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OCT 17 2016

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

S.C. SUPREME COURT

R. Markley Dennis, Jr., Circuit Court Judge

Opinion No. 5421 (S.C. Ct. App. filed June 30, 2016)

Coastal Federal Credit Union,

Respondent,

v.

Angel Latoria Brown,

Petitioner.

APPENDIX

Matthew M. Billingsley
J. Edwin McDonnell
SOUTH CAROLINA LEGAL SERVICES
2803 Carner Avenue
North Charleston, South Carolina 29405
(843) 266-2174
Attorneys for Petitioner

Other Counsel of Record:
Sarah Dalonzo-Baker
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Attorney for Respondent

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No 2014-CP-10-1827
Appellate Case No 2014-002079

Coastal Federal Credit Union Appellant

v.

Angel Latoria Brown Respondent

RECORD ON APPEAL

RECEIVED

MAR 17 2015

SC Court of Appeals

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STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NUMBER

20134513-618

COASTAL FEDERAL CREDIT UNION,

Plaintiff,

v.

ANGEL LATORIA BROWN,

Defendant

SUMMONS

(DEBT COLLECTION)

(NON-JURY DOCKET)

2013 OCT 21 AM 11 24
FAYEL SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY SC.

TO THE DEFENDANT BELOW-NAMED

Angel Latoria Brown
2211 Dover Street
North Charleston SC 29405

YOU ARE HEREBY required to Answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to said Complaint on the persons whose names are subscribed below within thirty (30) days after the service hereof, exclusive of the day of such service hereof. If you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

This the 17 day of October, 2013

David P. Nanney, Jr., State Bar #13239
Charles N. Griffin, III, State Bar #13905
Sarah Dalonzo-Baker, State Bar #14116
Nina G. Kilbride, State Bar #67982
KIRSCHBAUM, NANNEY, KEENAN & GRIFFIN, P A
Attorneys for Plaintiff
Post Office Box 19806
Raleigh, North Carolina 27619
Telephone (919) 848-9640

A True Copy Attest
Faye J. Sellers
CLERK OF COURT CP & GS
CHESTERFIELD COUNTY SC

STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NUMBER: 2013CPD13-618

COASTAL FEDERAL CREDIT UNION,)
Plaintiff,
v.
ANGEL LATORIA BROWN,
Defendant.

COMPLAINT

(DEBT COLLECTION)

(NON-JURY DOCKET)

2013 OCT 21 AM 11 29
FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

True Copy Attest
Faye L. Sellers
CLERK OF COURT CP & GS
CHESTERFIELD COUNTY, SC

The Plaintiff hereby alleges and shows unto this Honorable Court that:

1. The Plaintiff is a federally-chartered credit union, with its main office in Wake County, North Carolina.
2. Upon information and belief, the Defendant is a citizen and resident of Charleston County, South Carolina and is neither an infant nor incompetent.
3. The installment sale contract referred to herein was negotiated in Charleston County, South Carolina.
4. On or about May 4, 2008, the Defendant purchased and financed that certain 2008 Suzuki Forenza, VIN # KL5JD56Z38K748968 (the "Vehicle"), pursuant to the terms of a Retail Installment Contract of even date, a copy of which is attached hereto as Exhibit "A."
5. As collateral for the monies borrowed under the Contract, the Defendant granted the creditor a purchase money security interest in the Vehicle.
6. The Contract was assigned to the Plaintiff and the Plaintiff is currently the sole holder of the same.
7. The Defendant subsequently defaulted in making the regularly-scheduled monthly payments due under the Contract.
8. As a federally-chartered credit union, no prior notice was

required of the Plaintiff to the Defendant regarding a right to cure the existing default under the Contract, as is generally applicable to consumer credit transactions pursuant to Section 37-5-110 of the South Carolina Code, Ann. 1976.

9. As a result, the Plaintiff peaceably repossessed and sold the Vehicle in accordance with the terms of the Contract and applicable law.

10. After the sale of the Vehicle, the Plaintiff applied the proceeds thereof to the Contract, after which there remained an unpaid balance due. A copy of the deficiency letter is attached hereto as Exhibit "B."

11. There is now due and payable to the Plaintiff by the Defendant under the terms of the Contract the principal sum of \$11,120.41.

12 A copy of the Defendant's complete payment history is attached hereto as Exhibit "C."

13. Pursuant to the Contract, the Defendant is also liable to the Plaintiff for interest in the amount of \$5,891.16 until October 9, 2013, thereafter accruing at the rate of 12.4000% per annum (\$3.78 per diem).

14. Pursuant to the Contract, the Defendant is also liable to the Plaintiff for any costs incurred by the Plaintiff in collection of this debt, including reasonable attorney's fees.

15. The Plaintiff's counsel has demanded payment by the Defendant of the outstanding balance due but the Defendant has failed and refused to pay same. A copy of said demand is attached hereto as Exhibit "D."

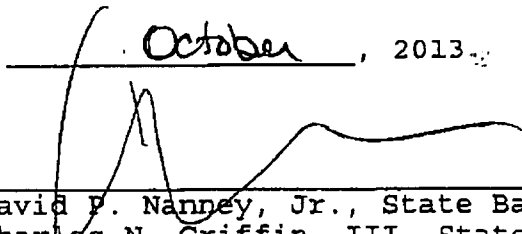
16. This law firm is a debt collector within the meaning of the Fair Debt Collection Practices Act. This communication is an attempt to collect a debt, and any information obtained will be used for that

purpose.

WHEREFORE, the Plaintiff prays that this Court issue Judgment against the Defendant in the following particulars:

1. Principal sum of \$11,120 41;
2. Interest in the amount of \$5,891.16 until October 9, 2013, thereafter accruing at the rate of 12.4000% per annum (\$3.78 per diem) until date of judgment, and at the legal rate thereafter until satisfied;
3. Reasonable attorney's fees in the amount of \$2,551.74, that being 15% of the outstanding balance now due;
4. The costs and disbursements of this action.
5. Such other and further relief as the Court may deem just and proper.

This the 17 day of October, 2013.



David P. Nanney, Jr., State Bar No 13239
✓ Charles N. Griffin, III, State Bar No. 13905
Sarah Dalonzo-Baker, State Bar No. 14116
Nina G. Kilbride, State Bar No. 67982
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Telephone: (919) 848-9640
Facsimile: (919) 848-8755

STATE OF NORTH CAROLINA

VERIFICATION

COUNTY OF WAKE

Sarah Senter, being first duly sworn, deposes and says that she is a Legal Specialist for Coastal Federal Credit Union (herein the "Plaintiff"); that she is a custodian of the business records of the Plaintiff related to all allegations and statements in the foregoing Complaint of the Plaintiff; that all records of the Plaintiff which relate to any and all allegations and statements in the foregoing Complaint of the Plaintiff were produced or made by, or from information transmitted by, a person with knowledge of the acts, events, conditions, etc. to which any and all such allegations and statements relate; that all such records were produced or made at or near the time of the acts, events, conditions, etc. set forth therein; that all such business records are kept and made in the regular course of the Plaintiff's regularly conducted business activity; that she has read the foregoing Complaint of the Plaintiff; and that the same is true of her own personal knowledge or from knowledge gained from her review of the Plaintiff's aforementioned business records related to Defendant and the involvement of the Plaintiff and Defendant therewith, except as to matters and things therein stated on information and belief, and as to such matters and things, she believes them to be true; and that she is competent to testify as to the matters and things stated in the Plaintiff's Complaint.

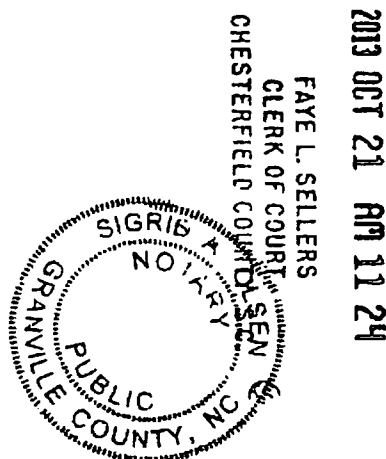
This the 11th day of October, 2013.

Sarah Senter

Sworn to and subscribed before me
this the 11th day of October, 2013.

Sigrid Aiken
Notary Public

My Commission Expires: 08/21/2016



Donor Number _____ Contract Number _____

You the Buyer (and Co-Buyer if any) may buy the vehicle below for cash or on credit. By signing this contract, you choose to buy the vehicle on credit under the agreements on the front and back of this contract. You agree to pay the Creditors Seller (sometimes we or us in this contract) the Amount Financed and Finance Charge according to the payment schedule below. We will figure your finance charge on a daily basis. The Truth-in-Lending Disclosures below are part of this contract.

EXHIBIT

Insurance is my key to financial security because the cost of insurance has hardly been higher than prices for a mortgage. And it's the best way to protect my key life resources in either case. When the tax authority strikes, I hope I have a second or third policy that I can use to pay off my mortgage should it be a factor in the next general price rise.

I am fortunate a double life, please it continues to be second income for my family, keeping the taxes and children

Check the Insurance you want and sign below
Optimal Credit Insurance

☐ Credit Life ☐ Buyer ☐ Cashier ☐ Stock
☐ Credit Disability (Power Only)
Positions
Credit Life I _____ N/A
Credit Disability I _____ N/A

Insurance Company Name N/A
 N/A
 Home Office Address N/A
 N/A
 CONSUMER CREDIT DELINQUENCY IS NOT REQUIRED TO OBTAIN CREDIT AND WILL NOT BE PROVIDED UNLESS YOU SIGN AND AGREE TO PAY THE ADDITIONAL COST. Your decision to buy or not buy credit insurance and credit delinquency insurance will not be a factor in the credit approval process. If you choose this procedure, interest is waived in full.

Other Insurances

☐ **A/A/A** _____ **N/A/A** _____
Type of Insurance Name

PARTIALS & COMPANY
Insurance Company (Name)

N/A/A _____
New Office Address

A/A/A _____
I want the optional credit insurance and other insurances checked above.

☒ **Coverage Signature** _____ **Date** _____

☒ **Coverage Signature** _____ **Date** _____

**THIS INSURANCE DOES NOT INCLUDE
INSURANCE ON YOUR LIABILITY FOR
BODILY INJURY OR PROPERTY DAMAGE**

☐ **VENDOR'S BENEFICIAL INTEREST INSURANCE**
(VBI) insuranced. If this proceeding has to check the coverage because VBI insurance for the manufacturer's interest to protect the dealer for loss or damage to the vehicle (because he sold it) insurance to be the manufacturer's sole protection. The dealer must protect your interest in the vehicle. You may choose the insurance company through which the VBI is obtained you shall be purchase VBI insurance through BANCARD, the cost of this insurance is \$_____, and is also shown in Item 45 of the STATEMENT OF AMOUNT FINANCED. This coverage is for the initial term of the contract

Returned Check Debit You agree to pay a charge of \$50 if any check you give is returned.

2013 OCT 21 PM 11 24

A True Copy Attest

Jay. C. L. Moore

NOW THIS CONTRACT CAN BE CHANGED This contract entitles the contractor to amend his performance and or delivery to the contract. Any change to this contract must be in writing and we must accept it. No oral changes are binding. Buyer Signs Michael Blauzy Co Buyer Signs _____
If any part of this contract is not valid all other parts shall stand. We may add or delete our ordering any of our rights under this contract without losing them. For example, we may extend the time for making some payments without extending the time for making others.
Buyer bank for return if money is returned.

You agree to the terms of this contract. You confirm that before you signed this contract, we gave it to you, and you were free to take it and review it. You confirm that you received a completely filled-in copy when you signed it.

Buyer Signs X Angela Brown Date 11/13/13 Co-Buyer Signs X _____ Date _____

Co-buyer and Co-Owner — A co-buyer is a person who is responsible for paying the price cost. An owner is a person who owns an item and is responsible for the cost of the item. The co-buyer and co-owner are responsible for the cost of the item. The co-buyer and co-owner are responsible for the cost of the item. The co-buyer and co-owner are responsible for the cost of the item.

Order number 4984 ☒ Express
 Seller JOHNNY'S SUBARU TRUCKS LLC 05/04/00 By X

☐ Accepted with exceptions
 ☒ Accepted without exceptions
 ☐ Accepted with limited exceptions

LAW FORM NO. 863-EC, with box "A" which can be used by
attorneys, judges, clerks, and laymen alike.

FINANCE CHARGE PAYMENTS

- a. How we will figure Finance Charge. We will figure the Finance Charge on a daily basis at the Annual Percentage Rate on the unpaid part of the Amount Financed.
- b. How we will apply payments. We may apply each payment to the earned and unpaid part of the Finance Charge, to the Amount Financed and to other amounts you owe under this contract in any order the law permits.
- c. How late payments or early payments change what you must pay. We based the Finance Charge, Total of Payments, and Total Sale Price shown on the front on the assumption that you will make every payment on the day it is due. Your Finance Charge, Total of Payments, and Total Sale Price will be more if you pay late and less if you pay early. Changes may take the form of a larger or smaller final payment or, at our option, more or fewer payments of the same amount as your scheduled payment with a smaller final payment. We will send you a notice telling you about these changes before the final scheduled payment is due.
- d. You may prepay. You may prepay all or part of the unpaid part of the Amount Financed at any time without penalty. If you do so, you must pay the earned and unpaid part of the Finance Charge and all other amounts due up to the date of your payment.
- e. You may refinance a balloon payment. A balloon payment is a scheduled payment that is more than twice as large as the average of your earlier scheduled payments. If you are buying the vehicle primarily for personal, family, or household use, you may refinance the balloon payment when due without penalty. The terms of the refinancing will be no less favorable to you than the terms of this contract. This provision does not apply if we adjusted your payment schedule to your seasonal or irregular income.

2. YOUR OTHER PROMISES TO US

- a. If the vehicle is damaged, destroyed, or missing. You agree to pay us all you owe under this contract even if the vehicle is damaged, destroyed, or missing.
- b. Using the vehicle. You agree not to remove the vehicle from the U.S. or Canada or to sell, rent, lease, or transfer any interest in the vehicle or this contract without our written permission. You agree not to expose the vehicle to misuse, misuse, excessive use, or involuntary transfer. If we pay any repair bills, storage bills, taxes, fees, or charges on the vehicle, you agree to repay the amount when we ask for it.
- c. Security interest.
- i. You give us a security interest in:
 - 1. The vehicle and all parts or goods put on it.
 - 2. All money or goods received (proceeds) for the vehicle.
 - 3. All insurance, maintenance, service or other contracts we finance for you.
 - 4. All proceeds from insurance, maintenance, service, or other contracts we finance for you. This includes any refunds of premiums or charges from the contracts.
- This secures payment of all you owe on this contract. It also secures your other agreements in this contract. You will make sure the title shows our security interest (lien) in the vehicle.
- d. Insurance you must have on the vehicle. You agree to have physical damage insurance covering loss of or damage to the vehicle for the term of this contract. The insurance must cover our interest in the vehicle. If you do not have this insurance, we may, if we choose, buy physical damage insurance. If we decide to buy physical damage insurance, we may either buy insurance that covers your interest and our interest in the vehicle or buy insurance that covers only our interest. If we buy either type of insurance, we will tell you which type and the charge you must pay. The charge will be the cost of the insurance and a finance charge at the Annual Percentage Rate shown on the front of this contract. If the vehicle is lost or damaged, you agree that we may use any insurance settlement to reduce what you owe or repair the vehicle.
- e. What happens to returned insurance, maintenance, service, or other contract charges. If we get a refund of insurance, maintenance, service, or other contract charges, you agree that we may subtract the refund from what you owe.

3. IF YOU PAY LATE OR BREAK YOUR OTHER PROMISES

- a. You may owe late charges. You will pay a late charge on each late payment as shown on the front. Acceptance of a late payment or late charge does not excuse your late payment or mean that you may keep making late payments.

If you pay late, we may also take the described below. You may have to pay all you owe at once if you break your promises (default). We may demand that you pay all you owe at once after we give you any notice the law requires. Default means:

- You pay any payment more than 10 days late or not at all or
 - You start a proceeding in bankruptcy or one is started against you or your property, or you break any agreements in this contract, except that if you bought the vehicle primarily for personal, family or household use, we will only treat these events as defaults if they significantly impair the prospect of payment performance or realization of the collateral.
- The amount you will owe will be the unpaid part of the Amount Financed plus the earned and unpaid part of the Finance Charge, any late charges and any amounts due because you defaulted.
- c. You may have to pay collection costs. If we hire an attorney who is not our salaried employee to collect what you owe, you will pay the attorney's reasonable fee and court costs the law permits. The maximum attorney's fee you will pay will be 15% of the amount you owe.
- d. We may take the vehicle from you. If you default, we may take (repossess) the vehicle from you after we give you any notice the law requires. We may only take the vehicle if we do so peacefully without entering into a dwelling used as a current residence. If your vehicle has an electronic tracking device, you agree that we may use the device to find the vehicle. If we take the vehicle, any accessories, equipment, and replacement parts will stay with the vehicle. If any personal items are in the vehicle, we may store them for you at your expense. If you do not ask for these items back, we may dispose of them as the law allows.
- e. How you can get the vehicle back. If we take it, we repossess the vehicle, you may pay to get it back (redeem). We will tell you how much to pay to redeem. Your right to redeem ends when we sell the vehicle.
- f. We will sell the vehicle if you do not get it back. If you do not redeem, we will sell the vehicle. We will send you a written notice of sale before selling the vehicle. We will apply the money from the sale, less allowed expenses, to the amount you owe. Allowed expenses are expenses we pay as a direct result of taking the vehicle, holding it, preparing it for sale, and selling it. Attorney's fees and court costs the law permits are also allowed expenses. If any money is left (surplus), we will pay it to you unless the law requires us to pay it to someone else. If money from the sale is not enough to pay the amount you owe, you must pay the rest to us, unless the law provides otherwise. If you do not pay the amount when we ask, we may charge you interest at a rate not exceeding the highest rate permitted by applicable law.
- g. What we may do about optional insurance, maintenance, service, or other contracts. This contract may contain charges for optional insurance, maintenance, service, or other contracts. If we repossess the vehicle, we may claim benefits under these contracts and cancel them to obtain refunds of unearned charges to reduce what you owe or repair the vehicle. If the vehicle is a total loss because it is completely damaged, or stolen, we may claim benefits under these contracts and cancel them to obtain refunds of unearned charges to reduce what you owe.
4. **WARRANTIES SELLER DISCLAIMS**
Unless the Seller makes a written warranty, or enters into a service contract within 90 days from the date of this contract, the Seller makes no warranties, express or implied, on the vehicle, and there will be no implied warranties of merchantability or of fitness for a particular purpose. This provision does not affect any warranties covering the vehicle that the vehicle manufacturer may provide.
5. **Used Car Buyers Guide**. The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale. Spanish Translation: Guía para compradores de vehículos usados. La información que ve en el formulario de la ventanilla para este vehículo forma parte del presente contrato. La información del formulario de la ventanilla deja sin efecto toda disposición en contrario contenida en el contrato de venta.
6. **Applicable Law**. Federal law and the law of the state of our address shown on the front of this contract apply to this contract.

NOTICE. ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

The preceding NOTICE applies only if the "personal, family or household" box in the "Primary Use for Which Purchased" section of this contract is checked. In all other cases, Buyer will not assert against any subsequent holder or assignee of this contract any claims or defenses the Buyer (debtor) may have against the Seller, or against the manufacturer of the vehicle or equipment obtained under this contract.

EXHIBIT

A

2013 OCT 21 PM 11 24
FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

A True Copy Attest
Faye L. Sellers
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, S.C.



Simply Brighter.

DEFICIENCY OR SURPLUS AFTER RESALE OF REPOSSESSED COLLATERAL

November 24, 2009

Angel Brown
2130 ADAIR ST
N CHARLESTON, SC, 29405-5531

REF 346121-01

Dear Angel Brown,

We have sold your 2008 Suzuki Forenza, according to our rights in your loan agreement with the Credit Union. Here is how we calculated the balance on the account after such sale

1	Total amount secured by collateral		
2.	Rebate of unearned interest		
3	Resale amount		
4	Aggregate amount of obligations after deducting proceeds	=	
5	Amount of transport fees.	+	
6.	Amount of repossession invoice.	+	
7	Amount of CUNA insurance premiums	+	
8	Amount of skip tracing invoice	+	
9	Amount of storage	+	
10.	Amount of repair invoice	+	
11	Amount of outside invoice.	+	
12	Legal fees	+	
13.	Amount of sales fee/reconditioning fee.	+	
14	Amount of other credits including rebates of interest or credit services charges, if any		
15	Total amount of		
	[] Surplus		
	[x] Deficiency*		

2009 OCT 21 PM 11 24
CLERK OF COURT
CHESTERFIELD COUNTY, SC

\$13060.85

Future debits, credits, charges, including additional credit service charges or interest, rebates and expenses may affect the amount of the stated surplus or deficiency

Contact our office within ten (10) days from the date of this letter to discuss any questions you may have. The Credit Union will be open to work with you on your repayment plan. Should we not hear from you within the specified time, this account may be forwarded to legal action to collect this debt.

Sincerely,

Collections Department
1-877-863-6164

*This notice is provided to you in compliance with NCGS 25-9-616. The purpose of this communication is to collect a debt.

A True Copy Attest
Jaye T. Sellers
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC



Transaction History Listing

07/15/2013
 Member: 346121 Br Brown, Angel L
 FOR ACCOUNT 346121-Angel L Brown
 LOAN Sub 1

EXHIBIT

EFFECTIVE	TRAN	AMOUNT	PRIN	INT	BALANCE	RECEIPT #
12/02/2009	lrec	\$1,395.00	\$1,395.00	0	-\$11,120.41	1202105412
Desc service contract						
11/24/2009	sale	\$5,127.75	\$5,127.75	0	-\$12,515.41	1124103618
10/28/2009	woff	\$17,643.16	\$0.00	0	-\$17,643.16	1028102608
Desc Writeoff						
10/21/2009	woff	\$17,643.16	\$0.00	0	-\$17,643.16	1021114346
Desc Writeoff Reversed 10/21/2009						
RevReason: Member paying current						
07/28/2009	yclp	\$366.32	\$118.95	-241.37	-\$17,643.16	728104532
LateFee -6						
06/18/2009	yclp	\$367.00	\$226.55	-134.45	-\$17,762.11	
LateFee -6						
05/27/2009	yclp	\$364.78	\$4.24	-354.54	-\$17,988.66	527174906
LateFee -6						
03/30/2009	lnpt	\$367.00	\$39.76	-318.56	-\$17,992.90	330143338
LateFee -8.68						
03/16/2009	lnpx	\$3.32	\$0.00	0	-\$18,032.66	316104930
savings 1 LateFee -3.32						
02/06/2009	lnpt	\$363.00	\$178.12	-178.88	-\$18,032.66	206121054
LateFee -6						
01/13/2009	zccp	\$254.00	\$0.00	-248	-\$18,210.78	113154316
Desc 1746 LateFee -6						
12/02/2008	lxt	\$0.00	\$0.00	0	-\$18,210.78	1202163644
11/29/2008	lnpt	\$173.10	\$6.19	-160.91	-\$18,210.78	1130170120
Entered 11/30 LateFee -6						
11/03/2008	zccp	\$300.00	\$92.96	-201.04	-\$18,216.97	1103151656
Desc 1746 LateFee -6						
11/03/2008	zccp	\$300.00	\$92.96	-201.04	-\$18,309.93	1103131512
Desc 1746 Reversed 11/03/2008 LateFee -6						
RevReason teller error						
10/23/2008	zccp	\$60.00	\$0.00	-54	-\$18,309.93	1023111238
Desc X1746 LateFee -6						
09/23/2008	zccp	\$300.00	\$26.15	-267.86	-\$18,309.93	923132850
Desc 1746 LateFee -5.99						
09/15/2008	oftt	\$0.01	\$0.00	0	-\$18,336.08	
savings 1 LateFee -0.01						
08/11/2008	zccp	\$372.32	\$112.86	-253.46	-\$18,336.08	811130922
Desc 4953 LateFee -6						
07/23/2008	zccp	\$153.00	\$0.00	-153	-\$18,448.94	723171206
Desc 4198						
07/16/2008	oftt	\$20.03	\$0.00	-20.03	-\$18,448.94	
savings 1						
07/16/2008	lnpt	\$200.00	\$0.00	-194	-\$18,448.94	716121434
LateFee -6						
05/04/2008	culd	-\$18,448.94	-\$18,448.94	0	-\$18,448.94	515143626
Entered 05/15						

A True Copy Attest

Jaye L. Sellers

CLERK OF COURT C.P. & G.
CHESTERFIELD COUNTY, S.C.

History Request Date: 07/15/2013 Time: 11:58 AM

2013 OCT 21 AM 11 24
 FAYE L. SELLERS
 CLERK OF COURT
 CHESTERFIELD COUNTY, S.C.

KIRSCHBAUM, NANNEY, KEENAN & GRIFFIN, P.A.
ATTORNEYS AT LAW
POST OFFICE BOX 19806
RALEIGH, NORTH CAROLINA 27619
TELEPHONE 919-848-9640

August 20, 2013

Angel Latoria Brown
2211 Dover Street
North Charleston, SC 29405

Re Coastal Federal Credit Union

Dear Ms Brown

The undersigned represents Coastal Federal Credit Union. We have been advised that as of the date of this letter, you are indebted to Coastal Federal Credit Union in the amount of \$16,822.67. This amount includes interest at the rate of 12.4000% per annum, which continues to accrue at the rate of \$3.78 per day. This amount is due as deficiency in regard to your purchase and financing of a 2008 Suzuki Forenza, VIN # KL5JD56Z38K748968, under a contract dated May 4, 2008.

As stated in the bold type below, you have thirty (30) days after receipt of this letter in which to send your dispute of this debt. No further action will be taken by this firm until this thirty (30) day period has expired. Demand is now made for payment of the above amount within five (5) days after expiration of the thirty (30) day dispute period. You should forward to us within five (5) days after the thirty (30) day dispute period, the sum of \$16,822.67 plus interest at the rate of \$3.78 per day. Your failure to pay may also result in the filing of legal proceedings against you, in which case we may apply to the court for reasonable attorney's fees and court costs as allowed by law.

