IN THE SOUTH CAROLINA COURT OF APPEALS

Appellate Case No. 2026-000201

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SC Court of Appeals

CHERYL CARTER,
Appellant,

v.

MCELVEEN BUICK-GMC, INC.,
Respondent.

Appeal from the Court of Common Pleas, Ninth Judicial Circuit
Berkeley County, South Carolina
Case No. 2025-CP-08-00615

APPELLANT'S BRIEF

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STATEMENT OF THE CASE

Factual Background

On July 26, 2022, Appellant Cheryl Carter purchased a 2013 Dodge Durango from Respondent McElveen Buick-GMC, Inc. for $14,246. Appellant viewed the vehicle online and subsequently visited the dealership in person, having been referred there by a family member. She was informed of the vehicle's price by a sales agent, and that price fell within her pre-approved financing amount through South Carolina Federal Credit Union. Because Appellant arrived with her own financing already secured, her transaction was the functional equivalent of a cash sale. Respondent performed no financing-related administrative or financial work on her behalf beyond processing a single-page "Buyer-Seller Sales Agreement." Appellant purchased no ancillary products whatsoever, no service contract, no GAP insurance, and no other dealer offerings. She transferred her own tags. The price quoted by the sales agent was reasonably understood by Appellant to be the full cost of the vehicle, subject only to mandatory government fees such as taxes and title, the universally understood baseline exclusions. Dealer-imposed administrative fees are not mandatory government fees, and Appellant had no reason to anticipate their addition.

Despite this, Respondent charged Appellant a $489 "Closing Fee" and a $65 "License and Admin Fee." Appellant was never clearly and conspicuously informed of these fees prior to signing. The price communicated to her by the sales agent did not include these charges, and there is no indication that the required conspicuous in-dealership display of the closing fee was brought to her attention at any point during the transaction.

On Thanksgiving Day 2024, while discussing home and vehicle purchases. Appellant learned from a friend with industry knowledge that these fees may have violated South Carolina law. On December 18, 2024, Appellant formally demanded a refund of $1,108, itemized as follows: (1) the $489 "Closing Fee," which was represented as excluded from the advertised price but then added to the sale price, effectively double-charging Appellant for a total of $978; and (2) the $65 "License and Admin Fee," which is subsumed within the statutory closing fee definition and therefore constitutes a second charge for the same administrative services already covered, doubling to $130. Together, $978 plus $130 equals $1,108, by certified mail to Respondent's General Manager. Respondent received the demand on December 21, 2024. Appellant filed her Complaint on February 20, 2025, after Respondent failed to respond to her notice to cure amicably for the refund of the overcharged amount on December 21, 2024. On March 2, 2025, after the Complaint was served, Respondent's General Manager, Todd Smith, responded by email. Rather than address the statutory merits, Mr. Smith stated: "Closing fees are charged to everyone regardless whether you're paying cash or financing." He further directed Appellant to Respondent's website, stating that closing fees and taxes are added to every price. He concluded that Appellant had not been overcharge.

Procedural History

Respondent filed a Rule 12(b)(6) Motion to Dismiss on March 21, 2025. On April 14, 2025, a hearing was held via Webex before the Honorable George M. McFaddin, Jr. From the outset, Appellant experienced severe technical difficulties; she could not be heard by the Court or opposing counsel. (Tr. 4/14/25, p. 3.) The Court acknowledged the problem and provided a phone number for Appellant to call in. (Tr. 4/14/25, p. 4.) Even after connecting by phone, significant audio issues persisted, with the Court noting "a tremendous amount of echoing." (Tr. 4/14/25, p. 4.) Despite these unresolved technical failures, the Court proceeded with the hearing. Appellant's participation was severely limited as a result.

At the close of the hearing, Judge McFaddin explicitly stated: "you will hear from me either by email through the Court or by letter." (Tr. 4/14/25, p. 7.) Appellant, a pro se litigant appearing remotely with documented audio difficulties, reasonably understood this as a personal assurance that a written order would follow by mail. Notably, the hearing produced no final written order; only a Form 4 administrative entry was subsequently filed. A Form 4 is a ministerial administrative form used to record a case disposition; it is not a signed judicial order containing findings of fact, conclusions of law, or identified legal authority.

On April 22, 2025, the Court entered a Form 4 dismissing Appellant's Complaint pursuant to Rule 12(b)(6). The entirety of the court's ruling consisted of a single sentence: "Upon review of the file and existing law, I grant Defendant's SCRCP 12(b) Motion and respectfully dismiss Plaintiff's complaint." No findings of fact were made. No conclusions of law were stated. No legal authority was identified. No explanation was given as to which allegations were deemed insufficient or why. No formal signed written order was ever issued by Judge McFaddin. Appellant, a pro se litigant, was left with no basis upon which to understand the court's reasoning or to formulate a meaningful appeal. Furthermore, the Form 4 itself, on its second page, expressly states that the clerk is required to mail a copy to parties who are not E-Filers or who are appearing pro se, citing Rule 77(d), SCRCP. Appellant never received that mailed copy.

On June 10, 2025, upon discovering the dismissal, Appellant promptly filed a Motion for Relief from Judgment pursuant to Rule 60(b)(1) and 60(b)(6), SCRCP, in order to preserve her rights within a reasonable time. Appellant subsequently filed a supporting sworn Affidavit, notarized on July 11, 2025, before the first scheduled hearing on July 14, 2025, setting forth under oath the specific evidentiary basis for the motion, including the lack of proper notice, her reliance on the court's own representation, and the circumstances surrounding her discovery of the dismissal. By the time any court was prepared to consider the motion on its merits, the Affidavit had been in the record for months. Respondent filed no opposition to the motion at any time, and made no challenge to the timing or adequacy of Appellant's supporting documentation.

