

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APPEAL FROM HORRY COUNTY
Court of Common Pleas

APR 06 2018

Steven H. John, Resident Circuit Judge

S.C. SUPREME COURT

CASE NO. 2016-CP-26-00937
Unpublished Opinion No. 2018-UP-083
Filed February 14, 2018

Cali Alyson Emory, individually and in a representative capacity
for all others similarly situated.....Petitioner

vs.

Thag, LLC d/b/a Myrtle Beach Mitsubishi.....Respondent

APPENDIX

L. Sidney Connor, IV
Post Office Drawer 14547
Surfside Beach, SC 29587
(843) 238-5648
ATTORNEY FOR APPELLANT

James Y. Becker, Esquire
Mary M. Caskey, Esquire
Haynsworth Sinkler Boyd, P.A.
Post Office Box 11889
Columbia, SC 29211-1889
(803) 779-3080

Sarah P. Spruill, Esquire
Haynsworth Sinkler Boyd, P.A.
Post Office Box 2048
Greenville, SC 29602
(864) 240-3220
ATTORNEYS FOR RESPONDENT

INDEX

Order Denying Petition for Rehearing (Filed March 22, 2018) 1

Opinion of the Court of Appeals (Filed February 14, 2018)..... 2

Petition for Rehearing (Filed February 21, 2018) 4

Record on Appeal attached

Brief of Appellant attached

Brief of Respondent attached

The South Carolina Court of Appeals

Cali Alyson Emory, individually and in a representative capacity for all others similarly situated, Appellant,

v.

Thag, LLC d/b/a Myrtle Beach Mitsubishi, Respondent.

Appellate Case No. 2017-000142

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.

Paul E. Short, Jr.

J.

CKO

J.

John H. Johnson

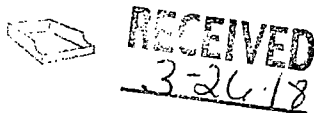
J.

Columbia, South Carolina

cc: Lawrence Sidney Connor, IV, Esquire
James Y. Becker, Esquire
Sarah Patrick Spruill, Esquire
Mary M Caskey, Esquire
The Honorable Steven H. John

FILED

March 22, 2018


RECEIVED
3-26-18

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

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

Cali Alyson Emory, individually and in a representative
capacity for all others similarly situated, Appellant,

v.

Thag, LLC d/b/a Myrtle Beach Mitsubishi, Respondent.

Appellate Case No. 2017-000142

Appeal From Horry County
Steven H. John, Circuit Court Judge

Unpublished Opinion No. 2018-UP-083
Submitted January 1, 2018 – Filed February 14, 2018

AFFIRMED

Lawrence Sidney Connor, IV, of Kelaher Connell &
Connor, PC, of Surfside Beach, for Appellant.

James Y. Becker and Mary M. Caskey, both of
Haynsworth Sinkler Boyd, PA, of Columbia; and Sarah
Patrick Spruill, of Haynsworth Sinkler Boyd, PA, of
Greenville, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 352 (2011) (holding

state law is preempted by the Federal Arbitration Act (FAA) when it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)); *York v. Dodgeland of Columbia, Inc.*, 406 S.C. 67, 93-94, 749 S.E.2d 139, 153 (Ct. App. 2013) ("[P]rovisions banning class arbitration . . . cannot be invalidated based upon public policy considerations embodied within state law. Rather, the 'arbitration clause[s] at issue . . . must be enforced according to [their] terms, which requires individual arbitration and forecloses class arbitration.'" (third and fifth alterations by court) (quoting *Litman v. Cellco P'ship*, 655 F.2d 225, 231 (3rd Cir. 2011))); *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 687 (2010) ("We think that the differences between bilateral and class-action arbitration are too great for arbitrators to presume, consistent with their limited powers under the FAA, that the parties' mere silence on the issue of class arbitration constitutes consent to resolve their disputes in class proceedings."); *Holden v. Alice Mfg. Inc.*, 317 S.C. 215, 220, 452 S.E.2d 628, 631 (Ct. App. 1994) ("When a court construes . . . any contract, resort is first made to the language of the contract in issue, and if the language is perfectly plain and capable of legal construction, it determines the rights and obligations of the parties.").

