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THE STATE OF SOUTH CAROLINA
In the Supreme Court

AUG - 5 2014

S.C. Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Appellate Case No. 2014-001521

Centennial Casualty Co., Inc. Petitioner,

v.

Western Surety Co., d/b/a CNA Surety Respondent.

Western Surety Co., d/b/a CNA Surety Defendant/Third-Party Plaintiff

v.

Charleston Auto Auction, A3 Auto Center, LLC,
And Wylie Mickle Third-Party Defendants.

**RETURN TO PETITION
FOR A WRIT OF CERTIORARI**

S. Markey Stubbs
BAKER, RAVENEL & BENDER, L.L.P
3710 Landmark Drive, Suite 400
Post Office Box 8057
Columbia, South Carolina 29202
803.799.9091 (telephone)
803.779.3423 (facsimile)
Attorneys for Respondent

August 5, 2014

Other Counsel of Record:

Ian S. Ford

Ford Wallace Thomson, LLC

715 King Street

Charleston, SC 29403

843.277.2011

ian.ford@fordwallace.com

Attorney for Petitioner

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QUESTION PRESENTED

Pursuant to Rule 242 of the South Carolina Rules of Appellate Procedure, the Petitioner petitioned the Court for a writ of certiorari to the Supreme Court to review the Court of Appeals' decision in this matter. Appellant asserts that the sought-after petition should be denied both in the Court's discretion and because of the failure of the Opinion to give rise to any of the five factors asserted pursuant to Rule 242(b).

- 1. Should this Court deny certiorari as the Court of Appeals correctly interpreted S.C. Code §56-15-320(B)**

STATEMENT OF THE CASE

This action centers on the South Carolina licensing statute for motor vehicle dealers, which requires a surety bond under S.C. Code § 56-15-320(B) (2009) (the "Dealer Bond Statute" or "Statute"). The Dealer Bond Statute requires motor vehicle wholesalers or dealers to obtain a bond and provides in part:

"...as indemnification for loss and damage suffered by an owner of a motor vehicle, or his legal representative, by reason of fraud practiced or fraudulent representations made in connection with the sale or transfer of a motor vehicle by a licensed dealer or wholesalers or the dealers or wholesalers agents acting for the dealer or wholesaler or within the scope of the employment of the agent or loss or damage suffered by reason of the violation by the dealer or wholesaler of its agent of this chapter. The owner or his legal representative who suffers the loss or damage has a right of action against the dealer or wholesaler and against the dealers' or wholesalers' surety on the bond and may recover damages that are provided in this chapter. However, regardless of the number of years a bond remains in effect, the aggregate liability of a surety for claims is limited to \$30,000 on each bond and to the amount of the actual loss incurred...."

The Court has construed this bond as restrictive and it does not cover any and all persons or entities. As noted in Mid-State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 69,

476 S.E.2d 690, 692 (1996), it is clear that the legislature intended to provide only the owner of a motor vehicle or the owner's legal representative, with a cause of action against the surety on the bond.

Charleston Auto Auction is a wholesale auctioneer that "facilitates the sale and purchase of automobile among dealers." (Brief of Petitioner p.2). Charleston Auto Auctions in the processing of the sale, issues paperwork to buyers and sellers the language referenced by the Petitioner is on the back of the purchase agreement and a bill of sale (ROA 115) found in the second paragraph and provides:

Seller and Buyer each appoint Auction Company as their agent and **legal representative for the purpose of processing this transaction through Auction Company, including transfer of title. However, they agree auction is merely performing an auction service** and Auction Company disclaims all express and implied warranties, including merchantability and ...) (Emphasis added).

A-3 is an automobile dealer in South Carolina. In March of 2008, A3 Auto Center purchased three "vehicles" From A+ Auto Sales, A Plus Auto Sales, Priceless Automotive, and Automotive Rentals, Inc./ARI Fleet Ltd (collectively the "Selling Dealerships")(brief of Petitioner at p.3) each sold one of the vehicles. Charleston Auto Auction was an auction house as authorized by Statute. Centennial Casualty Insurance Company is an insurance company who insured the payment of funds even from bad checks for Charleston Auto Auction. Charleston Auto Auction chose to accept checks instead of cash, certified checks, or other forms of guaranteed payment and Centennial Casualty Company, Inc. chose to insure that risk as part of a business decision of each. The "legal representative" language, as noted by the Petitioner, is limited to "the purpose of processing this transaction through the Auto Auction." Brief of Appellant p.3. A3 Auto Center issued checks that were either cancelled or returned for purchase

of the vehicles. A3 Auto Center had a bond issued in accordance with the statute by Western Surety Company d/b/a CNA Surety.

ARGUMENT

I. The Court of Appeals correctly interpreted the Dealer Bond Statute

The order of the Court Appeals correctly held its CAA and Centennial were not legal representatives as required by the Statutory Bond.

A. The Court of Appeals was correct in holding that the Statute does not cover insurance carriers of automobile auction houses such as the Petitioner.

Petitioner continually misstates that the documents made Petitioner a “legal representative” of the owner. In fact, the documents as the Appellate Court correctly found the Petitioner the “legal representative” for the purpose of “processing the transaction through the auction company...however, both buyer and seller agree that Auction is merely performing an auction service...” ROA 58. Centennial repaid Charleston Auto Auction for the bad checks in exchange for the premium it received. Centennial thereafter asserted as subrogee of Charleston Auto Auction a claim against the bond which was correctly denied. The primary rule of statutory construction to ascertain and give effect of the intent of the legislature. Fieldstrep v. S.C. Budget and Control Board, 310 S.C. 210, 423 S.E.2d 101 (1992), Midstate Auto Auction, supra. The Appellate Court correctly held that legal representative as used in the statute means one who stands in the shoes of the owner. An example would be conservator, a personal representative, or a trustee. Petitioner seeks to expand the definition to persons whose authority is limited to processing a transaction through the auto auction company and who specifically states that the sole service they are providing is that of an auction house. The Court of Appeals

was correct in following the Supreme Court's decision in Midstate Auto Auction, *supra* in its ruling.

