

Exhibit A

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2012CP3901554

2013 SEP 20 P 3:59
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

Julie Freeman vs. JLH Investments LP

CHECK ONE:


- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered. *See attached verdict form.*
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**
 - Rule 12(b), SCRPC;
 - Rule 41(a), SCRPC (Vol. Nonsuit);
 - Rule 43(k), SCRPC (Settled);
 - Other: _____
- ACTION STRICKEN (CHECK REASON):**
 - Rule 40(j) SCRPC;
 - Bankruptcy;
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 - Affirmed;
 - Reversed;
 - Remanded;
 - Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court:

Dated at Pickens, South Carolina, this .

Court Reporter:



PRESIDING JUDGE -

This judgment was entered on the , and a copy mailed first class this , to attorneys of record or to parties (when appearing pro se) as follows:

Brady Ryan Thomas 505 Long Pointe Lane Columbia, SC 29229

Sarah Patrick Spruill PO Box 2048 Greenville, SC 29602

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S. David Butler
ATTORNEY(S) FOR THE PLAINTIFF(S)

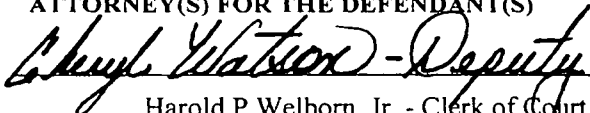
ATTORNEY(S) FOR THE DEFENDANT(S)

Harold P Welborn, Jr. - Clerk of Court

Exhibit B

COURT OF COMMON PLEAS
PICKENS COUNTY

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF PICKENS...)
MAR 17 A 9:01)

Case No.: 2012-CP-39-01554

Julie Freeman Hair, individually and for the)
benefit of all car buyers whom paid)
"Administrative Fees" to Defendant.)

Plaintiff,)

vs.)

J.L.H. Investments, LP a/k/a Hendrick Honda)

Defendant.)

**ORDER DENYING DEFENDANT'S
MOTION FOR JUDGMENT
NOTWITHSTANDING THE
VERDICT, OR, IN THE
ALTERNATIVE, A NEW TRIAL
NISI REMITTUR**

This matter is before the Court by way of Defendant's Motion for Judgment Notwithstanding the Verdict, or, In the Alternative, a New Trial Nisi Remittur. This motion was heard by the Court in Bamberg, South Carolina on December 4, 2013. After considering the parties' briefing and arguments of counsel, I hereby rule as follows:

1. Defendant's Motion for JNOV

a. Standard

A motion for a JNOV is merely a renewal of the directed verdict motion. When reviewing the trial court's ruling on a motion for a directed verdict or a JNOV, this Court must apply the same standard as the trial court by viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party. The trial court must deny a motion for a directed verdict or JNOV if the evidence yields more than one reasonable inference or its inference is in doubt. Moreover, "[a] motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict." An appellate court will reverse the trial court's ruling only if no evidence supports the ruling below. In deciding such motions, neither the trial court nor the appellate court has the authority to decide credibility issues or to resolve conflicts in the testimony or the evidence.

RFT Management Co., L.L.C. v. Tinsley & Adams L.L.P., 399 S.C. 322, 331-32, 732 S.E.2d

166, 170-71 (S.C. 2012) (internal citations omitted) (emphasis added).

b. The Evidence, When Construed in the Light Most Favorable to Plaintiff, Supports a Finding that Hendrick Honda Violated the Dealers Act.

This case was tried over the course of four days in Pickens County, South Carolina from September 16, 2013 to September 19, 2013. A jury of twelve unanimously found in favor of the Plaintiff and issued a verdict in the amount of \$1,445,786.00. The jury found that the Defendant J.L.H. Investments, LP a/k/a Hendrick Honda of Easley (“Hendrick”) violated the Motor Vehicle Dealers Act,¹ a consumer protection statute, which imposes liability for actions by car dealers that are unfair,² arbitrary/unreasonable,³ or actions which are in bad faith.⁴ As discussed below, the evidence submitted at trial was sufficient to support the jury’s finding that Hendrick violated the Dealers Act.

The evidence presented at trial showed that from August 29, 2002 to August 29, 2006, Hendrick charged all of its customers closing fees. At trial, by way of stipulation, the Plaintiff introduced a chart (Plaintiff’s Ex. 17) showing that Hendrick uniformly collected \$1,445,786 in

¹ S.C. Code Ann. §56-15-10 *et. seq.*

² S.C. Code Ann. § 56-15-30(a) provides: “(a) Unfair methods of competition and **unfair** or deceptive acts or practices as defined in § 56-15-40 are hereby declared to be unlawful.” (emphasis added).

³ “Although arbitrary conduct is not defined in the Dealers Act, our supreme court has defined it for purposes of the Act to include ‘acts which are **unreasonable**, capricious or nonrational; not done according to reason or judgment; depending on will alone.’” *deBondt v. Carlton Motorcars, Inc.*, 342 S.C. 254, 263, 536 S.E.2d 399, 404 (Ct. App. 2000). (emphasis added).

⁴ S.C. Code Ann. § 56-15-40 provides: “(1) It shall be deemed a violation of paragraph (a) of § 56-15-30 for any manufacturer, factory branch, factory representative, distributor, or wholesaler, distributor branch, distributor representative or 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.” (emphasis added).

closing fees from 5,314 car buyers during the relevant time period, many of these transactions were financed transactions. Plaintiff Julie Hair was charged a \$299 closing fee that Hendrick referred to as an "ADMINISTRATION FEE" on some of her documents and a "PROCUREMENT FEE" on other sales documents from Hendrick. The testimony from Hendrick Honda's 30(b)(6) representative published at trial shows that a closing fee was charged on every vehicle sale. See Hendrick Honda 30(b)(6) testimony published at trial, p. 200, ll. 22-25; and p. 231, ll. 22-24.

Hendrick employees testified that they were trained to instruct customers that the fees were being charged to reimburse Hendrick for closing costs such as document preparation and retrieval. Similarly, the evidence established that Hendrick posted signs in conspicuous places in the dealership stating that Hendrick was charging closing fees to reimburse itself for the costs of document preparation and document retrieval. See Plaintiff's Ex. 2, sign declaring that Hendrick was charging closing fees to reimburse itself for the costs of document preparation and document retrieval.

Testimony was also presented by Hendrick's Vice-President of Transaction Compliance, Randy Watkins, whose duties included monitoring statutes and ensuring that Hendrick complied with them. Watkins testimony, p. 10, l. 2 to p. 11, l. 12. Mr. Watkins testified that if Hendrick was going to post signs saying that they were reimbursing themselves for certain overhead costs that Hendrick should know what those costs were before they charged the fee. Watkins testimony, p. 22, ll. 2-7, and l. 9. Mr. Watkins also testified that in order to be "fair", a dealer needs to know what their document preparation and retrieval costs are before they seek to reimburse themselves for those costs. Watkins testimony, p. 67, ll. 21-25 and p. 68, l. 2. Mr.

Watkins also admitted that it would not be "fair" for a dealer to charge a closing fee that was not tied to their actual closing costs. Watkins testimony, p. 68, ll. 8-10 and l. 12.

Despite the foregoing admissions by Mr. Watkins, the evidence, when construed in the light most favorable to the Plaintiff, was sufficient for a jury to find that Hendrick did not charge its closing fees for the purpose of reimbursing itself for its closing costs including document preparation and retrieval. The evidence showed that Hendrick did not know what its closing costs were when Hendrick set the fee. Hendrick 30(b)(6), p. 241, ll. 17-27, p. 242, ll. 3-6. Similarly, Hendrick admitted at trial that it did not know how the original \$199 closing fee was determined and that its subsequent increases in the amount charged for the closing fee were not tied to increases in Hendrick's closing costs. As discussed above, Hendrick's Vice President of Transaction Compliance testified that these actions were unfair and thus the jury could have reasonably found that the actions were a violation of the Dealers Act because the Act prohibits unfair and unreasonable acts.

The evidence also, when construed in the light most favorable to the Plaintiff, was also sufficient for a jury to find that Hendrick's closing fees were not tied to its actual closing costs (Mr. Watkins also admitted that it would be unfair for this to occur and thus this is also a violation of the Dealers Act). The evidence showed that Hendrick's costs went down in years prior to the closing fee increases and thus the jury could find that the increase in the amount charged for closing fees was not tied to any increase in closing costs.

The evidence could also be reasonably construed by the jury to show that Hendrick did not use the closing fees as a means to reimburse itself for the costs of closing including document preparation and retrieval as stated on their signs and as their employees were trained to

instruct customers. The evidence when construed in the light most favorable to Plaintiff could be construed to show that Hendrick used the closing fees to increase the amounts paid to senior management. As shown on cross examination of Hendrick's General Manager, Don Pendleton, the financial statements of Hendrick showed that Hendrick's increase in the amount it charged for closing fees correlated with an increase in the amount of senior management pay.

The jury, when construing the evidence in the light most favorable to the Plaintiff, could also have reasonably found that it is unfair, unreasonable, and an action done in bad faith for Hendrick to post signs in their dealership saying that Hendrick is reimbursing the dealership for the costs of document preparation and retrieval and to train their salesmen to tell customers the same, when Hendrick was actually charging the fees to increase management pay or profit.

Similarly, the evidence could have been construed by the jury to show that it is unfair and unreasonable for Hendrick to name the fee on their buyers orders an "ADMINISTRATION FEE" when the fee is not tied to the costs of administering anything and not tied to the costs of document retrieval or document preparation. Hendrick's Vice President of Transaction Compliance testified that use of the name "administrative fee" required that fee be limited to document retrieval and document preparation. See Exhibit B, p. 67, ll. 12-19. Again, the evidence in this case was sufficient for a jury to find that fees collected by Hendrick were not limited to seeking reimbursement for the costs of document retrieval and document preparation or any closing costs.

The jury could have also reasonably found that it is unfair and unreasonable for Hendrick to name the fee on the contract a "PROCUREMENT FEE" when the fee is not tied to procuring anything. The jury could reasonably find based on the evidence presented that, despite the

nomenclature used by Hendrick, Hendrick's fees were really used to pad Hendrick's profit and to increase senior management pay. The evidence could reasonably be construed to show that the fee collected had nothing to do with closings, administering anything, or procuring anything.

Furthermore, the evidence was sufficient to support a finding by the jury that Hendrick could not claim protection under the Closing Fee Statute, S.C. Code Ann. § 37-2-307.⁵ The Closing Fee Statute allows car dealers to charge closing fees if certain restrictions are complied with including *inter alia* posting signs in conspicuous places in the dealership notifying the customers of the purpose of the fee and registering with the Department of Consumer Affairs. At trial, Plaintiff introduced Exhibit 9 wherein the Consumer Advocate, in June 2001, after the Closing Fee statute was enacted, issued an official interpretation that includes a sign that states the purpose for closing fees and provides in part: "THIS DEALERSHIP CHARGES CLOSING FEES AS A MEANS OF REIMBURSING IT FOR CERTAIN OVERHEAD COSTS SUCH AS DOCUMENT RETRIEVAL AND DOCUMENT PREPARATION." Similarly, Hendrick's registration forms, which they submitted to the Department of Consumer Affairs in order to be allowed to charge closing fees, state: "This dealership charges closing fees as a means of reimbursing it for certain overhead costs such as documents retrieval and document preparation." See, Defendant's Ex. 3. The evidence, when construed in the light most favorable to Plaintiff, could reasonably be construed to show that Hendrick acted unfairly, unreasonably, and in bad faith because they posted the signs, signed the registration form and then did not charge the fees

⁵ The South Carolina Consumer Protection Code ("SCCPC") serves "to clarify the law governing consumer credit and to protect consumer buyers against unfair practices by suppliers of consumer credit." Fanning v. Fritz's Pontiac-Cadillac-Buick, Inc., 322 S.C. 399, 401, 472 S.E.2d 242, 244 (1996)(citing S.C.Code Ann. § 37-1-102 (1989)). Plaintiff's claims in this case arise from alleged violations of the Closing Fee Statute, found in Chapter 2 of the SCCPC, which governs disclosures in "Consumer Credit Sales."

for purposes of reimbursing themselves for closing costs such as document preparation and document retrieval.

Additionally, at trial, Hendrick's General Manager and its Vice President of Transaction Compliance both admitted that they always believed that they were limited under the Closing Fee Statute to charging closing fees that were for the purpose of reimbursing Hendrick for the costs of closing such as document preparation and document retrieval. The jury could reasonably have found that it is unfair, unreasonable, and an action in bad faith, for Hendrick to know of this limitation and then ignore the limitation and instead charge closing fees for other purposes.

As discussed above, the evidence when construed in Plaintiff's favor, was sufficient to show that Hendrick charged closing fees that were not for the purpose of reimbursing itself for closing costs such as document preparation and document retrieval. Instead, the jury could have reasonably found that Hendrick unfairly, arbitrarily, unreasonably, and in bad faith charged closing fees that were designed to pad management pay and/or increase profit.

The totality of aforementioned evidence and testimony, when construed in the light most favorable to the Plaintiff, was a sufficient basis for the jury to reasonably return the verdict at issue. Accordingly, Defendant's motion for JNOV is denied.

c. ***The Dealers Act is Designed to Protect Consumers And Applies to Contracts Between Consumers and Car Dealers.***

Defendant wrongly argues that "the Dealers Act is not applicable, and it governs only written or oral agreements between a manufacturer, wholesaler or distributor with a motor vehicle dealer." See Defendant's memo., p. 7. I reject this argument for several reasons. First, our courts have repeatedly applied the Dealers Act to consumer contracts. See e.g. deBondt v.

Carlton Motorcars, Inc., 342 S.C. 254, 264-65, 536 S.E.2d 399, 404-05 (S.C.App. 2000) (holding question of fact existed as to whether dealer violated the Dealers Act by failing to fulfill contractual obligations in the sale of an automobile to a consumer) (“From these allegations, a jury could infer that Carlton misled deBondt as to her status as a Charter Owner in order to persuade deBondt to contract to purchase an automobile which would not even arrive at the dealership for approximately one and a half years. A jury also could infer Carlton neglected to fulfill an obligation owed to deBondt under its contract not from an honest mistake but from some other motive.”); *See also* Jackson v. Speed, 326 S.C. 289, 304, 486 S.E.2d 750, 757-58 (S.C.,1997) (holding the jury could reasonably find a dealer violated the dealers act “by failing to repair the vehicle as agreed to in the contract.”); Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 29-30, 644 S.E.2d 663, 671 (S.C.,2007) (holding contract to compel arbitration unenforceable because it purported to take away statutory remedies available under the Dealers Act); Herron v. Century BMW, 387 S.C. 525, 536, 693 S.E.2d 394, 399 (S.C.,2010) (same).

Second, the Dealers Act contains provisions that specifically refer to contracts between consumers and car dealers and thus it is obvious that the legislature intended the Act to apply to contracts between consumers and dealers. See e.g. S.C. Code Ann. 56-15-40 (5)(a).⁶

⁶ This statute provides: “It shall be deemed a violation of paragraph (a) of § 56-15-30 for a motor vehicle dealer: (a) To require a purchaser of a new motor vehicle, as a condition of sale and delivery thereof, to also purchase special features, appliances, equipment, parts or accessories not desired or requested by the purchaser; *provided, however*, that this prohibition shall not apply as to special features, appliances, equipment, parts or accessories which are already installed on the car when received by the dealer; *provided, further*, that the motor vehicle dealer prior to the consummation of the purchase reveals to the purchaser the substance of this paragraph.”

Third, the statute cited by Defendant, S.C. Code Ann. § 56-15-80, only clarifies that the Dealers Act applies to contracts between manufacturers and dealers. The statute does not in any way state the Dealers Act does not apply to consumer contracts.

Last, Defendant's argument that the Dealers Act does not apply to contracts between consumers and car dealers is contrary to the purpose behind the Dealers Act ("consumer protection") and thus the argument is rejected. See Herron v. Century BMW, 387 S.C. 525, 535, 693 S.E.2d 394, 399 (2010) *cert. granted, judgment vacated sub nom. Sonic Auto., Inc. v. Watts*, 131 S. Ct. 2872, 179 L. Ed. 2d 1184 (U.S.S.C. 2011) and *opinion reinstated*, 395 S.C. 461, 719 S.E.2d 640 (2011) ("The purpose of the Dealers Act is consumer protection."). It would be nonsensical to say that the purpose behind the Dealers Act is consumer protection and then accept the Defendant's argument that the Dealers Act does not apply to contracts between consumers and car dealers. Based on the foregoing, I hereby find that Defendant's motion for JNOV on this ground is denied.

d. S.C. Code Ann. § 37-5-202 Does Not Create an Exclusive Remedy For Car Buyers To Challenge Closing Fees.

I previously addressed this issue in detail by Order filed September 12, 2013. The Defendant has failed to raise sufficient arguments to warrant reversal of my prior Order on this issue. Accordingly, I hereby adopt the prior rulings from my Order filed September 12, 2013 and deny Defendant's post-trial motions based on this issue.

e. The Closing Fee Statute Did Not Displace Protections Afforded to Consumers in the Dealers Act.

The Defendant's argument, relying on Hitachi Electronic Devices (USA), Inc. v. Platinum Technologies, Inc., 366 S.C. 163, 170-171, 621 S.E.2d 38, 41 (2005), that enactment of the Closing Fee Statute displaces the protections provided to consumers in the Dealers Act is

rejected. The Hitachi court stated that: “[d]isplacement occurs when one or more particular provisions of the UCC comprehensively address a particular subject.” In Hitachi, the Court analyzed a claim for breach of warranty and after noting that the UCC provided a “comprehensive system of remedies” for breach of warranty held that the plaintiff there could pursue no other remedy. *See Id.* at 170-171 (“This comprehensive system of remedies for breach of warranty displaces the common law. Consequently, the Buyer cannot pursue common-law remedies for the Seller’s alleged breach of warranty.”). Here, the Closing Fee Statute does not reference a remedy and expresses no intention to set forth a comprehensive system of remedies. Moreover, the Department of Consumer Affairs, who is charged with enforcing the Consumer Protection Code, in its official interpretation of the Closing Fee Statute stated that it did not find that the Closing Fee statute was intended to be a comprehensive remedy. The Official interpretation specifically notes that Closing Fees still may be challenged on other grounds and states:

The Supreme Court specifically indicated in its holding in *Fanning* that it did not imply such fees might not be actionable under other applicable law. 322 S.C. at 404, 472 S.E.2d at 245, N.8. Likewise, the General Assembly did not further clarify the issue other than to indicate the fees might be legally charged for Consumer Protection Code purposes if the requisite filing and disclosures are made. The Department is aware of nothing in the General Assembly’s enactment that legitimizes a closing fee or any fee or charge if it is assessed through fraud or misrepresentation.