The motion was initially set for hearing on July 14, 2025 before the Honorable Diane Schafer Goodstein. At that hearing, immediately following greetings and before either party was permitted to speak, Judge Goodstein disclosed *Sua sponte* three independent conflicts with Respondent: that she personally purchases her vehicles from McElveen's; that the owner Doug McElveen and his family were personal acquaintances; and that her former law firm had previously represented McElveen's. (Tr. 7/14/25, p. 3.) Judge Goodstein stated verbatim on the record: "I buy my vehicles from McElveen's, and Doug McElveen and Doug McElveen's parents are acquaintances... we represented McElveen's. I think I just talked myself out of hearing this case." (Tr. 7/14/25, p. 3.) She immediately recused herself, continuing the matter via Form 4 without hearing argument from either side. All three of these conflicts, a current financial relationship with the defendant, a personal acquaintance relationship with the defendant's owner, and a prior professional legal representation of the defendant, were known to Judge Goodstein before the July 14 hearing was ever scheduled. Rule 2.11 of the South Carolina Code of Judicial Conduct obligated her to proactively identify and disclose these conflicts before the hearing was scheduled. Her failure to do so caused both parties to prepare for and appear at a hearing that was immediately terminated, unnecessarily delaying adjudication of Appellant's motion.

Following Judge Goodstein's recusal, the matter was assigned to the Honorable Charles J. McCutchen for an August 12, 2025 hearing. Appellant took time off work and appeared at the Webex hearing. Only upon attending did Appellant learn, for the first time, that Respondent's counsel, Victoria W. Kurtz, had obtained an Order of Protection from all court appearances from August 5 through September 5, 2025, citing the loss of both her mother and her husband. That Order of Protection was signed by the Honorable Jennifer B. McCoy on August 10, 2025, and electronically filed in this specific case, Case No. 2025CP0800615, on August 11, 2025, one day before the scheduled hearing. Appellant was never served with this filing in violation of Rule 5, SCRCP, which requires that every filing in a pending case be served on all parties. As a pro se non-e-filer, Appellant was entitled to receive a mailed copy. She never received it. The presiding judge acknowledged on the record that he did not know why Appellant had not been informed. The hearing could not proceed. No Form 4 was entered by Judge McCutchen memorializing what occurred. Appellant lost time off work as a direct result of opposing counsel's failure to serve her with a filing in her own active case. No transcript of the August 12, 2025 proceeding exists or could be located. Appellant, who was present, recalls the presiding judge stating on the record that Respondent's counsel had filed a Motion for Leave, of which Appellant was never served.

The motion was subsequently heard by the Honorable Jennifer B. McCoy on November 10, 2025. At that hearing, Appellant explicitly denied ever agreeing to receive notice by email only, stating: "No. I've never said anything or agreed to anything being sent only through email." (Tr. 11/10/25, p. 10.) The Clerk of Court, when asked how the email preference was established, revealed that it came from an automated system called Court08, not from any affirmative choice by Appellant. (Tr. 11/10/25, pp. 9-10.) Judge McCoy then updated the record to reflect that all future notices would be sent by mail, acknowledging on the record: "it'll be coming by mail now." (Tr. 11/10/25,

p. 11.) Despite these findings, Judge McCoy's subsequent written Order denied relief on the ground that the court system reflected Appellant's "choice" for emailed service, directly contradicting what was established on the record at the very hearing over which she presided.

Critically, the November 10, 2025 Form 4 Order directed Respondent's counsel to draft the formal written Order within ten days. The November 19, 2025 written Order, signed by Judge McCoy, was therefore drafted by Respondent's own counsel and submitted for signature. That Order, prepared by an interested party, contains the finding that Appellant acknowledged electing email service, a finding that directly contradicts the transcript of the November 10, 2025 hearing at which Judge McCoy presided. The Order also incorrectly stated that Appellant had provided "no affidavits," a finding directly contradicted by the Affidavit filed July 11, 2025, which appears in the court record.

The November 19, 2025 Order was never mailed to Appellant. After waiting over a month and receiving nothing by mail, Appellant was forced to physically travel to the Berkeley County Court of Common Pleas on December 31, 2025 to obtain a copy of the Order herself. That date, December 31, 2025, is the operative date of receipt for a pro se non-e-filer who was never served as required by Rule 77(d). Appellant filed her Notice of Appeal on January 9, 2026, and an Amended Notice of Appeal on January 20, 2026, within the thirty-day jurisdictional window. On March 30, 2026, this Court denied Respondent's Motion to Dismiss the appeal and granted Appellant's motion to order transcripts out of time.

