RECEIVED
Jul 13 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Robert J. Bonds, Circuit Court Judge
The Honorable Deadra L. Jefferson, Circuit Court Judge
The Honorable R. Kirk Griffin, Circuit Court Judge

Case No. 2011-CP-10-07166
Appellate Case No. 2026-000244

Otha Delaney, Octavia D. Watson, Alicia S. Alston and Paul D. McGuiggan, Jr., Individually and on behalf of all others similarly situated as Co-Class Representatives, ... Respondents/Appellants,

v.

First Financial of Charleston, Inc.,…..................................... Appellant/Respondent.

Initial Brief of Appellant/Respondent

Skyler C. Wilson (SC Bar No. 102865)
Brenten H. DeShields (SC Bar No. 105199)
Copeland, Stair, Valz & Lovell, LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401
(843) 727-0307

-and-

Amanda K. Dudgeon (SC Bar No. 72516)
MD Law Group, LLC
102 Wappo Creek Drive, Unit 9
Charleston, SC 29412
(843) 577-5410

-and-

Stephen L. Brown (SC Bar No. 66468)
Russell G. Hines (SC Bar No. 72100)
Clement Rivers, LLP
25 Calhoun Street, Suite 400
Charleston, SC 29401
(843) 720-5488

Attorneys for Appellant/Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

<u>Statutes and Rules</u>

Other

STATEMENT OF ISSUES ON APPEAL

I. DID THE CIRCUIT COURT ERR IN TAKING ACTION IN THIS MATTER FOLLOWING THE BANKRUPTCY OF DELANEY AND THE AUTOMATIC STAY?

II. DID THE CIRCUIT COURT ERR IN RELYING ON PRIOR ORDERS DENYING A MOTION TO DISMISS IN ORDER TO RULE ON SUMMARY JUDGMENT?

III. DID THE CIRCUIT COURT ERR IN FAILING TO FIND THAT, BECAUSE THIS COURT HAD ALREADY AFFIRMED THE DISMISSAL OF THIS CASE AND JURISDITION TO ALTER THIS RESULT HAD TERMINATED UPON THE COURT'S PROPER ISSUANCE OF THE REMITTITUR, THE ONLY JURISDICTIONALLY PROPER DISPOSITION OF THIS CASE IS DISMISSAL?

IV. DID THE CIRCUIT COURT ERR IN FINDING THAT THE DISPUTED NOTICES FAILED TO COMPLY WITH THE SC UCC?

V. DID THE CIRCUIT COURT ERR IN FINDING THAT RULE 23, SCRCP, SERVES AS A BAR TO SUMMARY JUDGMENT AGAINST A CLASS?

VI. DID THE CIRCUIT COURT ERR IN DENYING FFC'S MOTION TO DECERTIFY THE CLASS?

VII. DID THE CIRCUIT COURT ERR IN GRANTING DELANEY'S MOTION TO INTERVENE?

STATEMENT OF THE CASE AND FACTS

In October 2007, Otha Delaney[1] (collectively the Respondent/Appellants "Delaney") borrowed $8,499 from First Financial of Charleston, Inc. ("FFC")[2] to buy a truck. Def.'s App'x of Exs. for Summary J. Mem., filed April 22, 2025 ("App."). p. 290 ¶¶ 13–17, pp. 327–328; *see also* App. p. 3 ¶¶ 9–10, pp. 9–10. Delaney promised to repay the loan over 36 months and granted FFC a security interest in the truck as collateral, making FFC a secured party under the

---

[1] As further explained below, Delaney brought this now nearly 15-year-old lawsuit in October 2011, and for almost the entire life of this litigation, he has been the only named plaintiff. The other plaintiffs named in the case caption are alleged class members who, over FFC's objection, were only allowed to intervene earlier this year.

[2] In business since 1988, FFC is a small (six employee) consumer finance company in North Charleston. (2021 VanHook Dep. Tr. p. 8:11–21; *id.* at p. 31:22–23.)

SC UCC.[3] App. pp. 290–291 ¶¶ 19–20, pp. 327–328; *see also* App. p. 3 ¶ 10, pp. 9–10. When Delaney defaulted, FFC tried to mitigate its loss by repossessing and selling the truck but was still left with an unpaid deficiency balance of $4,187.57. App. pp. 268–269; p. 326.

On or about May 2, 2008, after repossession of Delaney's collateral (truck) but before the disposition (private sale) of the collateral, FFC sent Delaney a "Pre-Sale Notice" as required by the SC UCC.[4] This Pre-Sale Notice was a two-page template that was also sent to other debtors up until October 2011. Except for individual particulars that necessarily changed from debtor to debtor (names, addresses, account numbers, etc.), the text of the Pre-Sale Notice FFC sent Delaney is the same as that of every other Pre-Sale Notice FFC sent during this period. App. p. 291 ¶¶ 21–23, pp. 323–324; App. p. 305:12–23; *see also* App. p. 4 ¶ 14, p. 12. Hereinafter, this form of Pre-Sale Notice is referred to as the "Original Pre-Sale Notice."[5] In October 2011, FFC stopped using the Original Pre-Sale Notice and began using a new Pre-Sale Notice template that is only one page. App. p. 303:5–14, p. 304:1–8, p. 305:12–23.[6] Hereinafter, this form of Pre-Sale Notice is referred to as the "Modified Pre-Sale Notice."[7]

Similarly, following the disposition (private sale) of the collateral (the truck) in December 2008, FFC sent Delaney a "Post-Sale Notice" on or around January 10, 2009,

---

[3] The "SC UCC" refers to South Carolina's enactment of Article 9 of the Uniform Commercial Code, S.C. Code Ann. §§ 36-9-101 to -809.

[4] S.C. Code Ann. § 36-9-611(b) contains the notification requirement, while §§ 613 & 614 contain the content requirements (the "Pre-Sale Notice Content Requirements").

[5] Exhibit A to Delaney's amended complaint (App. pp. 323–324) depicts the Original Pre-Sale Notice but for the absence of FFC's letterhead, which was on each page of the Pre-Sale Notice that FFC sent to Delaney and everyone else to whom FFC sent Pre-Sale Notice via the Original Pre-Sale Notice. App. pp. 302:7–303:4. Although it depicts only one of the Original Pre-Sale Notice's two pages, Exhibit C to Mr. Delaney's original complaint (App. p. 12) shows the letterhead that appeared on each page of the Original Pre-Sale Notice.

[6] To be clear, FFC does not concede that the Original Pre-Sale Notice does not comply with the Pre-Sale Notice Content Requirements.

[7] Exhibit B to Delaney's amended complaint (App. p. 325) depicts the Modified Pre-Sale Notice but for the absence of FFC's letterhead, which is on the Pre-Sale Notice that FFC sent to everyone to whom it sent the Modified Pre-Sale Notice. Again, although it depicts only one of the Original Pre-Sale Notice's two pages, Exhibit C to Delaney's original complaint (App. p. 12) shows the letterhead that appeared on the Modified Pre-Sale Notice.

explaining the calculation of his $4,187.57 deficiency balance as required by the SC UCC.[8] App. p. 291 ¶ 26–27, p. 326. As with the Pre-Sale Notice, FFC used a Post-Sale Notice template. More specifically, FFC used two slightly different Post-Sale Notice templates. Hereinafter, the form of Post-Sale Notice that FFC sent Delaney and some of the alleged class members is referred to as the "Original Post-Sale Notice,"[9] and the form of Post-Sale Notice it sent to the rest of the alleged class members is referred to as the "Modified Post-Sale Notice."[10]

For himself, individually, and on behalf of a purportedly similarly situated class, Delaney filed suit on October 4, 2011, asserting only that the *Original* Pre-Sale Notice failed to comply with the Pre-Sale Notice Content Requirements (the "Pre-Sale Notice Claim"). App. pp. 1–12. FFC initially responded to the suit with a successful motion to dismiss, prompting Delaney to appeal. App. pp. 13–40. This Court affirmed the dismissal by opinion filed September 28, 2016, and, having not received from Delaney a timely petition for rehearing, remitted the case to the circuit court on October 19, 2016, ostensibly concluding the appeal and, in turn, the case itself, with the dismissal constituting final disposition. App. pp. 41-57. Over FFC's objection, the Court recalled the remittitur on November 2, 2016, and allowed Delaney to petition for rehearing, which ultimately resulted in having the dismissal reversed by our Supreme Court. *See* App. pp. 58–264.

On March 11, 2021, Delaney moved for class certification. Mot. for Class Certification, filed March 11, 2021; *see also* Def.'s Mem. in Opp. to Pl.'s Mot. for Class Certification, filed June 15, 2021. Without a hearing, the circuit court, granted this motion by order filed July 27,

[8] S.C. Code Ann. § 36-9-616.
[9] Exhibit C to Delaney's amended complaint (App. p. 326) is a copy of the Post-Sale Notice that FFC sent Delaney, i.e., the Original Post-Sale Notice.
[10] Exhibit E to Delaney's amended complaint (App. p. 329) depicts the other form of Post-Sale Notice FFC used, i.e., the Modified Post-Sale Notice. Although this notice is referred to as "modified," the record does not disclose when or why FFC began using it. FFC's use of the Modified Post-Sale Notice is by no means any acknowledgement of any deficiency in the Original Post-Sale Notice.

2021 (the "Certification Order"), and thereafter denied FFC's motion for reconsideration without a hearing by order filed February 17, 2022. Order Denying Def.'s Mot to Alter or Amend and/or for Reconsideration, filed February 17, 2022; Order Granting Pl.'s Mot. for Class Certification, filed July 27, 2021; Def.'s Mot. to Alter, Amend, and/or Reconsider Order Granting Pl.'s Mot. for Class Certification, filed August 6, 2021. Among others, the Certification Order expressly excludes from the class "individuals . . . who had their debt discharged in bankruptcy after their collateral was sold." *Id.* at n.2.

On March 30, 2021, Delaney amended his complaint to add claims in addition to the single claim brought in his original complaint for (1) the alleged failure of the Modified Pre-Sale Notice to comply with the Pre-Sale Notice Content Requirements (i.e., he expanded the Pre-Sale Notice claim to include the Modified Pre-Sale Notice); (2) the alleged failure of the Original Post-Sale Notice to comply with the Post Sale Notice Content Requirements; and (3) the failure of the Modified Post-Sale Notices to comply with the Post-Sale Notice Content Requirements (collectively (2) and (3) the "Post-Sale Notice Claim"). App. pp. 288–299. In his amended Complaint, Delaney specifically alleged that: (1) "[t]he defective presale and post-sale notices were *not* mailed with knowledge of their falsity[;]" (2) "[Appellant/Respondent] did *not* intend to violate the SC UCC and did *not* intend injury to the class because *it believed its notices were accurate, lawful and contained no misrepresentations*[;]" and (3) "[Appellant/Respondent] did *not* know the presale and post-sale notices . . . would violate the rights of the class members or inflict injury upon them." App. pp. 292–293.

On April 29, 2021, FFC moved to dismiss Delaney's amended complaint. App. pp. 307–329. Following a hearing on June 29, 2021, the circuit court denied this motion by order filed August 19, 2021, and thereafter denied reconsideration without a hearing by order filed

November 8, 2021 prompting FFC to appeal by notice filed/served December 8, 2021. App. pp. 330–344, 345–353; June 29, 2021, Hr'g Tr. By order filed March 10, 2022, this Court dismissed FFC's appeal, and later denied FFC's petition for rehearing on May 17, 2022. App. pp. 383–84. The Supreme Court denied FFC's petition for a writ of certiorari on August 10, 2023, and the case was remitted to the circuit court on October 11, 2023. App. pp. 385–388.

On August 6, 2024, Delaney moved for summary judgment against FFC as to liability, and on September 11, 2024, FFC filed its own motion for summary judgment, which it amended on April 20, 2025, to add additional grounds relating to the effect of bankruptcies Delaney filed during the pendency of this lawsuit. *Id.*; Pls.' Mot. for Summary J., filed August 6, 2024; Def.'s Mot. for Summary J., filed September 11, 2024; Def.'s Am. Mot. for Summary J., filed April 20, 2025; Def.'s Mem. in Supp. of its Am. Mot. for Summary J. & in Opp'n to Pl.'s Mot. for Summary J., filed April 22, 2025.

By motion filed July 16, 2025, and supplemented July 31, 2025, three alleged class members, Octavia Watson, Alicia Alston, and Paul McGuiggan, Jr. (collectively, the "Purported Intervenors"), together with Delaney, moved to intervene in this action as named plaintiffs and class representatives. Mot. to Intervene, filed July 16, 2025; Supplement to Mot. to Intervene, filed July 31, 2025; *see also* Def.'s Mem. in Opp'n to Mot. to Intervene, filed October 20, 2025.

