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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable J. Derham Cole, Circuit Court Judge

Case No. 2021-CP-23-00244
Appellate Case No. 2026-000821

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

v.

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

PETITIONERS' REPLY TO RESPONDENTS' MEMORANDUM IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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INTRODUCTION

Respondents' memorandum in opposition to the petition for writ of certiorari does not address the question Petitioners presented. Instead, it underscores why review is warranted. The petition does not ask this Court to abandon strict construction of contractual jury-trial waivers. Rather, it asks whether strict construction permits a court to disregard the independent force of a broadly worded jury waiver provision by treating the disputed status of the surrounding agreement as dispositive, instead of giving effect to the parties' agreed-upon language. The waiver here does not apply only to claims arising under the Financing Agreement. It applies to "any and all causes of action in any way relating to any matter between" the parties, including claims arising from alleged extra-contractual facts "prior to, during, or subsequent to" the Financing Agreement. (App. Vol. I, pp. 397–399). Petitioners preserved the argument that this language required independent analysis regardless of whether the broader Financing Agreement ultimately governed every aspect of the parties' resumed 2020 relationship. (App. Vol. I, pp. 15–17; App. Vol. II, pp. 501–502). Respondents' opposition does not meaningfully engage that textual point. It instead depends on the very premise that the petition challenges, namely that the Financing Agreement "effectively ended" and that the 2020 arrangement was "subsequent and distinct."

The Court of Appeals' opinion and Respondents' opposition attack the continuing existence of the Financing Agreement, but neither the opinion nor the opposition addresses the actual question on appeal: whether the waiver's own language resolves the question presented. The Court of Appeals quoted the clause, acknowledged its breadth in some respects, and then looked past it, treating the Financing Agreement's disputed status as dispositive without separately analyzing and deciding what "any and all causes of action in any way relating to any matter between" the parties, and "alleged extra-contractual facts prior to, during, or subsequent to this Agreement," covered on their own terms. Respondents defend that conclusion without engaging

the actual language at issue. Without a textual analysis to defend, Respondents can only restate the premise the petition challenges, which is that the Financing Agreement effectively ended and the 2020 arrangement was distinct. That is not a response to the preserved argument. It is a concession that the analysis was never done.

The record, moreover, cannot support the factual premise on which that defense rests. The Circuit Court's July 2021 Order expressly found "a genuine issue of material fact exists relating to the continued applicability of the 2016 Loan Documents to the reopened floorplan financing relationship in 2020." (App. Vol. I, pp. 62–64). That question remained unresolved when then-Circuit Judge Verdin later denied Respondents' motion for partial summary judgment on Petitioners' counterclaims because issues of material fact still remained, a point Respondents themselves acknowledged in their memorandum opposing Petitioners' renewed motion to strike. (App. Vol. I, p. 225; App. Vol. II, pp. 278–79). The Form 4 Order that denied Petitioners' renewed motion to strike the jury demand did not resolve that dispute. (App. Vol. I, pp. 67–69). The Court of Appeals decided disputed factual and legal questions about the Financing Agreement's status that no lower court had made, and it did so without separately asking whether the waiver's language itself could reach this dispute.

At this stage, the question is not whether Petitioners are ultimately right on the merits of the waiver issue. The question is whether this Court should review a decision that narrowed a broad commercial jury waiver provision by relying on a disputed factual premise no lower court resolved. That question is important and unanswered by South Carolina law. This Court should grant the petition.

ARGUMENT

I. Respondents do not answer the waiver-language issue the petition presents.

Respondents do not explain how the Court of Appeals' analysis gave effect to the waiver's actual language. That is the argument Petitioners preserved and pressed at every stage below. At the January 4, 2023 hearing, Petitioners' counsel put it directly: "whether the contract was terminated in 2019 or not, the jury waiver survives any termination or any interpretation of what parts of the contract survive and what parts don't." (App. Vol. II, pp. 501). Petitioners presented the same argument in their briefing to the Court of Appeals (App. Vol. I, pp. 15–17) and their petition for rehearing (App. Vol. I, pp. 51–53). The waiver covers "any and all causes of action in any way relating to any matter between" the parties and "alleged extra-contractual facts prior to, during, or subsequent to this Agreement." (App. Vol. I, pp. 398). Respondents' opposition does not point to anything in the Court of Appeals' analysis that gave those words their plain effect.

