



# The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1220 SENATE STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
www.sccourts.org

June 23, 2016

The Honorable Beverly H. Whitfield  
PO Box 678  
Walhalla SC 29691-0678

## REMITTITUR

Re: Branch Banking and Trust Company v. Sarah L. Gray  
Lower Court Case No. 2011CP3701250  
Appellate Case No. 2013-002037

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

Enclosure

cc: Charles R. Griffin, Jr., Esquire  
William Douglas Gray, Esquire  
Weyman C. Carter, Esquire

# The Supreme Court of South Carolina

Branch Banking and Trust Company, Respondent,

v.

Sarah L. Gray, Jeffery Gray, Suntrust Bank, West Union  
Development, LLC, and Bank of Anderson, N.A.,  
Defendants,

Of Whom Jeffery Gray is the Petitioner.

Appellate Case No. 2015-002414  
Lower Court Case No. 2011-CP-37-01250

**RECEIVED**

JUN 20 2016

SC Court of Appeals

---

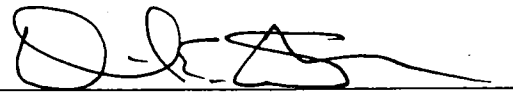
## ORDER

---

Based on the vote of the Court, the petition for a writ of certiorari is denied.

FOR THE COURT

BY



CLERK

Pleicones, C.J., Beatty, Kittredge and Few,  
JJ., not participating

Columbia, South Carolina

June 17, 2016

cc:

William Douglas Gray, Esquire

Weyman C. Carter, Esquire

Charles R. Griffin, Jr., Esquire

The Honorable Beverly H. Whitfield

The Honorable Jenny Abbott Kitchings

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE  
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING  
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

Branch Banking and Trust Company, Respondent,

v.

Sarah L. Gray, Jeffery Gray, Suntrust Bank, West Union  
Development, LLC, and Bank of Anderson, N.A.,  
Defendants,

Of Whom Jeffery Gray is the Appellant.

Appellate Case No. 2013-002037

---

Appeal From Oconee County  
J. Cordell Maddox, Jr., Circuit Court Judge

---

Unpublished Opinion No. 2015-UP-439  
Submitted June 1, 2015 – Filed August 26, 2015

---

**AFFIRMED**

---

Charles R. Griffin, Jr., of The Griffin Firm, LLC, of  
Anderson, for Appellant.

William Douglas Gray and Weyman C. Carter, both of  
McNair Law Firm, PA, of Greenville, for Respondent.

---

**PER CURIAM:** Jeffery Gray appeals the circuit court's order granting Branch Banking and Trust Company's (BB&T's) motion for summary judgment as to Gray's counterclaims in a foreclosure action. On appeal, Gray argues the circuit court erred in granting BB&T's motion because genuine issues of material fact exist regarding whether BB&T (1) was a holder in due course (HIDC) of the loan; (2) violated the South Carolina Consumer Protection Code (SCCPC) by failing to comply with the attorney-preference provision; and (3) violated the Federal Fair Debt Collection Practices Act (FDCPA) by using deceptive means to collect a debt. We affirm pursuant to Rule 220(b), SCACR, and the following authorities.

First, Gray's argument that BB&T was not a HIDC is unpreserved. *See BMW of N. Am., LLC v. Complete Auto Recon Servs., Inc.*, 399 S.C. 444, 454-55, 731 S.E.2d 902, 908 (Ct. App. 2012) (holding an issue must have been raised to and ruled upon by the circuit court to be preserved for appeal); *id.* at 455, 731 S.E.2d at 908 (holding a party must file a Rule 59(e), SCRCF, motion to preserve an issue for appellate review that was raised to but not ruled on by the circuit court).

Second, the circuit court properly granted summary judgment regarding the SCCPC claims because the statute of limitations bars Gray from asserting a violation of the attorney-preference law. *See McMaster v. Dewitt*, 411 S.C. 138, 143, 767 S.E.2d 451, 453 (Ct. App. 2014) ("In reviewing a decision to grant summary judgment, [the appellate court] appl[ies] the same standard as the circuit court."); Rule 56(c), SCRCF ("[Summary] judgment . . . shall be rendered forthwith if . . . there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law."); S.C. Code Ann. § 37-10-105(A) (2015) ("No debtor may bring an action for a violation of [section 37-10-102(a) of the South Carolina Code (2015)] more than three years after the violation occurred, [unless the agreement was unconscionable]."); S.C. Code Ann. § 37-5-108(4) (2015) (listing factors that indicate unconscionability). Gray's argument that the statute of limitations does not apply because BB&T unconscionably secured the loan at an exceptionally high interest rate and concealed material facts related to the loan is unpreserved. *See BMW of N. Am., LLC*, 399 S.C. at 454-55, 731 S.E.2d at 908 ("[A]n issue must have been raised to and ruled upon by the [circuit] court in order to be preserved for appellate review.").

Third, the circuit court properly granted summary judgment regarding the FDCPA claim because BB&T was a creditor in the loan transaction. *See* 15 U.S.C. § 1692a(6) (2009) (defining "debt collector" as "any person who . . . regularly collects or attempts to collect . . . debts owed or due or asserted to be *owed or due*").

*another*" (emphasis added)); § 1692a(4) (2009) ("'[C]reditor' means any person who offers or extends credit creating a debt or to whom a debt is owed . . .").

**AFFIRMED.**<sup>1</sup>

**FEW, C.J., and HUFF and THOMAS, JJ., concur.**

---

<sup>1</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.