

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016CP-40-02859

South Carolina Department
of Consumer Affairs

Cash Central of SC, LLC

PLAINTIFF(S)

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. See Page 2 for additional information.
- 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
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

2017 NOV 28 PM 12:39
RICHLAND COUNTY

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:

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT 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)
		\$
		\$
		\$

RECEIVED
DEC 29 2017
SC COURT OF APPEALS

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.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Rehoad

Circuit Court Judge

2164
Judge Code

Nov 20, 17
Date

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

Case No. 2016-CP-40-02859

South Carolina Department of Consumer
Affairs,

Plaintiff,

vs.

Cash Central of South Carolina, LLC,

Defendant.

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**ORDER DENYING
PLAINTIFF'S MOTION TO ALTER OR AMEND**

After a review of the Plaintiff's Motion to Alter or Amend ("Motion") the Court's Final Order and Judgment filed on September 28, 2017 ("Order")¹ and the Defendant's Memorandum in Opposition, the Court denies the Motion in its entirety without oral argument as permitted by Rule 59(f), SCRPC. In order to provide the parties with further guidance, the Court rules on certain of the issues raised in the Motion in more detail below.²

DISCUSSION

To the extent that any finding of fact in the Order would be more properly identified as a conclusion of law, it should be considered as such. To the extent that any conclusion of law in the Order would be more properly identified as a finding of fact, it should be considered as such. The Court carefully considered both the law and the evidence in issuing the Order and does not wish to revisit those points here.

¹ Terms defined in the Order shall have the same meaning here.

² The Motion is denied in its entirety. To the extent any issue raised in the Plaintiff's Motion is not treated fully in this Order, that does not mean the issue was not considered and ruled upon. It simply means the Court has elected not to discuss that issue further.

1. S.C. Code Ann § 37-6-104(4) does not strip Cash Central of its defenses at common law or under the Code.

In its Motion, the Department argues for the first time that a lender can *never* be excused from refunding excess charges, regardless of the defenses set forth by the lender. As an initial matter, Rule 59(e) is not a proper mechanism for advancing new arguments. *See Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990).

The Court further finds this argument fails on its merits. South Carolina permits lenders to charge any interest rate. The issue, then, is *under what circumstances* an interest rate above 18% per year will be considered an excess charge for purposes of the Code. The Department admitted at trial that but for Cash Central's failure to file the Department's Form, its rates were legally proper.³ The Department now takes the position that this failure to file strips Cash Central of three affirmative defenses, two in the Code, § 37-5-202(7), the "bona fide error" defense, and § 37-3-201(6), the "excusable neglect" defense, and a third in the common law, the "substantial compliance" defense, see, e.g., *Davis v. NationsCredit Fin. Servs. Corp.*, 326 S.C. 83, 86, 484 S.E.2d 471, 472 (1997), any one of which operates to excuse or limit liability for a failure to comply with the statutory requirement to file the Form. The Court disagrees and reaffirms its findings in the Order that these affirmative defenses are available here and that Cash Central presented evidence showing that it was entitled to the protection of each of these affirmative defenses. As a result, there are not any recoverable "excess charges."

³ The Department approved substantially the same rates in April 2015, 2016, and 2017. The renewal filings were accepted and certified by the Department without question.

2. The language of S.C. Code Ann. § 37-3-201(6) is not limited to initial filings only, nor is there any requirement that this defense requires both a penalty and a refund of excess charges.

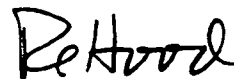
The Department argues that S.C. Code Ann. § 37-3-201(6) only limits Cash Central's liability for loans made between October 24, 2013, when it first began making loans in South Carolina, and January 31, 2014, the date that Cash Central should have renewed an initial filing of the Department's Form. The Department claims that S.C. Code Ann. § 37-3-305(7) compels the conclusion and that the Court should recast all loans made after January 31, 2014, to 18%. The Court disagrees and finds that S.C. Code Ann. § 37-3-201(6) applies to both initial filings and renewals. Nothing in this statute states that it applies in one instance and not the other.

The Department also argues, again for the first time, that the section 37-2-201(6) defense requires a lender to pay *both* excess charges and a penalty. Section 37-2-201(6) states "the lender that has failed or neglected to post rates or to file rates is subject to a civil penalty of up to \$5,000.00 payable to the Department of Consumer Affairs." S.C. Code Ann. § 37-3-201(6). The plain language of this statutory section does not provide for a refund of excess charges. It would be nonsensical to provide a statutory defense resulting in greater liability to the lender (a civil penalty in addition to recasting any loans for the period in question) than would be the case without the defense.

CONCLUSION

The Motion is hereby denied in its entirety.

AND IT IS SO ORDERED.



The Honorable Robert E. Hood
Fifth Judicial Circuit

Columbia, South Carolina

11/27, 2017