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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
In the Court of Common Pleas

The Honorable J. Derham Cole, Circuit Court Judge

Case No. 2021-CP-23-00244

Appellate Case No. 2023-001053

Penland Automotive, LLC and Charles W. Penland, Jr.,

.....Respondents,

v.

Dealer Financial Holdings, LLC, Steve Lanzl, and Daniel B. Haight,

.....Petitioners.

RESPONDENTS' MEMORANDUM IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....ii

INTRODUCTION.....1

STATEMENT OF THE CASE.....2

ARGUMENT.....4

I. The Court of Appeals Correctly Applied Settled South Carolina Law Requiring Strict Construction of Jury-Trial Waivers.....4

II. The Court of Appeals Did Not Resolve a Disputed Factual Question—It Applied Undisputed Legal Principles to the Record Before It.....6

III. Petitioners' Arguments Do Not Present a Novel or Unsettled Question of Law Warranting Certiorari Review.....8

CONCLUSION.....9

TABLE OF AUTHORITIES

Cases

Beach Co. v. Twillman, Ltd., 351 S.C. 56, 566 S.E.2d 863 (Ct. App. 2002).....4

Dillon v. BMO Harris Bank, N.A., 787 F.3d 707 (4th Cir. 2015).....8

McGill v. Moore, 381 S.C. 179, 672 S.E.2d 571 (2009).....6

Sandvik AB v. Advent Int'l Corp., 220 F.3d 99 (3d Cir. 2000).....8

Wachovia Bank, Nat. Ass'n v. Blackburn, 407 S.C. 321, 755 S.E.2d 437 (2014).....4

Statutes

9 U.S.C. § 4.....8

Other Authorities

South Carolina Appellate Court Rules Rule 242(b).....2, 4, 9

INTRODUCTION

The Court of Appeals correctly held that the contractual jury-trial waiver contained in the parties' 2016 Financing Agreement does not bar Respondents' right to a jury trial in this action. That decision rested on settled South Carolina principles requiring jury-trial waivers to be strictly construed, and it faithfully applied those principles to the undisputed fact that the parties ended the Financing Agreement in 2019 and resumed their relationship in 2020 without executing a new written agreement incorporating the waiver. The Court of Appeals reached the right result, and this Court's review is not warranted.

Petitioners characterize the decision below as a failure to independently analyze the waiver provision's text. That characterization misreads the opinion. The Court of Appeals did analyze the waiver's language. It concluded that, strictly construed, the waiver could not be stretched to encompass claims arising from a subsequent and distinct financing arrangement that the parties entered without the jury-trial waiver—or indeed without any written agreement at all. The panel's conclusion that the Financing Agreement had effectively ended was not a factual finding displacing the circuit court; it was a legal determination, drawn from undisputed record evidence, that bore directly on whether the waiver provision's strict terms covered the claims at issue.

Petitioners also contend that this case presents an important, unsettled legal question about how courts should analyze jury-waiver provisions when the underlying contract's continued enforcement is disputed, but that framing overstates the novelty of the question and understates the significance of Petitioners' own failure to obtain a ruling below that the 2016 Financing Agreement remained in effect. The circuit court twice declined to resolve that factual question in Petitioners' favor, and Petitioners chose to appeal the denial of their motion to strike without first

obtaining a dispositive ruling on the predicate issue. The Court of Appeals was not required to adopt a factual premise that the circuit court expressly reserved.

This case does not present the kind of important, unresolved legal question that warrants this Court's attention under Rule 242(b), SCACR. The legal principles governing jury-waiver clauses have settled the sunseting of terminated contracts and their continued enforceability. Their application here turns on the specific facts of this commercial relationship and the language of the waiver itself, not on any gap in South Carolina law. The Court of Appeals applied existing law correctly. The petition should be denied.