YOU HAVE THE FOLLOWING RIGHTS WHICH ARE IN NO WAY AFFECTED BY THE DEMAND FOR PAYMENT SET FORTH ABOVE.

Unless you dispute the validity of this debt or any portion thereof within thirty (30) days after receipt of this letter, we will assume it to be valid. Upon notification to us in writing within thirty (30) days after receipt of this letter that you dispute all or any portion of the debt, we will obtain and mail verification of the debt to you. Also, upon written request within thirty (30) day after receipt of this letter, we will provide you with the name and address of the original creditor.

This law firm is a debt collector within the meaning of the Fair Debt Collection Practices Act. This communication is an attempt to collect a debt and any information obtained will be used for that purpose.

Sincerely yours,

KIRSCHBAUM, NANNEY, KEENAN & GRIFFIN,

David P Nanney, Jr.

2013 OCT 21 AM 11:12
FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, SC

True Copy Attest
Faye L. Sellers
CLERK OF COURT P & GS
CHESTERFIELD COUNTY, SC

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, Sarah Senter, hereby swear (or affirm) that the attached documents are true, correct photocopies of the documents in the possession of Coastal Federal Credit Union.

Sarah Senter

Affiant

A True Copy Attest
Faye L Sellers
S. C. 2013 OCT 21 AM 11 24
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

Subscribed and sworn (or affirmed) before me

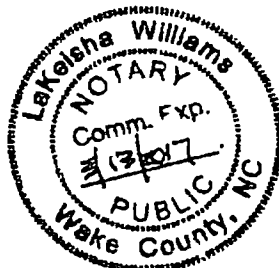
This 6th day of May, 2013.

Lakeisha Williams
Notary

2013 OCT 21 AM 11 24
FAYE L SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

My Commission Expires: 3/13/2017

(Notary Seal)



STATE OF SOUTH CAROLINA)
COUNTY OF CHESTERFIELD)
Coastal Federal Credit Union,)
Plaintiff,)
v.)
Angel Latoria Brown,)
Defendant.)

2014 CP 101827
IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
CASE NO.: 2013-CP-13-618

2013 NOV 21 AM 9 31
FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

ANSWER

The Defendant responding to the Plaintiff's Complaint would respectfully show unto the Court.

FOR A FIRST DEFENSE

1. Each and every allegation in the Plaintiff's Complaint not herein qualified is denied.
2. The Defendant admits the allegations of paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 10, and 12 of the Plaintiff's Complaint.
3. The Defendant denies the allegations of paragraphs 9, 11, 13, and 14 of the Plaintiff's Complaint and strict proof is demanded of the allegations contained therein.
4. The Defendant would answer paragraph 15 of the Plaintiff's Complaint stating that the Defendant does not recall receiving the letter attached as Exhibit "D" and therefore denies the same and demands strict proof thereof.
5. Paragraph 16 of the Plaintiff's Complaint does not require an answer

FOR A SECOND DEFENSE
(Statute of Limitations)

6. Each and every allegation in the Defendant's Defenses above is repeated herein as if repeated verbatim.
7. The alleged default of the Defendant was prior to November 24, 2009. Plaintiff's Exhibit "B" lists a date of November 24, 2009 as its notice to Defendant regarding a deficiency from the sale of the vehicle.

FILED
2014 MAR 17 PM 3:46
JULIE J. ARMSTRONG
CLERK OF COURT

8 The Plaintiff's action should be barred by the statute of limitations as set out in SC Code 15-3-20 et seq. as the account would be in default and the deficiency known for over three (3) years.

FOR A THIRD DEFENSE

(Change of Venue)

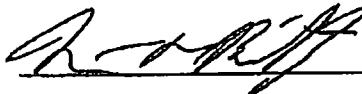
9. The Plaintiff's Complaint states that the contract originated in Charleston County and that Defendant is a resident of Charleston County

10. The Defendant is informed and believes that Plaintiff filed this action in Chesterfield County by mistake and the case should be transferred to Charleston County.

WHEREFORE, having fully answered the Plaintiff's Complaint, the Defendant prays that the Court issues its Order granting the Defendant the following:

- A. Dismissing the Plaintiff's Complaint with prejudice; and
- B. For such other relief as this Court deems is just and proper.

SOUTH CAROLINA LEGAL SERVICES



Matthew M. Billingsley, Esquire SC Bar # 76095
Attorneys for the Defendant
2803 Carner Avenue
North Charleston, SC 29405
(843) 266-2174
(843) 760-1090 fax

November 18, 2013

Charleston, South Carolina

2014 CP 10 1 827

STATE OF SOUTH CAROLINA

COUNTY OF CHESTERFIELD

COASTAL FEDERAL CREDIT UNION,

Plaintiff,

vs.

ANGEL LATORIA BROWN,

Defendant,

IN THE FAMILY COURT OF THE
FOURTH JUDICIAL CIRCUIT

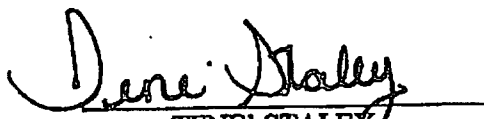
Case No. 2013-CP-13-618

CERTIFICATE OF SERVICE

FILED
2014 MAR 17 PM 4:44
JULIE J. ARMSTRONG
CLERK OF COURT
BY

I, Tene' Staley, Legal Secretary at South Carolina Legal Services, North Charleston, South Carolina, do hereby certify that I have on the 19th day of November, 2013 mailed a copy of the Answer in the above action, via regular mail, with sufficient postage affixed to:

Kirschbaum, Nanney, Keenan, & Griffin, P.A.
Attn: Charles N. Griffin, Esq., III
P.O. Box 19806
Raleigh, NC 27619


TENE' STALEY

2013 NOV 21 AM 9 32
FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

STATE OF SOUTH CAROLINA
CHESTERFIELD COUNTY

IN THE COURT OF COMMON PLEAS
FOR THE FOURTH JUDICIAL CIRCUIT
CASE NUMBER 2013-CP-13-618

COASTAL FEDERAL CREDIT UNION,
Plaintiff,

v

ANGEL LATORIA BROWN,
Defendant

CONSENT ORDER
TO CHANGE VENUE

2014 JAN 7 AM 9:42
CLERK
FAYETTEVILLE

The parties, by and through their counsel, request the Court as follows.

1 As evidenced by the Complaint filed by the Plaintiff in this matter Plaintiff intended the Action to be filed in Charleston County/Ninth Judicial Circuit

2 The Summons and Complaint were inadvertently forwarded to and filed by the Clerk of Court in Chesterfield County/Fourth Judicial Circuit on October 21, 2013

3 The Defendant has now been duly served and filed his Answer to the Complaint with the Chesterfield County Clerk asking for, among other things, transfer of this case to Charleston County/Ninth Judicial Circuit

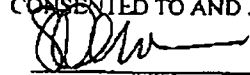
4 Plaintiff has no objection to such relief, the matter having been intended by Plaintiff to be filed in Charleston County/Ninth Judicial Circuit in the first instance

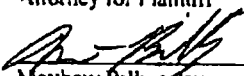
THEREFORE, IT IS HEREBY ORDERED that this case be, and the same hereby is, transferred to Charleston County in the Ninth Judicial Circuit, and the Clerk of Court for Chesterfield County is authorized and directed to forthwith transmit to the Clerk of Court for Charleston County the original file in this case

AND IT IS SO ORDERED this ~~21st~~ day of ~~December~~ *January 2014* 2013


Judge, Fourth Judicial Circuit

CONSENTED TO AND AGREED UPON AFTER REVIEW


Sarah Dalonzo-Baker
Attorney for Plaintiff


Matthew Billingsley
Attorney for Defendant

JULIE J. ARMSTRONG
CLERK OF COURT, C P & S S
102 BROAD STREET, SUITE 102
CHARLESTON, SC 29401-2258
RETURN SERVICE REQUESTED



www3.charlestoncounty.org

69



DAVID P NANNEY
PO BOX 19766
RALEIGH NC 27619-9766

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Order: Consent to Change Venue Fr/Chesterfield to Charleston

CASE NO: 2014CP1001827
Coastal Federal Credit Union VS Angel Latoria Brown

This judgment was entered on the 17th day of March, 2014, and a copy mailed first class on Tuesday, March 18, 2014, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at www3.charlestoncounty.org

STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NUMBER 2014-CP-10-1827

COASTAL FEDERAL CREDIT UNION,
Plaintiff,

v.

ANGEL LATORIA BROWN,
Defendant

MOTION FOR
SUMMARY JUDGMENT

2014 APR 23 PM 1:04
CLERK OF COURT
NINTH JUDICIAL CIRCUIT

For the reasons enumerated in Plaintiff's Complaint previously filed herein and in Plaintiff's Verified Statement and Affidavit attached hereto, both incorporated by reference herein, Plaintiff moves the Court, pursuant to the South Carolina Rules of Civil Procedure, for Summary Judgment on the ground that there is no genuine issue as to any material fact as shown by the pleadings, and Movant is entitled to Judgment as a matter of law

This the 25 day of April, 2014

David P. Nanney, Jr., Bar #13239
Charles N. Griffin, III, Bar #13905
Sarah Dalonzo-Baker, Bar #14116
Nina G. Kilbride, Bar #67982
KIRSCHBAUM, NANNEY, KEENAN & GRIFFIN, P A
Attorneys for Plaintiff
Post Office Box 19806
Raleigh, North Carolina 27619
Telephone: (919) 848-9640

CERTIFICATE OF SERVICE

A copy of the foregoing Motion for Summary Judgment was served on the Defendant by

(xx) Mailing a copy of same in a postage-paid envelope to Attorney Matthew Billingsley, 2803 Carner Avenue, North Charleston SC 29405

This the 25 day of April, 2014

Charles N. Griffin, III

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS FOR
THE NINTH JUDICIAL CIRCUIT
CASE NUMBER: 2014-CP-10-1827

COASTAL FEDERAL CREDIT UNION;
Plaintiff,

v

ANGEL LATORIA BROWN,
Defendant.

VERIFIED STATEMENT
AND AFFIDAVIT

FILED
2014 MAR 28 PM 1:04
CLERK OF COURT

Sarah Senter, being first duly sworn, deposes and
says:

1 That s/he is a citizen and resident of Wake
County, NC, is over the age of 18 years, and is competent to
make this Affidavit

2 That s/he is employed by the Plaintiff as a
Legal Specialist, and that s/he is authorized to make this
Affidavit on behalf of Plaintiff.

3. That in such capacity s/he is a custodian of the business
records of the Plaintiff related to all allegations and statements
contained herein or in the Complaint; that all records of the Plaintiff
which relate to any and all allegations and statements contained herein
or in the Complaint were produced or made by, or from information
transmitted by, a person with knowledge of the acts, events, conditions,
etc., to which any and all such allegations and statements relate, that
all such records were produced or made at or near the time of the acts,
events, conditions, etc., set forth herein or in the Complaint; that all
such business records are kept and made in the regular course of the
Plaintiff's regularly-conducted business activity, that s/he is familiar
with the books and records and business practices of Plaintiff and is in
a position to give evidence as to the correctness of the records and
business practices of Plaintiff and, in particular, as Defendant's
account with Plaintiff.

4. That s/he has been employed by the Plaintiff for approximately
five years and is familiar with the customs and usages of the
automobile financing industry; that during her/his history of
employment, s/he has received both training and work experience in the
areas of financing and repossessing of motor vehicles after default

5. That on or about May 4, 2008, the Defendant entered into a
transaction for the sale of goods, namely that certain 2008 Suzuki
Forenza, VIN KL5JD56Z38K748968 (the "Vehicle"). As part of the above-
noted transaction in goods, the Defendant executed a retail installment
sale contract (the "Contract") in the original principal sum of

\$18,448.94, with interest accruing thereon at the rate of 12.4000% per annum. In return for financing for the sale of goods (namely, the Vehicle), Defendant agreed to pay in accordance with the contract. A true copy of the Contract is attached hereto as Exhibit "A "

6. That the Contract was thereafter assigned to Plaintiff, as the financing agency, herein

7. That as security for the repayment to Plaintiff of the above-referenced loan, the Defendant granted to Plaintiff, and Plaintiff duly perfected, a first lien on the "Vehicle", as evidenced by the Certificate Of Title for the Vehicle attached hereto as Exhibit "B."

8. That on or about December 1, 2008, the Defendant requested and was granted approval for a payment extension pursuant to that certain Closed End Extension Agreement attached hereto as Exhibit "C."

9 That prior to October 22, 2009, the Defendant failed to pay in accordance with the contract by failing to make certain regularly-scheduled payments owed to Plaintiff. A copy of the payment history for the Defendant's account is attached hereto as Exhibit "D."

10. That the Plaintiff is a federally chartered Credit Union and therefore no notification to the Defendant of his right to cure the default in this consumer credit transaction was required.

11. That as a result of the Defendant's default under the Contract, the Plaintiff peaceably repossessed the Vehicle on October 22, 2009.

12. That on or about October 26, 2009, the Plaintiff mailed to the Defendant at her last-known address, the letter attached hereto as Exhibit "E."

13. That on or about November 19, 2009, following notification to Defendant as set forth in Exhibit "E", the Plaintiff sold the Vehicle at a private sale conducted for vehicle dealers at one of the auto auctions regularly used by Plaintiff and other vehicle lenders to liquidate repossessed vehicles.

14. That immediately prior to said sale, the outstanding balance due under the Contract, including all credits to which the Defendants was entitled, was \$18,188.60.

15. That on or about November 19, 2009, when the Plaintiff sold the Vehicle, it had a Black Book "average" wholesale auction value of \$6,077.80, with appropriate additions and deductions for mileage and

chargeable damage. See Exhibits "F" and "G" attached hereto

16. That the Vehicle was sold for the sum of \$6,000.00, a copy of the Bill Of Sale or a summary of the details of the sale is attached hereto as Exhibit "H."

17. That the Plaintiff thereafter charged those reasonable expenses of collection and enforcement as allowed by S.C Code 36-9-608 against above-described proceeds of sale and now has a net principal balance due under the Contract in the amount of \$11,120 41 plus interest in the amount of \$5,891.16 until October 9, 2013, and continuing thereafter at the contract rate of 12.4000% per annum (\$3 78 per diem)

18. That on or about November 24, 2009, the Plaintiff mailed to the Defendant at her last-known address the letter attached hereto as Exhibit "I," making demand for payment of the remaining balance due under the Contract.

This the 17th day of April, 2014.

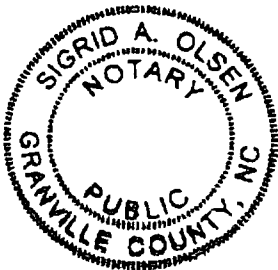
Coastal Federal Credit Union

By: Sarah Sander

Sworn to of affirmed before me this
17th day of April, 2014.

Sigrid A. Olsen
Notary Public

My Commission Expires: 08/24/16

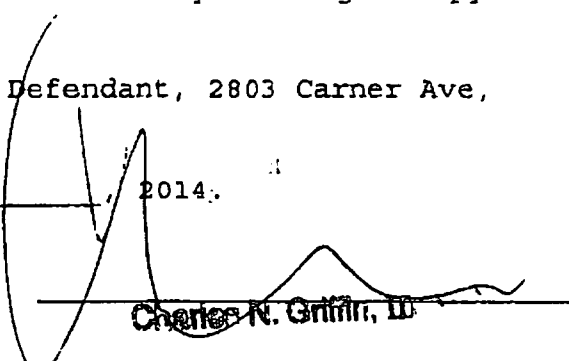


CERTIFICATE OF SERVICE

The foregoing was served on the Defendant by mailing a copy of same in a postage-paid envelope to.

Matthew Billingsley, Attorney for Defendant, 2803 Carner Ave,
North Charleston SC 29405.

This 25 day of April, 2014.



Charles N. Griffin, II

2014 APR 23 PM 1:04
CLERK OF COURT

You, the Buyer (and Co-Buyer if any), may buy the vehicle below for cash or on credit. By signing this contract, you choose to buy the vehicle on credit under the agreements on the front and back of this contract. You agree to pay the Creditor \$olar (sometimes "we" or "us" in the contract) the Amount Financed and Finance Charge according to the payment schedule below. We will figure your finance charge on a daily basis. The Truth-in-Lending Disclosures below are part of this contract.

EX-151
A

insurance that may pay the physical damage insurance the insured requires but which from anyone you discuss will be difficult to get. You are not looking to buy any other insurance to supplement such unless the law indicates that's simply based on a special or standard basis. You therefore buy and keep the insurance related to a benefit in that special program.

If any increase in stock price, price in a contract, but the normal insurance companies will require the terms and conditions.

Check the insurance you need and sign below
Optional: Credit Insurance

☐ Credit Life ☐ Buyer ☐ Co-Buyer ☐ Both
☐ Credit Disability (Says/Dirty)
Premium
Credit Life \$ _____ N/A _____
Credit Disability \$ _____ N/A _____

CONSUMER CREDIT INSURANCE IS NOT REQUIRED TO OBTAIN OR RENT AND WILL BE PROVIDED UNLESS YOU SIGN AND AGREE TO PAY THE ADDITIONAL COST.

This insurance is to pay or help pay the mortgage payments if you become disabled or die. It does not cover the principal amount of the loan. If you choose this insurance, the cost will be shown in Item 6 of your statement of charges.

Other Insurance

☐ N/A/A Type of Insurance _____ N/A/A Term _____

Item #1 N/A/A
Insurance Company Name _____
N/A/A
Phone Office Address _____
N/A/A
I would like the optional special treatments and other insurance described above.

X _____ Item #2
Major Expenses _____ Item #3
X _____ Item #4
Co-Insured Expenses _____ Item #5

**THIS INSURANCE DOES NOT INCLUDE
INSURANCE ON YOUR LIABILITY FOR
BODILY INJURY OR PROPERTY DAMAGE**

☐ VENDOR'S SINGLE INTEREST INSURANCE (VSI) INSURANCE If the preceding box is checked, the Creditor requires VSI insurance for the entire term of the contract to protect the Creditor for loss or damage to the vehicle (including the title) if insurance is for the Creditor's sole protection. This insurance does not protect your interest in the vehicle. You may choose the insurance company through which the VSI is obtained; you elect to purchase VSI insurance through the Creditor at the cost of \$600 annually.
ITEMIZATION OF AMOUNT FINANCED: The coverage is for the total value of the contract.

Extended Check things You agree to pay a charge (\$5) if any check you give us is dishonored

NO COOLING OFF PERIOD
State law does not provide for a "cooling off" or cancellation period for this sale. After you sign this contract, you may only cancel it if the seller agrees or for legal cause. You cannot cancel this contract simply because you change your mind. This notice does not apply to home solicitation sales.

The Annual Percentage Rate may be negotiable with the Seller. The Seller may assign this contract and retain its right to receive a part of the Finance Charge.

HOW THIS CONTRACT CAN BE CHANGED This contract contains the entire agreement between you and us relating to this contract. Any change to this contract must be in writing and we must sign it. It must change all our liability. Buyer Signs Michael Brown Co-Buyer Signs X

If any part of this contract is not valid, all other parts will stay. We may drop or refuse from enforcing any of our terms under this contract without losing them. For example, we may extend the time for making down payments without extending the time for making other fees back to other investments or payments.

NOTICE TO RETAIL BUYER: Do not sign this contract in blank. You are entitled to a copy of the contract at the time you sign. Keep it to protect your legal rights.

You agree to the terms of this contract. You confirm that before you signed this contract, we gave it to you, and you were free to take it and review it. You confirm that you received a completely filled-in copy when you signed it.

Buyer Signs Edging & Brown Date 5/24/58 Co-Buyer Signs X Date _____

Co-Buyer and Other Comments - A co-buyer is a person who is responsible for paying the entire debt. An other co-buyer is a person whose name is on the EOs to the vehicle but does not have to pay the debt. This other co-buyer agrees to the security interest in the vehicle given to us in this contract.

Other member signs here ☒ Address _____
 Arthur Jones, MANAGER, FINANCIAL TOWNSHIP, LLC, DELAWARE, USA, Tel: ☒ _____

Borrower accepts no interest in the contract to		COASTAL FEDERAL CREDIT UNION		(Redeem) under the terms of Borrower's agreement(s) with ALLEGRA	
☐ Assumed with original account	☒	☐ Assumed with original account	☒	☐ Assumed with original account	☒

JOHNNY'S SUBARU ISUZU LLC

1. FINANCE CHARGE () PAYMENTS

- a. How we will Finance Charge. We will figure the Finance Charge on a daily basis at the Annual Percentage Rate on the unpaid part of the Amount Financed.
- b. How we will apply payments. We may apply each payment to the earned and unpaid part of the Finance Charge, to the Amount Financed, and to other amounts you owe under this contract in any order the law permits.
- c. How late payments or early payments change what you must pay. We based the Finance Charge, Total of Payments, and Total Sale Price shown on the front on the assumption that you will make every payment on the day it is due. Your Finance Charge, Total of Payments, and Total Sale Price will be more if you pay late and less if you pay early. Changes may take the form of a larger or smaller final payment or, at our option, more or fewer payments of the same amount as your scheduled payment with a smaller final payment. We will send you a notice telling you about these changes before the final scheduled payment is due.
- d. You may prepay. You may prepay all or part of the unpaid part of the Amount Financed at any time with out penalty. If you do so, you must pay the earned and unpaid part of the Finance Charge and all other amounts due up to the date of your payment.
- e. You may refinance a balloon payment. A balloon payment is a scheduled payment that is more than twice as large as the average of your earlier scheduled payments. If you are buying the vehicle primarily for personal, family, or household use, you may refinance the balloon payment when due without penalty. The terms of the refinancing will be no less favorable to you than the terms of this contract. This provision does not apply if we adjusted your payment schedule to your seasonal or irregular income.

2. YOUR OTHER PROMISES TO US

- a. If the vehicle is damaged, destroyed, or missing. You agree to pay us all you owe under the contract even if the vehicle is damaged, destroyed, or missing.
- b. Using the vehicle. You agree not to remove the vehicle from the U.S. or Canada, or to sell, rent, lease, or transfer any interest in the vehicle or this contract without our written permission. You agree not to expose the vehicle to misuse, seizure, confiscation, or involuntary transfer. If we pay any repair bills, storage bills, taxes, fines, or charges on the vehicle, you agree to repay the amount when we ask for it.
- c. Security Interest. You give us a security interest in:
- The vehicle and all parts or goods put on it,
 - All money or goods received (proceeds) for the vehicle,
 - All insurance, maintenance, service, or other contracts we finance for you, and
 - All proceeds from insurance, maintenance, service, or other contracts we finance for you. This includes any refunds of premiums or charges from the contracts.
- This secures payment of all you owe on this contract. It also secures your other agreements in this contract. You will make sure the title shows our security interest (lien) in the vehicle.
- d. Insurance you must have on the vehicle. You agree to have physical damage insurance covering loss of or damage to the vehicle for the term of this contract. The insurance must cover our interest in the vehicle. If you do not have this insurance, we may, if we choose, buy physical damage insurance. If we decide to buy physical damage insurance, we may either buy insurance that covers your interest and our interest in the vehicle or buy insurance that covers only our interest. If we buy either type of insurance, we will tell you which type and the charge you must pay. The charge will be the cost of the insurance and a finance charge at the Annual Percentage Rate shown on the front of this contract. If the vehicle is lost or damaged, you agree that we may use any insurance settlement to reduce what you owe or repair the vehicle.
- e. What happens to returned insurance, maintenance, service, or other contract charges. If we get a refund of insurance, maintenance, service, or other contract charges, you agree that we may subtract the refund from what you owe.

3. IF YOU PAY LATE OR BREAK YOUR OTHER PROMISES

- a. You may owe late charges. You will pay a late charge on each late payment as shown on the front. Acceptance of a late payment or late charge does not excuse your late payment or mean that you may keep making late payments.

If you pay late, we may also take it' described below

- b. You may have to pay all you owe at once if you break your promises (default). We may demand that you pay all you owe at once after we give you any notice the law requires. Default means:
- You pay any payment more than 10 days late or not at all, or
 - You start a proceeding in bankruptcy or one is started against you or your property or you break any agreements in this contract, except that if you bought the vehicle primarily for personal, family, or household use, we will only treat these events as defaults if they significantly impact the prospect of payment, performance, or satisfaction of the collateral.
- The amount you will owe will be the unpaid part of the Amount Financed plus the earned and unpaid part of the Finance Charge, any late charges, and any amounts due because you defaulted.
- c. You may have to pay collection costs. If we hire an attorney who is not our salaried employee to collect what you owe, you will pay the attorney's reasonable fee and court costs the law permits. The maximum attorney's fee you will pay will be 15% of the amount you owe.
- d. We may take the vehicle from you if you default. We may take (repossess) the vehicle from you after we give you any notice the law requires. We may only take the vehicle if we do so peacefully without entering into a dwelling used as a current residence. If your vehicle has an electronic tracking device, you agree that we may use the device to find the vehicle. If we take the vehicle, any accessories, equipment, and replacement parts will stay with the vehicle. If any personal items are in the vehicle, we may store them for you at your expense. If you do not ask for these items back, we may dispose of them as the law allows.
- e. How you can get the vehicle back. If we take it, if we repossess the vehicle, you may pay to get it back (redeem). We will tell you how much to pay to redeem. Your right to redeem ends when we sell the vehicle.
- f. We will sell the vehicle if you do not get it back. If you do not redeem, we will sell the vehicle. We will send you a written notice of sale before selling the vehicle. We will apply the money from the sale, less allowed expenses, to the amount you owe. Allowed expenses are expenses we pay as a direct result of taking the vehicle, holding it, preparing it for sale, and selling it. Attorney's fees and court costs the law permits are also allowed expenses. If any money is left (surplus), we will pay it to you unless the law requires us to pay it to someone else. If money from the sale is not enough to pay the amount you owe, you must pay the rest to us, unless the law provides otherwise. If you do not pay this amount when we ask, we may charge you interest at a rate not exceeding the highest rate permitted by applicable law.
- g. What we may do about optional insurance, maintenance, service, or other contracts. This contract may contain charges for optional insurance, maintenance, service, or other contracts. If we repossess the vehicle, we may claim benefits under these contracts and cancel them to obtain refunds of unearned charges to reduce what you owe or repair the vehicle. If the vehicle is a total loss because it is confiscated, damaged, or stolen, we may claim benefits under these contracts and cancel them to obtain refunds of unearned charges to reduce what you owe.