On July 25, 2025, FFC moved to decertify the class. Def.'s Mot. to Decertify Class, filed July 25, 2025. The circuit court heard oral argument on the motions for summary judgment on May 1, 2025, and August 13, 2025, and by Form 4 order filed August 20, 2025, granted Delaney's motion for summary judgment as to liability, denied FFC's motion for summary judgment, and denied FFC's motion for decertification. May 1, 2025, Hr'g Tr.; August 13, 2025, Hr'g Tr.; Order filed August 20, 2025. The circuit court's formal order to this effect was filed

September 18, 2025. FFC timely moved for reconsideration thereof on September 29, 2025,[11] and following a hearing on January 9, 2026, the circuit court denied FFC's motion for reconsideration of the MSJ Order and granted the motion to intervene by order filed January 22, 2026. Order filed September 18, 2025 (the "MSJ Order"); FFC's Mot. to Reconsider, filed September 29, 2025; January 9, 2026, Hr'g Tr.; Order filed January 22, 2026. After another hearing on February 19, 2026, the circuit court denied FFC's timely motion for reconsideration of the grant of the motion to intervene by order filed February 26, 2026. February 19, 2026, Hr'g Tr.; Order filed February 26, 2026.

This appeal follows.

STANDARD OF REVIEW

"An appellate court reviews the granting of summary judgment under the same standard applied by the [circuit] court under Rule 56, SCRCP." *Quail Hill, LLC v. Cnty. of Richland*, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010) (*citing Brockbank v. Best Capital Corp*., 341 S.C. 372, 379, 534 S.E.2d 688, 692 (2000). "Summary judgment is appropriate 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 217, 578 S.E.2d 329, 334 (2003) (quoting Rule 56(c), SCRCP).

"The decision to grant or deny a motion to join an action pursuant to Rule 19, SCRCP, or intervene in an action pursuant to Rule 24, SCRCP, lies within the sound discretion of the trial court." *Ex parte Builders Mut. Ins. Co.*, 431 S.C. 93, 98, 847 S.E.2d 87, 90 (2020) (*quoting Ex parte Gov't Emps. Ins. Co. (Ex parte GEICO)* 373 S.C. 132, 135, 644 S.E.2d 699, 701 (2007)).

[11] Out of an abundance of caution, FFC served a notice of appeal on October 15, 2025, within 30 days after entry of the MSJ Order, but this Court dismissed this appeal without prejudice by order filed November 5, 2025.

The decision to grant or deny class certification is within the discretion of the circuit court but will be reversed where there were errors of law. *See Gardner v. S.C. Dep't of Revenue*, 353 S.C. 1, 21, 577 S.E.2d 190, 200 (2003) ("We generally defer to the trial court's discretion in granting class certification absent an error of law.").

ARGUMENT

I. This Court should reverse the circuit court's decision because Delaney's bankruptcies void the circuit court's decisions since the automatic stay, and also prevent Delaney from serving as the class representative.

Delaney has a history of bankruptcies during this litigation that significantly impact this case, which the circuit court erroneously failed to recognize. After this lawsuit was filed but before it was certified as a class action, Delaney filed for Chapter 7 bankruptcy on January 24, 2013 (2013 Bankruptcy). He did not schedule his claims against FFC as assets under Bankruptcy Schedule B. App. pp. 399–443. Although he did reference the lawsuit in the Statement of Financial Affairs, he affirmatively stated that it was "Dismissed." App. p. 427. Delaney's statement was not true, because the dismissal was not filed until April 30, 2013, and it misrepresented that this lawsuit had ended with finality even though Delaney could still challenge the dismissal—which, of course, he did. Nevertheless, Delaney received a discharge on May 13, 2013, and the case was closed the same day. App. pp. 443–44.

Delaney filed for Chapter 13 bankruptcy in December 2016 (2016 Bankruptcy). This time, he neither scheduled his claims against FFC as assets nor mentioned this lawsuit, even though it was pending on appeal. App. pp. 445–78. The bankruptcy court confirmed Delaney's Chapter 13 plan on April 12, 2017. App. p. 417. However, due to failure to make payments, the case was dismissed on June 2, 2017, and officially closed on August 4, 2017. App. pp. 480–481. Thereafter, in July 2021, the circuit court certified the class with Delaney as its representative.

Delaney filed for Chapter 7 bankruptcy in March 2024 (2024 Bankruptcy). App. pp. 482–534. He did not disclose his claims against FFC initially. Only through an amendment months later in 2024 did Delaney disclose the lawsuit, which was subsequently abandoned by the trustee, albeit too late. App. pp. 539, 543. Delaney received a discharge and the case was closed on August 27, 2024. App. p. 547. This Court should find that the failure to disclose the lawsuit properly in multiple bankruptcies voids nearly all of the circuit court's prior orders and deprives Delaney of his ability to serve as class representative.

A. The circuit court erred in its analysis as to the bankruptcies because all circuit court rulings during the bankruptcy stay are void *ab initio*, including the order certifying the class.

The circuit court found that the automatic stay of the Bankruptcy Code, § 362, "does not bar these proceedings." MSJ Order, p. 11. The circuit court erred.

"Under 11 U.S.C. § 541, the filing of a petition in bankruptcy creates an estate which consists of all legal or equitable interests of the debtor in property at the time the petition is filed. Title to claims that became property of the estate under § 541 remains in the estate unless it is exempted, abandoned or otherwise revested in the debtor." *In re Bailey*, 306 B.R. 391, 392 (Bankr. D.D.C. 2004). Claims that become part of a bankruptcy estate are subject to the sole direction and control of the trustee. *See Wilson v. Dollar Gen. Corp.*, 717 F.3d 337, 343 (4th Cir. 2013); *Bailey*, 306 B.R. at 392. The bankruptcy trustee retains the capacity to prosecute a lawsuit on behalf of the bankruptcy estate, subject only to a debtor's exemptions. *Bailey*, 306 B.R. at 392. "[B]efore the debtor or a creditor may pursue a claim, there must be a judicial determination that the trustee in bankruptcy has abandoned the claim." *Steyr-Daimler-Puch of Am. Corp. v. Pappas*, 852 F.2d 132, 136 (4th Cir. 1988).

A debtor when filing bankruptcy must identify any pending litigation on a schedule, although scheduled and unscheduled claims become property of the bankruptcy estate under 11 U.S.C. § 541. If the trustee does not administer properly disclosed assets (i.e., litigation) as part of the bankruptcy, those assets are abandoned back to the debtor at the closing of the bankruptcy estate. 11 U.S.C. § 554(c). Property of a bankruptcy estate "that is not abandoned . . . and that is not administered in the case remains property of the estate." 11 U.S.C. § 554(d). In short, an undisclosed asset, like pending litigation, becomes an asset of a bankruptcy estate and remains there even after the bankruptcy case closes unless there is an express abandonment by the trustee.

Here, Delaney did not properly disclose this litigation as an asset in the 2013 Bankruptcy and, therefore, it could not be abandoned by the trustee at the time the bankruptcy case was closed. Consequently, the claims he asserts herein remain property of the estate even now under § 554(d). *See Ketema v. Midwest Stamping, Inc.*, 2007 WL 9747241 at *7 (D.S.C. Mar. 6, 2007) ("Because plaintiff's present action was never exempted or abandoned, it currently remains as an asset of plaintiff's bankruptcy estate."). Indeed, the circuit court recognized that at least Delaney's claim became part of the 2013 Bankruptcy estate. MSJ Order, p. 7.

In addition, the lawsuit in its entirety became part of the estate because Delaney filed for bankruptcy before the class action was certified, meaning the putative class members did not have a separate legal interest from Delaney's. Unnamed class members do not acquire legal standing until after a class is certified. *See Sosna v. Iowa*, 419 U.S. 393, 399 (1975) (noting that the class members acquire a legal status separate from the interest asserted by the representative only upon certification); 32B Am. Jur. 2d Federal Courts § 1485 ("A lawsuit brought as a class action must present justiciable claims at each stage of the litigation, and if the named plaintiffs' individual claims become moot before a class has been certified, no justiciable claims are at that point before the court and the case must as a general rule be dismissed for mootness."); *see, e.g.*, *Bertrand v. Maram*, 495 F.3d 452, 455 (7th Cir. 2007) (explaining under SCOTUS precedent that when a would-be class representative's claim becomes moot before certification, the case must be dismissed). Because Delaney filed for bankruptcy well before class certification, the lawsuit consisted only of his claim and that transferred to the bankruptcy estate in its entirety.

A pre-bankruptcy petition lawsuit becomes property of the bankruptcy estate and is subject to the automatic stay in 11 U.S.C. § 362. Upon the filing of a bankruptcy petition, 11 U.S.C. § 362(a)(3) imposes an automatic stay of "any act . . . to exercise control over property of the estate." This ensures that the property remains free from interference by the debtor while it remains estate property. *Wilson*, 717 F.3d at 343 ("Chapter 7 . . . requir[es] the debtor to relinquish possession of the estate to the trustee for liquidation and distribution to creditors. To effectuate this purpose, the trustee's management of the estate—including causes of action that are part of the estate—must necessarily be free from interference by the debtor.").

Under 11 U.S.C. § 362(c)(1), "the stay of an act against property of the estate under subsection (a) . . . continues until such property is no longer property of the estate." Once a trustee is appointed, the Chapter 7 debtor has no right to pursue a prepetition cause of action, only the trustee can administer the assets of the estate. *See In re Iredale*, 429 B.R. at 855; *see also Bauer v. Commerce Union Bank*, 859 F.2d 438, 441 (6th Cir.1988); 11 U.S.C. § 323(a); *In Re Lents*, 644 B.R. 479 (Bankr. D.S.C. 2022).

"[A] debtor in a chapter 7 case under the Bankruptcy Code violates § 362(a)(3) when []he continues prosecution of litigation initiated prepetition, or when []he commences litigation postpetition of a prepetition claim, if the claim pursued is property of the estate." *See Bailey*, 306 B.R. at 394; *see also Doucet v. Cooper*, 263 B.R. 835 (Bankr. S.D. Ohio 2001) (postpetition settlement of personal injury claim brought prepetition without court's or trustee's approval violated automatic stay); *In re Stinson*, 221 B.R. 726 (Bankr. E.D. Mich. 1998) (holding that postpetition settlement of a personal injury suit brought prepetition without the involvement of the Chapter 7 Trustee violated the automatic stay).

Here, the circuit court ruled that "[b]y its terms, § 362 stays only proceedings against the debtor; it does not bar actions brought by the debtor that may inure to the benefit of the estate," citing *Martin-Trigona v. Champion Fed. Sav. & Loan Ass'n*, 892 F.2d 575, 577 (7th Cir. 1989). MSJ Order, pp. 10–11. The circuit court erred. Certainly, § 362(a)(1) of the automatic stay applies to lawsuits *against* the debtor, and not *by* the debtor. However, as argued above, § 362(a)(3) stays all acts to obtain or exercise control over property of a bankruptcy estate. Because the lawsuit is property of the estate, the trustee and not Delaney had sole authority to exercise control over the lawsuit. Delaney's actions continuing to litigate this lawsuit since the 2013 Bankruptcy are in violation of the stay.

The circuit court's reliance on *Martin-Trigona* is misplaced considering the age and posture of that case. *Martin-Trigona*, decided in 1989, involved a state court plaintiff who subsequently filed for Chapter 7 bankruptcy, and the defendants in the state court case successfully moved to dismiss. 892 F.2d at 576–77. Before the plaintiff appealed the dismissal, the trustee abandoned the claim back to the plaintiff. *Id.* at 577. The appeal was dismissed for failure to prosecute. *Id.* Seven years later, the plaintiff filed another state court action seeking damages based on the dismissed state court litigation, arguing the defendants had violated the automatic stay when securing their dismissal. *Id.* The *Martin-Trigona* court found the 11 U.S.C. § 362(a)(1) stay was not applicable to suits by the debtor. The court recognized the claims were part of the bankruptcy estate when the dismissal occurred, but that the § 362(a)(3) stay was not applicable to the defendants because the defendants by opposing the lawsuit and securing dismissal were not seeking to take possession of claim that was property of the estate. *Id.* Additionally, the trustee had abandoned the claim back to the plaintiff debtor shortly after the dismissal. *Id.*; s*ee In re Muhlig*, 494 B.R. 755, 763 (Bankr. S.D. Fla. 2013) (acknowledging that a debtor's wrongful death action became property of his bankruptcy estate and finding the stay applicable, distinguishing *Martin-Trigona* because the trustee had abandoned the claim).

Unlike *Martin-Trigona*, the 2013 Bankruptcy trustee has not abandoned Delaney's claim (and the lawsuit as it existed in 2013) back to Delaney and it is still part of the 2013 Bankruptcy estate. Also unlike *Martin-Trigona*, this case involves arguments that the debtor *Delaney* is violating the automatic stay under § 362(a)(3) by continuing to exercise control over property of the 2013 Bankruptcy estate, not that FFC is violating the automatic stay. Certainly, by continuing to exercise its defenses to this lawsuit FFC is not violating the stay under *Sosna*. Because *Martin-Trigona* is meaningfully different, and more recent cases in bankruptcy and other courts have noted pre-bankruptcy petition lawsuits by a debtor are subject to an automatic stay, the circuit court erred and this Court should reverse.