STATEMENT OF THE CASE

Respondents Penland Automotive, LLC and Charles W. Penland, Jr. (collectively, "Respondents") operated a used-car dealership that entered into a commercial floorplan financing relationship with Petitioner Dealer Financial Holdings, LLC ("Dealer Financial") in 2016. The 2016 Loan and Security Agreement ("Financing Agreement") governed that relationship and included, along with the Demand Note and Unlimited Guaranty, a bilateral jury-trial waiver. The parties conducted business under the Financing Agreement until 2019.

In 2019, Respondents ended their financing relationship with Dealer Financial in writing and received its deposit money back. No party contends otherwise. (App. Vol. I, p. 272.) The parties' relationship ceased entirely for a period, and no further obligations were incurred or discharged under the Financing Agreement during that time.

In 2020, Respondents obtained alternate financing but could not consummate that financing without Petitioners removing a 2016 UCC-1 security instrument to allow the new agreement first priority secured transaction status. Petitioners took the request to remove the UCC-1 as a marketing opportunity and promised to match the new financing offer. Critically, the parties

executed no new written agreement, and no written document incorporated by reference the terms of the 2016 Financing Agreement or its jury-trial waiver. No new agreement was forwarded to Respondents ever. The circumstances under which the parties resumed their dealings, and what terms—if any—governed the 2020 arrangement, became the central factual dispute in this litigation.

A dispute among the parties arose in October 2020. Respondents filed this action seeking relief arising from the conduct of Petitioners Dealer Financial, Steve Lanzl, and Daniel B. Haight in connection with the 2020 financing activity and its termination. Respondents demanded a jury trial. Petitioners answered, asserted counterclaims, and moved to strike the jury demand, invoking the waiver in the 2016 Financing Agreement.

The circuit court heard Dealer Financial's motion to strike the jury demand alongside Respondents' motion for partial summary judgment on July 29, 2021. The circuit court denied both motions, finding that "a genuine issue of material fact exists relating to the continued applicability of the 2016 Loan Documents to the reopened floor-plan financing relationship in 2020." (App. Vol. I, p. 292.) The court did not find—because no party had established—that the 2016 Financing Agreement governed the 2020 arrangement. It simply declined to resolve that issue on the record before it at that time.

Following additional discovery, Dealer Financial renewed its motion to strike. The circuit court again denied the motion by Form 4 order on June 1, 2023. (App. Vol. I, pp. 67–69.) Petitioners appealed.

The Court of Appeals affirmed. The panel examined the record and concluded that the parties had "effectively ended" the Financing Agreement in 2019 and that nothing in the record supported a finding that all parties intended to carry the Financing Agreement's terms—including

the jury-trial waiver—forward into the 2020 arrangement. (App. Vol. I, pp. 6–7.) On that basis, the court held that the waiver did not apply to Respondents' claims. Petitioners sought rehearing; the Court of Appeals denied it. This petition followed.

ARGUMENT

Certiorari is appropriate where the Court of Appeals has failed to apply settled legal principles or where review is needed to resolve an important unsettled issue. Rule 242(b), SCACR. Neither circumstance is present here. The Court of Appeals applied established principles of contract interpretation and jury-waiver law correctly. No unsettled legal question of broader significance is presented. The petition should be denied.

I. The Court of Appeals Correctly Applied Settled South Carolina Law Requiring Strict Construction of Jury-Trial Waivers.

Petitioners contend that the Court of Appeals failed to conduct an independent textual analysis of the jury-waiver provision and instead treated the disputed status of the Financing Agreement as dispositive. That argument mischaracterizes the opinion. The Court of Appeals did engage with the waiver's text, and it applied the governing standard—strict construction—to conclude that the waiver's terms did not reach claims arising from the separate 2020 financing arrangement.

South Carolina law is well-settled that a party may contractually waive the right to a jury trial, but that such waivers are strictly construed. *Wachovia Bank, Nat. Ass'n v. Blackburn*, 407 S.C. 321, 332, 755 S.E.2d 437, 443 (2014). Strict construction means courts do not extend a waiver beyond what its language plainly and unambiguously requires. See *Beach Co. v. Twillman, Ltd.*, 351 S.C. 56, 63–64, 566 S.E.2d 863, 866 (Ct. App. 2002). This standard reflects the fundamental

importance of the constitutional right to trial by jury and the deliberate caution courts apply before finding that parties have relinquished it.