The Court of Appeals' reasoning is logically inconsistent and seems to rely on disputed extrinsic evidence rather than giving effect to the express language of the jury waiver provision. The panel quoted the waiver and identified three categories of covered claims, including claims related to alleged extra-contractual facts "before, during, or after the parties executed the 2016 Agreement." (App. Vol. I, pp. 2, 6–7). It then concluded that Respondents' claims "do not concern extra-contractual facts *surrounding* the 2016 Agreement." (App. Vol. I, p. 7) (emphasis added). Those are not the same phrase. The waiver says, "prior to, during, or subsequent to" the Financing Agreement. (App. Vol. I, pp. 397–399). The substitution of "surrounding the 2016 Agreement" reads a limiting principle into the clause to which the parties did not agree. The same problem appears in how the panel framed the waiver's categories in the first place. The Court of Appeals described the third category as covering claims arising from "extra-contractual facts before, during, or after the parties executed the 2016 agreement," yet the word "executed" does not appear in the

waiver. (App. Vol. I, pp. 6; 397–399). The provision reads "prior to, during, or subsequent to this Agreement," using the Agreement itself as the temporal reference point rather than the act of signing, and neither the Court of Appeals nor Respondents offers any explanation for that substitution. The Court of Appeals then compounded the error through its opinion in which it judicially narrowed the clause's language, holding that even the narrowed formulation did not apply because the Financing Agreement had effectively ended. (App. Vol. I, p. 6). The panel never asked whether the waiver's actual language reached this dispute on its own terms. Moreover, as discussed further below, there remains a factual question as to the continuation of the terms of the Financing Agreement.

Petitioners' petition focused on precisely that failure—the Court of Appeals never analyzed whether the waiver's actual language reached this dispute on its own terms. Respondents' opposition does not meaningfully address the waiver's precise language either. Reading the clause as a whole reveals the required analysis. "During" already covers claims arising from the parties' dealings under the Financing Agreement. "Subsequent to" can serve an independent purpose only by applying to something else, such as claims arising after or beyond the Financing Agreement's own terms, which is precisely what is at issue. Collapsing "subsequent to" into "during" strips it of any independent work and violates South Carolina's rule that every contractual term must be given effect. *See Stevens Aviation, Inc. v. DynCorp Int'l LLC*, 407 S.C. 407, 756 S.E.2d 148 (2014); *Yarborough v. Phoenix Mut. Life Ins. Co.*, 266 S.C. 584, 225 S.E.2d 344 (1976). Respondents do not address the fundamental issue on appeal: what did the parties intend this provision to cover when they agreed to it in 2016? South Carolina courts determine contractual intent from the parties' purposes at the time of contracting, not from their conduct or disputes years

later. *See Klutts Resort Realty, Inc. v. Down'Round Dev. Corp.*, 268 S.C. 80, 88, 232 S.E.2d 20, 25 (1977). The Court of Appeals and Respondents simply ignore this question.