In addition, all actions in this case taken in violation of the automatic stay, including the orders certifying the class and on summary judgment, should be voided. In the District of South Carolina, courts have held that actions taken in violation of the automatic stay are void ab initio and thus not legally effective. *Weatherford v. TIMMARK Carey Holdings, Inc.*, 413 B.R. 273, 283 (Bankr. D.S.C. 2009) (holding a judgment obtained in violation of the automatic stay is void ab initio and without legal effect); *see also In re Parast*, 612 B.R. 710, 716 (Bankr. D.S.C. 2020). The automatic stay deprives state court judges of subject matter jurisdiction to take any action inconsistent with the stay. *Ex Parte Reichlyn*, 310 S.C. 495, 499, 427 S.E.2d 661, 663

(1993); *Bailey v. Campbell*, 862 P.2d 461, 467 (Okla. 1991) (noting that "judicial proceedings undertaken in violation of an automatic stay are ineffective"). Further, other courts have determined a debtor-plaintiff's filings in civil litigation over claims belonging to the debtor's estate were void. *In re Sakon*, 2024 WL 3944897, at *5 (Bankr. D. Conn. Aug. 26, 2024)

Last, because the bankruptcy stay is still in effect and our case law indicates state court judges are deprived of subject matter jurisdiction to take action inconsistent with the stay, FFC did not waive its ability to raise the issue and did so when it discovered the extent of Delaney's failure to identify the lawsuit in multiple bankruptcies. *See Amisub of S.C., Inc. v. Passmore*, 316 S.C. 112, 114, 447 S.E.2d 207, 208 (1994) ("Lack of subject matter jurisdiction may not be waived and should be taken notice of by this Court.").

In sum, upon the filing of his Chapter 7 case in 2013, Delaney lost the right to prosecute the lawsuit because it became property of the 2013 Bankruptcy estate. All of Delaney's actions in continuing to prosecute the case are in violation of the automatic stay under § 362(a)(3) because he is continuing to exercise control over the property of the 2013 Bankruptcy estate. Further, under the above-cite cases, the automatic stay deprives this Court of subject matter jurisdiction to take action inconsistent with the stay since the 2013 Bankruptcy case was filed, and all orders in violation of that stay are void *ab initio* and without legal effect. Therefore, this Court should reverse all orders in the lawsuit entered after the 2013 Bankruptcy case was filed in violation of the automatic stay. At the very least, this Court should reverse the circuit court's orders granting summary judgment, intervention, and denying decertification because those orders were entered after being notified of the bankruptcy issue.

B. Delaney's bankruptcy excludes him from the class and standing to serve as class representative, and he should be judicially estopped from doing so.

As an initial matter, Delaney cannot be the class representative because, by his own allegations, he is not a member of the class. Although Delaney's operative complaint alleges that he is a member of the class, it also states, "Excluded from the 'Class' are individuals who filed for Chapter 7 bankruptcy after the date of their vehicle's disposition whose bankruptcy ended in discharge rather than dismissal, as well as individuals who filed for Chapter 13 bankruptcy after the date of their vehicle's disposition and whose bankruptcy is still pending or ended in discharge rather than dismissal." App. p. 293 ¶ 46. The Certification Order itself excludes from the class "any individuals . . . who had their debt discharged in bankruptcy after their collateral was sold." Certification Order p.2 n.2. The 2013 and 2024 Bankruptcies were both Chapter 7 cases and both ended in discharge. It is axiomatic that the class representative have claims which are "typical . . . of the class" and that the representative party can (and will) adequately and fairly protect the interests of the class. *See* Rule 23(a), SCRCP. Under the above-quoted language of both the operative complaint and even the Certification Order itself Delaney is excluded from the class. Because he is not a member of the class, he does not have standing to serve as the class representative and this Court should reverse the circuit court.

1. Delaney lost standing to pursue this litigation because it is an asset of the bankruptcy estate, and neither Rule 17 or Rule 25, SCRCP, trump federal bankruptcy statutes and interpreting case law on standing in this scenario.

Addressing the other "standing" rulings, the circuit court ruled generally that Delaney's "standing" arguments do not justify ruling in its favor. MSJ Order, p. 4. More specifically, the circuit court found Delaney had standing under the SC UCC and constitutional standing. MSJ

Order, p. 4–6. In this regard, FFC does not challenge "standing" in the sense of the SC UCC or constitutional standing.[12] Thus, those rulings are irrelevant to this appeal.

The circuit court further found Delaney was the real party in interest under Rule 17, that Defendants had waived standing arguments, and that the issue should be addressed by Rule 25(c), SCRCP. However, the circuit court's reliance on the state rules of civil procedure is at odds with the multiple cases under federal bankruptcy statutes establishing that a plaintiff debtor loses standing to prosecute an action that is part of the debtor's bankruptcy estate, and dismissing the case or requiring the trustee to step into the shoes of the plaintiff debtor.

As argued above, the lawsuit became an asset of the 2013 Bankruptcy estate, where it remains, and Delaney cannot exercise control over it. Many courts in this scenario will dismiss the case on standing grounds under the bankruptcy code unless the claim is abandoned by the trustee or the trustee becomes a party to the case. *See, e.g.*, *In re Bailey*, 306 B.R. at 393 ("The debtor lacks standing in a chapter 7 case to prosecute claims that are property of the estate," explaining further that to avoid dismissal the trustee must be substituted or approve the debtor's actions); *Ketema*, 2007 WL 9747241 at *7 ("Because plaintiff's present action was never exempted or abandoned, it currently remains as an asset of plaintiff's bankruptcy estate. As an asset of plaintiff's estate, only the trustee had standing to assert the present action in this court. Because the action was tried by a plaintiff who did not have standing, the court must set aside the verdict."); *Dalley v. Mitchell Rubenstein & Assocs., P.C.*, 172 F. Supp. 3d 6, 15 (D.D.C. 2016) (finding district court lacked subject matter jurisdiction and dismissing a complaint involving a plaintiff debtor because the plaintiff debtor did not disclose the claim in her Chapter 7 bankruptcy, and it was still part of her bankruptcy estate without evidence that the trustee had abandoned the claim); *Simmers v. Nat'l R.R. Passenger Corp.*, 2020 WL 7059631, at *3 (D.D.C.

[12] With regard to Delaney's ability to pursue claims for notices he did not receive FFC does challenge such standing.

Dec. 2, 2020) (finding that a legal claim became part of a plaintiff debtor's bankruptcy estate and he lost standing to pursue it, dismissing the case without prejudice).

Although the courts above did not directly address transfers of interest under procedural rules, the result should still be the same. The bankruptcy code is federal substantive law that preempts any contrary state laws. *See CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 663 (1993) ("Where a state statute conflicts with, or frustrates, federal law, the former must give way."). In addition, the Bankruptcy Code takes precedent when conflicting with contrary procedural rules. *See In re Beaton*, 211 B.R. 755, 763 (Bankr. N.D. Ala. 1997) (acknowledging that there is a strong presumption that substantive rights are not changed by procedural rules, and that in a conflict between the Bankruptcy Code and Bankruptcy Rules, the Code prevails).

Here, and under the circuit court's logic, South Carolina's Civil Procedure Rule 25 is in conflict with federal Bankruptcy law, the latter of which should prevail. The circuit court "resolved" the bankruptcy issue by relying on Rule 25(c), which gives the court discretion to allow a lawsuit to continue in the name of someone who has transferred their interest during litigation. MSJ Order, p. 8. The circuit court reasoned the rule was implicated because Delaney's interest in the lawsuit transferred to the 2013 Bankruptcy estate while the case was pending. This reasoning is in error because it conflicts with 11 U.S.C. § 362(a)(3) and the Bankruptcy Code which collectively hold that pending litigation becomes part of the bankruptcy estate over which the trustee has sole authority, staying any actions to exert control over that asset. The circuit court's ruling effectively nullifies the Bankruptcy stay statute—allowing someone other than the trustee to exercise control over assets belonging to a bankruptcy estate as long as the lawsuit was filed before the bankruptcy and not disclosed. This ruling would encourage would-be debtors to file lawsuits on claims, fail to disclose them in bankruptcy and receive a discharge, and then continue to pursue the claim free from any creditor claims. The circuit court erred in relying on the state procedural rule to ignore federal substantive bankruptcy law that holds pending litigation cannot be pursued by a debtor when the pending litigation is part of a bankruptcy estate and has not otherwise been abandoned. Therefore, this Court should reverse the circuit court's decision, and find the case cannot continue under state procedural laws when federal substantive law prohibits it.

Further, the circuit court erred when it found FFC waived any objection to Delaney's real party in interest status. "Waiver is the voluntary and intentional relinquishment of a known right." *Provident Life & Acc. Ins. Co. v. Driver*, 317 S.C. 471, 478, 451 S.E.2d 924, 928 (Ct. App. 1994). Delaney presented no evidence to suggest that FFC voluntarily and intentionally relinquished a known right. Delaney knew of his prior bankruptcies and did not disclose them in any discovery until his deposition in July 2024. For the Court to hold "the public availability of the bankruptcy filings . . . undercuts any claim of diligence," unfairly requires FFC to investigate the public record to learn of Delaney's bankruptcy and discover his concealment. This holding likewise is an error of law in that it appears shift the burden to FFC to disprove waiver. Moreover, balancing the equities, Delaney had a years of experience with multiple bankruptcies by the time he disclosed them, whereas FFC had notice for only months. Under those circumstances, and because Delaney did not present any competent evidence FFC knowingly and intentionally waived the issue, the circuit court erred in finding FFC waived its ability to contest Delaney's standing as a result of the bankruptcies.

Moreover, Delaney did not present admissible evidence that the 2013 Bankruptcy trustee reopened the bankruptcy and abandoned the litigation. The court apparently accepted Delaney's counsel's representations at the summary judgment hearing that Delaney had moved to reopen the 2013 Bankruptcy to permit the trustee to join, and that the trustee was aware of and supported the case. MSJ Order, p. 9. Delaney's counsel, however, did not submit admissible evidence at the summary judgment stage to support this contention, relaying inadmissible hearsay to the court to support the point. The court erred in relying on those representations. *Hall v. Fedor*, 349 S.C. 169, 175, 561 S.E.2d 654, 657 (Ct. App. 2002) ("[M]aterials used to support or refute a motion for summary judgment must be those which would be admissible in evidence."); *id.* (finding statement from plaintiff to oppose summary judgment was inadmissible hearsay and, therefore, was inadmissible to refute a motion for summary judgment).

The circuit court also erroneously ruled that the class action does not become moot upon the expiration of the named plaintiff's substantive claim. MSJ Order, p. 9. Stated differently, the court ruled that Delaney's claim being impaired by the bankruptcy issue does not impact the continuation of the class claims. MSJ Order, pp. 9–10. This was error because at the time Delaney filed for bankruptcy in 2013, the class had yet to be certified—a motion for certification and order granting the motion occurring in 2021. Under those circumstances and according to the same authority the court cites in its Order, the class action became moot when prior to certification the claim became an asset of the 2013 Bankruptcy. *See Bertrand*, 495 F.3d at 455 (explaining under SCOTUS precedent that when a would-be class representative's claim becomes moot before certification, the case must be dismissed); *see also Sosna*, 419 U.S. at 399 (noting that the class members acquire a legal status separate from the interest asserted by the representative only upon certification); 32B Am. Jur. 2d Federal Courts § 1485 ("A lawsuit brought as a class action must present justiciable claims at each stage of the litigation, and if the named plaintiffs' individual claims become moot before a class has been certified, no justiciable claims are at that point before the court and the case must as a general rule be dismissed for mootness.”).

Accordingly, this Court should reverse and find that Delaney lacks standing.

2. This Court should reverse the circuit court and find that Delaney is judicially estopped from pursuing this lawsuit against FFC and from recovering anything.

The circuit court erred by not considering or ruling that Delaney should be judicially estopped from pursuing this lawsuit and recovering anything.

“Judicial estoppel is an equitable concept that prevents a litigant from asserting a position inconsistent with, or in conflict with, one the litigant has previously asserted in the same or related proceeding.” *Cothran v. Brown*, 357 S.C. 210, 215, 592 S.E.2d 629, 631 (2004). The elements of judicial estoppel are as follows: “(1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent.” *Id.* at 215–16, 592 S.E.2d at 632.

In bankruptcy proceedings, the duty to disclose all assets, including contingent and unliquidated claims, is fundamental. The purpose of bankruptcy is that an individual can receive a financial fresh start without fault for his financial misfortune in exchange disclosing all assets and liabilities so that creditors can be paid. Knowingly false and fraudulent misrepresentations subject bankruptcy debtors to criminal penalties. *See* 28 U.S.C. § 152.

