adequately represent a group of consumers.”); *Florence Cty. Democratic Party v. Florence Cty. Republican Party*, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2012) (holding South Carolina courts “will not construe a statute in a way which leads to an absurd result or renders it meaningless.”). As such, this construction is plainly incorrect.

The Code has provided a specific statute of limitations for claims for the recovery of excess charges, whether by a borrower or by the Department in a representative capacity. Therefore, the general contract statute of limitations is inapplicable. The Department is not a party to a promissory note or any other contract, obligation, or other liability involving Cash Central or any of its borrowers. Nor is this an action for breach of Cash Central’s contract with any of its borrowers. Rather, it is an action for a failure to strictly comply with statutory requirements. Therefore, the Department’s claims are not “an action upon a contract” as contemplated in S.C. Code Ann. § 15-3-530(1), but rather *a statutory claim* under the Code brought by the Department in a representative capacity. As such, the limitations period for the Department’s claims here is one year, not three years.

B. *Cash Central I* involved only the good faith error defenses and did not decide anything about the applicable statute of limitations.

The circuit court’s order suggests that Cash Central has “attempt[ed] to conflate” subsections 1 and 2 of S.C. Code Ann. § 37-5-202, and this is “contrary” to the finding in *Cash Central I* that subsection 2 “is a distinct remedy, independent of a consumer’s right to bring an action for damages or penalties for the violation of a failure to file.” (Order, pp. 5-6, R. at ____). Again, the analysis in *Cash Central I* is limited to the good faith error defenses. This language relates to this Court’s finding that the “good faith” error defense of S.C. Code Ann. § 37-2-202(7)

did not apply based on the evidence presented at the 2017 trial. It has no bearing on the issue of the appropriate statute of limitations for a consumer claim to recover excess charges, as this issue was not before the Court.

A right of action refers to the legal entitlement to initiate a lawsuit or to enforce a legal claim. It is generally considered to be the right to seek judicial relief for a wrong, rooted in either statute or common law. Remedies, on the other hand, denote the relief or enforcement mechanisms the law provides once a right of action has been successfully asserted. Remedies may include damages, injunctions, restitution, or equitable relief, serving as the means by which a court enforces or compensates for the violated right. *Accord Ebner v. Haverty Furniture Co.*, 138 S.C. 74, 136 S.E. 19, 20 (1926) (“A remediable right is a legal conclusion from a certain state of facts; a remedy is the appropriate legal form of relief by which that remediable right may be enforced.”)

In *Wilson v. Gregory*, 189 S.C. 62, 200 S.E. 358, 360 (1938), the South Carolina Supreme Court reinforced this conceptual separation, holding “that a cause of action and the remedy sought are entirely different matters” and “are separate and distinct from each other, and are governed by different rules and principles.” The court there defined a cause of action as “a legal wrong threatened or committed against the complaining party” while recognizing that multiple remedies may be available for addressing the same underlying wrong. *Id.* at 62, 200 S.E. at 359 (citing *Heller v. Charleston Phosphate Co.*, 28 S.C. 224, 5 S.E. 611, 614 (1888)).

Wilson goes on to provide, “it is true, that the motive which prompts the action is a desire for relief, and to obtain this relief is the object of the action, and in this sense the relief sought is the cause of the action; but this is not the legal sense of the phrase ‘cause of action.’ On the contrary, that sense is as stated above, i.e., a breach of one’s legal rights.” *Id.* at 62, 200 S.E. at 360 (citing *Emory v. Hazard Powder Co.*, 22 S.C. 476, 53 Am.Rep. 730 (1885); *see also Lightner*

v. Duke Power Co., 719 F. Supp. 1310, 1316 (D.S.C. 1989) (reviewing and explaining authorities)).

These authorities confirm that the consumer’s “right” or “cause of action” to recover the remedy of excess charges as defined in S.C. Code Ann. § 37-5-202(2) is found in either subsection (1) or (3), both of which contain a statute specific one-year limitations period. Pursuant to the plain language of S.C. Code Ann. § 37-6-113(A), which provides the Department’s right of action to pursue the consumer’s remedy in Section 37-5-202(2), the Department’s action is subject to the same limitations period.

C. The circuit court’s other reasons for rejecting the statute-specific one-year limitations period found in the Code are misplaced.

As shown above, the applicable statute of limitations here is found in S.C. Code Ann. § 37-5-202(1) or (3). In its tortured efforts to avoid that result, the circuit court considered inapplicable provisions of the Code including subsection (B) of S.C. Code Ann. § 37-6-113, which authorizes the Department to recover a civil penalty for repeated and intentional violations of Title 37 and contains a two-year statute of limitations. The Official Comment to S.C. Code Ann. § 37-6-113(B) states “[s]ince *this* subsection confers a right of recovery on the Administrator *in his own behalf*, it prescribes its own statute of limitations.” Kathleen G. Smith, *The South Carolina Consumer Protection Code*, p. 344, 4th ed. (2001) (emphasis added). Here, it is undisputed that the Department is acting in a representative capacity pursuant to section 37-6-113(A) to recover on behalf of Cash Central’s borrowers and not “in [its] own behalf.”