I find that the Department of Consumer Affairs, whose interpretation should be given weight in interpreting a statute, is correct. *See Faile v. S.C. Employment Sec. Comm’n*, 267 S.C. 536, 540, 230 S.E.2d 219, 221-22 (1976) (“The construction of a statute by the agency charged with executing it is entitled to the most respectful consideration and should not be overruled without cogent reasons.”). Nothing in the General Assembly’s enactment indicates an intention to set up a comprehensive system of remedies governing closing fees. Accordingly, unlike the enactment

of the UCC breach of warranty remedies at issue in Hitachi, the Closing Fee statute does not displace other laws including the Dealers Act. I hereby find that Closing Fees may still be challenged under other laws despite the enactment of the Closing Fee Statute and I deny Defendant's post-trial motions based on Hitachi.

f. Plaintiff Was Not Required to Bring this Case Under Rule 23, SCRPC And Instead Properly Brought this Case Pursuant to the Requirements of S.C. Code Ann. §56-15-110(2)

Defendant's arguments based on Rule 23, SCRPC do not warrant the granting of a JNOV. Defendant wrongly argues that Plaintiff cannot bring this action on behalf of a group because Plaintiff failed to plead the elements of a class action under Rule 23, SCRPC. As this Court has previously found, Rule 23, SCRPC is inapplicable and S.C. Code Ann. §56-15-110(2) sets forth the requirements that Plaintiff must meet to prosecute this action on behalf of a group. See Orders filed August 1, 2007 and February 5, 2008. In its post-trial motions, the Defendant has not raised grounds sufficient to warrant the reversal of my prior Orders on this issue and thus I hereby incorporate my prior rulings and deny Defendant's post-trial motions on this issue.

Additionally, Defendant's arguments asserting a due process violation arising from my allowing Plaintiff to prosecute this case on behalf of a group pursuant to the express language in §56-15-110(2) are rejected. Hendrick's due process rights were protected. First, the lawsuit involves common claims on behalf of a large number of purchasers. All of the 5,000 plus customers were uniformly charged a closing fee that the jury found was not tied to the reimbursement of Hendrick's closing costs. Second, the testimony showed that Mrs. Hair's claim was typical of every other customer's claim because she was charged a closing fee just like every other customer. Third, the Parties provided notice to all of the affected customers and provided a sufficient time period to allow those customers to opt out of the lawsuit. Some

purchasers did opt out. The majority of the affected customers chose to be bound by the jury's verdict. The due process protections described in this paragraph are similar to those provided in Rule 23, SCRPC and thus I hereby find that they are also sufficient to protect Hendrick's due process rights under the Dealers' Act. Thus, Defendant's arguments as to a due process violation are rejected and I decline to grant Defendant's post-trial motions on this ground.

g. The Declaratory Judgment Interpreting the Closing Fee Statute Is Consistent with Defendant's Agents' Understanding of the Statute and Does Not Warrant A New Trial.

I also decline to vacate the Court's prior Orders interpreting the term "closing fee" as used in the Closing Fee Statute, S.C. Code Ann. § 37-2-307. See January 11, 2010 Declaratory Judgment Order as to Defendant Taylor Toyota, Inc. which was adopted in this case by Order dated December 14, 2012. In those Orders, I previously defined the term "Closing Fee" as a pre-determined set fee for the reimbursement of closing costs such as document retrieval and document preparation. The evidence presented at trial confirms this definition. This interpretation is in accord with Defendant Hendrick's signs, Hendrick's registration form, the Department of Consumer Affairs' official interpretation, the training given to Hendrick's sales staff in explaining the fee to customers, Hendrick's General Manager's understanding of the statute, and Hendrick's Vice President of Transaction Compliance's interpretation of the statute. Defendant's arguments in the post-trial motions that the Court should adopt a different meaning of the Closing Fee statute than that used by Hendrick in its business are rejected. Further, the Defendant has not raised sufficient arguments to warrant vacating the Court's prior rulings on this issue and thus the request for a JNOV on this ground are rejected.

Additionally, Defendant's arguments about retroactive application, and that the Closing Fee statute is unconstitutionally vague are also rejected. As discussed above, the declaratory judgment order simply confirmed the understanding of the statute employed by Hendrick from

the beginning. Hendrick's General Manager and Hendrick's Vice President of Transaction Compliance both testified that they always believed that under the Closing Fee statute Hendrick was limited to charging closing fees that were for reimbursement of their closing costs such as document retrieval and document preparation. Similarly, Hendrick posted signs in their dealership to this effect and trained their sales people to tell customers that Hendrick was so limited. The evidence at trial showed that Hendrick believed they were so limited and thus the statute is not unconstitutionally vague and there is no unfairness arising from a declaratory judgment that confirmed Hendrick's agent's understanding of the law. As such, Hendrick's arguments as to retroactive application and vagueness are rejected and I decline to Order a JNOV on these grounds.

2. The Jury Charge Correctly Stated the Law Applicable to the Evidence And Issues Presented at Trial.

a. Standard

"The law to be charged to the jury is determined by the evidence presented at trial...If, as a whole, the charges are reasonably free from error, isolated portions which might be misleading do not constitute reversible error. A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law. In re Care and Treatment of Canupp, 380 S.C. 611, 616, 671 S.E.2d 614, 616 (S.C.App. 2008) (internal citations omitted).

"Conversely, where a defendant requests a charge on a defense that is supported by the evidence presented at trial, the trial court is required to charge the jury on that defense..." State v. Rye, 375 S.C. 119, 123, 651 S.E.2d 321, 323 (S.C.2007). "The substance of the law is what must be instructed to the jury, not any particular verbiage." Keaton ex rel. Foster v. Greenville Hosp. System, 334 S.C. 488, 496, 514 S.E.2d 570, 574 (S.C.,1999)(Even though the jury charge in the present case was not a word for word quotation of previous case law, we believe that the charge

adequately covered the law of South Carolina medical malpractice.”). “A confusing charge alone is insufficient to warrant reversal.” Keaton ex rel. Foster v. Greenville Hosp. System, 334 S.C. 488, 497-98, 514 S.E.2d 570, 575 (S.C.,1999). “[A] charge must be erroneous and prejudicial to warrant reversal...[A] jury charge, even if erroneous, on a matter not in issue, is not always considered prejudicial.” Ardis v. Sessions, 682 S.E.2d 249, 250-51 (S.C.2009) (internal citations omitted).

b. S.C. Code Ann. §37-5-202 (7)

S.C. Code Ann. §37-5-202 (7) is inapplicable and thus I declined to charge this statute to the jury. §37-5-202(7) provides:

A creditor may not be held liable in an action brought under this section for a violation of this title if the creditor shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error.

This statute is not applicable to the claims at issue because Plaintiff did not bring a claim under § 37-5-202. Instead, the cause of action was for violation of the Dealers Act. Furthermore, Defendant was not a creditor in this case, did not lend money to Plaintiff, and thus this statute is inapplicable to Defendant. Finally, the evidence showed that Hendrick knew they were limited to charging closing fees for reimbursement of closing costs (see GM and Vice President Testimony and as well as employee training testimony and signs posted in the dealership) and there was no testimony that Hendrick adopted any procedures to reasonably avoid the error of charging closing fees that were not for reimbursement of closing costs. In summary, this statute does not apply and thus a new trial is not needed based on the absence of this charge.

c. S.C. Code Ann. §37-6-104(4).

S.C. Code Ann. § 37-6-104(4) is inapplicable and thus the absence of this charge does not warrant a new trial. §37-6-104(4) provides:

Except for refund of an excess charge no liability is imposed under this title for an act done or omitted in conformity with a rule of the Administrator notwithstanding that after the act or omission this rule may be amended or repealed or be determined by judicial or other authority to be invalid for any reason.

This statute does not apply. Again, Plaintiff's cause of action was for violating the Dealers Act and Plaintiff was not prosecuting a cause of action under the Consumer Protection Code. Second, this statute only applies to "rules of the Administrator" and actions done in conformity thereof. The Department of Consumer Affairs has not issued a rule stating that Hendrick could charge closing fees that were not for reimbursement of their closing costs. Accordingly, this statute has no application to this case and §37-6-104(4) does not apply to the cause of action or the facts at issue. Thus, a new trial is not warranted due to the absence of this charge.

d. S.C. Code Ann. § 37-6-506(3)

S.C. Code Ann. 37-6-506(3) is also inapplicable and therefore the absence of this charge does not necessitate the grant of a new trial. §37-6-506(3) provides:

(3) No provision of this title or of any statute to which this title refers which imposes any penalty on any creditor shall apply to any act done, or omitted to be done, in conformity with any rule or regulation so adopted, amended or repealed or in conformity with any written order, opinion, interpretation or statement of the Commission or of the Administrator, notwithstanding that such rule, regulation, order, opinion, interpretation or statement may, after such act or omission, be amended, or rescinded or be determined by judicial or other authority to be erroneous or invalid for any reason.

S.C. Code Ann. § 37-6-506 (emphasis added). First, Hendrick was not a creditor of Plaintiff and its liability did not arise from the lending of money. Thus, this statute is inapplicable because it

applies to creditors. Second, there was no evidence in the case that the act of charging closing fees that were not for reimbursement of a dealership's closing costs was in conformity with the 2001 Consumer Affairs interpretation. The 2001 interpretation does not authorize dealers to charge closing fees for profit, charge closing fees to pad senior management pay, or charge arbitrary closing fees that were not to reimburse a dealer for its closing costs. Instead, the 2001 interpretation provides a disclosure that states the purpose of the fees which is "a means of reimbursing it for certain overhead costs such as document retrieval and document preparation." This is the same limitation included in the Court's charge on the meaning of the Closing Fee statute and thus there was no need to charge this statute. The Court's existing charge made clear that no liability could be imposed if the fees were for the purpose of reimbursing closing costs. Accordingly, I find that there was no error in refusing to charge §37-6-506(3) and the absence of this charge does not warrant the grant of a new trial.

e. The Voluntary Payment Defense is Not A Defense to a Statutory Cause of Action.

The absence of a charge on the voluntary payment doctrine does not warrant a new trial. Plaintiff asserted a statutory cause of action against Hendrick alleging that Hendrick committed unfair and arbitrary acts under the Dealers Act. The Voluntary Payment defense does not apply to this type of statutory cause of action. The South Carolina Supreme Court in Hardaway stated:

Except where otherwise provided by statute, a party cannot by direct action, or by way of set-off or counterclaim, recover money voluntarily paid with a full knowledge of all the facts, and without any fraud, duress, or extortion, although no obligation to make such payment existed.

Hardaway v. S. Ry. Co., 90 S.C. 475, 73 S.E. 1020, 1025 (1912) (emphasis added). The language above expressly excepts statutory causes of action from the voluntary payment defense. Here, Plaintiff has asserted a statutory cause of action against Defendant alleging that Defendant committed unfair, unreasonable and bad faith acts under the Dealers Act. Accordingly, the

voluntary payment defense does not apply to this statutory cause of action. Any other ruling would nullify the protections of the Dealers Act and be contrary to the intent⁷ of the legislature to protect consumers from unfair, unreasonable and bad faith acts committed by car dealers. Accordingly, the voluntary payment defense is not a valid legal defense to the claims at issue in this case.

Note that courts in other jurisdictions have looked at this issue and also held that the voluntary payment defense cannot be used to override statutory causes of action designed to protect consumers because the defense would defeat the purpose of legislative enactments. For example, the Nevada Supreme Court in Huch v. Charter Commc'ns, Inc., 290 S.W.3d 721, 727 (Mo. 2009) (emphasis added) stated:

Here, plaintiffs allege that Charter provided unsolicited merchandise to consumers in the form of the channel guide and then billed and collected, or attempted to collect, payment for the unordered merchandise. This conduct, if proven, is an unfair practice that is prohibited by the act. 15 CSR 60-8.060(1); section 407.020.1. **To allow Charter to avoid liability for this unfair practice through the voluntary payment doctrine would nullify the protections of the act and be contrary to the intent of the legislature.** In light of the legislative purpose of the merchandising practices act, the voluntary payment doctrine is not available as a defense to a violation of the act.

Similar reasoning was applied by a Nevada federal court in Sobel v. Hertz Corp., 698 F. Supp. 2d 1218, 1223-24 (D. Nev. 2010) which stated:

The Legislature enacted both Nevada Revised Statutes section 482.31575 and the Deceptive Trade Practices Act primarily for the protection of consumers. (See Pls.' Req. for Judicial Notice (# 18), May 9, 1989, Minutes of the Nevada State Legislature, Ex. A at 11.) As the court stated in Huch II, the Legislature, having enacted "paternalistic legislation designed to protect those that could not otherwise protect themselves, ... would

⁷The Dealers Act is designed to protect consumers from unfair and arbitrary acts supplementing consumers' rights as they exist under the common law. see Herron v. Century BMW, 387 S.C. 525, 535, 693 S.E.2d 394, 399 (2010) cert. granted, judgment vacated sub nom. Sonic Auto., Inc. v. Watts, 131 S. Ct. 2872, 179 L. Ed. 2d 1184 (U.S.S.C. 2011) and opinion reinstated, 395 S.C. 461, 719 S.E.2d 640 (2011) ("The purpose of the Dealers Act is consumer protection.").

not want [those] protections ... to be waived by those deemed in need of protection.” 290 S.W.3d at 727. **“To allow [the defendant] to avoid liability for [an] unfair practice through the voluntary payment doctrine would nullify the protections of the act and be contrary to the intent of the legislature.”** *Id.* Accordingly, the court finds as a matter of law that Hertz cannot rely on the voluntary payment doctrine as a defense to Plaintiffs’ claims.

Sobel v. Hertz Corp., 698 F. Supp. 2d 1218, 1223-24 (D. Nev. 2010) (emphasis added).⁸

I find the reasoning used by these other courts in analyzing similar statutes designed to protect consumers from unfair acts persuasive. For example, in this case the jury found that Hendrick violated two statutes (the Dealers Act and the Closing Fee Statute included in the Consumer Protection Code) that are both to be liberally construed in favor of protecting consumers. *See* Davis v. Nations Credit Financial Services Corp., 326 S.C. 83, 86, 484 S.E.2d 471, 472 (1997)(“[T]he South Carolina Consumer Protection Code, declares that it shall be liberally construed and applied to promote its underlying purposes and policies. S.C. Code Ann. § 37-1-102(1) (1989). One of the primary purposes of the Consumer Protection Code is to ‘protect consumer buyers.’”); *see* Herron v. Century BMW, 387 S.C. 525, 535, 693 S.E.2d 394, 399 (2010) cert. granted, judgment vacated sub nom. Sonic Auto., Inc. v. Watts, 131 S. Ct. 2872, 179 L. Ed. 2d 1184 (U.S.S.C. 2011) and opinion reinstated, 395 S.C. 461, 719 S.E.2d 640 (2011) (“The purpose of the Dealers Act is consumer protection.”). The voluntary payment defense if

⁸ *See also* Indoor Billboard/Wash. Inc. v. Integra Telecom of Wash., Inc., 162 Wash.2d 59, 170 P.3d 10, 24 (2007) (“[T]he voluntary payment doctrine is inappropriate as an affirmative defense in the [Consumer Protection Act] context, as a matter of law, because we construe the [Act] liberally in favor of plaintiffs.”); Eisel v. Midwest BankCentre, 230 S.W.3d 335, 339–40 (Mo.2007) (because voluntary payment doctrine is based on waiver and consent, defendant could not assert defense to claim that it engaged in the unauthorized practice of law in violation of statute enacted for the protection of public); Ramirez v. Smart Corp., 371 Ill.App.3d 797, 309 Ill.Dec. 168, 863 N.E.2d 800, 810 (2007) (“[T]his state has an interest in transactions that violate ‘statutorily-defined public policy.’ The effect of such transgressive acts, generally speaking, is that the voluntary payment rule will not be applicable.”); Pratt v. Smart Corp., 968 S.W.2d 868, 872 (Tenn.Ct.App.1997) (“[T]he State has an interest in transactions that involve violations of statutorily defined public policy, and, generally speaking, in such situations, the voluntary payment rule will not be applicable.”).

applied would nullify these statutory protections, is contrary to the intent of the legislature, would render these statutes meaningless, would result in an illegal windfall to Hendrick, and thus this defense is inapplicable.

Regardless, even if the voluntary payment defense were a proper defense to the Dealers Act cause of action, there was no evidence supporting the charge because there was no evidence that Mrs. Hair paid the fee with "full knowledge of all the facts." See Town of Bennettsville v. Bledsoe, 226 S.C. 214, 218, 84 S.E.2d 554, 556 (1954) ("It is an elementary principle that no action will lie to recover money voluntarily paid with full knowledge of all the facts."). There was no evidence supporting a finding that Mrs. Hair knew the fee was illegal when she paid it, that she knew Hendrick Honda was violating the Closing Fee Statute, that she knew what Hendrick Honda's closing costs were when she paid the fee, that she knew how Hendrick Honda had calculated the fee, or that she knew what costs Hendrick Honda was seeking to recoup through the Closing Fee. Thus, the evidence at trial did not support a charge based on the defense of the voluntary payment doctrine because there was no evidence supporting a finding that Mrs. Hair paid the fee with "full knowledge of all facts." Accordingly, the refusal to charge the voluntary payment doctrine in this case does not warrant the grant of a new trial.

f. Estoppel by Silence/Waiver

Defendant's argument that mere disclosure of the fact that they are charging closing fees warranted waiver and/or estoppel by silence jury charges is rejected. The evidence did not support charging either of these defenses to the jury. First, waiver, as conceded in Defendant's memorandum, requires "that the party against whom waiver is asserted, possessed, at the time, actual or constructive knowledge of his rights or of all material facts upon which they depended." See Defendant memo., p. 43. It is undisputed that there was no evidence presented

that Julie Hair had any knowledge about how Hendrick calculated their closing fee.

Furthermore, there was no evidence presented to support a finding that Julie Hair knew what Hendrick's closing costs were or that Hendrick was charging a closing fee that was not tied to reimbursing them for their actual closing costs. Also, the waiver defense fails because Defendant cannot show any evidence supporting a finding that Plaintiff paid the closing fee knowing that the fee was illegally charged. See Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 344, 415 S.E.2d 384, 387-388 (1992) ("A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Generally, the party claiming waiver must show that the party against whom waiver is asserted possessed, at the time, actual or constructive knowledge of his rights or of all the material facts upon which they depended."). The evidence presented at trial did not support this defense and thus the absence of a waiver charge does not warrant the grant of a new trial.