ISSUES PRESENTED

I. Did the trial court abuse its discretion in denying Appellant's Rule 60(b) Motion for Relief from Judgment where: (a) Appellant was denied the mandatory mailed notice of judgment required by

Rule 77(d), SCRCP, and reasonably relied upon the court's own explicit representation that the ruling would be delivered by mail (Tr. 4/14/25, p. 7); (b) the November 19, 2025 written Order was drafted by Respondent's counsel and contains findings directly contradicted by the transcript of the November 10, 2025 hearing over which Judge McCoy presided, including the erroneous finding that Appellant elected email service and the erroneous finding that Appellant filed no affidavit; (c) the April 14, 2025 hearing was constitutionally deficient because unresolved technical failures prevented Appellant from meaningfully participating, yet the court proceeded and dismissed her case eight days later; (d) Respondent's counsel failed to serve Appellant with an Order of Protection filed in this case on August 11, 2025 in violation of Rule 5, SCRCP, causing Appellant to lose a day of work appearing at an August 12, 2025 hearing that could not proceed; (e) the presiding judge at the August 12, 2025 hearing acknowledged on the record that he did not know why Appellant had not been informed of the filing; and (f) newly discovered evidence in the form of a party admission by Respondent's General Manager demonstrates that the closing fee is charged uniformly to all customers regardless of actual costs incurred?

II. Did the trial court err in granting Respondent's Rule 12(b)(6) Motion to Dismiss where: (a) Appellant's Complaint alleged sufficient facts to state viable claims under the South Carolina Consumer Protection Code, § 37-2-307, and the South Carolina Dealers Act, § 56-15-10, et seq.; (b) the dismissal was rendered by a one-sentence Form 4, a ministerial administrative form, with no findings of fact, no conclusions of law, and no identified legal authority, and no formal signed order was ever entered by Judge McFaddin, denying Appellant any meaningful basis for appeal; (c) Respondent introduced a factual claim, that Appellant discovered the vehicle through an online advertisement, that appears nowhere in the Complaint, in violation of the Rule 12(b)(6) standard requiring the court to rule solely on the face of the complaint; and (d) Respondent materially misrepresented to the court that *Freeman v. J.L.H. Investments, L.P., a/k/a Hendrick Honda of Easley,* 414 S.C. 362, 778 S.E.2d 902 (S.C. 2015) predated the statutory amendments to § 37-2-307, when in fact Freeman was decided fifteen years after those amendments and interpreted the amended statute?

ARGUMENT

I. THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING APPELLANT'S RULE 60(b) MOTION FOR RELIEF FROM JUDGMENT WHERE APPELLANT WAS DENIED PROPER NOTICE, DENIED A MEANINGFUL HEARING, THE COURT'S OWN WRITTEN ORDER IS CONTRADICTED BY THE RECORD, AND OPPOSING COUNSEL FAILED TO SERVE A FILING IN THIS CASE IN VIOLATION OF RULE 5, SCRCP.

This Court reviews the denial of a Rule 60(b) motion for abuse of discretion. Rule 60(b), SCRCP permits relief from a final judgment for, among other reasons, "mistake, inadvertence, surprise, or excusable neglect" under subsection (1); "newly discovered evidence" under subsection (2); and "any other reason justifying relief from the operation of the judgment" under subsection (6). All three grounds are implicated here. Additionally, where a dismissal results from a hearing at which the pro se plaintiff was functionally unable to participate due to court-related technical failures, the constitutional guarantee of due process provides an independent basis for relief.

A. Appellant Was Denied the Mandatory Mailed Notice Required by Rule 77(d), SCRCP.

Rule 77(d), SCRCP mandates that upon entry of judgment, the clerk "shall serve a notice of the entry" and that for parties who are not proceeding through the Electronic Filing System, service shall be made by mail. This is not discretionary; it is a mandatory obligation of the court system. Appellant was a pro se litigant and a non-registered e-filer. The rule's protections applied to her by operation of law.

The trial court's Order denying relief stated that Appellant's email notification was sufficient because "the Court system reflected Plaintiff's choice for emailed service." This finding is directly contradicted by the transcript of the November 10, 2025 hearing. When asked about the email preference, the Clerk of Court testified that it was generated by an automated system called Court08, not by any affirmative election by Appellant. (Tr. 11/10/25, pp. 9-10.) Appellant herself explicitly denied ever agreeing to email-only notice: "No. I've never said anything or agreed to anything being sent only through email." (Tr. 11/10/25, p. 10.) Judge McCoy acknowledged this on the record and updated Appellant's preference to mail going forward. (Tr. 11/10/25, p. 11.) The court's written order, issued nine days later, ignored these on-the-record findings entirely.

The trial court's finding is also erroneous as a matter of law. A pro se litigant who is not a registered e-filer has not "chosen" electronic service simply because the court's electronic system generated an automated email notification. Rule 77(d) does not provide for email as a substitute for mailed notice for non-e-filers. The court cannot transform a system-generated email into a legally valid election by the non-filing party.

Furthermore, the clerk's own notation on the July 14, 2025 continuance order by Judge Goodstein confirms that proper mailed service to Appellant was required and executed on that occasion, demonstrating that the court understood its obligations under Rule 77(d). The failure to apply the same standard to the April 22 dismissal order was inconsistent and prejudicial to Appellant.

Because Appellant did not receive proper notice as required, she was unable to file a timely notice of appeal under Rule 203(b)(1), SCACR, which requires a notice of appeal to be filed within thirty days after receipt of written notice of the order. This failure of notice directly caused the procedural situation that necessitated the Rule 60(b) motion and this appeal.

B. The November 19, 2025 Written Order Was Drafted by Respondent's Counsel and Contains Findings Directly Contradicted by the Transcript.

The November 10, 2025 Form 4 Order directed Respondent's counsel to draft the formal written Order within ten days. The November 19, 2025 written Order was therefore prepared by opposing counsel, an interested party, and submitted to Judge McCoy for signature. This fact is established by the court's own filed record.

The order that Respondent's counsel drafted contains two findings that are directly contradicted by the transcript of the November 10, 2025 hearing over which Judge McCoy presided.

