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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appellate Case No. 2026-000231

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

The Honorable Thomas J. Rode, Circuit Court Judge

Case No. 2014-CP-08-02072

Portfolio Recovery Associates, LLC

Respondent,

v.

Rhonda Chambers,

Appellant.

AMENDED INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. DOES THIS COURT HAVE SUBJECT MATTER JURISDICTION TO HEAR CHAMBERS' APPEAL OF THE ORDER DATED NOVEMBER 10, 2025?

2. TO THE EXTENT THE APPEAL IS TIMELY, DID THE TRIAL COURT ERR IN DISMISSING CHAMBERS' RIGHT TO CURE COUNTERCLAIM?

3. TO THE EXTENT THE APPEAL IS TIMELY, DID THE TRIAL COURT ERR IN DISMISSING CHAMBERS' UNCONSCIONABILITY COUNTERCLAIM?

4. DID THE TRIAL COURT ABUSE ITS DISCRETION IN DENYING CHAMBERS' RULE 59(E) MOTION?

5. DID THE TRIAL COURT ABUSE ITS DISCRETION IN DENYING CHAMBERS' MOTION FOR COSTS AND FEES UNDER RULE 37, SCRCP?

FACTS

This matter arises from a charged off credit card account. Rhonda Chambers ("Chambers") entered into a credit card agreement with U.S. Bank. Amended Answer and Counterclaim, p. 1 (filed Jul. 24, 2017). After she defaulted on the account, U.S. Bank sent her a letter informing her that the bank had not received a payment since March 6, 2013 and her immediate response was required. Plaintiff's Trial Exhibit 1. The letter identified the account and stated a balance of $6,918.99 was owed and in default. *Id.* The letter additionally provided Chambers with the bank's telephone number, address, and the date by which payment must be made to avoid the charge off of her account. *Id*. When no payment was forthcoming, U.S. Bank charged off the account and sent a final account statement to Chambers' address which reflected the charged off balance. Complaint, pp. 6-12 (filed Sep. 15, 2014). Portfolio Recovery Associates, LLC ("PRA") purchased the account from U.S. Bank in November 2013 and, on September 15, 2014, filed suit to collect the balance owed. *Id*., p. 4.[1] On or about October 16, 2014, Chambers responded to the Complaint with a *pro se* Answer which acknowledged the debt and requested a repayment option. Answer (filed Oct. 27, 2014).

Almost three years later, on July 24, 2017, Chambers, now represented by counsel, amended her answer and added a counterclaim. Amended Answer and Counterclaim (filed July 24, 2017). Chambers' "First Counterclaim – SCCPC" alleged

[1] The Complaint alleged two claims: breach of contract and an alternative claim for an account stated. *Id.*

that PRA violated the right to cure provisions of the South Carolina Consumer Protection Code (the "SCCPC") and that PRA's conduct was unconscionable and violated section 37-5-108 of the SCCPC.[2] *Id.* at pp. 2-3.

Over the next eight years, the parties exchanged written discovery and engaged in protracted motions practice. Both parties filed multiple summary judgment motions, all of which were ultimately denied.[3] Relevant to this appeal, Chambers served PRA with discovery requests, which included requests for admissions. Defendant's Notice of Motion and Motion to Compel Discovery Responses, pp. 21-34 (filed Feb. 23, 2022).

On February 23, 2022, Chambers filed a Motion to Compel Discovery Responses which, in part, requested that PRA's objections to Requests for Admission Nos. 1 and 11 be stricken and that Chambers be awarded fees and costs pursuant to Rule 37, SCRCP.[4] *Id.* On August 26, 2022, the court denied Chambers' Motion to

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[2] Subsequently, Chambers waived her demand for actual damages. *See* Notice of Waiver of Defendant's Demand for Actual Damages (filed Oct. 25, 2024).

[3] Chambers filed multiple motions for summary judgment, including a Fourth Motion for Partial Summary Judgment (filed Mar. 15, 2024); and Fifth Motion for Summary Judgment (filed Aug. 29, 2025). PRA filed multiple motions for summary judgment, including its Motion for Summary Judgment (filed Mar. 15, 2024), as amended by Amended Motion for Summary Judgment (filed May 10, 2024).

[4] Specifically, Chambers contested PRA's objections as improper. Regarding Request for Admission No. 1, Chambers contended that "[t]he request does not seek a legal conclusion but only asks Plaintiff to apply the legal definitions cited to the facts of this case, in an attempt to narrow the issues in this case. There is also no third party involved, since the only parties are Plaintiff and Defendant, so Plaintiff's objection on that basis makes no sense." *Id.* at ¶ 40. Regarding Request for Admission No. 11, Chambers contended that "[n]o legal conclusion was sought. Defendant merely requests that Plaintiff apply the cited statutory definitional section to the facts of this case Plaintiff's objection about the acts or status of a third party are irrelevant, since no third party is mentioned in this request." *Id.* at ¶ 46.

Compel regarding Requests for Admission, Nos. 1 and 11. Form 4 Order (filed Aug. 26, 2022).

On March 27, 2025, Chambers filed a Chapter 7 bankruptcy which ultimately discharged the debt she owed to PRA.[5] *See generally In re Rhonda Chambers,* No. 25-10196-SDB (S.D. Ga. Bankr. June 27, 2025). As a result, PRA dismissed its claims, leaving only Chambers' counterclaim pending. Stipulation of Dismissal (filed July 7, 2025).

The matter was set for trial September 3, 2025. Less than a week before trial, Chambers moved to amend her counterclaim and requested it relate back to the filing of her original Answer. Notice of Motion and Motion for Leave to Amend Counterclaim (dated Aug. 28, 2025).[6] On September 2, 2025, PRA filed its Reply to Amended Counterclaim which included the statute of limitations as an affirmative defense. *See* Reply to Amended Counterclaim, p. 5 (filed Sep. 2, 2025).

Prior to trial, the court heard several motions, including Chambers' Motion for Leave to Amend Counterclaim. The court granted Chambers' motion but found that the counterclaims related back only to the date of filing of the original counterclaim, July 24, 2017. Order, p. 3 (filed Nov. 10, 2025).[7] The Court additionally accepted

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[5] Chambers filed a voluntary Chapter 7 bankruptcy petition in the United States Bankruptcy Court for the Southern District of Georgia, Case No. 25-10196-SDB. (CM ECF No. 1). Plaintiff respectfully requests that this Court take judicial notice of the Discharge Order (CM ECF No. 16) entered in that case pursuant to Rule 201, SCRE.

[6] As amended, the Counterclaim did not seek actual damages.

[7] For ease of reference, the November 10, 2025 Order will be referred to as the "Merits Order."

PRA's Reply to Amended Counterclaim but struck several of the affirmative defenses asserted by PRA, including the affirmative defenses labeled 1,2 3 5, 6 and 9. *Id.* The Court additionally denied Chambers' Fifth Motion for Summary Judgment. *Id.*

At trial, Chambers testified on her own behalf. *Id.* Chambers acknowledged receipt of the U.S. Bank letter dated October 5, 2013, setting forth a balance owing of $6,918.89, and receipt of letters from PRA, dated December 19, 2013, and February 24, 2014. *See* Plaintiff's Exhibits 1 and 4; *see generally* Trial Transcript Part 1, pp. 109-114; 130-133. Both PRA's letters likewise reflected a balance of $6,918.89. *Id.*

At trial, PRA offered two witnesses, Dwayne Davis, a PRA employee, and Nathan Abshire, an employee of the original creditor, U.S. Bank. Merits Order, p. 3-4. The trial court allowed both witnesses to testify but ultimately excluded the testimony of Mr. Abshire. *Id.* at p. 4. Based solely upon the testimony of Chambers, the court made findings of fact and conclusions of law, then entered Judgment in favor of PRA and against Chambers on all claims. *Id.* at 12.

After trial, but before the trial court entered the Merits Order, Chambers filed a Motion for Sanctions seeking attorney's fees and costs, based upon PRA's responses to Requests for Admissions Nos. 1 and 11. Notice of Motion and Motion for Sanctions under Rule 37(c) (filed Oct. 3, 2025). That motion was heard and denied. Form 4 Order (filed Dec. 22, 2025).