Similarly, there was no evidence supporting a charge on the doctrine of estoppel, which would require evidence Mrs. Hair had "actual knowledge of the real facts" and that Hendrick "lacked knowledge or the means of acquiring with reasonable diligence knowledge of the true facts." See Defendants memo., p .44. Again, there was no evidence presented that Mrs. Hair had any knowledge about how Hendrick calculated the closing fee or what Hendrick's actual closing costs were. Thus, it would be impossible for a jury to find that Mrs. Hair had actual knowledge that Hendrick was charging closing fees unrelated to its actual closing costs. Also, there was no evidence that Hendrick lacked the knowledge or the means of acquiring with reasonable diligence knowledge of the true facts. Hendrick controlled the books and Hendrick's management knew that they were charging fees that were not to reimburse it for their actual closing costs, which admittedly had never been calculated. Hendrick's management also knew

because they controlled access to the books that Julie Hair had not been given access to this information. There was simply no evidence presented at trial to support charging estoppel to the jury. Additionally, Defendant cannot achieve a positive gain by asserting equitable estoppel and thus the defense does not apply to allow Defendant to keep the illegally collected closing fees. See Ott v. Ott, 188 S.E.2d 789, 792 (S.C. 1936)(“The final element of equitable estoppels is that the person claiming it must have been misled into such action that he will suffer injury if the estoppels is not declared....It was never intended *to work a positive gain to a party.*”). Thus, I find there was no err in refusing to give this charge and a new trial is not warranted due to the failure to give this charge.

g. The Filed Rate Doctrine Is Inapplicable.

The Filed Rate Doctrine “stands for the proposition that because an administrative agency is vested with the authority to determine what rate is just and reasonable, courts should not adjudicate what a reasonable rate might be in a collateral lawsuit.” Temporary Services, Inc. v. American Intern. Group, Inc., 388 S.C. 348, 351, 697 S.E.2d 527, 529 (S.C. 2010) (“The DOI was not vested with the authority to determine the rates applicable to the workers' compensation policies at issue, thus the Filed Rate Doctrine does not bar Plaintiffs' claims in this instance.”); Edge v. State Farm Mut. Auto. Ins. Co., 366 S.C. 511, 517-18, 623 S.E.2d 387, 391 (S.C. 2005)(“The filed rate doctrine preserves the stability, uniformity, and finality inherent in rates filed with the regulatory agency and what has been determined to be a reasonable rate by that agency.”). In this case, the Department of Consumer Affairs does not determine the rates that dealers may permissibly charge as closing fees. This is because the Department cannot look at dealers' records and works through a complaint process, not a monitoring process. Instead, the

Department relies on the representation by the dealers, including Hendrick, on the registration form that

This dealership charges closing fees as a means of reimbursing it for certain overhead costs such as document retrieval and document preparation.

By accepting this representation from the Defendant, the Department is no way approving a fee that is not being used as a means to reimburse the dealership for closing costs. The Filed Rate doctrine simply has no application to the facts at issue. Thus, the absence of this charge does not warrant the grant of a new trial.

h. The Court's Charge that An Act that Violates A Statute is Unfair is A Correct Statement of Law.

Defendant's arguments that the Court erred in its charge concerning unfair acts because the Court charged the jury that an act that violates a statute is unfair are also rejected. This is a correct statement of law. "An act is 'unfair' when it is offensive to public policy or when it is immoral, unethical, or oppressive." Gentry v. Yonce, 337 S.C. 1, 12, 522 S.E.2d 137, 143 (1999). The public policy of South Carolina is expressed in the statutory law. Ludwick v. This Minute of Carolina, Inc., 287 S.C. 219, 225, 337 S.E.2d 213, 216 (1985) ("The public policy of South Carolina is manifestly reflected in the penal statute with which Ludwick was compelled to comply."); White v. J.M. Brown Amusement Co., Inc., 360 S.C. 366, 371, 601 S.E.2d 342, 345 (2004) (contract is not enforceable that "violates public policy as expressed in constitutional provisions, statutory law, or judicial decisions."); Nationwide Mut. Ins. Co. v. Rhoden, 398 S.C. 393, 403, 728 S.E.2d 477, 482 (2012), reh'g denied (July 31, 2012) (citing UIM statutes as establishing the public policy of South Carolina). Defendant failed to cite to any case that supports Defendant's arguments that it is a fair act for a defendant to violate a statute or that statutes do not express the public policy of South Carolina. Defendant's argument that the Court erred in issuing this charge to the jury is not supported by the law and is rejected.

Similarly, Defendant's arguments that actions that violate a statute are not unfair acts under the Dealers Act are also rejected. S.C. Code Ann. § 56-15-30 (a) provides: "Unfair methods of competition and unfair or deceptive acts or practices as defined in § 56-15-40 are hereby declared to be unlawful." This statute declares unfair acts to be unlawful. Also, the statute declares acts or practices as defined in § 56-15-40 which includes arbitrary/unreasonable acts to be unlawful. A car dealer's violation of a statute, in addition to being unfair, can also be arbitrary and unreasonable. Certainly, the jury could have reached this conclusion given the facts of this case. The jury could have also reached the conclusion that violation of the statute was in bad faith given the Vice President of Compliance's and the General Manager's admissions that they always knew they were limited to reimbursing themselves for closing costs through the closing fee. Thus, the Defendant was not harmed by the charge and there is no error in charging the jury with a correct statement of law that an action that violates a statute is an unfair act under the Dealers Act. See Taylor v. Nix, 307 S.C. 551, 555-56, 416 S.E.2d 619, 621-22 (S.C.,1992) (holding new trial not warranted where Court charged wrong definition of arbitrary under the Dealers Act) ("Furthermore, we find the defendants were not harmed by it as it is not conceivable under the facts of this case that the jury found the defendants acted merely maliciously arbitrary and not in bad faith."). The Court's charge on this issue does not warrant the grant of a new trial.

i. **Duty to Read Charge Does Not Apply**

The Court did not err in refusing to charge Defendant's "duty to read charge" which provided:

Every contracting party owes a duty to the other party to the contract and to the public to learn the contents of a document before he signs it. One who signs a contract has the duty to exercise reasonable care to protect himself. One cannot complain of fraud and misrepresentation in the contents of a document if the truth could have been

ascertained by reading it. The law does not impose a duty on one party to explain to an individual what he could learn from simply reading the documents.

Defendant's memo., p. 45. This charge has no application to the cause of action at issue or the facts of this case as presented through the evidence at trial. Plaintiff has not submitted a claim for "fraud and misrepresentation in the contents of a document" where "the truth could have been ascertained by reading it." Plaintiff, instead, asserted a cause of action against Defendant under the Dealers Act for unfairly, unreasonably, arbitrarily, and in bad faith charging closing fees that were not for the reimbursement of Defendant's closing costs. This is not a fraud claim. More importantly, the alleged "truth" that Defendant was charging closing fees to pad senior management pay and profit is not disclosed on any document given to Plaintiff. Thus, there was no way Plaintiff could have "ascertained" the truth "by reading" a document. This charge simply does not apply to the cause of action at issue or the evidence presented at trial. As such, I decline to grant a new trial due to the absence of this charge.

j. Charge on the Meaning of the Term Arbitrary Under the Dealers Act

The jury charge included a statement that arbitrary acts violate the Dealers Act. Additionally, the charge included a statement that an unreasonable act is an arbitrary act. Defendant's argument that the Court needed to use particular verbiage beyond these definitions and also state that a Dealer's conduct is not arbitrary if it has "some reasonable basis" are wrong. "The substance of the law is what must be instructed to the jury, not any particular verbiage." Keaton ex rel. Foster v. Greenville Hosp. System, 334 S.C. 488, 496, 514 S.E.2d 570, 574 (S.C. 1999)("Even though the jury charge in the present case was not a word for word quotation of previous case law, we believe that the charge adequately covered the law of South Carolina medical malpractice."). Here the substance of the law was adequately charged. It is axiomatic that an unreasonable act does not have a reasonable basis. The language that Defendant now

argues should have been added would not have added anything to the charge and was not necessary. Accordingly, Defendant's argument that a new trial is needed due to the decision not to charge the Defendant's particular verbiage on arbitrary act is rejected.

k. Unconscionable Contract Charge Does Not Apply.

This case does not involve a defense that a written provision or term in a contract is unenforceable due to unconscionability. See e.g. S.C. Code Ann. § 36-2-302. Instead, this case included allegations that Defendant violated the Dealers Act by charging a closing fee that was not for the purpose of reimbursing itself for closing costs. The actual components of the closing fee were at issue in the case and not any specific term, provision or language used in a written contract. As such, the requested charge which addresses "one-sided provisions together with terms that are ..oppressive" has no application to the allegations at issue and the Court declined to charge same. Accordingly, I also find that the absence of this charge does not warrant the grant of a new trial.

l. Federal Trade Commission Discretionary Charge

Defendants argue that the Court should have issued a jury charge using 15 U.S.C. § 45(n) of the Federal Trade Commission Act. This statute provides in part:

(n) Standard of proof; public policy consideration

The Commission shall have no authority under this section or 57a of this title to declare unlawful an act or practice on the grounds that such act or practice is unfair unless the act or practices causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.

Defendants cite §56-15-30(b) of the Dealers Act as the basis for this argument. § 56-15-30(b) provides: "In construing paragraph (a) the courts may be guided by the definitions in the Federal Trade Commission Act (15 U.S.C. 45)."

15 U.S.C. § 45(n) was not applied to this case because it is not a definition. The Federal Trade Commission Act's definitions are listed in 15 U.S.C. §44 entitled "Definitions" and in 15 U.S.C. §55 entitled "Additional Definitions." 15 U.S.C. § 45(n) simply deals with the "Standard of proof; public policy consideration" to be applied by the Federal Trade Commission.

Even if 15 U.S.C. § 45(n) was a definition, which it is not, the charge at issue does not apply to the facts as established by the evidence at trial. Defendant contends that because they disclose the closing fee on the invoice that the closing fee may be reasonably avoided by consumers. This argument is rejected. In this case, the harm complained of is the Dealers charging closing fees for purposes other than to reimburse itself for closing costs. Consumers cannot reasonably avoid a Dealer charging closing fees that are not for reimbursing closing costs because the consumer does not have access to the dealer's books and records and is not in a position to know whether they are paying the fee dealer for profit or reimbursement of closing costs. Similarly, paying the fee is not reasonably avoidable as evidenced by Plaintiff's Ex. 17 which shows that all of Hendrick's customers paid the fee.

Regardless, the Court was not required to use any definition from the Federal Trade Commission Act because the Dealers Act makes this decision discretionary and does not mandate the use of any such definition. § 56-15-30(b) provides: "In construing paragraph (a) the courts may be guided by the definitions in the Federal Trade Commission Act (15 U.S.C. 45)."

(emphasis added). As such, the Court's decision not to use the Federal Trade Commission charge at issue does not warrant the grant of a new trial.

m. **The Damages Charge Was Sufficient.**

Defendant on page 46 of its memorandum argues that the Court erred by declining "the portion of the charge related to speculative damages." This argument is rejected. The charge given succinctly set forth the standard to apply for damages and accurately stated that Plaintiff was limited to her actual damages. This was not a case involving potentially speculative damages, like lost profits, as such an additional charge on speculative damages was not needed.

Also, the charge was correct in that it allowed the jury to determine what the damages were from zero to the full amount of the collected fee. The charge gave the jury discretion to determine if any part of the fee was for reimbursement of closing costs or not. The complete charge (Defendant omits the last sentence in its brief which critiques the charge) stated:

[S]he cannot recover more than her loss. And as applied to this claim and the—if the Defendant's closing fees exceeded the amount necessarily reimburse the Defendant for his actual closing costs, then actual damages [are] a portion of that fee which exceeded the actual closing costs. So if you find that she's entitled to damages, obviously you've got a wide range in this case, anywhere from zero to two hundred ninety-nine dollars. Of course, she's the representative of the full class, so if you find that maybe perhaps some it was involved in the closing, but not others, then you can—you have that discretion.

The jury applied this charge and found that none of the closing fees charged by Hendrick were for purposes of reimbursing Hendrick for its closing costs. The charge properly gave the jury discretion to determine what amount of the closing fee, if any, was involved in the closing.

Moreover, contrary to Defendant's argument, the above charge is not inconsistent with the earlier portion of the charge that reads "you must make a determination in your findings, in

this case you analysis must be whether or not what the dealer charged in this case was, in fact a closing fee as defined by the declaratory judgment order, or was it not a closing fee.” The charges are consistent and correct because both give the jury discretion to return the entire closing fees collected if the jury determines that the fees were unfair, unreasonable, arbitrary, and in bad faith because the fees were not for purposes of reimbursing the dealer for its closing costs. Based on the foregoing, Defendant’s argument that the damages charge warrants a new trial is rejected.

3. The Jury Verdict Form Was Proper

a. *Standard*

[T]he question of whether to require a jury to return a special verdict is one committed to the discretion of the trial court. *See* Rule 49(a), SCRPC (“The court *may* require a jury to return only a special verdict in the form of a special written finding upon each issue of fact.”) (emphasis added); *Butler v. Gamma Nu Chapter of Sigma Chi*, 314 S.C. 477, 483, 445 S.E.2d 468, 471 (Ct.App.1994) (“The question of whether to grant a party’s request for a special verdict form is a matter committed to the sound discretion of the trial court.”); 9 MOORE’S FEDERAL PRACTICE 3D § 49.11[2] [a], at 49-16 (1997) (“Rule 49 is a rule of discretionary implementation, solely in the control of the trial judge. No party has a right to the use of a special verdict.”)... *See* 5A C.J.S. *Appeal & Error* § 1762(b), at 1136 (1958) (“Error in the refusal to submit special interrogatories or special issues to the jury will constitute ground for reversal only if prejudice results to the complaining party.”).

Steele v. Dillard, 327 S.C. 340, 343, 486 S.E.2d 278, 279-80 (Ct. App. 1997).

“The prejudicial effect of a defective verdict form may be cured where the trial court provides clear and cogent jury instructions.” S. Carolina Dep’t of Transp. v. First Carolina Corp. of S.C., 372 S.C. 295, 303, 641 S.E.2d 903, 908 (2007).

b. Use of a General Verdict Form Was Proper, Not an Abuse of Discretion, and there Was No Prejudice to Defendant.

In this case, the jury was given a general verdict form. There was no need for the special verdict form requested by the Defendant. The jury charges adequately described the law that needed to be applied and there was no need for the questionnaire propounded by Defendant.

Moreover, there was no prejudicial effect in using the general verdict form because as admitted by Defendant on p. 52 of their brief, the Court provided sufficient instructions "that walked the jury through the very process" included on "Defendant's proposed verdict form." See Carolina Dep't of Transp. v. First Carolina Corp. of S.C., 372 S.C. 295, 303, 641 S.E.2d 903, 908 (2007) ("The prejudicial effect of a defective verdict form may be cured where the trial court provides clear and cogent jury instructions.").

Last, the jury returned the entire amount of every closing fee charged to the customers. This amount was included on Plaintiff's Ex. 17 which was the stipulated closing fees collected by Hendrick. There is no prejudice created by use of the general verdict form because the dollar amount returned is the same as that set forth on Plaintiff's Ex. 17. The jury's verdict is self-explanatory and amounts to a return of the closing fees collected from all represented purchasers. There was no need for a questionnaire to understand the jury's finding and thus there is no need for a new trial to be granted due to the use of a general verdict form.

4. A New Trial is Not Warranted Under the Thirteenth Juror Doctrine.

a. Standard.

[T]he thirteenth juror doctrine is a vehicle by which the trial court may take its own view of the evidence and grant a new trial if it disagrees with the jury's verdict. This is also called granting a new trial upon the facts....The granting of a new trial upon the facts is not the equivalent of granting a directed verdict." The question of whether the evidence is legally sufficient to sustain a verdict, a question of law, is distinguishable from the question of whether a fair preponderance of the evidence supports a verdict, which is a matter involving the exercise of discretion. Stated another way, a party's evidence might

make a case one for the jury, but the evidence might be so outweighed by the countervailing evidence that, in the exercise of its discretion, a trial court could choose to set aside the verdict under the thirteenth juror doctrine.

RFT Management Co.. L.L.C. v. Tinsley & Adams L.L.P., 399 S.C. 322, 334, 732 S.E.2d 166, 172 (S.C.,2012) (emphasis added).

b. The Evidence Relied Upon by the Jury is Not So Outweighed by Countervailing Evidence that the Verdict Should be Set Aside.

As discussed in detail above, the evidence could reasonably be construed to show that Hendrick unreasonably, unfairly, arbitrarily, and in bad faith charged closing fees that were not for purposes of reimbursing their closing costs and instead charged closing fees to pad management pay and profit. There was no countervailing evidence that so outweighs the above described evidence that warrants a new trial being granted on the facts. The jury properly weighed the facts and credibility of the witnesses and reached a reasonable decision. Thus, I decline to act under thirteenth juror doctrine and deny Defendant's motion on this issue.

5. A New Trial Nisi Remittitur Is Not Warranted.

a. Standard

The trial court alone has the power to grant a new trial *nisi* when he finds the amount of the verdict to be merely inadequate or excessive. However, compelling reasons must be given to justify invading the jury's province by granting a new trial *nisi remittitur*. The consideration for a motion for a new trial *nisi remittitur* requires the trial judge to consider the adequacy of the verdict in light of the evidence presented.

Proctor v. Dep't of Health & Env'tl. Control, 368 S.C. 279, 320-22, 628 S.E.2d 496, 518-19 (Ct. App. 2006). "The jury's determination of damages, however, is entitled to substantial deference." Id.

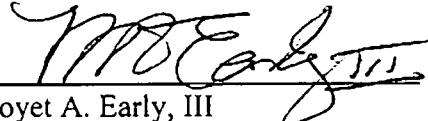
b. There Are No Compelling Reasons Present to Invade the Jury's Province and Order a New Trial Nisi Remittitur.

As discussed in detail above, the evidence could reasonably be construed to show that Hendrick unfairly, unreasonably, arbitrarily, and in bad faith charged closing fees that were not for purposes of reimbursing their closing costs and instead charged closing fees to pad management pay and profit. The verdict amount was not excessive as it was for exactly the amount of unfair closing fees collected by Defendant. Moreover, there are no compelling reasons present to invade the jury's province. Thus, the requested *New Trial Nisi Remittitur* is denied.