4. WARRANTIES SELLER DISCLAIMS

Unless the Seller makes a written warranty, or enters into a service contract within 90 days from the date of this contract, the Seller makes no warranties, express or implied, on the vehicle, and there will be no implied warranties of merchantability or of fitness for a particular purpose. This provision does not affect any warranties covering the vehicle that the vehicle manufacturer may provide.

5. Used Car Buyers Guide. The information you see on the window turn for this vehicle is part of this contract. Information on the window turn overrides any contrary provisions in the contract of sale. Spanish Translation. Guía para compradores de vehículos usados. La información que ve en el formulario de la ventanilla para este vehículo forma parte del presente contrato. La información del formulario de la ventanilla deja sin efecto toda disposición en contrario contenida en el contrato de venta.

6. Applicable Law

Federal law and the law of the state of our address shown on the front of this contract apply to this contract.

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

The preceding NOTICE applies only if the "personal, family or household" box in the "Primary Use for Which Purchased" section of this contract is checked. In all other cases, Buyer will not assert against any subsequent holder or assignee of this contract any claims or defenses the Buyer (debtor) may have against the Seller, or against the manufacturer of the vehicle or equipment obtained under this contract.


 Coastal Federal Credit Union

 EXHIBIT
 BAD FAX COPY

A

ASSIGNMENT WITHOUT RECOURSE

This ASSIGNMENT is attached to and expressly made a part of that certain Retail Installment Contract pertaining to the sale and financing of a motor vehicle (the "Contract") more particularly described as follows:

Dated 5-4-2008 by and between:

Seller (Dealership): Johnny's Subaru Buyer(s) Angel Latoria Brown

for:

Make: SUZUKI

Model: FOREZA

Year: 2008

VIN KL5JD56238K748968

FOR VALUE RECEIVED, the Seller identified above ("Seller") hereby sells, assigns and transfers to Coastal Federal Credit Union, its successors and assigns ("CFCU"), Seller's entire right, title and interest in and to the Contract and authorizes CFCU to do every act and thing necessary to collect and discharge obligations arising out of or incident to the Contract. The Assignment of the Contract shall be WITHOUT RECOURSE to the Seller unless noted below or except in the circumstances set forth herein. Seller acknowledges that, notwithstanding anything to the contrary contained in said Contract, including references in the Contract to assignees other than CFCU, if any, this Assignment shall be effective to transfer Seller's rights in the Contract to CFCU.

Johnny's Subaru
 Dealer-Seller

By [Signature]

Date 5-4-08

Assignment of the Contract shall be WITHOUT RECOURSE.

EXHIBIT B

STATE OF SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES CERTIFICATE OF TITLE

VEHICLE ID NUMBER
KL5JD56Z3BK748968

YEAR MAKE
2008 SUZUKI

MODEL
FORENZ

NEW/USED
NEW

BODY STYLE DATE ISSUED
4S 06-16-2008

ODOMETER
123

WEIGHT
2674

TITLE NUMBER
772060192701169A

VEHICLE BRAND(S)
ACTUAL MILEAGE

FULL NAME OF OWNER(S)
BROWN, ANGEL LATORIA
2124 ADAIR ST
NORTH CHARLESTON SC 294057994

CUSTOMER NUMBER: 022484611

FIRST LIENHOLDER
COASTAL FEDERAL CREDIT UNION
PO BOX 660010
SACRAMENTO CA 958660010
DATE OF LIEN 05/06/2008

1ST LIEN RELEASED _____

(DATE)

BY _____
(AUTHORIZED AGENT)

THE SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES HEREBY CERTIFIES THAT THE PERSON HEREIN IS REGISTERED BY THIS DEPARTMENT AS THE LAWFUL OWNER OF THE VEHICLE DESCRIBED SUBJECT TO THE LIEN, IF ANY, HEREIN SET FORTH

MARCIA B ADAMS
EXECUTIVE DIRECTOR

MARK SANFORD
GOVERNOR



PO Box 10421, Raleigh, NC 27618-0421
919-882-5230 • 800-800-0202
www.coastalfcu.org

Closed End Extension Agreement

BAD FAX COPY

Borrower Name <u>Angel Brown</u>	Account Number <u>12345678</u>
Address <u>2694 Madden Dr.</u>	Loan Number <u>12345678</u>
<u>N. Charleston SC 29405</u>	Place of Employment <u>C.E. Williams Middle</u>
Home Telephone <u>843.534.8073</u>	Work Telephone <u></u>

In accordance with your request, Coastal Federal Credit Union hereby agrees to extend the due date(s) for the monthly installment payment(s) indicated below. Upon return of this Agreement, signed by you, your next monthly installment of \$ 96.82 will be due on 12/08. However, please take note that if you do not sign and return this Agreement, your payments and any other charges will continue to be due as provided in the below-described contract.

As a result of this extension, the following payment(s) coming due on the above-referenced loan have been deferred to the end of your loan term. The amount(s) and new due date(s) of these payments are indicated below:

Payment Due Date(s) and Amount(s) Of Payment(s) Being Extended	New Installment Due Date(s) and Amount(s) of Payment(s) Being Extended
<u>10/06, 11/06</u>	<u>12/08</u>

Please also take note that under the terms of your Simple Interest contract, each payment received is applied to the interest earned to the date of receipt and the remainder is applied to reduce the unpaid amount financed. This extension does not defer any interest on the payments you have not made. The extension only modifies your contractual obligation to make certain payments on specific dates. The next payment you make will be applied to the interest earned on the unpaid amount financed from the date we last received a payment from you and the remainder of the payment, if any, will be applied to reduce the unpaid amount financed. Because of this extension, and assuming you make all subsequent payments as scheduled, the unpaid amount financed will not be reduced as rapidly as it would have been under the original payment schedule. This may result in you owing more interest over the term of the contract than originally disclosed.

See your contract documents for any additional information about non-payment, default, any required repayment in full before the scheduled date, and repayment refunds and penalties. This letter becomes part of your contract, so please keep a copy for your records.

We, the above named Borrower(s), acknowledge that this Agreement evidences an extension of payments and/or modification of the terms of that certain Simple Interest Motor Vehicle Contract and Security Agreement dated 12.1.08 executed by me/us, and now held or serviced by Coastal Federal Credit Union. We expressly agree that the terms and provisions of such Contract and Security Agreement, except as herein modified, remain in full force and effect, and are incorporated herein by reference as through fully set forth.

We also understand that this extension does not include an extension of insurance coverage, if any, for which a separate charge was included in the above contract and we assume full responsibility for extending such insurance coverage after the expiration date stated in the insurance policy or contracts, if such extended coverage is desired.

Angel Brown
Borrower

Date 12.1.08

Co-Borrower
Date

Extension Approved: [Signature]

Loan Officer

Date 12/2/08

- Sign and Return by _____
- Return Fax# (919) 882-6604
- EXTENSION IS SUBJECT TO MANAGEMENT APPROVAL

P. 01/01

FAX NO.

DEC-01-2008 MON 10:17 AM

Transaction History Listing

12/16/2013

Member: [REDACTED] Br Angel L Brown
 FOR ACCOUNT : [REDACTED] -Angel L Brown
 LOAN SUB 1

EXHIBIT

EFFECTIVE	TRAN	AMOUNT	PRIN	INT	BALANCE	RECEIPT #
12/02/2009	lrec	\$1,395.00	\$1,395.00	0	-\$11,120.41	1202105412
Desc service contract						
11/24/2009	sale	\$5,127.75	\$5,127.75	0	-\$12,515.41	1124103618
10/28/2009	woff	\$17,643.16	\$0.00	0	-\$17,643.16	1028102608
Desc Writeoff						
10/21/2009	woff	\$17,643.16	\$0.00	0	-\$17,643.16	1021114346
Desc Writeoff Reversed 10/21/2009						
RevReason Member paying current						
07/28/2009	yclp	\$366.32	\$118.95	-241.37	-\$17,643.16	728104532
LateFee -6						
06/18/2009	yclp	\$367.00	\$226.55	-134.45	-\$17,762.11	
LateFee -6						
05/27/2009	yclp	\$364.78	\$4.24	-354.54	-\$17,988.66	527174906
LateFee -6						
03/30/2009	lnpt	\$367.00	\$39.76	-318.56	-\$17,992.90	330143338
LateFee -8.68						
03/16/2009	lnpx	\$3.32	\$0.00	0	-\$18,032.66	316104930
savings 1 LateFee -3.32						
02/06/2009	lnpt	\$363.00	\$178.12	-178.88	-\$18,032.66	206121054
LateFee -6						
01/13/2009	zccp	\$254.00	\$0.00	-248	-\$18,210.78	113154316
Desc 1746 LateFee -6						
12/02/2008	lxt	\$0.00	\$0.00	0	-\$18,210.78	1202163644
11/29/2008	lnpt	\$173.10	\$6.19	-160.91	-\$18,210.78	1130170120
Entered 11/30 LateFee -6						
11/03/2008	zccp	\$300.00	\$92.96	-201.04	-\$18,216.97	1103151656
Desc 1746 LateFee -6						
11/03/2008	zccp	\$300.00	\$92.96	-201.04	-\$18,309.93	1103131512
Desc 1746 Reversed 11/03/2008 LateFee -6						
RevReason. teller error						
10/23/2008	zccp	\$60.00	\$0.00	-54	-\$18,309.93	1023111238
Desc X1746 LateFee -6						
09/23/2008	zccp	\$300.00	\$26.15	-267.86	-\$18,309.93	923132850
Desc 1746 LateFee -5.99						
09/15/2008	oftt	\$0.01	\$0.00	0	-\$18,336.08	
savings 1 LateFee -0.01						
08/11/2008	zccp	\$372.32	\$112.86	-253.46	-\$18,336.08	811130922
Desc 4953 LateFee -6						
07/23/2008	zccp	\$153.00	\$0.00	-153	-\$18,448.94	723171206
Desc 4198						
07/16/2008	oftt	\$20.03	\$0.00	-20.03	-\$18,448.94	
savings 1						
07/16/2008	lnpt	\$200.00	\$0.00	-194	-\$18,448.94	716121434
LateFee -6						
05/04/2008	cul	-\$18,448.94	-\$18,448.94	0	-\$18,448.94	515143626
Entered 05/15						

History Request Date: 12/16/2013 Time: 11 52 AM



NOTICE OF OUR PLAN TO SELL PROPERTY

Simply Brighter.

EXHIBIT

E

October 26, 2009

Angel Brown
2130 ADAIR ST
N CHARLESTON, SC 29405

Subject: 346121

Dear Angel Brown

We have your, 2008 Suzuki Forenza because you broke your promises in our agreement.

[For a public disposition]

We will sell [description of collateral] at public sale. A sale could include a lease or license. The sale will be held as follows:

Date: _____
Time: _____
Place: _____

You may attend the sale and bring bidders if you want.

[For a private disposition, including dealer-only auctions]

We will sell 2008 Suzuki Forenza at private sale sometime after 11/4/2009. The sale could include a lease or license.

The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you will still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

You can get the property back at any time before we sell it by paying us the full amount you owe (not just the past due payments), including our expenses. To learn the exact amount you must pay, call us at (877) 863-6164.

If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at (877) 863-6164 or write us at P.O. Box 58429 and request a written explanation. [We will charge you \$_____ for the explanation if we sent you another written explanation of the amount you owe us within the last six months.]

If you need more information about the sale, call us at (877) 863-6164 or write us at P.O. Box 58429.

We are sending this notice to the following other people who have an interest in 2008 Suzuki Forenza or who owe money under your agreement:

Sincerely,

Collections Department



Your savings federally insured to at least \$250,000. National Credit Union Administration, a U.S. Government Agency. Equal Housing Lender. Printed on recycled paper.



Vehicle Condition Report

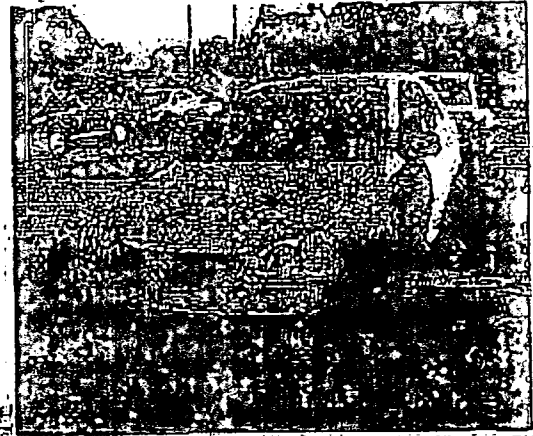
Manheim Darlington
1111 Harry Byrd Highway
Darlington, SC 29532-3507
(843) 393-2861/(843) 395-1521
WHOLESALE ASSESSMENT ONLY

EXHIBIT
F

Make/Model: 2008 SUZUKI FORENZA
Bodystyle/Series: 4 Door Sedan, S
Color: SILVER
Mileage: 18,320 (Digital)
Classification: Lease
VIN: KL5JD56Z38K748968

Customer Name: Remarketing Solutions
Client Stock #: 346121-1 LP
Work Order: 8676004

Pick-up Date: 11/03/2009
Overall Condition: Grade 3.4
Remarks: ;



Coastal

Driveable: Yes Tire Rating Good

Transmission: Automatic Transmission
Engine: 4-Cylinder Gas
Engine Size: 2 L
Roof: Hard Top
Radio: AM/FM CD
Interior - Type/Color: Cloth Interior/GRY
Airbag: Dual Air Bags
Seats/Count: 0

A/C
Cruise Control
Rear Defroster
Pwr Steering
Pwr Locks
Pwr Windows
Tilt Steering
Drive Type

6975 /BK
7875 /MMR
6000 /FLOOR

Additional Equipment

LF Tires - 5 /32 inch, RF Tires - 5 /32 inch, LR Tires - 6 /32 inch, RR Tires - 7 /32 inch, Tire Brand - Front Left - KUMHO - 1.00 inch
Tire Brand - Front Right - KUMHO - 1.00 inch, Tire Brand - Rear Left - KUMHO - 1.00 inch, Tire Brand - Rear Right - KUMHO - 1.00 inch
Owner's Manual, Warranty Books, Regular Dash, Master Key - 1 key(s), Power Mirrors, Directional Stability Control
Parking Distance Control, Floor Mats, Steel Wheels

#	Description	Condition	Severity	Action	Paint (Hrs)	Labor (Hrs)	Labor	Parts	Estimate
1	Photo - Rear	Photo Only			0.0	0.0	0.00	0.00	0.00
2	Photo - Wheel	Photo Only			0.0	0.0	0.00	0.00	0.00
3	Photo - Interior	Photo Only			0.0	0.0	0.00	0.00	0.00
4	Photo - Dash	Photo Only			0.0	0.0	0.00	0.00	0.00
5	Overall Picture - Od	Photo Only			0.0	0.0	0.00	0.00	0.00
6	Photo - VIN/ID Sticker	Photo Only			0.0	0.0	0.00	0.00	0.00
7	Windshield	Chipped	< 1/8 inch		0.0	0.0	0.00	0.00	0.00
Total Non-Chargeables					0.0	0.0	\$0.00	\$0.00	\$0.00

1 - Photo - Rear



2 - Photo - Wheel



3 - Photo - Interior



4 - Photo - Dash



5 - Overall Picture -



6 - Photo - VIN/ID St



Vehicle Condition Report

Manheim Darlington

EXHIBIT
F

#	Description	Condition	Severity	Action	Paint (Hrs)	Labor (Hrs)	Labor	Parts	Estimate
1	Front Bumper	Scratched	5 to 6 inches	Refinish	3.2	0.0	134.40	0.00	134.40
2	Left Front Door	Dents W/No Pt Dm	PDR-1 dent	PDR	0.0	0.0	45.00	0.00	45.00
3	Right Front Fender	Dents W/ Paint Dmg	8 to 9 inches	Repair	2.8	4.0	286.60	0.00	286.60
4	Right Front Door	Dents W/ Paint Dmg	5 to 6 inches	Repair	2.8	2.5	222.60	0.00	222.60
5	Right Qtr Panel	Dent	< 1/8 inch	Repair	2.8	1.0	169.60	0.00	169.60
Total Chargeables					11.6	7.5	\$847.20	\$0.00	\$847.20

3 - Right Front Fender



4 - Right Front Door



Additional Damages and Remarks OK Odor

In-Transit		CR Wnter	BJACKSON3
Awaiting Clearance:	11/03/2009	Title Recvd:	
CR Created:	11/04/2009	Title #	
CR Last Modified:	11/04/2009	State:	
CR Completed	11/04/2009	Lens #-Run #	
Cleared for Sale		Scheduled Sale:	
On Block		License Plate	

ID	Type	Description	Labor	Parts	Total Cost
1	TRANSPORT. Transportation Fee	TRANS BY SELLER REC & TRANS	\$5.00	0.00	\$5.00
Total Charges			\$55.00	\$0.00	\$55.00

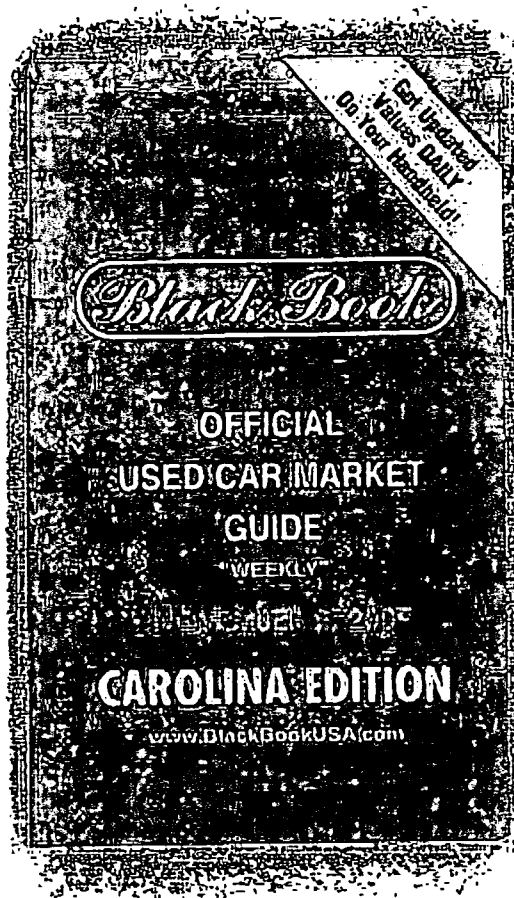
Floor Price \$0.00
Sold Date

Sale Price \$0.00

DISCLAIMER: THIS CONDITION REPORT IS FOR INFORMATIONAL PURPOSES ONLY AND IS BASED ON INFORMATION PROVIDED BY THE SELLER. THIS CONDITION REPORT IS NEITHER INTENDED, NOR SHOULD IT BE CONSTRUED TO CONSTITUTE ANY TYPE OF WARRANTY, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, AND ANY SUCH WARRANTY, WHETHER ARISING BY OPERATION OF LAW OR OTHERWISE, IS HEREBY DISCLAIMED. ANY REPUBLISHING OF THIS CONDITION REPORT SHALL CONTAIN THIS DISCLAIMER.

EXHIBIT

G



2003 SUZUKI RENO		PAGE 238	
MILEAGE CATEGORY A		[PRICES INC. AT AC]	
* ADD *		* REDUCT *	
FIN ADV VNU	400 W/O AUTO TRANS LX, S	X-CL	CIN
4000 "D6"Z 4D HATCHBACK S	4300	3600	2400
4950 "D6"Z 4D HATCHBACK LX	3250	4550	3350
5700 "D6"Z 4D HATCHBACK EX	6000	5300	4100
2008 SUZUKI FORENZA		3050	
MILEAGE CATEGORY A		[PRICES INC. AT AC]	
* ADD *		* REDUCT *	
150 CRUISE CONTROL	500 W/O AUTO TRANS		
400 SUNROOF	8450	7650	6750
8200 "F56"Z 4D SEDAN	8750	7950	5950
8500 "F56"Z 4D WAGON			
2007 SUZUKI FORENZA		[PRICES INC. AT AC]	
MILEAGE CATEGORY A		* REDUCT *	
* ADD *		500 W/O AUTO TRANS	
125 CRUISE CONTROL	7200	6500	5400
350 SUNROOF	7500	6700	5700
6925 "F56"Z 4D SEDAN			4300
7225 "F56"Z 4D WAGON			4600
2006 SUZUKI FORENZA		[PRICES INC. AT AC]	
MILEAGE CATEGORY A		* REDUCT *	
* ADD *		450 W/O AUTO TRANS	
100 CRUISE CONTROL	6000	5200	4100
300 SUNROOF	6400	5600	4500
5675 "F57"Z 4D SEDAN			3600
6075 "F57"Z 4D WAGON			
2005 SUZUKI FORENZA		[PRICES INC. AT AC]	
MILEAGE CATEGORY A		* REDUCT *	
* ADD *		400 W/O AT EX 4D WGN LX	
4700 "D57"Z 4D SEDAN	5050	4250	3200
5150 "D7"Z 4D WAGON	5500	4700	3600
			2450
5300 "D57"Z 4D SEDAN	5150	3050	4000
5850 "F77"Z 4D WAGON	4300	3400	4300
			3150
2004 SUZUKI FORENZA		[PRICES INC. AT AC]	
MILEAGE CATEGORY A		* REDUCT *	
* ADD *		350 W/O AUTO TRANS LX, S	
4025 "D57Z" 4D SEDAN S	4500	3700	2750
4825 "D57Z" 4D SEDAN LX	5300	4500	3550
5825 "D57Z" 4D SEDAN EX	6300	5500	4550
2007 SUZUKI AERIO		[PRICES INC. AT AC]	
MILEAGE CATEGORY A		* REDUCT *	
* ADD *		500 W/O AT 4D SEDAN	
6775 "B46"Z 4D SEDAN	6950	6450	5800
7675 "B46"Z 4D SEDAN AWD	7150	7350	6200
2006 SUZUKI AERIO		[PRICES INC. AT AC]	
MILEAGE CATEGORY A		* REDUCT *	
* ADD *		450 W/O AT 4D SEDAN WGN	
450 15-INCH WHEEL PRO-BASE	6400	5900	4850
100 CRUISE CONTROL ST	7000	6700	5650
BASE			4500
6200 "B46"Z 4D SEDAN	6900	6400	5350
7000 "B46"Z 4D SEDAN AWD	7700	7200	6150
6700 "B46"Z 4D WAGON			5000
7500 "B46"Z 4D WAGON AWD			
2005 SUZUKI AERIO		[PRICES INC. AT AC]	
MILEAGE CATEGORY A		* REDUCT *	
* ADD *		400 W/O AT EX AWD	
4575 "B46ZS" 4D SEDAN	4800	4300	3350
5175 "B46ZS" 4D SEDAN	5400	4900	3950
5875 "B46ZS" 4D SEDAN AWD	6100	5600	4650
5675 "B46ZS" 4D WAGON	5900	5400	4400
6375 "B46ZS" 4D WAGON AWD	6600	6100	5100
			3950
PAGE 239			

CONFIDENTIAL

G

PAGE 344

2006						
FOR ADV	MILES	VEN CMT	R-CLER	CLN	AVD	ROH
-300	12 000	A	-175	-375	-375	0
-375		B C	-310	-450	-450	0
-375		D	-330	-450	-550	0
-450		E	-400	-535	-625	0
-450	18 000	A	0	-175	-375	0
-475		B C	0	-240	-450	0
-450		D	0	-310	-450	0
-475		E	0	-380	-535	0
-500	24 000	A	300	0	-175	0
-500		B C	350	0	-250	0
-500		D	400	0	-350	0
-500		E	475	0	-450	0
-550	30 000	A	-275	-380	0	0
-550		B C	-775	-450	0	0
-575		D	1 150	-450	0	0
-575		E	-2 344	-750	0	0
-1 050	30 001	A	1 175	750	325	0
-1 375		B C	1 650	1 000	400	0
-1 700		D	1 875	1 275	575	0
-2 150		E	2 330	1 650	750	0
-2 475	40 000	A	1 600	1 150	725	200
-2 450		B C	2 000	1 600	1 075	200
-2 450		D	2 655	1 975	1 375	200
-2 700		E	3 100	2 400	1 350	200
-1 950	50 001	A	2 075	1 650	1 200	600
-2 475		B C	2 650	2 100	1 625	1 125
-2 775		D	3 150	2 575	1 950	1 350
-2 375		E	3 725	3 075	2 275	1 425
-2 600	60 000	A	N/A	2 100	1 600	1 325
-2 600		B C	N/A	2 600	2 100	1 650
-2 625		D	N/A	3 175	2 575	1 925
-2 625		E	N/A	3 750	3 075	2 275
-3 275	70 001	A	N/A	N/A	2 100	1 650
-3 250		B C	N/A	N/A	2 625	2 125
-3 225		D	N/A	N/A	3 200	2 650
-3 225		E	N/A	N/A	3 775	3 175
-4 425	84 000	A	N/A	N/A	2 650	2 175
-4 400		B C	N/A	N/A	3 100	2 650
-4 350		D	N/A	N/A	3 775	3 125
-4 375		E	N/A	N/A	4 350	3 625

