

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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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)
Appellate Case No. 2016-002124

Coastal Federal Credit Union,

Respondent

v.

Angel Latoria Brown,

Petitioner

RETURN TO PETITION FOR A WRIT OF CERTIORARI

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STATEMENT OF THE CASE

1. On or about May 4, 2008, the Petitioner entered into a retail installment sale contract (the "Contract") with an auto dealership for the purchase and financing of a 2008 Suzuki Forenza, VIN KL5JD56Z38K748968 (the "Vehicle"). (R., p.2).

2. The Contract was assigned to the Respondent by the dealership in its entirety. (R., p.2)

3. Pursuant to the terms of the Contract, the Petitioner agreed to pay Respondent the agreed upon purchase price for the Vehicle via 72 monthly payments of \$366.32 each beginning June 18, 2008. (R., p.2)

4. In July 2009, the Petitioner ceased making the payments due under the Contract prior to the entire agreed-upon purchase price for the Vehicle having been paid to Respondent.

5. As a result, Respondent exercised its right under the Contract and applicable law to repossess and sell the Vehicle and apply the sales proceeds to the balance remaining due on the purchase price of the Vehicle. (R., p.2)

6. The sales proceeds received for the Vehicle were insufficient to pay the entire balance remaining due on the purchase price of the Vehicle, so Respondent thereafter made demand on the Petitioner for the difference. (R., p.2)

7. Accordingly, Respondent filed suit against Petitioner seeking recovery of the amount remaining due on the purchase price for the Vehicle after its sale. (R., p.2)

8. In the trial court, the Petitioner asserted that the applicable statute of limitations for Respondent to file such an action was the three (3) year statute of limitations applicable to breach of contract actions in general. (R., p. 37)

9. Respondent asserted that the applicable statute of limitations was the six (6) year statute of limitations applicable to breach of contract actions for the sale of goods. (R., p.43)

10. The trial court found in favor of Petitioner and granting Petitioner's motion for summary judgment dismissing the case with prejudice. (R., pp. 66-67)

11. Respondent timely appealed and on June 30, 2016, the Court of Appeals reversed the trial court on the issue of the applicable statute of limitations.

12. Petitioner timely filed a petition for rehearing *en banc* which was denied on September 15, 2016.

13. Petitioner has now filed the instant petition for a *writ of certiorari* asking this Court to review the prior decision of the Court of Appeals.

QUESTION PRESENTED

Did the Court of Appeals err in holding that the applicable statute of limitations to collect the remaining balance due on the purchase price of a motor vehicle is the 6-year statute of limitations applicable to breaches of sales contracts as set forth in § 36-2-725 of Chapter 2 of the South Carolina Uniform Commercial Code?

ARGUMENT

As noted in the Court of Appeals decision, the majority of jurisdictions which have addressed this issue apply the Article 2-Sales statute of limitations to suits for a debtor's breach of an instalment sales contract, reasoning that a suit seeking payment of the remaining balance due for the collateral being sold is more closely related to the sales aspect of a combination sale and security interest contract than to the security aspect of such contract. In agreeing with that analysis, the Court of Appeals correctly found that a "deficiency suit" such as the one in issue in this case is substantively nothing more than an action for that part of the sales price of the

collateral which remains unpaid by the buyer after the seller has exhausted its rights under Article 9 to repossess and sell the collateral following the debtor's default under the sales contract. In that regard, the Court of Appeals correctly found that the minority view to the contrary "mistakes the true character" of such a suit, since the security aspect of the contract is not in fact what the seller is seeking to enforce in the "deficiency suit."

At the same time, the Court of Appeals correctly rejected Petitioner's assertion that Respondent acted as only the "financing agency" in the transaction. As acknowledged by the Court of Appeals, the Contract as written is only a two-party contract between the Petitioner and the dealership, and was assigned in its entirety by the dealership to Respondent. As such, Respondent legally stepped into and occupied the shoes of the dealership (seller) with respect to *all* of the rights and obligations under the Contract, including the right to collect the full agreed-upon purchase price for the Vehicle from Petitioner as well as enforce the security interest in the Vehicle pledged by Petitioner to secure Petitioner's payment obligation under the Contract

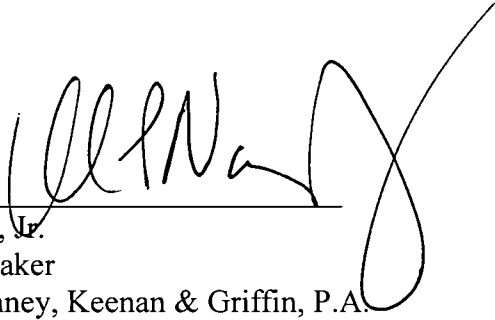
In this regard, the Court of Appeals specifically noted that "[t]he fact that the [automobile installment sales contract and security agreement] was later assigned . . . does not change the nature of the agreement." In other words, even after assignment, the Contract remained a sales contract for the Vehicle, with merely a concomitant security interest in the Vehicle pledged collateral for the Petitioner's payment obligation thereunder. Based on this sound analysis, The Court of Appeals correctly concluded that exercising its right under the Contract to foreclose that security interest in the Vehicle did not impair or extinguish any of Respondent's other rights under the Contract, specifically including the right to recover from Petitioner the remaining balance of the agreed-upon purchase price for the Vehicle, plus interest and collection costs as also allowed under the Contract.

The Court of Appeals also correctly rejected Petitioner's assertion that the instant action filed by Respondent against Petitioner is an action based on Respondent's security interest it retained rather than the sales aspect of the Contract. As noted by the Court of Appeals, Respondent's action against Petitioner is in fact for the remaining balance owed on the purchase price of the Vehicle *after* enforcement of Respondent's security interest therein, and therefore directly relates to the sales contract which is governed by Article 2 of the South Carolina UCC, including the six-year statute of limitations contained therein.

CONCLUSION

Accordingly, Respondent respectfully requests this Court deny the Petition For A Writ of Certiorari.

November 11, 2016



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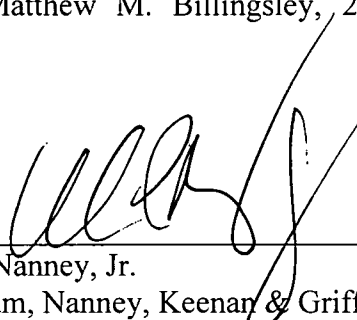
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PROOF OF SERVICE

I certify that I have served Return to Petition For Writ of Certiorari on Petitioner's counsel of record by depositing a copy of it in the United States Mail, postage prepaid, on November 11, 2016, addressed to Matthew M. Billingsley, 2803 Carner Avenue, North Charleston, SC 29405.

November 11, 2016



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