On November 21, 2025, Chambers filed a motion pursuant to Rule 59(e), SCRCP. Defendant's Rule 59(e) Motion (filed Nov. 21, 2025). On December 22, 2025, the trial court denied the motion while "[a]ssuming without deciding that [the] motion

[was] timely." Form 4 Order (filed Dec. 22, 2025). On January 19, 2026, Chambers filed a notice of appeal. Notice of Appeal (filed Jan. 19, 2026).

ARGUMENT

I. THE COURT LACKS SUBJECT MATTER JURISDICTION TO CONSIDER CHAMBERS' APPEAL OF THE MERITS ORDER AND THE APPEAL OF THAT ORDER MUST BE DISMISSED.

As a threshold issue, Chambers' appeal of the Merits Order must be dismissed. Chambers did not timely perfect her appeal because her Rule 59 motion was not timely served, and, therefore, it did not stay the deadline for filing the appeal. Because the notice of appeal was filed *after* the deadline for doing so expired, this Court lacks subject matter jurisdiction to consider the appeal of the Merits Order, and the appeal of that order must be dismissed.

The service of a notice of appeal is a jurisdictional requirement, and the time for service may not be extended by this Court. *Hill v. S.C. Dep't of Health & Envtl. Control*, 389 S.C. 1, 21, 698 S.E.2d 612, 623 (2010); *see also Camp v. Camp,* 386 S.C. 571, 574-575, 689 S.E.2d 634, 636 (2010); *State v. Devore*, 416 S.C. 115, 119, 784 S.E.2d 690, 692 (Ct. App. 2016). "[I]f a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice." *Elam v. S.C. Dept. of Transp.,* 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004); *see also Mears v. Mears*, 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1985); *Canal Ins. Co. v. Caldwell*, 338 S.C. 1, 5, 524 S.E.2d 416, 418 (Ct. App. 1999) (the failure to timely

serve the notice of appeal "divests this court of subject matter jurisdiction and results in dismissal of the appeal.").

Ordinarily, a notice of appeal from the Court of Common Pleas must be filed within thirty (30) days after receipt of written notice of entry of the order or judgment. Rule 203(b)(1), SCAR.[8] A timely motion to alter or amend the judgment (Rules 52 and 59, SCRCP), however, stays the time for appeal for all parties. *Id.* Where a timely motion to alter or amend a judgment is filed, the time for appeal shall run from receipt of written notice of entry of the order granting or denying such motion. *Id.*

In order to be timely, a motion to amend or alter a judgment must be *served* in accordance with the time limitations set forth in Rule 59. Rule 59(e), SCRCP (emphasis added).[9] Service of the motion may be made using any method prescribed by Rule 5, SCRCP, using the court's E-Filing system, or by email. *See* Rule 5(b), SCRCP; S.C. Elec. Filing Policies & Guidelines R. 4(e)(2) (hereinafter cited to as "E-Filing Rules"); *Order Re Service by E-Mail in the Trial Courts,* Appellate Case No. 2022-00029 (S.C. May 6, 2022); *but see* E-Filing Rules at R. 4(c) and (d) (making clear that filing and service is dependent upon the clerk of court accepting the filing).

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[8]Under Rule 203(b)(1), the time to appeal is stayed under three limited circumstances: a timely motion for judgment n.o.v. (Rule 50, SCRCP), motion to alter or amend the judgment (Rules 52 and 59, SCRCP), or a motion for a new trial (Rule 59, SCRCP). *See* Rule 203(b)(1), SCAR.

[9] Prior to April 30, 2026, Rule 59(e) of the South Carolina Rules of Civil Procedure required motions to alter or amend the judgment be *served* not later than 10 days after receipt of written notice of the entry of the order. Rule 59(e), SCRCP (effective April 30, 2026, subsection (e) was amended to allow 20 days for service).

Here, Chambers' Rule 59 Motion was not timely served and therefore failed to stay the time in which to appeal the Merits Order. *See* Defendant's Rule 59(e) Motion (filed Nov. 21, 2025).[10] Chambers initially attempted to file and serve her motion electronically via the Court's electronic system on November 20, 2025, at 11:06 p.m. NEF Notice (Nov. 20, 2025); Opposition to Defendant's R. 59(e) Motion, p. 2 (filed Dec. 15, 2025). Had that filing been accepted by the clerk of court, service would have been effected by transmission of a Notice of Electronic Filing ("NEF") through the court's electronic system and would have constituted proper service under Rule 5, SCRCP. *See* E-Filing Rules at 4(c)-(e). That filing, however, was rejected. NEF Rescission (Nov. 21, 2025); NEF Rejection (Nov. 21, 2025); Initial Brief of Appellant, p. 5. And because the filing was rejected, it did not constitute proper service under Rule 5, SCRCP. *See* E-Filing Rules at 4(c)-(e). Chambers resubmitted her Motion on November 21, 2025. *See* Defendant's Rule 59(e) Motion (filed Nov. 21, 2025). That submission was accepted by the clerk of court. *Id.* As such, Chambers' motion to alter or amend was *filed and served* on November 21, 2025, at 12:33 PM, more than ten (10) days after Chambers' receipt of written notice of entry of the Merits Order. Defendant's Rule 59(e) Motion (filed Nov. 21, 2025). As such, the motion was not timely and did not stay the time in which to provide notice of appeal.

Chambers recognizes this defect and seeks to have this Court look the other way. *See* Appellant's Initial Brief, pp. 5-6. It cannot do so. This Court has no discretion to rescue the delinquent party by extending or ignoring the deadline

[10] Chambers' Rule 59 Motion was solely directed to the court's November 10, 2025 Order.

for service of the notice. *Mears,* 287 S.C. at 169, 337 S.E.2d at 207. Nor should it. Chambers had notice of the rejection and resulting defect of service and, inexplicably, chose not to seek curative action in the trial court.

The court's E-Filing Rules and Guidelines provided Chambers with an opportunity to seek appropriate relief upon good cause shown. E-Filing Rules at 4(d). Despite being put on notice by both the clerk of court's rejection of its initial filing and by PRA's Opposition to Defendant's Rule 59(e) Motion, Chambers never applied to the trial court for appropriate relief or made any showing before the trial court of good cause, which would have allowed the trial court to have the filing deemed *nunc pro tunc* to November 20, 2025. The Court's E-Filing Guidelines make it clear: "*It is the responsibility of an E-Filer to review the content of the E-Filed document in the E-Filing System to determine its force and effect*." *Id*. at 4(e)(2).

Because there was no timely service of Chambers' Rule 59 Motion and no curative action taken by Chambers, the time to appeal was not stayed. The Merits Order was a final order of the court and any appeal as to that order, therefore, was required to be filed on or before December 10, 2025. Because Chambers failed to timely appeal the Merits Order, this Court lacks jurisdiction to hear Chambers' appeal, and the appeal must be dismissed.

II. TO THE EXTENT THE COURT CONSIDERS THE APPEAL TIMELY, THE TRIAL COURT CORRECTLY DISMISSED CHAMBERS' SECOND AMENDED COUNTERCLAIM.

To the extent the Court determines the appeal of the Merits Order is timely,[11] the trial court did not err in dismissing the Second Amended Counterclaim (the "Counterclaim") and entering judgment in favor of PRA. The Counterclaim, which seeks statutory damages of up to $1,000 for Chambers and attorney's fees for her counsel, alleges that PRA failed to comply with the notice of right to cure provisions of the SCCPC, S.C. Code Ann. §§ 37-5-110 through 111 (hereinafter, the "RTC Provisions") and that PRA engaged in unconscionable debt collection, S.C. Code Ann. § 37-5-108. Second Amended Counterclaim, p. 2 (filed Aug. 28, 2025). The trial court did not err in dismissing Chambers' claims because: (a) the right-to-cure provisions do not create an independent cause of action; (b) any claim based on PRA's alleged failure to send a right-to-cure notice was time-barred; and (c) the record evidence did not establish a violation of S.C. Code Ann. § 37-5-108. Accordingly, the Court should affirm the trial court on all issues.

STANDARD OF REVIEW[12]

"In an action at law, the trial court's factual findings will not be disturbed upon appeal unless they are found to be without evidence which reasonably supports the

[11] Subject to, and without waiver of, its argument as to this Court's lack of subject matter jurisdiction, PRA presents its arguments as to why the trial court correctly dismissed Chambers' Amended Counterclaim.