2007						
FOR ADV	MILES	VEN CMT	R-CLER	CLN	AVD	ROH
-375	12 000	A	-275	-450	-550	0
-375		B C	-325	-450	-575	0
-475		D	-405	-450	-675	0
-450		E	-480	-450	-600	0
-500	18 000	A	-375	-375	-600	0
-500		B C	-400	-380	-650	0
-500		D	-400	-475	-650	0
-500		E	-450	-450	-650	0
-550	24 000	A	0	-175	-475	0
-575		B C	0	-255	-475	0
-575		D	0	-300	-475	0
-575		E	0	-350	-475	0
-600	30 000	A	-300	0	-475	0
-600		B C	-375	0	-475	0
-600		D	-475	0	-475	0
-600		E	-500	0	-475	0
-625	40 000	A	800	350	0	0
-675		B C	1 075	500	0	0
-1 050		D	1 250	-450	0	0
-1 325		E	1 375	875	0	0
-1 800	50 000	A	-1 225	-475	-325	0
-1 800		B C	-1 775	-1 300	-600	0
-1 800		D	-2 225	-1 625	-750	0
-1 800		E	-2 650	-2 000	-750	0
-1 700	60 000	A	1 150	1 225	725	450
-2 150		B C	2 350	1 775	1 075	575
-2 700		D	2 900	2 300	1 415	925
-3 275		E	3 325	2 825	1 875	1 125
-3 180	70 000	A	N/A	1 200	1 375	-775
-3 180		B C	N/A	1 600	1 750	1 325
-3 180		D	N/A	2 000	2 150	1 600
-3 180		E	N/A	2 700	2 750	2 125
-3 400	85 000	A	N/A	N/A	1 875	1 450
-3 225		B C	N/A	N/A	2 375	1 850
-4 000		D	N/A	N/A	2 925	2 375
-5 050		E	N/A	N/A	3 625	2 975
-5 125	100 000	A	N/A	N/A	3 250	3 625
-5 125		B C	N/A	N/A	3 650	4 125
-5 125		D	N/A	N/A	4 200	4 600
-5 125		E	N/A	N/A	4 750	5 100

PAGE 345

24103 H

SELLER'S COPY

MANHEIM DARLINGTON
1111 HARRY BYRD HWY
DARLINGTON, SC 29532
(843) 393-2861

BID# 285

KEY
2009-047-100162
CJEFFORDS

SALE DATE	ENTRY NO.
11:40:56 11/19/2009	10-0162

772060192701169
SC 11/10/2009
TITLE REC'D X

1120387

KL5JD56Z38K748968

YEAR	MAKE	MODEL/SUB SERIES	BODY	COLOR	ENG	INT	INT R	TRNPS	PB	ACE	WES	TOP	CC	EL	4X	TL	SRS	SI	RD
2008	SUZUKI	FORENZA	4DSN	SILVER	4G	GRY	C	C	A	X	X	X	X	HT	X	X	D		X

ANN COND:
PRE-SALE INSPECTED.WD,REPO
*UNIT

NOTES:

CARBON COPY

GREEN : GUARTEE :
***CERTIFIED**

FULL	FULL	FRAME	FRAME	MECH	MECH	IF	CLERK	SOLD BY
7 CHK	14 CHK	7 CHK	14 CHK	7 CHK	14 CHK		DSH	GJX

I, OR WE BY USE OF OUR PLATE OR AUTHORIZED SIGNATURE HEREBY AGREE TO PAY THE INDICATED SALE PRICE FOR THE VEHICLE DESCRIBED IN THIS VOUCHER UNDER THE TERMS AND RULES OF THE ABOVE NAMED AUCTION AND SUBJECT TO AGREEMENT ON REVERSE SIDE

346121-1 LP
7611169 6676004
COASTAL FEDERAL CREDIT UNION/RS
435 RETROPLEX DRIVE
NASHVILLE, TN 37211

LICENSE NO	TAB
------------	-----

BUYER PLEASE CHECK ONE
☐ CLEAN ☐ ROUGH ☐ AVERAGE
(1) (2) (3)

NOTICE:

- Do not re-purchase or finance without certificate of title
- Auction retains security interest in vehicle until good funds received

Y
P 5065124 12 285
U HIXX FORT BUICK GMC TRK INC
627 BLENDAL RD
R GALAX, VA 24333
C (276) 236-5167
H JERRY HIXX
A
S
E
R

X *Jerry Hixx*
PRINTED PURCHASER'S NAME (BUYER)

X *Jerry Hixx*
PURCHASER'S SIGNATURE (BUYER)

PURCHASER MUST RETURN SIGNED COPY OF ODOMETER DISCLOSURE STATEMENT (FRONT & BACK OF TITLE IF MADE ON TITLE TO TRANSFEROR (SELLER)) OR BE SUBJECT TO CIVIL & CRIMINAL PENALTIES, INCLUDING FINE AND JAIL, Under the Motor Vehicle Act of 1995 48 C.F.R. 580.4(a)

AUCTION ASSUMES NO RESPONSIBILITY NOR GUARANTEES THE ACCURACY OF THE ODOMETER READING
DOCUMENT NOT VALID FOR EXPORT



Manheim

NOT A RECEIPT OF PAYMENT

ODOMETER DISCLOSURE STATEMENT Section 580.5 Disclosure form FEDERAL LAW (AND STATE LAW IF APPLICABLE) REQUIRES THAT YOU STATE THE MILEAGE UPON TRANSFER OF OWNERSHIP FAILURE TO COMPLETE OR PROVIDING A FALSE STATEMENT MAY RESULT IN FINES AND/OR IMPRISONMENT

- ☐ (1) I hereby certify to the best of my knowledge the odometer reading reflects the amount of mileage in excess of its mechanical limits
- ☐ (2) I hereby certify that the odometer reading is NOT the actual mileage
-WARNING - ODOMETER DISCREPANCY

COASTAL FEDERAL CREDIT UNION/RS

18320 DIG 6

STATE THAT THE ODOMETER NOW READS MILES (NO TENTHS) AND TO THE BEST OF MY

KNOWLEDGE THAT IT REFLECTS THE ACTUAL MILEAGE OF THE VEHICLE DESCRIBED HEREIN, UNLESS NOTED DIFFERENTLY ABOVE

For value received I hereby sell, assign or transfer the vehicle described on this document to the purchaser named at left

X *[Signature]*
TRANSFEROR'S SIGNATURE (SELLER)

X ANYONE CAN HELP
PRINTED NAME OF (SIGNOR)

SELLING PRICE	\$ 6,000.00
BUYER'S FEE	\$ 195.00

PSY	\$
FEE	\$
	\$
	\$

DRAFT FEE	\$
BUYER'S ADJ	\$
BUYER'S ADJ 2	\$ 50.00
BUY NET	\$ 6,245.00

THIS SALE IS SOLELY AN AUCTION BETWEEN THE BUYING AND SELLING PARTIES. NO REPRESENTATION OF TITLE OR CONDITION IS MADE OR INTENDED OR SUPPORTED BY ANY

EXHIBIT
H

SELLER and PURCHASER agree by their signatures on the face of this agreement to abide by all auction policies, which are incorporated herein and all policy decisions of management. PURCHASER and SELLER agree that this agreement shall be of the same force and effect as though personally signed by them even though it only contains their identification plate or other authorized signature.

Any adjustments or rejections must be made prior to settlement. The Vehicle must be paid for on day of purchase or this sale may be considered null and void at AUCTION's discretion. SELLER and PURCHASER each agree that should any vehicle be left on AUCTION premises for a period in excess of six days, AUCTION may charge a reasonable daily storage fee of \$10 per day. SELLER and PURCHASER agree that AUCTION and its affiliates retain the right to cease doing business with either of them as it sees fit, and that AUCTION is not a bailee. Title to the Vehicle does not pass to PURCHASER until good funds are received. PURCHASER grants AUCTION and its affiliates a security interest in the Vehicle to secure payment of the purchase price and of any other debt owing from PURCHASER to the AUCTION or its affiliates. PURCHASER agrees AUCTION may re-sell VEHICLE, if repossessed, at a regular AUCTION sale. The PURCHASER agrees to purchase this vehicle for the purchase price shown provided the vehicle is found to be as recommended before settling for this vehicle to check the serial and/or engine numbers on the vehicle with those on the title to check the actual condition of the vehicle with its description and with the recommendation, if any when offered for sale at this auction, not to resell the Vehicle until good funds have been transmitted to AUCTION, upon making settlement in cash or by check or draft in lieu of cash to consider the transaction a fully consummated cash transaction for present consideration that no stop payment of this check to this AUCTION shall be honored, that any stop payment order of a check/draft or giving a check/draft which is returned unpaid shall be deemed by the parties to be prima facie evidence of fraud existing at the time the transaction was consummated, and shall be continued by the parties as an intent to defraud in order to consummate the transaction, and that AUCTION may deposit any check or draft immediately upon receiving it, regardless of whether the Vehicle's certificate of title has been submitted by the seller or whether AUCTION has agreed to hold the check or draft pursuant to a float arrangement with the seller. PURCHASER agrees to make any claim of defects with the car with SELLER and immediately to notify AUCTION pursuant to its policies. PURCHASER agrees that it is responsible for its own transportation.

PURCHASER represents to AUCTION that it is solvent, and that the Vehicle is purchased solely for resale. The SELLER covenants with the PURCHASER that he is the true and lawful owner of the described vehicle ("Vehicle") that the same is free from all liens and encumbrances, that he has good right and full power to sell and transfer title to the same and that he will warrant and defend the same against the lawful claims and demands of all persons whomsoever. If SELLER is a corporation, by the execution of the agreement the officers of said corporation do hereby individually and personally guarantee performance of the corporation's warranties. SELLER agrees that any amounts owing to AUCTION, MAFS or other Mannheim businesses may be deducted from the proceeds due SELLER, and that AUCTION may stop payment or refuse to authorize payment on any check or draft to SELLER pursuant to this right of set-off. SELLER agrees to be bound by the TERMS OF SALE and acknowledges responsibility for completion and execution of the required odometer mileage statement pertaining to the Vehicle described herein. Upon payment to SELLER AUCTION shall be subrogated to all of the SELLER's and PURCHASER's rights and the SELLER and PURCHASER agree to do whatever is necessary to secure such rights and do nothing to prejudice them.

TITLE GUARANTEE

Upon payment of the purchase price and upon delivery of the title to the PURCHASER, AUCTION, in accordance with the following terms and conditions, GUARANTEES THE TITLE of the Vehicle to be FREE AND CLEAR OF ALL LIENS AND ENCUMBRANCES at the time of the execution of this instrument and upon delivery of the title to the PURCHASER for a period of FOUR (4) YEARS from the date of sale as shown on face. This guaranty applies only to stolen vehicles and mortgage liens. The amount of the AUCTION's liability under this guaranty shall be secured by deducting from said sale price 2% thereof on the first of each month following the date of this transaction, and all liability of the AUCTION will expire and terminate on the first day of the forty-eighth month after the date of this transaction. The AUCTION's guarantee of this title is expressly limited to the PURCHASER of the Vehicle, and said guarantee is not negotiable or transferable. This shall be void if the purchase price for the vehicle is not paid by the PURCHASER. This guarantee does not protect against defects in the title known to the PURCHASER whether or not listed as exceptions to the title on the reverse of this agreement. Whenever any claim is made by any person against the title of the Vehicle, whether by suit or otherwise, the PURCHASER shall within five days after becoming aware of said claim notify the AUCTION, giving full particulars of the claim and shall cooperate fully in defending any legal action and in taking any other steps to minimize possible loss. Time is of the essence of this entire agreement and any failure on the part of the PURCHASER to notify the AUCTION of any such claim shall void the AUCTION's liability under this guarantee. Likewise failure of the PURCHASER to cooperate in defending any such claim shall relieve the AUCTION of liability under this guarantee. The PURCHASER shall not surrender possession of the vehicle, except as required by legal process, to any such claimant nor shall it voluntarily pay or acknowledge the validity of any such claim without the prior approval of the AUCTION.

On payment of any claim under this guarantee, the PURCHASER will execute all necessary papers subrogating its right to recover against the SELLER or others, to the AUCTION.

DISCLAIMERS and INDEMNIFICATION

SELLER and PURCHASER agree that AUCTION is neither responsible for odometer mileage on the consigned vehicles nor for the information contained in the odometer mileage statement which SELLER as Transferor is required to complete and sign and PURCHASER as Transferee is required to acknowledge. SELLER and PURCHASER agree that all representations concerning the Vehicle are solely the responsibility of the SELLER, whether made on the block, before the sale, on this agreement, or otherwise and acknowledge and agree that AUCTION has made no representations whatsoever about the Vehicle. AUCTION is merely performing an auction service, and expressly disclaims all express and/or implied warranties as to merchantability, fitness or any other matter whatsoever other than the title guarantee set forth above.

SELLER and PURCHASER agree to indemnify and hold AUCTION harmless from any liability, loss, costs, damage or expense including attorney's fees which may arise either directly or indirectly from the sale and purchase of the Vehicle including, but not limited, any matters relating to odometer mileage or odometer mileage statements.

If the AUCTION is required to make a claim as a result of this transaction against either SELLER or PURCHASER or an agent or employee of SELLER or PURCHASER or an insurance carrier insuring or bonding SELLER or PURCHASER, then the Auction shall recover, in addition to the amount of the claim and the costs incurred in the claim, reasonable attorney's fee in an amount not less than 25% of the amount of the claim, regardless of whether suit is filed including appellate fees and costs. Interest shall accrue on the unpaid balance of any such claim at the rate of 1 5% per month.

The Vehicle is purchased for resale in the form of tangible personal property in the regular course of business and is the sort usually purchased by the PURCHASER for resale. In the event that the property is used for any purpose other than for resale, PURCHASER will pay direct to the proper taxing authorities such sale or use tax as may then be accrued and become payable. The PURCHASER further certifies that he holds a retail sales tax registration certificate, license or other permit, issued by the sales tax authority of this state and county.

AUCTION MANAGEMENT RESERVES THE RIGHT TO VOID A TRANSACTION



Simply Brighter.

DEFICIENCY OR SURPLUS AFTER RESALE OF REPOSSESSED COLLATERAL

November 24, 2009

Angel Brown
2130 ADAIR ST
N CHARLESTON, SC, 29405-5531



Dear Angel Brown,

We have sold your 2008 Suzuki Forenza, according to our rights in your loan agreement with the Credit Union. Here is how we calculated the balance on the account after such sale:

1.	Total amount secured by collateral:		\$18188.60
2.	Rebate of unearned interest:		\$0 00
3.	Resale amount:		\$6000.00
4.	Aggregate amount of obligations after deducting proceeds	=	\$12188.60
5.	Amount of transport fees:	+	\$0 00
6.	Amount of repossession invoice	+	\$360 00
7.	Amount of CUNA insurance premiums:	+	\$0
8.	Amount of skip tracing invoice	+	\$0
9.	Amount of storage:	+	\$0 00
10.	Amount of repair invoice.	+	\$0.00
11.	Amount of outside invoice.	+	\$0
12.	Legal fees:	+	\$0
13.	Amount of sales fee/reconditioning fee:	+	\$512.25
14.	Amount of other credits including rebates of interest or credit services charges, if any	-	\$0
15.	Total amount of		
	[] Surplus		
	[x] Deficiency*		\$13060.85

Future debts, credits, charges, including additional credit service charges or interest, rebates and expenses may affect the amount of the stated surplus or deficiency

Contact our office within ten (10) days from the date of this letter to discuss any questions you may have. The Credit Union will be open to work with you on your repayment plan. Should we not hear from you within the specified time, this account may be forwarded to legal action to collect this debt.

Sincerely,

Collections Department
1-877-863-6164

*This notice is provided to you in compliance with NCGS 25-9-616. The purpose of this communication is to collect a debt



Your savings federally insured to at least \$250,000 National Credit Union Administration, a U.S. Government Agency Equal Housing Lender Printed on recycled paper

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
COASTAL FEDERAL CREDIT)
UNION,)
Plaintiff)
v)
ANGEL LATORIA BROWN,)
Defendant)

IN THE FAMILY COURT FOR THE
NINTH JUDICIAL CIRCUIT

CASE NO.. 2014-CP-10-1827

MOTION FOR SUMMARY JUDGMENT
S.C.R.C.P. RULE 12(C) AND RULE 56(b)

JULIE J ARMSTRONG
CLERK OF COURT

2014 JUN 18 PM 1:27

FILED

TO: CHARLES N. GRIFFIN, III, ATTORNEY FOR THE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that Defendant, by and through the undersigned attorney, will move before the presiding Judge for the Ninth Judicial Circuit on the tenth (10th) day after service hereof or as soon thereafter as the Clerk may schedule for an Order, pursuant to Rules 12 (c) and Rule 56 (b) of the S.C.R.C.P. granting summary judgment against the Plaintiff and dismissing the Complaint in this matter. This motion is based upon the following

- (1) The Plaintiff's Complaint filed in the above matter alleges that Defendant owes money for non-payment of a debt.
- (2) The Defendant timely filed her Answer and alleged therein the defense that the action is barred by the Statute of Limitations
- (3) The Defendant received from Plaintiff no documentation indicating any payments made by her after July, 2009 This action was not filed until October 21, 2013, more than three years after the last activity on the account.
- (4) §15-3-530 of the Code of Laws of South Carolina requires that an action upon a contract be commenced within three (3) years §15-3-610 of the Code of Laws of South Carolina provides that the cause of action shall be deemed to have accrued from the time of the last item proved
- (5) Because the Statute of Limitations applies to this matter, the Plaintiff should be barred from seeking any judgment from the Defendant The Defendant

respectfully requests that the Complaint of the Plaintiff be dismissed, with prejudice.

WHEREFORE, the Defendant prays that this Court will review the matters raised in her Motion and issue its Order as follows

- a. Granting the Defendant's Motion and dismissing the Complaint of the Plaintiff, with prejudice,
- b. For such other and further relief as this Court may deem just and proper.

I SO MOVE.



Matthew M. Billingsley
SC Bar #: 76095
SOUTH CAROLINA LEGAL SERVICES
2803 Carner Avenue
North Charleston, SC 29405
(843) 266-2174 (843) 760-1090 (fax)

ATTORNEYS FOR DEFENDANT

Charleston, South Carolina
June 17, 2014

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

COUNTY OF CHARLESTON

Case No 2014-CP-10-1827

Coastal Federal Credit Union,

Plaintiff,

CERTIFICATE OF SERVICE

VS

Angel Latoria Brown,

Defendant,

I, Matthew M Billingsley, do hereby certify that I have on the 17th day of July, 2014 mailed a copy of the Motion for Summary Judgment filed by the Defendant along with notice of the hearing scheduled for August 1, 2014 at 9:30 a.m. in the above action, via U S. mail, with sufficient postage affixed to

Charles N. Griffin, III
KIRSCHBAUM, NANNEY, KEENAN & GRIFFIN, P.A.
P.O. Box 19806
Raleigh, NC 27619

[Handwritten signature]

Matthew M Billingsley
Attorney for Defendant
S C. Legal Services
2803 Carner Avenue
North Charleston, SC 29405
843-266-2174

12345678910111213141516171819202122232425262728293031323334353637383940414243444546474849505152535455565758596061626364656667686970717273747576777879808182838485868788899091929394959697989910010110210310410510610710810911011111211311411511611711811912012112212312412512612712812913013113213313413513613713813914014114214314414514614714814915015115215315415515615715815916016116216316416516616716816917017117217317417517617717817918018118218318418518618718818919019119219319419519619719819920020120220320420520620720820921021121221321421521621721821922022122222322422522622722822923023123223323423523623723823924024124224324424524624724824925025125225325425525625725825926026126226326426526626726826927027127227327427527627727827928028128228328428528628728828929029129229329429529629729829930030130230330430530630730830931031131231331431531631731831932032132232332432532632732832933033133233333433533633733833934034134234334434534634734834935035135235335435535635735835936036136236336436536636736836937037137237337437537637737837938038138238338438538638738838939039139239339439539639739839940040140240340440540640740840941041141241341441541641741841942042142242342442542642742842943043143243343443543643743843944044144244344444544644744844945045145245345445545645745845946046146246346446546646746846947047147247347447547647747847948048148248348448548648748848949049149249349449549649749849950050150250350450550650750850951051151251351451551651751851952052152252352452552652752852953053153253353453553653753853954054154254354454554654754854955055155255355455555655755855956056156256356456556656756856957057157257357457557657757857958058158258358458558658758858959059159259359459559659759859960060160260360460560660760860961061161261361461561661761861962062162262362462562662762862963063163263363463563663763863964064164264364464564664764864965065165265365465565665765865966066166266366466566666766866967067167267367467567667767867968068168268368468568668768868969069169269369469569669769869970070170270370470570670770870971071171271371471571671771871972072172272372472572672772872973073173273373473573673773873974074174274374474574674774874975075175275375475575675775875976076176276376476576676776876977077177277377477577677777877978078178278378478578678778878979079179279379479579679779879980080180280380480580680780880981081181281381481581681781881982082182282382482582682782882983083183283383483583683783883984084184284384484584684784884985085185285385485585685785885986086186286386486586686786886987087187287387487587687787887988088188288388488588688788888989089189289389489589689789889990090190290390490590690790890991091191291391491591691791891992092192292392492592692792892993093193293393493593693793893994094194294394494594694794894995095195295395495595695795895996096196296396496596696796896997097197297397497597697797897998098198298398498598698798898999099199299399499599699799899910001001100210031004100510061007100810091010101110121013101410151016101710181019102010211022102310241025102610271028102910301031103210331034103510361037103810391040104110421043104410451046104710481049105010511052105310541055105610571058105910601061106210631064106510661067106810691070107110721073107410751076107710781079108010811082108310841085108610871088108910901091109210931094109510961097109810991100110111021103110411051106110711081109111011111112111311141115111611171118111911201121112211231124112511261127112811291130113111321133113411351136113711381139114011411142114311441145114611471148114911501151115211531154115511561157115811591160116111621163116411651166116711681169117011711172117311741175117611771178117911801181118211831184118511861187118811891190119111921193119411951196119711981199120012011202120312041205120612071208120912101211121212131214121512161217121812191220122112221223122412251226122712281229123012311232123312341235123612371238123912401241124212431244124512461247124812491250125112521253125412551256125712581259126012611262126312641265126612671268126912701271127212731274127512761277127812791280128112821283128412851286128712881289129012911292129312941295129612971298129913001

STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NUMBER: 2014-CP-10-1827

COASTAL FEDERAL CREDIT UNION,
Plaintiff,

v.

ANGEL LATORIA BROWN,
Defendant.

NOTICE
OF HEARING

BY

JULIE M. HONG
CLERK OF COURT

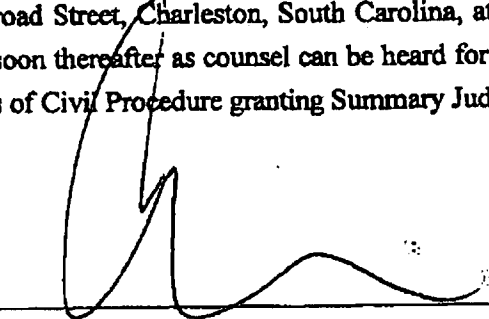
2014 JUL 14 PM 4:10

FILED

TO: Angel Latoria Brown, c/o Matthew Billingsley, Attorney for Defendant, 2803
Carner Ave; North Charleston SC 29405

PLEASE TAKE NOTICE that the undersigned will move the Court at Charleston County
Courthouse, Courtroom 3E, at 100 Broad Street, Charleston, South Carolina, at 9:30 o'clock a.m.
on the 1st day of August, 2014, or as soon thereafter as counsel can be heard for an Order pursuant
to Rule 56 of the South Carolina Rules of Civil Procedure granting Summary Judgment for Plaintiff
against Defendant.

This 10 day of July, 2014.

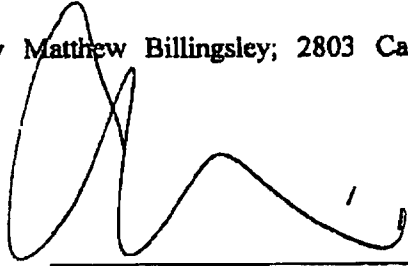

Charles N. Griffin, III
KIRSCHBAUM, NANNEY, KEENAN & GRIFFIN, P.A.
Attorney for the Plaintiff
Post Office Box 19806
Raleigh, North Carolina 27619
Telephone: (919) 848-9640

CERTIFICATE OF SERVICE

The foregoing served on the Defendant by mailing a copy of same in a postage-paid envelope to:

Angel Latoria Brown; c/o Attorney Matthew Billingsley; 2803 Carner Ave; North
Charleston SC 29405.

This the 10 day of July, 2014.


Charles N. Griffin, III

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Coastal Federal Credit Union,)
Plaintiff,)
v.)
Angel Latoria Brown,)
Defendant.)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2014-CP-10-1827

AFFIDAVIT OF
ANGEL LATORIA BROWN

BY
JULIE J. HARRIS
CLERK OF COURT
2014 JUL 30 PM 1:16

FILED

PERSONALLY APPEARED BEFORE ME the undersigned who being duly sworn states as follows:

1. My name is Angel Latoria Brown, and I am the Defendant in this action.
2. I did not receive the letter marked as Exhibit "E" in Plaintiff's motion. The Plaintiff sold my car in 2009 for one-third of the amount I paid for it in 2008. I do not believe they sold it in a reasonable manner.

Angel Latoria Brown
Angel Latoria Brown

Sworn to before me this 29th day of
July, 2014.

Maria Peller

Notary Public for South Carolina
My Commission expires: 9-28-2020

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Coastal Federal Credit Union,
Plaintiff,

vs.

Angel Latoria Brown,
Defendant,

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Case No 2014-CP-10-1827

CERTIFICATE OF SERVICE

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2014 JUL 30 PM 1:14

FILED

I, Matthew M. Billingsley, do hereby certify that I have on the 30th day of July, 2014, mailed a copy of the Affidavit of Angel Latoria Brown in the above action, via U.S. mail, with sufficient postage affixed to:

Charles N. Griffin, III
KIRSCHBAUM, NANNEY, KEENAN & GRIFFIN, P.A.
P.O. Box 19806
Raleigh, NC 27619

July 19, 2014


Matthew M. Billingsley
Attorney for Defendant
S.C. Legal Services
2803 Carner Avenue
North Charleston, SC 29405
843-266-2174

STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NUMBER: 2014-CP-10-1827

COASTAL FEDERAL CREDIT UNION,
Plaintiff,

v.