The failure to disclose litigation in bankruptcy schedules can give rise to judicial estoppel. *See Pappacoda v. Palmetto Health*, 2014 WL 4417559 at *11 (D.S.C. Sept. 8, 2014)

("In addition to the Fourth Circuit, at least eight other appellate courts have also found that a debtor/plaintiff cannot realize a recovery on assets that were concealed until after a bankruptcy case was closed."); *see also Cannon-Stokes v. Potter*, 453 F.3d 446, 448 (7th Cir. 2006) (joining six other appellate courts on this issue, the court explained that "[b]y making [litigants] choose one position irrevocably, the doctrine of judicial estoppel raises the cost of lying").

As stated in *Martineau v. Weir*, "[j]udicial estoppel has often been applied to bar a civil lawsuit brought by a plaintiff who concealed the existence of the legal claim from creditors by omitting the lawsuit from his bankruptcy petition." 485 F. Supp. 3d 637, 644 (D.S.C. 2020) (quoting *Whitten v. Fred's Inc.*, 601 F.3d 231, 241 (4th Cir. 2010)). At least one court judicially estopped a debtor from pursuing a claim against a creditor based on allegedly selling the debtor's repossessed vehicle in a commercially unreasonable manner when the claim existed but was not disclosed in bankruptcy and the debtor's deficiency was discharged in bankruptcy. *See Sevostiyanova v. Tempest Recovery Servs., Inc.*, 705 S.E.2d 878, 882 (Ga. Ct. App. 2011).

Here, Delaney repeatedly failed to properly disclose the existence of this lawsuit in multiple bankruptcy filings, despite his obligation to do so. In the 2013 Bankruptcy, Delaney checked "NONE" in the schedule inquiring as to contingent and unliquidated claims. App. p. 414. Additionally, despite including the lawsuit in response to Question 4 on his Statement of Financial Affairs, Delaney affirmatively and wrongfully indicated that the lawsuit had been dismissed with finality. App. p. 427. Also in the 2013 Bankruptcy, Delaney failed to list FFC as a creditor or party in interest despite FFC having a right to payment. Critically, Delaney reviewed and swore "under penalty of perjury" the information disclosed in bankruptcy was true and correct, but it was not. Further, the court cannot overlook these failures based on lack of experience with the bankruptcy process in 2013 because Delaney had prior experience in bankruptcy via a 2005 filing and was represented by counsel.

Then, in the 2016 Bankruptcy, Delaney made no mention of this lawsuit whatsoever. App. pp. 445–78. Specifically, Delaney answered NO in response to: ”Within 1 year before you filed for bankruptcy, were you a party in interest in any lawsuit, court action, or administrative proceeding?” At the time, he continued to prosecute the lawsuit. Delaney was represented by counsel and would have provided counsel necessary information for bankruptcy. He swore his statements in the 2016 Bankruptcy were true, but clearly they were not.

Delaney filed a fourth bankruptcy case in 2024 in Virginia, again failing to identify the lawsuit as an asset despite him continuing to prosecute the class action, amended pleadings, and class certification filings, and the appearance of new state court counsel in December 2019. Delaney's only disclosure of this lawsuit was made 11 years after he filed the 2013 Bankruptcy, and only then through an amendment to the schedules in the 2024 Bankruptcy where he disclosed the lawsuit as an asset with exemptions. App. pp. 539, 543. Even then, Delaney did not disclose his role in the class action lawsuit as lead plaintiff. At that point, he should have affirmatively known of his duty to disclose this lawsuit in his *prior* bankruptcy cases as well. However, he did not take any action until FFC filed its amended motion for summary judgment. Further, Delaney never identified FFC as a creditor or served it with notice of the bankruptcy despite the debt and FFC's potential claim for recovery.

By failing to properly disclose the lawsuit in his bankruptcy cases and obtaining a discharge, Delaney benefitted from bankruptcy protection without submitting all assets to the trustee to pay to his creditors. The 2013 Bankruptcy court accepted Delaney's representations, the trustee's no-asset determination, and granted a discharge. The failure to properly disclose in his bankruptcy case the existence and prosecution of his rights in this is directly inconsistent with his concurrent and later assertion of those same rights in this Court. *See King v. Herbert J. Thomas Mem'l Hosp.*, 159 F.3d 192, 196 (4th Cir. 1998) ("[T]he courts apply judicial estoppel to prevent a party from benefiting itself by maintaining mutually inconsistent positions regarding a particular situation."). Courts have suggested a number of factors to show the requisite intent for judicial estoppel to apply, including: (i) the failure to disclose a known claim in multiple bankruptcy filings; (ii) the timing of the disclosure (e.g., disclosing only when it benefits the debtor); and (iii) the debtor's financial motive to conceal the claim from creditors. *See Calafiore v. Werner Enters., Inc.*, 418 F. Supp. 2d 795, 798 (D. Md. 2006). However, judicial estoppel also when an omission was a mistake or inadvertent, and courts must look to the totality of the circumstances. *Keathley v. Buddy Ayers Const., Inc.*, No. 25-6, 2026 WL 1686028, at *2 (U.S. June 11, 2026).

Delaney's failure to properly disclose the active lawsuit in multiple bankruptcy cases, spanning over a decade, demonstrates a pattern of intentional omission. In the 2013 Bankruptcy, he failed to include the lawsuit as an asset, and affirmatively and wrongfully indicated that it had been dismissed in his Statement of Financial Affairs, despite undeniable knowledge that the litigation was ongoing. This false representation misled the trustee and prevented creditors from accessing any potential recovery Delaney might obtain in the case. Delaney subsequently failed to disclose the lawsuit as an asset in the 2016 Bankruptcy, indicating a pattern of wrongful nondisclosure in violation of 11 U.S.C. § 521. By hiding the lawsuit, Delaney preserved its value for himself while depriving his creditors of the possibility of payment were the trustee to pursue it. Furthermore, the failure to disclose caused the trustee to determine there were no assets and Delaney received a discharge.

Delaney's eventual disclosure of the lawsuit as an asset by amendment in the 2024 Bankruptcy—after the multiple prior omissions—does not cure his past conduct. *Evans v. Allied Air Enters., Inc.*, 2012 WL 2572266, at *2 (D.S.C. July 2, 2012) ("Courts have repeatedly rejected the argument that judicial estoppel should not be applied when the plaintiff has attempted to remedy an omission by amending his bankruptcy filings.") The consistent wrongful omissions and the financial benefit of failing to disclose the lawsuit in his bankruptcy cases strongly support an inference that his actions were intentional rather than inadvertent. His conduct aligns with the kind of conduct judicial estoppel is designed to prevent.

All elements of judicial estoppel are present here. Delaney was involved in both this lawsuit and his bankruptcies, and the relationship between this lawsuit and those proceedings is undeniable—this is the lawsuit he failed to disclose in bankruptcy. Delaney was successful in maintaining inconsistent positions by obtaining a discharge in the 2013 Bankruptcy. The intention behind his inconsistent positions is evidenced by repeated failures to disclose the lawsuit in multiple bankruptcies, supporting a strong inference of intent. And his positions are totally inconsistent—in bankruptcy he had no claims, but in this court he does.

Given Delaney did not disclose this lawsuit in bankruptcy, this Court should reverse and find judicial estoppel bars him from recovering. To allow Delaney to proceed with his claims in this litigation would reward him for a pattern of deception and abuse of the integrity of the bankruptcy system.

II. The circuit court improperly relied on prior orders.

In multiple instances the circuit court found that previous opinions bound the court to reject FFC's arguments as the circuit court was "not permitted to overrule another circuit judge who has ruled on the same issue." *See, e.g.,* MSJ Order, p. 23, p. 35. This was incorrect.

Generally, one judge of the same court cannot overrule another. *Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013). Further, an unappealed ruling becomes the law of the case. The law of the case does not apply, however, to orders denying motions for summary judgment or motions to dismiss, which decide nothing about a case and expressly permit the parties to raise the same issues at later stages in the proceedings. *See Bessinger v. Bi-Lo, Inc.*, 366 S.C. 426, 431, 622 S.E.2d 564, 567 (Ct. App. 2005) ("[D]enial of a Rule 12(b)(6) motion does not establish the law of the case nor does it preclude a party from raising the issue at a later point or points in the case."); *see also McLendon v. S.C. Dep't of Highways & Pub. Transp.*, 313 S.C. 525, 526 fn.2, 443 S.E.2d 539, 540 fn.2 (1994) ("[T]he denial of a motion for summary judgment, the denial of a motion to dismiss does not establish the law of the case and the issue raised by the motion can be raised again at a later stage of the proceedings."). In dismissing FFC's earlier appeal, this Court agreed with Delaney that the denial of the motion to dismiss did not decide anything and the issue can be raised later. App. p. 381; *see also* App. p. 355, pp.358-360; Order of the Court of Appeals filed March 10, 2022, App. Case No. 2021-001443.

The circuit court made this finding with respect to nearly all of FFC's arguments, including, but not limited to, the compliance of the pre-sale notices, compliance of the post-sale notices, the applicability of section 36-9-628(e), the applicability of the statute of limitations, the recall of remittitur, FFC's arguments with respect to certification of the class, and others. *See, e.g.,* MSJ Order at p. 23, p. 26, p. 34, p. 37, p. 40, p. 43. This was the circuit court's first and foremost reason for granting Delaney's Motion for Summary Judgment with respect to the UCC claims, noted before any actual analysis of the notices themselves. *id.* at p. 23, p. 26.

The circuit court improperly relied on the denial of a motion to dismiss. *See id.* In essence, the circuit court's reasoning would forever prohibit *any defendant* from fighting liability *whatsoever* if that defendant moves for and loses a motion to dismiss. Case law is clear that a denial of a motion to dismiss decides nothing about a case and parties can reraise the exact same issues and arguments. *See id.* Thus, the fact that the court denied FFC's motion to dismiss based on the statute of limitations and compliance with the UCC has no bearing on those same issues at summary judgment. Even Delaney himself did not go so far as to argue that this prohibition actually applied. Pl. MIS MSJ, p.2 n.1 ("Plaintiff acknowledges that the prior trial court orders addressing the arguments raised herein may not be binding on this Court."). The circuit court likewise erred in relying on the Certification Order, as the circuit court has the ability "to maintain continual control over class action proceedings." *Salmonsen v. CGD, Inc.*, 377 S.C. 442, 454, 661 S.E.2d 81, 88 (2008).

No rulings in the prior orders are the law of the case and FFC was free to make the same arguments at any subsequent stage in litigation. *See Bessinger* 366 S.C. at 431, 622 S.E.2d at 567; Salmonsen, at 454, 661 S.E.2d at 88; *see also McLendon*, 313 S.C. at 526 fn.2, 443 S.E.2d at 540 fn.2. The circuit court erred in ruling it was constrained by these orders, and thus this Court should reverse the orders of the circuit court.[13]

III. This matter was decided with finality and remittitur was improperly recalled.

"Petitions for rehearing must be *actually received* by the appellate court no later than fifteen (15) days after the filing of the opinion, order, judgment, or decree of the court." Rule 221(a), SCACR. "The remittitur shall . . . not be sent to the lower court or administrative tribunal until fifteen (15) days have elapsed (the day of filing being excluded) since the filing of the

[13] Even if the circuit court was constrained to grant summary judgment against FFC because of the prior orders, these orders are therefore appealable under § 14-3-330 and are properly challenged herein.

opinion, order, judgment, or decree of the court finally disposing of the appeal." Rule 221(b), SCACR. "*If a petition for rehearing is received before the remittitur is sent*, the remittitur shall not be sent pending disposition of the petition by the court." Rule 221(b), SCACR. (*emphasis added*). "When the remittitur has been properly sent, the appellate court no longer has jurisdiction over the matter and no motion can be heard thereafter." *Wise v. S.C. Dep't of Corr.*, 372 S.C. 173, 174, 642 S.E.2d 551, 551 (2007); *see also Stogsdill v. S.C. Dep't of Health & Hum. Servs.*, 415 S.C. 568, 569, 784 S.E.2d 669, 670 (2016) ("The sending of the remittitur ended appellate jurisdiction over this case, and no further motions will be entertained after the remittitur is sent."). Once remittitur was sent, the circuit court acquired jurisdiction to enforce the judgment consistent with the ruling of this Court. *See Martin v. Paradise Cove Marina, Inc.*, 348 S.C. 379, 559 S.E.2d 348 (2001). "In order to justify this court in exercising the unusual power of recalling the remittitur after it has been sent down, a very strong showing would be required that the remittitur was sent down through some mistake or inadvertence on the part of this court or its officer[.]" *State v. Barnes*, 413 S.C. 1, 4, 774 S.E.2d 454, 456 (2015) ; *State v. Keels,* 39 S.C. 553, 553, 17 S.E. 802, 802 (1893) (holding that to exercise the unusual power of recalling remittitur, a "very strong showing" of mistake or inadvertence on the part of the *court* or *its officer* must be shown).