Rather than considering the specific right and remedies pursued, the circuit court found: “It is evident the General Assembly intended to establish a specific limitation on actions brought by the Department for civil penalties in Section 37-6-113(B) – and on actions brought by a debtor

pursuant to Section 37-5-202(1) – but not to actions to recover excess charges for consumer in Section 37-6-113(A).” (Order, p. 6, R. at ____). This statement is directly refuted by the Official Comment guidance on these code sections. By the circuit court’s logic, one could equally conclude that there is no statute of limitations applicable to actions pursuant to S.C. Code Ann. § 37-6-113(A). Although it is true that S.C. Code Ann. § 37-6-113(A) does not specify a statute of limitations, it specifically states that a *defense* available to a creditor in an action brought by a consumer is available to that creditor in an action brought by the Department. It is further clear that a statute of limitations is a defense. *See* Rule 8(c), SCRCP. Thus, the Department is subject to the same statute of limitations that would apply to the borrower.

Finally, the Order’s reliance on *Crocker v. S.C. Department of Health and Environmental Control*, 428 S.C. 1, 831 S.E.2d 924 (Ct. App. 2019) is misplaced, because the holding in that case supports Cash Central’s position in this matter. *Crocker* involved a provision of the South Carolina Human Affairs Law, S.C. Code Ann. § 1-13-10 *et seq.* (“SCHAL”), which established the State Human Affairs Commission (“SHAC”), and created a private right of action for an employee alleging discrimination on account of race, religion, color, sex, age, national origin, or disability against their employer. *Crocker*, at 1, 831 S.E.2d at 924; S.C. Code Ann. § 1-13-20; S.C. Code Ann. § 1-13-90 (d)(6).⁷ The plaintiff in *Crocker*, a state agency employee, brought his claim under

⁷ S.C. Code Ann. § 1-13-90(d)(6) provides:

If a charge filed with the commission by a complainant pursuant to this chapter is dismissed by the commission, or if within one hundred eighty days from the filing of the charge the commission has not filed an action under this chapter or entered into a conciliation agreement to which the complainant is a party, *the complainant may bring an action in equity* against the respondent in circuit court. *The action must be brought within one year from the date of the violation alleged, or within one hundred twenty days from the date the complainant’s charge is dismissed,*

S.C. Code Ann. § 1-13-90(c), which did not contain a statute of limitations and provided only for an administrative remedy and procedure wherein the SHAC would investigate a complaint and issue a report and decision, which either party could then appeal to the Administrative Law Court. *Id.* at 7, 831 S.E.2d at 928. The *Crocker* court ruled that S.C. Code Ann. § 1-13-90(d)(6) provided a private right of action and that the limitations period provided in that section applied to bar the plaintiff's claim. *Id.* at 9, 831 S.E.2d at 929. The result in this case should be no different. The Department is pursuing its right of action under S.C. Code Ann. § 37-6-113(A), which allows the Department to pursue the consumer's right of action under S.C. Code Ann. § 37-5-202. That claim is clearly subject to a one-year statute of limitations.

II. The summary judgment record supports the consideration of the voluntary payment doctrine by the factfinder in this matter.

Under the voluntary payment doctrine, a plaintiff cannot recover the amount of a voluntarily paid charge even if the charge itself was illegal and the plaintiff was unaware of his or her legal rights. *Hardaway v. Southern Ry. Co.*, 90 S.C. 475, 73 S.E. 1020 (1912); *Moody v Stem*, 214 S.C. 45, 51 S.E.2d 163 (1948). The common law places the burden on the plaintiff to show that the payment was not made voluntarily. *Baker v. Allen*, 220 S.C. 141, 151, 66 S.E.2d 618, 622-23 (1951) (“It follows from the foregoing views that one of the cardinal issues in this case is whether respondent paid the alleged illegal excess of \$3.00 involuntarily. The burden of proof is upon him, as all payments are presumed to be voluntary until the contrary is made to appear.”). In this case, the only evidence shows that the interest rates were fully disclosed and any payments

whichever occurs earlier, except that this period may be extended by written consent of the respondent.

(Emphasis added).

made by the borrowers was voluntary. Cash Central is entitled to present this defense at the ultimate trial of this matter.

