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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Court of Appeals Case No. 2018-000171
Supreme Court Case No. 2021-000137

Cleo Sanders,

Respondent

vs.

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

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

Petitioners/Appellants.

RESPONSE TO AMICUS BRIEF FROM THE SOUTH CAROLINA
AUTOMOBILE DEALERS ASSOCIATION

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STATEMENT OF ISSUES ON APPEAL

Sanders reasserts his issues on appeal as set forth in his previously filed Response To Petitioners'/Appellants' Petition For A Writ Of Certiorari.

STATEMENT OF THE CASE

On May 1, 2017, Sanders filed his complaint. (App. p. 161.) On May 10, 2017, Petitioners and Santander Consumer USA Holdings, Inc. were served with the Summons and Complaint. Petitioners requested from Sanders and were granted an extension of time to file their answer pursuant to Rule 6 SCRPC. (App. p. 247.) On July 12, 2017, Petitioners filed their answer. (App. p. 179.) Santander, represented by McGuire Woods LLP, filed its Answer July 20, 2017. (App. p. 191.)

On July 21, 2017, Sanders served discovery on Petitioners. (App. pp. 280-296.) On August 16, 2017, Petitioners requested from Sanders a 30-day extension to respond to Sanders' discovery, again pursuant to Rule 6 SCRPC. (App. pp. 297-298.) Petitioners' counsel agreed to respond to Sanders' discovery by September 8. (App. p. 297.) On September 7, 2017, Petitioners filed their motion to compel arbitration. (App. p. 216.)

On November 16, 2017, the Honorable J.C. Nicholson, Jr. heard Petitioners' motion to compel arbitration. (App. pp. 128-148.) Savannah Highway, however, had not filed the required affidavit authenticating the contract. At the conclusion of the hearing, the Court allowed Savannah Highway to "prepare an affidavit regarding the authenticity of the retail sales agreement and Plaintiff may address the case law presented at the hearing and any applicable exceptions to compelling arbitration". (App. p. 148, Lines 23:11-24; App. p. 203.) Nothing else was permitted by Judge Nicholson.

On December 4, 2017, Sanders filed his supplemental memorandum opposing

Petitioners' motion to compel arbitration (App. pp. 267-274) and Petitioners filed their supplemental memorandum. (App. pp. 249-263.)

On January 9, 2018, Gallivan, White & Boyd, Petitioners' counsel, took over the defense of Santander. (App. p. 200.) Also, on January 9, Judge Nicholson heard and ruled on Sanders' motion to compel discovery. Judge Nicholson orally ordered Petitioners to respond to Sanders' discovery within thirty days. (App. p. 154:20.) Judge Nicholson also granted Sanders' oral motion to dismiss Santander Consumer USA Holdings, Inc. as a defendant. (App. pp. 157:25-158:2.) Judge Nicholson instructed Petitioners' counsel to draft an Order regarding his ruling compelling Petitioners to respond to Sanders' discovery. (App. p. 154:20-24.)

On January 10, Judge Nicholson filed his formal Order denying Petitioners' Motion to Compel Arbitration. (App. pp. 209-211.) His denial was based on Petitioners' assignment of all their contractual interests, including the right to compel arbitration, to Santander.

On January 18, Judge Nicholson's Form 4 Order was filed dismissing Santander as a party. (App. p. 204.) Petitioners did not file a Motion for Reconsideration under Rule 59 SCRPC nor did they appeal that ruling.

On February 6, 2018, Petitioners filed their Notice of Appeal regarding Judge Nicholson's January 10 Order. (App. pp. 303-310.)

On February 20, 2018, the Clerk of Court filed Judge Nicholson's formal Order recording his January 9 ruling ordering Petitioners to respond to Sanders' discovery. (App. pp. 213-214.)

On March 21, 2018, Petitioners filed their Notice of Appeal regarding Judge

Nicholson's February 20 Order compelling discovery responses. (App. pp. 311-315.)

STATEMENT OF FACTS

Savannah Highway Automotive Company, a General Partnership d/b/a Rick Hendrick Dodge Chrysler Jeep Ram sells thousands of cars each year in Charleston. (App. p. 164.) As part of its sales process, Savannah Highway regularly extends credit to car buyers using an adhesion contract called a retail installment sales contract (RISC) (App. 232-237). Savannah Highway then sells the RISC to financial institutions such as Santander Consumer USA, Inc. (App. pp. 169-170 ¶¶ 43-46.) As part of this process, Savannah Highway uses a credit application to obtain a consumer's credit report. The information on the credit application is supposed to be supplied by the consumer; however, the form is completed by a Savannah Highway employee. The credit application is shared with other financial institutions to which Savannah Highway attempts to assign the RISC. Based on the information supplied by Savannah Highway, these other financial institutions decide whether to purchase the RISC from Savannah Highway.

Around 2012, Appellant Savannah Highway and its employees were recognized by Chrysler as being one of Chrysler's top dealerships in the country. (App. p. 165 ¶9.) As a result of Savannah Highway's status, Chrysler Capital¹ offered Savannah Highway incentive money should Savannah Highway meet certain sales quotas. (App. p. 166 ¶11.) Savannah Highway's employees devised a scheme to meet Chrysler Capital's sales quotas by falsifying information in purchasers' contracts, such as cars being traded in, the values of traded in vehicles, and consumer's income. (App. p. 166 ¶¶ 12, 13, 14.)