First, the Order states that Appellant's email notification was sufficient because "the Court system reflected Plaintiff's choice for emailed service." But the transcript establishes that Appellant denied electing email service, the Clerk confirmed the email was autogenerated by Court08 and not selected by Appellant, and Judge McCoy acknowledged this and updated the record to reflect mailed service going forward. (Tr. 11/10/25, pp. 9-11.) The order drafted by opposing counsel directly contradicts all of this.

Second, the Order states that Appellant "provided no affidavits, evidentiary support, or legal authority" in support of her motion. But Appellant filed a sworn Affidavit notarized on July 11, 2025, which appears in the court record and was in the record at the time of the November 10 hearing. The transcript of the November 10, 2025 hearing itself constitutes additional evidentiary support. Both directly contradict the Order's finding.

A written order drafted by an interested party that contradicts the transcript of the hearing it purports to memorialize, on the precise factual issues that determined the outcome against Appellant, is not a reliable memorialization of judicial findings. The transcript is the record. The transcript controls. Furthermore, the November 19, 2025 Order was never mailed to Appellant. She was forced to physically travel to the Berkeley County courthouse on December 31, 2025 to retrieve it herself, depriving her of any timely opportunity to identify the contradictions and bring them to the court's attention.

C. Appellant's Reliance on the Court's Own Representation Constitutes Excusable Neglect Under Rule 60(b)(1).

Even if this Court were to find that email notification technically satisfied some threshold notice requirement, Appellant's failure to act within the appeal period nonetheless constitutes excusable neglect under Rule 60(b)(1) because she relied directly on the court's own explicit representation, and because the hearing itself was compromised by technical failures that denied her a meaningful opportunity to be heard.

At the close of the April 14, 2025 hearing, Judge McFaddin stated on the record: "you will hear from me either by email through the Court or by letter." (Tr. 4/14/25, p. 7.) This representation was made in open court to a pro se litigant who had just experienced significant technical difficulties that limited her participation. When Appellant received only an automated email notification, with no accompanying written order, only a Form 4 administrative entry, she reasonably waited for the promised written mailed order before taking action. This interpretation was not only objectively reasonable; it was the only reasonable interpretation available to a pro se litigant given the judge's explicit words.

The doctrine of excusable neglect under Rule 60(b)(1) exists precisely to protect parties from the consequences of procedural missteps caused by circumstances beyond their reasonable control, including reasonable reliance on representations from the court itself. To hold that a pro se litigant's reliance on a judge's explicit representation does not constitute excusable neglect would be fundamentally unjust and would undermine the integrity of judicial representations made in open court.

Appellant acted promptly upon discovering the dismissal by filing her Rule 60(b) motion on June 10, 2025. Respondent filed no opposition. These facts further support a finding of excusable neglect and the propriety of granting relief.

D. The April 14, 2025 Hearing Was Constitutionally Deficient Due to Unresolved Technical Failures That Denied Appellant a Meaningful Opportunity to Be Heard.

The due process right to be heard is meaningless if the party cannot actually be heard. The April 14, 2025 hearing transcript demonstrates that from its very opening, Appellant could not be heard by the Court or opposing counsel. (Tr. 4/14/25, p. 3.) The Court acknowledged the problem, provided a phone number, and attempted to work around the issue, but audio difficulties persisted throughout. (Tr. 4/14/25, pp. 3-4.) Despite these unresolved technical failures, the Court proceeded with and concluded the hearing, which resulted in the dismissal of Appellant's case eight days later.

Appellant's participation was so limited that her entire argument before the Court, after finally reaching partial audio connection, consisted of a brief statement about the fees charged and her December 2024 demand letter. (Tr. 4/14/25, pp. 5-7.) She had no meaningful opportunity to respond to opposing counsel's arguments about the statute's amendments or to advance the legal basis of her claims. Critically, Appellant was in possession at that hearing of a written communication from Respondent's own General Manager admitting that the closing fee is charged universally to all customers regardless of actual costs incurred, the most important piece of evidence in the case. Technical failures prevented her from presenting it. A dismissal entered under these circumstances, where the pro se plaintiff could not functionally participate and where critical evidence was never heard, is constitutionally infirm and provides an additional and independent basis for relief under Rule 60(b)(6), which authorizes relief for any reason justifying it in the interests of justice.

E. The Trial Court's Factual Finding That Appellant Filed No Affidavit Is Clearly Erroneous.

The trial court's November 19, 2025 Order states that Appellant "provided no affidavits, evidentiary support, or legal authority" in support of her Rule 60(b) motion. This finding is factually incorrect and constitutes a clear error of fact that independently warrants reversal.

The record reflects that Appellant filed a sworn Affidavit in Support of Motion for Relief from Judgment, notarized on July 11, 2025, and filed with the Berkeley County Court of Common Pleas on the same date, well before the first scheduled hearing on July 14, 2025 and months before the November 10, 2025 hearing at which the motion was decided. That Affidavit set forth, under oath, the specific facts supporting Appellant's Rule 60(b) claim: that she is a pro se litigant and non-e-filer; that Judge McFaddin represented the ruling would be mailed (Tr. 4/14/25, p. 7); that she did not receive the required mailed notice; that she relied on the judge's representation; and that she acted promptly upon learning of the dismissal. The Affidavit was properly sworn before a notary public and submitted to the court. That the Affidavit was filed approximately one month after the initial motion is not a procedural deficiency; the motion was filed promptly on June 10, 2025 to preserve Appellant's rights, the Affidavit followed before any hearing was held, Respondent filed no opposition challenging the timing or adequacy of Appellant's supporting documentation, and by the time Judge McCoy ruled, the Affidavit had been in the record for four months.