[12] In Section II, where a different standard of review is required, it is duly noted and identified in the applicable subsection of the brief.

trial court's findings." *Fesmire v. Digh*, 385 S.C. 296, 303, 683 S.E.2d 803, 807 (Ct. App. 2009) (citing *Townes Assocs., Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976)). "Determining the proper interpretation of a statute is a question of law, and this court reviews questions of law de novo." *Coastal Fed. Credit Union v. Brown*, 417 S.C. 544, 548, 790 S.E.2d 417, 419 (Ct. App. 2016) (quoting *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 109, 662 S.E.2d 40, 41 (2008)); *see also Lightner v. Hampton Hall Club, Inc.*, 419 S.C. 357, 363, 798 S.E.2d 555, 558 (2017) ("An issue regarding statutory interpretation is a question of law.").

A. The Trial Court Correctly Dismissed Chambers' Right to Cure Claim.

Chambers seeks to push forward an independent right of action premised upon the RTC Provisions and urges this Court to interpret its decision in *Portfolio Recovery Associates, LLC v. Campney*[13] as providing for the same. *See* Initial Brief of Appellant, pp. 15-19. For the reasons shown below, the RTC Provisions do not provide an independent cause of action and, to the extent the Court determines that the SCCPC provides a right to cure claim, any such claim is time-barred based upon the competent evidence presented at trial. The decision of the trial court should therefore be affirmed.

1. <u>The right to cure provisions do not provide Chambers with a stand-alone claim</u>.

The trial court correctly held that the right to cure provisions do not provide an independent cause of action. Merits Order, pp. 8-12. The trial court's holding is

[13] 441 S.C. 36, 892 S.E.2d 321 (2023), *cert. dismissed,* 445 S.C. 564, 915 S.E.2d 512 (2025).

supported by the plain language of the SCCPC and, therefore, this Court should affirm.

a. The right to cure provisions do not provide an express right of action.

Chambers' appeal of the dismissal of her right to cure claim turns on a straightforward question of statutory interpretation: whether the SCCPC's RTC Provisions create an independent private cause of action or merely limit the remedies available to a creditor before acceleration or repossession. Read in context, the statutory scheme confirms the latter. Chapter 5 carefully distinguishes between provisions that restrict creditor remedies and provisions that expressly authorize consumer claims. Because the General Assembly provided private rights of action in some sections but omitted one from the right-to-cure provisions, the Court should not imply a remedy the legislature chose not to include and is bound by the maxim that "'to express or include one thing implies the exclusion of another, or of the alternative.'" *Hodges v. Rainey*, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000) (quoting *Black's Law Dictionary* 602 (7th ed. 1999). Accordingly, this Court must affirm the trial court's holding.

Chapter 5 of the SCCPC provides the SCCPC's remedies and penalties. Part 1 *limits* the creditor's remedies and actions. S.C. Code Ann. § 37-5-102 (2016) ("This part applies to actions … to enforce rights arising from consumer credit sales, consumer leases, consumers loans…"). Part 2 provides the consumer with their remedies for violations of the SCCPC. *See generally* S.C. Code Ann. §§ 37-5-202 through §37-5-205. In that sense, Chapter 5 acts both as a shield (Part 1) and as a

sword (Part 2).

The RTC Provisions are found squarely within Part 1, "Limitations on Creditors' Remedies." *See* S.C. Code Ann. §§ 37-5-110 (1985); 37-5-111 (1985). The RTC Provisions *limit* a creditor's right to accelerate maturity of the unpaid balance of an unsecured obligation . . . "until twenty days after [providing a notice of right to cure]" and gives the consumer an opportunity to cure its default "by tendering the amount of all unpaid sums due at the time of the tender, without acceleration, plus any unpaid delinquency or deferral charges." *Id.*

Unlike certain other SCCPC provisions, the RTC Provisions do not provide a stand-alone cause of action. Rather, they simply limit a creditor's ability to exercise certain rights—specifically, the right to accelerate the balance owed and the right to repossess. *See* S.C. Code Ann. § 37-5-111(1) (1985). Further to that point, they neither invalidate any action by the creditor that is otherwise lawful nor impair the creditor's rights on the debt. *See* S.C. Code Ann. §§ 37-5-111(6) (1985); 37-5-202(4) (1999). Thus, at most, the RTC Provisions place restrictions on the creditor's right to accelerate the balance which, if raised by the consumer, potentially operate as a *limitation* on the creditor's recovery. *See* S.C. Code Ann. §§ 37-5-111, 37-5-114 (1982), 37-5-202(4) (1999).

Had the legislature intended to provide consumers with an independent claim under the RTC Provisions, it could have done so. And the SCCPC contains other provisions in which the legislature did exactly that. For example, section 37-5-108 provides consumers with a private right of action for unconscionable debt collection

activity. *See* S.C. Code Ann. §37-5-108(2) (2004) ("With respect to a consumer credit transaction, if the court as a matter of law finds that a person has engaged in, is engaging in, or is likely to engage in unconscionable conduct in collecting a debt arising from that transaction … the consumer has a cause of action to recover actual damages…"). Likewise, section 37-5-202 provides consumers with a private right of action for a sundry of other violations of the SCCPC. *See* S.C. Code Ann. § 37-5-202(1) (1999). Neither of these statutory provisions, nor any other provision of the SCCPC, provides Chambers with an independent right of action for any failure to send a notice of right to cure.

As a primary tenet of statutory construction, courts must ascertain and give meaning to legislative intent. *Anderson v. S.C. Election Comm'n,* 397 S.C. 551, 556, 725 S.E.2d 704, 706 (2012); *see also State v. Leopard,* 349 S.C. 467, 470, 563 S.E.2d 342, 344 (Ct. App. 2002); *Denson v. Nat'l Cas. Co.*, 439 S.C. 142, 151, 886 S.E.2d 228, 233 (2023) (noting that whether a statute creates a private right of action is likewise a matter of legislative intent which is determined primarily from the language of the statute). It is not the court's place to change the meaning of a clear and unambiguous statute. *In re Vincent J.*, 333 S.C. 233, 235, 509 S.E.2d 261, 262 (1998) (citations omitted). "In construing statutory language, the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect." *S.C. State Ports Auth. v. Jasper Cnty*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006). In keeping with that, "[t]he canon of construction '*expressio unius est exclusio alterius*' or '*inclusio unius est exclusio*

alterius' holds that 'to express or include one thing implies the exclusion of another, or of the alternative.'" *Hodges v. Rainey*, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000) (quoting *Black's Law Dictionary* 602 (7th ed. 1999)).

In considering these maxims of statutory construction and legislative intent, the trial court correctly concluded that while other sections of the SCCPC expressly provide private rights of action, the RTC Provisions do not. Merits Order, pp. 8-9. The trial court, therefore, rightfully "decline[d] to imply language into a deliberate silence because to do so would be to rewrite the statute." *Kubic v. MERSCORP Holdings, Inc.*, 416 S.C. 161, 170, 785 S.E.2d 595, 600 (2016).

Separate sections of a statute do not exist in a vacuum and cannot be read as such. *Synovus Bank v. S.C. Dep't of Revenue,* 444 S.C. 30, 37, 906 S.E.2d 85, 89 (Ct. App. 2024). Where the legislature intended to provide a private right of action, it did so. Because it did not do so in the context of the RTC Provisions, this Court must follow the maxim of '*expressio unius est exclusio alterius*' or '*inclusio unius est exclusio alterius*' and affirm the trial court's holding.

b. Chambers' reliance on Campney is misplaced.

Chambers relies on this Court's decision in *Portfolio Recovery Assocs., LLC v. Campney* for the proposition that a stand-alone cause of action exists under the RTC provisions. Chambers' reliance is misplaced. In *Campney*, this Court affirmed the judgment entered in favor of PRA but held that "consumer credit card accounts are subject to the SCCPC and PRA was required to send her a right to cure notice before

requiring repayment." *Portfolio Recovery Assocs., LLC v. Campney*, 441 S.C. 36, 50, 892 S.E.2d 321, 328 (2023), *cert. dismissed,* 445 S.C. 564, 915 S.E.2d 512 (2025). The *Campney* Court did not consider, nor did it hold, that the RTC Provisions provide a stand-alone claim. *Id.* at 46, 892 S.E.2d at 326.[14] The only substantive issue it considered was whether PRA, under the facts presented, was required to provide notice of right to cure. *Id.* at 50–53, 892 S.E.2d at 328–30.

