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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas
The Honorable S. Bryan Doby
Third Judicial Circuit

Appellate Case No. 2025-002019
Circuit Court Case No. 2024-CP-45-00502

William Ward and Charlotte Ward, Plaintiffs / Respondents,

v.

AmeriCredit Financial Services, Inc. d/b/a GM Financial; Windingmakia Automotive Group, LLC
D/B/A Winding Chevrolet GMC; Michael Winding; and Andrew Efird, Defendants,

Of whom, AmeriCredit Financial Services, Inc. d/b/a GM Financial is the Appellant.

**RECORD ON APPEAL
VOLUME II OF II**

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Provision instead of severing any unconscionable terms and compelling the Plaintiffs' claims to arbitration. In support of their argument of substantive unconscionability, Plaintiffs primarily relied upon the case of *Doe v. TCSC, LLC*, 846 S.E.2d 874 (S.C. App. 2020). Since this Court purportedly found *Doe* to be more persuasive than the cases referenced above, it was a clear error for this Court not to follow *Doe* in its entirety by severing the alleged unconscionable terms and compelling this case to arbitration pursuant to the delegation clause.

Importantly, after conducting their unconscionability analysis, the court in *Doe* explained that “[c]ourts have discretion though to decide whether a contract is so infected with unconscionability that it must be scrapped entirely, or to sever the offending terms so the remainder may survive. Once again, we are guided by the parties’ intent.” *See id.* at 880 (citing *Columbia Architectural Grp., Inc. v. Barker*, 266 S.E.2d 428, 429 (S.C. 1980)). The court went on to explain that “[t]he Agreement here contains a severability clause, reflecting that if any part of the contract is found “unenforceable for any reason, the remainder shall remain enforceable.” *See id.* at 881. And, due to the severability clause, the court ultimately compelled the claims to arbitration. *See id.* Due to the parties’ arbitration agreement containing a delegation clause, the court in *Doe* left any remaining questions of arbitrability after severance to the arbitrator to decide. *See id.*

Here, the Arbitration Provision contains *the exact same severability clause*, stating that if any part of the contract is found “unenforceable for any reason, the remainder shall remain enforceable.” *See* Ex. 1 to Wilson Aff. at 4. As such, it was a clear error for this Court to invalidate the entirety of the Arbitration Provision, instead of simply severing the alleged unconscionable terms and compelling the claims to arbitration with said terms removed.

CONCLUSION

WHEREFORE, Defendant AmeriCredit Financial Services, Inc. d/b/a GM Financial requests that this Court alter or amend its Order and either compel Plaintiffs' claims against it to arbitration or, in the alternative, sever any alleged unconscionable terms and compel Plaintiffs' claims to arbitration.

Dated: August 25th, 2025

Respectfully Submitted,

s/ Richard C. Keller

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document by Notice of Electronic Filing, or, if the party served does not participate in Notice of Electronic Filing, by U.S. First Class Mail, hand delivery, fax or email on this the 25th day of August, 2025:

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STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
C/A # 2024-CP-45-00502

WILLIAM WARD AND CHARLOTTE
WARD,

Plaintiffs,

PLAINTIFFS' MOTION TO RECONSIDER

vs.

GM FINANCIAL, LLC; WINDINGMAKIA
AUTOMOTIVE GROUP, LLC DBA
WINDING CHEVROLET GMC; MICHAEL
WINDING; AND ANDREW EFIRD,

Defendants.

The Plaintiffs William Ward and Charlotte Ward (hereinafter, "Plaintiffs") respectfully submit this Motion to Reconsider this Court's September 26, 2025 Order pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. Plaintiffs seek reconsideration based on Defendant AmeriCredit Financial Services, Inc. d/b/a GM Financial's (hereinafter, "Defendant") failure to comply with the mandatory requirements of Rule 59(g), SCRPC, regarding the filing and service of its Motion to Alter or Amend. For the reasons set forth herein, Plaintiffs request that the Court amend its Order to expressly find that Defendant's Motion was procedurally defective and is dismissed as a matter of law.

FACTS

On July 10, 2025, the Court held a hearing on Defendant's underlying motions¹ in Williamsburg County. On July 28, 2025, the Court issued a Form 4 Order denying

¹ Defendant filed a Motion to Compel Arbitration and Motion to Stay Discovery/Protection, filed March 27, 2025 and March 28, 2025, respectfully.

Defendant's motions. On August 20, 2025, the Court issued a second Order on the same motions, and the rulings and operative findings of fact were consistent with the Form 4 Order.

On August 25, 2025, Defendant filed a Motion to Alter or Amend pursuant to Rule 59(e), SCRPC (hereinafter, "Rule 59(e) Motion"). However, Defendant failed to provide the presiding judge with a copy of its Rule 59(e) Motion within ten (10) days of filing, as required by Rule 59(g). Defendant did not provide Chambers with a copy until September 24, 2025, thirty (30) days after filing, by email. On the same day, counsel for Plaintiffs responded to Defendant's request for a hearing and raised this issue with the Court.

Pursuant to Rule 59(g), the moving party "shall provide a copy of the motion to the judge within ten (10) days after the filing of the motion." Accordingly, Defendant's deadline to comply was September 4, 2025. Defendant's failure to meet this deadline constitutes a clear violation of Rule 59(g). The notes to Rule 59 confirm that subsection(g) was added specifically to ensure that the judge is promptly notified that the motion has been filed. Defendant's failure to comply undermines the very purpose of the Rule.