This Court properly sent the remittitur on October 19, 2016. Normally, under Rule 221(b), SCACR, remittitur is sent 15 days after an opinion, but the Supreme Court declared October 5-14, 2016 legal holidays. This extended the deadline to file a petition for rehearing until October 17, with remittitur to follow October 18, 2016. Having not received any petition for rehearing by the extended deadline of October 17, 2016, this Court properly sent remittitur to the circuit court on October 19, 2016. Delaney's motion for an extension of time to file for rehearing was untimely received by this Court on October 20, 2016. *See* Rule 221(b), SCACR. When this Court properly sent remittitur on October 19, 2016, it lost all jurisdiction over the matter and could not hear any motion on the matter, including a motion for an extension of time. *See Wise*, 372 S.C. at 174, 642 S.E.2d at 551; *see also Stogsdill*, 415 S.C. at 569, 784 S.E.2d at 670. Notably, Delaney did not request, at any point, that this Court recall remittitur. Even if Delaney's October 20 Motion for an Extension was construed as a motion to recall remittitur, this Court's unusual power to recall remittitur can *only be justified* by "a very strong showing . . . that the remittitur was sent down through some mistake or inadvertence on the part of this court or its officer[.]" *See Keels* 39 S.C. at 553, 17 S.E. at 802; *Barnes*, 413 S.C. at 4, 774 S.E.2d at 456. Delaney advanced no argument that remittitur was sent through some mistake or inadvertence due to the Court of its officers, nor did the Court articulate any mistake or inadvertence of the Court or its officers.[14] *See Keels* 39 S.C. at 553, 17 S.E. at 802; *Barnes*, 413 S.C. at 4, 774 S.E.2d at 456. Because the remittitur was improperly recalled, this Court should hold that the only jurisdictionally proper disposition of this case is dismissal, and reverse the orders of the circuit court.

IV. The circuit court erred in finding that the disputed notices failed to comply with the SC UCC.

A. The circuit court improperly required "strict compliance" with Chapter 9 of the SC UCC rather than the proper standard required.

The circuit court mentioned multiple times in its ruling that "strict compliance" with the relevant notice provisions was required. MSJ Order, pp. 17 ("The General Assembly and the drafters of the UCC designed Article 9 to impose strict compliance, not substantial compliance."). The court further found that the statutes create "strict liability." MSJ Order, p.33.

[14] The Court only held that "[i]t was now necessary for this Court to recall the remittitur." Court of Appeals Order Recalling Remittitur, filed November 2, 2016, in Appellate Case No. 2014-000824.

The circuit court erred because it held FFC to a higher standard than required under Article 9 contrary to the rules of statutory construction.

Determining legislative intent is the ultimate goal of interpreting a statute. The legislature's intent is derived from the explicit statutory language of an unambiguous statute. *See State v. Leopard*, 349 S.C. 467, 471–72, 563 S.E.2d 342, 344 (Ct. App. 2002). When a statute is ambiguous or contains undefined terms, the courts must resort to the rules of statutory construction and give words their plain and ordinary meaning. *See id.* "A statute should be given reasonable and practical construction consistent with the purpose and policy expressed in the statute." *See Liberty Mut. Ins. Co. v. S.C. Second Injury Fund*, 363 S.C. 612, 621, 611 S.E.2d 297, 301 (Ct. App. 2005). "An ambiguity in a statute should be resolved in favor of a just, beneficial, and equitable operation of the law." *Id.* "[C]ourts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature or would defeat the plain legislative intention." *Hodges v. Rainey*, 341 S.C. 79, 91, 533 S.E.2d 578, 584 (2000) (quoting *Kiriakides v. United Artists Communications, Inc.*, 312 S.C. 271, 440 S.E.2d 364 (1994).

The legislative intent from the plain language of Chapter 9 indicates "strict compliance" is not required and it does not create "strict-liability." Pre-sale notice under section 36-9-614(1) requires certain categories of information. ("A notification of disposition must provide the following information:"). The following subsection, however, states that "a particular phrasing of the notification is not required." § 36-9-614(2). The statute also provides a safe harbor notice example that provides "sufficient information" under the statute. § 36-9-614(3). By not requiring a particular phrasing of information in the notice and providing one example, the intent from the plain language is that secured creditors may choose how to provide the information. Choice is directly contrary to strict compliance.

Similarly, post-sale notices under section 36-9-616 require an "explanation" with listed information. However, the statute states "a particular phrasing of the explanation is not required. An explanation complying substantially with the requirements of subsection (a) is sufficient, even if it includes minor errors that are not seriously misleading." § 36-9-616(d). This plain language likewise gives a secured creditor choice, or discretion, on how to phrase the explanation. The standard is also even lower than that of section 614, indicating mere *substantial compliance* is acceptable, contrary to the circuit court's requirement of strict compliance.

Reading strict compliance or liability into the statutory provisions would lead to absurd results that frustrate, rather than further, the legislative intention. The circuit court was required to give these statutes a reasonable and practical construction consistent with their purpose and policy. It erred in failing to do so, and therefore the decision of the circuit court should be reversed by this Court.

B. The Pre-Sale Notices comply with the SC UCC requirements.

When disposing collateral in a consumer goods transaction, a creditor must give the debtor notice to include:

> (A) the information specified in Section 36-9-613(1), (which includes the below items (1) through (5)[15]:
>
> (1) a description of the debtor and the secured party
>
> (2) a description of the collateral that is the subject of the intended disposition;
>
> (3) states the method of intended disposition;
>
> (4) states that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and,

[15] S.C. Code Ann. § 36-9-613(5) reiterates "[a] particular phrasing of the notification is not required" for the items contained in Section 613.

(5) states the time and place of a public disposition or the time after which any other disposition is to be made.)

(B) a description of any liability for a deficiency of the person to which the notification is sent;
(C) a telephone number from which the amount that must be paid to the secured party to redeem the collateral under Section 36-9-623 is available; and
(D) a telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.

S.C. Code Ann. § 36-9-614. However, *no particular phrasing of the notification is required*. § 36-9-614(2). A Pre-Sale Notice is required to, with no particular phrasing of the notification[16]:

(1) describe the debtor and the secured party;
(2) describe the collateral that is the subject of the intended disposition;
(3) state the method of intended disposition;
(4) state that the debtor is entitled to an accounting of the unpaid indebtedness and state the charge, if any, for an accounting; and
(5) state the time and place of a public disposition or the time after which any other disposition is to be made.
(6) a description of any liability for a deficiency of the person to which the notification is sent;
(7) a telephone number from which the amount that must be paid to the secured party to redeem the collateral under Section 36-9-623 is available; and
(8) a telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.

See §§ 36-9-613 & 614. Of these eight different items, the circuit court only found three purported defects with the Pre-Sale Notices: (1) it does not state the method of disposition; (2) it does not state the "correct" date after which any other disposition is to be made; and (3) it does not disclose the debtor's entitlement to an accounting.[17] MSJ Order pp. 23–24.

[16] Again, both Sections 613 and 614 state that no particular phrasing of the notification is required.

[17] Although FFC specifically addresses only the three items identified by the circuit court as deficient in its MSJ Order, FFC maintains that it complied fully with the required items. Furthermore, it must be noted that, at no point, does Delaney argue that the Modified Pre-Sale Notice failed to conform with requirement that the Pre-Sale Notice disclose the entitlement to an accounting. *See* App. pp. 288-299; Resp. MIS of Resp.'s MSJ and MIO App.'s MSJ at 10-16 ("(a) *The original pre-sale notice does not disclose that the debtor is entitled to an accounting*.") (*emphasis original*); *see also* May 1, 2025, Hearing Tr. at 36:1-6. In fact, Respondent seemingly admitted that the language was included to the circuit court—"[s]o in 2011 after we sued them the first time, they modified the notice *to include the accounting disclosure*.". May 1, 2025, Hearing Tr. At 29:22-25. (*emphasis added*). Thus, for this reason alone, it was improper for the circuit court to rule that the Modified Pre-Sale Notice failed to conform with this requirement. Further, FFC would make clear that to the extent the circuit court imposed any obligation not required by the SC UCC is erroneous. *See, e.g.,* MSJ Order at p. 16.

The Pre-Sale Notices complied with sections 36-9-613 and 614. The Pre-Sale Notices both stated the intended method of disposition: private sale. The notices both included the same bolded and capitalized "**NOTICE OF PRIVATE SALE OF COLLATERAL**[.]" (*emphasis original*). This alone satisfies the requirements of sections 36-9-614(1) and 613(1)(C). Both likewise state that the collateral "will be sold" and the Original Pre-Sale Notice further stated that "if acceptable arrangements cannot be made on this matter within the time specified in the attached notice of sale, *we will proceed with the sale of this collateral*." (*emphasis added*). Both notices describe the intended method of disposition and satisfy the requirements in sections 36-9-614(1) and 613(1)(C).

The circuit court unreasonably read the Pre-Sale Notices and wrongly ignored the capitalized and bolded type clearly stating the intended method of disposition, cherry-picking sentence fragments out of context to find it improper. Specifically, the circuit court highlighted language in the notice that "the collateral 'can be sold, at our option, by private sale[]'" and language stating "if we are required to sell the collateral." MSJ Order p. 23. However, the highlighted language considered in context does not alter the intended method of private sale disposition. The first two sentences read: "This is to notify you that due to default under the terms of the above referenced account, the collateral below, which secures your account, can be sold, at our option, by private sale after the close of business on the tenth (10^{th}) day from the date of this notice. If such date falls on a Sundar or legal holiday, then the collateral will be sold after the first business day following the tenth (10^{th}) day." Original Pre-Sale Notice p.2; Modified Pre-Sale Notice. This language plainly advises that FFC has the right to dispose of the collateral by private sale and the time after which it intends to move forward in doing so—in no reasonable way can this language be said not to express FFC's intention to dispose of the collateral by private sale.[18] The same conclusion follows based on the other language in the Original Pre-Sale Notice examined by the court: "[i]f we are required to sell the collateral, we cannot guarantee that we will be able to obtain a price equal to the unpaid balance on your account." Original Pre-Sale Notice pp. 1–2. As before, this language merely recognizes the possibility of events (e.g., redemption of the collateral) that could alter FFC's plans to dispose of the collateral via private sale but does not detract from FFC's expression of its intention to dispose of the collateral via private sale in absence of such event.[19]

The Pre-Sale Notices also complied with the requirements of sections 36-9-614(1)(A) and 613(1)(E). The Pre-Sale Notices state that the sale will take place "after the close of business on the tenth (10th) day from the date of this notice" and if such date falls on a Sunday or a legal holiday, then the collateral "will be sold after the first business day following the tenth (10th) day." Original Pre-Sale Notice at p.2; Modified Pre-Sale Notice. The SC UCC did not require FFC to state with specificity on what date the sale would actually take place. *See* § 36-9-613(1)(E). The SC UCC requires a specific time and place to be noted only when there will be a "public disposition[.]" *See id.* All the dispositions at issue here are via private sale. When, as here, disposition is not public, the secured party need only state "the *time after which* any other disposition is to be made." *See* S.C. Code Ann. 36-9-613(1)(E). In the analysis of the Original

---

[18] *See also* S.C. Code Ann. § 36-9-612 (stating that the timeliness of a notification before disposition of collateral is a question of fact; however, that ten days or more before the earliest time of disposition set forth in the notification is reasonable for non-consumer transactions).

[19] The circuit court's reliance on *Gen. Motors Acceptance Corp. v. Carter*, 290 S.C. 216, 218, 349 S.E.2d 342, 343 (1986) (*vacated,* 293 S.C. 466, 361 S.E.2d 620 (Ct. App. 1987)) was misplaced. This Court vacated the opinion relied on by the circuit court. *See Gen. Motors Acceptance Corp. v. Carter*, 293 S.C. 466, 361 S.E.2d 620 (Ct. App. 1987) (vacating the prior opinion). Even if it were proper to rely on *Gen. Motors*, the notices at issue are readily distinguishable and the circuit court erred in its application of *Gen. Motors.* In *Gen. Motors*, the notices failed to "indicate an intent to sell." *See Gen. Motors Acceptance Corp.*, 290 S.C. at 220, 349 S.E.2d at 344 (*vacated,* 293 S.C. 466, 361 S.E.2d 620 (Ct. App. 1987)). The *Gen. Motors* notices contained *only* language that indicated that the collateral *could be sold*. *See id.* at 217–18, 361 S.E.2d at 343. The notices at issue here, unlike the notice in *Gen. Motors*, contain bolded and capitalized type that on its own clearly identifying the intent to privately sell the collateral in bold lettering: "**NOTICE OF PRIVATE SALE OF COLLATERAL**[.]" *contra id.* Therefore, the notice at issue here complied with the SC UCC.