ANGEL LATORIA BROWN,
Defendant.

MEMORANDUM OF LAW
IN SUPPORT OF
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT

2014 AUG -1 AM 9:01
FILED
CLERK OF COURT
ARMSTRONG

COMES NOW Coastal Federal Credit Union, by and through the undersigned attorney, and files this Memorandum of Law in support of its pending Motion For Summary Judgment as follows

FACTUAL BACKGROUND

1. On or about May 4, 2008, the Defendant entered into a transaction with a South Carolina retail car dealership (the "Dealership") for the sale of goods, namely that certain 2008 Suzuki Forenza, VIN KL5JD56Z38K748968 (the "Vehicle") As part of this transaction, the Defendant executed a retail installment sale contract (the "Contract") in the original principal sum of \$18,448 94, with interest accruing thereon at the rate of 12 4000% per annum See Exhibit "A" attached to the Plaintiff's Verified Statement and Affidavit

2. The Contract was thereafter assigned by the Dealership to the Plaintiff, thereby placing the Plaintiff in the shoes of the Dealership with respect to the Contract, as described in the "holder provision" at the bottom of page 2 of the Contract

3 Pursuant to the terms of the Contract, the Defendant agreed to pay for the Vehicle via 72 monthly payments of \$366.32 each beginning June 18, 2008

4 In July 2009, the Defendant ceased making the payments due under the Contract See the payment history attached as Exhibit "D" to Plaintiff's Verified Statement and Affidavit

5. As a result, the Plaintiff peaceably repossessed the Vehicle and mailed the Defendant a notice of its intent to sell the Vehicle if payment in full of then outstanding balance due under the Contract was not paid in full See Exhibit "E" to Plaintiff's Verified Statement and Affidavit

6 The Defendant did not exercise her right to redeem the Vehicle and it was sold by the Plaintiff as permitted by the Contract and applicable law, following which the net sales proceeds were applied to the Contract balance

7 Following the sale of the Vehicle, the Plaintiff mailed the Defendant the statutory post-sale accounting detailing the application of the sales proceeds for the Vehicle and demanding payment for the then-remaining balance due under the Contract after the sale See

Exhibit "T" to Plaintiff's Verified Statement and Affidavit.

8 The Defendant thereafter failed and/or refused to pay the Plaintiff the remaining balance due under the Contract, and the Defendant's account was referred to the undersigned counsel

9 The undersigned counsel also made demand upon the Defendant to pay the then-remaining balance due under the Contract but the Defendant continued to fail and/or refuse to pay the same

10 Accordingly, the instant lawsuit was filed by the undersigned counsel on October 21, 2013, seeking a judgment against the Defendant for the remaining purchase price owed for the Vehicle

11 The Defendant filed an Answer to that Complaint alleging that the applicable statute of limitations for filing suit to collect the remaining balance due under the Contract had expired

12 The parties have now filed competing Motions For Summary Judgment, agreeing that there is no dispute as to any material fact in this case and that this case is appropriate for resolution by the Court as a matter of law

ISSUE PRESENTED

Is the statute of limitations applicable to this case (i) the 3-year statute of limitations for breach of contract actions in general as set forth in §15-3-530 of the Code of Laws of South Carolina or (ii) the 6-year statute of limitations applicable specifically to breaches of sales contracts as set forth in § 36-2-725 of Chapter 2 of the South Carolina Uniform Commercial Code?

ARGUMENT AND AUTHORITIES

1. The Contract In Issue Is A Chapter 2 Sales Contract Pursuant to § 36-2-102 of the South Carolina Uniform Commercial Code (herein the "SC UCC"), the provisions of Chapter 2 – Sales apply to all "transactions in goods" between a buyer and seller. For these purposes, "buyer" is defined as a person who buys or contracts to buy goods and "seller" is defined as a person who sells or contracts to sell goods. See § 36-2-103. "Goods" is then defined as all things which are moveable at the time of identification to the contract for sale § 36-2-105(1). Financing agency is then defined as a bank, finance company or other person who in the ordinary course of its business makes advances against goods or documents of title § 36-2-104(2).

In the instant case, it is undisputed that the Defendant (buyer) contracted with the Dealership (seller) to buy the Vehicle and the Plaintiff (financing agency) provided the financing to the Defendant in that buy-sell transaction. It is also undisputed that the Defendant did not perform her obligation to pay for the Vehicle in accordance with the terms of the Contract, thereby committing a breach of same. As such, the Contract falls squarely within the express

provisions of Chapter 2 of the SC UCC as a "transaction in goods" to which Chapter 2 is specifically directed

2 **This Action Was Commenced Pursuant To The Provisions of Chapter 2 Of The SC UCC, And Neither The SC Consumer Protection Code Nor The Fair Debt Collection Practices Act Are Applicable** As an initial matter, inasmuch as it is a federally chartered credit union, the Plaintiff is exempt from the provisions of the South Carolina Consumer Protection Code in its entirety. See § 37-1-202(10). Further, the provisions of the Fair Debt Collections Practice similarly do not apply to the Plaintiff inasmuch as it is attempting to collect a debt that is owed to it, as opposed to collecting a debt on behalf of another creditor. See 15 U.S.C. § 1692a(6). Accordingly, the Defendant's assertions that the case is "governed by the South Carolina Consumer Protection Code and the Fair Debt Collection Practices Act" are not sustainable as a matter of law, notwithstanding any prior decisions by other South Carolina trial courts to the contrary.

Moreover, while the Plaintiff does not dispute the Defendant's assertion that the SC UCC sets out protections for buyers and sellers of "commercial" goods, this Court should note that both the South Carolina Court of Appeals and the South Carolina Supreme Court have had no issue with including motor vehicles as the type of goods covered by Chapter 2 of the SC UCC. See e.g., *Brewer v Stokes Kia, Isuzu, Subaru, Inc.*, 364 S.C. 444, 613 S.E.2d 802 (S.C. App 2005) and *Singleton v Stokes Motors, Inc.*, 358 S.C. 369, 595 S.E.2d 461 (S.C. 2004). In each of these cases, the Court looked directly to Chapter 2 of the SC UCC to analyze the buyer's and seller's respective obligations in a breach of contract dispute involving the purchase and sale of a motor vehicle by a consumer from a retail motor vehicle dealership.

Further, the Defendant argues that the "special protection" of repossession contained in the Contract is not "covered by the Commercial Code," which the Defendant apparently believes somehow removes the parties' Contract from the scope of Chapter 2 of the SC UCC. However, that argument totally ignores the fact that the SC UCC includes not only Chapter 2 relating to sales of goods, but also Chapter 9 relating to the rights of secured lenders involved in those sales transaction, specifically including a seller/creditor's right to repossess and sell the goods in question in the event the buyer fails to pay the purchase price for those goods as agreed.

Finally, the Defendant argues that the Plaintiff is "now suing over an alleged deficiency" and that this "case is an action to collect a debt," which the Defendant apparently also believes somehow removes the parties' Contract from the scope of Chapter 2 of the SC UCC. The Plaintiff does not take issue with either of those assertions, but states that these facts simply have no legal effect with respect to the question at hand. Sec. 36-2-301 expressly sets forth the general obligations of the parties to a Chapter 2 contract, i.e., the seller is to transfer and deliver the purchased goods and the buyer is to accept and pay for those goods *in accordance with the contract* (emphasis added). The Complaint against the Defendant in this case clearly sets forth the Defendant's payment obligations under the Contract for the purchase of the Vehicle, and clearly claims that the Defendant has breached the Contract by failing to pay for the Vehicle in accordance with the Contract's terms. No other claim/cause of action against the Defendant is stated in the Complaint. Therefore there can be no dispute that, by this action, the Plaintiff is solely attempting to enforce its right to demand performance by the Defendant of her contractual payment obligations under a contract for the purchase and sale of goods, thereby bringing it

under the ambit of Chapter 2 of the SC UCC notwithstanding the various other characterizations and/or nomenclature applied by the Defendant to this action

3 **Established Rules Of Statutory Construction Dictate That A Specific Statute Prevails Over A More General One Dealing With The Same Subject Matter.** In the case of *Atlas Food Systems and Services, Inc v Crane National Vendors, et al*, 319 S C 556, 462 S E 2d 858 (1995), the South Carolina Supreme Court specifically discussed the interplay between the 3-year statute of limitations generally applicable to actions for breach of contract and the 6-year statute of limitations in Chapter 2 of the S C UCC. In that case, the Court first reiterated the general rule of statutory construction holding that a specific statute prevails over a more general one. It also held that the enactment of a later general statute does not repeal an earlier more specific statute. As such, the Court declined to find that the 1988 amendment to the general contract statute of limitations reducing it from 6 years to 3 years impliedly repealed or reduced the 6 year statute of limitations applicable at that time (and still applicable) to breaches of contract covered by the SC UCC. As such, the 6-year statute of limitations found in Chapter 2 of the SC UCC still applies -- and prevails -- when the suit in question is for breach of a Chapter 2 sales contract.

4 **There Is No Inherent Conflict Between The Two Statutes of Limitation For Breach Of Contract.** Perhaps more importantly, the *Atlas* Court also found there to be no inherent conflict between the general statute of limitations for breach of contract actions contained in § 15-3-530 and the more specific statute of limitations for breach of sales contracts contained in § 36-2-725. "The U.C.C. statute of limitations applies to actions arising under that act, while § 15-3-530(1) applies to other types of general contract actions." 319 S C at 558, 462 S.E.2d at 859. Accordingly, the fact that there may be two statutes of limitation applicable to this particular case does not create a situation in which the Court herein is left to resolve competing dictates. As the South Carolina Supreme Court has clearly stated, "[a]ctions arising under Article 2 of the U C C are governed by § 36-2-725's statute of limitations," and any implication otherwise in any prior decisions is no longer good law. 319 S.C. at 559, 462 S E 2d at 859.

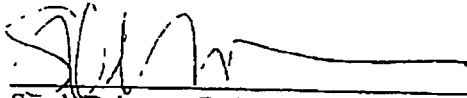
CONCLUSION

There is no dispute between the parties as to the material facts leading up to this case. Neither the SC Consumer Protection Code nor the Fair Debt Collections Practices Act have any application to this case as a matter of law. As evidenced by the undisputed terms of the parties' Contract and the plain language of Chapter 2 of the SC UCC, this case arises solely from a "transaction in goods" and the Plaintiff is suing the Defendant solely for her failure to pay for those goods in accordance with the terms of the buy/sell agreement for same. The fact that the Contract and Chapter 9 of the SC UCC gave the Plaintiff the right to repossess and sell the goods upon a payment default by the Defendant does not, as a matter of law, remove the Plaintiff's breach of contract claim from the ambit of Chapter 2 of the SC UCC or "transform" the nature of the Plaintiff's legal claim against the Defendant herein for breaching her obligations under the Contract.

Further, although the Plaintiff's breach of contract claim against the Defendant may well be subject to both the general 3-year statute of limitations and the specific 6-year statute of limitations contained in Chapter 2, the South Carolina Supreme Court has made clear that (1) a

more specific statute will prevail over a general statute dealing with the same subject matter and (ii) when a civil action is filed alleging a breach of a Chapter 2 sales contract, the 6-year statute of limitations found in Chapter 2 is the appropriate statute of limitations to apply to the case. In this case by which it is clearly suing on a Chapter 2 sales contract, the Plaintiff indisputably filed within the applicable 6-year statute of limitations and is entitled to judgment as a matter of law against the Defendant for the remaining balance due on the purchase price of the Vehicle. Plaintiff's Motion For Summary Judgment should be granted and the Defendant's Motion For Summary Judgment should be denied.

This 31st day of July, 2014.



Sarah Dalonzo-Baker

KIRSCHBAUM, NANNEY, KEENAN & GRIFFIN, P A
Attorney for the Plaintiff

Post Office Box 19806

Raleigh, North Carolina 27619

Telephone: (919) 848-9640

Facsimile: (919) 848-4216

Email: sdalonzo-baker@kirschlaw.com

CERTIFICATE OF SERVICE

The foregoing was served on the Defendant's counsel of record via email as follows.

Matthew Billingsley

matthewbillingsley@sclegal.org

This the 31st day of July, 2014



Sarah Dalonzo-Baker

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE FAMILY COURT FOR THE
NINTH JUDICIAL CIRCUIT

CASE NO.: 2014-CP-10-1827

COASTAL FEDERAL CREDIT'
UNION,

Plaintiff

v.

ANGEL LATORIA BROWN,

Defendant

MEMORANDUM OF LAW
IN SUPPORT OF DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

On May 8, 2008 Ms. Brown purchased and financed a vehicle from Johnny's Subaru Isuzu LLC. The car was financed through Coastal Federal Credit Union. Ms. Brown defaulted in making her monthly payments in 2009 with her last payment being in July of that year, according to the Plaintiff's payment history. The Plaintiff, a federally-chartered credit union, had the right of repossession under the contract and sale of the vehicle Plaintiff exercised that right a repossessed the vehicle in October 2009. The Plaintiff then sold the car and applied the proceeds from the sale to the account. The Plaintiff's Complaint, marked "Debt Collection," was filed on October 21, 2013, more than three years from the time of Ms. Brown's default.

This case is an action to collect a debt. The statute of limitations in this case is three years under S.C. Code § 15-3-530. The debt arose from a deficiency after a repossession and sale of an automobile. After the repossession and sale, the deficiency alleged becomes an unsecured debt. The resulting actions taken by Plaintiff are those to collect a debt, including the cause of action in Plaintiff's Complaint of debt collection.

The contract in this case is a retail installment contract. Accordingly it is governed by the South Carolina Consumer Protection Code and the Fair Debt Collection Practices Act. The South Carolina Commercial Code does not grant the transaction at issue a lengthened statute of limitations. The Commercial Code sets out protections for buyers and sellers of commercial goods. The case at issue involves a deficiency which resulted after repossession of the automobile. The contract for the sale of the car contained a special protection to the seller, authorized by law, of repossession. This special protection is not provided to the contracts covered by the Commercial Code. Plaintiff utilized the right of repossession and is now suing over an alleged deficiency. In this case the special remedy of repossession as provided in the contract has already been exhausted; the car has already been repossessed and sold.

Plaintiff will argue that this case falls under the statute of limitations for a contract for the sale of goods under the UCC, which is six years. SC Code § 36-2-725 (2013). There have been no reported South Carolina cases supporting the assertion that the seller/financer in a deficiency action is entitled to a six (6) year statute of limitations. Such a lengthened statute of limitations period would afford an additional and improper advantage to one party over the other, whereas a three-year statute of limitations provides some protection for the consumer.

In one of Plaintiff's recent cases, Coastal Federal Credit Union v. Cobia, the honorable Judge W. Jeffrey Young determined that a three year statute of limitations was appropriate. The facts of that case were substantially similar to this case. In Coastal, Plaintiff sought a deficiency after the repossession. Plaintiff filed that action more than three years after default. The deficiency was considered a defaulted debt. Plaintiff filed

the action for collection of a debt. For this reason Judge Young ruled the South Carolina Consumer Protection Code and Fair Debt Collection Practices Act apply to these contracts. As the action sought the collection of a defaulted debt, it fell under the general limitations statute of three years. Judge Young granted summary judgment based on the conclusion that the three year statute applied. (See attached order)

The Plaintiff filed this action as a debt collection for which the court should grant Ms. Brown Summary judgment on the grounds that the Statute of Limitations has run. §15-3-610 of the Code of Laws of South Carolina provides that the cause of action shall be deemed to have accrued from the time of the last item proved. In this case the Defendant's last payment was in July of 2009. The Complaint was filed in October of 2013, more than three years from the last item proved. Accordingly, Plaintiff's action should be dismissed with prejudice.


Matthew M. Billingsley
SC Bar #: 76095
SOUTH CAROLINA LEGAL SERVICES
2803 Carner Avenue
North Charleston, SC 29405
(843) 266-2174 (843) 760-1090 (fax)

ATTORNEYS FOR DEFENDANT

Charleston, South Carolina
July 30, 2014

STATE OF SOUTH CAROLINA
COUNTY OF CLARENDON

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

DOCKET NO.: 2012-CP-14-552

BEULAH G. ROBERTS
CLERK OF COURT
CLARENDON COUNTY, SC
2013 NOV -5 AM 8:33

Coastal Federal Credit Union,
Plaintiff,

vs.

Wendell Cobin and
Sylvia Walker Cobin,

Defendants.

CLERK'S ORDER
OF ORIGINAL FILED IN THIS OFFICE
DATE 11/6/13
Beulah G. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC

This matter came before the Court on September 4, 2013 for a hearing on the Defendants' Motion for Summary Judgment. The Defendants' Summary Judgment Motion was based on the three (3) year statute of limitations found in Section 15-3-530 of the S.C. Code. While the Plaintiff contends the six (6) year statute of limitations found in Section 36-2-725 for breach of contract under the South Carolina Commercial Code applies. Appearing at the hearing was the Defendants' attorney Clifford C. McBride and representing the Plaintiff was Sarah Dalonzo-Baker, Esq.

After reviewing the Court file, documents presented by counsel, hearing counsels' respective arguments and reviewing the attorney submissions/briefs after the hearing, I hereby make the following findings:

1. The transaction for the purchase of the 2005 Chevrolet Blazer vehicle in this case was a retail installment sales contract between the Defendants and Gibbs automobile dealership.
2. The installment sales contract was assigned by the dealership to the Plaintiff, Coastal Federal Credit Union.

3 Since the transaction involving this vehicle was a retail installment sales contract, it is governed by the South Carolina Consumer Protection Code and the Fair Debt Collection Practices act.

4. The action before the Court is an action for the collection of a defaulted debt and is not an action for breach of contract under a Uniform Commercial Code filing. The Plaintiff, in its pleadings, is only seeking the collection of the amount of an alleged debt with fees and costs.

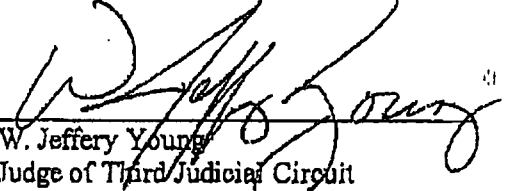
5. This being an action to collect a defaulted debt makes the three (3) year statute of limitations found in Section 15-3-530 of the S.C. Code applicable.

6. This action was not commenced against the Defendants within three (3) years required by Section 15-3-530 a fact that Plaintiff's Counsel admitted at the hearing.

It is, THEREFORE ORDERED,

- 1 That the Defendant's Motion for Summary Judgment is Granted;
2. That this case is Dismissed with prejudice; and it is,

SO ORDERED.


W. Jeffery Young
Judge of Third Judicial Circuit

Sumter, South Carolina

October 24, 2013

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014-CP-10-1827

Coastal Federal
PLAINTIFF(S)

Angel Latoria Brown
DEFENDANT(S)

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.
- ☐ 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: Court denied Plaintiff's Motion for Summary Judgment. Court Granted Defendant's Motion for Summary Judgment. Formal Order to Follow.

ORDER INFORMATION

This order ☒ ends does not end the case.

Additional Information for the Clerk : _____

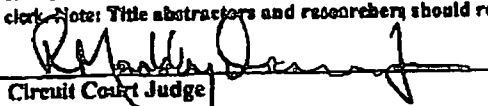
INFORMATION FOR THE PUBLIC INDEX

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

2060
Judge Code

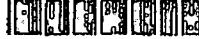
8/1/14
Date

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & O.S.
100 BROAD STREET, SUITE 100
CHARLESTON, SC 29401-2250
RETURN SERVICE REQUESTED



www3.charlestoncounty.org

81



DAVID P. NANNEY
PO BOX 19788
RALEIGH NC 27619-9788

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRCP

Order/Crt denied Plntff's mot for sum judg & Crt granted

CASE NO: 2014CP1001827
Coastal Federal Credit Union VS Angel Latoria Brown

This judgment was entered on the 04th day of August, 2014, and a copy mailed first class on Tuesday, August 05, 2014, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at www3.charlestoncounty.org.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Coastal Federal Credit Union,

Plaintiff,

vs.

Angel Latoria Brown,

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO . 2014-CP-10- 1827

**ORDER GRANTING SUMMARY
JUDGMENT FOR DEFENDANT AND
DENYING PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT**

Date of Hearing: August 1, 2014
Presiding Judge: R. Markley Dennis, Jr.
Plaintiff's Attorney: Sarah Dalonzo-Baker
Defendant's Attorney: Matthew M. Billingsley

FILED
2014 SEP 16 PM 3:11
JULIE J. HANSTON
CLERK OF COURT

THIS MATTER comes before the court upon Plaintiff and Defendant each filing a Motion for Summary Judgment. Defendant based her Motion for Summary Judgment on the three (3) year statute of limitations found in Section 15-3-530 of the S.C. Code. Plaintiff based its Motion for Summary Judgment on the six (6) year statute of limitations found in Section 36-2-725 of the S.C. Code. Defendant was present for the hearing with her attorney Matthew M. Billingsley, Esq. Sarah Dalonzo-Baker, Esq. appeared for the Plaintiff.

Based on arguments set forth by the parties, the pleadings, submissions of the parties, and documents on file, the court finds as follows:

FINDINGS OF FACT

1. Defendant purchased a 2008 Suzuki Forenza from Johnny's Subaru Isuzu, LLC on May 4, 2008. The transaction was a retail installment sales contract.
2. Johnny's Subaru Isuzu, LLC assigned the contract to the Plaintiff also on May 4, 2008.
3. Defendant subsequently defaulted on her payments with the last payment being in July 2009.

rmag

- 4 Plaintiff repossessed the vehicle in October 2009 and sold the vehicle on November 19, 2009 Plaintiff applied the proceeds of the sale to the balance of the loan and notified Defendant of the resulting deficiency by letter dated November 24, 2009.
- 5 Plaintiff originally filed this Complaint against this Defendant on October 21, 2013 in Chesterfield County. The parties agreed that Charleston County was the proper venue and the case was transferred to Charleston County by consent order March 17, 2014.
6. Plaintiff sought the relief of collection of a defaulted debt with fees and costs in its Complaint The action before the Court is for the collection of a defaulted debt

CONCLUSIONS OF LAW

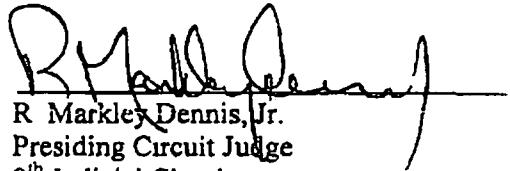
1. After Plaintiff repossessed and sold the vehicle, it applied the proceeds to the balance of the loan This resulted in a deficiency owed by Defendant. Plaintiff's action is one to collect the defaulted debt of the deficiency
2. The three (3) year statute of limitations found in Section 15-3-530 of the S.C. Code applies to this action to collect a deficiency debt. In as much as the sale of the repossessed vehicle was on November 19, 2009, more than three years elapsed from that date before Plaintiff filed their Complaint on October 21, 2013
- 3 The South Carolina Consumer Protection Code and the Fair Debt Collection Practices Act apply to this case.
4. Section 15-3-610 of the S.C. Code provides that the cause of action shall be deemed to have accrued from the time of the last item proved

Amo 9/2

ORDER

1. Plaintiff's Motion for Summary Judgment is denied
2. Defendant's Motion for Summary Judgment is hereby granted and Plaintiff's Complaint is accordingly dismissed with prejudice.

IT IS SO ORDERED.


R. Markley Dennis, Jr.
Presiding Circuit Judge
9th Judicial Circuit

Monica Carner, SC

This 9th day of September, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2014-CP-10-1827

Coastal Federal Credit Union. Appellant

v.

Angel Latoria Brown Respondent

NOTICE OF APPEAL

Coastal Federal Credit Union appeals the Order of the Honorable R. Markley Dennis, Jr. dated September 9, 2014 and filed September 16, 2014. Appellant received written notice of the entry of this Order on September 19, 2014.

September 26, 2014



Sarah Dalonzo-Baker
Post Office Box 19806
Raleigh, NC 27619
(919) 848-9640
Attorney for Appellant

Other Counsel of Record:
Matthew M Billingsley
2803 Carner Avenue
North Charleston, SC 29405
Attorney for Respondent
(843) 266-2174

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

173695

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2014-CP-10-1827

Coastal Federal Credit Union. Appellant

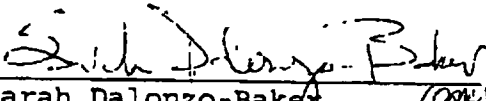
v.

Angel Latoria Brown Respondent

NOTICE OF APPEAL

Coastal Federal Credit Union appeals the Order of the Honorable R. Markley Dennis, Jr. dated September 9, 2014 and filed September 16, 2014. Appellant received written notice of the entry of this Order on September 19, 2014.

September 26, 2014


Sarah Dalonzo-Baker (Baker)
Post Office Box 19806
Raleigh, NC 27619
(919) 848-9640
Attorney for Appellant

Other Counsel of Record:
Matthew M. Billingsley
2803 Carner Avenue
North Charleston, SC 29405
Attorney for Respondent
(843) 266-2174

RECEIVED

SEP 29 2014

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2014-CP-10-1827

Coastal Federal Credit Union. Appellant

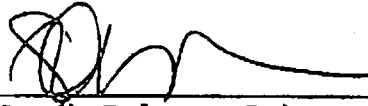
v.

Angel Latoria Brown : Respondent

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Angel Latoria Brown by depositing a copy of it in the United States Mail, postage prepaid, on September 26, 2014, addressed to her attorney of record, Matthew M. Billingsley, 2803 Carner Avenue, North Charleston, SC 29405.

September 26, 2014



Sarah Dalonzo-Baker
Post Office Box 19806
Raleigh, NC 27619
(919) 848-9640
Attorney for Appellant

RECEIVED

SEP 29 2014

SC Court of Appeals

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

2014-CP-1001827

COASTAL FEDERAL CREDIT
UNION

TRANSCRIPT OF RECORD

VS.

AUGUST 1, 2014
CHARLESTON, SC

B E F O R E:

HONORABLE R. MARKLEY DENNIS, JR.

