

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BARNWELL COUNTY
Court of Common Pleas

J. Martin Harvey, Special Referee

Appellate Case No. 2016-001214

Circuit Court Case No. 2015-CP-06-00070

Quicken Loans, Inc., Appellant,

v.

Wayne D. Wilson; Calvin O. Wilson, III; Any other Heirs-In-Law or devisees of Ezekiel (Ellen) T. Wilson, deceased, their heirs, personal representatives, administrators, successors and assigns, and all other persons entitled to claim through them; all unknown persons with any right, title or interests in the real estate described herein; also any persons who may be in a class designated as John Doe; any unknown minors or persons under a disability being a class designated as Richard Roe; Park Sterling Bank, Respondents.

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SC Court of Appeals

**REPLY TO QUICKEN LOANS, INC.'S OPPOSITION TO THE SOUTH CAROLINA
DEPARTMENT OF CONSUMER AFFAIRS' MOTION FOR LEAVE TO APPEAR AS
AMICUS CURIAE**

**SOUTH CAROLINA DEPARTMENT OF
CONSUMER AFFAIRS**

Carolyn Grube Lybarker, Esquire
Administrator/ Consumer Advocate

Kelly H. Rainsford, Esquire
*Deputy of Regulatory Enforcement/
General Counsel*

Post Office Box 5757
Columbia, SC 29250-5757

INTRODUCTION

The South Carolina Department of Consumer Affairs (“the Department”) responds to Appellant Quicken Loans, Inc.’s (“Quicken Loans”) opposition the Department’s motion for leave to appear as *amicus curiae*. The Department’s request for the Court’s permission to serve and file a brief *amicus curiae* in this matter is supported by (1) the Department’s strong interest in this case; (2) the Department’s unique ability to offer assistance to this Court; and (3) the overall appropriateness of Department involvement as based on Rule 213 and case law. As such, the Court should reject Quicken Loans’ attempt to prevent the Department from assisting this Court as *amicus curiae*.

ARGUMENT

I. The Department Has a Strong and Compelling Interest in this Case.

The matter before this Court is more than an unauthorized practice of law issue. This case presents the Court with the question of what methods a lender must employ to comply with the attorney insurance preference statute. The Department, as the only administrative agency authorized to enforce this section and to fulfill the consumer protection purposes of the Consumer Protection Code, has a strong interest in ensuring consumers are adequately protected and businesses are aware of their rights and responsibilities under the law. *See* S.C. Code Ann. § 37-1-102(c)–(e), §37-10-102. Overall, the Department has an interest in the orderly administration of the Consumer Protection Code and in fulfilling its purposes in protecting consumers in the credit marketplace.

II. The Department Possesses a Unique Ability to Assist This Court.

One of the primary legal questions in this appeal is whether the special referee properly interpreted and applied the attorney insurance preference statute. (*See* Appellants’ Br. 9-17;

Resp. Br. 1-12). As stated in our request for Leave, the Department was designated by the Legislature as the agency to administer and enforce the attorney insurance preference statute and has served in this capacity since 1982. The Department has issued Administrative Opinions as well as informal opinions on this topic which still stand in light of statutory revisions made throughout the years. The Department's perspective is pertinent. Its unique position as the administrator of the Consumer Protection Code makes its views desirable when interpreting statutes contained within the Code.

III. The Department's Input is Desirable in This Matter.

The Department possesses the experience and knowledge as well as practical application of the issues presented in the matter before the Court. Its point-of-view is desirable and necessary. The cases cited by Quicken Loans in its Reply outline the purpose for an *amicus curiae* brief to be provided. In Alexander v. Hall, the Court states that "it serves only for the benefit of the court, assisting the court in cases of general public interest. By making suggestions to the court, by providing supplementary assistance to existing counsel, and by insuring a complete and plenary presentation of difficult issues so that the court may reach a proper decision." Alexander v. Hall, 64 F.R.D. 152, 155 (D.S.C. 1974) (internal citations omitted). The Department's input would accomplish such purposes.


The Department is charged with the regulation of consumer credit in South Carolina. It is neither for the business nor for the consumer, but rather for a fair and balanced credit marketplace where the protection of consumers occurs while due regard is given to scrupulous businesses. Contrary to the argument of Quicken Loans, however, it should further be noted that courts may accept *amicus curiae* from partisan interests. "The trend, particularly in appellate courts, is to accept or even invite the participation of *amici curiae* with partisan interests. 4 Am.