The waiver here is broad in some respects—it extends to extra-contractual claims and to matters arising "prior to, during, or subsequent to" the Financing Agreement, but the threshold question is whether the waiver clause itself survived the effective termination of the Financing Agreement and applied to a subsequent, distinct financing arrangement that was not memorialized in any writing incorporating the waiver's terms. Strictly construed, it did not.

The Court of Appeals examined the undisputed record evidence and concluded that the parties ended the Financing Agreement in 2019. That determination was not a resolution of a disputed factual question, as Petitioners suggest, rather, it was a legal conclusion drawn from undisputed evidence: both sides agreed the financing relationship stopped in 2019. The disputed question was whether the 2020 arrangement reimposed the 2016 Agreement's terms—a question the Court of Appeals properly resolved against Petitioners by observing that there was no evidence all parties so intended.

Petitioners place substantial weight on the waiver's reference to extra-contractual claims and matters arising "subsequent to" the Financing Agreement. But that language is most naturally read to extend the waiver's reach to claims whose factual predicate arises outside or after the Agreement while the Agreement remained operative—not to resurrect a waiver from a terminated agreement and project it onto an entirely distinct subsequent arrangement. To read the clause as Petitioners urge would mean that any two parties who once executed a financing agreement containing a jury-waiver provision would be bound by that waiver forever, regardless of the subsequent evolution or complete termination of their relationship. Strict construction forecloses that reading.

Moreover, the Court of Appeals' analysis is consistent with this Court's foundational contract-interpretation principles. The cardinal rule is to ascertain and give effect to the parties' intent as reflected in the plain language of the contract. *McGill v. Moore*, 381 S.C. 179, 186, 672 S.E.2d 571, 575 (2009). Where a contract has effectively ended and the parties have entered a new arrangement without incorporating the prior agreement's terms, it is the intent of the parties as to the new arrangement—not the language of the defunct prior agreement—that controls. The Court of Appeals correctly applied that principle here.

Petitioners also argue that the waiver's severability clause—providing that invalidity of one provision does not affect others—supports their position. But severability addresses the internal structure of an operative agreement. It does not address what happens when the agreement as a whole ends and the parties enter a new arrangement. The severability clause cannot tether the waiver to a subsequent, separate financing relationship that was never documented in any writing referencing the 2016 Agreement.

II. The Court of Appeals Did Not Resolve a Disputed Factual Question—It Applied Undisputed Legal Principles to the Record Before It.

Petitioners argue that the Court of Appeals impermissibly resolved a disputed factual question when it concluded that the Financing Agreement had "effectively ended" in 2019 and was not carried forward into the 2020 arrangement. According to Petitioners, that conclusion was in tension with the circuit court's prior finding that a genuine issue of material fact existed on the question. That argument rests on a mischaracterization of what the Court of Appeals decided—and of what the circuit court found.

The circuit court's July 2021 ruling denied Petitioners' analysis of the case and denied Petitioners' motion to strike the jury prayer and identified a genuine issue of material fact as to the continued applicability of the 2016 Loan Documents. That ruling was made at the outset of the

litigation, before the close of discovery, when the record was sparse. It did not resolve the question in either direction; it simply found the question too underdeveloped to decide at that stage. By the time Dealer Financial renewed its motion to strike in early 2023—after substantial discovery—the evidentiary record had grown considerably and again the court denied Petitioners’ motion.

Critically, even taking the record in the light most favorable to Petitioners, the relevant evidence does not support a finding that the 2020 arrangement reimposed the jury-trial waiver. The testimony Petitioners cite—from Tim Yarger and Daniel Haight—reflects their view that the parties agreed to reopen the credit line on "the same terms as before." But that testimony, even accepted as true, does not establish that Respondents agreed to carry forward the 2016 Financing Agreement's terms wholesale, including the jury-trial waiver. The fact that Respondents dispute that characterization only underscores that no meeting of the minds occurred on that point—which is itself fatal to Petitioners' position, since a jury-trial waiver, like any contractual provision, requires mutual assent to be enforceable.