Pre-Sale Notice, the circuit court relies on the fact that the sale did not occur for some months following the date of the notice, to conclude that the language was "ambiguous" or "misled" the class members. MSJ Order p. 24. This contradicts what the SC UCC requires a secured party to state in a pre-sale notice. *See id.* Both notices stated the "time after which" the disposition was to be made, and both the circuit court erred in finding them noncompliant in this respect.[20]

Finally, the Pre-Sale Notices likewise complied with sections 36-9-614(1)(A) and 613(1)(D). The Pre-Sale Notices stated that the debtor has "the right to have the collateral returned . . . upon payment of the account balance plus any repossession expenses, attorney's fees and other costs [FFC has] incurred, as may be applicable and permitted by law." Original Pre-Sale Notice at p.2; Modified Pre-Sale Notice. The Original Pre-Sale Notice also states that "You will still owe the amount remaining unpaid balance on your account. You will owe the amount remaining unpaid after application of sale proceeds, less recovery and selling expenses." Original Pre-Sale Notice at p.1. Calculating this necessitates that an accounting be completed, and the debtor's entitlement to the same.

The Modified Pre-Sale Notice similarly explains that the debtor "ha[s] the right to have the collateral returned . . . upon payment of the account balance plus any repossession expenses, attorney's fees and other costs . . . incurred." Modified Pre-Sale Notice. The Modified Pre-Sale Notice goes on to state that "[t]he funds received from the sale, less reconditioning cost and the cost of the sale, will reduce the amount you owe." Modified Pre-Sale Notice. The Modified Pre-Sale Notice explains that "[i]f [FFC] get[s] less money than you owe, you will owe the difference" and that "[i]f [FFC] get[s] more money than you owe, you will receive the surplus, unless we must pay it to someone else" and "[i]f you want us to explain to you in writing how we figured the amount you owe, or if you need more information, call at the above telephone

[20] The circuit court further erred in examination of FFC's intent under its own standard. *See* MSJ Order p. 15, p. 24.

number or write us at the above address." Modified Pre-Sale Notice. This language copies the SC UCC's safe harbor language verbatim. *See* § 36-9-614(3) ("If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at [*telephone number*] [or write us at [*secured party's address*][.]").

Last, the circuit court highlighted the lack of any statement of how much the accounting would cost the debtor; however, the statute only requires a charge to be noted if there was any charge. *See* S.C. Code Ann. § 36-9-613(1)(D). There was no change, so none was noted. *See id.*

The Original and Modified Notices include all items required by sections § 36-9-613 and 614, and invited Delaney to contact FFC to resolve the delinquent account.[21] While the Pre-Sale Notices may not be phrased exactly as the statute's safe harbor in full, "[a] particular phrasing of the notification is not required." § 36-9-614(2). The items required by section 36-9-614 were, as required, included in the Pre-Sale Notices.[22] For these reasons, the Modified Pre-Sale Notice complied with the SC UCC, and this Court should reverse the decision of the circuit court.

C. The Post-Sale Notices comply with the SC UCC requirements.

A secured party must also give a debtor notice after collateral is sold. S.C. Code Ann. § 36-9-616(b). The explanation must:

> (A) state[] the amount of the surplus or deficiency;
>
> (B) provide[] an explanation in accordance with subsection (c) of how the secured party calculated the surplus or deficiency;
>
> (C) state[], if applicable, that future debits, credits, charges, including additional credit service charges or interest, rebates, and expenses may affect the amount of the surplus or deficiency; and

[21] The circuit court also made references to FFC's language in contrast with the language of the safe harbor provided in the SC UCC and appears to rely on FFC's deviation from the safe harbor language as a *per se* violation of the statute rather than solely relying on the requirements of the statute itself. MSJ Order at pp. 25–26. This was improper and should be reversed by this Court. *See* S.C. Code Ann. § 36-9-613 (setting forth requirements for the contents and form of notification before disposition of collateral); S.C. Code ann. § 36-9-614 (setting forth requirements of contents and form of notification for disposition of collateral in consumer goods transactions).

[22] *See also* Opinion of Expert Philip T. Lacy, Distinguished Professor Emeritus of Law.

(D) provide[] a telephone number or mailing address from which additional information concerning the transaction is available.

§ 36-9-616(a)(1). Additional detail is required to explain calculation of the surplus or deficiency:

(1) the aggregate amount of obligations secured by the security interest under which the disposition was made, and, if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date:

(A) if the secured party takes or receives possession of the collateral after default, not more than thirty-five days before the secured party takes or receives possession; or

(B) if the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than thirty-five days before the disposition;

(2) the amount of proceeds of the disposition;

(3) the aggregate amount of the obligations after deducting the amount of proceeds;

(4) the amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorney's fees secured by the collateral which are known to the secured party and relate to the current disposition;

(5) the amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the obligor is known to be entitled and which are not reflected in the amount in item (1); and

(6) the amount of the surplus or deficiency.

§ 36-9-616(c). However, "*a particular phrasing of the explanation is not required*." S.C. Code ann. § 36-9-616(d) (emphasis added). Furthermore, "[a]n explanation *complying substantially with the requirements of subsection (a)* is sufficient*, even if it includes minor errors that are not seriously misleading*." *Id.* (emphasis added). Thus, to require strict compliance with the statute is plainly erroneous; rather, the statute need only to be substantially complied with, as long as there are no errors that are "seriously misleading." *See id.*

The circuit court found purported defects with both Post-Sale Notices in: (1) failing to state the aggregate amount of obligations; (2) the proceeds of the disposition were listed seventh rather than second; (3) the aggregate obligation net of sale proceeds was omitted; (4) the expenses incurred by FFC were listed in two separate items and were separated by two items related to credits; (5) the credits were not grouped together; (6) the deficiency amount is listed eight rather than sixth; (7) the date of which the calculations were completed was omitted; and (8) omitted a warning that future debits, credits, or rebates could alter the deficiency balance. MSJ Order pp. 26–30. The circuit court also found that the Original Post-Sale Notice was purportedly defective for stating "[i]f we are required to sell your collateral[.]" MSJ Order pp. 26–30.

The Post-Sale Notices complied with section 36-9-616(c)(1). The aggregate amount of obligations secured by the security interest is the contract amount, set forth in line item one. Even if the statute required further information, such as including the late fees/insurance and repossession expenses, then this was readily calculable from the Post-Sale Notice by adding Lines (3) and (6) to (1) to equal the aggregate. *See id.*

Furthermore, the circuit court misapplied section 36-9-616(c)(1), finding it required stating the date on which the deficiency was calculated, when no such requirement is imposed by the statute or the comments to the statute. *See* § 36-9-616(c); § 36-9-616 cmt. 3. The court's ruling contradicts the statute. The relevant section merely requires the amount be calculated as of a specific date: "[t]he aggregate amount of obligations secured by the security interest under which the disposition was made, and, if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, *calculated as of a specified date*[.]" The statute goes on to state the days on which the amount could be calculated, depending on whether possession of the collateral is received before or after default. *See* § 36-9-616(c)(1). There is no requirement whatsoever that the date be actually communicated in the Post-Sale Notices. The comments are likewise silent. The circuit court found that "[t]he comments to this Section indicate that the creditor must specify this date in the post-sale notice," referencing comment 2. However, this comment merely refers the reader back to Subsection (c)(1), which contains no specific requirement that the date used to calculate the number be listed in the Post-Sale Notice.[23] *See id.*

The Post-Sale Notices complied with sections 36-9-616(c)(2) and (c)(3). The proceeds of the sale of the collateral were listed in the Post-Sale Notices as item (7) and (8), respectively.[24] *See* § 36-9-616(c)(2). The aggregate amount of the obligations after deducting sale proceeds is readily calculable and included in the Post-Sale Notices by subtracting Line (7) or (8), respectively, from Line (1). *See* § 36-9-616(c)(3).

The Post-Sale Notices complied with section 36-9-616(c)(4). The Post-Sale Notices contained the amount of expenses, by type, factoring into the remaining deficiency balance. *See* § 36-9-616(c)(4). This included only repossession expenses, which were set forth in line item number (6), and line item number (7), respectively. § 36-9-616(c)(4). The circuit court found that line item 3 (late charges and insurance added) should also be included in this calculation. MSJ Order p. 29. However, this contradicts section 616(c)(4). This Section only requires the expenses of "retaking, holding, preparing for disposition, processing and disposing of the collateral, and attorney's fees secured by the collateral[.]" *See* S.C. Code Ann. § 36-9-616(c)(4). Thus, the only item that should be included in this is the repossession expenses. *See id.* Furthermore, the line

[23] To reach this conclusion, the circuit court also relied on § 9-616 FORM 1, Explanation of Calculation of Surplus/Deficiency, 28A N.J. Prac., Uniform Commercial Code Forms § 9-616 FORM 1 (3d ed.) Author's Comments, wherein the author stated "The first item of information is also required to state the date as of which the aggregate amount was calculated." *See id.* This still fails for the same reasons already explained: Section 616(c)(1) contains *no actual requirement* that the date of which the calculation is made to be stated. *See* S.C. Code Ann. § 36-9-616(c)(1).

[24] This fact was acknowledged by the circuit court. MSJ Order p.28.

item clearly sets forth the type of expense in both Post-Sale Notices—repossession expenses.[25] *See id.*

The Post-Sale Notices complied with section 36-9-616(c)(5). The Original Post-Sale Notice contains the amount, by type, of credits to which the obligor is known to be entitled. *See* § 36-9-616(c)(5). These are listed in items (2) (payments made on the contract); (4) (interest refund); and (5) (gap insurance refund), and the Modified Notice in items (2) (payments received), (4) (interest refund), (5) (life insurance refund), and (6) (A&H refund). *See* § 36-9-616(c)(5). In fact, the circuit court acknowledged this and made no finding that any credit which should have been included was actually missing from the Post-Sale Notices. MSJ Order p. 29; pp. 31–32.

The Post-Sale Notices complied with section 36-9-616(c)(6). The Original Post-Sale Notice includes the deficiency amount in item (8), and the Modified in item (9). *See* § 36-9-616(c)(6). The circuit court acknowledged this fact. MSJ Order p. 29. Section 36-9-616(c)(6) requires only that the amount of the surplus or deficiency come last—NOT six of six. *See id.* Indeed, if the circuit court's interpretation of the SC UCC is followed, it would be impossible to comply with this statute if you follow the terms of the statute itself and set forth obligations or credits by type rather than in the aggregate. *See* § 36-9-616(c)(4) and (5). It could necessitate the addition of multiple line items to set forth the items by type contained in (c)(4) and (c)(5). *See id.* For example, as here, there are multiple credits due to Delaney in the Original Post-Sale Notice[26]: payments made on the contract, refunded interest, and refunded gap insurance. To comply with Section (c)(5), and list the amount by type of credits, would require at least three

---

[25] The circuit court also erred in finding that fees associated with the sale of collateral was not included; however, this is in error. MSJ Order at p.29, n.10. The amount listed in the Post-Sale Notice accurately reflects the price for which FFC sold the collateral.

[26] This is equally appliable to the Modified Post-Sale Notice.

separate line items. *See* § 36-9-616(c)(4). Thus, it would be impossible for FFC (or any other secured creditor) to comply with the court's reading of the statute requiring the deficiency balance to *specifically* be line item 6. *See id.*; *Hodges v. Rainey*, 341 S.C. 79, 91, 533 S.E.2d 578, 584 (2000) ("[C]ourts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature or would defeat the plain legislative intention.") (*quoting Kiriakides v. United Artists Communications, Inc.,* 312 S.C. 271, 440 S.E.2d 364 (1994)); *Liberty Mut. Ins. Co. v. S.C. Second Inj. Fund*, 363 S.C. 612, 621, 611 S.E.2d 297, 301 (Ct. App. 2005) ("A statute should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute."); *id.* ("An ambiguity in a statute should be resolved in favor of a just, beneficial, and equitable operation of the law."). The intent of the statute must be that the amount of the surplus or deficiency comes *last* in the list of the items above, NOT that it be specifically labeled six of six. *See Hodges*, 341 S.C. at 91, 533 S.E.2d at 584; *Liberty Mut. Ins. Co.*, 363 S.C. at 621, 611 S.E.2d at 301.