After determining that PRA was required to provide notice of right to cure, the *Campney* Court delved no further and made no specific determination as to which provision of the SCCPC might give rise to Campney's claim. *Id.* Instead, the *Campney* Court determined that any "SCCPC Counterclaim" was time-barred and remanded the matter back to the trial court to determine "the amount of set-off and attorney's fees, if any, Campney is entitled." *Id.* at 53, 892 S.E.2d at 330 (citing to S.C. Code Ann. Ann. §§ 37-5-202(1) and 37-5-205). The *Campney* Court, therefore, while identifying the RTC provisions as being violated, did not identify the specific provision of the SCCPC which gave rise to Campney's "SCCPC Counterclaim." *Id.* Instead, the court relied upon sections 37-5-202 and 37-5-205 for its analysis of the statute of limitations and available remedies and viewed Campney's claim only as a claim for potential set off and not as a claim for affirmative relief. *Id.*

[14] The specific issues on appeal as to Campney's counterclaims were: "Did the trial court err when ruling that PRA was not liable to Campney on her counterclaims? … Did the trial court err when ruling the SCCPC did not apply to consumer credit card accounts?… Did the trial court err when ruling Campney's claim that PRA misrepresented the amount owed on the account?" *Id.*

Accordingly, *Campney* does not support Chambers' position. At most, *Campney* confirms that the RTC provisions may limit a creditor's remedies where a notice of right to cure is required and not provided (in other words, as a defense to the collection action or, under appropriate circumstances, as a set off); but it does not transform those provisions into a stand-alone cause of action. Because the remedies provisions of the SCCPC lie elsewhere, the *Campney* Court relied upon sections 37-5-202 and 37-5-205 when addressing limitations and relief. Accordingly, Chambers cannot use *Campney* to create a claim the legislature did not provide. The trial court therefore correctly rejected Chambers' right to cure claim, and its decision should be affirmed.

2. <u>To the extent the right to cure provisions provided Chambers with a stand-alone claim, any such claim was barred by the applicable statute of limitations</u>.

As an alternative basis for dismissal, and assuming for the purposes of argument that a standalone claim exists, the trial court correctly determined that any such claim was time-barred. Merits Order, pp. 10-12. In reaching that conclusion, the court analyzed the claim under both the two-year limitations period set forth in *Campney* and the three-year limitations period advocated by Chambers and determined any such claim arose outside the applicable statute of limitations. *See id.,* p. 8; Initial Brief of Appellant, pp. 19-27.

a. The trial court correctly concluded that the Second Amended Counterclaim relates back to July 24, 2017.

As an initial matter, the trial court correctly concluded that the Second Amended Counterclaim only related back to the filing of the Amended Anwer and Counterclaim on July 24, 2017. Merits Order, p. 3. An amendment only relates back to the original pleading when the amended claim or defense asserted arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleading. Rule 15(c), SCRCP; *see also Whitfield Constr. Co. v. Bank of Tokyo Trust Co.*, 338 S.C. 207, 525 S.E. 2d 888 (Ct. App. 1999). As this Court explained in *Whitfield*, the central requirement is that the party defending against the new claim have sufficient notice of it, *i.e.*, "the new claim must be 'logically related' to the *matters originally pleaded* so that the defend[ing party] … is not prejudiced by the new claim asserted after the statute of limitations has expired." *Whitfield,* 338 S.C. at 222-223, 525 S.E.2d at 897.

In *Whitfield*, the defendant bank amended its counterclaim for a second time to include an abuse of process claim more than sixteen months after its initial Answer was filed and after the statute of limitations had run. *Id.* at 222, 525 S.E.2d at 896-97. The bank's first responsive pleading presented only general denials and certain defenses. *Id.* at 214, 525 S.E.2d at 892. While its first amended counterclaim added an unjust enrichment counterclaim and prayed for a set-off, it was otherwise similar to the original answer. *Id.* at 223, 525 S.E.2d at 897. Neither the original answer nor the first amended counterclaim suggested the plaintiff made improper use of

process. *Id*. at 224, 525 S.E.2d at 897. There, in determining that the abuse of process counterclaim was not timely filed, this Court concluded that "[t]he proper inquiry... is whether [the defendant] had ever provided notice in any of its prior pleadings that it intended to allege such a counterclaim, not whether [the plaintiff] should have anticipated that the counterclaim would follow as a result of his own actions." *Id*. at 223, 525 S.E.2d at 897. The court therefore considered but declined to apply the relation back doctrine.

Like the defendant in *Whitfield*, Chambers first asserted counterclaims some 33 months after her initial Answer was filed. *See* Amended Answer and Counterclaim (filed Jul. 24, 2017). Chambers' original Answer contained no hint of any counterclaim. *See* Answer (filed Oct. 27, 2014). Rather, it acknowledged the debt and pledged to make payment arrangements. *Id*. at p. 1. Chambers did not provide any allegations as to unconscionability or the right to cure provisions until she amended her answer to include the counterclaims on or about July 24, 2017. *See* Amended Answer and Counterclaim (July 24, 2017). Because Chambers' original Answer failed to set forth or attempt to set forth the conduct, transaction, or occurrence giving rise to her later filed counterclaims (including the failure to provide a notice of right to cure), the trial court did not err in determining that Chambers' counterclaim only related back to the date of Chambers' Amended Answer and Counterclaim.

b. The trial court did not err in determining that, to the extent Chambers had a stand-alone claim under the RTC provisions, that claim was time-barred.

In *Campney*, this Court held that a two-year statute of limitations governed Campney's "SCCPC Counterclaim." *See Campney,* 441 S.C. at 53, 892 S.E.2d at 330 (Ct. App. 2023) (citing S.C. Code Ann. § 37-5-202(1)). Although the Court did not provide its rationale for applying that limitations period, the decision relies upon Part 2 of Chapter 5 and it can be inferred that the Court's holding rests on the premise that any "SCCPC Counterclaim" must originate from Part 2 of Chapter 5 and, particularly, Section 37-5-202(1).[15] *Id.* Section 5-202 also provides its own discrete limitations periods which the *Campney* Court relied upon in determining that Campney's "SCCPC Counterclaim" was time barred. *Id.* ("with respect to violations arising from … loans made pursuant to a revolving charge or a revolving loan account no action pursuant to this subsection may be brought more than two years after the violation occurred"). In so ruling, the Court's premise is consistent with the legislature's intent – Part 1 of Chapter 5 limits a creditor's remedies while Part 2 of Chapter 5 provides a consumer with its claims and remedies for violations of the SCCPC.

Statutes of limitation are procedural in nature and begin to run when the cause of action reasonably should have been discovered. *Prince v. Liberty Life Ins. Co.*, 390 S.C. 166, 169, 700 S.E.2d 280, 282 (Ct. App. 2010); *see also Capco of Summerville,*

[15] As has been discussed supra, Section 37-5-202(1) provides private rights of action for certain violations of the SCCPC.

Inc. v. J.H. Gayle Constr. Co., 368 S.C. 137, 142, 628 S.E.2d 38, 41 (2006). Under that discovery rule, the limitations period is triggered when the injured party either knows or should know, through the exercise of reasonable diligence, that a claim may exist. *Dean v. Ruscon*, 321 S.C. 360, 363, 468 S.E.2d 645, 647 (1996). The fact that the party does not yet appreciate the full extent of the injury is immaterial. *Id.*

In *Campney*, the court determined that the statute of limitations began to run October 7, 2015, when Campney first knew or should have known that PRA "claimed she owed $4,274.78." *Campney*, 441 S.C. at 53, 892 S.E.2d at 330; *see also id*. 441 S.C. at 44-45; 892 S.E.2d at 325.[16] The same reasoning applies here. Based upon Chambers' own evidence, the trial court found that Chambers knew or should have known in October 2013 that the original creditor had accelerated the debt by claiming the full balance was owed. Merits Order, p. 11. Further, the uncontroverted evidence at trial supports the conclusion that Chambers knew or should have known no later than April 2014 that PRA's records showed the balance owed as being $6,918.89. Plaintiff's Trial Exhibit 4, pp. 6-7; Trial Transcript Part 1, pp. 109-114; 130-133.