Furthermore, the November 10, 2025 hearing transcript itself constitutes evidentiary support that was before the court. Appellant testified under questioning that she never agreed to email-only notice. (Tr. 11/10/25, p. 10.) The Clerk confirmed on the record that the email preference was system-generated through Court08, not elected by Appellant. (Tr. 11/10/25, pp. 9-10.) These sworn and recorded statements directly supported Appellant's motion. A court's denial of a motion based on a factual finding directly contradicted by both the written record and the hearing transcript it produced is an abuse of discretion. Because the trial court's analysis was premised in part on the erroneous conclusion that no evidentiary support existed, the denial cannot stand.

F. The Procedural History Demonstrates a Consistent Pattern of Failures, None Attributable to Appellant, That Caused Every Day of Delay Between June 10 and November 10, 2025.

Respondent has characterized Appellant's procedural history as reflecting a pattern of tardiness and noncompliance. The documented record directly contradicts this characterization. Appellant filed her Motion for Relief from Judgment on June 10, 2025. It was not heard and decided until

November 10, 2025, five full months later. Not one single day of that delay was caused by Appellant. Every delay is traceable to specific, documented failures by others:

July 14, 2025, Judge Goodstein's Undisclosed Conflicts. Judge Goodstein was assigned to hear Appellant's motion. She had an obligation under Rule 2.11 of the South Carolina Code of Judicial Conduct to proactively identify and disclose any disqualifying conflicts before the hearing was scheduled. All three of her disclosed conflicts, her current financial relationship with McElveen's as a vehicle customer, her personal acquaintance relationship with the owner Doug McElveen, and her law firm's prior representation of McElveen's, were known to her before July 14. She disclosed them only after both parties had appeared. Her failure to proactively recuse caused a wasted hearing appearance and delayed adjudication of Appellant's motion by a full court term.

August 12, 2025, Opposing Counsel's Failure to Serve Order of Protection, Rule 5 Violation. Respondent's counsel obtained an Order of Protection from all court appearances from August 5 through September 5, 2025. That Order was signed by Judge McCoy on August 10, 2025, and electronically filed in this case on August 11, 2025, one day before the scheduled August 12 hearing. Appellant, a pro se non-e-filer entitled to receive mailed copies of all filings under Rule 5, SCRCP, was never served with this Order. She learned of it only upon appearing at the hearing on August 12, having taken time off work. The presiding judge acknowledged on the record that he did not know why Appellant had not been informed. No Form 4 was entered memorializing the proceedings. Appellant lost time off work. No transcript of the August 12, 2025 proceeding exists or could be located. Appellant, who was present, recalls the presiding judge stating on the record that Respondent's counsel had filed a Motion for Leave, of which Appellant was never served.

November 10 through December 31, 2025, Order Drafted by Opposing Counsel, Never Mailed. When the motion was finally heard and denied on November 10, Judge McCoy directed opposing counsel to draft the formal Order. The order opposing counsel drafted contradicts the transcript on the critical notice finding. And that Order was never mailed to Appellant, forcing her to travel to the courthouse on December 31, 2025 to retrieve it herself.

The party in this case with a documented pattern of procedural failures is not Cheryl Carter. It is the party whose counsel failed to serve a court filing on the opposing party, drafted an order contradicting the transcript, and failed to ensure court orders were mailed to a pro se non-e-filer as required by Rule 77(d), not once but twice in the same case. This Court should firmly reject Respondent's characterization and recognize it for what the record shows it to be: a narrative unsupported by the documented facts.

Furthermore, it bears noting that Judge McCoy, who signed the Order of Protection for opposing counsel on August 10, 2025, thereby facilitating the notice failure at the August 12 hearing, later presided over and denied Appellant's motion on November 10, 2025, directed opposing counsel to draft the Order, and signed an Order that contradicts the transcript of the hearing she conducted. The cumulative picture, in which every procedural failure falls on the same party, at every stage, throughout the entirety of the proceedings, is one this Court should examine with care.

G. Newly Discovered Evidence Further Supports Relief from Judgment Under Rule 60(b)(2).

Rule 60(b)(2) permits relief from judgment on the basis of newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial. After the Complaint was served but before the trial court ruled on Respondent's Motion to Dismiss, Respondent's own

General Manager, Todd Smith, sent Appellant an email on March 2, 2025, which constitutes a party admission of significant evidentiary weight.

In that email, Mr. Smith stated that closing fees are charged to everyone regardless whether the buyer pays cash or finances. This admission directly contradicts the statutory definition of a closing fee under § 37-2-307(A)(1), which defines it as a fee for recovery of a dealer's actual costs for administrative and financial work performed in connection with the specific transaction. As discussed below in Section II.A, this statement is also a per se violation of the version of § 37-2-307 in effect at the time of the sale. A fee that is identical for every customer regardless of the services actually performed is by definition not a recovery of actual costs; it is a predetermined flat charge that bears no relationship to the work, if any, done on behalf of the individual buyer.