Strict construction cannot operate to ignore or re-draft express contractual language. *Richards v. Spicer*, 445 S.C. 514, 522-23, 915 S.E.2d 486, 490–91 (2025) (holding courts must enforce unambiguous contracts according to their terms and that parties may contractually waive adjudicative rights, including the right to a jury trial). South Carolina courts enforce jury-trial waivers that are clear, knowing, and voluntary by giving their language its plain and ordinary meaning and should not shrink or ignore express terms agreed to by the parties. *Wachovia Bank, Nat'l Ass'n v. Blackburn*, 407 S.C. 321, 332, 755 S.E.2d 437, 443 (2014). Respondents acknowledge the waiver is "broad in some respects," but argue it cannot apply because the 2020 arrangement was not memorialized in a new writing incorporating its terms. (Opp. at 5). That argument treats the continued effect of the Financing Agreement as a precondition to enforcing the waiver, when the waiver's own language was drafted to reach claims "subsequent to" the Financing Agreement and "any matter between" the parties, regardless of whether the rest of the Financing Agreement remained in force. Respondents separately suggest that Petitioners could have drafted the waiver to cover post-termination claims but did not. That suggestion concedes the point, because it acknowledges that the answer lies in the language, yet Respondents never analyze the language they say controls.[1] Respondents cite no authority holding that strict construction permits a court to transform "subsequent to this Agreement" into "surrounding this Agreement,"

[1] Read on its own terms, the waiver does distinct work in each of its parts. "Prior to" covers claims predating the Financing Agreement, "during" covers claims arising in the course of it, and "subsequent to" covers claims arising after. Respondents' reading, like the Court of Appeals' analysis, renders "subsequent to" a nullity.

or to disregard broad "any matter between them" language because the parties dispute whether the broader Financing Agreement continued to govern all later dealings.

Respondents and the Court of Appeals also offer no meaningful answer to Petitioners' severability argument. Section 13 of the Financing Agreement provides that "[a]ny invalidity, in whole or in part, of any provision of this Agreement shall not affect the validity of any other provision." (App. Vol. I, p. 340). Petitioners argued below and on appeal that this clause independently supports enforcing the jury waiver even if other provisions of the Financing Agreement were deemed inapplicable to the 2020 dispute. (App. Vol. I, p. 16). Respondents' opposition dispenses with it in a single paragraph, asserting without citation that severability addresses only "the internal structure of an operative agreement." (Opp. at 6). That assertion does not explain why a severability clause, read alongside the waiver's own expansive language, would fail to sustain the waiver independently of the Financing Agreement's other terms.

Respondents' "bound forever" argument misses the point and does not resolve the contractual interpretation issue on appeal. Petitioners have never argued that a jury waiver attaches to any conceivable future dispute between parties who once executed a contract. The Petition raises a narrower issue in contending this clause, by its express terms, reaches a dispute arising from the same floorplan financing relationship, between the same parties, after that relationship resumed. The Court of Appeals recognized that Dealer Financial resumed advancing funds to Penland Automotive in 2020, that Penland Automotive used those funds, and that payments were made back to Dealer Financial. (App. Vol. I, pp. 3–4). The dispute underlying this case arose from that resumed financing activity and the parties' disagreement over the governing terms following several months and hundreds of thousands of dollars loaned. Whether the waiver's language reaches that dispute is a question of contract interpretation that the Court of Appeals did not

address. Further, Respondents offer assertion in place of authority, citing no case addressing a similarly worded provision in comparable circumstances.

II. Respondents' factual framing cannot be reconciled with the record or the procedural posture.

Respondents characterize the Court of Appeals' determination as a legal conclusion drawn from "undisputed record" evidence rather than a resolution of any disputed factual question. (Opp. at 5). Two separate Circuit Court orders addressing this exact question found a genuine issue of material fact as to the continued applicability of the Loan Documents to the parties' 2020 relationship, and neither finding was ever overturned. (App. Vol. I, pp. 62–64; 224–225; 278–279). Whatever Respondents may now say is "undisputed," that question was found to be disputed below.