CONCLUSION⁹

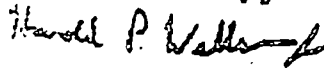
As stated above, Defendant's Motion for Judgment Notwithstanding the Verdict, or, In the Alternative, a New Trial Nisi Remittitur is denied.

AND IT IS SO ORDERED.


Doyet A. Early, III
Resident Circuit Court Judge
Second Judicial Circuit

Bamberg, South Carolina

This 13th day of March, 2014

Certified Copy

Clerk of Court
Pickens County, SC
Dated 4/17/2014 (CBW)

⁹Any other arguments/ grounds for a new trial asserted by Defendant but not specifically addressed herein are hereby rejected and the motions based on these grounds are denied.

Exhibit C

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS
IN THE COURT OF COMMON PLEAS

JUDGMENT I CIVIL CASE

CASE NO. 2012 CP-39-01554

Julie Freeman, et al

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

L.H. Investments, LP, a/k.a Hendrick Honda of Easley

PLAINTIFF(S)

DEFENDANT(S)

2014 APR -2 P 3:06

Submitted by:

Attorney for : Plaintiff Defendant
or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: Defendant's Motions for Reconsideration dated March 26, 2014 are DENIED.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

0136
Judge Code

3/31/14
Date

Exhibit D

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
Case No. 2006-CP-02-1230

Heather Herron, et al.,

Plaintiffs,

vs.

Defendant Car Max Auto Superstores,
Inc., et al.,

Defendants.

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
ORDER DENYING MOTIONS TO DISMISS
General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

AUG 01 2007

Liz Godard

C.C.C.P. & G. S., Aiken County, S.C.
Autie Smith

Deputy Clerk

This matter comes before the Court by way of Motions to Dismiss by the defendants on the following grounds: (1) lack of standing of the plaintiffs; (2) Rule 23, S.C.R.C.P. and its relationship with S.C. Code Ann. § 56-15-110(2); and (3) failure of the plaintiffs to plead civil conspiracy adequately. These motions were heard before the Court in Bamberg, South Carolina on April 4, 2007.

This action was initiated on August 21, 2006, and the present Amended Complaint before the court alleges three causes of action:

1. Violation of S.C. Code Ann. § 56-15-10;
2. Civil Conspiracy;
3. Declaratory judgment to determine rights and legal relations under S.C. Code Ann. § 56-15-10 and/or S.C. Code Ann. § 37-2-307.

FILED 7-31-07
Liz Godard

C.C.C.P. & G.S.
3:45 PM

Deputy Clerk

A motion to dismiss a claim pursuant to Rule 12 must be considered solely on the basis of allegations set forth on the face of the complaint in question. The motion will not be sustained if the facts alleged and the inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case. A judgment on the pleadings is considered to be a drastic procedure by our courts. Therefore, pleadings in a case should be construed liberally, and the trial court must presume all well pled facts to be true so that substantial justice is done between

the parties. *Overcash v. South Carolina Elec. and Gas Co.*, 364 S.C. 569, 614 S.E.2d 619, 620 (S.C. 2005).

"All properly pleaded factual allegations are deemed admitted for the purposes of considering a motion for judgment on the pleadings." *Hous. Auth. of the City of Columbia v. Cornerstone Hous., LLC*, 356 S.C. 328, 588 S.E.2d 617, 620 (Ct.App. 2003).

"The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief. ...The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action." *Doe v. Marion*, ___ S.C. ___, 645 S.E.2d 245, 247-48, 2007 W.L. 1321978 (S.C. 2007).

Applying these principles to the Amended Complaint before the Court, the Court finds first, that the Amended Complaint sufficiently pleads facts supporting standing of the plaintiffs to proceed under the three causes of action pled. Second, at this stage of the proceedings there are sufficient allegations of civil conspiracy in the Amended Complaint to avoid dismissal.

Concerning the relationship between S.C.R.C.P. 23 and S.C. Code Ann. § 56-15-110(2), I find that Section 56-15-110(2) creates a substantive right. Because 1985 Act 100 (the Act enacting the Rules of Civil Procedure) is inapplicable to substantive rights, I find that the 1985 Act neither repealed S.C. Code Ann. § 56-15-110(2) nor required that a complaint asserting rights under § 56-15-110(2) include a requirement that the plaintiff plead and prove the class certification requirements of S.C.R.C.P. Rule 23.

This Order is made in the framework of Rule 12(b)(6) motions and is based solely upon the pleadings. After the facts are developed in discovery, the defendants are free to reassert at a later date any or all of the issues addressed in this Order.

AND IT IS SO ORDERED.

Doyet A. Early, III

The Honorable Doyet A. Early, III
Judge of the Second Judicial Court

July
~~June 31~~ 2007
Bamberg, S.C.

IN THE COURT OF COMMON PLEAS

CASE NO. 06-CP-02-1230

MC _____ JR _____

Heather Herron, et al

CarMax Auto Superstores Inc.

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court:

Dated at _____, South Carolina, this _____ day of _____, 20____

PRESIDING JUDGE

This judgment/order was entered/filed on the 31 day of July, 2007, and a copy mailed/hand-delivered/boxed this 1 day of August, 2007 to attorneys of record or to parties (when appearing pro se) as follows:

See attached list

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Raceway Ford
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Darlington, SC 29532

Raceway Chevrolet Pontiac Buick GMC
410 W. Main St.
Lake City, SC 29560

Saturn of Charleston, LP
8261 Rivers Ave.
North Charleston, SC 29406

C. Thompson Automotive, Inc.
1706 Montague Ave.
Greenwood, SC 29649

Exhibit E

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

Case No. 2006-CP-02-1230

Heather Herron, et al.,

Plaintiffs,

v.

Dick Dyer & Associates, Inc., et al.,

Defendants.

FILED 2/5 2008
[Signature]
Deputy Clerk

**ORDER
ON
PLAINTIFFS' RULE 41(a) MOTION
TO VOLUNTARILY DISMISS CERTAIN DEFENDANTS
AND
DEFENDANTS' RULE 59(e) MOTION TO RECONSIDER
THE DENIAL OF THEIR MOTIONS TO DISMISS ON CERTAIN GROUNDS**

I. PROCEDURAL POSTURE AND FACTUAL BACKGROUND

Plaintiffs filed their original Complaint against certain Dealers in Aiken County on August 29, 2006, with four Plaintiffs suing 51 motor vehicle dealerships located in thirteen counties. Plaintiffs filed a "Corrigenda" correcting the original Complaint on September 1, 2006. Plaintiffs filed their First Amended Complaint in this case on October 31, 2006, with eight Plaintiffs suing some 324 dealerships ("Defendants" or "Dealers") located in forty-one counties. Each named Plaintiff alleges he or she bought one vehicle from a single Dealer.

WAE

As set forth more fully in the First Amended Complaint, Plaintiffs allege among other things that (1) Defendants charged closing fees in violation of the South Carolina Regulation of Manufacturers, Distributors and Dealers Act ("the Dealers Act") contained in South Carolina Code Ann. §§ 56-15-10 to -600 (2006), and failed to comply with requirements of South

STATE OF SOUTH CAROLINA
I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing is a true and correct copy of the original documents which have been filed in my office this

[Signature]
C.C.P. & G. S., Aiken County, S.C.
Deputy Clerk *[Signature]*

Carolina Code Ann. § 37-2-307 (2002) (the "Closing Fee Statute"); (2) Defendants engaged in a civil conspiracy; and (3) Plaintiffs request that the circuit court issue a declaratory judgment finding Defendants' practices illegal and granting other relief.

Defendants moved to dismiss the First Amended Complaint based on lack of standing; improper joinder; Rules 12(b)(1), (2), (3) and (6), SCRCF; failure to plead the requirements of Rule 23, SCRCF; and other grounds.

This Court denied Defendants' various motions to dismiss by Order filed August 1, 2007. Defendants on August 10 and 13, 2007, timely served two Joint Motions to Amend or Reconsider the denial of the motions to dismiss pursuant to Rule 59(e), SCRCF.

Plaintiffs on October 11, 2007, moved pursuant to Rule 41(a), SCRCF, to voluntarily dismiss without prejudice all parties named in the First Amended Complaint, filed October 31, 2006, except for the seven named Plaintiffs and the seven Defendants from which those Plaintiffs purchased a vehicle.¹

A hearing was held before this Court on November 30, 2007, on Plaintiffs' motion to voluntarily dismiss certain Defendants and Defendants' motions to reconsider. Numerous lawyers for Plaintiffs and Defendants were present, with A. Camden Lewis presenting the Plaintiffs' motion and arguments and James Y. Becker, Bradford N. Martin and Steven W. Hamm presenting Defendants' motions and arguments.

This case is related to two other cases before this Court: Janet L. West-Cox et al. v. Cale Yarborough Honda, Inc. et al., Case No. 2007-CP-02-1154 (Complaint filed in Aiken County on

¹ The eighth named Plaintiff in the First Amended Complaint, Alison Dannert, has settled her claims against Defendant CarMax Auto Superstores, Inc., and is no longer involved in this litigation.

Aug. 20, 2007) (the West-Cox case); Howard Adams et al. v. Action Ford Mercury, Inc. et al., Case No. 2007-CP-02-1232 (Complaint filed in Aiken County on Sept. 4, 2007) (the Adams case).

II. PLAINTIFFS' MOTION TO VOLUNTARILY DISMISS CERTAIN DEFENDANTS

The majority of Defendants apparently have consented to Plaintiffs' Rule 41(a) motion to dismiss. Some Defendants have opposed this motion. I find that granting Plaintiffs' Rule 41(a) motion to dismiss serves judicial economy and is in accord with Rule 1, SCRPC, and thus, Plaintiffs' motion is granted. All Defendants in this case are hereby dismissed without prejudice pursuant to Rule 41(a)(2), SCRPC, except the following:

1. Heather Herron v. Land Rover of Columbia;
2. Natalie Armstrong v. Galeana Chrysler Jeep, Inc.;
3. Michael Ritz v. Taylor Investments, Inc. d/b/a Taylor Toyota, Inc.;
4. Julie Freeman v. J.L.H. Investments, d/b/a Hendrick Honda of Easley;²
5. Christine Watts v. Sonic Automotive 2752 Laurens Rd., Greenville, Inc. d/b/a Century BMW;
6. Michael Blease v. Dick Dyer & Associates, Inc.; and
7. Michael Watts v. Toyota of Greenville, Inc.

Defendants, including those which have consented to Plaintiffs' Rule 41(a) motion to dismiss and those which have not, have moved or reserved any and all rights they may have to seek the payment of their attorney's fees and costs by Plaintiffs. Defendants also have reserved any and all rights they may have with regard to any applicable statute of limitations if Plaintiffs

² The First Amended Complaint incorrectly asserts that Ms. Freeman purchased a vehicle from Rick Hendrick Honda Cars Co.

should refile this lawsuit against them. I express no opinion on these motions or issues and reserve ruling on them until a later date. Before I rule on such motions, the parties will be allowed to prepare memoranda and affidavits in support of or opposition to the motions, and present their arguments at a hearing.

III. DEFENDANTS' MOTIONS TO RECONSIDER

I grant Defendants' motions to reconsider in part and modify my earlier ruling on the issue of a Plaintiff's standing to sue Dealers with whom he or she did not transact any business. I deny Defendants' motions to reconsider in part, reaffirming my earlier rulings on the issues of the applicability of Rule 23, SCRPC. I reserve any rulings on the issues of improper joinder and venue until a later time.

A. STANDARD FOR DECIDING MOTION TO DISMISS

A trial judge may dismiss a claim when the defendant demonstrates the plaintiff's failure to state facts sufficient to constitute a cause of action in the pleadings filed with the court. Rule 12(b)(6), SCRPC. When considering the motion to dismiss for failure to state a cause of action, the trial court must base its ruling solely upon the allegations made on the face of the complaint. Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999). If the facts and inferences drawn from the facts alleged in the complaint would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a cause of action is improper. Brown v. Leverette, 291 S.C. 364, 353 S.E.2d 697 (1987). When it is determined that a plaintiff does not have standing to prosecute, the court must dismiss the action. Brock v. Bennett, 313 S.C. 513, 519, 443 S.E.2d 409, 413 (Ct. App. 1994).

DAE
/K

B. STANDING

In my Order filed August 1, 2007, denying Defendants' motions to dismiss, I ruled that the First Amended Complaint sufficiently pled facts supporting standing of the Plaintiffs to proceed under the three causes of action in the First Amended Complaint, and that at this stage of the proceeding, there were sufficient allegations of civil conspiracy in the First Amended Complaint to avoid dismissal. I now reconsider and clarify my ruling on the issue of standing, reversing it to a limited extent.

Defendants' motion to dismiss is granted with regard to a named Plaintiff's claims against "no-sale Defendants," i.e., Defendants with which a named Plaintiff did not transact any business. Otherwise, Defendants' motion to dismiss on this ground is denied.

In short, I conclude that a named Plaintiff has standing to pursue all three causes of action, on behalf of himself or others, against the Defendant from which that particular Plaintiff purchased a vehicle. However, a named Plaintiff does not have standing to sue, on behalf of himself or others, any Defendant with which he did not transact any business. A named Plaintiff may later gain standing to sue Defendants with which a named Plaintiff did not transact any business by presenting evidence sufficient to create a genuine issue of material fact that particular Defendants conspired on the charging of the closing fee with the Defendant from which the named Plaintiff purchased a vehicle.

Standing is a "fundamental requirement for instituting an action," without which "[n]o justiciable controversy is presented." Brock v. Bennett, 313 S.C. 513, 519, 443 S.E.2d 409, 412-13 (Ct. App. 1994). As a result, upon determining a plaintiff has no standing to prosecute a cause of action, the court must dismiss the action. Id.

To have standing, a party must prove all elements that constitute the “irreducible constitutional minimum of standing”:

First, the plaintiff must have suffered an injury in fact – an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of – the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court. Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Sea Pines Assn. for the Protection of Wildlife, Inc. v. S.C. Dept. of Nat. Resources, 345 S.C. 594, 601, 550 S.E.2d 287, 291 (2001) (internal quotes and ellipses omitted). An injury in fact is a particularized harm that affects the plaintiff in a personal and individual way. Id. at 602, 550 S.E.2d at 292. Plaintiffs bear the burden of demonstrating each of the three elements. Sea Pines, 345 S.C. at 601, 550 S.E.2d at 291.

A plaintiff may not sue a defendant with whom he or she has had no dealings because the law precludes a plaintiff from suing a defendant “unless the plaintiff has suffered an injury at the hands of the defendant.” Gardner v. S.C. Dept. of Revenue, 353 S.C. 1, 23 n.14, 577 S.E.2d 190, 201 n.14 (2003). In Blum v. Yaretsky, 457 U.S. 991 (1982), the United States Supreme Court explained that

[i]t is not enough that the conduct of which the plaintiff complains will injure *someone*. The complaining party must also show that he is within the class of persons who will be concretely affected. Nor does a plaintiff who has been subject to injurious conduct of one kind possess by virtue of that injury the necessary stake in litigating conduct of another kind, although similar, to which he has not been subject.

Id. at 999 (emphasis in original).

In the present case, when considering solely the allegations made on the face of the First Amended Complaint, each named Plaintiff has sustained no injury from any of the Dealers with which he or she did not conduct any business, and he or she is not in immediate danger of a

direct injury from any of these Dealers. A named Plaintiff cannot establish standing because there simply is no causal connection between the injury alleged (a closing fee illegally charged by a Dealer that sold a vehicle to an individual Plaintiff) and the challenged actions of the other Dealers (which did not sell a vehicle to Plaintiff). The injury suffered by each named Plaintiff is fairly traceable to the challenged action of only the Dealer from which he or she bought a car, not every other Dealer in the state. A decision in the named Plaintiff's favor would not redress the injuries allegedly suffered by people who bought vehicles from other, unrelated Dealers. Furthermore, each named Plaintiff has a personal stake in an action only against the Dealer with which he or she did transact business. The mere fact that other Dealers may charge a closing fee simply does not give Plaintiffs standing to sue every Dealer in the state that charges such a fee.

Accordingly, a named Plaintiff does not have standing to sue, on behalf of himself or others, any Defendant from which a Plaintiff did not purchase a vehicle or transact any business. Stated conversely, a named Plaintiff who alleges he or she has been charged an illegal motor vehicle closing fee has standing to sue, on behalf of himself or others, only the Defendant which sold a vehicle to that particular Plaintiff. As explained further in Section E below, a named Plaintiff may gain standing to sue other Defendants with which he or she did not transact any business if that Plaintiff, during discovery, obtains evidence sufficient to raise a genuine issue of material fact on whether certain Defendants engaged in a civil conspiracy with regard to the charging of a closing fee.

2. Impact of S.C. Code Ann. § 56-15-110(2) on standing

South Carolina Code Ann. § 56-15-110(2) (2006) does not confer standing for Plaintiffs to sue Dealers with which they did not conduct any business. Under § 56-15-110(1), "any person *who shall be injured in his business or property* by reason of anything forbidden in this

chapter may sue therefor [sic] in the court of common pleas.” (Emphasis added.) This subsection simply gives an injured person a right to sue a Dealer with which he or she did business for damages, but in no way indicates that person may sue every other Dealer in South Carolina. To be liable under this provision, a Dealer must have participated in wrongdoing against a Plaintiff who bought a vehicle from that Dealer. Jackson v. Speed, 326 S.C. 289, 302, 486 S.E.2d 750, 756 (1997); Rowe v. Hyatt, 321 S.C. 366, 468 S.E.2d 649 (1996). The named Plaintiffs were not injured in their person or property by dealers with which they did no business. Therefore, Plaintiffs have no claim under § 56-15-110(1) against those Dealers with which they did no business.

This ruling is consistent with the South Carolina Supreme Court’s decision in Gardner v. S.C. Dept. of Revenue, 353 S.C. 1, 577 S.E.2d 190 (2003), in which the plaintiffs brought an action for violations of the South Carolina Debt Setoff Act and, like the Plaintiffs in this case, they sued defendants with which they had not conducted any business. The plaintiffs alleged that public agencies which collected debts by seizing an individual’s state income tax refund under the Debt Setoff Act had failed to comply with the Act’s notice provisions. The plaintiffs sued defendant class members that had *not* collected debts from them, but had collected debts from other persons using the Act. The Supreme Court held that the plaintiffs could not sue persons who did *not* collect debts from them and at whose hands they had suffered no injury. Gardner, 353 S.C. at 23 n.14, 577 S.E.2d at 201 n.14.