ARGUMENT

Rule 59(e) permits a party to move for reconsideration when the court has addressed an issue but failed to resolve a point of law. However, compliance with Rule 59(g) is mandatory, and South Carolina appellate courts have made clear that a trial court may deny a Rule 59(e) motion solely for failure to comply with Rule 59(g).

In *Smith v. Fedor*, 809 S.E.2d 612, 422 S.C. 118 (S.C. App. 2017), the Court of Appeals affirmed denial of a 59(e) motion for noncompliance with Rule 59(g), holding that "Rule 59(g) would lack any purpose if trial courts committed error by denying the motion

for failure to comply with the rule. Further . . . a trial court may deny the motion solely on the basis of the rule.” (citing *Gallagher v. Evert*, 353 S.C. 59, 63-64, 577 S.E.2d 217, 219 (Ct. App. 2002)). More recently, in *Smith v. Newton*, Op. No. 2021-UP-216 (S.C. Ct. App. dated June 16, 2021) (unpublished opinion), the Court of Appeals again affirmed denial of a 59(e) motion for failure to strictly comply with Rule 59(g).

Here, Defendant indisputably failed to provide a copy of its Rule 59(e) Motion to the presiding judge within the ten-day period mandated by Rule 59(g). Therefore, under the plain language of Rule 59 and binding appellate precedent, Defendant’s Motion must be dismissed as a matter of law.

Without a clear finding that Defendant’s Rule 59(e) Motion fails as a matter of law due to this procedural defect, Defendant may attempt to prolong this matter through appeal. A definitive ruling on this point will prevent unnecessary delay, judicial economy, and further prejudice to Plaintiffs.

CONCLUSION

For these reasons, Plaintiffs respectfully request that this Honorable Court amend its September 26, 2025 Order to expressly hold that Defendant’s Motion to Alter or Amend is dismissed as a matter of law for failure to comply with Rule 59(g), SCRCP.

Florence, South Carolina

s/Katherine McLean Ryan

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STATE OF SOUTH CAROLINA) IN THE CIRCUIT COURT 3
COUNTY OF WILLIAMSBURG) DOCKET NO. 2024-CP-45-00502

WILLIAM WARD,)
)
 Plaintiff,)
)
 versus)
)
)
 GM FINANCIAL LLC,)
)
 Defendant.)

H E A R I N G

DATE: July 7, 2025
LOCATION: South Carolina Circuit Court 3
JUDGE: Bryan S. Doby
TRANSCRIBED BY: Jeanne Meldrim

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EXHIBITS

(No Exhibits marked)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL
IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

Proceedings

1 THE COURT: All right. That brings us to our next
2 matter which is William Ward versus GM Financial. And
3 I've got two motions listed on here. One is --- or
4 they're both from GM Financial. One is a motion to
5 compel arbitration and the next one is a motion for
6 protection from discovery pending that question.

7 Good morning.

8 MR. STEWART: Good morning, Your Honor. Nick
9 Stewart on behalf of defendant GM Financial.

10 THE COURT: Mr. Stewart, how are you this morning?

11 MR. STEWART: I'm doing well. How are you doing?

12 THE COURT: Okay. Good. And tell me who --- I'll
13 let you come to the podium.

14 MR. HOGSETTE: Thank you, Your Honor.

15 THE COURT: That's the only way to get --- get
16 everybody on the record.

17 MR. HOGSETTE: Absolutely. Alec Hogsette with
18 Temple & Hogsette Law Group, here on behalf of the Wards.
19 Thank you, Your Honor.

20 THE COURT: Good morning, sir.

21 MR. HOGSETTE: Good morning.

22 THE COURT: Mr. Stewart, I'm glad to hear from you.

23 MR. STEWART: May it please the Court, Your Honor.
24 Nick Stewart on behalf of defendant, GM Financial. We're
25 here on behalf of my motion to compel arbitration and

1 motion for protective order. As a practical matter, they
2 kind of go hand and hand. If we compel arbitration, they
3 don't have a right to discovery ---

4 THE COURT: Right.

5 MR. STEWART: --- and so I'm --- I'm going to focus
6 on the arbitration. Plaintiff's case is essentially
7 related to a finance agreement concerning a truck. What
8 happened was is plaintiff bought a truck, my plaintiff
9 was provided the financing for that truck.

10 Plaintiff then takes that truck to trade it in to
11 get a new truck. And as a part of that transaction, the
12 dealer was supposed to handle the payoff of my client's
13 security interest in the truck. That didn't happen.

14 So plaintiff has now sued GM Financial and the
15 dealership related to the transaction for the second
16 truck. My client was the financier of the vehicle number
17 one. And --- and the focus of this case is related to
18 the failure to pay off vehicle number one.

19 So we brought this motion to compel arbitration
20 because the financing agreement has an arbitration
21 agreement contained in it. And it is broad that includes
22 any claim or dispute whether a contract, tort, statute, or
23 otherwise, which arises out of or relates to your credit
24 application, purchase condition of the vehicle, and this
25 contract, or any resulting transaction. That's contained

1 in our Exhibit A to our memo.

2 Your Honor, in order to conduct this analysis, the
3 Court must look to the Federal Arbitration Act to
4 determine if this arbitration agreement is enforceable
5 and valid and whether it should be compelled to
6 arbitration.

7 There's a three-prong analysis that the FAA has
8 adopted. Those are: Is there an existence of a written
9 agreement? Is there a nexus to interstate commerce? And
10 is the scope of the clause is cover the claims that have
11 been brought? We can satisfy all prongs here.

12 As it relates to the first prong, the existence of a
13 written agreement. We have a written agreement. It's
14 signed. Specifically, he's initialed right under this
15 arbitration provision. I --- I don't believe anywhere in
16 plaintiff's opposition have they indicated that he didn't
17 sign. So I think we met the first element, there is an
18 arbitration agreement that exists in this contract.

