

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

RECEIVED

Jun 30 2021

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas  
The Honorable J. C. Nicholson, Jr., Circuit Court Judge

S.C. SUPREME COURT

Civil Action No. 2017-CP-10.02148  
Court of Appeals Case No. 2018-000171  
Supreme Court Case No. 2021-000137

Cleo Sanders .....Respondent

v.

Savannah Highway Automotive Company, a General Partnership d/b/a Rich Hendrick Dodge  
Chrysler Jeep Ram, Santander Consumer USA Holdings, Inc. Isiah S. White, Danny Anderson  
and Patrick Bachrodt, Jr. .... Defendant

Of whom, Savannah Highway Automotive Company, a General Partnership d/b/a Rick Hendrick  
Chrysler Jeep Ram and Isiah S. White are the ..... Appellants

---

**MOTION FOR LEAVE TO FILE AN AMICUS BRIEF BY THE  
SOUTH CAROLINA AUTOMOBILE DEALERS ASSOCIATION**

---

Pursuant to Rule 213 of the South Carolina Appellate Court Rules, the South Carolina  
Automobile Dealers Association (“SCADA”) respectfully submits this Motion for Leave to File a  
Brief of Amicus Curiae, a copy of which is conditionally filed herewith.<sup>1</sup>

Members of SCADA have a legitimate and direct interest in the above-captioned matter.  
SCADA represents new car and truck franchised dealers throughout the state of South Carolina,  
and has more than 280 dealer members. Its members are not manufacturer-owned stores; instead,  
they are independent business. Each dealer member of SCADA employs an average of 63 South

---

<sup>1</sup> This motion contains a discussion with citation to appropriate legal authorities as required by  
Rule 240(c)(2), SCACR. Accordingly, a separate, repetitive memorandum has been omitted.

Carolinians. SCADA's interest in this case is to provide this Court with the collective insights of its dealer members and to more fully develop the arguments of the individual parties.

The Court's determination in this matter could dramatically and adversely affect SCADA's members. Arbitration provisions in retail installments sales contracts executed between automobiles and their customers are valuable, bargained for rights which benefit not only the dealership, but often individual dealership employees. The Court of Appeals decision in this case results in a dramatic forfeiture of these rights. Eighty-five percent of all new vehicles sold through dealers are sold using retail installment finance contracts which are later assigned to a lender.<sup>2</sup> Seventy percent of all cars sold by dealers, new and used, involve dealer assisted financing.<sup>3</sup> The Court of Appeals decision strips South Carolina automobile dealers and their employees of arbitration rights in more than a million transactions.

Moreover, the rule announced by the Court of Appeals below works a hardship upon South Carolina automobile dealers. Citing *Moore v. Weinberg*, 373 S.C. 209, 219-20, 644 S.E.2d 740, 745 (Ct.App. 2007); *aff'd*, 383 S.C. 583, 681 S.E.2d 875 (2009) and *DuPont de-Bie v. Vrendenburgh*, 490 F.2d 1057, 1061 (4<sup>th</sup> Cir. 1974), the Court of Appeals concluded that assignment of a retail installment sales contract by the Appellant automobile dealer passed the dealer's entire right to enforce the contract to the lender. *Sanders v. Savannah Highway Auotomotive Company*, 432 S.C. 328, 334, 852 S.E.2d 744, 746-47 (Ct.App. 2020). Unfortunately, the Court of Appeals did not consider the equally established principle that "[a]s a matter of law, an assignor remains liable to the obligor for the assignee's defective performance, just as he would

---

<sup>2</sup> Source: <https://www.nada.org/autofinance>.

<sup>3</sup> *Id.*

be liable for his own defective performance.” *Orange Bowl Corp. v. Warren*, 300 S.C. 47, 50, 386 S.E.2d 293, 295 (Ct. App. 1989).

Appellant dealer’s assignment of the installment contract to the lender did not, as a matter of law, relieve the dealer of all of its contractual obligations under the installment contract. The Court of Appeals’ decision therefore places automobile dealers in the position of having contractual obligations to a customer arising from an installment contract after it is assigned to the lender, but of being unable to avail themselves of the protections afforded in the installment contract itself. The Court of Appeals decision is fundamentally unfair to South Carolina automobile dealers.

Submission of a brief by SCADA would assist the Court. The matter before the Court is a matter of state wide interest, and one in which multiple viewpoints would benefit the Court.

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.

s/ Robert L. Reibold  
James Y. Becker (SC Bar No. 64991)  
Robert L. Reibold (SC Bar No. 9284)  
P.O. Box 11889  
Columbia, SC 29211-1189  
(803) 779-3080  
jbecker@hsblawfirm.com  
rreibold@hsblawfirm.com

*Attorneys for the South Carolina Automobile  
Dealers Association*

Dated: June 30, 2021