3. Impact of civil conspiracy claim on standing

The mere assertion of a civil conspiracy cause of action does not confer standing on Plaintiffs to sue Dealers with which they did not transact business. Any use of the conspiracy

allegation to circumvent standing requirements would involve applying the “juridical links doctrine.”

The South Carolina Supreme Court has expressly rejected the “juridical links” doctrine, finding that it runs counter to previous decisions that a plaintiff may not sue a defendant unless the plaintiff has suffered an injury at the hands of the defendant. Gardner, 353 S.C. at 23 n.14, 577 S.E.2d at 201 n.14; Edisto Fleets, Inc. v. S.C. Tax Commn., 256 S.C. 350, 182 S.E.2d 713 (1971) (plaintiff cannot maintain a class action where record indicates he was not directly harmed by defendant’s actions); Furman Univ. v. Livingston, 244 S.C. 200, 136 S.E.2d 254, 256 (1964) (only a taxpayer directly affected by erroneously paying taxes has a right to seek a refund).

Given the Supreme Court’s unconditional rejection of the juridical links doctrine, Plaintiffs cannot now rely on a conspiracy allegation to circumvent the standing requirements. Plaintiffs therefore lack standing at this time to bring any cause of action against Dealers with which they did not transact any business.

4. Impact of declaratory judgment action on standing

The mere assertion of a declaratory judgment action does not confer standing on Plaintiffs to sue Dealers with which they did not transact business.

The Declaratory Judgment Act provides:

[a]ny person interested under a deed, will, written contract or other writings constituting a contract or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

S.C. Code Ann § 15-53-30 (2006). Despite the Act’s “broad language, it has limits.” Sunset Cay, LLC v. City of Folly Beach, 357 S.C. 414, 423, 593 S.E.2d 462, 466 (2004). An

adjudication that “would not settle the legal rights of the parties would only be advisory in nature and, therefore, would be beyond the intended purpose and scope of [the Act.]” Id.

To state a cause of action under the Declaratory Judgment Act, a party “must demonstrate a justiciable controversy.” Id. A justiciable controversy exists “when a concrete issue is present, there is a definite assertion of legal rights and a positive legal duty which is denied by the adverse party.” Graham v. State Farm Mutual Ins. Co., 319 S.C. 69, 71, 459 S.E.2d 844, 845 (1995). Additionally, in declaratory judgment actions “[t]he interest of the parties . . . to the subject matter of the controversy must be more than merely general. It must be a substantial, direct, and legally protected present interest in the relief sought.” Quinn v. City of Columbia 303 S.C. 405, 407-408, 401 S.E.2d 165, 167 (1991) (holding that subdivision residents lacked standing under the Declaratory Judgment Act to challenge the city’s annexation of the subdivision because the residents did not own real property in the subdivision and, therefore, had no “legally protected present interest”).

Because there was no transaction or interaction between the named Plaintiffs and Dealers with which they did no business, Plaintiffs’ legal interest with respect to such dealerships is neither concrete nor legally protected and any declaratory judgment would be merely advisory in nature. Plaintiffs’ declaratory judgment cause of action is, therefore, an impermissible basis to establish standing against a Dealer with which they did not transact any business.

5. Impact of public interest exception

To establish public interest standing, the reported cases indicate that a government entity or public actor must be a defendant. See e.g. Davis v. Richland County Council, 372 S.C. 497, 642 S.E.2d 740 (2007) (holding county recreation commission members had public interest standing in suit against county regarding the constitutionality of an act changing the authority to

appoint commission members, and citing several cases involving government entities as the defendant). In this case, there is no dispute with governmental entities, public officials, or public bodies. Instead, the lawsuit is an action by private individual plaintiffs against private corporate defendants. Given the well-established general principles on standing outlined above, I find that the public interest exception in this case should not be applied to allow a named Plaintiff to sue Defendants with which that Plaintiff did not transact any business.

C. APPLICABILITY OF RULE 23

Defendants assert that the First Amended Complaint should be dismissed because Plaintiffs have failed to plead the requirements of Rule 23, SCRCF, or, in the alternative, Plaintiffs must be required to plead and prove the requirements of Rule 23 during the liability or litigation phase of this case.

In my Order filed August 1, 2007, denying Defendants' motions to dismiss, I ruled that South Carolina Code Ann. § 56-15-110(2) (2006) creates a substantial or substantive right. I further found that Act No. 100 of 1985, 1985 S.C. Acts 277, which enacted the South Carolina Rules of Civil Procedure, did not apply to or affect substantive rights. The 1985 Act did not repeal Section 56-15-110(2). Therefore, Plaintiffs are not required to plead and prove the requirements pertaining to class actions contained in Rule 23, SCRCF.

I have considered Defendants' arguments to reconsider my ruling regarding Rule 23, SCRCF. I reaffirm my ruling as set forth in my Order filed August 1, 2007 and deny Defendants' motions to dismiss and to reconsider my earlier ruling on this ground. Plaintiffs are not required to plead and prove the requirements pertaining to class actions contained in Rule 23 SCRCF during the liability or litigation phase of this case.

D. IMPROPER JOINDER AND VENUE

Defendants contend that the First Amended Complaint should be dismissed against all Defendant dealerships on the ground of improper joinder pursuant to Rules 12(b)(6) and 20(a), SCRCF. Defendants assert that Plaintiffs should be required to refile their Complaints individually in the county of proper venue, i.e., where a given Defendant has its principal place of business. In my Order filed August 1, 2007, denying Defendants' motions to dismiss, I did not explicitly rule on Defendants' motions relating to improper joinder and venue.

I have considered the parties' arguments on this issue, including the arguments made in the various memoranda and hearings listed above. These motions in this case now pertain only to seven Plaintiffs and seven Defendants, given my decision to grant Plaintiffs' motion to voluntarily dismiss all no-sale Defendants in the First Amended Complaint. Accordingly, I will refrain from ruling on these issues until after discovery is completed. Defendants may refile or renew their motions related to dismiss for improper venue and improper joinder at that time.

E. CIVIL CONSPIRACY CLAIM

TAPE # 12
Defendants assert that Plaintiffs have failed to adequately plead their civil conspiracy claim and so this claim should be dismissed from the First Amended Complaint in its entirety. In my Order filed August 1, 2007, I rejected Defendants' arguments and ruled that Plaintiffs have pleaded a civil conspiracy claim sufficiently to survive a motion to dismiss under Rule 12(b)(6), SCRCF. I reaffirm that ruling, but clarify its extent with regard to Defendants with which the named Plaintiffs did not transact business.

As explained in Section III(B)(3) above, a named Plaintiff may not rely on the mere assertion of an adequately pleaded civil conspiracy claim to obtain standing against no-sale Defendants, i.e., Dealers with which a given Plaintiff did not transact any business. However,

each named Plaintiff has standing to bring and has adequately pleaded in the First Amended Complaint a civil conspiracy claim against the Defendant from which that Plaintiff purchased a vehicle.

If Plaintiffs obtain sufficient evidence during the discovery process to create a genuine issue of material fact on the existence of a civil conspiracy among certain Defendants, then a named Plaintiff at that point would gain standing to sue, on behalf of himself or others, those particular Defendants which allegedly conspired on the charging of a closing fee with the Defendant from which the named Plaintiff purchased a vehicle. The named Plaintiff would not gain standing to sue every other Defendant in the state with which he or she did not transact any business, but only those allegedly involved in a conspiracy with the Defendant from which the Plaintiff did purchase a vehicle. If Plaintiffs do not obtain sufficient evidence of a civil conspiracy, dismissal of this claim pursuant to a summary judgment motion may be appropriate. Defendants may file summary judgment motions related to dismissal of the civil conspiracy claim after discovery is completed and before trial begins. I express no opinion on the validity of any civil conspiracy claim or whether dismissal of the claim ultimately may be appropriate.

F. ARBITRATION AND OTHER GROUNDS FOR DISMISSAL

Numerous Defendants have filed various motions related to arbitration agreements, including motions to dismiss the Complaint for lack of jurisdiction or to compel arbitration based on arbitration clauses found in buyer's orders or invoices and other documents related to the sale or financing of a vehicle. At the hearing on November 30, 2007, I heard arguments from Plaintiff Christine Watts and Defendant Sonic Automotive 2752 Laurens Rd., Greenville, Inc. d/b/a Century BMW, related to the arbitration agreement allegedly signed by Ms. Watts when she purchased a vehicle. I allowed those parties more time to conduct additional discovery,

including depositions, pertaining solely to issues related to the arbitration agreement. No ruling has been issued on the arbitration motion in Ms. Watts' case.

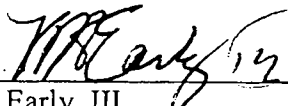
No other arbitration motions from any parties have been heard by the Court. As I previously have stated or ruled at various hearings, no party has waived any substantive or procedural rights or arguments relating to arbitration agreements, including the right to move to compel arbitration. See Green Tree Fin. Corp. v. Bazzle, 539 U.S. 444 (2003). Defendants have been careful throughout this litigation to preserve all rights related to the enforcement of arbitration agreements, as acknowledged on several occasions by Plaintiffs and this Court.

Furthermore, certain Defendants have asserted numerous other arguments and grounds for dismissal in various motions to dismiss and other pleadings filed in response to the Complaint. These other issues have not yet been considered by the Court and are expressly reserved for later review and consideration.

G. DISCOVERY

Discovery has been stayed while the parties and the Court addressed the preliminary issues contained in this Order. Discovery may proceed in this case after the filing of this Order.

IT IS SO ORDERED.



Doyet A. Early, III
Judge of the Second Judicial Circuit

January 31, 2008

IN THE COURT OF COMMON PLEAS

CASE NO. 06-CP-02-1230

MC _____ JR _____

Heather Herron

Dick Dyer, et al

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other- _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court:

Dated at _____, South Carolina, this _____ day of _____, 20____.

PRESIDING JUDGE

This judgment/order was entered/filed on the 4 day of Feb, 2008, and a copy mailed/hand-delivered/boxed this 4 day of Feb, 2008 to attorneys of record or to parties (when appearing pro se) as follows:

see attached

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By: Heather Herron
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Spartanburg, SC 29301

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730 Chesnee HWY
Gaffney, SC 29341-2711

Lawrence Chevrolet Pontiac
299 HWY 601 North
Pageland, SC 29728

Kia of Florence
3704 East Palmetto Street
Florence, SC 29506

Service Motor Company Inc
160 East Main Street
Pamplico, SC 29583

Kia of Myrtle Beach
1297 HWY 501
Myrtle Beach, SC 29577

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4855 Hwy 501
Myrtle Beach, SC 29579

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Newberry, SC 29108

Honda Cars of Columbia
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Columbia, SC 29210

Joe Gibson Mitsubishi
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Kia of Greer
504 East Wade Hampton Blvd.

Greer, SC 29651

Toyota of Greer
955 East Wade Hampton Blvd.
Greer, SC 29651

Union Chrysler Dodge Jeep Inc.
1246 South Duncan By Pass
Union, SC 29379

Raceway Chrysler Jeep Dodge, Inc.
900 East Bobo Newsom Hwy.
Hartsville, SC 29551

Raceway Ford
701 South Governor Williams Hwy
Darlington, SC 29532

Raceway Chevrolet Pontiac Buick GMC
410 West Main Street
Lake City, SC 29560

Saturn of Charleston
8261 Rivers Avenue
North Charleston, SC 29406

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Williston, SC 29853

Low Country Volkswagen
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Mount Pleasant, SC 29464

Victory Hyundai of Charleston
1940 Savannah Highway
Charleston, SC 29407

Tison Motor Company
710 Ewast Railroad Avenue South
Estill, SC 29918

H&H Chevrolet
7491 Kershaw Camden Highway
Kershaw, SC 29067

Spartanburg Dodge
1035 North Church Street
Spartanburg, SC 29303

Dunlap Johnson Chevrolet
919 East Liberty
York, SC 29745

Modern Classic Motors, Inc.
Margaret A. Rapp
355 W.M. Hilton Parkway
Hilton Head Island, SC 29926

Rodger Shiflett Ford, Inc.
Roger E. Shiflett
1577 Twin Bridge Road
Gaffney, SC 29341

Wilson Chrysler Dodge Jeep, Inc.
Hiram F. Wilson, Jr.
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Winnsboro, SC 29180

Floyd Motor Co. Inc.
Joe F. Boswell
211 Armour Street
Lake City, SC 29560

Heritage Lincoln Mercury, Inc.
P O Box 743937
Dallas, TX 75374

C. Thompson Automotive, Inc.
A Claude Thompson
1706 Montague Avenue
Greenwood, SC 29649

Boyle Toyota
Barnes Boyle, Jr.
320 N. Main St.
Sumter, SC 29150

Carolina Mazda, Inc.

830 N. Anderson Rd.
Rock Hill, SC 29730

Clinton Family Ford Lincoln Mercury Rock Hill
John R. Clinton
1884 Canterbury Glen Lane
Rock Hill, SC 29730-708

Atlantic Ford, LLC
R. Bradley Creger
5 Radcliffe St.
Charleston, SC 29403

Diamond Automotive Group
Alvin H. Shuman
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Conway, SC 29526

Elrod Pontiac/Buick/GMC, Inc.
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Lancaster, SC 29720

Crane Chevrolet Oldsmobile-Cadillac, Inc.
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Easley, SC 29640

Dickerson Motor Company
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Exhibit F

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN

Case No. 2006-CP-02-1230

Heather Herron, et al.,

Plaintiffs,

v.

Dick Dyer & Associates, Inc. et al.,

Defendants.

THIS is before me on the motion of all Plaintiffs for Declaratory Judgment asking the Court to issue a declaratory judgment against all Defendants interpreting S.C. Code Ann. § 37-2-307 (the "Closing Fee Statute" or "Statute"), and declaring that various actions or practices constitute violations of the Closing Fee Statute, and section 56-15-30(a) of the Regulation of Manufacturers, Distributors and Dealers Act, S.C. Code § 56-15-10, *et seq.* ("Dealers Act"). A hearing was held on Plaintiffs' Motion before this Court on November 23, 2009.

Defendants objected to proceeding forward with the Plaintiffs' Motion for various reasons including improper joinder and improper venue. A ruling on these issues has previously been reserved until after the completion of discovery. There is no dispute that venue is proper as to Defendant Taylor Toyota, and therefore, with the agreement of the Plaintiffs, the Court proceeded with hearing the motion of Plaintiff Michael Ritz against Defendant Taylor Toyota ("Plaintiff's Motion"). Although Plaintiff's Motion requests that the Court issue a number of

declarations regarding the meaning of various sections of the Closing Fee Statute and whether particular actions by Defendants violated either the Closing Fee Statute and the Dealers' Act, at the

STATE OF SOUTH CAROLINA
I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina, do hereby certify that the foregoing is a true and correct copy of the original documents which have been filed in my office this

JAN 11 2010

Liz Godard
C.C.P. & G.S., Aiken County, S.C.
Sharon Jansen
Deputy Clerk

1-11-10
Liz Godard
C.C.P. & G.S.
Sharon Jansen 11:55
Deputy Clerk

hearing, Plaintiff narrowed the scope of his request and asked the Court only to interpret two terms used in the Closing Fee Statute, namely the terms “closing fee” and “advertised price.”

Defendants objected to Plaintiff's request, arguing that despite the title of his motion, Plaintiff was really asking for the Court to issue an advisory opinion. Specifically, Defendant argued that a determination of the definitions of “closing fee” and “advertised price” would not settle the legal rights of any party involved, and thus the ruling would only be advisory in nature. Counsel for Defendant Taylor Toyota also objected on the grounds that these more narrow issues had not yet been fully briefed and were not yet ripe for argument.

The South Carolina Declaratory Judgments Act states that “Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed.” S.C. Code Ann. § 15-53-20. I find that the Plaintiff's request that I define the terms “closing fee” and “advertised price” constitutes a request for a declaration for the purposes of the Declaratory Judgments Act and that these issues are ripe for determination by the Court and issue this opinion accordingly.

On June 7, 2003, Plaintiff Ritz purchased a 2003 Toyota Tacoma Truck from Defendant Taylor Toyota. Mr. Ritz's invoice provides in part:

DAE # 2

MODEL NO.	STOCK NO.
7188	2303
1. VEHICLE PRICE	22818.33
2. PROCUREMENT/DELIVERY FEE	277.00
3. SECURE ETCH	N/A
4. TOTAL SELLING PRICE	23095.33
5. GROSS VEHICLE ALLOWANCE	N/A
6. TRADING DIFFERENCE	23095.33
7. STATE & LOCAL SALES TAXES	1616.67
8. LICENSE TAG & TITLE FEE	23.00
9. SUBTOTAL	24735.00
10. PAYOFF ON TRADE-IN	N/A
11. TOTAL	24735.00
12. PARTIAL PAYMENT	N/A
13. SUBTOTAL	24735.00
14. SERVICE CONTRACT	N/A
15. CASH ON DELIVERY	3750.00
16. BALANCE/AMT. FINANCED	20985.00

It is undisputed that the \$277.00 "PROCUREMENT/ DELIVERY FEE"¹ shown above is a closing fee as referenced in S.C. Code Ann. §37-2-307.² Mr. Ritz paid the \$277.00 PROCUREMENT/ DELIVERY FEE to Taylor Toyota.

On October 31, 2006, Plaintiff Ritz filed an Amended Complaint in this matter. In the Amended Complaint, Plaintiff Ritz alleges that the \$277 PROCUMENT/DELIVERY FEE charged by Defendant Taylor Toyota violated S.C. Code Ann. §37-2-307 and the Motor Vehicle Dealers Act, S.C. Code Ann. §56-15-10 et. seq. ("Dealers Act"). Plaintiff Ritz alleges that

¹ On the registration form filed with the State Department of Consumer Affairs (hereinafter "the Department of Consumer Affairs") and signed by Taylor Toyota; the form showed the Closing Fees to be charged "will not exceed \$400." See Exhibit I to the Rule 30(b)(6) deposition of Taylor Toyota, bates 4669. Taylor Toyota asserts the form covers the "PROCUREMENT/ DELIVERY FEE" of \$277.00

² In the Rule 30(b)(6) deposition of Taylor Toyota, the parties used the terms administrative fees and closing fees interchangeably to describe the \$277 PROCUREMENT/DELIVERY FEE charged to Mr. Ritz. See eg. p. 6, ll. 24-25 and p. 39, ll. 4-21.