19 The second consideration is a nexus to interstate
20 commerce. We believe that the running of his credit
21 score implicates interstate commerce and there's case law
22 that supports that. Running of credit scores is
23 regulated by the FTC and other Federal regulators. So
24 there's ample case law that supports that running of a
25 credit score invokes interstate commerce. My client is a

1 Delaware entity and received payments up there, the
2 contract was drafted likely up there. So that implicates
3 interstate commerce. Also, we've cited case law in our
4 memo that supports that it's well recognized that
5 transactions involving motor vehicles implicate
6 interstate commerce.

7 And then lastly, the arbitration provision itself,
8 explicitly states it invokes the Federal Arbitration Act.

9 Finally, you have to consider the scope. If --- if
10 the scope of the provision is encompasses plaintiff's
11 claims, and this language is broad and it states any and
12 all claims in tort or contract arising out of this
13 agreement.

14 THE COURT: Well, let me ask you this, Mr. Stewart:
15 Mr. Hogsette's going to tell me that this transaction
16 that is the result of --- or the basis for this suit is a
17 separate transaction not related to the initial purchase
18 of the vehicle. What would be your response to that?

19 MR. STEWART: Well, his client signed a contract
20 that states that anything that relates to claims against
21 my client should be submitted to arbitration. And the
22 second transaction was flawed because it wasn't paid off
23 the first transaction. So it's all rooted in the first
24 transaction, and so we weren't a party to that second
25 transaction.

Proceedings

1 THE COURT: No, but it --- but the suit seems to
2 indicate that it was as a result of actions that were
3 taken subsequent to that contract and as Mr. Hogsette's
4 going to tell me was a separate transaction that your
5 client then did certain things that result in this suit
6 being filed.

7 MR. STEWART: That's correct, Your Honor. However,
8 the --- the contract is still critical. You have to go
9 back to contract one which is the contract that his
10 client and my client have which states that any and all
11 claims related to this contract are submitted to
12 arbitration.

13 And so his claims were rooted in this contract,
14 right. He --- he was obligated to pay. He didn't --- he
15 didn't pay. The dealership didn't handle the payment
16 correctly. It all goes back to that first contract which
17 he's indicated --- or which was explicitly states it
18 includes these.

19 So you don't have --- if you ignore my client's
20 contract, then he --- I don't really know that he has
21 anything to claim in the second one, because it's all
22 rooted back in that agreement. So you can't ignore the
23 first contract that his client entered in with my client.
24 And --- and his claims are related to this contract and
25 the obligations contained in that contract.

1 So we believe that this --- this provision is valid
2 and enforceable and this should be compelled to
3 arbitration to the extent plaintiff contends that certain
4 claims are not within the scope of the arbitration
5 provision. There's US Supreme Court law that states that
6 those kind of gateway questions are reserved for the
7 arbitrator.

8 And this agreement explicitly references the
9 American Arbitration Association and the National
10 Arbitration and Mediation rules. And those rules
11 explicitly delegate arbitrability to the arbitrator.
12 There's cases we've cited in our memo that have stated
13 that reference to rules and those rules delegate gateway
14 questions to the arbitration. That's sufficient to say
15 that the gateway questions are contained in that
16 arbitration provision by reference to the rules. So we
17 believe that this is a straightforward analysis and these
18 claims against my client should go to arbitration.

19 Before I rest, I'd like to address the point made in
20 plaintiff's memo. We received that at 5:00 p.m.
21 yesterday. So I'm --- I'd like to ask the Court that we
22 have until next Friday to --- to submit a brief in reply
23 to that because we just got it and haven't had a chance
24 to analyze it. But ---

25 THE COURT: Yes, sir, that would be fine.

1 MR. STEWART: Thank you. I --- I will address those
2 briefly. My understanding by reading the agreement ---
3 the --- the opposition is that there's two arguments
4 they're making against it. One's --- one that there's a
5 lack of nexus between the contracts. And then second on
6 conscionability. As Your Honor and I have already spoken
7 about, we believe there is a nexus to the contracts. His
8 client entered an agreement with my client relating to
9 this financing agreement that he's now suing my client
10 related to. That agreement had the arbitration
11 provision.

12 I don't know how we can ignore the fact that this
13 first contract that created the duties that my client may
14 have had to him can be ignored in this second
15 transaction, but it seems an error happened when this
16 contract wasn't paid off.

17 So this contract is critical to the case and to the
18 analysis. So we believe that the nexus to the contract,
19 that argument fails. And so the next argument they make
20 is it's unconscionable. We believe this is a last-ditch
21 effort to try to avoid arbitration. This provision's not
22 unconscionable under South Carolina law.

23 Plaintiff claims that there were no meaningful
24 choice because the vehicle was a necessity and he needed
25 it to get around. I don't believe that that's sound

1 logic and that the fact that he could have gotten
2 financing from somewhere else. There's no affidavit or
3 any showing that he had to use this financier to get it.

4 There's lots of places typically. When I buy a car,
5 I bring the financing from my bank. And so I don't
6 believe that he didn't have a meaningful choice. He
7 could have opted for another financier.

8 They've also cited to the Simpson case which has
9 found that there was an unconscionability as it relates
10 in arbitration provisions in that case.

11 However, in that case, the arbitration provision was
12 hidden in a --- in a paragraph in the same spot as
13 everything else, whereas here it's surrounded by a box.
14 All of the critical language that you're waiving a jury
15 trial right, and there may be limited discovery, that
16 you're waving your right to be a class representative is
17 in bold up at the top. Again, it's surrounded by a box.
18 And then his signature is right below.