B. The Court of Appeals did not reach the issue, but would be correct in finding that the protection of the bond statute applies only to sellers.

The Order in this case does not find that the statute only applies to sellers. This was an argument presented below based upon the findings in Connecticut Indemnity v. Burdett Chrysler Dodge Corp, 317 S.C. 406, 453 S.E.2d 902 (1994). Burdette was overruled by Midstate Auto Auction, *Supra* only to the extent that it held that any person could recover under the bond. See FN 4.

Western Surety d/b/a CNA Surety believes that Burdette *supra* is still valid law. It was not ruled upon by the Appellate Court. The Appellate Court was merely setting forth that CAA and Centennial were not the legal representatives of the sellers, as contemplated and required by this statute. In this action, the sellers received their funds, the buyers received their vehicles, the auction house chose a business practice to accept unsecured payment, the insurance company chose to insure those unsecured payments for a premium.

The Court of Appeals also did not reach the argument addressed in Burdette where one acts as the cause of their own loss. In this action, the petitioner repeatedly states that it is the agent and legal representative of both the buyer and seller, it is therefore the agent of the fraud committer. While not reached by the Court, it is clear that it is not the intention of the statute that one may claim a relationship as legal representative of both the buyer and seller and yet disavow all obligations owed as between the parties.

C. The Court of Appeals was correct in holding that the Statutory Bond is limited to claims by legal representatives who, like executors and/or trustees, "stand in the shoes" of a party to the transaction.

The Petitioner acknowledges it is not a party to the transaction, but is an auction house that merely facilitated the transaction. The Appellant attempts repeatedly to assert that the inclusion of the words “legal representative” on the back of the Auction bill of sale agreement is sufficient to constitute a legal representative as intended by statute. It is clear that the statute and the prior holdings of this court show that the statute is a limited bond for protection of a limited populace. While each case must be decided upon the actual documents and the intent of the parties it is clear in this case that it was not the intent and in fact the documents specifically prohibit the auction house from actually standing in the shoes of the owner. Whether buyer or seller the auction house and its insurer do not constitute a legal representative of an owner as intended by statute and as traditionally meaning one who stands in the shoes of; such as a conservator, trustee, or personal representative. When read in its entirety, the text of the statute is considered and is in fact the best evidence of the legislative intent. Grier v. AMISB of S.Carolina, Inc., 397 S.C. 532, 535, 725 S.E.2d 693, 695 (2012); Midstate Auto Auction, *supra*.

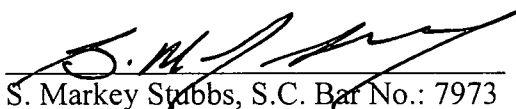
D. The Order correctly construed S.C. Code § 56-15-520.

In this action, the Court of Appeals correctly held that S.C. Code §56-15-520 does not convert an auto auction in to an owner, seller, transferrer or assignor of the title of vehicles. In fact, the statute specifically prohibits interpreting the acts of the auto auction as creating that status. The auto auction in the very agreement it wishes to enforce specifically states “however, they agree auction is merely performing an auction service ... “ R.O.A 58. The Court correctly construed the statutes. Had the bond been intended to extend to auto auctions or other entitles, it would have so stated.

CONCLUSION

For the reason stated, the request for writ of certiorari should be denied.

Respectfully Submitted,



S. Markey Stubbs, S.C. Bar No.: 7973

Baker, Ravenel & Bender, L.L.P.

3710 Landmark Drive, Suite 400

Post Office Box 8057

Columbia, South Carolina 29202

Phone: (803) 799-9091 Facsimile: (803) 779-3423

E-Mail: mstubbs@brblegal.com

File No.: 7753.67

*Attorneys for Appellant Western Surety Co. d/b/a CNA
Surety*

Columbia, South Carolina

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APPEAL FROM CHARLESTON COUNTY
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S.C. Supreme Court

Appellate Case No. 2013-0013816577

Centennial Casualty Co., Inc. Respondent

v.

Western Surety Co., d/b/a CNA Surety Appellant

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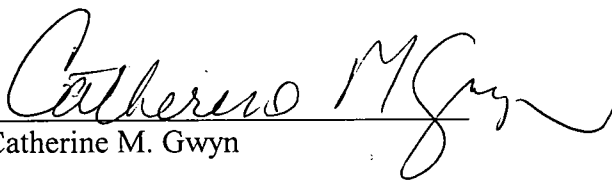
Charleston Auto Auction, A3 Auto Center, LLC, and Wylie Mickle, Third-Party Defendants

PROOF OF SERVICE

I, Catherine M. Gwyn, Legal Assistant to Legal Assistant to S. Markey Stubbs, an employee of Baker, Ravenel & Bender, L.L.P., hereby certify that I have, on the date indicated below, served counsel below with a Respondents Return to Petition for Writ of Certiorari by mailing a copy of same via United States Mail, postage pre-paid and return address clearly indicated on said envelope, to counsel at the following address:

APPELLANT'S COUNSEL OF RECORD:

Ian S. Ford
FORD, WALLACE THOMPSON LLC
715 King Street
Charleston, S.C. 29403


Catherine M. Gwyn

August 5, 2014