A P P E A R A N C E S:

SARAH DALONZO-BAKER, ESQUIRE
Attorney for the Plaintiff

MATTHEW M. BILLINGSLEY, ESQUIRE
Attorney for the Defendant

Ruth L. Mott, RPR, CRR
Official Court Reporter

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I N D E X

CERTIFICATE OF REPORTER 8

E X H I B I T S

NO.	DESCRIPTION	ID	EVD
(NONE MARKED)			

1 THE COURT: The next one is Coastal Federal Credit
2 versus Brown, cross motions for summary judgment.

3 MS. DALONZO-BAKER: That is correct, Your Honor.

4 THE COURT: If you'll identify yourselves, please, and
5 the party you represent.

6 MS. DALONZO-BAKER: Your Honor, I am Sarah
7 Dalonzo-Baker. I am a member of the South Carolina Bar and
8 the North Carolina Bar as well. I'm here from Raleigh.

9 THE COURT: Delighted to have you. And you represent
10 whom?

11 MS. DALONZO-BAKER: And I represent the plaintiff,
12 Coastal Federal Credit Union.

13 THE COURT: Thank you.

14 MR. BILLINGSLEY: Matthew Billingsley from South
15 Carolina Legal Services representing the defendant, Angel
16 Brown.

17 THE COURT: Okay. I think the plaintiff's is listed
18 first -- no, excuse me, defendant's is listed first. Do you
19 have any objection which way we go?

20 MR. BILLINGSLEY: No objection, Your Honor.

21 THE COURT: That's fine. I'll hear her, and I'll hear
22 your position, and obviously in your arguments you'll be
23 arguing your respective positions.

24 MR. BILLINGSLEY: Correct.

25 THE COURT: Happy to hear from you.

1 MS. DALONZO-BAKER: Thank you, Your Honor, may it please
2 the Court.

3 THE COURT: Yes, ma'am.

4 MS. DALONZO-BAKER: This case arises out of an
5 installment sales contract. On May 4th of 2008 Ms. Brown
6 purchased a 2005 Suzuki Forenza. She financed \$18,448.94 at
7 an interest rate of 12.4 percent. Coastal Federal Credit
8 Union has a perfected security interest --

9 THE COURT: I don't need you to give me a history of
10 that. Tell me why there's no issue of fact.

11 MS. DALONZO-BAKER: Well, Your Honor, I believe there's
12 no issue of fact because in the unverified answer signed by
13 Mr. Billingsley they admit the debt, they deny that the
14 vehicle was peaceably repossessed and deny the amount due;
15 however, we have filed, along with our motion for summary
16 judgment, which was filed on -- well, which was signed on
17 April 25th, we filed a verified statement of account and
18 affidavit which lists out the date of default, when the
19 payments stopped coming and that the vehicle was repossessed
20 and sold. So we feel like based on the pleadings and the
21 affidavit filed that there is no genuine issues to any
22 material fact.

23 THE COURT: Okay. What's your response?

24 MR. BILLINGSLEY: Our motion is based on statute of
25 limitations. First, while there is not a disputed issue of

1 fact as far as whether or not the car was repossessed and
2 that there is an amount of debt owed, if our statute of
3 limitations fails, then the issue of material fact that we
4 would argue would be to the actual amount of the debt or the
5 amount dealing with how much they sold the car for, etc. It
6 would not be a liability, it would be essentially an amount
7 kind of an argument. Our statute of limitations is based on
8 the last payments being made by my client were in 2009.
9 That's, as verified by their complaint and the attachments to
10 their complaint, more than three years prior to the filing of
11 this action that they filed in October of 2013. They do
12 argue a case, basically this exact same issue has been before
13 the Circuit Court before, but there's not really a reported
14 case from the Court of Appeals or Supreme Court that
15 specifically sets out the plaintiff's argument that a
16 six-year statute of limitations applies under UCC as a sales
17 contract. Our position is that the three-year statute of
18 limitations applies. In a previous case heard last
19 November --

20 THE COURT: By whom?

21 MR. BILLINGSLEY: It was heard by Judge Young, so it is
22 not precedent, and we recognize that.

23 THE COURT: You would agree, would you not -- and I
24 think it's an interesting issue, I really do, you've briefed
25 that, and I appreciate that. Do you concede that this

1 transaction was governed and under the UCC?

2 MR. BILLINGSLEY: I don't know if I would concede.

3 THE COURT: How could it not be involved? Obviously
4 there's some debt that clearly is under it. It involves a
5 sale, so that's Article 2. Article 9 I think deals with
6 financial situations. How does it not apply?

7 MR. BILLINGSLEY: Well, I think that, while it is
8 possible that it does apply to the transaction, the Fair Debt
9 Collection Practices Act and the uniqueness of the nature --
10 and even one of the cases they cited, in I believe Foster v.
11 Ford, mentions that in collecting on the deficiency, or in
12 this situation it counts them as a debt collector. The
13 action they filed in this matter --

14 THE COURT: Let me ask you this question: Did you sell
15 the car?

16 MS. DALONZO-BAKER: We did, Your Honor.

17 THE COURT: And then you established a balance owing.

18 MS. DALONZO-BAKER: Correct, in deficiency only.

19 THE COURT: And when was that sold?

20 MS. DALONZO-BAKER: That vehicle was sold on November
21 19th, 2009.

22 THE COURT: Bingo. It changes now in my opinion.
23 You're now suing on the deficiency, and now you've got a
24 situation you needed to do it sooner. I grant your motion
25 for summary judgment. You all appeal it.

1 MS. DALONZO-BAKER: Your Honor, just one thing, and I
2 apologize, I expected to have one moment. I filed a
3 memorandum of law.

4 THE COURT: Sure. It's incorporated. All memorandum
5 filed --

6 MS. DALONZO-BAKER: Okay. I just wanted --

7 THE COURT: And I saw that. All memorandum filed in
8 conjunction with this motion are incorporated fully for
9 purposes of review, should that become necessary. You're
10 entitled to rely completely on the positions taken and the
11 law cited therein.

12 MS. DALONZO-BAKER: Thank you, Your Honor.

13 THE COURT: Thank you very much.

14 MR. BILLINGSLEY: Thank you, Your Honor. Will there be
15 a Form 4, Your Honor?

16 THE COURT: I'm going to do a form unless you want it
17 otherwise. What's your position?

18 MS. DALONZO-BAKER: Your Honor, I'd kind of like to have
19 it specified.

20 THE COURT: That's fine. Give it to me, citing the law,
21 citing the position that it really is dealing with the
22 deficiency. That's my position, that I think they should
23 have filed it sooner. Defendant's motion's granted. Formal
24 order to follow. Thank you very much.

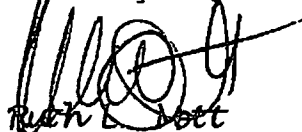
25 --- END OF TRANSCRIPT OF RECORD ---

1 CERTIFICATE OF REPORTER
2 STATE OF SOUTH CAROLINA
3 COUNTY OF CHARLESTON
4

5 I, the undersigned Ruth L. Mott, Official Court Reporter
6 for the State of South Carolina, do hereby certify that the
7 foregoing is a true, accurate and complete transcript of
8 record of all the proceedings had and evidence introduced in
9 the matter of the above-captioned case, relative to appeal,
10 in the 9th Judicial Circuit Court for Charleston County,
11 South Carolina, on the 1st of August, 2014.

12 I further certify that I am neither related to nor
13 counsel for any party to the cause pending or interested in
14 the events thereof.

15 February 20, 2015

16 
17 Ruth L. Mott

18 Official Court Reporter
19
20
21
22
23
24
25

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2014-CP-10-1827
Appellate Case No. 2014-002079

Coastal Federal Credit Union. Appellant

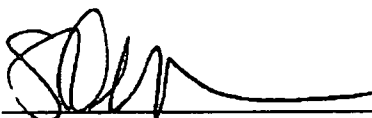
v.

Angel Latoria Brown. Respondent

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

February 25, 2015
Raleigh, North Carolina



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
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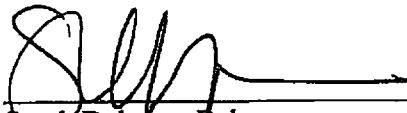
v.

Angel Latoria Brown. Respondent

PROOF OF SERVICE

I certify that I have served the Record of Appeal on Angel Latoria Brown by depositing a copy of it in the United States Mail, postage prepaid, on February 25, 2015, addressed to her attorney of record, Matthew M. Billingsley, 2803 Carner Avenue, North Charleston, SC 29405.

February 25, 2015



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2014-CP-10-1827
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Coastal Federal Credit Union. Appellant

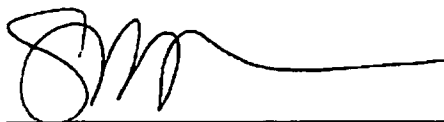
v.

Angel Latoria Brown Respondent

PROOF OF SERVICE

I certify that I have served Appellant's Record on Appeal on Angel Latoria Brown by depositing a copy of it in the United States Mail, postage prepaid, on March 13, 2015, addressed to her attorney of record, Matthew M. Billingsley, 2803 Carner Avenue, North Charleston, SC 29405.

March 13, 2015



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MAR 17 2015

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

ORIGINAL

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No 2014-CP-10-1827
Appellate Case No 2014-002079

Coastal Federal Credit Union. Appellant

v

Angel Latoria Brown Respondent

FINAL BRIEF OF APPELLANT

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MAR 17 2015

SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

- 1. DID THE TRIAL COURT ERR, AS A MATTER OF LAW, IN DETERMINING THAT THE SOUTH CAROLINA CONSUMER PROTECTION CODE AND/OR THE FAIR DEBT COLLECTIONS PRACTICES ACT APPLY TO THIS CASE?**
- 2. DID THE TRIAL COURT ERR, AS A MATTER OF LAW, IN DETERMINING THAT THE APPLICABLE STATUTE OF LIMITATIONS IN THIS CASE WAS ONLY THREE YEARS AND GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT BASED ON SAME?**
- 3. DID THE TRIAL COURT ERR, AS A MATTER OF LAW, IN DENYING APPELLANT'S MOTION FOR SUMMARY JUDGMENT ON THE MERITS ?**

STATEMENT OF THE CASE

Appellant filed this action on October 21, 2013 in the Court of Common Pleas for Chesterfield County seeking judgment against Respondent for the balance of the sales price owed by Respondent under a retail installment sales contract for a 2008 Suzuki Forenza. Respondent answered, alleging among other things, that Appellant's action against Respondent was barred by the three (3) year statute of limitations contained in S.C. Code Ann. § 15-3-530 (2013) inasmuch as Respondent's last payment toward such vehicle's sales price was in July 2009. Respondent's Answer also requested a change of Venue to Charleston County, S C. On or about January 7, 2014, a Consent Order To Change Venue was filed and the case was transferred to the Court of Common Pleas of Charleston County. Appellant and Respondent each thereafter filed a Motion For Summary Judgment, both of which were heard before the Hon R. Markley Dennis, Jr. on August 1, 2014. Judge Dennis denied Appellant's Motion For Summary Judgment and granted Respondent's Motion For Summary Judgment pursuant to an Order filed September 16, 2014. On September 26, 2014, Appellant served its Notice of Appeal on Respondent's counsel of record.

FACTS

On or about May 4, 2008, Respondent entered into a retail installment sales contract (the "Sales Contract") with a South Carolina retail car dealership (the "Dealership") for the sale to Respondent of a certain 2008 Suzuki Forenza, VIN #KL5JD56Z38K748968 (the "Vehicle") (Complaint p. 1, R. p. 2, Ex. A, R. pp. 6-7.) Pursuant to the terms of the Sales Contract, Respondent agreed to a total sales price for the Vehicle of \$28,375.04, to be paid by Respondent with interest at the rate of 12.4% per annum via 72 monthly payments of \$366.32 each beginning June 18, 2008 (Complaint pp. 1-2, R. pp. 2-3, Ex. A; R. p. 6.) The Dealership immediately thereafter sold and assigned the Sales Contract to Appellant, and Appellant remains the sole owner and holder of the Sales Contract. (Complaint p. 1; R. p. 2, CFCU Aff. pp. 1-2, R. pp. 18-19; and Ex. A to both, R. pp. 6-7 and pp. 22-23.)

In July 2009, Respondent defaulted in making the monthly payments for the agreed-upon sale price of the Vehicle (Complaint p. 1; R. p. 2; CFCU Aff. p. 2, R. p. 19; and CFCU Aff. Ex. D; R. p. 27.) As a result, Appellant peaceably repossessed the Vehicle and mailed Respondent, at her last known address, a notice of its intent to sell the Vehicle unless payment in full of then outstanding balance due for the Vehicle was tendered. (Complaint p. 2, R. p. 3, CFCU Aff. p. 2, R. p. 19, and CFCU Aff. Ex. E, R. p. 28.) Respondent did not exercise her right to pay the outstanding balance due and obtain clean title to the Vehicle. (Complaint p. 2, R. p. 3, CFCU Aff. p. 2; R. p. 19.) The Vehicle was sold by Appellant as permitted by the Sales Contract and applicable law, following which

the net sales proceeds were applied to balance still owed by Respondent on the sales price for the Vehicle (Complaint p. 2, R. p 3, CFCU Aff p 2-3, R pp 19-20 and CFCU Aff. Ex. F, G, H; R pp 25-35.)

Following the sale of the Vehicle. Appellant mailed Respondent, at the same last known address, a post-sale accounting. (Complaint p.2, R p. 3, Ex B, R p. 8, CFCU Aff p 3, R p 20; CFCU Aff Ex I, R. p 36.) The post-sale accounting detailed the application of the sale proceeds for the Vehicle and demanded payment for the then-remaining balance due on the sales price of the Vehicle (Complaint p.2. R p. 3, Ex B, R. p. 8, CFCU Aff. p. 3; R. p. 20; CFCU Aff Ex. I; R. p. 36) Respondent thereafter failed and/or refused to pay, and Respondent's account was referred to the undersigned counsel. (Complaint p. 2, R. p 3; CFCU Aff. p.3; R. p. 20) The undersigned counsel also made demand upon Respondent to pay the then-remaining balance due on the sales price for the Vehicle, but Respondent continued to fail and/or refuse to pay the same. (Complaint p 2; R. p 3, and Ex. D, R p 20.) Accordingly, a civil action was filed on behalf of Appellant in the Court of Common Pleas for Chesterfield County on October 21, 2013, alleging a breach by Respondent of her obligation under the Sales Contract to fully pay the agreed sales price for the Vehicle, on the terms set forth therein. (Complaint p. 1-2; R. pp. 2-3.)

Respondent filed an Answer to that Complaint defensively alleging that she didn't recall receiving the pre-sale letter after Appellant's repossession of the Vehicle, and that she did not agree that Appellant had conducted the sale of the Vehicle in accordance with applicable law (Answer pp 1-2; R pp 12-13)

Respondent also asserted that Appellant's action against her was barred by the three-year statute of limitations in South Carolina for filing suit to collect on a breach of contract claim (Answer p 2, R p 13) After the case was transferred by consent to Charleston County (Consent Order To Change Venue p 1, R p 15), Appellant filed a Motion For Summary Judgment asking that judgment be entered in Appellant's favor for the relief requested in the Complaint. (CFCU MSJ, R p. 17) The Affidavit of Sarah Senter, a Legal Specialist with Appellant, was filed in support of Appellant's Motion For Summary Judgment. (CFCU Aff., R. pp 18-36) Ms. Senter, as a qualified records custodian for Appellant, identified and authenticated various attached business records of Appellant from its files relative to Respondent's purchase and financing of the Vehicle, her default in making the agreed-upon payments toward the sales price of the Vehicle, and the remaining balance due to Appellant with respect to same (CFCU Aff.; R. pp 18-36) Respondent filed her own Motion For Summary Judgment (Brown MSJ, R pp. 37-39), supported by the Affidavit of Respondent simply stating that she did not receive a copy of Appellant's pre-sale letter and claiming that the Vehicle was not sold "in a reasonable manner " (Brown Aff , R. pp. 41-42)

The parties then each submitted a memorandum of law to the Trial Court on the issue of the applicable statute of limitations, agreeing that there was no dispute as to any material fact in the case and that the case was therefore appropriate for resolution by the Court as a matter of law (CFCU Memo, R. pp 43-47, Brown Memo, R pp 48-52) However, Appellant challenged Respondent's assertion that the applicable statute of limitations in this case is the

3-year statute of limitations contained in S C Code Ann. §. 15-3-530 (2013) that applies to actions for breach of contract in general (CFCU Memo, R. pp. 43-47) Appellant asserted that the appropriate statute of limitations in the case is in fact the 6-year statute of limitations contained in S C Code Ann. § 36-2-725 (2013) specifically applicable to actions for breach of sales contracts. (CFCU Memo, R. pp. 43-47.)

A hearing was held on the parties' respective Motions For Summary Judgment before the Hon R. Markley Dennis, Jr. on August 1, 2014. Without hearing arguments of counsel, Judge Dennis summarily ruled that he would grant Respondent's Motion For Summary Judgment and deny Appellant's Motion For Summary Judgment (R pp 63-67) His written order to that effect was then filed in the case and served on the parties on September 16, 2014. (SJ Order; R. pp. 55-57) Said order is the final order disposing of the case at the trial level which is on appeal herein (SJ Order; R. pp. 55-57)

On September 26, 2014, Appellant filed and served its Notice of Appeal of the September 16, 2014 Order (NOA, R. pp 58-59)

ARGUMENTS

I THE TRIAL COURT ERRED, AS A MATTER OF LAW, IN DETERMINING THAT THE SOUTH CAROLINA CONSUMER PROTECTION CODE AND/OR THE FAIR DEBT COLLECTIONS PRACTICES ACT APPLY TO THIS CASE

Appellant is a federally chartered credit union, which was affirmatively pleaded in the Complaint and admitted by Respondent in her Answer. As such, it is exempt from all of the provisions of the South Carolina Consumer Protection Code in their entirety See S C Code Ann. § 37-1-202(10) (2013) Further, the

Fair Debt Collections Practices Act, 15 U.S.C. § 1692 ("FDCPA"), in its entirety, similarly does not apply to Appellant. Pursuant to § 1692a(6) of the FDCPA, there is an express exception from the definition of "debt collector" for any entity attempting to collect monies owed directly to it, as opposed to an entity attempting to collect monies on behalf of another entity. See 15 U.S.C. § 1692a(6). Accordingly, the Trial Court's finding that "[t]he South Carolina Consumer Protection Code and the Fair Debt Collection Practices Act apply to this case" is erroneous as a matter of law, and to the extent it was relied on by the Trial Court in either granting Respondent's motion for summary judgment or denying Appellant's motion for summary judgment, must be reversed by this Court.

II. THE TRIAL COURT ERRED, AS A MATTER OF LAW, IN DETERMINING THAT THE APPLICABLE STATUTE OF LIMITATIONS IN THIS CASE WAS ONLY THREE YEARS AND GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT BASED ON SAME.

A. Standard of Review On appeal, the Court reviews the granting of summary judgment "under the same standard as applied by the trial court under Rule 56(c)." Sea Cove Development, LLC v Harbourside Community Bank, 387 S.C. 95, 691 S.E.2d 158 (2010). Accordingly, "[t]he judgment may be affirmed only if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Singletary v Aetna Casualty & Surety Co., 316 S.C. 199, 200, 447 S.E.2d 869, 870 (Ct. App. 1994); Rule 56(c), SCRCP. Further, in reviewing a grant of summary judgment, the reviewing court, like the trial court, must consider the facts and inferences in the light most favorable to the non-moving party. However, to defeat a motion for summary judgment, a party

may not rest upon the mere allegations or denials of his pleading but must set forth specific facts showing that there is a genuine issue for trial. Rule 56(e) SCRCF

B The Subject Contract Is A Chapter 2 Sales Contract. Pursuant to S.C. Code Ann. § 36-2-101 *et seq.* (2013) (herein the “S.C. UCC”), the provisions of Chapter 2 – Sales, apply to all “transactions in goods” between a buyer and seller. For these purposes, “buyer” is defined as a person who buys or contracts to buy goods and “seller” is defined as a person who sells or contracts to sell goods. See S.C. Code Ann. § 36-2-103 (2013). “Goods” is then defined as all things which are moveable at the time of identification to the contract for sale. See S.C. Code Ann. § 36-2-105(1) (2013). “Financing agency” is then defined as a bank, finance company or other person who in the ordinary course of its business makes advances against goods or documents of title. See S.C. Code Ann. § 36-2-104(2) (2013)

In the instant case, it is undisputed that Respondent (buyer) contracted with the Dealership (seller) to buy the Vehicle (goods) and Appellant (financing agency) provided the financing to Respondent in that buy-sell transaction. It is also undisputed that the Sales Contract in this case memorializes the buy-sell transaction. As such, the Sales Contract falls squarely within the express provisions of Chapter 2 of the S.C. UCC as a contract for a “transaction in goods” to which Chapter 2 is specifically directed.

C. This Action Is Solely A Suit For Breach Of That Chapter 2 Sales Contract. Although Respondent’s brief in support of her motion for summary

judgment asserts that the S.C. UCC sets out protections intended only for buyers and sellers of “commercial” goods, both the South Carolina Court of Appeals and the South Carolina Supreme Court have previously had no issue with including motor vehicles as the type of goods covered by Chapter 2 of the S.C. UCC. *See e.g., Brewer v. Stokes Kia, Isuzu, Subaru, Inc.*, 364 S.C. 444, 613 S.E.2d 802 (S.C. App. 2005) and *Singleton v. Stokes Motors, Inc.*, 358 S.C. 369, 595 S.E.2d 461 (S.C. 2004). In each of these cases, the reviewing Court looked directly to Chapter 2 of the S.C. UCC to analyze the buyer’s and seller’s respective obligations in a breach of contract dispute involving the purchase and sale of a motor vehicle by a consumer from a retail motor vehicle dealership.¹

Further, Respondent asserts that the “special protection” of repossession is not provided to contracts covered by the S.C. UCC. (Brown Memo p.2, R. p. 49). This argument is not supported by the plain language of the S.C. UCC. It is indisputable that the S.C. UCC includes not only Chapter 2 relating to the sale of goods as discussed above, but also Chapter 9 relating to the rights of secured lenders involved in those sales transactions, specifically including a seller/creditor’s right to repossess and sell the goods in question in the event the buyer fails to pay the sales price for those goods as agreed between the parties.

Finally, the characterization of Appellant’s action as a “deficiency action”

¹ Although not the original maker of the Sales Contract, Appellant steps into the shoes of the seller upon the purchase/assignment of the Sales Contract pursuant to the Notice at the bottom of Page 2 of the Sales Contract, which states, in pertinent part, “ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF.”

and/or an "action to collect a debt" has no legal effect with respect to the question of whether or not the Sales Contract is covered by Chapter 2 of the S.C. UCC, with its applicable 6-year statute of limitation. As set forth above, the relevant definitional provisions of Chapter 2 of the S.C. UCC clearly encompass the Sales Contract in this case. Both the Court of Appeals and the Supreme Court have treated motor vehicles as a category of "goods" subject to the provisions of Chapter 2 of the S.C. UCC. Further, § 36-2-301 of the S.C. UCC expressly sets forth the general obligations of the parties to a Chapter 2 contract, *i.e.*, the seller is to transfer and deliver the purchased goods and the buyer is to accept and pay for those goods "*in accordance with the contract*" (*emphasis added*). There have been no reported cases in South Carolina to support Respondent's bald assertion, tacitly approved by the Trial Court, that a Chapter 2 sales contract is somehow re-characterized or transformed into some other type of contract merely because the buyer pledged the goods sold as collateral for the sale price, the buyer failed to pay for the goods as agreed and the seller subsequently repossessed and sold those goods in accordance with its rights under Chapter 9 of the S.C. UCC.

In this case, the Complaint against Respondent clearly sets forth an alleged breach by Respondent of her specific payment obligations under the Sales Contract for the purchase and sale of the Vehicle. No other claim or cause of action against Respondent other than a breach of the Sales Contract is stated in the Complaint. Therefore, there can be no dispute that Appellant is simply trying to enforce its right to demand performance by Respondent of her contractual payment obligations under a contract for the purchase and sale of goods. Thus,

this case falls squarely within the ambit of Chapter 2 of the S.C. UCC despite the terminology used by both Respondent and the Trial Court to otherwise describe the nature of Appellant's claim against Respondent at the trial court level

D Established Rules Of Statutory Construction Dictate That A Specific Statute Prevails Over A More General One Dealing With The Same Subject Matter. In the case of Atlas Food Systems and Services, Inc. v. Crane National Vendors, et al, 319 S.C. 556, 462 S.E.2d 858 (1995), the South Carolina Supreme Court specifically discussed the interplay between the 3-year statute of limitations generally applicable to actions for breach of contract and the 6-year statute of limitations in Chapter 2 of the S.C. UCC. In that case, the Court first reiterated the general rule of statutory construction holding that a specific statute prevails over a more general one. Id. at 558, 462 S.E.2d at 859. It also held that the enactment of a later general statute does not repeal an earlier more specific statute. Id. at 558, 462 S.E.2d at 859. As such, the Court declined to find that the 1988 amendment to the general contract statute of limitations (reducing it from 6 years to 3 years) impliedly repealed or reduced the 6-year statute of limitations covered by the S.C. UCC. Id. at 558, 462 S.E.2d at 859. As such, the 6-year statute of limitations found in Chapter 2 of the S.C. UCC still applies, and prevails, when the suit in question is a suit for breach of a Chapter 2 sales contract. Therefore, the 6-year statute of limitations applies to the instant case.