19 In the Simpson case that found the
20 unconscionability, it was kind of a hidden provision that
21 wasn't set out from the agreement. It didn't draw any
22 unique attention to itself.

23 THE COURT: Well, Mr. Stewart, about the --- the
24 mutuality between the parties, under the circumstances
25 it's only your client that had the ability to invoke the

1 arbitration provision; is that right?

2 MR. STEWART: I believe he can invoke the
3 arbitration provision as well. He could have filed this
4 in arbitration. And --- and sought relief through the
5 arbitration.

6 THE COURT: But to compel the arbitration --- and
7 forgive me if I misquoted, but didn't your --- didn't
8 your contract say that it was your client's right to
9 invoke the arbitration?

10 MR. STEWART: I believe so, but I believe it would
11 also be his right is also to invoke arbitration.

12 THE COURT: Separate from the contract itself, he
13 could revoke --- he can invoke some arbitration
14 provision?

15 MR. STEWART: Well, he can --- he could rely on the
16 arbitration provisions in the contract. He could have
17 filed this action initially with the American Arbitration
18 Association.

19 THE COURT: Under --- under choices that your client
20 would have, if you were going to repossess this vehicle
21 for non-payment irrespective of the problems with the
22 second transaction, if I just throw that aside, would you
23 have to arbitrate that exclusively, or would your client
24 have the choice for straightforward remedies for
25 repossession and/or the arbitration? Meaning that under

1 typical circumstances wouldn't your client elect state
2 court remedies to seek repossession?

3 MR. STEWART: As it relates to that hypothetical, my
4 client could elect arbitration and could go get an order
5 granting the repossession and then take that order to the
6 state court to say, we want to enforce this order for
7 repossession.

8 Or they --- they could potentially elect for state
9 court, but plaintiff would then have the right to compel
10 arbitration if we tried to do that and say, no, no, no,
11 you've got to go to arbitration first.

12 So ultimately, you would have to go to a state court
13 probably to get that arbitration order enforced for
14 repossession. But I believe that my client would have
15 the right to go to arbitration, and if they chose to go
16 to State Court it would be subject to potentially a
17 motion to compel just like we filed.

18 And, you know, I think there's a practical sense if
19 it got to that point, the lawyers would probably talk and
20 figure out what was in the practical economic sense to
21 get it achieved, what they needed to get achieved.

22 So we --- finishing up, Your Honor, we don't believe
23 that it's unconscionable. It's a pretty standard
24 arbitration provision that's routinely enforced in South
25 Carolina. It streamlines litigation for the benefits of

1 the parties for efficient resolution. We'd get an
2 arbitrator that's knowledgeable in this type of law.
3 They're going to be afforded due process, the opportunity
4 to be heard. There's going to be no unfairness to
5 plaintiff.

6 So we don't believe that the provision is
7 unconscionable, and we believe that it should be enforced
8 in this --- the --- the claims against my client should be
9 compelled to arbitration. Thank you.

10 THE COURT: Thank you, Mr. Stewart, I appreciate it.
11 Mr. Hogsette.

12 MR. HOGSETTE: Thank you, Your Honor. May it please
13 the Court. Again, Alec Hogsette here on behalf of the
14 Wards, from Temple & Hogsette Law Group.

15 We've gotten a little off track this morning. And I
16 hope to --- to get us back on track with a --- a brief
17 background of what happened in the underlying lawsuit
18 that gives rise to the claims that brings us here today.

19 In 2003, Mr. Ward purchased a vehicle from the
20 Patriot dealership. And he did so like many do under a
21 credit application, he filed a credit application with
22 them. They asked him questions about how much he earned,
23 and where he lived, and his wife, and how much she
24 earned. And they went through that process and they were
25 sold a vehicle.

1 That is the arbitration agreement that is referred
2 to in the --- the defendant's brief and in their memo
3 here. And that's what they're trying to now use to force
4 my client to go into arbitration. And as they put it,
5 the --- the focus is on the failure of this dealership
6 to --- to pay off the balance of that --- that --- that
7 '23 automobile.

8 But that's not the focus of our claims against GM
9 Financial. In 2024, Mr. Ward, driving by the Winding
10 dealership decides he wants to buy one of their vehicles.
11 So he goes in and again says I want to buy it on credit.
12 And they say okay. That's fine. How much do you earn?
13 They get all that information again and then they say,
14 well, what are you going to put down? And he says well,
15 I got a little bit of money to put down, but I also have
16 this '23 truck that I can put down.

17 And they say, okay. Well, let's find out a little
18 bit more about it. Do you own it outright? He says, no
19 I've got a --- a lienholder. I've got GM Financial. And
20 they say don't worry about it and do like every other car
21 dealership does and they leave him in a room. They go to
22 another room to try and work out some --- some details of
23 a deal that they're going to bring to him.

24 In doing so, they notify --- Winding does --- GM
25 Financial and requests the payoff information from GM

Proceedings

1 Financial. As you know, you can't just go and pay off
2 the balance, there's other fees involved and so they have
3 to get that higher amount of what is that payoff amount.

4 And they work all of that into the purchase of the
5 '24 vehicle. Because he's got some (technical
6 difficulty) equity. Right? So he guess a credit for the
7 value of that vehicle and the equity he has in, but
8 there's a --- there's a gap. There's some negative
9 equity.