The Court of Appeals was not resolving a disputed factual question when it concluded the Financing Agreement had ended. It was recognizing the undisputed fact that the relationship ended in 2019 and resumed without a written agreement, and drawing the legal conclusion—required by strict construction of jury-trial waivers—that this circumstance did not establish the waiver's continuing applicability to the new arrangement. That conclusion is a legal one, properly made by the appellate court on the record before it.

Petitioners' preferred framework would require courts to hold a full evidentiary hearing—or even conduct a trial—on the question of whether the Financing Agreement's terms were carried forward before a motion to strike a jury demand can be decided. But South Carolina law does not

require such a procedure. Courts routinely resolve the applicability of contractual provisions, including jury-trial waivers, as questions of law on motions.

III. Petitioners' Arguments Do Not Present a Novel or Unsettled Question of Law Warranting Certiorari Review.

Petitioners argue that this Court should grant certiorari to provide guidance on how to analyze broadly worded jury-waiver provisions when the underlying contract's continued effect is terminated. But that framing overstates the novelty of the question and the significance of the decision below.

The legal principles governing jury-waiver provisions are well established in South Carolina. Courts must strictly construe such waivers, enforce them according to their plain language, and assess whether the parties knowingly and voluntarily agreed to the waiver's terms. Those principles, applied to the facts of this case, yield a clear answer: a jury-trial waiver contained in a financing agreement that the parties ended in 2019 does not automatically extend to a subsequent financing arrangement entered in 2020 without a written agreement incorporating the waiver's terms.

Petitioners invoke the framework developed under the Federal Arbitration Act for resolving disputes about whether an arbitration clause covers a particular claim. See 9 U.S.C. § 4; *Dillon v. BMO Harris Bank, N.A.*, 787 F.3d 707 (4th Cir. 2015); *Sandvik AB v. Advent Int'l Corp.*, 220 F.3d 99 (3d Cir. 2000). But that analogy is inapt. The FAA framework addresses whether an existing arbitration clause covers a particular dispute—not whether a clause from a terminated agreement extends to a subsequent, separate arrangement. The question here is not whether the waiver's language is broad enough to reach Respondents' claims if the Financing Agreement remained operative; it is whether the Financing Agreement, and by extension its jury-trial waiver, continued to govern the parties' relationship at all. South Carolina's existing principles of contract

formation and interpretation—including the requirement of mutual assent—answer that question without the need for a new analytical framework.

Nor does the decision below create any conflict or uncertainty in South Carolina law. The Court of Appeals applied settled principles to a specific factual record and reached a well-reasoned conclusion. That conclusion does not break new ground, and it does not expose future commercial parties to any meaningful uncertainty. Sophisticated parties who wish to ensure that a jury-trial waiver extends to all future dealings—regardless of how those dealings are documented—may do so by drafting their agreements to say precisely that. The parties here did not do so, and the Court of Appeals correctly declined to supply that language by implication.

Finally, certiorari review is not appropriate simply because a losing party believes the court below reached the wrong result. Rule 242(b), SCACR, reserves this Court's review for decisions that fail to apply settled principles or that present important unsettled questions. Neither condition is satisfied here. The petition should be denied.

CONCLUSION

The Court of Appeals correctly held that the contractual jury-trial waiver in the 2016 Financing Agreement does not apply to Respondents' claims arising from the parties' separate 2020 financing arrangement. That decision faithfully applied settled South Carolina principles requiring strict construction of jury-trial waivers, and it reached the right result on the record before it. The petition does not present a novel or important legal question warranting this Court's review. Respondents respectfully request that the Court deny the petition for writ of certiorari.

Respectfully submitted,

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