E There Is No Inherent Conflict Between The Two Statutes of Limitation For Breach Of Contract. Perhaps more importantly, the *Atlas* Court also found there to be no inherent conflict between the general statute of

limitations for breach of contract actions contained in S C Code Ann. § 15-3-530 (2013) and the more specific statute of limitations for breach of sales contracts contained in Chapter 2 of the S C. UCC Id. at 558, 462 S E.2d at 859 “The U C.C. statute of limitations applies to actions arising under that act, while § 15-3-530(1) applies to other types of general contract actions.” Id. at 558, 462 S.E 2d at 859 Accordingly, the fact that there may be two statutes of limitation applicable to this particular case does not create a situation in which the Trial Court is left to resolve competing dictates As the South Carolina Supreme Court has clearly stated, “[a]ctions arising under Article 2 of the U C C. are governed by § 36-2-725’s statute of limitations “ Id. at 559, 462 S E.2d at 860. Any implication otherwise in any prior decisions is no longer good law. Id. at 559, 462 S.E 2d at 860

III THE TRIAL COURT ERRED. AS A MATTER OF LAW, IN DENYING APPELLANT’S MOTION FOR SUMMARY JUDGMENT ON THE MERITS.

There being no statute of limitations bar to Appellant filing this action against Respondent, the Trial Court further erred in denying Appellant’s Motion For Summary Judgment on the merits By means of the CFCU Affidavit, Appellant’s authenticated business records attached thereto were properly in evidence before the Trial Court pursuant to Rule 803(6), SCRE. These included the following:

- a The Sales Contract, setting forth Respondent’s payment obligations relative to her purchase of the Vehicle,
- b The sale and assignment of the Sales Contract by the Dealership to Appellant,

- c. Respondent's payment history, showing her default with respect to her payment obligations under the Sales Contract and the balance due with respect to same at the time of default;
- d. Appellant's pre-sale letter to Respondent, addressed to and mailed to Respondent at her last known address,
- e. Appellant's condition report for the Vehicle when it was repossessed, showing front end damage to the Vehicle;
- f. Appellant's bill of sale for the Vehicle showing it sold at auction for \$6,000; and
- g. Appellant's post-sale letter to Respondent, addressed to and mailed to Respondent at her last known address

Also attached to the CFCU Affidavit, as Exhibit G, is a copy of the relevant pages from the November 2009 Carolina Edition of the Black Book Official Used Car Market Guide showing that, as of its sale date, the Vehicle had an average wholesale (auction) value of \$6,077.80. The value was based on sales of the same make and model vehicles at auction in the previous month. These pages were properly in evidence before the Trial Court pursuant to Rule 803(17) SCRE.

By her Answer, Respondent admitted her default in making the payments due under the Sales Contract, and presented the Trial Court with no evidence prior to the summary judgment hearing to refute the accuracy of the payment history attached to the CFCU Affidavit, including the balance due after her last payment.

Further, Respondent's simple statement that she did not receive Appellant's pre-sale letter to her provides no legal impediment to Appellant's

right to recover judgment against Respondent for the balance due on the sales price for the Vehicle. S.C. Code Ann. § 36-9-611 (2013) requires a secured lender to notify a debtor before disposition of the collateral and S.C. Code Ann. § 36-9-616 (2013) requires a secured party to send the debtor an explanation of how the sales proceeds were applied to the debt owed. S.C. Code Ann. § 36-1-201(26) (2013) defines "giving notice" as the act of taking reasonable steps to inform another party but does not require actual receipt by the other party. Further, S.C. Code Ann. § 36-1-201(38) (2013) lists a definition of "send" relative to any writing or notice as simply depositing same in the mail to a known address or an address reasonable under the circumstances. Thus, the mailing of the required notices by the creditor, not the receipt of the same by the debtor, is the required legal standard for compliance with the noticing requirements of S.C. Code Ann. §§ 36-9-611 (2013) and 36-9-616 (2013). The uncontroverted evidence before the Trial Court, via the CFCU Affidavit, was that Appellant mailed the pre-sale letter attached to the Affidavit to Respondent, and that the address on such pre-sale letter was the last-known address in Appellant's file for Respondent. The uncontroverted evidence before the Trial Court also was that Appellant subsequently mailed the post-sale accounting letter relative to the Vehicle to Respondent at the same address, which Respondent did not deny receiving. As such, the uncontroverted evidence before the trial court was that Appellant fully complied with both applicable noticing statutes, regardless of whether Respondent did or did not receive both or either of said notices.

Respondent also presented no facts to the Trial Court to support her bald

assertion that Appellant's sale of the Vehicle at the Manheim Auto Auction in Darlington, South Carolina was not a reasonable means for Appellant to sell the Vehicle and/or is not in fact the means typically used in the industry by secured lenders such as Appellant to liquidate repossessed vehicles. Similarly, Respondent presented no facts to the Trial Court to show that the \$6,000 received by Appellant from the sale of the Vehicle was not in fact its reasonable fair market liquidation value at the time of sale. The only fact presented by Respondent in support of her claim that Appellant failed to sell the Vehicle in a reasonable manner was that the Vehicle sold for one-third of the amount Respondent had paid for the Vehicle (Brown Aff p 1, R p 41.) However, this fact, standing alone, altogether fails to address the predictable downward impact on the Vehicle's value occasioned by the front end damage to the Vehicle reported by the inspector following repossession and/or the fact that all vehicles continuously depreciate as time goes by due to on-going wear and tear.

As such, the uncontroverted evidence properly before the Trial Court at the summary judgment hearing showed (i) the existence of a valid enforceable sales contract between the parties, (ii) a clear breach by Respondent of her payment obligations to Respondent under that sales contract, (iii) a sale of the Vehicle in accordance with industry standards, (iv) the required pre- and post-sale notices mailed to Respondent's last known address regarding the repossession and sale of the Vehicle, and (v) the amount still owed by Respondent after all credits to which she was entitled had been applied to her account. Respondent's statement that she did not receive the pre-sale notice and/or her bare assertion that

Appellant failed to sell the Vehicle in a reasonable manner were insufficient, as a matter of law, to overcome the undisputed evidence presented to the Trial Court by Appellant, and the Trial Court therefore committed reversible error in denying Appellant's motion for summary judgment on the merits.

CONCLUSION

There is no dispute between the parties as to the material facts leading up to this case. There also can be no dispute, as a matter of law, that neither the SC Consumer Protection Code nor the Fair Debt Collections Practices Act has any lawful application to this case. Accordingly, the Trial Court's finding to the contrary is reversible error. To the extent the Trial Court relied on such a finding in granting Respondent's Motion For Summary Judgment, such Order should be reversed and Respondent's Motion For Summary Judgment denied.

Further, as evidenced by the undisputed facts of this case, Appellant's claim against Respondent herein is solely for breach of a sales contract covered by Chapter 2 of the S C UCC, and therefore the applicable statute of limitations in which Appellant could timely bring this action against Respondent had not expired as of the date this action was commenced. Accordingly, the Trial Court's finding to the contrary is reversible error. The Order granting Respondent's Motion For Summary Judgment should be reversed and Respondent's Motion For Summary Judgment denied.

Finally, Appellant presented sufficient undisputed evidence with respect to each element of its breach of contract claim against Respondent to support its assertion that it was entitled to judgment against Respondent for the relief

requested in the Complaint as a matter of law. The defenses raised by Respondent in her Answer and Affidavit in support of her Motion For Summary Judgment were insufficient to create a true dispute with respect to any material fact and/or prevent judgment from being entered in favor of Appellant as a matter of law. Accordingly, the Trial Court's refusal to grant summary judgment to Appellant in this case was further reversible error. The Order denying Appellant's Motion For Summary Judgment should be reversed and Appellant's Motion For Summary Judgment granted.

Respectfully submitted this the 13 day of March, 2015.



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In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2014-CP-10-1827
Appellate Case No. 2014-002079

Coastal Federal Credit Union. Appellant

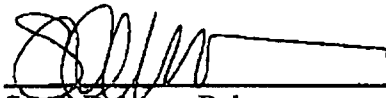
v.

Angel Latoria Brown Respondent

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b),
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Coastal Federal Credit Union..... Appellant

v.

Angel Latoria Brown Respondent

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SC Court of Appeals

PROOF OF SERVICE

I certify that I have served Final Brief of Appellant on Angel Latoria Brown by depositing a copy of it in the United States Mail, postage prepaid, on March 13, 2015, addressed to her attorney of record, Matthew M. Billingsley, 2803 Carner Avenue, North Charleston, SC 29405.

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In the Court of Appeals

ORIGINAL

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FILED

MAR 26 2015

SC Court of Appeals

Coastal Federal Credit Union.....Appellant,

v.

Angel Latoria Brown.....Respondent.

BRIEF FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I THE TRIAL COURT APPLIED THE CORRECT STATUTE OF LIMITATIONS AND ITS GRANT OF SUMMARY JUDGMENT SHOULD BE AFFIRMED.**
- II. THE DENIAL OF APPELLANT'S MOTION FOR SUMMARY JUDGMENT ON THE MERITS IS NOT APPEALABLE.**
- III THE COURT DID NOT RELY ON THE SCCPC OR THE FDCPA IN THE ORDER GRANTING SUMMARY JUDGMENT BASED ON THE APPLICABLE STATUTE OF LIMITATIONS.**

STATEMENT OF THE CASE

Appellant Coastal Federal Credit Union ("Appellant") filed this action on October 21, 2013 in the Court of Common Pleas for Chesterfield County (R , p 2). Appellant sought a judgment against the Respondent Angel Latoria Brown ("Respondent") for an alleged deficiency in the amount of \$11,120.41 resulting after repossession and the sale of a 2008 Suzuki Forenza, purchased by Respondent under a retail installment sales contract (R , p 2). On November 21, 2013, Respondent filed an Answer to the Complaint and asserted affirmative defenses, including the defense Appellant's action was barred by the three-year statute of limitations contained in S C. Code Ann. § 15-3-530 (2013). (R., p. 12). Respondent's Answer also requested a change of venue to Charleston County. (R., p. 12). On January 7, 2014, the parties entered a Consent Order to Change Venue to Charleston County where the Court of Common Pleas issued a new docket number (R., p. 15)

Appellant and Respondent each filed a Motion for Summary Judgment based on the pleadings Appellant filed its motion on April 28, 2014 seeking judgment for the relief requested in the Complaint (R , pp. 17-39) Respondent filed her motion on June 18, 2014 seeking to dismiss Appellant's case with prejudice based on the statute of limitations set out in S. C. Code Ann. § 15-3-530 (2013). Appellant and Respondent each submitted a memoranda of law in support of their respective Motions. (R., pp 43-52). The Honorable R. Markley Dennis, Jr heard both motions on August 1, 2014. (R., pp. 61-68). After argument, Judge Dennis granted Respondent's motion and denied Appellant's motion at the hearing. (R., pp. 66-67). An Order was issued and filed on September 16, 2014. (R , pp 55-57). Appellant served its Notice of Appeal on Respondent's Counsel of Record on September 26, 2014 (R , p. 59).

FACTS

On May 4, 2008, Respondent purchased a 2008 Suzuki Forenza (the "Vehicle") from a South Carolina retail car dealership, Johnny's Subaru Isuzu, LLC (the "Dealership"). Appellant provided financing for the purchase and the Dealership assigned its rights to the Appellant (R., p. 2) Appellant retained a purchase money security interest in the Vehicle (R , p 2). Respondent's monthly payments to Appellant were set at \$366 32, which began on June 18, 2008 (R , p 2)

Beginning in July 2009, Respondent was unable to continue making the monthly payments to Appellant. In October 2009, Appellant asserted its security interest and repossessed the Vehicle from Respondent. Appellant thereafter sold the Vehicle on November 19, 2009 (R , p. 2) Appellant applied the proceeds of the sale to the alleged balance owed by Respondent and sent a letter, dated November 24, 2009 to Respondent stating the post-sale accounting. (R., p. 2). Respondent made no further payments to Appellant. (R., p. 2).

Appellant filed this action on October 21, 2013 (R , p 2). In its Complaint, Appellant asserted a cause of action for debt collection. The gravamen of the Complaint is the collection of the debt – the deficiency after the proceeds of the sale of the Vehicle were applied to the balance owed by Respondent. (R , p 2).

On November 21, 2013, Respondent filed an Answer to the Complaint asserting as an affirmative defense that Appellant's action is barred by the three year statute of limitations as Appellant sought to collect a debt that resulted from their security interest in the Vehicle (R , p. 12)

On March 17, 2014, pursuant to a Consent Order to Change Venue, filed January 7, 2014, venue of this action was transferred from Chesterfield County to Charleston County. (R , p. 15)

On April 28, 2014, Appellant filed a Motion for Summary Judgment seeking judgment for the relief requested in the Complaint. (R., p. 17) Respondent filed a Motion for Summary Judgment seeking to dismiss Appellant's case with prejudice based on the statute of limitations set out in S. C. Code Ann. § 15-3-530 (2013) which states that certain actions shall be brought "[w]ithin three years (1) an action upon a contract, obligation, or liability, express or implied, excepting those provided for in Section 15-3-520". (R., p. 37). Respondent filed an affidavit to support her motion. (R., p. 41)

Appellant did not dispute that it filed this action more than three years after the last payment transaction. (R., p. 43). The last payment, repossession, and sale all occurred in 2009, more than three years prior to the filing of the action in the Court of Common Pleas. (R., p. 43)

Appellant and Respondent each submitted a memorandum of law in support of their respective motions. Respondent sought summary judgment based on Appellant filing its Complaint more than three years after the last item proved under the statute of limitations set out in S. C. Code Ann. § 15-3-530 (2013).

Appellant sought summary judgment on its deficiency claim based on the allegations contained in the Complaint. Appellant further claimed that the applicable statute of limitations to this Action is contained in S. C. Code Ann. § 36-2-725 (2013), which is applicable to breach of contract actions for the sale of goods. (R., p. 43). This statute of limitations, however, does not apply to this case as the action is related to the security interest of the transaction rather than the sale itself.

The Court of Common Pleas held a hearing on both motions before the Honorable R Markley Dennis, Jr. on August 1, 2014. (R., pp. 61-68) Judge Dennis questioned Appellant on the specific issue of the deficiency arising from the repossession and sale of the car. (R., pp. 66-

67) He thereafter denied Appellant's motion and granted Respondent's motion for summary judgment dismissing the case with prejudice. (R., pp 66-67) The Final Order was filed on September 16, 2014. (R , p 55).

Appellant filed the Notice of Appeal on September 26, 2014

ARGUMENT

STANDARD OF REVIEW

"An appellate court reviews the granting of summary judgment under the same standard applied by the trial court under Rule 56(c), SCRCF " *Hooper v Ebenezer Senior Servs & Rehab Ctr.*, 386 S.C. 108, 114, 687 S E 2d 29, 32 (2009) (citing *Brockbank v Best Capital Corp* , 341 S.C 372, 379, 534 S.E.2d 688, 692 (2000)). "...Pursuant to Rule 56(c), SCRCF: summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." *Austin v Beaufort Cnty Sheriff's Office*, 377 S.C 31, 34, 659 S.E.2d 122, 123 (2008) citing *Burriss v Anderson County Bd of Educ* , 369 S C 443, 633 S.E.2d 482 (2006); *Dawkins v Fields*, 354 S C 58, 580 S.E.2d 433 (2003)

I. THE TRIAL COURT'S DECISION SHOULD BE AFFIRMED BECAUSE IT APPLIED THE CORRECT STATUTE OF LIMITATIONS

There is no genuine dispute of material facts of this case. Appellant alleged the last payment by Respondent was July 28, 2009. (R., p. 9). Appellant repossessed the Vehicle on October 22, 2009. (R., pp. 18-20) The Vehicle was sold on November 19, 2009 (R., pp 18-20) Appellant sent Respondent a deficiency letter on November 24, 2009 (R., p. 8). Appellant filed its Complaint on October 21, 2013, more than three years after the sale of the car. These facts are undisputed. The sole issue that this Court must consider is whether, as a matter of law, the three year statute of limitations under S.C. Code Ann. § 15-3-530 (2013) or the six year statute of limitations under S.C. Code Ann. § 36-2-725 (2013) applies to the instant Action.

A. The Three Year Statute of Limitations Applies to an Action to Collect a Debt Based Upon a Security Interest.

The applicable statute of limitations in this case is three years under S.C. Code § 15-3-530 (2013). The transaction involved both a sale and a security interest. Appellant's role as financing agency reflects its intent to operate as a secured lender in a security transaction, which removes this action to collect on a deficiency claim from the six year statute of limitations under S.C. Code Ann. § 36-2-725 (2013) based upon S.C. Code Ann. §36-2-102. The six year state of limitations does not apply as the action by Appellant is directly related to the security interest rather than the sale of the Vehicle. Appellant acted as the financing agency and retained a purchase money security interest in the Vehicle purchased by Respondent. (Appellant's Brief, p. 8) The alleged debt arose from a deficiency after a repossession and sale of the Vehicle. The deficiency alleged becomes an unsecured debt as the Vehicle is disposed. The actions taken by Appellant were those to collect a debt based upon the retained security interest. Appellant acknowledged as much in its letter to Respondent, dated November 24, 2009, stating the intent of

the letter is to collect a debt. (R., p. 36). The Complaint itself is also captioned as “debt collection.” (R., p. 2).

Because Appellant was operating as a secured lender attempting to collect upon a debt, Chapter 2 of the S.C. Uniform Commercial Code does not apply. To wit:

Unless the context otherwise requires, this Chapter applies to transactions in goods; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction nor does this chapter impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers.

S. C. Code Ann. §36-2-102. Appellant acknowledges that it retained a security interest in the Vehicle (R., p. 2). Respondent purchased the car from the Dealer and the contract noted it would be assigned to Appellant. (R., p. 2). Appellant’s role in the transaction was that of financing agency

Appellant’s action is based on the security interest it retained rather than the sales aspect of the contract. This is clear from the gravamen of the Complaint. The resulting claim for a debt collection is, therefore, not a breach of contract claim under SC Code Ann. § 36-2-725 (2013)

Appellant exercised its remedy of repossession. (R., p. 3) Appellant states in its brief that it exercised this right as provided under Chapter 9 of the S.C. Uniform Commercial Code. There is no statute of limitations under that Chapter 9. The right of repossession is provided when a security interest is retained. SC Code Ann. § 36-9-609 (2013). Appellant as the secured party exercises this right based on that security interest. *Id* Accordingly the statute of limitations for a breach of contract claim under SC Code Ann. § 36-2-725 (2013) would not apply as Appellant is acting on its security interest rather than the sale aspect of the contract. Accordingly, the decision of the trial court should be affirmed.

**B. The Cases Cited By Appellant Do Not Support
The Application of a Six Year Statute of Limitations.**

Appellant argues that the statute of limitations for a contract for the sale of goods under the UCC, which is six years, applies to its Complaint. SC Code § 36-2-725 (2013). There are no reported South Carolina cases that support Appellant's bald assertion that the seller/financer in a deficiency action is entitled to a six year statute of limitations. Such a lengthened statute of limitations period would afford an additional and improper advantage to the seller/financer over the consumer, whereas a three-year statute of limitations provides some protection for the consumer.

In support of its argument, Appellant argues that the Uniform Commercial Code Chap. 2 statute of limitations should apply. In support of this argument, Appellant cites two cases for the proposition that the action is solely a suit for breach of a Chapter 2 Sales Contract. (Appellant's Brief, p 8) *See Brewer v Stokes Kia, Isuzu, Subaru, Inc*, 364 S.C 444, 613 S.E.2d 80 (S.C. App. 2005), *Singleton v Stokes Motors, Inc*, 358 S.C. 269, 595 S E 2d 461 (S.C. 2004) Neither case, however, deals with the issue that is the crux of this appeal – the applicable statute of limitations issue. In *Brewer*, the issues were whether there was an enforceable agreement and whether the dealer had a right to repossess the car. *Brewer v Stokes Kia*, 364 S C. 444, 451, 613 S.E 2d 802, 812 (Ct App 2005) In *Brewer*, the buyer brought an action against a seller regarding whether there was an enforceable agreement and whether the dealership was entitled to repossess the car. *Id.* In *Singleton*, the Court looked directly to the claims of the buyer based on Chapter 9 of the S C Uniform Commercial Code. *Singleton v Stokes Motors, Inc.*, 358 S.C 269, 595 S E 2d 461 (S.C. 2004). Tellingly, neither of these cases support the proposition that the instant action is governed by a six year statute of limitations. Moreover, neither case involved the security portion of the sales transaction – which is at issue in this case.

C. Other Jurisdictions Have Found That Actions To Recover A Deficiency After Repossession And Resale Were Not Under Chapter 2 Of The UCC And That Statute Of Limitations Did Not Apply.

In *North Carolina Nat'l Bank v Holhouser*, 38 N.C. App. 165, 247 S.E.2d 645 (1978), the court did not apply the statute of limitations in Chapter 2 of the Uniform Commercial Code to an action to collect on a deficiency after repossession and sale of an automobile. In that case, the court stated that Chapter 2 of the Uniform Commercial Code applies to the sales aspect of the transaction whereas Chapter 9 of the Uniform Commercial Code applies to the security interest aspect of the transaction. *Id.* Similarly, in *Banc Ohio Nat'l Bank v Freeland*, 13 Ohio App. 3d 245, 13 Ohio B.R. 298, 468 N.E.2d 941 (1984), the court held the statute of limitations in Chapter 2 of the Uniform Commercial Code did not apply to a deficiency action of an automobile. This Court should follow the rationales stated in those cases and hold that Chapter 9 applies to the instant action and that the general three year statute of limitations applies. Accordingly, this Court should affirm the decision of the trial court granting summary judgment to Respondent

II. THE DENIAL OF APPELLANT'S MOTION FOR SUMMARY JUDGMENT ON THE MERITS IS NOT APPEALABLE.

A denial of a motion for summary judgment is not appealable. *Ballenger v Bowen*, 313 S.C. 476, 443 S.E.2d 379 (1994). In *Ballenger*, the Court noted that:

[T]he denial of summary judgment does not finally determine anything about the merits of the case and does not have the effect of striking any defense since that defense may be raised again later in the proceedings. Therefore, an order denying a motion for summary judgment is not appealable

Id. at 477. The denial of summary judgment is not appealable even after final judgment. See generally *Olson v Faculty House of Carolina, Inc*, 354 S.C. 161, 580 S.E.2d 440 (2001) (listing cases holding that denial of summary judgment is not appealable)

In its brief, Appellant requests that this Court reverse the denial of its Motion for Summary Judgment and, then, grant its motion. The Supreme Court has ruled on this precise issue. The denial of Appellant's Motion for Summary Judgment cannot be appealed, and concomitantly, cannot be reversed. Accordingly, the Court should affirm the denial of the Motion for Summary Judgment.

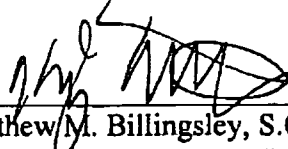
**III. THE COURT DID NOT RELY ON THE SCCPC OR THE FDCPA
IN THE ORDER GRANTING SUMMARY JUDGMENT
BASED ON THE APPLICABLE STATUTE OF LIMITATIONS.**

In its final order, the Court stated that the SCPCC and the FDCPA applied to this action (R , p. 56). This reference was merely incidental and was not relied on by the court in rendering a decision on the applicable contract statute of limitations. (R , pp 55-58). Therefore, as the Court granted no relief with respect to the SCPCA or the FDCPA, there is no relief available to the Appellant related to the SCPCA and the FDCPA. Indeed, the Appellant had not stated what the application or lack thereof of these statutes would affect with respect to their claim. Accordingly, the Court should dismiss this portion of the appeal.

CONCLUSION

For the foregoing reasons, the decision of the Circuit Court Ninth Judicial Circuit for Charleston County of South Carolina granting Respondent summary judgment and denying Appellant summary judgment should be affirmed.

Respectfully Submitted,



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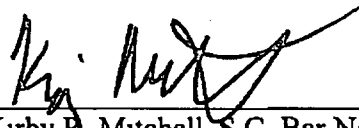
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v.

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CERTIFICATE OF SERVICE

I certify that I have served the Respondent's Final Brief and Certificate of Counsel on Coastal Federal Credit Union by depositing a copy of it in the United States mail, Certified Mail, Return Receipt Requested, on March 23, 2015, addressed to their attorney of record, Sarah Dalonzo-Baker of Kirschbaum, Nanney, Keenan & Griffin, P A at Post Office Box 19806, Raleigh, North Carolina 27619.


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THE STATE OF SOUTH CAROLINA
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APPEAL FROM CHARLESTON COUNTY
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R Markley Dennis, Jr., Circuit Court Judge

Case No 2014-CP-10-1827

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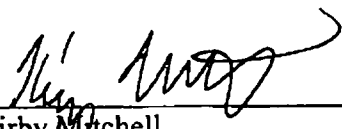
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CERTIFICATION OF COUNSEL

The undersigned hereby certifies that this Reply Brief complies with Rule 211(b),
SCACR.


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March 20, 2015

Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

SC Court of Appeals

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2014-CP-10-1827
Appellate Case No. 2014-002079

Coastal Federal Credit Union. Appellant

v.

Angel Latoria Brown Respondent

APPELLANT'S FINAL REPLY BRIEF

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ARGUMENT

Respondent asserts in her Initial Brief that a denial of a motion for summary judgment is an interlocutory order and therefore not immediately appealable. The Defendant therefore argues that if this Court reverses the trial court's holding that Plaintiff's lawsuit against Defendant is time-barred, that it cannot then go on to make a determination on the merits as to Plaintiff's Motion For Summary Judgment on its substantive claim against Defendant but must remand for further action by the trial court regarding same. (Initial Brief for Respondent, pages 8- 9.) However, South Carolina appellate courts have expressly recognized an exception to that rule, holding that interlocutory orders which are typically not appealable become so when they are companions to issues that are immediately appealable. *See, e.g., Hedgepath v. AT&T*, 348 S.C. 340, 363 S.E.2d 327, 340 (Ct.App. 2001); *see also Briggs v. Richardson*, 273 S.C. 376, 256 S.E.2d 544 (1979); *Brown v. County of Berkeley*, 366 S.C. 354, 622 S.E.2d 533 (2005).