10 And they take that negative equity and they roll it
11 into this '24 purchase agreement. We can see that in the
12 retail installment contract for that second vehicle
13 purchase. We know that GM Financial was aware of and
14 involved in that payoff communication with Winding.
15 Because the exact same day that he purchases that
16 vehicle, GM Financial notifies the credit bureau that he
17 no longer --- Mr. Ward no longer owes anything on that
18 vehicle. His balance is zero. That's because they have
19 a new debtor. Winding is now their debtor. Winding now
20 steps in the shoes of Mr. Ward with regard to that old
21 '23 vehicle. Right?

22 And GM Financial knows this. GM Financial, when
23 they go to repo that vehicle which we believe the
24 evidence will show is in October --- October 16th of ---
25 of '24. They don't go to Mr. Ward's house. They don't

Proceedings

1 go to Mr. Ward's place of business. They know exactly
2 where it is. It's at Winding Chevrolet. They go and
3 they repo it from them.

4 The problem then arising when we find out that
5 Winding has not made any payoff like they were supposed
6 in the second transaction. And when they go to sell it
7 at auction, the vehicle doesn't fetch the full amount of
8 the debt that's owed to GM Financial. Instead of GM
9 Financial pursuing collection actions against Winding,
10 they all of a sudden decide they're going to go back to
11 this first contract. And they're going to try and get
12 Mr. Ward to pay even though he's no longer a party to
13 that contract. Right?

14 And the new debtor was Winding Chevrolet. And so
15 they go and (technical difficulty) to the Wards and they
16 say you owe us \$10,000. They say, no we don't, Winding
17 paid that off. We don't owe that. We're not your debtor
18 anymore. They say, if you're not going to pay us, we're
19 now go to go to the credit bureau and we're going to take
20 back (technical difficulty).

21 So in April of this year, GM Financial went back to
22 the credit bureau and said never mind, we were wrong,
23 they don't owe zero, they owe us \$9,000, dinging their
24 credit now 100 points down which for someone who's not
25 (technical difficulty) someone who is a mechanic at

1 (unintelligible), that is a significant blow.

2 That is the basis of our negligence claims against
3 GM Financial. That forms the basis of our gross
4 negligence claims against GM Financial. That forms the
5 basis of our (technical difficulty) claims against GM
6 Financial. It has nothing to do with the purchase, the
7 credit application, or anything to do with the
8 transaction to purchase that '23 vehicle. It has to do
9 with everything subsequent.

10 And I think the Court was right in talking about
11 these things aren't related. These things are not
12 connected as GM would like them to be. This is a
13 separate transaction. This is about GM Financial
14 pursuing collection actions, dingy credit for somebody
15 here in South Carolina who they know is not the proper
16 debtor to this transaction.

17 It has nothing to do with the '23 vehicle. It has
18 everything to do with the payoff that Winding was
19 supposed to do but didn't. When Winding couldn't pay
20 because that business went under, GM Financial then turns
21 to somebody who they thought might be able to pay and
22 they turned on the Wards. And that is the focus of our
23 claim against GM Financial. It has nothing to do with
24 the purchase of the '23 vehicle.

25 Finally, Your Honor, I'm not going to rehash

1 everything that was filed in our motion, especially in
2 light of the fact that opposing counsel is going to
3 submit a rebuttal to that. But I would point out there
4 is a case here in South Carolina Doe versus TSC LLC. And
5 Supreme Court justice Hill at the time was writing for
6 the Court of Appeals looked at an arbitration provision,
7 an almost identical to the one in this case. A broad
8 ranging, broad sweeping arbitration clause that basically
9 says anything and everything that has to do with this
10 vehicle from now until the end of time involving any
11 party is going to be subject to an arbitration clause.
12 And our Court of Appeals said absolutely not. That is
13 unconscionable, that is an unenforceable arbitration
14 agreement. That was the same context of an automobile
15 purchase, Your Honor. So we that --- that not only is
16 this claim --- these claims don't even touch on the
17 arbitration provision, but even if they did, that
18 arbitration clause is unenforceable pursuant to the case
19 law in South Carolina.

20 Happy to answer any questions the Court would have.

21 THE COURT: Mr. Hogsette, your position is that the
22 arbitration clause would not apply because this is a
23 separate transaction. There are separate torts that were
24 committed beyond this contract. But you also talked
25 about unconscionability in your brief as well. Briefly

1 address your --- your position in regards to if I were to
2 find that the arbitration clause would apply, give me
3 your position in regards to whether or not this is an
4 unconscionability issue as well.

5 MR. HOGSETTE: Absolutely, Your Honor. And we ---
6 and we've laid this out in --- in our brief. But again,
7 we think that there are some --- some very drastic and
8 serious issues with the language that is in this
9 arbitration clause, we think it's unconscionable. This
10 is not a dealership dealing with a lawyer from Burr &
11 Forman. Again, this is a dealership dealing with a
12 mechanic at (unintelligible). There is no dealership
13 that he's going to be able to go to that's not going to
14 have these arbitration provisions in there.

15 This is not an arm's length transaction. If you
16 were to go through and say I'll purchase this vehicle,
17 but I'm striking out the third page here or the second to
18 last page here with this arbitration clause, they
19 wouldn't have sold him the vehicle and no dealership
20 would have sold him the vehicle. This is not something
21 he had the ability to negotiate. They were in a superior
22 position to him.