Jur. 2d Amicus Curiae §6 (1995). Federal courts have followed this reasoning and not required an amicus curiae to be strictly “neutral.” See Funbus Sys., Inc. v. Cal. Pub. Util. Comm’n, 801 F.2d 1120, 1125 (9th Cir. 1986) (Stating amicus briefs filed by state agencies may “take a legal position and present legal arguments in support of it.”)

CONCLUSION

As the agency required to administer and enforce the Consumer Protection Code and responsible for administering the attorney insurance preference statute for over thirty-five years, the Department has expertise which may assist the Court in the resolution of issues before it. As such, the Department respectfully requests the Court grant its motion to appear as *amicus curiae* and file a brief.

Respectfully submitted,



Carolyn Grube Lybarker, Esquire, S.C. Bar No. 73744
Administrator/Consumer Advocate
Kelly H. Rainsford, Esquire, S.C. Bar No. 15907
Deputy of Regulatory Enforcement/ General Counsel
Post Office Box 5757
Columbia, South Carolina 29250-5757
(803)734-4236
CLybarker@scconsumer.gov
KRainsford@scconsumer.gov
Attorneys for South Carolina Department of Consumer Affairs

September 12, 2017

Columbia, South Carolina

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PROOF OF SERVICE

I, the undersigned employee of the South Carolina Department of Consumer Affairs, hereby certify that one copy of the Reply to Quicken Loans' Opposition to the Department's Petition and Motion for Leave to Appear as Amicus Curiae in the above-referenced matter was served on the following counsel of record via United States mail, postage prepaid, as well as e-mail at the addresses listed below:

B. Rush Smith, III, Esquire
A. Mattison Bogan, Esquire
Carmen Harper Thomas, Esquire
Brian M. Barnwell, Esquire
Nelson Mullins Riley & Scarborough, LLP

Charles L. Dibble, Esquire
Dibble Law Offices
Post Office Drawer 1240
Columbia, SC 29202-1240
dibblelaw@msn.com

Post Office Box 11070
Columbia, SC 29201
rush.smith@nelsonmullins.com
matt.bogan@nelsonmullins.com
carmen.thomas@nelsonmullins.com
brian.barnwell@nelsonmullins.com

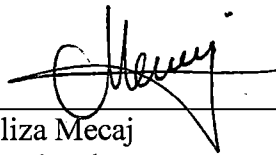
Attorneys for Appellant

Daniel W. Williams, Esquire
Bedingfield & Williams
Post Office Box 616
Barnwell, SC 29812-0606
dan@danwilliamsllaw.com

C. Bradley Hutto, Esquire
Williams & Williams
Post Office Box 1084
Orangeburg, SC 29116-1084
cbhutto@williamsattys.com

Steven W. Hamm, Esquire
Jo Anne Wessinger Hill, Esquire
Richardson Plowden & Robinson, P.A.
1900 Barnwell Street
Columbia, SC 29201
shamm@richardsonplowden.com
jhill@richardsonplowden.com

Attorneys for Respondents



Eliza Mecaj
Paralegal

September 12, 2017
Columbia, South Carolina



The State of South Carolina Department of Consumer Affairs

2221 DEVINE STREET, STE 200
PO BOX 5757
COLUMBIA, SC 29250-5757

Carri Grube Lybarker
Administrator/
Consumer Advocate

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Via Hand Delivery

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RE: Quicken Loans, Inc. v. Wayne D. Wilson, et al.
Appellate Case No. 2016-001214

Dear Ms. Kitchings:

Enclosed please find an original and seven (7) copies of a Reply to Opposition to the Department's Motion for Leave to Appear as Amicus Curiae from the South Carolina Department of Consumer Affairs along with a Proof of Service.

Please file the original and six copies and return the extra filed copy to our courier. If you have any questions, please do not hesitate to call me.

Best regards,

Kelly H. Rainsford, Esq.

cc: B. Rush Smith, III, Esquire
A. Mattison Bogan, Esquire
Carmen Harper Thomas, Esquire
Brian M. Barnwell, Esquire
Charles L. Dibble, Esquire
Daniel W. Williams, Esquire
C. Bradley Hutto, Esquire
Steven W. Hamm, Esquire
Jo Anne Wessinger Hill, Esquire

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ADMINISTRATOR
Tel.: 803-734-4233
Fax: 803-734-4060

PUBLIC INFORMATION
Tel.: 803-734-4296
Fax: 803-734-4060

CONSUMER ADVOCACY
Tel.: 803-734-4200
Fax: 803-734-4287

ENFORCEMENT/ INVESTIGATORS
Tel.: 803-734-4200
Fax: 803-734-4287

CONSUMER COMPLAINTS
Tel.: 803-734-4200
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ID THEFT UNIT
Tel.: 803-734-4200
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Tel.: 803-734-0366
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