In support of her position, Respondent cites to the case of *Olson v. Faculty House of Carolina, Inc.*, 354 S.C. 161, 580 S.E.2d (2003), in which the South Carolina Supreme Court overruled three cases that touched on the issue of interlocutory appeals: *Tanner v. Florence City-County Bldg Comm'n*, 333 S.C. 549, 511 S.E.2d 369 (Ct. App. 1999), *Anthony v. Padmar, Inc.*, 307 S.C. 503, 415 S.E.2d 828 (Ct. App. 1992), and *Garrett v. Snedigar*, 293 S.C. 176, 359 S.E.2d 283 (Ct.App. 1987). However, *Hedgepath v. AT&T*, *Briggs v. Richardson*, and *Brown v. County of Berkeley* are all still good law. More importantly however, the South Carolina Supreme Court decided *Brown v. County of Berkeley* in 2005, which was two years after the *Olson* decision.

In *Brown*, the Court briefly addressed interlocutory orders and specifically stated that “[c]ourts have made a practice of accepting appeals of denials of interlocutory orders not ordinarily immediately appealable when these appeals are companion to issues that are reviewable. *Pitts v. Jackson Nat’l Life Ins. Co.*, 352 S.C. 319, 338, 574 S.E.2d 502, 512 (Ct.App. 2002) (citing *Morris v. Anderson County*, 349 S.C. 607, 610, 564 S.E.2d 649, 651 (2002).”

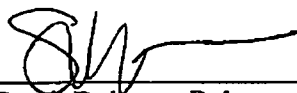
Brown v. County of Berkley, 366 S.C. at 362, n. 5, 622 S.E.2d at 538, n. 5.

In *Brown*, the Court then went on to examine whether there was a sufficient nexus between the issues before it to justify the Court’s review of the related interlocutory order. *Id.* Therefore, the South Carolina Supreme Court clearly indicated that allowing what would otherwise be interlocutory appeals when they are companions to immediately appealable issues is in fact within the appropriate purview of the appellate courts of South Carolina.

In the instant case, both parties filed Motions for Summary Judgment. Plaintiff’s Motion For Summary Judgment asserted that the applicable statute of limitations was 6 years as provided by relevant provisions of the South Carolina UCC, and asked for a money judgment against Defendant in the amounts set forth in its Complaint. (R., pp. 17-36). Defendant’s Motion For Summary Judgment asserted that the applicable statute of limitation was 3 years and that Plaintiff was therefore time-barred in bringing its lawsuit against Defendant in any amount. (R., pp. 37-39). The Hon. R. Markley Dennis, Jr. denied Plaintiff’s Motion for Summary Judgment and granted Defendant’s Motion for Summary Judgment on the statute of limitations issue. (R., pp. 55-57). Both rulings are obviously intimately related and based on opposing arguments of the very same issues. Accordingly, per the decisions in *Hedgepath v. AT&T*, *Briggs v. Richardson*, and *Brown v. County of Berkeley*, Judge Markley’s denial of Plaintiff’s Motion for

Summary Judgment is appropriately before this Court for review in the event Judge Markley's decision on the applicable statute of limitations is reversed herein.

Respectfully submitted this the 30th day of April, 2015.



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
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R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2014-CP-10-1827
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SC Court of Appeals

Coastal Federal Credit Union. Appellant

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Angel Latoria Brown Respondent

PROOF OF SERVICE

I certify that I have served Appellant's Final Reply Brief on Angel Latoria Brown by depositing a copy of it in the United States Mail, postage prepaid, on April 30, 2015, addressed to her attorney of record, Matthew M. Billingsley, 2803 Carner Avenue, North Charleston, SC 29405.

April 30, 2015 . . .



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

Coastal Federal Credit Union, Appellant,

v.

Angel Latoria Brown, Respondent.

Appellate Case No. 2014-002079

Appeal From Charleston County
R. Markley Dennis, Jr., Circuit Court Judge

Opinion No. 5421
Submitted April 1, 2016 – Filed June 30, 2016

**VACATED IN PART, REVERSED IN PART, AND
REMANDED**

Sarah Dalonzo-Baker, of Kirschbaum Nanney Keenan &
Griffin, PA, of Raleigh, North Carolina, for Appellant.

Kirby Rakes Mitchell, of Greenville, and Matthew M.
Billingsley, of North Charleston, both of S.C. Legal
Services, for Respondent.

CURETON, A.J.: Coastal Federal Credit Union (CFCU) appeals a circuit court order granting summary judgment to Angel Brown and denying summary judgment to CFCU. On appeal, CFCU argues the circuit court erred by (1) ruling the South Carolina Consumer Protection Code (SCCPC) and the Fair Debt Collections Practices Act (FDCPA) apply to this case, (2) ruling the applicable statute of limitations was three years and granting Brown summary judgment on that basis, and (3) denying its motion for summary judgment. We vacate the

circuit court's order as to the first issue, reverse as to the second issue, find the third issue is not appealable, and remand for further proceedings.¹

I. FACTS/PROCEDURAL HISTORY

On May 4, 2008, Brown entered into a retail installment sales contract with Johnny's Subaru Isuzu, LLC (the dealership), to purchase a vehicle. Brown financed the purchase, and the contract gave the dealership a security interest in the vehicle. The contract also provided that the financed portion of Brown's purchase would accrue interest at an annual rate of 12.4 percent. The dealership immediately assigned the contract to CFCU, and Brown's certificate of title listed CFCU as first lienholder. Brown failed to make payments as required by the contract,² and in October 2009, CFCU repossessed the vehicle. On November 19, 2009, CFCU sold the vehicle at auction, leaving an outstanding balance under the contract. On November 24, 2009, CFCU sent Brown a letter notifying her of the sale and resulting deficiency.

On October 21, 2013, CFCU filed the summons and complaint in the current action seeking to collect Brown's debt. The caption of the complaint stated the action was for "debt collection," and the complaint alleged Brown "defaulted in making the regularly-scheduled monthly payments due under the [c]ontract." The complaint further alleged CFCU repossessed and sold the vehicle "in accordance with the terms of the [c]ontract and applicable law," CFCU applied the proceeds "to the [c]ontract," and Brown owed an outstanding balance including interest and collection costs pursuant to the contract. Brown answered, asserting a statute of limitations defense. CFCU filed a motion for summary judgment, arguing the six-year statute of limitations contained in Article 2 of the South Carolina Uniform Commercial Code (SCUCC)³ applied to the case, while neither the SCCPC nor the FDCPA were applicable. Brown filed a motion for summary judgment asserting the case was barred by the general three-year statute of limitations contained in section 15-3-530 of the South Carolina Code (2005).

At a hearing on the motion, the circuit court engaged in the following exchange with CFCU:

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

² Brown made her last payment in July 2009.

³ Although the South Carolina Code refers to sections of the SCUCC as "Chapters" rather than "Articles," we use the term "Article" to maintain uniformity with language used in the Uniform Commercial Code and cited authority.

THE COURT: Did you sell the car?

CFCU: We did Your Honor.

COURT: And then you established a balance owing.

CFCU: Correct, in deficiency only.

....

COURT: You're now suing on the deficiency, and now you've got a situation [in which] you needed to do it sooner. I grant [Brown's] motion for summary judgment.

In its order disposing of the parties' motions, the circuit court found CFCU's action was one for the collection of a defaulted debt; therefore, the three-year statute of limitations applied and barred the action because it was initiated more than three years after CFCU repossessed the vehicle. It also ruled, "The [SCCPC] and the [FDCPA] apply to this case." The circuit court granted Brown's motion for summary judgment and denied CFCU's motion. This appeal followed.

II. ISSUES ON APPEAL

1. Did the circuit court err by ruling the SCCPC and FDCPA apply to this case?
2. Did the circuit court err by ruling the applicable statute of limitations was three years and granting Brown summary judgment on that basis?
3. Did the circuit court err by denying CFCU's motion for summary judgment?

III. STANDARD OF REVIEW

"When reviewing a grant of summary judgment, an appellate court applies the same standard used by the trial court." *Town of Summerville v. City of North Charleston*, 378 S.C. 107, 109, 662 S.E.2d 40, 41 (2008). "A grant of summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." *Id.* at 109-10, 662 S.E.2d

at 41. "Determining the proper interpretation of a statute is a question of law, and this [c]ourt reviews questions of law de novo." *Id.* at 110, 662 S.E.2d at 41.

IV. SCCPC & FDCPA

CFCU argues the circuit court erred by ruling the SCCPC applies to this case because, as a federally-chartered credit union, it is specifically exempted from the SCCPC. Similarly, CFCU argues it is exempted from the FDCPA because it is attempting to collect money owed directly to it and therefore is not a "debt collector" under that act. Brown argues the circuit court's ruling on this issue was "merely incidental" and was not relied upon in reaching its ruling regarding the appropriate statute of limitations. Brown further argues that because the circuit court granted no relief with respect to the SCCPC or the FDCPA, this court can offer no relief related to the ruling and should dismiss this portion of the appeal. We agree.

The circuit court did not rely on either the SCCPC or the FDCPA in reaching its decisions to grant summary judgment to Brown and deny summary judgment to CFCU. Because the ruling was unnecessary to the circuit court's disposition of the motions, it was improper. We therefore vacate the ruling. *See Brading v. County of Georgetown*, 327 S.C. 107, 112 n.3, 490 S.E.2d 4, 6 n.3 (1997) (vacating a ruling related to an issue because the issue "was not before the referee and was unnecessary to his ruling").

V. STATUTE OF LIMITATIONS

CFCU argues the circuit court erred by granting Brown summary judgment on statute of limitations grounds because the contract at issue is an SCUCC Article 2 contract for the sale of goods and the action is one for breach of the contract; therefore, the six-year statute of limitations in Article 2 controls. *See* S.C. Code Ann. § 36-2-725(1) (2003) ("An action for breach of any contract for sale must be commenced within six years after the cause of action has accrued.").⁴ Brown, on the other hand, argues CFCU's role in the sale was that of a financing agency and secured lender in a security transaction. She further argues her alleged debt "arose

⁴ Article 2 does exempt from its scope transactions "intended to operate *only* as a security transaction." S.C. Code Ann. § 36-2-102 (2003) (emphasis added). However, the transaction between Brown and the dealership was a mixed transaction involving both a sale of goods and a security agreement. Accordingly, it did not operate only as a security transaction and was not exempted from Article 2's scope.

from a deficiency" after CFCU repossessed and sold the vehicle, and CFCU's actions were taken pursuant to SCUCC Article 9 to collect a debt arising out of its security interest in the vehicle. Accordingly, Brown argues this action is not one for breach of a sales contract under Article 2, and because Article 9 does not contain a statute of limitations, CFCU's claim is governed by the general three-year statute of limitations in section 15-3-530. *See* S.C. Code Ann. § 15-3-530(1) (2005) (providing a three-year statute of limitations for "an action upon a contract, obligation, or liability, express or implied"). CFCU rejects Brown's assertion that the action was transformed into one solely for debt collection because CFCU repossessed and sold the vehicle. Rather, CFCU argues its complaint set forth that Brown breached the contract and CFCU is attempting to enforce the contractual payment obligations through this action.

This issue—whether Article 2 of the Uniform Commercial Code (UCC) applies to an action for the recovery of a deficiency following the repossession and sale of collateral by a secured creditor who is also a party to the sales contract creating the security interest in the collateral—is one of first impression in South Carolina. Additionally, there is a split of authority on this issue nationally. *See* David J. Marchitelli, Annotation, *Causes of Action Governed by Limitations Period in UCC* § 2-725, 49 A.L.R. 5th 1 (1997) (listing cases applying the UCC statute of limitations in section 15(a) of the annotation, and cases applying a non-UCC statute of limitations in section 15(b)); Sonja A. Soehnel, Annotation, *What Constitutes a Transaction, a Contract for Sale, or a Sale Within the Scope of UCC Article 2*, 4 A.L.R. 4th 85 (1981) (listing cases applying Article 2 to mixed sale-security contract actions in section 19(a) of the annotation, and cases declining to apply Article 2 in section 19(b)).

The majority of jurisdictions applies Article 2 to such actions, reasoning "a deficiency suit is more closely related to the sales aspect of a combination sale and security interest than to the security aspect." Richard H. Nowka, *The Secured Party Fiddles While the Article 2 Statute of Limitations Clock Ticks-Why the Article 2 Statute of Limitations Should Not Apply to Deficiency Actions*, 7 Fla. St. U. Bus. Rev. 1, 5 (2008); *id.* at 39 (recognizing "the tally of cases deciding the issue is greatly in favor of applying Article 2"). Conversely, the minority of jurisdictions reasons that an action to recover a deficiency is more closely related to the security aspect of the transaction, which is governed by UCC Article 9, and chooses not to apply Article 2. *See, e.g., N.C. Nat'l Bank v. Holshouser*, 247 S.E.2d 645, 647 (N.C. Ct. App. 1978) (ruling Article 2 "inapplicable to this transaction beyond its pure sales aspects, and that Article 9 is paramount in reference to the security aspects of the transaction"). We believe the majority's

reasoning is more persuasive and adopt it here. *See, e.g., Worrel v. Farmers Bank of Del.*, 430 A.2d 469, 471 (Del. 1981) ("We agree . . . that Article 2, the sales article of the Uniform Commercial Code . . . , controlled the contractual rights of the parties"); *Barnes v. Cmty. Trust Bank*, 121 S.W.3d 520, 524 (Ky. Ct. App. 2003) ("We agree with the courts of the other states . . . that while this case may be viewed as involving a hybrid contract, it deals essentially with a contract for the sale of a good. As such, it falls squarely within Article 2 of the Uniform Commercial Code, and should be governed by the limitations period contained in that article."); *Assocs. Disc. Corp. v. Palmer*, 219 A.2d 858, 861 (N.J. 1966) ("[W]e think [the view that an action for a deficiency is not governed by Article 2 because it is incident to the security arrangement between the parties rather than the sales aspect of the agreement] mistakes the true character of a deficiency suit. Such a suit is nothing but a simple [i]n personam action for that part of the sales price which remains unpaid after the seller has exhausted his rights under Article 9 by selling the collateral; it is an action to enforce the obligation of the buyer to pay the full sale price to the seller, an obligation which is an essential element of all sales and which exists whether or not the sale is accompanied by a security arrangement."); *First Nat'l Bank in Albuquerque v. Chase*, 887 P.2d 1250, 1252 (N.M. 1994) ("a deficiency action is essentially an action for the price and is, therefore, part of the general sales aspect of the agreement").

Admittedly, CFCU exercised its right to repossess the vehicle under SCUCC Article 9. *See* S.C. Code Ann. § 36-9-609 (2003) (allowing repossession of collateral after default); S.C. Code Ann. § 36-9-610(a) (2003) (allowing the sale of collateral after default); S.C. Code Ann. § 36-9-615(d) (2003) (holding the obligor liable for any deficiency following sale). However, as assignee to the sales contract, CFCU gained the dealership's rights thereunder, including the right to sue Brown for a breach of the contract. *See* S.C. Code Ann. § 36-2-210 (2) (2003) ("Unless otherwise agreed[,] all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on him by his contract, or impair materially his chance of obtaining return performance."); *Twelfth RMA Partners, L.P. v. Nat'l Safe Corp.*, 335 S.C. 635, 639, 518 S.E.2d 44, 46 (Ct. App. 1999) ("In South Carolina, it is well established that an 'assignee . . . stands in the shoes of its assignor" (quoting *Singletary v. Aetna Cas. & Sur. Co.*, 316 S.C. 199, 201, 447 S.E.2d 869, 870 (Ct. App. 1994)); *id.* at 640, 518 S.E.2d at 46 ("When a contract is assigned, the assignee should have all the same rights and privileges, including the right to sue on the contract, as the assignor."); *First Nat'l Bank in Albuquerque*, 887 P.2d at 1252 ("The fact that the [automobile installment sales

contract and security agreement] was later assigned . . . does not change the nature of the agreement.").

In our view, CFCU is entitled to exercise its rights under both Articles 2 and 9 simultaneously, so long as it does not obtain double recovery, and repossessing and selling the vehicle did not extinguish CFCU's rights under the sales contract, including the right to recover interest from Brown at the agreed-upon rate and collection costs. *See* S.C. Code Ann. § 36-9-601(a) (2003) ("After default, a secured party has the rights provided in this part and, except as otherwise provided in [s]ection 36-9-602, *those provided by agreement of the parties.*" (emphasis added)); S.C. Code Ann. § 36-9-602 (2003) (mandating that certain statutory provision in Article 9 may not be waived or varied); *Andrews v. von Elten & Walker, Inc.*, 315 S.C. 199, 202, 432 S.E.2d 500, 502 (Ct. App. 1993) (ruling "the UCC does not prohibit a secured party in possession of collateral from proceeding judicially on a guaranty"). Had the transaction between Brown and the dealership been simply a contract for the sale of goods unaccompanied by the creation of a security agreement, there is no question that CFCU, as the dealership's assignee, would be entitled to sue Brown for a breach of the contract, and the applicable statute of limitations would be that of SCUCC Article 2. We can discern no reason why this right should be taken away merely because a security interest in the vehicle was created concomitantly with its sale.

Here, although CFCU captioned its complaint as a "debt collection" action, it alleged Brown defaulted under the contract, CFCU repossessed and sold the vehicle "in accordance with the terms of the [c]ontract and applicable law," CFCU applied the proceeds "to the [c]ontract," and Brown owed an outstanding balance that included interest and collection costs pursuant to the contract. Accordingly, CFCU's action relates to the sales contract and is governed by SCUCC Article 2. Because CFCU's action was filed within the six-year statute of limitations in section 36-2-725, we reverse the circuit court's grant of summary judgment to Brown.

VI. DENIAL OF SUMMARY JUDGMENT

CFCU argues the circuit court erred by denying its motion for summary judgment on the merits because there was no genuine issue of material fact surrounding Brown's breach of contract and resulting indebtedness and CFCU was entitled to judgment as a matter of law. CFCU further argues that while a denial of summary judgment is generally not appealable, this denial is appealable because it accompanies the circuit court's appealable grant of summary judgment to Brown. We find this issue is not appealable. *See Ballenger v. Bowen*, 313 S.C. 476, 476,

443 S.E.2d 379, 380 (1994) ("This [c]ourt has repeatedly held that the denial of summary judgment is not directly appealable."); *id.* at 477, 443 S.E.2d at 380 ("The denial of summary judgment does not establish the law of the case, and the issues raised in the motion may be raised again later in the proceedings by a motion to reconsider the summary judgment motion or by a motion for a directed verdict."); *id.* ("In short, the denial of summary judgment does not *finally* determine anything about the merits of the case and does not have the effect of striking any defense since that defense may be raised again later in the proceedings.").

VII. CONCLUSION

We reverse the circuit court's grant of summary judgment to Brown, vacate its ruling regarding the SCCPC and FDCPA, and remand for further proceedings.

VACATED IN PART, REVERSED IN PART, AND REMANDED.

THOMAS, J., concurs.

SHORT, J., concurring in part and dissenting in part: I concur with the majority in its disposition of the first and third issues. As to the second issue, I respectfully dissent.

The second issue in this case is whether the applicable statute of limitations is the statute of limitations in Article 2 (governing the sale of goods) or the statute of limitations for the default on a security interest (governed by general statutes because Article 9 does not contain its own statute of limitations). Considering the applicable statute of limitations under facts similar to those presented in this case, the Court of Appeals of North Carolina in *North Carolina National Bank v. Holshouser*, 247 S.E.2d 645, 647 (N.C. Ct. App. 1978), found the Article 2 statute of limitations did not apply. The court found Article 2 would apply to the sales aspects of such a transaction and Article 9 would apply to the security aspects of the transaction. *Id.* Because Article 9 contains no statute of limitations, the court in *Holshouser* looked to other statutes of limitations in North Carolina. *Id.*

I recognize many courts have applied the Article 2 statute of limitations to an action on a secured transaction similar to this action. See Richard H. Nowka, *The Secured Party Fiddles While the Article 2 Statute of Limitations Clock Ticks - Why the Article 2 Statute of Limitations Should Not Apply to Deficiency Actions*, 7 Fla. St. U. Bus. Rev. 1, 39-40 (2008) (explaining many courts have ignored the Official Comments to Article 2 and summarily cited *Associates Discount Corp. v. Palmer*, 219 A.2d 858 (N.J. 1966) in finding Article 2 applies under similar facts); *id.* at 2

n.4 (listing cases that have applied the Article 2 statute of limitations); *DaimlerChrysler Servs. N. Am., LLC v. Ouimette*, 830 A.2d 38, 42 (Vt. 2003) (citing multiple jurisdictions applying the Article 2 statute of limitations to a suit for default on a motor vehicle retail installment sales contract). However, I agree with the rationale of the North Carolina Court of Appeals in *Holshouser* and find the circuit court did not err when it found the three-year statute of limitations applied in this case.

The sales transaction between Brown and Johnny's Subaru Isuzu, LLC (Johnny's) was for the sale of goods, namely the vehicle. Johnny's assigned the Retail Installment Sale Contract (the Contract) to CFCU. The Contract provided the financing terms and created a security interest. As a transaction for the sale of goods, CFCU correctly contends the SCUCC applied to the sale of the vehicle. *See* S.C. Code Ann. § 36-2-102 (2003) ("Chapter [2 of the SCUCC] applies to transactions in goods; it does not apply to any transaction . . . intended to operate only as a security transaction . . ."). However, in my view, CFCU's cause of action does not arise from a breach of the *sales* contract under the SCUCC; rather, it is a debt collection action on the security interest, not arising under the SCUCC. *See BancOhio Nat'l Bank v. Freeland*, 468 N.E.2d 941, 944 (Ohio Ct. App. 1984) (finding an action based on the note secured by a vehicle was not governed by Article 2 where the financier was not the seller of the vehicle); *see also Gray v. Suttell & Assocs.*, 123 F. Supp. 3d 1283, 1289-90 (E.D. Wash. 2015) (distinguishing between a hybrid agreement, which constituted both a contract for sale and a secured transaction and was subject to Article 2, and a financing agreement separate from the sale of goods, which was not subject to Article 2); S.C. Code Ann. § 36-1-201(35) (Supp. 2015) ("Security interest' means an interest in personal property or fixtures, which secures payment or performance of an obligation.").

Based on the analysis in *Holshouser*, I would find the circuit court properly granted Brown's motion for summary judgment. *See McMaster v. Dewitt*, 411 S.C. 138, 143, 767 S.E.2d 451, 453 (Ct. App. 2014) ("Summary judgment is appropriate when a plaintiff does not commence an action within the applicable statute of limitations."). Accordingly, I would affirm the second issue.

80172

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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JUL 08 2016

APPEAL FROM CHARLESTON COUNTY
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SC Court of Appeals

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2014-CP-10-1827
Appellate Case No.: 2014-002079

Coastal Federal Credit Union,..... Appellant,

v.

Angel Latoria Brown, ... Respondent.

RESPONDENT'S PETITION FOR REHEARING *EN BANC*

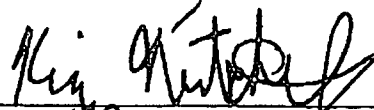
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COMES NOW, Kirby Mitchell, attorney for Respondent, and petitions this Honorable Court pursuant to Rule 221(a), SCACR, for a rehearing *en banc*. Respondent's counsel respectfully submits that the majority opinion issued on June 30, 2016 overlooks facts in this record and misapprehends the law in the case. Specifically, Respondent states the majority opinion incorrectly concludes that because Coastal Federal Credit Union's [hereinafter "CFCU's"] selling of the vehicle "did not extinguish CFCU's rights under the sales contract..." (see Sec. V. of majority opinion in CFCU v. Angel Brown), then it follows directly that the 6-year statute of limitations should be applied. However, as the dissenting opinion correctly concludes, CFCU's cause of action "does not arise from a breach of the *sales* contract under the SCUCC; rather, it is a debt collection action on the security interest, not arising under the SCUCC" (see dissenting opinion in CFCU v. Angel Brown). The dissent's focus is the correct one. The key is the triggering event for the cause of action and what that cause of action arises from in analyzing the applicability of a statute of limitations defense.

This case is appropriate for a rehearing *en banc* for four (4) reasons: (a) this is an issue of first impression in South Carolina, (b) this is an issue directly affecting the financial status and security of many thousands of South Carolina consumers, (c) upon information and belief, there has been a substantial diversity of approaches, orders (some appealed and many not), and opinions among South Carolina's Circuit Court judges on this issue and on related and very similar fact scenarios, so further direction and education to the bench and bar in South Carolina would be of great public benefit, and (d) this opinion contains a thoughtful and persuasive dissent. Further, should this Honorable Court grant Respondent's petition for rehearing *en banc*, Respondent requests the court grant oral argument in this case.

For the foregoing reasons, Respondent's counsel respectfully requests this Honorable Court grant a rehearing *en banc* in this case with oral argument.

Respectfully submitted,



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July 6, 2016

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2014-CP-10-1827
Appellate Case No.:2014-002079

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SC Court of Appeals

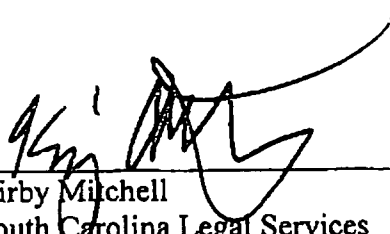
Coastal Federal Credit Union..... Appellant

v.

Angel Latoria Brown.....Respondent.

PROOF OF SERVICE

I certify that I have served the Respondent's Petition for Rehearing *En Banc* on Coastal Federal Credit Union by depositing a copy of it in the United States mail on July 6, 2016, addressed to their attorney of record, Sarah Dalonzo-Baker of Kirschbaum, Nanney, Keenan & Griffin, P.A., 2418 Blue Ridges Rd., Ste 200, Raleigh, North Carolina 27607.


Kirby Mitchell
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July 6, 2016

Attorney for Respondent

The South Carolina Court of Appeals

Coastal Federal Credit Union, Appellant,

v.

Angel Latoria Brown, Respondent.

Appellate Case No. 2014-002079

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.


C.J.


J.


J.

Columbia, South Carolina

cc: Matthew M. Billingsley, Esquire
Sarah Dalonzo-Baker, Esquire
Kirby Rakes Mitchell, Esquire
The Honorable R. Markley Dennis, Jr.

FILED

9-15-16