The Post-Sale Notices complied with section 36-9-616(a)(1)(C). The Post-Sale Notices are silent as to any future debits, credits, charges, or expenses that may affect the amount of the surplus or deficiency; however, this complies with the statute. *See* § 36-9-616(a)(1)(C). The item must be included only "if applicable[.]" *See id.* The Post-Sale Notices are silent because this item is not applicable to the deficiencies at issue, as they were not subject to change. *See id.*

Finally, with respect to the Original Post-Sale Notice, the circuit court erred in its interpretation of the sentence "[i]f we are required to sell the collateral, we cannot guarantee that we will be able to obtain a price equal to the unpaid balance on your account."[27] This "factor" examined by the court is not contemplated in section 36-9-616. *See* § 36-9-616; *Liberty Mut. Ins. Co.*, 363 S.C. at 621, 611 S.E.2d at 301. Even if it were contemplated, the circuit court's

[27] This sentence is only present in the Original Post-Sale Notice.

conclusion that the Original Post-Sale Notice contained an incorrect statement as to the sale status of the collateral is not supported by the text of the Original Post-Sale Notice itself. *See* § 36-9-616. It is readily apparent in the Original Post-Sale Notice that the sale of the collateral had already occurred, evidenced by the line item: "(7) The Sale Of Collateral: (amount)[.]" The sentence at issue merely stated factual information for the debtor, that a sale of the collateral may not cover the balance of the account, which is then illustrated later in the letter. *See id.* In no way does this sentence make any assertion that the collateral had not actually been sold. *See id.*

For these reasons, the Post-Sale Notices complied with the SC UCC requirements[28], and the decision of the circuit court should be reversed.

D. The Post-Sale Notices substantially complied with the requirements of the SC UCC and were not "seriously misleading."

Even if this Court believes that FFC failed to comply to the letter with sections 36-9-616(a) and (c), FFC still has not violated the SC UCC because it used an explanation "complying substantially with the requirements of subsection (a)[.]" *See* S.C. Code Ann. § 36-9-616(d). Even if some items appeared out of order, "a particular phrasing of the explanation is not required" and the Post-Sale Notices still "substantially [complied] with the requirements of subsection (a)" and was therefore sufficient. *See* § 36-9-616(d). At worst, these were "minor errors that are not seriously misleading." *See id.* Section 36-9-616(a)(1)(B) requires the secured party to set forth an explanation of how the secured party calculated the deficiency (or surplus). The Post-Sale Notices accomplish this goal, even if it was out of the specific order contemplated by section 36-9-616(c). All the information required by Section 616 was included or readily calculable—the fact that it appeared out of order does not make the notice seriously misleading. *See id.* The deficiency balance remaining was accurately stated, and the debtor could see the exact math used

[28] *See also supra* note 22.

to reach the result of the remaining deficiency balance. For these reasons, any error contained in the Post-Sale Notices was, at worst, a "minor error" that was "not seriously misleading."[29] *See* S.C. Code Ann. § 36-9-616(d). Thus, FFC complied with the SC UCC, and the circuit court's Order should be reversed.

E. The three-year statute of limitations bars all class claims accruing three years before the amended complaint in March 2021, and bars Delaney's claims related to the Post-Sale Notice.

1. The statute of limitations bars all class claims that accrued three years before the amended complaint in March 2021.

The three-year statute of limitations applies to this case. *See Delaney v. First Fin. of Charleston, Inc.*, 426 S.C. 607, 610 n.1, 829 S.E.2d 249, 250 n.1 (2019). The circuit court ruled that the filing of the amended complaint in March 2021 did not restart the statute of limitations because "under long-settled law, the timely filing of a class action tolls the statute of limitations for all asserted class members." MSJ Order, p. 36. The court erred in relying on *American Pipe & Constr. Co. v. Utah*, 414 U.S. 538 (1974) to find the statute of limitations in the class action context is tolled.

First, *American Pipe* does not apply because the tolling doctrine applies to save from a statute of limitations separate *individual* claims that were part of the class but no longer because the class was not certified or class members opted out. *See In re Linerboard Antitrust Litig.*, 223 F.R.D. 335, 344 (E.D. Pa. 2004) ("Filing a federal class action tolls the federal statute of limitations on *individual claims* pending a decision on class certification in the same federal court based on the facts alleged in the class case." (emphasis added)); *3* Newberg and Rubenstein on Class Actions § 9:56 (6th ed.) ("Note that the application of *American Pipe* tolling is decided by the court in which an individual files after the expiration of the class action and attempts to

[29] *See also supra* note 22.

take advantage of tolling—not by the class action court itself."). *American Pipe* does not apply in the context of an ongoing class action case to toll the statute of limitations and, therefore, the court erred in relying on it.

Second, even if *American Pipe* applied, the fact that this case was dismissed for six years before an improper remittitur recall makes the case significantly different to warrant not applying tolling. This case was dismissed April 30, 2013, and thereafter, between Delaney's motion for reconsideration and the conclusion of the appellate process in July of 2019, more than six years passed, during which time no claim was asserted against FFC by any alleged class member. At a minimum, the statute of limitations was not tolled as to any putative class member after the case was dismissed on April 30, 2013, and no South Carolina precedent of which FFC is aware holds that putative class members are covered by a stay even when they are on constructive notice in the public record that the case in which they are a putative class member has been dismissed, notwithstanding the pendency of any appeal from the dismissal. *Cf. Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr.*, 386 S.C. 108, 117, 687 S.E.2d 29, 33 (2009) (cautioning that the equitable power of the court to toll the statute of limitations "should be used sparingly and only when the interests of justice compel its use").

The *American Pipe* holding finds the commencement of a class action suspends the statute of limitations as to all asserted members of the class until class certification is denied. 414 U.S. at 554; *see Giovanniello v. ALM Media, LLC*, 726 F.3d 106, 107–08 (2013) ("[W]e join every other circuit court to have addressed the issue and conclude that the tolling rule announced in *American Pipe* . . . extends only through the denial of class status in the first instance by the district court."). Tolling under the *American Pipe* tolling doctrine is based on the idea that under Rule 23 of the Federal Rules of Civil Procedure (like under South Carolina's Rule 23), potential class members are protected by the commencement of a putative class action, even if they are unaware of the action, because individual class members may rely on the existence of the putative class action suit to protect their rights and need not file an action or move to intervene during the pendency of class certification. *Giovanniello*, 726 F.3d at 117. But "[t]his objectively reasonable reliance rationale breaks down once the district court disallows class status." *Id.* "[E]ven where the plaintiffs seek reconsideration or appeal, ostensibly representing the rights of non-named plaintiffs, reliance is not objectively reasonable." *Id.*

Here, the entire case, including the class allegations, was dismissed on April 30, 2013. The rationale against tolling after class status is disallowed applies equally here. It is objectively unreasonable for putative class members to rely on the existence of this case as a putative class action once the case is dismissed by the circuit court, notwithstanding the appeal that ultimately revived the case more than six years later.

Moreover, regarding the Modified Pre-Sale Notice—which was not sent to Delaney and did not even exist until after FFC was served with this lawsuit in October of 2011—no one to whom it was actually sent has ever asserted a claim against FFC. The statute of limitations has run on every class claim based on the Modified Pre-Sale Notice that accrued more than three (3) years before the amended complaint was filed on March 30, 2021. Likewise, claims based upon the Post-Sale Notice were not asserted until the amended complaint was filed on March 30, 2021. Therefore, at a minimum, the three-year statute of limitations has run on every class claim based on the Post-Sale Notice that accrued more than three (3) years before the amended complaint was filed on March 30, 2021.

In addition, *American Pipe* tolling does not apply considering Delaney's 2013 Bankruptcy. The bankruptcy court has exclusive jurisdiction over property of estate, including this lawsuit prior to class certification, according to 28 U.S.C. §§ 1332 and 157. In effect, the right to prosecute the class action lawsuit is locked up in the bankruptcy estate and court. Like in *Martineau*, the causes of action that form the basis of this lawsuit remain property of Delaney's 2013 Bankruptcy estate under the exclusive direction and control of the Chapter 7 trustee.

Without the right to prosecute and due to the state court's lack of subject matter jurisdiction (*Ex Parte Reichlyn*, 310 S.C. at 499, 427 S.E.2d at 663) Delaney no longer had a valid and viable claim to prosecute, and any *American Pipe* tolling, even assuming, arguendo, it applies in South Carolina, should have ceased. *American Pipe* indicated that it would end upon the dismissal of the class action and the statute of limitations would begin to run again. Therefore, it indicates that when the class action is no longer viable such as when the state court does not have jurisdiction or certification is void or defective, tolling should cease. If tolling ceased at that point in 2013, the statute of limitations would certainly have run. Delaney may argue that real party in interest is merely a temporary obstacle to restoration of the right to sue based on standing; however, *Wilson*, 717 F.3d at 342, recognizes that it is a bar and one which may only be relieved by the bankruptcy court—thus supporting the exclusive jurisdiction of the bankruptcy court. At a minimum, this Court should defer further rulings until the bankruptcy court decides its issues.

2. The statute of limitations bars Delaney's Post-Sale Notice claims.

The three-year statute of limitations applies to claims related to the Post-Sale Notice. *See* S.C. Code Ann. § 15-3-540(2). Delaney received his Post-Sale Notice in January 2009. Delaney filed his complaint on October 4, 2011, asserting a single cause of action based on the *Pre-Sale* Notice. The complaint contained no allegations or facts related to violations of a Post-Sale Notice. *See* Compl. Delaney did not assert a claim based on the Post-Sale Notice until his amended complaint on March 30, 2021—more than 12 years after FFC sent him the Post-Sale Notice. Thus, the only question is whether the claim and facts about Post-Sale Notice relate back to the date of the original filing. They do not.

The circuit court erroneously held that the amendment asserting new claims on a separate event for the Post-Sale Notice related back to the date of the original filing. "Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings, the amendment relates back to the date of the original pleading." Rule 15(c), SCRCP. When the amended allegations are based on separate or different conduct, transactions, or occurrences, the amended complaint does not relate back. *See Valentine v. Davis*, 319 S.C. 169, 172, 460 S.E.2d 218, 220 (Ct. App. 1995).

"[T]he factors to determine whether or not a claim arose out of the same conduct, transaction, or occurrence set forth in the original pleading include: (1) whether a party defending against the new claim had notice of it; (2) whether the party seeking to add the new claim will rely on the same kind of evidence offered in support of the original claim to prove the new claim; and (3) whether unfair surprise to the defending party would result if the amendment were to relate back." *Wright v. Am. Bankers Life Assur. Co. of Fla.*, 586 F. Supp. 2d 464, 475 (D.S.C. 2008) (quoting *Whitfield Const. Co. v. Bank of Tokyo Tr. Co.*, 338 S.C. 207, 223, 525

S.E.2d 888, 897 (Ct. App. 1999)). To determine whether the defending party had notice of the new claim, the proper inquiry is whether the amending party provided notice in its prior pleadings that it intended to allege the claim. *Whitfield*, 338 S.C. at 223, 525 S.E.2d at 897. The court should not focus on whether the defending party should have anticipated the claim. *Id.* For the second factor, the important inquiry is whether the factual circumstances of the new claims were already set out in the original complaint and no new information is required to assert the new claim. *Stanley v. Kirkpatrick*, 357 S.C. 169, 175, 592 S.E.2d 296, 298 (2004).

Here, Delaney cannot establish any of the elements required for relation back to apply, and the Post-Sale Notice claim does not relate back. First, Delaney did not show that FFC had notice of the Post-Sale Notice claim in its prior pleadings such that the court could say Delaney intended to allege the claim. The claim with the Post-Sale Notice is a separate event—a notice after the collateral is sold. In fact, prior to the Amended Complaint Delaney admitted that the only wrongdoing alleged in the complaint related to the Pre-Sale Notice requirements. Delaney Responses to Requests for Admission. Thus, Delaney expressly foreclosed any Post-Sale Notice based claims and, therefore, FFC did not have notice of it. Second, Delaney needed to allege additional facts to support the new claim—the facts surrounding the notice sent after the collateral was sold. Finally, considering Delaney admitted prior to amending the complaint that the wrongdoing he alleged related only to the Pre-Sale Notice, FFC was prejudiced in its defense of the case and in having to litigate stale claims.

Because Delaney failed to establish that the Post-Sale Notice claim arose out of the same conduct, transaction, or occurrence as laid out in the original complaint, the Post-Sale Notice claim does not relate back to the filing of the original complaint and is barred by the statute of limitations.

V. The circuit court erred in finding the amended motion for summary judgment was barred by Rule 23, SCRCP.

The circuit court agreed with Delaney's argument it could not dismiss the case under Rule 23, SCRCP, because the rule states: "A class action shall not be dismissed . . . without approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs." MSJ Order, p. 11. This was error in multiple respects.

First, the circuit court erred in its reading of Rule 23. The rule's language does not prohibit dismissal of a class action, it expressly contemplates it by noting it can be dismissed. Instead, if the court is inclined to dismiss the case, the court must give notice to the class members. Rule 23(c), SCRCP. Thus, the Rule itself does not outright bar dismissal as Delaney presented it and as the court apparently adopted. Therefore, this Court should reverse the circuit court and find that dismissal could occur if notice to class members is necessary.

Second, the circuit court overlooked the issue that the class certification order is defective and, therefore, the class members do not have any rights separate from Delaney that would require notice to absent class members. As argued above, Delaney filed for bankruptcy in 2013, eight years before the class was certified. When he filed for bankruptcy, the entirety of the lawsuit became an asset of the estate over which Delaney had no control, and orders occurring after that period are void *ab initio*, which includes the 2021 class certification order. Because the class certification order is void, the lawsuit loses its class character under Rule 23 and, therefore, there is no requirement of notice to any class members if dismissal is appropriate.

