

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

OCT 27 2017

R. Markley Dennis, Jr., Circuit Court Judge

S.C. SUPREME COURT

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

Coastal Federal Credit Union,

Respondent,

v.

Angel Latoria Brown,

Petitioner.

REPLY BRIEF OF PETITIONER

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ARGUMENT

REFERENCE TO ARTICLE 9 REMEDIES DOES NOT ELEVATE FORM OVER SUBSTANCE

Respondent argues that Article 9 of the SC Uniform Commercial Code (SC Code §36-9-101 et. seq.) is form over substance. Respondent characterizes the deficiency amount (including interest and attorney fees (R. pp. 3 and 4) it sought in this action as paying the balance of the purchase price. This characterization is not proper. Respondent was not seeking the balance of the purchase price after goods were rejected or acceptance revoked under Article 2 (SC Code §§36-2-703(2003), 36-2-706(2003), and 36-2-709(2003)). Part 7 of Article 2 contains the remedies for the seller as well as the statute of limitations (S.C. Code §36-2-725(2003)). Article 2 was not used by Respondent. In this case the buyer accepted and retained the goods before the alleged default and repossession of the vehicle. (R. p. 3) The appropriate remedy is repossession and sale pursuant to Article 9 and the deficiency is determined thereunder. That is the remedy Respondent pursued in this case and that is where the applicable Statute of Limitations is found.

Article 9 provides a secured party with multiple remedies upon default of a buyer who has already accepted and retained goods after purchase. Respondent had no choice other than repossession and sale under Article 9 because Brown had already accepted and retained the vehicle.

S.C. Code §36-9-609(2003) allows a secured party to take possession of the collateral after default. S.C. Code §36-9-110(2003) addresses Article 9 security interests arising under a Article 2 sale and states they are subject to Article 9. The rights of the secured party after default by the debtor are governed by Article 2 only until the debtor obtains possession of the goods. Once the debtor has

possession of the goods, Article 9 governs. Because the repossession and sale in this case was after the debtor had possession, the Respondent pursued its remedies under Article 9 which does not specify a particular Statute of Limitations. The limitation to be applied is the three years set forth for contracts under S.C. Code §15-3-530(1)(2005).

Article 2 assumes that the buyer has either rejected the goods or revoked acceptance of them. Under the Article 2 remedy, the unpaid seller still has possession of the goods and is authorized to resell them, credit the sale proceeds to the obligation, and sue the buyer for the difference. The difference in this situation is not the same as a deficiency under Article 9. It does not include amounts related to the financing of the purchase price as were included in the Complaint filed by Respondent such as interest and attorney fees (R. pp. 3 and 4).

CONCLUSION

Brown had accepted and retained the goods so the Article 9 procedure was required according to S.C. Code §36-9-110(2003). Respondent used the remedies of Article 9, but wants this Court to use the more generous statute of limitations from Article 2. That would be form over substance. Because Article 9 does not set forth a particular Statute of Limitations, the general limitations found in S.C. Code §15-3-530(1)(2005) must be consulted. That code section provides a three year statute of limitations for actions on a contract. The decision of the Court of Appeals should be reversed and the summary judgment affirmed.

Respectfully submitted,

October 26, 2017



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**THE STATE OF SOUTH CAROLINA
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Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Appellate Case No. 2016-002124

Coastal Federal Credit Union.....Respondent

v.

Angel Latoria Brown.....Petitioner

CERTIFICATE OF SERVICE

The undersigned attorney certifies that a true copy of the Reply Brief of Petitioner has been served upon opposing counsel by mailing the true copy in an envelope properly addressed via Federal Express this 26th day of October, 2017.

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