DAE #3 3

Defendant Taylor Toyota failed to include the closing fee in the advertised price of his car and that Defendant Taylor Toyota impermissibly charged a closing fee for an improper purpose (for profit and not for reimbursement of closing costs). Plaintiff Ritz alleged a cause of action for violation of the Dealers Act and a cause of action requesting a Declaratory Judgment interpreting S.C. Code Ann. §37-2-307 and the Dealers Act.

Defendant Taylor Toyota denies that it violated S.C. Code Ann. §37-2-307 or the Dealers Act. Defendant Taylor Toyota maintains that Plaintiff Ritz's vehicle did not include an "advertised price" as defined in S.C. Code Ann. §37-2-307 and that the closing fee charged was for a permissible purpose.

On May 28, 2009, Plaintiff Ritz filed a Motion requesting the Court issue the Declaratory Judgment. As stated by Plaintiff's counsel at the hearing, Plaintiff Ritz simply seeks an interpretation of the words "closing fee" and "advertised price" as the words appear in S.C. Code Ann. §37-2-307.

The Closing Fee Statute was enacted in 2000, and made a part of the South Carolina Consumer Protection Code, S.C. Code § 37-1-101, *et seq.* ("SCCPC"). The Closing Fee Statute, in its entirety, states as follows:

Every motor vehicle dealer charging closing fees on a motor vehicle sales contract shall pay a one-time registration fee of ten dollars during each state fiscal year to the Department of Consumer Affairs. The closing fee must be *included in the advertised price* of the motor vehicle, *disclosed on* the sales contract, and *displayed in* a conspicuous location in the motor vehicle dealership.

Id. § 37-2-307 (emphasis added).

The Closing Fee Statute authorizes motor vehicle dealers to register the amount of the fee with the Department of Consumer Affairs (hereinafter the "Department") and charge closing

DAE #4

fees to consumers. The Statute imposes three other requirements on dealers charging closing fees:

- (1) the fee must be *disclosed to* the consumer on the sales contract or invoice;
- (2) some notice of the fee must be *displayed in* a conspicuous place in the dealership; and
- (3) the fee must be *included in* the advertised price of the motor vehicle.

The Closing Fee Statute does not further define the terms “closing fee” or “advertised price.”

The Department is charged with the administration of the Closing Fee Statute, and the Department also monitors and enforces certain advertising guidelines with respect to motor vehicle dealers and other creditors. As such, in interpreting the Closing Fee Statute, it is appropriate for the Court to review and give deference to any interpretations of the Statute by the Department. *See Faile v. S.C. Employment Sec. Comm'n*, 267 S.C. 536, 540, 230 S.E.2d 219, 221-22 (1976) (“The construction of a statute by the agency charged with executing it is entitled to the most respectful consideration and should not be overruled without cogent reasons.”); *Lexington Law Firm v. Dep't of Consumer Affairs*, 2009 S.C. LEXIS 133 (S.C. May 12, 2009) (“The Court should defer to the [Department of Consumer Affairs'] findings where there is no compelling reason to reject it.”). Because the Department is charged by the Legislature with regulating closing fees and dealers' compliance with the Closing Fee Statute, it is in the best position to interpret the Statute's meaning. In fact, the SCCPC provides that if an entity regulated under the SCCPC (including motor vehicle dealers) acts in “conformity with any written order, opinion, interpretation or statement” of the Department, then that entity shall be free from penalty. S.C. Code Ann. § 37-6-506(3).

DAE #5

The Department has issued an interpretation of the Closing Fee Statute in Administrative Interpretation 2.307.0101, dated June 7, 2001 (the "Administrative Interpretation" or "Interpretation"). This is the only written interpretation of the Closing Fee Statute by the Department. (Deposition of Danny Collins ("Collins Depo.") p. 25, ll. 19-24.) The Administrative Interpretation explains the procedure for complying with the Closing Fee Statute, and explains how dealers can comply with the registration and disclosure requirements. The Interpretation states, in pertinent part, as follows:

As clearly indicated from the terminology of Section 37-2-307, from the effective date of that section (June 30, 2000), any dealer choosing to assess a closing or documentation fee must: 1.) File a registration fee of ten dollars (\$10.00) with the Department each state fiscal year prior to the assessment of a closing fee; 2.) Disclose the closing fee on its sales contract; 3.) Display in a conspicuous place in the dealership a statement that indicates the closing fee may be charged; and 4.) If the closing fee is charged, and the vehicle is advertised, the closing fee must be included in the advertised price so that consumers cannot be unfairly surprised by having the closing fee added on after the acceptance of an advertisement's terms. In the absence of any of these requirements, the charging of a closing or other similar fee is an excess charge for Consumer Protection Code purposes.

In discussing the Statute's requirement that dealers pay a registration fee to the Department and display a notice in the dealership that the dealer charges a closing fee to consumers, the Interpretation states further:

While the [Statute] does not directly say so, the registration fee is referred to as a registration fee and not merely as a fee, with the apparent implication that the dealership seeking to charge closing fees should likewise file or register the disclosure it seeks to use. The attached disclosure may be used for this purpose. It is not required that the dealers use the attached form, but if they do, they will be deemed compliant if the form is properly filled out. Forms considered to be deceptive or to misstate the law will be rejected by the Department.

(Interpretation at p. 2.)

The Interpretation also states that "[t]he [Statute] does not specify the content of the disclosure other than to indicate that it must be displayed in a conspicuous place." (*Id.* at p. 3.)

DAE #6 6

The "attached disclosure" referenced in the Interpretation is a form issued by the Department and titled "Notice—Closing Fees" ("Registration Form") that all dealers involved in this action used throughout the relevant time period to register their fees with the Department and display at their dealership. The Registration Form states, in pertinent part:

This Dealership charges closing fees as a means of reimbursing it for certain overhead costs such as document retrieval and document preparation. It is a charge that is permitted but not required by law. The full cash price charged at any dealership depends on many factors, including all products and services bought with the vehicle.

(*Id.* at p. 4.)

The Registration Form was changed by the Department in the spring of 2008, prior to the registration renewal period of July 1st of that year,³ and now states as follows:

This dealership charges closing fees on a motor vehicle sales contract. It is a charge that is permitted but not required by law (Section 37-2-307). The full cash price charged at any dealership depends on many factors, including all products and services bought with the vehicle.

(http://www.sconsumer.gov/licensing/mv_closing_fee.htm.)

Other than as previously discussed herein, the Interpretation does not further define the terms "closing fee" or "advertised price."

Danny Collins, the Deputy for Regulatory Enforcement of the Department, testified that the 2001 Interpretation is the Department's official position as to the Closing Fee Statute and as long as a dealer has complied with the Interpretation, a dealer would not be found by the Department to be in violation of the Closing Fee Statute. As a part of its regular enforcement activities, the Department regularly reviews and stamps approval of automobile dealers' closing

³ In his deposition, Mr. Collins testified that wording change in the Registration Form did not change the Department's interpretation of the closing statute in any manner. (Collins Depo. p. 21, ll. 15-21; p. 91, ll. 16-21.)

DAE #7 7

fee registration forms. (Collins Depo. pp. 37-38, p. 94, ll. 3-5.) The Department also enforces advertising guidelines relating to advertising by automobile dealers. (*Id.* at p. 10, ll. 14-20.)

Section 37-1-102, which sets forth the purposes of the South Carolina Consumer Protection Code, declares that it shall be liberally construed and applied to promote its underlying purposes and policies. S.C. Code Ann. § 37-1-102(1). One of the primary purposes of the Consumer Protection Code is to “protect consumer buyers, lessees, and borrowers against unfair practices by some suppliers of consumer credit, having due regard for the interests of legitimate and scrupulous creditors.” *Id.* § 37-1-102(2)(d).

Plaintiff has asked the Court to determine the meaning of two terms as used in S.C. Code Ann. §37-2-307: “closing fee” and “advertised price.”

When interpreting a statute, the court’s primary function is to ascertain the intention of the Legislature. *Plowman v. Bagnal*, 316 S.C. 283, 285, 450 S.E.2d 36, 37 (1994). A statutory provision should be given a reasonable construction consistent with the purpose and policy expressed in the statute. *Jackson v. Charleston County Sch. Dist.*, 316 S.C. 177, 181, 447 S.E.2d 859, 861 (1994). Where, as here, a court is confronted with an undefined term in a statute, the term must be interpreted in accordance with its usual and customary meaning. *Branch v. City of Myrtle Beach*, 340 S.C. 405, 410, 532 S.E.2d 289, 292 (2000). Words must also be construed without resorting to subtle or forced constructions which limit or expand the statute’s operation. *SCANA v. S.C. Dept. of Revenue*, 384 S.C. 388, 392, 683 S.E.2d 468, 470 (2009). Finally, terms must be construed in context. *S. Mut. Church Ins. Co. v. S.C. Windstorm & Hail Underwriting Ass’n*, 306 S.C. 339, 342, 412 S.E.2d 377, 379 (1991).

The first term at issue is “closing fee” as used in S.C. Code Ann. §37-2-307. This term appears twice in the statute, which provides:

DTE #8

Every motor vehicle dealer charging closing fees on a motor vehicle sales contract shall pay a one-time registration fee of ten dollars during each state fiscal year to the Department of Consumer Affairs. The closing fee must be included in the advertised price of the motor vehicle, disclosed on the sales contract, and displayed in a conspicuous location in the motor vehicle dealership.

(Emphasis added).

Plaintiff Ritz contends that a “closing fee” is a pre-determined set fee for the reimbursement of closing costs such as document retrieval and document preparation.

Defendant Taylor Toyota contends that there is no “limit to the purposes for which closing fees can be charged.”⁴ Taylor Toyota further argues that a “closing fee” does not have to be for reimbursement or related in any way to an automobile closing and may include dealer profit.

This statute authorizes a motor vehicle dealer to charge “closing fees.” Use of the word “closing” must be given some meaning. *See Hartford Acc. and Indem. Co. v. Lindsay*, 273 S.C. 79, 85, 254 S.E.2d 301, 304 (1979)(full effect must be given to each portion of a statute, and a court should avoid interpretation that renders a portion meaningless).

I first look to the plain and ordinary meaning of the word “closing” in relation to the sale of a motor vehicle. Black’s Law Dictionary defines “closing” as “the final meeting between the parties to a transaction, at which the transaction is consummated...” Black’s Law Dictionary (8th ed. 2004). Closing occurs at the time the purchaser fills out the motor vehicle sales contract and other paperwork necessary to complete a purchase. Accordingly, I find that a “closing fee” as used in S.C. Code Ann. §37-2-307 starts with a fee associated with an automobile closing. I reject Taylor Toyota’s assertion that a “closing fee” does not have to be related to an automobile closing. This interpretation would render the word “closing” meaningless.

⁴Defendant Taylor Toyota’s Memorandum in Opposition to Motion for Declaratory Judgment, page 14, states “the Closing Fee Statute does not limit the purposes for which closing fees can be charged.”

DAE # 9 9

Defendant Taylor Toyota's contention that there is no "limit to the purposes for which closing fees can be charged"⁵ is unreasonable in light of the purpose of the statute. "A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design and policy of the lawmakers." *Greenville Baseball v. Bearden*, 20 S.E.2d 813, 815 - 816 (1942). When S.C. Code Ann. §37-2-307 was enacted, it was included in the Consumer Protection Code. This indicates that S.C. Code Ann. §37-2-307 was enacted to protect consumers. Accordingly, I find that the statute should be construed to protect consumers.

Defendant Taylor Toyota's proposed interpretation that the fee is not limited and can be charged for any purpose does not protect consumers. Under Defendant Taylor Toyota's interpretation, dealers can charge a fee, call it a "closing fee" (document fee, processing fee or some other name associated with documentation for an automobile closing), and then use the fee solely to make a profit. This interpretation would authorize the dealers to charge a fee with a potentially misleading name. This interpretation does not protect consumers. I find this interpretation unreasonable in light of the statute's purpose of protecting consumers.

The more reasonable interpretation is that S.C. Code Ann. §37-2-307 authorizes the charging of "closing fees" which are for the reimbursement of set overhead costs arising from automobile closings such as document retrieval and document preparation. This interpretation protects consumers because it mandates that the charge is for the actual cost associated with a closing, which can be predetermined, and does not allow a dealer to name a fee a "closing fee" and then use the fee to make a hidden profit.

⁵ See Defendant Taylor Toyota's Memorandum in Opposition to Motion for Declaratory Judgment.

DAE # 10

Accordingly, I hereby find that a "closing fee" is a pre-determined set fee for the reimbursement of closing costs, such as document retrieval and document preparation.

The "closing fee" is not limited to document retrieval and document preparation; it may include other closing fees actually incurred from the consummation of the transaction. It cannot be arbitrarily set, unlimited or include dealer profit. The dealer may only charge the buyer closing fees that are actually incurred and are a necessity to the closing, thus reimbursing the dealer for actual closing fees incurred.

The second term at issue is "advertised price." The Fee Disclosure Statute provides, in its entirety, that:

[e]very motor vehicle dealer charging closing fees on a motor vehicle contract shall pay a one-time registration fee of ten dollars during each state fiscal year to the Department of Consumer Affairs. The closing fee must be included in the advertised price of the motor vehicle, disclosed on the sales contract, and displayed in a conspicuous location in the motor vehicle dealership.

S.C. Code Ann. § 37-2-307 (1976). The statute contains no definition of the term "advertised price." The court must therefore construe the statute to arrive at the appropriate definition.

Canons of statutory construction previously cited will be applied again.

The statute expressly requires every motor vehicle dealer charging closing fees to include the fee in the advertised price of the motor vehicle. S.C. Code Ann. § 37-2-307 (1976). This language indicates that: (1) the statute applies to motor vehicle dealers and (2) an advertisement of the price of a motor vehicle by a dealer must include the closing fee. It is therefore inferable that an advertised price is a price contained in an advertisement of a motor vehicle by a motor vehicle dealer.

The terms "advertise" and "advertising" have been variously defined. The American Heritage Dictionary defines advertising as "[t]he activity of attracting public attention to a

DAE#11

product or business, as by paid announcements in the print, broadcast or electronic media.” American Heritage Dictionary of the English Language (4th ed. 2000). Webster’s Third New International Dictionary (2002) defines “advertising” as “the action of calling something (as a commodity for sale, a service offered or desired) to the attention of the public esp. by means of printed or broadcast paid announcements.” *Id.* at 31. The Compact Oxford English Dictionary states that “advertise” means “[t]o present or describe (a product, service, or event) in a public medium so as to promote sales.” Compact Oxford English Dictionary (2005). Plaintiff Michael Ritz urges that the Court adopt the definition found in Black’s Law Dictionary:

[t]o advise, announce, appraise, command, give notice of, inform, make known, publish. To call a matter to the attention of the public by any means whatsoever. Any oral, written, or graphic statement made by the seller in any manner in connection with the solicitation of business and includes, without limitation... statements and representations made in a newspaper or on the radio or television or contained in any handbill, sign, catalog, or letter, or presented on or contained in any tag or label attached to or accompanying any merchandise.

Black’s Law Dictionary (6th ed. 1990).

Taken together, these definitions indicate that the plain and ordinary meaning of the term “advertising” and/or “advertisement” is: (1) a notice given by the seller of a product or service; (2) to the general public for the purpose of attracting customers; (3) by means of printed announcements in handbills, signs, catalogs, or letters or announcements paid by or on behalf of the seller in newspapers, radio, television, or electronic media. This definition is also supported by the construction given the statute by the Department of Consumer Affairs. Danny Collins, the Department’s Deputy for Regulatory Enforcement, testified that an advertisement is a display “to the public to try to attract attention.” (Collins Dep. at 6:23 to 7:1 and 123:3-7).

Applying the above definition, the Court specifically excludes “Monroneys” labels because they are statements made by the manufacturer and not the dealer.

DAE #12

The Court also concludes that it is improper to consider a negotiated price to be an advertised price. Statements about price made in the course of negotiations do not conform to the Court's findings of the meaning of the words "advertised price." They are made to an individual, rather than to the public.

Based on the foregoing and after full consideration of the issues herein, I hereby declare that:

1) A "closing fee" is a pre-determined set fee for the reimbursement of closing costs, such as document retrieval and document preparation, but only those actually incurred by the dealer and necessary to the closing transaction.

2) An "advertised price" is a notice given by the seller of a product or service to the general public for the purpose of attracting customers by means of printed announcements in handbills, signs, catalogs, or letters or announcements paid by or on behalf of the seller in newspapers, radio, television, or electronic media.

AND IT IS SO ORDERED.



The Honorable Doyet A. Early, III
Chief Administrative Judge
Second Judicial Circuit

January 11, 2010.

Aiken, South Carolina

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
IN THE COURT OF COMMON PLEAS**

JUDGMENT IN A CIVIL CASE

Heather Herron
Natalie Armstrong
Alison Dannert
Michael Ritz
Julie Freeman

CASE NO: 2006CP0201230

CARMAX AUTO SUPERSTORE
ACTION FORD-MERCURY IN
ADDY DODGE, INC.
ADDY'S HARBOR DODGE
ALTMAN LINCOLN-MERCURY

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

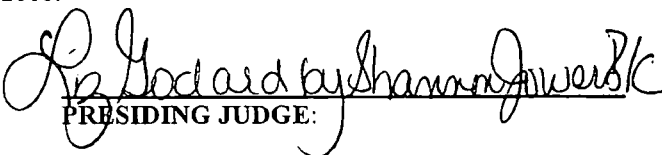
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

- See attached order. (Formal order to follow)
- Statement of Judgment by the Court:

Dated at Aiken, South Carolina, this 11th day of January, 2010.

Court Reporter:


ROBERT DAVID PROFFITT
 PRESIDING JUDGE:

This judgment was entered on the 11th day of January, 2010, and a copy mailed first class this 11th day of January, 2010, to attorneys of record or to parties (when appearing pro se) as follows:

Brady Ryan Thomas Lewis Babcock & Hawkins, LLP
 P.O. Box 11208 Columbia, SC 29211
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 Associates, Pa P.O. Box 10410 Greenville, SC 29602
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 29202

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Joseph Gregory Studemeyer Attorney at Law 1804 Bull St.
Columbia, SC 29211-2201

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Liz Godard - Clerk of Court

Exhibit G

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF PICKENS

Aiken County Case No. 2006-CP-02-1230
Pickens County Case No. 2012-CP-39-01554

Heather Herron, Natalie Armstrong,
Michael Ritz, Julie Freeman, Christine
Watts, Michael Blease and Michael Watts,
individually and for the benefit of all car
buyers who paid "administrative fees" as
described below to Dealers,

Plaintiffs,

v.