AFFIRMED.¹

SHORT, KONDUROS, and GEATHERS, JJ., concur.

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

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

FEB 21 2018

SC Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Steven H. John, Resident Circuit Judge

CASE NO. 2016-CP-26-00937
Unpublished Opinion No. 2018-UP-083
Filed February 14, 2018

Cali Alyson Emory, individually and in a representative capacity for all others
similarly situated.....Appellant

vs.

Thag, LLC d/b/a Myrtle Beach Mitsubishi.....Respondent

**PETITION FOR REHEARING
ON BEHALF OF APPELLANTS/PETITIONERS
CALI ALYSON EMORY, INDIVIDUALLY
AND IN A REPRESENTATIVE CAPACITY
FOR ALL OTHERS
SIMILARLY SITUATED**

TO: THE HONORABLE JUDGES OF THE COURT OF APPEALS

Appellants petition this Court for rehearing pursuant to Rules 219 and/or Rule 221 SCACR
on the ground that the Court overlooked or misapprehended the following points:

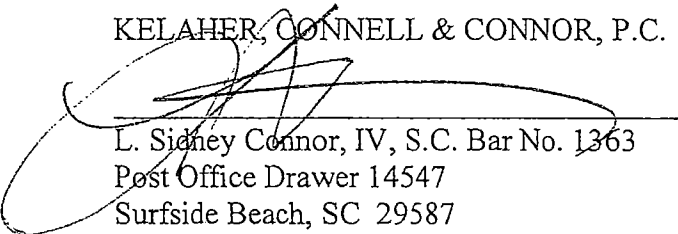
1. That the South Carolina Supreme Court's Opinion in Herron v. Century BMW, 387 S.C. 525, 693 S.E.2d 394 (2010) (Herron I) would not be decided differently today even in light of the United States Supreme Court's decisions on arbitration, because the provision for class

treatment contained within the Dealers Act was not designed to defeat arbitration or to frustrate the purposes of the Federal Arbitration Act, but is in fact neutral to arbitration agreements as it would apply equally to contracts with or without arbitration agreements.

WHEREFORE, Appellants move this Court to rehear the case.

Respectfully submitted,

KELAHER, CONNELL & CONNOR, P.C.



L. Sidney Connor, IV, S.C. Bar No. 1363
Post Office Drawer 14547
Surfside Beach, SC 29587
(843) 238-5648
sconnor@classactlaw.net
Attorneys for Appellants

February 20, 2018

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Steven H. John, Resident Circuit Judge

CASE NO. 2016-CP-26-00937
Unpublished Opinion No. 2018-UP-083
Filed February 14, 2018

RECEIVED
FEB 21 2018
SC Court of Appeals

Cali Alyson Emory, individually and in a representative capacity for
all others similarly situated..... Appellant

vs.

Thag, LLC d/b/a Myrtle Beach Mitsubishi, Respondent

PROOF OF SERVICE

PERSONALLY appeared before me, Shelia, who being duly sworn, deposes and says that she is an employee of KELAHER, CONNELL & CONNOR, P.C., Attorneys at Law, and that she has served the **Petition for Rehearing** on the Respondent, through its attorney of record, by depositing a copy of same in the United States Mail, postage prepaid, to:

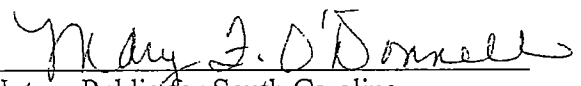
Sarah P. Spruill, Esquire
Haynsworth Sinkler Boyd, P.A.
Post Office Box 2048
Greenville, SC 29602

John H. Tiller, Esquire
Amy F. Bower, Esquire
Haynsworth Sinkler Boyd, P.A.
134 Meeting Street, 4th Floor
Charleston, SC 29401

Date of Mailing: February 20, 2018


Lynn C. Benton

SWORN to before me this
20th day of February, 2018


Notary Public for South Carolina
My Commission Expires: 5/31/26