Respondents attempt to minimize the July 2021 Order by suggesting that subsequent proceedings and additional discovery rendered the record undisputed. Their account omits the most important subsequent ruling entirely. In October 2022, Judge Verdin denied Respondents' own motion for summary judgment on Petitioners' counterclaims, which argued directly that the Financing Agreement did not apply to the 2020 arrangement, because issues of material fact remained. *Id*. Respondents do not address that ruling. Instead, they point to the Form 4 Order denying Petitioners' renewed motion to strike and contend that, by early 2023, "the evidentiary record had grown considerably," suggesting that the continued-applicability question had been resolved. (Opp. at 7). It had not. The Form 4 Order made no findings on the continued applicability of the Loan Documents. It did not determine that the Financing Agreement had terminated, did not address the parties' later dealings, and did not disturb the prior ruling that a genuine issue of material fact existed on that question. (App. Vol. I, pp. 224–225; 278–279). The Circuit Court simply issued a ruling holding that the plaintiff had not waived its right to a jury. Even Respondents

recognized, at the time, that the applicability question remained open. In their memorandum opposing the renewed motion to strike, they acknowledged that "the finder of fact must first determine whether the 2016 Agreement applies to the 2020 arrangement" before any waiver analysis could proceed. (App. Vol. I, p. 225). That concession cannot be squared with their current argument that the Court of Appeals was simply applying an undisputed factual premise. At the January 4, 2023 hearing that produced that very order, Respondents' counsel told the Circuit Court that "every judge that's heard this has found that there's a material issue or genuine issue of material fact." (App. Vol. I, p. 279). The rulings below and Respondents' own characterization of the record, made before the Court of Appeals issued its opinion, confirm that the dispute is very much alive.

Respondents wrongly argue that Petitioners failed to obtain a ruling that the Financing Agreement remained in effect. This is wrong because both parties argued this issue to Judge Verdin on cross-motions for summary judgment and she decided that genuine issues of material fact existed. The continued applicability of the Loan Documents remains disputed. The Court of Appeals therefore should not have treated the premise that the Financing Agreement "effectively ended" and was not carried forward as the basis for rejecting the waiver.

The Court of Appeals' own language reflects that its conclusion depended on a predicate about the Financing Agreement's status. The panel held that "nothing in the record indicates that *all* parties intended to carry all the terms of the Financing Agreement, including the jury trial waiver provision," into the 2020 arrangement. (App. Vol. I, pp. 6). A finding that not every party manifested the requisite intent is a conclusion about disputed intent, not a statement of undisputed fact.

This matter warrants Supreme Court review because the Court of Appeals' decision rests on a factual premise the Circuit Court expressly left open. The continued applicability of the Financing Agreement to the parties' 2020 relationship remains disputed. The Court of Appeals nevertheless treated that issue as settled, avoided the contract interpretation question presented, and adopted reasoning that would allow courts to bypass independent analysis of a commercial jury waiver whenever one party disputes the continued effect of the surrounding agreement. The appropriate course was to analyze the waiver's language independently or, at minimum, to recognize that the unresolved factual predicate could not be used to defeat the waiver at the appellate stage. The opinion did neither. The consequence of the Court of Appeals' approach extends beyond this case because if an appellate court resolves a disputed factual predicate in the course of addressing a jury waiver question without acknowledging that it has done so, the right to an evidentiary determination of that predicate, which Petitioners preserved below, is effectively lost.

III. The absence of controlling authority, and respondents' own admissions, confirm the need for review.

Respondents argue that this case presents no novel or unsettled question because the Court of Appeals applied established principles correctly. This is inaccurate. The question Petitioners present is narrower than Respondents characterize. Petitioners do not contend South Carolina law is unsettled on whether parties may contractually waive a jury trial. They do not dispute that jury waivers are strictly construed. The unsettled question is narrower. Petitioners ask how a court should analyze a broadly worded contractual jury-waiver provision when the opposing party disputes whether the broader agreement continued to govern later dealings and no court below has resolved that predicate issue. Respondents identify no South Carolina decision that answers it. Their cited authorities establish general propositions but do not supply a framework for the

situation this case presents. *Wachovia Bank*, 407 S.C. at 332, 755 S.E.2d at 443; *Beach Co. v. Twillman, Ltd.*, 351 S.C. 56, 63–64, 566 S.E.2d 863, 866 (Ct. App. 2002); *McGill*, 381 S.C. at 186, 672 S.E.2d at 575.