23 As we outline and as opposing counsel briefly
24 discussed, there is the issue with necessity that he
25 needs this vehicle. There is also the issue with the

1 fact, Your Honor, that the --- the broad sweeping just
2 generalized language of this arbitration agreement. Our
3 Court of Appeals and our sitting Supreme Court justice
4 has said that is an unconscionable and unenforceable
5 arbitration agreement. That our Supreme Court or our
6 South Carolina courts have the ability to look at at
7 first blush. This does not have to run off to an
8 arbitration panel simply because there's a clause in a
9 2023 contract. This is something that the Court can look
10 at, the judge can use your discretion, and in doing so
11 our Court of Appeals has already outlined it. Language
12 like this in an arbitration clause is on its face
13 unconscionable just because it deals with anything and
14 everything from now until the end of time involving any
15 potential party.

16 So if --- if the Court is going to say that this is
17 a --- this is an arbitration agreement that applies to or
18 relates to these claims, which again, we deny we
19 would --- we would submit to the Court any alternative
20 the Court should still find in our favor and deny the
21 relief requested because of the broad sweeping language
22 and the precedent set by our Court of Appeals.

23 THE COURT: This, Mr. Hogsette.

24 MR. HOGSETTE: Thank you, Your Honor.

25 THE COURT: Mr. Stewart, your motion. I'll give you

1 the last word.

2 MR. STEWART: Thank you, Your Honor. Just very
3 briefly, I'd like the Court to focus on --- on something
4 Mr. Hogsette stated which was that it --- the payoff ---
5 this is all rooted in the payoff. If the payoff
6 negligence doesn't happen, then there's no claim against
7 my client. So the payoff is the payoff of contract
8 number one that has the arbitration in it. So you can't
9 ignore that first contract when conducting your analysis,
10 because that's what everything is rooted in. That's
11 where it begins. And the payoff is what triggered the
12 harm. And --- and whatever happened there is what caused
13 the harm.

14 And then lastly, Your Honor, as it relates to the
15 unconscionability, I haven't had an opportunity to read
16 this Doe case, but I --- I don't believe that --- I need
17 to look at those facts that this is on its face
18 unenforceable. I argue a lot of these typically in a
19 nursing home setting, and they all --- always say any and
20 all claims. That's just how they --- they work.

21 And so Your Honor has given us an opportunity, I'd
22 like to address that in a brief, but we believe that this
23 is a valid, enforceable arbitration agreement under the
24 FAA. They indicated that, you know, it's the
25 unconscionable and that no other dealership would give

1 him an agreement that didn't have an arbitration
2 agreement. Well, that hasn't been presented to the
3 Court. There's been no evidence of that. That's just
4 been testimony from counsel.

5 Again, he could have gone and gotten financing from
6 somewhere else. This was a five-page agreement. It
7 wasn't like a long lengthy agreement where this was
8 hidden. This was on the bottom a page that was, you
9 know, covered in a box that was bolded and he signed
10 right under it. He signed on each page. So he had
11 opportunity to read it. He could have sought financing
12 somewhere else. It's a valid enforceable arbitration of
13 the FAA.

14 I move respectfully request the Court compel
15 this --- the claims against my client arbitration.

16 THE COURT: Thank you, Mr. Stewart.

17 MR. STEWART: Thank you.

18 THE COURT: And you indicated you need till Friday
19 to address the arguments as set forth in the plaintiff's
20 memorandum?

21 MR. STEWART: Yes, sir. If I may till next Friday?

22 THE COURT: Yes, sir. That will be fine.

23 MR. STEWART: And on the motion for a protective
24 order, Your Honor, generally, we --- that's a position
25 that --- the discovery should be in arbitration, but if

1 Your Honor decides that we're going to be in State Court,
2 I just ask if you rule against this on a protective
3 order, just give us 30 days from that order so we can
4 answer the discovery. But again, we don't think we
5 should be answering discovery in State Court. But that
6 order --- that motion is hinged on we don't want to be in
7 trouble for not answering discovery or (technical
8 difficulty).

9 THE COURT: You didn't want to --- you didn't want
10 to prejudice your argument ---

11 MR. STEWART: And that too.

12 THE COURT: --- by submitting to discovery that
13 looks like you --- you're submitting to the state court
14 proceedings.

15 MR. STEWART: And that's right, Your Honor. And I
16 believe there's case law that states when a --- a party
17 conducts discovery using the rules of procedure, that can
18 be construed as a waiver of your arbitration rights,
19 so ---

20 THE COURT: And --- and --- and so yeah. Those go
21 hand in hand. And --- and I see those filed together
22 under most circumstances, so yes, sir.

23 MR. HOGSETTE: Just for the record, the Wards have
24 no problem with if the Court does decide to not enforce
25 the arbitration agreement, I'm not going to sit here and

Proceedings

1 say oh, you --- you're in --- you haven't answered so I'm
2 going to file a motion to compel and ask for sanctions.
3 We would certainly give whatever time frame is need to
4 answer discovery.

5 MR. STEWART: Thank you.

6 THE COURT: Gentleman. I appreciate your arguments.
7 And --- and work that you've already done and what you're
8 going to give me. And I'll look to --- to get your brief
9 by next Friday.

10 MR. HOGSETTE: Thank you, Your Honor.

11 THE COURT: Thank you, Mr. Stewart. Thank you Mr.
12 Hogsette.

13 MR. STEWART: Thank you, Your Honor.

14 (PROCEEDINGS CONCLUDED)

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CERTIFICATE OF TRANSCRIBER

I, JEANNE MELDRIM, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of CIRCUIT COURT 3 for WILLIAMSBURG COUNTY, South Carolina, on the 7th Day of July, 2025.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

November 3, 2025

A handwritten signature in black ink that reads "Jeanne Meldrim". The signature is written in a cursive, flowing style with a prominent dot above the 'i' in "Meldrim".