Dick Dyer & Associates, Inc.; Land Rover
of Columbia; Galeana Chrysler Jeep, Inc.;
Taylor Investments, Inc. d/b/a Taylor
Toyota, Inc.; J.L.H. Investments, d/b/a
Hendrick Honda of Easley; Sonic
Automotive, d/b/a Century BMW; and
Toyota of Greenville, Inc.



Defendants.

2013 FEB - 5 12: 24
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

**ORDER REGARDING PLAINTIFF JULIE FREEMAN'S
MOTION FOR A DECLARATORY JUDGMENT AS TO
DEFENDANT J.L.H. INVESTMENTS, LP, d/b/a HENDRICK HONDA OF EASLEY**

On or about May 28, 2009, all Plaintiffs filed separate motions for a declaratory judgment as to each respective Defendant in the above-captioned action ("Declaratory Judgment Motion(s)"). On November 18, 2009, Defendant J.L.H. Investments, LP, d/b/a Hendrick Honda of Easley ("Hendrick Honda of Easley") filed a memorandum in opposition to the Declaratory Judgment Motion of Plaintiff Julie Freeman.

On November 23, 2009, a hearing was held on the Declaratory Judgment Motions, at which time all Defendants except Taylor Toyota, Inc., objected to the motions based on improper joinder and improper venue, among other grounds. Given those objections, the Court proceeded

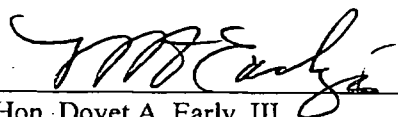




to consider only the Declaratory Judgment Motion of Plaintiff Michael Ritz against Defendant Taylor Toyota, Inc., for which venue in Aiken County was admittedly proper. Pursuant to Plaintiff Ritz's request, the Court limited its ruling to an interpretation of two terms used in S.C. Code Ann. § 37-2-307 (the "Closing Fee Statute"), namely the terms "closing fee" and "advertised price."

Plaintiffs and various Defendants, including Hendrick Honda of Easley, submitted proposed orders on the Declaratory Judgment Motion on December 18, 2009. On January 11, 2010, the Court entered an order, which applied only as to the case involving Plaintiff Michael Ritz and Defendant Taylor Toyota, Inc.

After full consideration of the motions, memoranda, and proposed orders submitted by the Plaintiffs and Hendrick Honda of Easley, the Court finds that, to the extent its January 11, 2010 order construes the terms "closing fee" and "advertised price" as they are used in the Closing Fee Statute, those rulings also apply to the claims of Plaintiff Julie Freeman against Hendrick Honda of Easley.

IT IS SO ORDERED.


The Hon. Doyet A. Early, III

December 17, 2012
, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF PICKENS

Aiken County Case No. 2006-CP-02-1230
Pickens County Case No. 2012-CP-39-01554

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
DEC 28 A 10:05

Heather Herron, Natalie Armstrong,
Michael Ritz, Julie Freeman, Christine
Watts, Michael Blease and Michael Watts,
individually and for the benefit of all car
buyers who paid "administrative fees" as
described below to Dealers,

Plaintiffs,

v.

Dick Dyer & Associates, Inc.; Land Rover
of Columbia; Galeana Chrysler Jeep, Inc.;
Taylor Investments, Inc. d/b/a Taylor
Toyota, Inc.; J.L.H. Investments, d/b/a
Hendrick Honda of Easley; Sonic
Automotive, d/b/a Century BMW; and
Toyota of Greenville, Inc.

Defendants.

**ORDER REGARDING PLAINTIFF JULIE FREEMAN'S
MOTION FOR A DECLARATORY JUDGMENT AS TO
DEFENDANT J.L.H. INVESTMENTS, LP, d/b/a HENDRICK HONDA OF EASLEY**

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to consider only the Declaratory Judgment Motion of Plaintiff Michael Ritz against Defendant Taylor Toyota, Inc., for which venue in Aiken County was admittedly proper. Pursuant to Plaintiff Ritz's request, the Court limited its ruling to an interpretation of two terms used in S.C. Code Ann. § 37-2-307 (the "Closing Fee Statute"), namely the terms "closing fee" and "advertised price."

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After full consideration of the motions, memoranda, and proposed orders submitted by the Plaintiffs and Hendrick Honda of Easley, the Court finds that, to the extent its January 11, 2010 order construes the terms "closing fee" and "advertised price" as they are used in the Closing Fee Statute, those rulings also apply to the claims of Plaintiff Julie Freeman against Hendrick Honda of Easley.

IT IS SO ORDERED.

December 18, 2012
Aiken, South Carolina

Doyet A. Early, III
The Hon. Doyet A. Early, III

Ms
Aiken County, S.C.

Exhibit H

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS
Case No. 2012-CP-39-01554

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

2013 MAR 25 A 10:21
Julie Freeman Hair, individually and for
the benefit of all car buyers whom paid
“administrative fees” as described below
to Defendant,

Plaintiffs,

v.

J.L.H. Investments, d/b/a Hendrick Honda
of Easley

Defendant.

**ORDER REGARDING PLAINTIFF’S MOTION TO COMPEL DISCOVERY
AND HENDRICK HONDA OF EASLEY’S SECOND AMENDED MOTION
TO ESTABLISH PROCEDURAL REQUIREMENTS,
DECLARE THE SCOPE OF THE PLAINTIFF GROUP, AND
REQUIRE PLAINTIFF TO GIVE NOTICE TO THE PLAINTIFF GROUP**

On February 4, 2013, Defendant J.L.H. Investments, LP, d/b/a Hendrick Honda of Easley (“Hendrick Honda of Easley”) served a Second Amended Motion to Establish Procedural Requirements, Declare the Scope of the Plaintiff Group, and Require Plaintiff to Give Notice to the Plaintiff Group (the Amended Motion was filed January 31, 2013), which renewed and amended Hendrick Honda of Easley’s earlier motion to Declare the Scope of the Plaintiff Group and to Establish Procedural Requirements filed on December 8, 2010 (collectively, the “Motion”). Plaintiff Julie Freeman (“Plaintiff”) requested that her outstanding Motion to Compel discovery dated February 4, 2011 also be heard. Both motions were heard by the Court in a telephone hearing on February 12, 2013 and an in-person hearing on February 21, 2013.

In its Motion, Hendrick Honda of Easley sought an order (1) requiring Plaintiff to plead and prove the procedural requirements under Rule 23, SCRPC, for prosecuting any of her claims

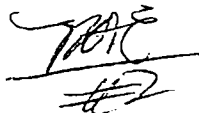
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in a representative capacity; (2) declaring that the group or class of persons represented by Plaintiff is limited to those persons who paid closing fees to Hendrick Honda of Easley during the four years prior to the commencement of the action; and (3) to require Plaintiff to give notice and an opportunity to opt out of the Plaintiff group prior to any trial or other decision on the merits of Plaintiff's claims.

Plaintiff's Motion to Compel discovery dated February 4, 2011 sought information from Defendant for time periods after 2008. Information for time periods prior to November 2008 was previously produced pursuant to an agreement of counsel, as discussed in a joint letter to the Court dated December 12, 2008.

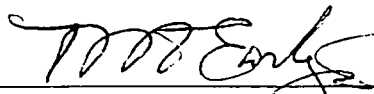
At the hearing of these motions, Plaintiff's counsel agreed to provide and to pay the costs associated with notice to the group members who purchased a vehicle and paid a closing fee to Hendrick Honda of Easley in the four years prior to the date the complaint was filed on August 29, 2006. These purchasers are the only persons covered by Plaintiff's cause of action for damages under the Dealers Act. Counsel for the parties have agreed to work together to draft a notice to these group members and will submit the proposed notice for this Court's approval.

The Court declines to revisit its rulings relating to Rule 23, SCRPC, and whether this case is required to proceed as a class action pursuant to that rule. However, based on the above representations of counsel, the Court declares that the group represented by Plaintiff with respect to her claims for damages under the Dealer's Act is limited to pre-complaint purchasers, i.e., persons who paid closing fees to Hendrick Honda of Easley during the four years prior to the commencement of the action on August 29, 2006. The Court further orders that Plaintiff will give notice and an opportunity to opt out to the pre-complaint purchasers prior to any trial or decision on the merits.

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With respect to Plaintiff's equitable claims for an injunction and disgorgement on behalf of all post-complaint purchasers, the Court makes no rulings at this time as to the claims of post-complaint purchasers and reserves ruling on all issues raised by the parties as to post-complaint purchasers, including the discovery that is the subject of Plaintiff's Motion to Compel dated February 4, 2011. The Parties have agreed that any trial of those claims would be a non-jury trial and will be held, if at all, after a jury trial on the claims of the pre-complaint purchasers.

IT IS SO ORDERED.



The Hon. Doyet A. Early, III

March 30, 2013


 South Carolina

Exhibit I

2013 SEP 12 AM 10 49

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS

COUNTY OF PICKENS

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

Case No.: 2012-CP-39-01554

Julie Freeman

Plaintiff,

**ORDER DENYING DEFENDANT'S
REVISED MOTION FOR
JUDGMENT ON THE PLEADINGS**

vs.

J.L.H. Investments, LP a/k/a Hendrick Honda

Defendant.

This matter is before the Court by way of a motion for judgment on the pleadings filed by Defendant J.L.H. Investments, LP a/k/a Hendrick Honda. This motion was heard by the Court in Aiken, South Carolina on August 14, 2013. After considering the parties' briefing and arguments of counsel, I have determined that the motion should be denied.

STANDARD FOR JUDGMENT ON THE PLEADINGS

"When considering such motion, the court must regard all properly pleaded factual allegations as admitted. Russell v. City of Columbia, 305 S.C. 86, 406 S.E.2d 338 (1991). On review of the motion, the court may not consider matters outside the pleadings. Firemen's Ins. Co. v. Cincinnati Ins. Co., 302 S.C. 234, 394 S.E.2d 855 (Ct.App.1990).

A judgment on the pleadings against the plaintiff is not proper if there is an issue of fact raised by the complaint which, if resolved in favor of the plaintiff, would entitle him to judgment.... When a fact is well pleaded, any inference of law or conclusions of fact that may properly arise therefrom are to be regarded as embraced in the averment. Moreover, a complaint is sufficient if it states any cause of action or it appears that the plaintiff is entitled to any relief whatsoever. Our courts have held that pleadings in a case should be construed liberally so that substantial justice is done between the parties.

Russell, 305 S.C. at 89, 406 S.E.2d at 339 (citations omitted). Furthermore, "a judgment on the pleadings is considered to be a drastic procedure by our courts." *Id.*"



Falk v. Sadler, 341 S.C. 281, 286-87, 533 S.E.2d 350, 353 (Ct. App. 2000).

ALLEGATIONS AT ISSUE

Plaintiff Julie Freeman Hair alleges that Defendant Hendrick Honda charged illegal “closing fees” to its customers. See Third Amended Complaint, para. 3. Closing fees are sometimes referred to by a variety of names. In this case, Defendant Hendrick Honda charged Plaintiff Julie Freeman a \$299.00 “Procurement Fee.” Third Amended Complaint, para. 3.

Plaintiff alleges that Hendrick Honda violated the law by charging a closing fee to its customers, including Plaintiff Julie Freeman, that was not done to reimburse Hendrick Honda for closing costs. Third Amended Complaint, para. 93. Plaintiff also alleges that Hendrick Honda failed to include the closing fee in the advertised price of Julie Freeman’s car. Third Amended Complaint, paras. 59-62.

Plaintiff has alleged that the above conduct is a violation of S.C. Code Ann. § 37-2-307¹ (the “Closing Fee Statute”). Plaintiff has further alleged that the above conduct amounts to “unfair” acts in violation of S.C. Code Ann. § 56-15-30²; and an “arbitrary,” “unconscionable” action conducted “in bad faith,” all in violation of S.C. Code Ann. § 56-15-40 (a).³

¹ S.C. Code Ann. § 37-2-307 provides: “Every motor vehicle dealer charging closing fees on a motor vehicle sales contract shall pay a one-time registration fee of ten dollars during each state fiscal year to the Department of Consumer Affairs. The closing fee must be included in the advertised price of the motor vehicle, disclosed on the sales contract, and displayed in a conspicuous location in the motor vehicle dealership.”

² S.C. Code Ann. § 56-15-30(a) provides: “(a) Unfair methods of competition and unfair or deceptive acts or practices as defined in § 56-15-40 are hereby declared to be unlawful.”

³ S.C. Code Ann. § 56-15-40 provides: “(1) It shall be deemed a violation of paragraph (a) of § 56-15-30 for any manufacturer, factory branch, factory representative, distributor, or wholesaler, distributor branch, distributor representative or 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.”

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Plaintiff has alleged a cause of action pursuant to S.C. Code Ann. § 56-15-110 of the Dealers Act which provides:

In addition to temporary or permanent injunctive relief...any person who shall be injured in his business or property by reason of anything forbidden in this chapter may sue therefor in the court of common pleas and shall recover double the actual damages by him sustained and the cost of suit, including a reasonable attorney's fee.

When such action is one of common or general interest to many persons or when the parties are numerous and it is impracticable to bring them all before the court, one or more may sue for the benefit of the whole, including actions for injunctive relief.

In any action for money damages, if the jury finds that the defendant acted maliciously, the jury may award punitive damages not to exceed three times the actual damages.

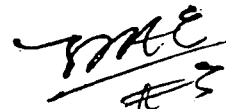
See Third Amended Complaint, p. 12. Plaintiff has also prayed for disgorgement of all illegally collected fees. See Third Amended Complaint, para. 111.

DISCUSSION

On August 9, 2013, Defendant filed a Second Revised Motion for Judgment on the Pleadings arguing that Plaintiff cannot pursue a cause of action under the Dealers Act arising from the Defendant charging illegal closing fees that are also in violation of the Closing Fee Statute because Defendant claims that S.C. Code Ann. §37-5-202 creates an exclusive remedy for the charging of illegal closing fees. For the following reasons, this motion is denied.

1. **S.C. Code Ann. § 37-5-202 Does Not Create an Exclusive Remedy For Car Buyers To Challenge Closing Fees.**

Defendant argues that because the Closing Fee Statute is located in the Consumer Protection Code that S.C. Code Ann. §37-5-202 (also in the Consumer Protection Code) is the exclusive remedy for all claims alleging that a car dealer charged illegal closing fees. The South Carolina Supreme Court in Tilley v. Pacesetter Corp. 333 S.C. 33, 40-41, 508 S.E.2d 16, 19-20

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(1998) held that that S.C. Code Ann. §37-5-202 does not create an exclusive remedy for a violation of the Consumer Protection Code. The Tilley opinion provides in part:

Pacesetter contends that, in providing a specific remedy in 37-5-202 for violations of section 37-2-413, the legislature intended 5-202 as the exclusive remedy. We disagree. Had the Legislature so intended, it could have specifically provided that 37-5-202 was the exclusive remedy. Accord Hanier v. American Medical International, 328 S.C. 128, 492 S.E.2d 103 (1997) (if legislature had intended certain result in a statute, it would have said so).

I agree with the Supreme Court in Tilley. I find that S.C. Code Ann. §37-5-202 does not create an exclusive remedy for a violation of another section of the Consumer Protection Code. As such, this statute cannot be an exclusive remedy for consumers when charged an illegal closing fee. Moreover, S.C. Code Ann. §37-5-202, while specifically referring to other statutes, makes no reference to the Closing Fee Statute, § 37-2-307, and the Closing Fee Statute makes no reference to S.C. Code Ann. §37-5-202. Similarly, S.C. Code Ann. §37-5-202 makes no reference to Closing Fees and expresses no intention to be the exclusive remedy for car buyers who are charged illegal closing fees. This also indicates that S.C. Code Ann. §37-5-202 was not intended as an exclusive remedy for car buyers when challenging closing fees. As the Court in Tilley noted, had the legislature wanted to make S.C. Code Ann. §37-5-202 an exclusive remedy “it would have said so.”

2. The Rules of Statutory Construction Support A Finding that A Car Buyer Can Pursue a Claim Under the Dealers Act When Charged a Closing Fee that Also Violates the Closing Fee Statute.

“Statutes in apparent conflict should, if reasonably possible, be construed to allow both to stand and to give effect to each.” Ion, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 412-13, 526 S.E.2d 716, 719 (2000) (emphasis added).

Statutes dealing with the same subject matter must be reconciled, if possible, so as to render both operative. Id. “It is presumed that the Legislature is familiar with prior

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legislation, and that if it intends to repeal existing laws it would ... expressly do so; hence, if by any fair or liberal construction two acts may be made to harmonize, no court is justified in deciding that the later repealed the first.” *Justice v. Pantry*, 330 S.C. 37, 43–44, 496 S.E.2d 871, 874 (Ct.App.1998) (quoting *State v. Hood*, 181 S.C. 488, 491, 188 S.E. 134, 136 (1936)).

Hodges v. Rainey, 341 S.C. 79, 88-89, 533 S.E.2d 578, 583 (2000).

In this case, the Closing Fee Statute, § 37-2-307, and the Dealers Act both regulate conduct between car dealers and consumers and importantly it is **reasonably possible** to render both the Closing Fee Statute and the Dealers Act operative. Clearly, if Julie Freeman can pursue a cause action against a car dealer under the Dealers Act when a dealer charges an illegal closing fee in violation of §37-2-307 both statutes are operative. Thus, pursuant to the foregoing authorities, this construction trumps Defendant’s proposed interpretation which would act to exclude illegal closing fees from the Dealers Act’s prohibition against unfair acts and thus render the Dealers Act’s protections inoperative.

Moreover, there is no “apparent conflict” between the Closing Fee Statute and the Dealers Act. The Closing Fee statute simply creates a narrow exception that allows Closing Fees to be charged if a dealer follows certain limitations. The Dealers Act prohibits “unfair,” “arbitrary,” “unconscionable” and actions “in bad faith.” These two statutes are not in conflict and more importantly as mentioned above it is **reasonably possible** to construe these statutes “to allow both to stand and to give effect to each.” See I’On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 412-13, 526 S.E.2d 716, 719 (2000). As such, this is the more reasonable interpretation.