Rather than assessing the summary judgment record and the applicable law, the circuit court once again misread *Cash Central I* in finding that summary judgment was appropriate on the voluntary payment defense, which was added after the case was remitted to the circuit court. Based on this timeline, this defense could not have been part of the appeal in *Cash Central I*.

In addition, the circuit court's order incorrectly states that "[d]espite everything that was available on Cash Central's website, the Court of Appeals still held *the content* was not sufficient to allow Cash Central to charge more than 18% APR on the consumer loans in this case." (Order, p. 12 (emphasis added), R. at ____). However, this language in *Cash Central I* only discussed the content of Cash Central's website in the context of the good faith error defenses. On that issue, this Court found "there is no recognized doctrine of substantial compliance *in this context*," i.e., this case. *Cash Central I*, at 206, 865 S.E.2d at 796 (emphasis added). Regarding the filing requirement, this Court found "[t]he purpose of filing a maximum rate schedule serves not only to inform consumers, it triggers the Department's oversight of the lender, which is critical to assuring the SCCPC's objectives of protecting consumers, providing rate ceilings, and fostering competition among suppliers of consumer credit." *Id.* Regarding the posting requirement, this Court found that the fee schedule posted on Cash Central's website did not substantially comply with the statutory posting requirement because it "did not state the maximum APR" for Cash Central's highest rate loan or "reflect rates for \$750 loans even though it offered loans ranging from \$750 to \$5,000." *Id.* These findings have nothing to do with whether each of Cash Central's customers were fully informed about all material terms of their individual loans, or whether they

received the 127-word statutory disclosure required by S.C. Code Ann. § 37-3-305(3), and do not preclude application of the voluntary payment defense in this case.

The Order also unfairly and incorrectly equates the “excess charges” Cash Central collected from its customers with “usury” and “illegally paid interest.” (Order, p. 10-11, R. at ____). As noted by the circuit court, “South Carolina does not have a traditional usury statute for consumer loans ... and there is no cap on the amount of interest a lender can contract for and receive.” (Order, p. 10, R. at ____). By all accounts, Cash Central’s loan interest rates were duly approved by the South Carolina Board of Financial Institutions – Consumer Finance Division (“Board”) well before Cash Central began offering loans in South Carolina. In its prior decision, this Court never used the word “illegal,” and it consistently described the interest collected above 18% per annum as an “excess charge.” The only reason for a refund of interest above 18% per annum is because of an inadvertent failure to file a single *form* with the Department.

Without citation to any South Carolina authority, the Order finds “the non-statutory common law defense of voluntary payment doctrine does not apply to transactions under a comprehensive consumer protection statute such as” the SCCPC. (Order, p. 9-10, R. at ____). However, South Carolina courts and the Fourth Circuit have regularly applied common-law defenses to excuse liability for a failure to strictly comply with statutory requirements under the Code and the federal Truth in Lending Act. *See Davis v. NationsCredit Fin. Servs. Corp.*, 326 S.C. 83, 85–86, 484 S.E.2d 471, 472 (1997) (holding that a lender’s substantial compliance with S.C. Code Ann. § 37-10-102 (the “attorney preference statute”) operated as a defense to strict compliance); *Responsible Economic Development v. Florence Consol. Mun. Planning Com’n.*, No. 2005-UP-584, 2005 WL 7084861 (Ct. App. 2005) (unpublished opinion) (citing numerous cases and finding a municipal entity substantially complied with notice provisions of a statute);

General Motors Acceptance Corporation v. McMinn, 285 S.C. 67, 328 S.E.2d 472 (1985) (interpreting requirements of the federal Truth in Lending Act and stating: “this court will strongly construe [the Act’s] provisions against borrowers who were not misled by a lender’s disclosure but merely seek a penalty for finding a technical problem with the loan form which could not have conceivably influenced his choice of credit.”).

The trial court’s order also notes that the Code must be “liberally construed to promote its underlying purposes” which include, in pertinent part “protecting consumers against unfair practices,” “furthering consumer understanding of the terms of credit transactions,” and “fostering competition among suppliers of consumer credit so that consumers may obtain credit at a reasonable cost.” (Order, p. 10., R. at ____). Again, this does not preclude application of the voluntary payment doctrine. Here, there is no allegation that Cash Central’s practices were unfair or deceptive, and the undisputed evidence is that Cash Central’s website disclosures promoted “consumer understanding of the terms of [their own] credit transactions” far better than the maximum rate certificate issued by the Department. (R. at 466–472; 704–722). Cash Central’s website also fostered competition and transparency among suppliers of consumer credit better than the Department’s maximum rate certificate, because the material terms of *all* of Cash Central’s loan products were available to Cash Central’s customers and competitors alike for viewing on its website. The Department’s maximum rate certificate provided *only* the maximum APR for *one* of Cash Central’s many loan products.