Mr. Smith further directed Appellant to Respondent's website as the source of closing fee disclosure. This is particularly significant. While Appellant did view the vehicle online prior to visiting the dealership, she came to McElveen in person based on a family referral, not through any online advertisement. More critically, to this very day Respondent's website states that the "Closing Fee" is "Excluded from the advertised price," in direct conflict with South Carolina law, which requires closing fees to be included in the advertised price. The advertisement is therefore materially misleading on its face. Respondent cannot use its own non-compliant website as a shield against statutory liability. The General Manager's own response reveals that Respondent's primary disclosure vehicle was its website, which Appellant had no reason to consult and did not consult. This confirms that Appellant received no meaningful pre-sale disclosure of the closing fee.

This email was received after the Complaint was filed and could not have been submitted to the trial court before the April 22, 2025 dismissal. It constitutes newly discovered evidence within the meaning of Rule 60(b)(2) that, had it been before the court, would have materially affected the outcome of the motion to dismiss. At minimum, it provides an independent and compelling basis to grant relief from judgment and remand for proceedings on the merits.

II. THE TRIAL COURT ERRED IN GRANTING RESPONDENT'S RULE 12(b)(6) MOTION TO DISMISS WHERE THE DISMISSAL WAS UNSUPPORTED BY ANY LEGAL REASONING, RESPONDENT INTRODUCED FACTS NOT IN THE COMPLAINT, AND RESPONDENT MISREPRESENTED CONTROLLING AUTHORITY.

This Court reviews the grant of a Rule 12(b)(6) motion de novo. Dismissal is appropriate only if the facts alleged, and all reasonable inferences drawn from them in the light most favorable to the plaintiff, fail to state any cognizable claim for relief. *Doe v. Marion,* 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). The trial court must base its ruling solely upon the allegations on the face of the complaint. *Flateau v. Harrelson,* 355 S.C. 197, 201-02, 584 S.E.2d 413, 415 (Ct. App. 2003).

The dismissal below was rendered by a one-sentence Form 4 that identified no legal authority, made no findings of fact, and offered no analysis of the complaint's allegations. As noted above, a Form 4 is a ministerial administrative form used to record a case disposition; it is not a signed judicial order. No formal written order signed by Judge McFaddin was ever entered on the record identifying the legal basis for dismissal. A Rule 12(b)(6) dismissal that cannot be reviewed because it identifies no legal basis and is not memorialized in a proper signed order cannot be affirmed on appeal. A ruling of this nature cannot constitute a proper adjudication of a Rule 12(b)(6) motion, which requires the court to assess whether the specific allegations of the complaint, taken as true, state a cognizable claim. A pro se litigant is entitled to know the basis upon which her complaint was dismissed, particularly where, as here, she had no meaningful opportunity to present her arguments at the hearing due to technical failures beyond her control, and where the evidence she was prepared to present, the General Manager's written admission of a blanket fee policy, was never heard.

Additionally, Respondent's Motion to Dismiss introduced a factual claim that does not appear anywhere in Appellant's Complaint, specifically, that Appellant discovered the vehicle through an online advertisement. Respondent stated in its Motion to Dismiss: "Plaintiff was shopping for a used car and found one she liked on the McElveen website." Appellant's Complaint contains no such allegation whatsoever. Because Appellant never made any claim of finding the vehicle through an online advertisement, Respondent had no factual basis to insert that claim into its Motion to Dismiss. Respondent nevertheless used this fabricated fact to construct an entire disclosure defense centered on its website and online; a defense built on a premise that exists nowhere in the Complaint. This is precisely the type of impermissible factual insertion that Flateau prohibits. The Rule 12(b)(6) standard requires the court to rule solely on the face of the complaint, not on facts manufactured by the moving party. To the extent the trial court accepted Respondent's unsupported factual insertions, it committed reversible error. Moreover, Respondent's reliance on its own website as a disclosure mechanism is independently unavailing: to this day, Respondent's website states that the "Closing Fee" is "Excluded from the advertised price," in direct violation of South Carolina law requiring it to be included. A disclosure device that itself violates the statute cannot serve as a defense to statutory non-compliance.

Appellant's Complaint alleges specific, concrete facts, not mere conclusions, that, taken as true, state valid claims under both the South Carolina Consumer Protection Code and the South Carolina Dealers Act. The trial court erred in dismissing those claims at the pleading stage.

A. Appellant Stated a Valid Claim Under SCCPC § 37-2-307.

S.C. Code Ann. § 37-2-307 defines a closing fee as a fee for recovery of a dealer's actual costs for administrative and financial work needed to transfer and deliver a vehicle to the consumer. The statute requires that a closing fee be clearly and conspicuously disclosed in any advertisement of a specific vehicle for sale or lease. § 37-2-307(B)(2).

Critically, the version of § 37-2-307(A)(2) in effect on July 26, 2022, the date of Appellant's transaction, required that the closing fee "must be included in the advertised price of the motor vehicle." 2016 Act No. 231, § 1. That requirement was not weakened to a mere disclosure standard until 2023 Act No. 45 (H.3952), effective May 16, 2023, nearly a year after Appellant's purchase, and that amendment does not apply retroactively. Respondent's own website affirmatively states that the "Closing Fee" is "Excluded from the advertised price," the opposite of what the statute required at the time of Appellant's transaction. This is not merely inadequate disclosure; it is a direct violation of the plain statutory text governing this sale.