Furthermore, Defendant’s interpretation is contrary to the liberal construction in favor of consumer protection that is to be used when evaluating claims under the Dealers Act. See Kucharski v. Rick Hendrick Chevrolet, LP, 2002 WL 313860990 (SC Ct. App. 2002) (“This

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action is based not on a common law tort or on contract but is a creature of statute. The legislature obviously enacted the Dealers Act because consumers' remedies at common law were deemed inadequate. Remedial statutes are to be construed liberally in order to effectuate their purpose.") and Herron v. Century BMW, 387 S.C. 525, 535, 693 S.E.2d 394, 399 (2010) cert. granted, judgment vacated sub nom. Sonic Auto., Inc. v. Watts, 131 S. Ct. 2872, 179 L. Ed. 2d 1184 (U.S.S.C. 2011) and opinion reinstated, 395 S.C. 461, 719 S.E.2d 640 (2011). ("The purpose of the Dealers Act is consumer protection."). Defendant's argument that the Dealers Act provides no protection to consumers from illegal closing fees is contrary to the liberal rule of construction to be used when evaluating claims under the Dealers Act and thus this is another reason why this interpretation is rejected.

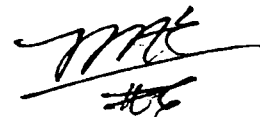
3. The Consumer Protection Code is Designed to Supplement Consumer's Rights At Law and Not to Take Consumer Rights Away.

Defendant wrongly argues the Consumer Protection Code was intended "to be the exclusive statute governing the subjects addressed in the Code" and thus the enactment of the Closing Fee Statute eliminates a consumer's ability to challenge an illegal closing fee as an unfair act in violation of the Dealers Act. This argument is contrary to S.C. Code Ann. § 37-1-103, a statute included in the Consumer Protection Code, which provides:

§37-1-103. Supplementary general principles of law applicable.

Unless displaced by the particular provisions of this title, the Uniform Commercial Code and the principles of law and equity, including the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause supplement its provisions.

S.C. Code Ann. § 37-1-103. As shown above, the Consumer Protection Code includes a subsection clarifying that the act is intended to supplement other principles of law. In this case, the other principle of law at issue is the Dealers Act and there is nothing in the Consumer

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Protection Code that indicates an intention to repeal the protections provided to consumers in the Dealers Act. Thus, Defendant's argument that the Consumer Protection Code takes away protections given to consumers in the Dealers Act should be rejected. The Consumer Protection Code supplements those remedies; it does not take away remedies otherwise available at law to consumers.

Furthermore, Defendant's proffered interpretation that the enactment of the Closing Fee Statute creates an exclusive remedy for consumers for challenging closing fees and takes away the pre-existing remedy existing in the Dealers Act to challenge unfair acts by car dealers is contrary to the purposes of both the Dealers Act and the Consumer Protection Code and thus is rejected. See Tilley v. Pacesetter Corp., 355 S.C. 361, 378, 585 S.E.2d 292, 300 (2003) ("The Consumer Protection Code and the Dealers Act share a common purpose: protection of the consumer.").

4. The Closing Fee Statute Did Not Create a New Right or Liability Where None Existed Before and Thus Defendant's Argument that the Enactment of The Closing Fee Statute Means that S. C. Code Ann. §37-5-202 Is an Exclusive Remedy For Challenging Closing Fees Should be Rejected.

The South Carolina Supreme Court in Petition of State ex rel. Hutchinson, 182 S.C. 369, 189 S.E. 475, 477 (1937), cited by Defendant, stated:

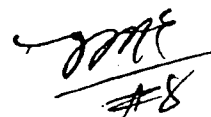
It has generally been held that a statutory remedy to enforce a new right or liability created by the same statute is exclusive unless the statute clearly shows a contrary intention. Such an exclusion, however, depends upon the creation of a new right. In 1 C.J.S., Actions, § 6, p. 976, it is said: "Where a statute prescribing a remedy does not create a new right or liability, but merely provides a new remedy for an independent right or liability already existing, the general rule is that the remedy thus given is not regarded as exclusive but as merely cumulative of other existing remedies, and does not take away a pre-existing remedy, or, as more specifically stated, if a statute gives a new remedy in the affirmative, and contains no negative, express or implied, of the old remedy, the new remedy is merely cumulative; and, in such a case, the party having the right may resort to either the pre-existing or the new remedy, except that he cannot resort to inconsistent remedies. * * *" Also see 1 Am.Jur., Actions, § 12.

(emphasis added).

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In this case, the enactment of the Closing Fee Statute, enacted in 2000, did not create a new remedy where none existed before. Importantly, the South Carolina Supreme Court in Fanning v. Fritz's Pontiac-Cadillac-Buick, Inc., 322 S.C. 399, 404, 472 S.E.2d 242, 245 (1996) specifically noted that closing fees could be the subject of claims “such as claims for fraud, misrepresentation or unfair trade practices.” See Fanning v. Fritz's Pontiac-Cadillac-Buick, Inc., 322 S.C. 399, 404, , n. 8, 472 S.E.2d 242, 245, n. 8 (1996) (“By our holding, we do not imply that inclusion of such fees may not be attacked on other grounds, such as claims for fraud, misrepresentation or unfair trade practices.”). Additionally, the Supreme Court in Ferguson specifically analyzed a claim that a closing fee violated the Dealers Act. See also Ferguson v. Charleston Lincoln Mercury, Inc., 349 S.C. 558, 561, 564 S.E.2d 94, 96 (2002) (Ferguson was filed in 1997). As the Fanning and Ferguson courts make clear, closing fees could be challenged as an unfair trade practice and violations of the Dealers Act before the Closing Fee statute was passed. Thus, under Hutchinson because the Closing Fee Statute does not contain a “negative, express or implied, of the old remedy,” the remedies provided in the Consumer Protection Code should be considered cumulative and Plaintiff “may resort to either the pre-existing or the new remedy.”

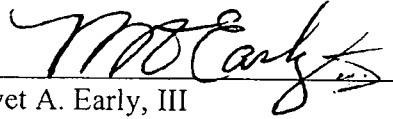
Furthermore, the following sentence from Hutchinson is another reason why that rule does not apply here: “It has generally been held that a statutory remedy to enforce a new right or liability created by the same statute is exclusive **unless the statute clearly shows a contrary intention.**” Again, as discussed above, the Consumer Protection in S.C. Code Ann. § 37-1-103 expresses an intention that its enactments are designed to supplement consumer rights and not to take them away. Accordingly, Defendants arguments that S.C. Code Ann. §37-5-202 is an exclusive remedy for challenging illegal closing fees is rejected.

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CONCLUSION

For the foregoing reasons, Defendant's motion for judgment on the pleadings is denied.

AND IT IS SO ORDERED.



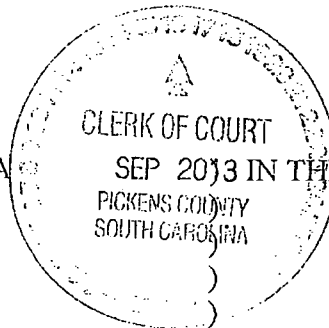
Doyet A. Early, III
Resident Circuit Court Judge
Second Judicial Circuit

Bonkey, South Carolina

This 5 day of Sept, 2013

Exhibit J

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS



Case No.: 2012-CP-39-01554

Julie Freeman Hair

Plaintiff,

vs.

J.L.H. Investments, LP a/k/a Hendrick Honda

Defendant.

**ORDER ON DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT, DEFENDANT'S
MOTION IN LIMINE, AND
PLAINTIFF'S MOTION TO DEEM
CERTAIN PARAGRAPHS IN
PLAINTIFF'S THIRD AMENDED
COMPLAINT ADMITTED**

This matter is before the Court by way of a motion for summary judgment and motions in limine filed by Defendant J.L.H. Investments, LP a/k/a Hendrick Honda and a Motion to Deem Certain Paragraphs in Plaintiff's Third Amended Complaint Admitted . This motion was heard by the Court in Columbia, South Carolina on September 4, 2013. After considering the parties' briefing and arguments of counsel, I hereby rule as follows:

(1) The Voluntary Payment Doctrine.

Defendant's motion seeking summary judgment based on the voluntary payment doctrine is denied. "Summary judgment is a drastic remedy and should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues." Singleton v. Sherer, 377 S.C. 185, 198, 659 S.E.2d 196, 203 (Ct. App. 2008). Summary judgment is appropriate if "there is no genuine issue as to any material fact." Rule 56(c), SCRPC. In determining whether a triable issue of material fact exists, the Court must construe all facts and inferences in the light most favorable to the non-movant. Wogan v. Kunze, 379 S.C. 581, 585, 666 S.E.2d 901, 903 (2008). "In order to withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only

required to submit a mere scintilla of evidence.” Turner v. Milliman, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011).

Freeman Hair has asserted a statutory cause of action against Hendrick Honda alleging that Hendrick Honda committed unfair and arbitrary acts under the Dealers Act. The Voluntary Payment defense does not apply to this type of statutory cause of action. The South Carolina Supreme Court in Hardaway stated:

Except where otherwise provided by statute, a party cannot by direct action, or by way of set-off or counterclaim, recover money voluntarily paid with a full knowledge of all the facts, and without any fraud, duress, or extortion, although no obligation to make such payment existed.

Hardaway v. S. Ry. Co., 90 S.C. 475, 73 S.E. 1020, 1025 (1912) (emphasis added). The language above expressly excepts statutory causes of action from the voluntary payment defense. Here, Plaintiff Freeman has asserted a statutory cause of action against Defendant alleging that Defendant committed unfair and arbitrary acts under the Dealers Act. Accordingly, the voluntary payment defense does not apply to this statutory cause of action.

Regardless, even if the voluntary payment defense were a proper defense to the Dealers Act cause of action, summary judgment would still not be appropriate on this ground because there is a question of fact as to whether Mrs. Freeman Hair paid the fee with “full knowledge of all the facts.” See Town of Bennettsville v. Bledsoe, 226 S.C. 214, 218, 84 S.E.2d 554, 556 (1954) (“It is an elementary principle that no action will lie to recover money voluntarily paid with full knowledge of all the facts.”). Mrs. Freeman Hair has presented an affidavit demonstrating questions of material fact exist including assertions that she did not know the fee was illegal when she paid it, she did not know that Hendrick Honda was violating the Closing Fee Statute, she did not know what Hendrick Honda’s closing costs were when she paid the fee, she did not know how Hendrick Honda had calculated the fee, and she did not know what costs

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that Hendrick Honda was seeking to recoup through the Closing Fee. This evidence is sufficient to demonstrate a “mere scintilla of evidence” making a grant of summary judgment inappropriate on this ground. See Turner v. Milliman, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011).

(2) Plaintiff is Abandoning Her Claims Based on Advertising and Her Prayer for Punitive Damages.

Plaintiff in their memorandum in opposition and Plaintiff’s counsel at the hearing affirmatively stipulated that they are abandoning all claims based on advertising including window stickers and the prayer for punitive damages. Plaintiff has agreed not to present evidence on these issues or to ask for a jury charge on these grounds. The Court hereby accepts this stipulation and rules that Plaintiff is not permitted to present evidence or argument on these issues and no such charge will be given to the jury.

(3) Prejudgment Interest.

The Parties agreed at the hearing that the issue of whether prejudgment interest will be awarded in this case should be determined after the jury’s verdict. As such, Defendant’s motion asking for a ruling on this issue is denied without prejudice and this issue may be revisited, if necessary, at the time of post-trial motions.

(4) Defendant’s Motion in Limine Concerning Referring to Closing Fees As Illegal Fees.

At the hearing, Defense counsel clarified that after reading Plaintiff’s Memorandum in Opposition to this Motion that this issue is not in dispute. Plaintiff is asserting that a closing fee charged in violation of the closing fee statute is illegal. Accordingly, this motion is denied without prejudice. Defense counsel may raise this issue if necessary at trial.

J. P. E.
#3

(5) **The Jury Trial Portion of this Case Involves Illegal Closing Fees Charged from 2002 to 2006.**

As the Parties have previously agreed and the Court has previously ruled, the jury trial portion of this case centers on closing fees charged by Hendrick Honda from August 29, 2002 to August 29, 2006. Hendrick Honda in its motion requests that the Court "limit Plaintiff's evidence and arguments accordingly." Plaintiff's counsel at the hearing again re-affirmed this agreement and the intention to present evidence from the relevant time period. Accordingly, this motion is granted but may be revisited based on the presentation of specific evidence at the trial of this case.

(6) **Plaintiff's Motion to Deem Certain Paragraphs in Plaintiff's Third Amended Complaint Admitted.**

This motion is denied. However, the Court hereby grants the Defendant leave of Court, if Defense counsel so desires, to readdress paragraphs 4, 17, 19, 23, 25, 32, 34 and 35. Plaintiff's ability to address the propriety of any denials of these paragraphs by way of post-trial motions is preserved.¹

AND IT IS SO ORDERED.

Riken, South Carolina

This 10 day of Sept, 2013

Doyet A. Early, III
Doyet A. Early, III
Resident Circuit Court Judge
Second Judicial Circuit

¹Defendant also filed a motion concerning deposition testimony of Ben Satcher. The Court has taken that issue under advisement and will review the passages at issue. The Court will inform the Parties of its ruling on the propriety of that testimony at a later time.

Exhibit K

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

2014 JAN 13 PM 3 38

COUNTY OF PICKENS

Case No. 2012-CP-39-01554

Julie Freeman,

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

Plaintiffs,

v.

J.L.H. Investments, LP, a/k/a Hendrick
Honda of Easley,

Defendants.

CONSENT ORDER REGARDING ATTORNEYS' FEES AND COSTS

This matter comes before the Court on the motion of Plaintiff Julie Freeman ("Plaintiff") to Recover Attorneys' Fees and Costs. A hearing was held on December 4, 2013. Plaintiff appeared through her attorney, Brady R. Thomas, Esq., and Hendrick Honda of Easley ("Defendant") appeared through its attorney, James Y. Becker, Esq. At the hearing, the parties disputed the proper method to award a reasonable attorney's fee, the appropriate reasonable hourly rate used in an attorney's fee award, and the reasonable number of hours necessarily devoted to Plaintiff's case.

Following the hearing, however, Plaintiff and Defendant reached an agreement to resolve Plaintiff's Motion by agreeing as follows: Plaintiff shall be awarded attorney's fees and costs in the amount of \$762,250.00, for all work completed and costs incurred through the date of this Order.

In agreeing to this award, the Parties recognize that Plaintiff may apply for other fees and costs should Plaintiff succeed on an appeal and that Defendant reserves all arguments set forth in its post-trial motions and memoranda, including but not limited to its Memorandum in

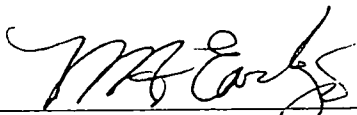


Opposition to Plaintiff's Motion, filed on November 27, 2013, for challenging any subsequent fee petition by Plaintiff.

The Parties also recognize that should Defendant succeed on an appeal that this award would be vacated.

Based on the foregoing, The Court finds that an award of \$762,250, represents a reasonable attorney's fee and award of costs through the date of this Order. Due to the agreement between the Parties, The Court does not make any findings with respect to any other issues raised in Plaintiff's Motion or Defendant's response.

AND IT IS SO ORDERED.



The Hon. Doyet A. Early, III

1-7, 2014
Bombardier, South Carolina

Exhibit L

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS

COUNTY OF PICKENS

MAR 17 A 9:00

Case No.: 2012-CP-39-01554

Julie Freeman Hair, individually and for the benefit of all car buyers whom paid "Administrative Fees" to Defendant.

Plaintiff,

vs.

J.L.H. Investments, LP a/k/a Hendrick Honda

Defendant.

ORDER GRANTING PLAINTIFF'S MOTION TO DOUBLE THE DAMAGES AWARD IN THIS CASE

This matter is before the Court by way of Plaintiff Julie Freeman Hair's Motion requesting that the Court double the damages award in this case. This motion was heard by the Court in Bamberg, South Carolina on December 4, 2013. After considering the parties' briefing and arguments of counsel, I hereby find that Plaintiff is entitled to double damages.

This motion is governed by S.C. Code Ann. §56-15-110, included in the South Carolina Automobile Dealers Act, which provides in part:

(1) In addition to temporary or permanent injunctive relief as provided in § 56-15-40(3)(c), any person who shall be injured in his business or property by reason of anything forbidden in this chapter may sue therefor in the court of common pleas and shall recover double the actual damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

(2) When such action is one of common or general interest to many persons or when the parties are numerous and it is impracticable to bring them all before the court, one or more may sue for the benefit of the whole, including actions for injunctive relief.

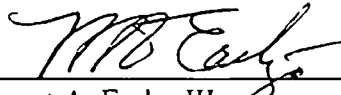
S.C. Code Ann. § 56-15-110(1) and (2) (emphasis added).¹

¹I reject Defendant's argument that Plaintiff's prosecution of this case on behalf of a group under S.C. Code Ann. §56-15-110(2) prevents her from recovering double damages under S.C. Code Ann. §56-15-110(1). This argument is contrary to the plain language used in subsection 2 ("When such action") which clearly refers back to subsection 1. Moreover, this

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Plaintiff in this case alleged and the jury found that the Defendant violated the Dealers Act. The jury found that the damages sustained were \$1,445,786.00. Pursuant to the above statute, this amount is hereby doubled so that Plaintiff is entitled to recover \$2,891,572.00 in damages.

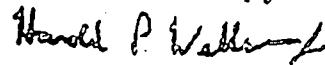
AND IT IS SO ORDERED.



Doyet A. Early, III
Resident Circuit Court Judge
Second Judicial Circuit

Bamberg, South Carolina

This 13th day of March, 2014

Certified Copy

Clerk of Court
Pickens County, SC
Dated 4/17/2014

interpretation is contrary to the liberal construction to be used when interpreting remedial statutes such as the Dealers Act. See Kucharski v. Rick Hendrick Chevrolet, LP, 2002 WL 313860990 (SC Ct. App. 2002) (“This action is based not on a common law tort or on contract but is a creature of statute. The legislature obviously enacted the Dealers Act because consumers’ remedies at common law were deemed inadequate. Remedial statutes are to be construed liberally in order to effectuate their purpose.”) and Herron v. Century BMW, 387 S.C. 525, 535, 693 S.E.2d 394, 399 (2010) cert. granted, judgment vacated sub nom. Sonic Auto., Inc. v. Watts, 131 S. Ct. 2872, 179 L. Ed. 2d 1184 (U.S.S.C. 2011) and opinion reinstated, 395 S.C. 461, 719 S.E.2d 640 (2011). (“The purpose of the Dealers Act is consumer protection.”).