VI. The circuit court erred in denying FFC's motion to decertify the class.

Rule 23(a), SCRCP allows a plaintiff to sue on behalf of a class "only if" five prerequisites are met:

> (1) [Numerosity:] the class is so numerous that joinder of all members is impracticable, (2) [Commonality:] there are questions of law or fact common to the class, (3) [Typicality:] the claims of the representative plaintiff are typical of the claims of the class, (4) [Adequacy of Representation:] the representative parties will fairly and adequately protect the interests of the class, and (5) [Amount in Controversy:] in cases in which the relief primarily sought is not injunctive or declaratory with respect to the class as a whole, the amount in controversy exceeds one hundred dollars for each member of the class.

The "court has an affirmative obligation to reverse an order certifying a class 'if it becomes apparent, at any time during the pendency of the proceeding, that class treatment of the action is inappropriate.'" *Brooks v. GAF Materials Corp.*, 301 F.R.D. 229, 230 (D.S.C. 2014) (quoting *Stott v. Haworth*, 916 F.2d 134, 139 (4th Cir. 1990)). The standard is the same for class decertification as for class certification: the Court must be satisfied that the requirements are met to allow the named plaintiff to maintain the action on a representative basis. *Brooks*, 301 F.R.D. at 230.

"In deciding whether class certification is proper, the court must apply a rigorous analysis to determine each prerequisite is satisfied." *Gardner*, at 21, 577 S.E.2d at 200. The class proponent's "[f]ailure to satisfy even one prerequisite is fatal to calls certification . . . ." *Id.*; *Waller v. Seabrook Island Prop. Owners Ass'n*, 300 S.C. 465, 388 S.E.2d 799 (1990). But before the requirements of Rule 23(a) are considered, the plaintiff must first show standing and the existence of a class. 32B Am. Jur. 2d Federal Courts § 1481 ("The requirements for standing do not change in the class action context. Any analysis of class certification must begin with the issue of standing, and a plaintiff seeking to represent a class must personally have standing.") (internal footnotes omitted); 32B Am. Jur. 2d Federal Courts § 1484 ("[O]nly after the court determines the issues for which the named plaintiffs have standing should it address the question of whether the named plaintiffs have representative capacity to assert the rights of others."); *see also S.C. Pub. Interest Found. v. Wilson*, 437 S.C. 334, 340, 878 S.E.2d 891, 894 (2022) ("A motion to dismiss for lack of standing challenges the court's subject matter jurisdiction."); *id.* at 341, 878 S.E.2d at 895 ("If a plaintiff lacks standing, he does not have the right to proceed to the merits of his claim against the defendant."); *Weiner v. Bank of King of Prussia*, 358 F. Supp. 684, 694 (E.D. Pa. 1973) ("Standing to sue is an essential threshold which must be crossed before any determination as to class representation under Rule 23 can be made. Without standing, one cannot represent a class."); A. Camden Lewis & Michael G. Sullivan, Lewis And Sullivan On Class Actions p. 39 (2005); *id.* ("Before a class action can be brought, as with[] any other lawsuit, a plaintiff must have standing.").

A. The motion to decertify was not noticed to be heard by the circuit court and was not argued.

In the August 20 Form 4 Order, the circuit court stated that the Motion to Decertify was "argued before this Court on August 13, 2025." This was not the case. FFC filed an amended Motion for Summary Judgment on April 20, 2025, adding two grounds to its original Motion for Summary Judgment, (1) Delaney lacked standing to pursue the claims he asserted because he failed to meet the definition of the class and (2) that Delaney should be judicially estopped from pursuing the suit against FFC. On August 11, 2025, the circuit court emailed the parties noting that "We have the *Summary Judgment hearing* scheduled in this case for Hampton County on 8/13 at 10:00 AM." Circuit Court August 11, 2025, Email. (*emphasis added*). FFC replied to this email, noting that "[FFC was] prepared to argue the *Motion for Summary Judgment* tomorrow." (FFC August 12, 2025, Email). (*emphasis added*). It is axiomatic that a party be alerted that their motion is being heard prior to the court's order on the same. At no point during the hearing did the circuit court state that FFC was being heard on its motion to decertify. August 13, 2025, Hearing Tr. The mere fact that the arguments between summary judgment and decertification were similar do not allow the circuit court to override the fundamental right of the party to be heard on its motion.

B. Delaney lacks standing to complain about the modified notices.

"For a plaintiff to possess standing three elements must be satisfied. First, the plaintiff must have suffered an injury-in-fact which is a concrete, particularized, and actual or imminent invasion of a legally protected interest. Second, a causal connection must exist between the injury and the challenged conduct. Third, it must be likely that a favorable decision will redress the injury." *Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n*, 407 S.C. 67, 75, 753 S.E.2d 846, 850 (2014) (internal citations omitted); *see also id*. ("In order for an injury to be particularized, it must affect the plaintiff in a personal and individual way."); 32B Am. Jur. 2d Federal Courts § 1481 ("It is not enough that a named plaintiff can establish a case or controversy between him or herself and the defendant by virtue of having standing as to one of many claims he or she wishes to assert. Rather, each claim must be analyzed separately, and a claim cannot be asserted on behalf of a class unless at least one named plaintiff has suffered the injury that gives rise to that claim." (internal footnote omitted)).

Delaney is unable to meet the requirement that a causal connection exists between the injury and the challenged conduct. *See Carnival Corp*., 407 S.C. at 5, 753 S.E.2d at 850. Delaney did not receive the Modified Notices, and the Modified Notices are materially different than the ones he received. *See id.* The Modified Notices had no personal impact on Delaney, and therefore Delaney has no standing to complain about them. *See id.*; *see also Opternative, Inc. v. S.C. Bd. of Med. Examiners*, 437 S.C. 258, 878 S.E.2d 861 (2022) ("Standing is 'a fundamental prerequisite to instituting an action.'"); 32B Am. Jur. 2d Federal Courts § 1481 ("The requirements for standing do not change in the class action context. . . . A party is not entitled to use the procedural device of a class action in order to create standing which such party lacks under the express terms of substantive law. . . . A class certification order does not confer standing on a plaintiff who otherwise lacks it."); *Allee v. Medrano*, 416 U.S. 802, 828–29 (1974) (Burger, J., concurring in part) ("It bears repeating that a person cannot predicate standing on injury which he does not share. Standing cannot be acquired through the back door of a class action."); Newberg on Class Actions § 1:1 (5th ed.) (as a procedural device, a class action cannot "abridge, enlarge or modify any substantive right").

Typicality and adequacy of representation under Rule 23(a), SCRCP, are also implicated by this fact. *See* Rule 23(a), SCRCP. A purported class representative that lacks standing certainly cannot adequately represent the class. *See id.*; *see also* 32B Am. Jur. 2d Federal Courts § 1484 ("[A] representative who is unable to secure standing . . . would certainly not be in a position to insure the adequate and fair representation of those alleged to be similarly situated, and what a party may not achieve for him- or herself the party may not achieve as a class representative.").

Thus, Delaney lacks standing and fails to meet Rule 23(a), SCRCP, requirements to serve as the class representative. For these reasons, the decision of the circuit court should be reversed.

C. S.C. Code Ann. § 36-9-628(e) bars treatment of the claims as a class.

Pursuant to S.C. Code Ann. § 36-9-628(e), "[a] secured party is not liable under Section 36-9-625(c)(2) more than once with respect to any one secured obligation." Delaney is attempting to establish liability with respect to a class of individuals where only his loan is before the circuit court. *See* Official Comment to § 36-9-628(e) ("Single Liability for Statutory Minimum Damages. Subsection (e) ensures that a secured party will incur statutory damages only once in connection with any one secured obligation."). Delaney's claim seeks a windfall for a defaulting debtor who suffered no actual damage and left FFC with a deficiency balance that went unpaid—class treatment only increases this exponentially. Delaney has failed to provide evidence of the other loans he alleges are at issue, and thus liability is based *solely* on Delaney's loan, in direct contradiction to S.C. Code Ann. § 36-9-628(e). For these reasons, the decision of the circuit court should be reversed.

VII. The circuit court erred in granting Delaney's motion to intervene.

In support of Delaney's Motions to Intervene, Watson, Alston, and McGuiggan filed affidavits that alleged they purchased vehicles with loans financed through FFC which were ultimately repossessed. Affidavit of Watson; Affidavit of Alston; Affidavit of McGuiggan. The Purported Intervenors alleged that they received some version of the notices used by FFC—based on the times that the Purported Intervenors alleged they purchased the vehicles, McGuiggan and Watson would have received the Modified Notices, while Alston would have received the Original Notices. Affidavit of Watson; Affidavit of Alston; Affidavit of McGuiggan. Notably, in their affidavits, none of the Purported Intervenors claimed that Delaney inadequately represented them or the class. *See id.* Watson's claims against FFC dates back six years, while Alston's and McGuiggan's claims date back to *over fifteen years ago*. *See id.*

A. The Purported Intervenors made no allegation that they were inadequately represented by Delaney when they attempted to intervene.

Pursuant to Rule 24, SCRCP[30], a party may intervene as a matter of right[31] when "the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties."

Neither Delaney nor the Purported Intervenors have argued or agreed that their interests were not adequately represented by Delaney. Motion to Intervene; Supp Motion to Intervene; January 9, 2026, Hearing Tr. In fact, Delaney and the Purported Intervenors argue the exact opposite, that Delaney *is* and *remains* an adequate representative of the class: "[b]oth Delaney and the intervenors are aligned in that there is no problem with Delaney's representation." January 9, 2026, Hearing Tr. at 38:18-20. This alone defeats Delaney's argument for intervention as a matter of right. *See* Rule 24, SCRCP (prohibiting intervention as a matter of right where the proposed intervenor's interests is adequately represented by existing parties). Intervention by the Purported Intervenors necessarily requires the admission that Delaney does not adequately represent the Purported Intervenors—making either the class definition improper, and/or Delaney improper as a member of the class and representative of the class itself. *See id.* For these reasons, the circuit court erred in granting Delaney's Motion to Intervene, and this Court should reverse the decision of the circuit court.

[30] Further, the Purported intervenors failed to comply with Rule 24(c), SCRCP, in that they failed to "serve a motion to intervene upon the parties as provided in Rule 5[,] which "*shall be accompanied by a pleading setting forth the claims . . . for which intervention is sought*." (*emphasis added*). Therefore, this Court should reverse the decision of the circuit court.

[31] Even if the Purported Intervenors were permissively intervening, intervention should not have been granted. *See* Rule 24(b), SCRCP. The Purported Intervenors could not establish timely application and could not prove that their participation in the underlying action would not delay or prejudice the adjudication of the rights of the original parties. *See id.*; *Ex parte Builders Mutual Insurance Company*, 431 S.C. 93, 101, 847 S.E.2d 87, 91.

B. Even if intervention was proper, the circuit court failed to conduct a Rule 23 analysis to add the intervening parties as class representatives.

To be a class representative, the circuit court must first certify that Rule 23(a), SCRCP, prerequisites are met. *See* Rule 23(a), SCRCP. Neither Delaney nor the Purported Intervenors made any argument with respect to the Rule 23(a), SCRCP, requires in their motions, briefs, or at the hearing, and the circuit court did not engage in any analysis regarding whether the Purported Intervenors complied with Rule 23(a), SCRCP, before granting their motion. *See id.* It is clear that the Purported Intervenors were attempting to intervene as class representatives—as this fact was included in the Motion to Intervene for Watson and Alston (though absent from McGuiggan's), and made clear during the hearing on this motion that all Purported Intervenors "want[ed] to intervene, be appointed as co-class representatives." (January 9, 2026 Hearing Tr. at 42:7-8). Thus, the circuit court erred in failing certify that the Purported Intervenors complied with Rule 23(a), SCRCP, and the decision of the circuit court should be reversed.

CONCLUSION

For the aforementioned reasons, this Court should reverse the circuit court's rulings on the motion for summary judgment, motion to decertify, and motion to intervene.

This 13th day of July, 2026.

s/Skyler C. Wilson
Skyler C. Wilson
(SC Bar No. 102865)
Brenten H. DeShields
(SC Bar No. 105199)
Copeland, Stair, Valz & Lovell, LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401
Ph: (843) 727-0307

-and-

Amanda K. Dudgeon
(SC Bar No. 72516)
MD Law Group, LLC
102 Wappo Creek Drive, Unit 9
Charleston, SC 29412
Ph: (843) 577-5410

-and-

Stephen L. Brown
(SC Bar No. 66468)
Russell G. Hines
(SC Bar No. 72100)
Clement Rivers, LLP
25 Calhoun Street, Suite 400
Charleston, SC 29401
Ph: (843) 720-5488

Attorneys for Appellant/Respondent