Before the trial court, Respondent argued that Appellant's reliance on *Freeman v. J.L.H. Investments, L.P., a/k/a Hendrick Honda of Easley,* 414 S.C. 362, 778 S.E.2d 902 (S.C. 2015) was misplaced because Freeman was decided before the statutory amendments to § 37-2-307 and is therefore no longer applicable. This was a material misrepresentation of the law on multiple grounds. First, Freeman was decided by the South Carolina Supreme Court in 2015, fifteen years after the 2000 amendment that added the closing fee definition to the statute. Freeman did not predate the amendments; it interpreted and applied the amended statute. Respondent's characterization of Freeman as outdated pre-amendment authority was factually and legally false. Second, and critically, Appellant's transaction occurred on July 26, 2022. The statutory amendments Respondent points to did not take effect until 2023. It is a foundational principle of law that statutes do not apply retroactively absent clear legislative intent to the contrary. The law governing this dispute is the law as it existed on the date of the transaction, July 26, 2022, which is the precise version of § 37-2-307 that Freeman interpreted. Respondent cannot invoke post-transaction amendments to insulate itself from liability for conduct that predates those amendments. Third, even if the 2023 amendments were somehow relevant, they do not undermine Freeman; they effectively codified it. The post-Freeman amendments defined "closing fee" in a manner entirely consistent with Freeman's core holding: that a closing fee must bear a relationship to actual costs incurred. To the extent the trial court relied on Respondent's misrepresentation in granting the motion to dismiss, it committed reversible error. Freeman remains valid and directly applicable authority for the proposition that a closing fee must reflect actual costs incurred, which supports Appellant's claim both under the 2022 statute and under Freeman itself.

Appellant's Complaint alleges that she visited the dealership in person, was quoted a vehicle price by the sales agent, and purchased the vehicle using her own pre-approved financing, the functional equivalent of a cash transaction. She purchased no ancillary products, no service contract, no GAP insurance, and no other dealer offerings, and transferred her own tags. The price communicated by the sales agent was reasonably understood to be the full purchase price of the vehicle, subject only to mandatory government fees such as taxes and title. Dealer-imposed administrative charges are not mandatory government fees and were never disclosed or anticipated. She was never clearly and conspicuously informed of the $489 closing fee prior to signing. The statute requires that the closing fee be disclosed on the sales contract, displayed conspicuously in the dealership, and clearly disclosed in any advertisement. § 37-2-307(B)(2). Whether Respondent satisfied any of these requirements in a manner that gave Appellant meaningful notice before she committed to the purchase is a factual question that cannot be resolved on a motion to dismiss.

Further, the statute defines "closing fee" to include costs for "all administrative and financial work" needed to transfer and deliver the vehicle, including compliance with lender requirements. Here, Appellant arranged her own financing through South Carolina Federal Credit Union. Respondent performed no financing-related services, processed no lender paperwork, negotiated no loan terms, and sold Appellant no ancillary products such as a service contract or GAP insurance. In short, Respondent performed virtually none of the administrative or financial work that the closing fee is designed to recover. The Complaint alleges, and the reasonable inference strongly supports, that a $489 closing fee charged in the absence of any meaningful administrative or financial work lacks a legitimate statutory basis and constitutes an overcharge. Where a dealer performs no actual closing-related work, it has no actual costs to recover, and a flat fee imposed regardless is not a closing fee within the meaning of § 37-2-307; it is a surcharge.

Additionally, the Complaint alleges that the $65 "License and Admin Fee" was itself subsumed within the statutory definition of closing fee because § 37-2-307 defines closing fee to encompass "all administrative fees associated with the sale." By charging both a closing fee and a separate admin fee for services already covered by the closing fee definition, Respondent effectively double-charged Appellant for the same service. Furthermore, Appellant transferred her own vehicle tags; she did not require Respondent to obtain or process new tags on her behalf. Any fee associated with tag or license services was therefore entirely unwarranted, as no such service was performed. Notably, Respondent's own Motion to Dismiss acknowledged this fact, stating: "Plaintiff alleges she should not have been charged for the registration of tags because she could have transferred her tags." Respondent's response was that this "was Plaintiff's choice at the time of the transaction in 2022," but whether Appellant in fact transferred her own tags, and whether Respondent was therefore without basis to charge a tag fee, is a disputed factual question that cannot be resolved against Appellant on a motion to dismiss. Charging a fee for a service that was never rendered is the quintessential arbitrary and unfair practice that both § 37-2-307 and § 56-15-30 were enacted to prohibit.

Significantly, Respondent's own General Manager confirmed in a post-service email dated March 2, 2025 that the closing fee is charged universally, to every customer, regardless of whether the buyer pays cash or finances through the dealer. This admission is fatal to Respondent's defense. A fee that is identical for all customers without regard to the actual administrative and financial work performed for each individual transaction cannot, by definition, constitute a recovery of actual costs as the statute requires. It is instead a predetermined profit center disguised as a statutory fee, exactly what § 37-2-307 was enacted to regulate.

Respondent's reliance on § 37-2-307(F)(1), which expresses legislative intent to protect dealers from civil liability for closing fees charged in compliance with the statute, actually supports Appellant's position: the protection from liability is conditioned on compliance with the statute. Where a dealer fails to comply, as Appellant alleges here, that protection does not apply. Whether Respondent in fact complied is a factual question that cannot be resolved at the Rule 12(b)(6) stage.