At trial, Chambers testified that she received letters from both the original creditor and PRA, reflecting a balance owed of $6,918.89. Trial Transcript, Part 1, 109-114; 130-133. All such letters were received more than three years before Chamber first made her claim alleging violation of the right to cure provisions. The

[16] Contrary to the trial court's finding in this matter, the *Campney* court did not use the filing of the lawsuit as the date the claim accrued, but instead relied upon evidence presented at trial of letters predating the lawsuit. *See id.* at 44–45, 53, 892 S.E.2d at 325, 330 (where Court stated that "Campney argued letters PRA sent to her claimed she owed $4,274.78 as of October 7, 2015, but the complaint alleged she owed $4,236.78").

evidence at trial supported a finding that the U.S. Bank letter was received in October 2013. Merits Order, pp. 4, 11; s*ee also* Plaintiff's Exhibit 1; Trial Transcript part 1, pp. 109:14 -110:21; 113:3-118:8. That letter advised Chambers that the bank "must receive a payment no later than the last business day of this month." Plaintiff's Exhibit 1. Chambers additionally testified as to two letters she received from PRA, both of which were admitted into evidence as part of Plaintiff's Exbibit 4. Those letters, dated December 19, 2013 and April 17, 2014 respectively, likewise reflected an unpaid account balance owing of $6,918.89.

The trial court correctly identified the U.S. Bank letter as the first evidence of when Chambers knew or should have known that the creditor was demanding the full balance. *See In re Brown*, 428 B.R. 672, 676 (Bankr. D.S.C. 2010) (quoting *Black's Law Dictionary* 11 (7th ed. 1999) and defining "acceleration" as "the advancing of a loan agreement's maturity date so that payment of the entire debt is due immediately.) The U.S. Bank letter provided Chambers with notice that the full balance was now owing. *See* Plaintiff's Exhibit 1. Based upon Chambers' own testimony, the trial court correctly found that Chambers knew or should have known that the U.S. Bank, PRA's assignor, was seeking the full balance owed as early as October of 2013, more than three (3) years before she filed her Amended Answer and Counterclaim. Merits Order, p. 11.

Likewise, based upon Chambers' own testimony, the evidence supported a finding that Chambers knew or should have known that PRA's records reflected it had purchased the account balance (now charged off) as early as December 19, 2013,

and no later than on or around April 17, 2014. Plaintiff's Trial Exhibit No. 4; Trial Transcript Part 1, pp. 109-114; 130-133. Because Chambers did not move to amend her answer or add her right to cure counterclaim until July 24, 2017, any such counterclaim was barred by both the two-year statute of limitations set forth by this Court in *Campney* and by the three-year statute of limitations advocated by Chambers.

Moreover, any determination by the trial court that the claim accrued when PRA filed suit constitutes harmless error. The trial court, as an additional basis for its alternative finding, stated:

> [a]ssuming, for the sake of argument, that PRA was required to and failed to send a NOTRC, at the very least Chambers knew or should have known of such failure at [the time PRA files its suit]. However, Chambers did not raise this claim until July 24, 2017. Accordingly, this claim (to the extent such a claim exists) is barred by the two-year statute of limitations. S.C. Code Ann. § 37-5-202(1).

Merits Order, p. 10.

The Court's holding, while contrary to *Campney* is, at best, harmless error. The *Campney* Court did not determine that the cause of action arose on the date suit was filed. Had it done so, Campney's SCCPC claim would have been timely. Rather, the *Campney* Court looked at the date Campney first knew or should have known that PRA was seeking the entire balance owed. A careful reading of *Campney* indicates that Campney received a letter from PRA on October 7, 2015, claiming she owed $4,274.78. *Campney,* 441 S.C. at 44-45, 892 S.E.2d 325. PRA filed its complaint in January 2017. *Id.* at 40-41, 892 S.E.2d 323-324. While the opinion does not so state,

a review of the *Campney* record indicates that the First Amended Answer and Counterclaims was filed March 13, 2018, *less than two years after PRA filed its complaint*.[17] The *Campney* Court, therefore, could not have relied upon the filing of the Complaint as the date the claim accrued, but rather necessarily relied upon the date when Campney knew or should have known a claim existed – when she received the 2015 correspondence.

As stated above, however, the trial court's reliance upon the date PRA filed its Complaint in this case is harmless error because: (a) the right to cure provisions do not provide an independent claim; and (b) Chambers knew or should have known both U.S. Bank and PRA were seeking the full balance on the account more than three years before she filed her Amended Answer and Counterclaim. Accordingly, the trial court did not err in dismissing Chambers' right to cure claim.

B. The Trial Court Correctly Dismissed Defendant Appellant's Claim Under S.C. Code Ann. 37-5-108.

The trial court correctly dismissed Chambers' unconscionability claim because the record did not support a finding that PRA engaged in conduct that was fraudulent, deceptive, misleading, or otherwise rose to the level of unconscionability under S.C. Code Ann. § 37-5-108. Chambers' arguments depend on expanding the statute beyond its text, treating it as a strict liability provision, and converting ordinary pleading and evidentiary disputes into actionable unconscionability.

[17] PRA requests the court take judicial notice of the filed record on appeal in *Portfolio Recovery Assocs., LLC v. Campney,* Case No. 2020-00935, R. 84; R. 105.

The trial court properly rejected those theories after considering the evidence, the applicable statutory framework, and the governing standard of review. At trial, Chambers testified on her own behalf and acknowledged she received multiple letters from PRA and its assignor seeking repayment of $6,918.89. She additionally admitted at trial that she had acknowledged in her original Answer that she owed a debt to US Bank. Trial Transcript No. 1 at pp. 96:20 – 97:3. Chambers also acknowledged receipt of U.S. Bank's letter, dated October 5, 2013, which reflected the balance of $6.918.89. *Id*. at pp. 109-114. Ms. Chambers testified she did not know what PRA's role was in the transaction, but later acknowledged that she had produced in discovery a letter from PRA, dated December 19, 2013, which stated that "PRA, LLC purchased [her] account [ending in] 6959 on 11/18/2013." (the "December 19 Letter") *Id.* at pp. 84:8 – 85:10, 132:4 – 133:6; Plaintiff's Trial Exhibit 4. Chambers, who bore the burden of proof, presented no evidence that she was confused or misled by either PRA or U.S. Bank or took or failed to take any actions to her detriment based upon PRA's actions or inactions.

The trial court properly considered the evidence presented, the purpose of the statute, and the factors set forth in section 37-5-108(5) and determined that, based upon the evidence presented, PRA did not engage in unconscionable conduct. The Merits Order should be affirmed.

1. **Section 37-5-108 is not a strict liability statute**.

Chambers' section 37-5-108 theory depends, in part, on treating the section as a strict liability statute. The statute does not support that reading. By its terms,

section 37-5-108 requires the court to determine, as a matter of law, whether the challenged conduct was unconscionable after considering the setting, purpose, effect, and applicable statutory factors. *See generally,* S.C. Code Ann. § 37-5-108 (2004). Thus, Chambers was required to prove more than an inconsistency in PRA's pleadings or a failure to provide notice of a right to cure to support her claim. She had to establish that PRA's conduct was unconscionable based upon all the factors set forth in section 37-5-108(5). The trial court correctly found that she did not meet this burden.

Section 37-5-108 governs unconscionable conduct in debt collection, but it was not intended to provide strict liability. "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Here, the statutory language is clear and unambiguous. Whether or not conduct raises to the level of unconscionability is for the court to determine based upon consideration of a number of factors. *See* S.C. Code Ann. § 37-5-108(5)(c) (2015) ("In applying subsection (2), consideration shall be given to each of the following factors, among others, as applicable: . . . using fraudulent, deceptive, or misleading representations in connection with the collection of a consumer credit transaction." (emphasis added)). And while the parties are afforded a reasonable opportunity to present evidence *to aid the court in making the determination*, it is the court that makes the determination. *See* S.C. Code Ann. § 37-5-108(3) (2015). Accordingly, rather than providing for strict liability, unconscionability is determined instead by a weighing of factors by the trial court.

Here, the court weighed the evidence presented, the purpose of the statute, and the factors set forth in section 37-5-108(5) and determined that, based upon the evidence presented, PRA did not engage in unconscionable conduct. The Merits Order should be affirmed.

2. The trial court correctly found that PRA's pursuit of two alternative claims, supported by different balances, did not rise to the level of unconscionability.