Respondents' own argument shows the gap. Respondents assert that where a contract has "effectively ended" and the parties enter a later 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." (Opp. at 6). They cite no South Carolina decision applying that proposition to a jury waiver clause drafted to cover later extra-contractual facts and "any matter between" the parties. In fact, they cite no support for that proposition at all. The invocation of intent only underscores the flawed logic. Whether the parties intended the Loan Documents to govern the 2020 relationship was precisely what the Circuit Court found to be a genuine issue of material fact. (App. Vol. I, pp. 63–64). The record on that question is not silent. The individuals directly involved in reopening the financing relationship, including Timothy Yarger, Penland Automotive's own representative, testified that the parties agreed the original 2016 documents would continue to govern the resumed relationship. (App. Vol. III, p. 852). Respondents cannot answer a contract interpretation argument by relying on a factual question that was never resolved below.

Respondents' own counsel implicitly acknowledged the significance of the legal question before this Court. In seeking an extension of time to file the memorandum in opposition, counsel represented that this matter raises issues of "significant legal complexity." (Respondents' Mot. for Extension of Time ¶ 7 (May 6, 2026)). That acknowledgment sits awkwardly alongside the opposition's insistence that the questions presented are straightforward and fully resolved by settled law.

Respondents argue that the federal arbitration authorities cited in the petition are inapt because this case involves a jury waiver clause rather than an arbitration clause. Petitioners do not contend the Federal Arbitration Act controls this dispute. Instead, Petitioners make the more narrow point and analogy that federal courts addressing threshold questions about whether a dispute-resolution clause survives or reaches a given dispute have developed structured frameworks requiring those threshold questions to be resolved independently rather than subsumed in the clause analysis. *See* 9 U.S.C. § 4; *Dillon v. BMO Harris Bank, N.A.*, 787 F.3d 707, 713 (4th Cir. 2015); *Sandvik AB v. Advent Int'l Corp.*, 220 F.3d 99, 107 (3d Cir. 2000). South Carolina has no analogous framework for broadly worded jury waiver clauses. The absence of one is precisely the reason this Court's guidance is needed.

This case is a suitable vehicle for providing that guidance. The waiver language is in the record. The issue was preserved at every stage of the proceedings below. The Court of Appeals' reasoning turned on a disputed factual premise no lower court had resolved. Respondents' opposition identifies no controlling South Carolina authority addressing that procedural posture, and Respondents have not pointed to a single case applying their "effectively ended" proposition to a broadly worded jury waiver clause covering later extra-contractual facts and "any matter between" the parties.

Commercial relationships routinely pause, resume, or evolve in ways that generate disputes about which documents govern later dealings. Parties to commercial financing agreements negotiate jury waiver provisions at arm's length to control how those disputes are resolved, relying on the expectation that the language they chose will be analyzed on its own terms. The Court of Appeals' approach allows that analysis to be bypassed entirely whenever one party characterizes the surrounding agreement as having ended. Under that approach, the enforceability of a

commercial jury waiver depends less on the text the parties agreed to and more on how a court interprets one party's contention on the survivability of the entire contract, even though that dispute may be contested, may never have been resolved below, and may be the very dispute the waiver's language was designed to render irrelevant. Absent guidance from this Court, parties to commercial agreements cannot have certainty as to whether their negotiated jury waiver provisions will be honored when a dispute actually arises.

CONCLUSION

Respondents' memorandum in opposition does not answer the petition's core argument. It repeats the same analytical move the petition challenges: treating the disputed status of the Financing Agreement as dispositive while giving no independent effect to the waiver's broad language. Because South Carolina law does not yet answer how courts should analyze a broadly worded commercial jury waiver provision in this procedural posture, and because the Court of Appeals' reasoning relied upon an unresolved factual premise no lower court resolved, Petitioners respectfully request that this Court grant the petition for writ of certiorari.

Respectfully submitted,

June 4, 2026

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