Respondent also argues that the Department of Consumer Affairs, not this Court, has exclusive authority to determine the reasonableness of a closing fee under § 37-2-307(C)(5)(a), and that because the Department approved McElveen's closing fee in 2022, 2023, 2024, and 2025, civil liability is precluded. This argument fails on multiple grounds. First, the Department's role under

§ 37-2-307(C)(5)(a) is regulatory in nature; it governs the Department's administrative enforcement authority. It does not strip courts of subject matter jurisdiction over civil claims brought by injured consumers. Freeman itself was a civil lawsuit adjudicated by the courts, not the Department, and the South Carolina Supreme Court affirmed judgment in favor of the plaintiff without suggesting the courts lacked authority to hear the case. Second, DCA approval of a dealer's closing fee schedule is an administrative registration of the fee amount; it is not a transaction-specific finding that the fee was properly charged, properly disclosed, or legitimately earned in any individual sale. Third, Respondent repeatedly cites "Kelly Reiner, Closing Fee Statute Update (2023), http://consumersc.gov" as legal authority for its disclosure and compliance arguments. This citation does not refer to a statute, regulation, or judicial decision; it appears to be an informal agency blog post or staff update. Such materials carry no binding legal authority and cannot override the plain text of § 37-2-307 or controlling case law. Respondent's attempt to substitute an informal web publication for statutory and judicial authority is not persuasive and should be disregarded.

B. Appellant Stated a Valid Claim Under the South Carolina Dealers Act.

S.C. Code Ann. § 56-15-30 provides that it is a violation of the Dealers Act for any motor vehicle dealer to engage in any action which is arbitrary, in bad faith, or unconscionable, and which causes damage to any of the parties or to the public.

Appellant's Complaint alleges that Respondent, fully aware that Appellant had secured her own financing, nonetheless charged a $489 closing fee that is typically justified by financing-related services the dealer performs on the buyer's behalf. Having performed no such services, and having charged the fee anyway, Respondent's conduct was arbitrary, without reasonable basis, and therefore falls squarely within the conduct prohibited by § 56-15-30. The General Manager's written admission that the fee is charged universally to all customers regardless of actual costs confirms this. A blanket fee policy applied without regard to actual costs incurred is the definition of arbitrary conduct under Freeman.

Respondent argued that because no SCCPC violation occurred, the Dealers Act claim must fail with it. However, that argument is circular: it presupposes the very conclusion Respondent asks this Court to reach. At the pleading stage, where Appellant's factual allegations are taken as true, the Complaint adequately alleges both that the fee was unlawful and that its imposition caused direct financial harm to Appellant. That is sufficient to state a cause of action under the Dealers Act and to survive a motion to dismiss.

C. Respondent's Disclosure Methods Were Inadequate as Applied to Appellant's In-Person Transaction Under § 37-2-307(B)(2).

Respondent argued before the trial court that its disclosure obligations were satisfied because the closing fee was posted in the dealership finance office and accessible via online advertisements. Neither method satisfied the statutory standard as applied to Appellant's transaction.

Although Appellant viewed the vehicle online, she visited the dealership in person based on a family referral, not as a result of any online advertisement. She was quoted a price by the sales agent and purchased the vehicle using her own pre-approved financing, a cash-equivalent transaction. In this context, the relevant disclosure was what Appellant was told and shown at the point of sale. Posting a closing fee certification in the finance office, a room a buyer enters only after already deciding to purchase, does not constitute meaningful pre-sale disclosure. By the time a buyer is seated in the finance office reviewing paperwork, the practical ability to walk away has been significantly diminished.

Furthermore, because Appellant came to the dealership with her own financing already secured, the transaction proceeded as a cash sale. The closing fee, as defined by § 37-2-307, is intended to recover costs for administrative and financial work including compliance with lender requirements. Where no lender was involved on the dealer's side, and no such work was performed, the statutory basis for the fee is absent. Appellant's Complaint raises a legitimate and facially plausible claim that the fees charged were both improperly disclosed and substantively unjustified. Those claims should have survived the motion to dismiss and been allowed to proceed to discovery and trial.

CONCLUSION

For the foregoing reasons, Appellant Cheryl Carter respectfully requests that this Court:

1. Reverse the trial court's denial of Appellant's Rule 60(b) Motion for Relief from Judgment on any one or more of the following grounds: (a) Appellant was denied mandatory mailed notice under Rule 77(d) and reasonably relied on the court's own representation that the ruling would be mailed; (b) the November 19, 2025 written Order was drafted by Respondent's counsel and contains findings directly contradicted by the transcript of the November 10, 2025 hearing; (c) the April 14, 2025 hearing was constitutionally deficient due to technical failures that prevented Appellant from meaningfully participating; (d) Respondent's counsel failed to serve Appellant with an Order of Protection filed in this case in violation of Rule 5, SCRCP, causing a wasted

hearing appearance; (e) the trial court's written order contains factual findings directly contradicted by the hearing transcript and the court's own record; and (f) newly discovered evidence in the form of the General Manager's email admission constitutes grounds for relief under Rule 60(b)(2); and remand with instructions to re-enter judgment to allow Appellant to timely pursue her appeal on the merits; or in the alternative,

2. Reverse the trial court's dismissal of Appellant's Complaint and remand for further proceedings on the merits, on any one or more of the following grounds: (a) the one-sentence Form 4 dismissal, entered without a formal signed order, failed to provide constitutionally adequate reasoning; (b) Respondent introduced facts outside the Complaint in violation of the Rule 12(b)(6) standard; (c) Respondent materially misrepresented the applicability of *Freeman v. J.L.H. Investments, L.P., a/k/a Hendrick Honda of Easley,* 414 S.C. 362, 778 S.E.2d 902 (S.C. 2015); and (d) Appellant's Complaint stated viable claims under § 37-2-307 and the South Carolina Dealers Act that should have survived dismissal; and

3. Grant such other and further relief as this Court deems just and proper.

Respectfully submitted,

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