The trial court did not err in finding that Chambers failed to state a claim for unconscionability based upon the conflicting balances contained in PRA's Complaint and its attachments. The evidence of record demonstrates that, in its Complaint, PRA included two claims: (a) breach of contract; and (b) account stated. Complaint (filed Sep. 15, 2014). PRA's first claim, for breach of contract, expressly claims a balance owed of $6,918.89. *Id.* at p. 1. PRA's second claim, for account stated, however, is silent as to what balance PRA seeks to recover, only asserting that "[i]n the course of dealing between the parties, the Plaintiff has provided the Defendant with periodic statements of account which the Defendant acknowledged by making payments." *Id.* at p. 2.

In support of its claims, PRA attached a number of documents as exhibits to its complaint, including an Affidavit stating a balance due of $6,918.89, a charge off statement dated November 5, 2013 showing a charge off balance of $6,079.30, and documents supporting the sale of the debt to PRA from U.S. Bank. *Id.* at pp. 3 - 18. Chambers' original Answer referenced a balance due of $6,079.30 and acknowledged

that "I do realize that I owed the debt and want to make every effort to pay it off." Answer (filed Oct. 27, 2014).

At trial, Chambers testified that her reference in the Answer to the charge off balance was based upon the charge off statement, attached to the Complaint. Trial Transcript Part 1, pp. 83:18-84:7. She additionally admitted at trial that she had acknowledged in her original Answer that she owed a debt to U.S. Bank. *Id* at pp. 96:20-97:3. Ms. Chambers also acknowledged receipt of U.S. Bank's letter, dated October 5, 2013, which reflected the balance of $6.918.89 (*Id*. at pp. 109-114) and to producing in discovery the December 19 Letter which contained the same balance. *Id.* at pp. 84:8 – 85:10, 132:4 – 133:6; Plaintiff's Trial Exhibit 4. Chambers, who bore the burden of proof, presented no evidence that she was confused or misled by either PRA or U.S. Bank or took or failed to take any actions to her detriment based upon PRA's actions or inactions.

Based upon the evidence presented, the trial court made a finding of fact that PRA's complaint sought a balance of $6,918.89 for its breach of contract claim and $6,079.30 for its account stated claim. Merits Order, p. 5. "In an action at law tried without a jury, an appellate court's scope of review extends merely to the correction of errors of law." *Temple v. Tec-Fab, Inc.*, 381 S.C. 597, 599-600, 675 S.E.2d 414, 415 (2009). "The Court will not disturb the trial court's findings unless they are found to be without evidence that reasonably supports those findings." *Id.* at 600, 675 S.E.2d at 415. Because the trial court's findings were reasonably supported by the evidence of record, they cannot be disturbed.

Further, the trial court correctly concluded that PRA's use of two balances within its Complaint, one to support its breach of contract and one to support its account stated claim, is supported by the record, as well as this Court's opinion in *Campney*. Similar to the complaint in *Campney*, PRA's use of two balances correlates to its two separate, alternative claims. And as the *Campney* Court held, where the balances correlate to different theories of recovery, there is no misrepresentation. *Campney,* 441 S.C. 36, 45, 892 S.E.2d 321, 326 (2023). Accordingly, the trial court did not err in determining that PRA did not engage in unconscionable conduct in seeking different balances to support its alternative claims.

3. The trial court correctly excluded from evidence Defendant's Exhibit 3.5.

STANDARD OF REVIEW

"The admission or exclusion of evidence is within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion." *Conner v. City of Forest Acres*, 363 S.C. 460, 467, 611 S.E.2d 905, 908 (2005). "An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion without evidentiary support." *Id.*

ARGUMENT

Chambers assigns as error the trial court's failure to admit into evidence Defendant's Exhibit 3.5, a letter sent by PRA's prior counsel regarding settlement. The letter, dated October 20, 2014, was sent in response to Chambers' original Answer which invited "an offer on monthly payments." *See* Defendant's Trial Exhibit

Ex. 3.5; Answer (filed Oct. 27, 2014).[18] The only purpose for which Chambers attempted to admit the letter was to support her position as to the amount of the debt claimed by PRA. Trial Transcript Part 1, p. 74 ("we're asking the Court to admit this based on the alleged balance due.").

The Court properly excluded the letter from evidence under Rule 408, SCRE. Rule 408 excludes

> [e]vidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, *is not admissible to prove liability for or invalidity of the claim or its amount.* Evidence of conduct or statements made in compromise negotiations is likewise not admissible."

Rule 408, SCRE. "The purpose of Rule 408 is to encourage free and unfettered negotiation while providing parties peace of mind that their negotiations—concessions, denials, admissions, and claim amounts—cannot be used against them to prove liability for the disputed claims or its amount at trial." *Edwards v. Scapa Waycross, Inc.,* 437 S.C. 396, 426-427, 878 S.E.2d 696, 712 (Ct. App. 2023). While such evidence may be permissible for other purposes, Chambers failed to provide such purpose, only submitting it to show the "alleged balance due." *See* Trial Transcript Part 1, p. 74 ("we're asking the Court to admit this based on the alleged balance due."). Because the letter was submitted to prove the amount claimed by PRA, it was properly excluded from evidence.

[18] While the Answer was filed October 27, 2014, it is dated October 13, 2014, addressed to Frederick J. Hannah & Associates and marked received October 16, 2014. Answer (filed Oct. 27, 2014).

Moreover, even if the evidence was to be considered, the trial court properly found that the letter did not support Chambers' unconscionability claim because Chambers failed to present any evidence that she was deceived or misled by the balance shown in the letter. As noted by the trial court, the letter contained no demand for payment and Chambers did not present any testimony as to how she was misled or deceived by the letter. Merits Order, p. 7. In other words, even if admissible, Chambers failed to meet her burden of proof.

4. Failure to send a notice of right to cure does not create a *per se* violation of Section 37-5-108.

Chambers also attempts to recast any alleged failure to provide notice of right to cure as a *per se* violation of section 37-5-108. That argument fails for several reasons. First, as set forth in Section II.B.1, section 37-5-108 is not a strict liability statute. Second, the pleading requirements governing a creditor's collection action are limitations on the creditor's right to recover; however, they do not convert every disputed right to cure allegation into an unconscionability claim. Finally, Chambers had the burden to prove unconscionability, especially since PRA dismissed its collection claim, and she failed to meet her burden of proof. Because the record does not support Chambers' unconscionability claim, the Merits Order should be affirmed.

a. PRA's Complaint accurately reflected its position as to the right to cure requirement.

Chambers assigns as error the trial court's failure to find that PRA engaged in unconscionable debt collection practices by alleging in her complaint that a notice of right to cure was sent or was not required. Chambers' argument relies upon the

pleading requirements set forth in S.C. Code Ann. § 37-5-114 and Chambers' mistaken belief that PRA cannot rely upon any notice of right to cure sent by its assignor but must necessarily provide its own.

Section 37-5-114 sets forth the pleading requirements for a creditor seeking to collect on a consumer credit transaction. It requires that "the complaint shall allege the facts of the consumer's default, the amount to which the creditor is entitled, an indication of how that amount was determined, and either that the notice to cure required by Sections 37-5-110 and 37-5-111 has been given or is not required." S.C. Code Ann. § 37-5-114(1) (1982). "Failure to so plead does not invalidate any action taken by the creditor that is otherwise lawful." S.C. Code Ann. Ann. § 37-5-111(6) (1985) ("the creditor shall affirmatively plead and prove either that the notice to cure is not required or that the creditor has given the required notice, but the failure to so plead does not invalidate any action taken by the creditor that is otherwise lawful"). Because the pleading requirements are set forth in Part 1 of Chapter 5, they may be read as a limitation on the creditor's remedy. In other words, if the creditor fails to plead and prove each element set forth in section 37-5-114, its recovery may be limited to the *unaccelerated* balance of the underlying debt, but it does not invalidate the debt or any action taken by the creditor which is otherwise lawful.

In any event, PRA's pleading was accurate. Two things can be true at once. As set forth in its Amended Motion for Summary Judgment, PRA takes the position, among others, that no right to cure was required of PRA because any obligation to provide a right to cure was preempted by the National Bank Act and its amplifying

rules and regulations and, alternatively, to the extent a notice of right to cure was required, U.S. Bank provided a notice of right to cure. *See generally* Plaintiff's Memorandum in Support of Amended Motion for Summary Judgment as to Defendant's Counterclaim (filed May 10, 2024).