Jeanne Meldrim

Transcriber

From: Tucker, Michelle on behalf of Keller, Richard
Sent: Wednesday, September 24, 2025 10:12 AM
To: sdobysc@sccourts.org
Cc: Elmore, Melissa; rod@jerniganlaw.net; Stewart, Nick; Keller, Richard; ashogsette@thlawsc.com; kmryan@thlawsc.com; eh temple@thlawsc.com
Subject: RE: Continued Motion
Attachments: GM Motion to Alter_Amend Order Denying Motion to Compel Arbitration(62228865.1).pdf

Judge Doby:

AmeriCredit Financial Services, Inc. d/b/a GM Financial filed the attached Motion to Alter or Amend Order Denying Motion to Compel Arbitration and Stay Case on August 25, 2025. The Motion was set for hearing on September 25, 2025 in front of Judge Griffin. We received notice from Melissa Elmore on September 23, 2025 that the Motion needs to be heard by you. Please set this for hearing at the court's earliest convenience. Thank you.

Richard Keller

From: Elmore, Melissa <Melissa.Elmore@wc.sc.gov>
Sent: Tuesday, September 23, 2025 2:15 PM
To: rod@jerniganlaw.net; Keller, Richard <rkeller@burr.com>; Stewart, Nick <NStewart@burr.com>; ashogsette@thlawsc.com; kmryan@thlawsc.com; eh temple@thlawsc.com
Subject: Continued Motion

This is an EXTERNAL email! STOP, ASSESS, and VERIFY

Good Afternoon,

The case referenced below is on Thursday's motions roster. It is a motion to reconsider a prior order of Judge Doby. He will need to hear this matter. This matter is continued and should be scheduled to be heard by Judge Doby. Please let me know if you have any further questions.

22	09/25/2025	9:30 AM	Motion/Alter and/or Amend	Gm Financial, Llc-DEF	08/25/2025	2024CP4500502 William Ward , plaintiff, et al VS Gm Financial, Llc , defendant, et al
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Melissa Elmore
Common Pleas

Williamsburg County Clerk of Court Office
125 W. Main Street

Kingstree, SC 29556
843-355-9321 ex 7106
Melissa.Elmore@wc.sc.gov



E. Hood Temple
Phone: (843) 662-5000
Fax: (843) 678-9273
E-mail: eh temple@thlawsc.com

September 24, 2025

VIA EMAIL

The Honorable S. Bryan Doby
sdobyj@sccourts.org

Re: *William Brian Ward and Charlotte Ward
v. Winding Makia Automotive Group,
LLC, d/b/a Winding Chevrolet GMC*
Our File # 2024180T
C/A No.: 2024-CP-45-00502

Dear Judge S. Bryan Doby:

As you may remember, this firm has the honor and privilege of representing Plaintiffs William and Charlotte Ward in the above-referenced matter.

Earlier today, opposing counsel copied the undersigned on an email (hereinafter, "September 24 Email") sent to your chambers wherein Defendant GM Financial provided a copy of its Motion to Alter or Amend and requested a hearing on its Motion pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. Plaintiffs believe that a hearing is not necessary, and Defendant's 59(e) Motion should be dismissed as a matter of law.

On July 10, the Court held a hearing on Defendant's underlying motions¹ in Williamsburg County. On July 28, your Honor issued a Form 4 Order stating that Defendant's Motions were denied. I have included a courtesy copy of that Order for the Court's convenience. Your honor subsequently issued a second Order on Defendant's motions on August 20. Notably, the rulings and operative findings of fact contained in the second Order were consistent with the Court's ruling in the Form 4 Order.

On August 25, Defendant's filed a Motion to Alter or Amend the Court's ruling, pursuant to Rule 59(e), SCRPC (hereinafter, "Rule 59(e) Motion"). Unless Defendant's counsel had an *ex parte* communication with your chambers, the September 24 Email is the first time Defendant provided your Honor with a copy of their Rule 59(e) Motion.

¹ Defendants filed a Motion to Compel Arbitration and Motion to Stay Discovery/Protection, filed March 27 and 28, respectfully.

Rule 59, SCRCP, requires that the moving party provide the presiding judge with a copy of its 59(e) Motion “within ten (10) days after the filing of the motion.”² The South Carolina Court of Appeals has affirmatively held that failure to comply with Rule 59(g) supports a circuit court’s decision to deny a Rule 59(e) motion based solely on the failure to comply with this subpart of Rule 59.³

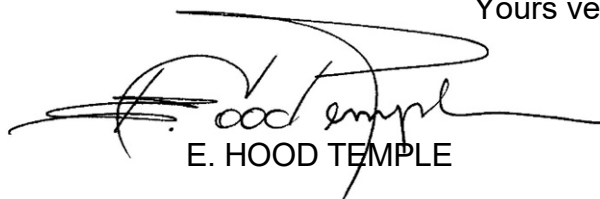
Therefore, based upon the plain reading of Rule 59, SCRCP, and the binding precedent from the appellate court, Plaintiff respectfully requests the Court deny Defendant’s Motion to Alter or Amend due to Defendant’s failure to comply with the South Carolina Rules of Civil Procedure.

In the alternative, if your Honor decides to hold a hearing on this matter, Plaintiffs’ counsel respectfully requests the opportunity to file a Memorandum in Opposition raising this defense and any other defense(s) to the substance of Defendant’s Motion. Counsel will make the necessary arrangements to be present at a hearing scheduled at your convenience.

As always, please do not hesitate to contact us if you have any questions or concerns.

With kindest regards, we are

Yours very truly,



E. HOOD TEMPLE



ALEXANDER S. HOGSETTE

Enclosure: Form 4 Order
Order (dated August 20, 2025)
cc: Richard Keller, Esq. (email only)
Clients

² Rule 59(g), South Carolina Rules of Civil Procedure. Based upon the filing date of the 59(e) Motion, the deadline to provide your Honor with a copy of the Motion was September 4.