In addition, the trial court’s order omits any reference to an equally important underlying purpose of the SCCPC, *i.e.*, “to protect consumer buyers, lessees, and borrowers against unfair practices by some suppliers of consumer credit, *having due regard for the interests of legitimate and scrupulous creditors.*” S.C. Code Ann. § 37-1-102 (emphasis added). The Department has

never contended that Cash Central engaged in unfair and deceptive practices. It is undisputed that Cash Central's lending operations complied with the Code, except for an inadvertent failure to file a single form with the Department, and for this, the Department has relentlessly pursued a significant forfeiture from Cash Central.

Nothing in the Code suggests there is no defense to the collection of an excess charge. The trial court, however, cited to a Missouri case, *Eisel v. Midwest BankCentre*, 230 W.W.3d 335, 339 (Mo. 2007), for the proposition that a consumer "may not waive his or her right to recover excess charges," and the voluntary payment doctrine is based on "waiver and consent." (Order, p. 11., R. at ____). Cash Central has never claimed in this case that any customer knowingly and voluntarily waived their legal rights. Rather, it claims that every consumer voluntarily entered into and made payments on their loans with full knowledge of all material loan terms, i.e., there was full disclosure of all relevant information *and* appropriate statutory disclosure as required Section 37-3-305(3).

The Department does not contest this assertion and has made no attempt to refute Cash Central's evidence that its customers' payments were made voluntarily after full disclosure of all material loan terms, including the annual percentage interest rate for their loan and the exact 127-word disclosure statement required by Section 37-3-305(3), and were not procured through fraud, duress, or extortion. These uncontested facts call out for application of the voluntary payment doctrine.

The most recent discussion of the voluntary payment doctrine is in *Freeman v. J.L.H. Invs., LP*, 414 S.C. 362, 382–83, 778 S.E.2d 902, 912–13 (2015). In *Freeman*, the plaintiff pursued claims against a motor vehicle dealer under the South Carolina Dealers Act. There, the plaintiff sought recovery of automobile sales transaction "closing fees," alleging that the fees had been

“unfairly” and “arbitrarily” calculated and charged to consumers by motor vehicle dealers, and that the fees “were not calculated to reimburse [the dealer] for actual closing costs.” *Id.* Such closing fees are regulated under the Code. *Id.*; S.C. Code Ann. § 37–2–307 (2015).

In *Freeman*, the court acknowledged the existence of the voluntary payment doctrine defense and cited *Hardaway* with approval, but ultimately found only that the defense did not apply *on the facts of that case*, stating that the plaintiff:

paid the closing fee without full knowledge of what comprised the fee. In fact, even if [plaintiff] had inquired, no [dealer] employee could have explained how [dealer] arrived at this amount. Accordingly, we find that [dealer’s] reliance on the voluntary payment doctrine is misplaced. *See Hardaway v. S. Ry. Co.*, 90 S.C. 475, 488–89, 73 S.E. 1020, 1025 (1912) (“It is an elementary principle that no action will lie to recover money *voluntarily paid with full knowledge of all the facts*” and “without any fraud, duress, or extortion” to make such payment. (emphasis added)).

Freeman, 414 S.C. at 383, 778 S.E.2d at 913.

In this case, there is ample evidence, undisputed by the Department, showing that Cash Central’s customers received complete disclosure and information regarding all material loan terms, and a complete copy of the promissory note prior to signing. Every borrower knew from the time of loan application, the amount of loan principal, the payment schedule and the loan duration, the interest rate, the amount of the monthly payment, including interest, and the date the first payment was due. On the Cash Central website, borrowers could select from among multiple different loan formats to see how much their payments would be and the interest rate on the loan, experimenting to find the loan that was best suited to their needs. All of this was done online, in private, without any human interaction.

There can be no genuine dispute in these circumstances that the loan agreement and all payments were made voluntarily and “without any fraud, duress, or extortion,” because the entire transaction was accomplished online, without any direct human interaction from Cash Central

employees. And, as further demonstrated above, the information disclosure was superior to that required by the Department. This is simply not a case where the borrowers were uninformed, but rather one where they simply were not informed *by the Department's form*.

Given the abundant and undisputed evidence in the record before the Court demonstrating grounds for the application of the voluntary payment doctrine, the Court should find that genuine issues of material fact preclude summary judgment in favor of the Department. *See In re TD Bank, N.A. Debit Card Overdraft Fee Litigation*, 325 F.R.D. 136 (2018) (discussing voluntary payment as an affirmative defense that can be addressed on a class-wide basis when defendants rely on universally provided documentation).

CONCLUSION

For all the reasons stated above, the Court should reverse the circuit court's rulings applying the three-year statute of limitations and finding that summary judgment was appropriate for the Department on the voluntary payment doctrine.

Respectfully submitted,

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