Because PRA dismissed its claim, the burden of proving that PRA's pleading was inaccurate shifted to Chambers as a factor the court could consider for Chambers' unconscionability claim. *See Tucker v. Reynolds,* 268 S.C. 330, 336, 233 S.E.2d 402, 405 (1977) (the burden to prove his case is always on the claimant); S.C. Code Ann. § 37-5-108(3) (2015). Chambers failed to establish that PRA's allegation as to the notice of right to cure was false. Chambers offered only her own testimony in support of her case and successfully excluded from evidence the testimony of U.S. Bank's employee, Nathan Abshire. *See* Merits Order, pp. 3-4. At best, Chambers could only testify to what she received and not what was sent by either PRA or its assignor, U.S. Bank. Moreover, Chambers testified to her receipt of a letter from U.S. Bank which contained the bank's name, address and telephone number, identified the account, advised Chambers of the amount owed and provided her with an opportunity to discuss payment options and provided her with the date by which payments must be made to avoid charge-off of her account. Because Chambers failed to meet her burden that PRA's pleading was inaccurate and the trial court did not err in dismissing her claim.

b. Chambers' reliance on Campney for the proposition that a notice of right to cure must come from PRA regardless of whether the original creditor has provided its own is misplaced.

Chambers relies on *Campney* for the proposition that regardless of whether PRA's assignor has sent a notice of right to cure, PRA must also send one. Chambers' reliance is misplaced. While the *Campney* Court did find PRA was required to send a notice of right to cure, that holding is based upon a specific fact pattern; and the sentence cannot be read out of context. The *Campney* holding was based upon a record which contained no evidence of a notice of right to cure having been sent by the original creditor or by its assignee, PRA. In response to PRA's argument that it was not a creditor for purposes of the notice requirement and the obligation to send a notice of right to cure, if any, necessarily fell upon the original creditor, the Court stated,

> [p]articularly, no creditor, initial or assignee, would be held liable for violation of the SCCPC's right to cure notice requirement whenever a charged off debt was assigned because an initial creditor would argue it would have no obligation once all their claims to a debtor's account were assigned and an assignee would raise the argument PRA raises.

Campney, 441 S.C. at 52, 892 S.E.2d at 330.

Importantly, the *Campney* Court did not address whether a debt buyer could rely upon a notice of right to cure sent by a predecessor in interest. Established South Carolina jurisprudence, however, requires that this court answer the question in favor of the creditor's assignee. As this Court stated in *Twelfth RMA Partners*,

> In South Carolina, it is well established that an "assignee . . . stands in the shoes of its assignor . . ." When a contract is assigned, the assignee

> should have all the same rights and privileges, including the right to sue on the contract, as the assignor.

Twelfth RMA Partners, L.P. v. Nat'l Safe Corp., 335 S.C. 635, 640, 518 S.E.2d 44, 46 (Ct. App. 1999); *see also Campney*, 441 S.C. at 49, 892 S.E.2d at 328.

To require otherwise would be in derogation of an assignee's common law rights. Statutory derogation can only be required if the statute is explicit and the derogation is clearly intended by the legislature, neither of which is the case here.

> Regarding the presumption against change of the common-law by a statute, it is stated in 25 R.C.L. 1054, that it is not presumed that the Legislature intended to abrogate or modify a rule of the common-law by the enactment of a statute upon the same subject; that it is rather to be presumed that no change in the common-law was intended unless the language employed clearly indicates such an intention; that the rules of the common-law are not to be changed by doubtful implication, or overturned except by clear and unambiguous language.

Nuckolls v. Great Atl. & Pac. Tea Co., 192 S.C. 156, 161, 5 S.E.2d 862, 864 (1939). "Statutes in derogation of the common law are to be strictly construed." *Eades v. Palmetto Cardiovascular & Thoracic, PA*, 422 S.C. 196, 201, 810 S.E.2d 848, 850 (2018). "Under this rule, a statute restricting the common law will not be extended beyond the clear intent of the legislature." *Id.* (citations and quotation marks omitted). Accordingly, an assignee may rely upon the notice of right to cure provided by its predecessor in interest.

c. *Finally, a failure to send a notice of right to cure does not create a per se violation of section 37-5-108.*

Chambers suggests that any failure to send a notice of right to cure and seek the full balance creates a *per se* violation of section 37-5-108. However, as stated in Section II.A.1 of this brief, the right to cure provisions are part of the SCCPC's shield

against a consumer's liability and simply limit the amount a consumer may be entitled to recovery. Moreover, as previously demonstrated in Section II.B.1. of this brief, section 37-5-108 is not a strict liability statute.

Finally, here, the dismissal of the unconscionability claim was properly supported by the record. The trial court found as fact that Chambers received a letter from U.S. Bank in October of 2013 in which she

> was informed that an immediate response was required to stop the charge off of her credit card account and stating that the last payment received by her occurred on March 6, 2013. The letter also stated that the correspondence was Chambers's last opportunity to speak with U.S. Bank to discuss payment options prior to the account being charged off and reported to credit reporting agencies. The letter provided Chambers with the name of the creditor (U.S. Bank), its telephone number, the account number of the debt owed, the amount of the debt owed, and the date by which payment must be made to avoid the charge off of her account.

Merits Order, p. 4. The trial court further found as fact that Chambers failed to present any evidence that she was confused or mislead by communications from U.S. Bank or PRA. Merits Order, p. 5. Those findings of fact are supported by the record and cannot be disturbed on appeal. Therefore, this Court must affirm the Merits Order.

III. THE TRIAL COURT DID NOT ERR IN DENYING CHAMBERS' RULE 59 MOTION.

STANDARD OF REVIEW

"The decision to grant or deny a motion for relief from judgment lies within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion." *Smith v. Fedor*, 422 S.C. 118, 124, 809 S.E.2d 612, 615 (Ct. App. 2017)

(quoting *Stearns Bank Nat'l Ass'n v. Glenwood Falls, LP*, 373 S.C. 331, 336, 644 S.E.2d 793, 795 (Ct. App. 2007)). "An abuse of discretion arises where the judge issuing the order was controlled by an error of law or where the order is based on factual conclusions that are without evidentiary support." *Id.* (citing *Glenwood Falls*, 373 S.C. at 336, 644 S.E.2d at 795).

ARGUMENT

The trial court did not abuse its discretion in denying the Rule 59(e) Motion. As set forth in Section I of this brief, the motion was not timely made and therefore, was improper. On that basis alone, denial of the motion was proper.

Further, regarding Chambers' unconscionability claim, the court likewise did not abuse its discretion in denying Chambers' Rule 59(e) Motion. Chambers' motion asserts that the court's Order did not address three issues as to her unconscionability claim and asks that this Court address those issues. As to two of those issues (violation of section 37-5-108 predicated on the RTC provisions and paragraph 5 of the Complaint as a basis for unconscionability), Chambers presented no evidence in support of either of those allegations at trial and any failure to address this issue under Rule 59 is, at best, harmless error. Defendant's Rule 59(e) Motion (filed Nov. 21, 2025).

Moreover, Chambers herself placed this precise issue before the trial court. In her Fifth Motion for Summary Judgment, heard on the day of trial, Chambers asked the court to find PRA liable for violating sections 37-5-110 and 37-5-111 of the SCCPC by suing her for the full accelerated balance before sending the required notice of

right to cure. Defendant's Notice of Motion and Fifth Motion for Summary Judgment (filed Aug. 29, 2025). Having asked the trial court to rule on this issue herself, Chambers cannot now claim she lacked notice or an opportunity to be heard on it, or that the court's resolution of the question was improper. The trial court did not abuse its discretion in declining to revisit, on reconsideration, an issue Chambers herself squarely presented for decision and which was decided.

As to the remaining issue raised regarding unconscionability (the multiple account balances Chambers alleges PRA sought), the Merits Order fully addressed the issue, and the court therefore did not abuse its discretion in denying Chambers' request that the same be addressed. While a Rule 59(e) motion is a vehicle for a party to request reconsideration of issues and arguments, no new issues may be raised at that point. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004); *Arnold v. State*, 309 S.C. 157, 172-173, 420 S.E.2d 834, 842 (1992), *cert. denied*, 507 U.S. 927 (1993).

Further, there is no abuse of discretion as to Chambers' request for reconsideration of the court's decision as to Chambers' right to cure claim. First, as the evidence at trial clearly demonstrated, any such claim was time-barred. Therefore, any decision as to the merits was surplusage. Second, the court correctly decided the issue based upon its findings of fact and the evidence presented that the statute of limitations began to run on October 5, 2013.