³ Smith v. Fedor, 809 S.E.2d 612, 422 S.C. 118 (S.C. App. 2017) (“Rule 59(g) would lack any purpose if trial courts committed error by denying the motion for failure to comply with the rule. Further . . . a trial court may deny the motion solely on the basis of the rule.”) (citing Gallagher v. Evert, 353 S.C. 59, 63-64, 577 S.E.2d 217, 219 (Ct. App. 2002); see Smith v. Newton, Op. No. 2021-UP-216 (S.C. Ct. App. dated June 16, 2021) (unpublished opinion)(Court of Appeals affirmed decision of The Honorable Deandre Benjamin’s denial of a 59(e) motion for failure to strictly comply with Rule 59(g), SCRCP).

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Williamsburg
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2024CP4500502

William Ward et al
PLAINTIFF(S)

Gm Financial, Llc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

Defendant GM Financial's motion to compel arbitration and motion from protection of discovery was filed on 3/27&28/2025 and heard on 7/10/2025 in Williamsburg County via Webex recording but conducted in person.. The motions are denied. I find that the causes of action in this case are not connected to the original transaction and compelling arbitration would be unconscionable. Plaintiff's attorney to do a more formal order within 10 days.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/28/2025 .

Windingmakia Automotive Group, Llc
Michael Winding
Herbert Stackley

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCF.



Williamsburg Common Pleas

Case Caption: William Ward , plaintiff, et al VS Gm Financial, Llc , defendant, et al
Case Number: 2024CP4500502
Type: Order/Electronic Form 4

So Ordered

S. Bryan Doby, Circuit Court Judge, No. 2784

Electronically signed on 2025-07-28 14:28:41 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF WILLIAMSBURG

WILLIAM WARD AND CHARLOTTE
WARD,

Plaintiffs,

vs.

GM FINANCIAL, LLC, WINDINGMAKIA
AUTOMOTIVE GROUP, LLC DBA
WINDING CHEVROLET GMC, MICHAEL
WINDING, AND ANDREW EFIRD,

Defendants.

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
C/A # 2024-CP-45-00502

**ORDER DENYING DEFENDANT AMERICREDIT FINANCIAL SERVICES, INC. D/B/A
GM FINANCIAL'S MOTIONS TO COMPEL ARBITRATION AND STAY LITIGATION**

This matter is before the Court on the Motions of Defendant AmeriCredit Financial Services, Inc. d/b/a GM Financial (“GM Financial”) to stay this litigation and to compel arbitration of the matter pursuant to the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.*

After reviewing the pleadings, the applicable law, and the arguments presented by the parties, the Court finds the following:

1. The threshold issue of whether a valid arbitration agreement exists is properly before this Court. The Patriot Chevrolet arbitration provision does not include a “clear and unmistakable” delegation of this gateway issue to an arbitrator.
2. The arbitration clause relied upon by GM Financial is contained in a previous 2023 purchase agreement between Plaintiff William Ward and a different dealership, Patriot Chevrolet. It does not govern the transaction at issue in this litigation.
3. The causes of action asserted in this case are not connected to the prior 2023 transaction.

4. Grounds for invalidating an arbitration agreement include generally applicable contract defenses, such as fraud, duress, or unconscionability. *See Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C 14, 644 S.E.2d 663 (2007).
5. Plaintiff has shown grounds exist to invalidate the arbitration provision due to unconscionability. Compelling arbitration would be unconscionable due to Plaintiff's lack of meaningful choice in accepting the arbitration provision and the oppressive nature of its terms.
6. Based on all of the facts and circumstances of the present matter, the Court finds no agreement ever existed between the parties to submit Plaintiff's present disputes with GM Financial to binding arbitration.
7. Accordingly, the arbitration clause is unenforceable and void with respect to the claims asserted in this action.

THEREFORE, IT IS ORDERED that this Court hereby **DENIES** Defendant GM Financial's Motion to Compel Arbitration with prejudice. I further **ORDER** that this matter is not stayed and that the parties shall proceed with litigation forthwith in this Court.

AND IT IS SO ORDERED.

This ___ day of _____, 2025
_____, SC

The Honorable S. Bryan Doby
Presiding Circuit Court Judge for
the Third Judicial Circuit



Williamsburg Common Pleas

Case Caption: William Ward , plaintiff, et al VS Gm Financial, Llc , defendant, et al
Case Number: 2024CP4500502
Type: Order/Other

So Ordered

S. Bryan Doby, Circuit Court Judge, No. 2784

Electronically signed on 2025-08-20 10:00:44 page 3 of 3

RECEIVED

Apr 08 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas
The Honorable S. Bryan Doby
Third Judicial Circuit

Appellate Case No. 2025-002019
Circuit Court Case No. 2024-CP-45-00502

William Ward and Charlotte Ward, Plaintiffs / Respondents,

v.

AmeriCredit Financial Services, Inc. d/b/a GM Financial; Windingmakia Automotive Group, LLC
D/B/A Winding Chevrolet GMC; Michael Winding; and Andrew Efird, Defendants,

Of whom, AmeriCredit Financial Services, Inc. d/b/a GM Financial is the Appellant.

CERTIFICATE OF COUNSEL

I certify that the Record on Appeal contains no matter which is irrelevant to this Appeal.

April 8, 2026.

/s/ Richard Carlton Keller

Richard Carlton Keller

Nicholas C. Stewart

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Attorneys for Appellant