Because the trial court did not abuse its discretion in denying Appellant's Rule 59 Motion, the Rule 59 Order should be affirmed.

IV. THE TRIAL COURT DID NOT ERR IN DENYING CHAMBERS' RULE 37 MOTION.

STANDARD OF REVIEW

The standard of review is an abuse of discretion. *Skywaves I Corp. v. Branch Banking & Tr. Co.*, 423 S.C. 432, 456, 814 S.E.2d 643, 656 (Ct. App. 2018). "The award of expenses under Rule 37(c)[, SCRCP,] is a matter left to the sound discretion of the trial court, and the court's decision will not be reversed on appeal absent an abuse of that discretion." *Sessions v. Withers,* 327 S.C. 409, 416, 488 S.E. 2d 888, 892 (Ct. App. 1997); *see also Estes v. Gray,* 319 S.C. 551, 554-555, 462 S.E.2d 561, 562-563 (Ct. App. 1995). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006).

ARGUMENT

The trial court did not err in denying Chambers' Rule 37 motion. The motion was prematurely made and fails to meet the foundational requirements for an award of costs and fees. Additionally, the requests for admission at issue were properly objected to, were of no substantial importance, and, in any event, PRA had other good reason for declining to admit them.

Chambers assigns as error the trial court's denial of her Motion for Sanctions, which was filed after the trial concluded, but before the court rendered the bench order. Chambers moved for sanctions based on PRA's failure to admit Requests for Admission Nos. 1 and 11 which requested that PRA admit that: (a) "defendant is a

'consumer' and that the subject credit card account is a 'consumer credit transaction' within the meaning of S.C. Code Section 37-1-201" (Request No. 1); and (b) "the consumer credit card account that is the subject of this collection action is a consumer loan as defined in S.C. Code Sec. 37-3-104" (Request No. 11). Notice of Motion and Motion to Compel Discovery Responses, pp. 54, 57 (filed Feb. 23, 2022). Although PRA objected to both requests, it also denied them subject to its objections and responses. *Id.* In denying Chambers' motion, the trial court correctly applied Rule 37, and its decision should be affirmed.

Rule 37 allows a party to recover its reasonable expenses, including reasonable attorney's fees, where a party fails to admit the truth of any matter as requested under Rule 36 *and* the moving party thereafter proves the truth of the matter. Rule 37(c), SCRCP (emphasis added). No recovery is required, however, where the court finds that "(1) the request was held objectionable pursuant to Rule 36(a), or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe that he might prevail on the matter, or (4) there was other good reason for the failure to admit." *Id.*

A. The Trial Court Did Not Err in Denying the Rule 37 Motion Because the Requests at Issue Were Subject to Appropriate Objections.

In denying Chambers' Motion for Sanctions, the trial court correctly considered whether the requests were objectionable pursuant to Rule 36(a) and its order should be affirmed.

Both requests for admissions were outside the scope of Rule 36 which requires that requests for admissions relate to statements or opinions of fact or of the

application of law to fact, including the genuineness of any documents described in the request. Rule 36, SCRCP. The two requests at issue requested admissions to legal conclusions, and were properly objected to as such.

Black's Law Dictionary defines a "legal conclusion" as "[a] statement that expresses a legal duty or result *but omits the facts creating or supporting the duty or result*." Legal Conclusion, *Black's Law Dictionary* (11th ed. 2019). Neither request contains a single fact. As such, both were legal conclusions and subject to appropriate objections.

Moreover, both requests for admission were the subject of a prior Motion to Compel and Motion for Sanctions by Chambers, which was adjudicated. *See* Motion to Compel (filed Feb. 23, 2022); Order (filed Aug. 26, 2022). In that motion, Chambers contested and sought to strike PRA's objections to those requests for admissions as seeking legal conclusions pursuant to R. 36(a). *See* Notice of Motion and Motion to Compel Discovery Responses, pp. 12, 14 (filed Feb. 23, 2022). The trial court, however, denied the Motion to Compel as to the requests at issue as follows:

> As to the Defendant's requests for Admission No. 1, the Defendant's Motion to Compel is denied. … As to Request No. 11, the Defendant's Motion to Compel is Denied. Defendant's Requests for Admissions 1, 2, 6, 7, 9, 10, and 11 are Moot and Denied as the plaintiff, while interposing an objection, provided a response either admitting or denying the request.

Order, p. 3 (filed Aug. 26, 2022).

In considering Chambers' post-trial motion for sanctions, the trial court noted that Chambers' prior Motion to Compel and Motion for Sanctions, which sought to strike PRA's objections to the two requests, had been adjudicated. Form 4 Order, p.

2 (filed Dec. 22, 2025). The court appropriately considered the prior ruling and did not abuse its discretion in denying Chambers' new Motion for Sanctions as "[t]here is a long-standing rule in this State that one judge of the same court cannot overrule another." *Charleston Cty. Dep't of Soc. Servs. v. Father*, 317 S.C. 283, 288, 454 S.E.2d 307, 310 (1995). And because a judge had previously adjudicated the propriety of PRA's objections to the subject requests for admissions, the trial court did not abuse its discretion in denying Chambers' current motion for sanctions.

B. The Trial Court Did Not Err in Denying the Rule 37 Motion Because the Requests Were Not Consequential.

The trial court properly considered whether the requests were consequential to the case and correctly determined they were not. First, Chambers prematurely brought her Rule 37 Motion prior to the entry of the Merits Order. The Merits Order did not find that Chambers proved the truth of the matters set forth in the subject requests; therefore, the requests were not consequential and Chambers' motion was lacking in foundation.

Further, rather than submitting evidence as to the two requests, Chambers instead sought to rely upon statements made in dicta in the prior Order denying the parties' cross motions for summary judgment. *See, e.g.,* Trial Transcript Part 2, pp. 52:10-13 ("But on the key issues, like … you know, is my client a consumer? We've already got rulings on that Judge McCoy's order of January 10th, 2025."); *id.* at p. 83:15-19; *but see Ballenger v. Bowen*, 313 S.C. 476, 477, 443 S.E.2d 379, 380 (1994) ("A denial of a motion for summary judgment decides nothing about the merits of the

case, but simply decides the case should proceed to trial."); *Weil v. Weil,* 299 S.C. 84, 89, 382 S.E.2d 471, 473 (Ct. App. 1989) (holding that "a judge deciding a case on the merits is not bound by a prior order of another judge denying summary judgment"). Because the evidence presented at trial did not establish the truth of Request for Admissions Nos. 1 and 11, the trial court did not abuse its discretion in denying the motion for sanctions.

Additionally, the only claim tried was Chambers' SCCPC claim. Chambers' testimony was therefore necessary, regardless of PRA's admissions or denials of the two requests, and created no additional litigation burden upon Chambers. Accordingly, the trial court did not abuse its discretion in denying the Motion for Sanctions.

C. The Trial Court Did Not Err in Denying the Rule 37 Motion Because Other Reasons Justified PRA's Failure to Admit.

Finally, the trial court appropriately considered and determined there were other reasons which justified PRA's failure to admit either request. As the court correctly noted, information as to the nature of the underlying debt, and the status of the debt depended in part upon Chambers' use of the credit card – that is, whether the charges were incurred for consumer or commercial purposes. *See, e.g.,* S.C. Code Ann. § 37-3-104 (1991). This was information that Chambers, not PRA, could provide. Therefore, trial court did not abuse its discretion in denying her Rule 37 Motion.

Accordingly, the trial court acted well within its discretion in denying Chambers' Rule 37 Motion. PRA's responses were subject to valid objections that had already been considered by the court, the requested admissions were not of

substantial importance to the issues tried, and PRA had good reason for declining to admit matters that depended, at least in part, on information within Chambers' own knowledge. Because Chambers failed to establish any basis for sanctions under Rule 37(c), the order denying her motion should be affirmed.

CONCLUSION

For the reasons set forth above, this Court should dismiss Chambers' appeal of the Merits Order for lack of subject matter jurisdiction, and, in the alternative, affirm the order of the trial court dismissing Chambers' Counterclaims. This Court should affirm the denial of Chambers' Motions pursuant to Rules 59(e) and 37(c).

Dated: October 7, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on October 7, 2026, I served a copy of the foregoing AMENDED **INITIAL BRIEF OF RESPONDENT** upon all counsel of record in this action by email to the following addresses:

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/s/ David A. Grassi, Jr.

RECEIVED
Oct 07 2026
SC Court of Appeals