¹ Chrysler Capital provides automobile financing for FCA US, LLC and its dealers. FCA US came into existence when Fiat purchased Chrysler Group in 2014. FCA licenses the use of Chrysler Capital to Santander Consumer LLC. <https://chryslercapital.com/about/fact-sheet>

Savannah Highway's management knew about and sanctioned this scheme. (App. pp. 166-167 ¶¶ 15 and 16.) Sanders was one of the consumers caught up in this scheme. (App. pp. 169-170.)

On August 9, 2012, Sanders sought to purchase a 2012 Dodge Charger RT for approximately \$30,000. Sanders informed Petitioners he was on disability and his income was reduced. Petitioners nonetheless put his pre-injury income on the credit application so Santander would purchase the contract. (App. p. 168 ¶¶ 26-27.) Because of Savannah Highway's misrepresentation of Sanders' income, Santander, pursuant to its contract with Savannah Highway, agreed to purchase all the rights Savannah Highway had in the subject RISC. This obligated Sanders to pay for a car which he could not afford. The car was repossessed by Santander in January 2017. (App. p. 170 ¶¶ 46-52.)

As is typical in a car sale at a dealership, the contract prepared by Savannah Highway included multiple documents. (App. p. 169 ¶ 42.) One of the documents in the Parties' contract is the RISC. (App. p. 169 ¶¶ 39 and 40.) The RISC is on the front and back of an abnormally long piece of paper. On the front of the RISC, just below the Parties' signature lines, is an assignment agreement which states "**Seller assigns its interest in this contract to Santander Consumer USA (Assignee) under the terms of Seller's agreement(s) with Assignee**". Below that agreement is a box marked "**Assigned without recourse**" and Savannah Highway's employee's signature. (App p. 234.) The arbitration clause in this contract is in small font on the backside and at the bottom of the RISC. (App. 237.) There is no evidence that Sanders was shown or ever saw the back of the RISC.

On May 1, 2017, Sanders filed suit against Savannah Highway. Savannah

Highway sought to impose arbitration upon Sanders even though Savannah Highway had sold all its interest in the Parties' RISC to Santander (App. 143 lines 17-21.) After Savannah Highway's attorney admitted the RISC, including the arbitration rights, had been fully assigned to Santander, Judge Nicholson ruled that a contract to arbitrate did not exist between Sanders and Savannah Highway. Therefore, without a written arbitration agreement, Savannah Highway could not compel Sanders to arbitrate this dispute.

Before he issued his formal arbitration Order, Judge Nicholson heard Sanders' Motion to Compel discovery responses. Judge Nicholson orally ordered Savannah Highway to respond to Sanders' discovery. (App. 154, Line 20; 158, Line 3.) Before Judge Nicholson could file his formal Order regarding discovery, Savannah Highway and White appealed Judge Nicholson's arbitration Order. Petitioners then appealed Judge Nicholson's written discovery Order filed after this appeal began.

STANDARD OF REVIEW

Arbitrability determinations are subject to de novo review. Wellman, Inc. v. Square D Co., 366 S.C. 61, 67, 620 S.E.2d 86, 89 (Ct. App. 2005). Nevertheless, a circuit court's factual findings will not be reversed on appeal if any evidence reasonably supports the findings. Simpson v. MSA of Myrtle Beach, Inc., 644 S.E.2d 663, 373 S.C. 14 (2007).

INTRODUCTION

When a contract is unambiguous, courts should enforce the contracts as written between the parties. Mid-Continent Refrigerator Co. v. Dean, 180 S.E. 2d 892, 256 S.C. 99 (1971); McGill v. Moore, 672 S.E.2d 571, 381 S.C. 179 (2009). This is the argument that South Carolina car dealers always make when sued by a consumer. Now car dealers

are asking the Court to carve out a special exemption for car dealers, that they not be held to the contracts they draft. The Court of Appeals' decision is not fundamentally unfair to car dealers as they are the ones who are writing the contracts used at their dealerships. They are the masters of their own fate. Having written contracts poorly, they now seek the courts help in bailing them out. The Court should decline to do so.

This appeal deals with three very basic rules of contract, judicial administration, and discovery.

The main issue is whether a contractual right to compel arbitration existed after Petitioners voluntarily and unconditionally assigned all their contract rights to a third party, Santander. Sanders contended an agreement to arbitrate did not exist between the Parties since Petitioners assigned those rights to Santander. Thus, without a written agreement to arbitrate, Petitioners do not have the right to require Sanders to arbitrate disputes between them. Judge Nicholson and the Court of Appeals agreed.

A secondary issue is whether Judge Nicholson retained jurisdiction to perform the ministerial act of filing a formal Order after Petitioners appealed the denial of their motion to compel arbitration. Judge Nicholson orally ordered Petitioners to respond to Sanders' discovery. Before he could submit his written Order, Petitioners appealed his arbitration Order. Judge Nicholson should be allowed to perform the ministerial act of filing his Order even though Petitioners had appealed a different Order.

Petitioners' third issue claims Judge Nicholson's discovery Order contains errors of law. The appeal of his discovery Order is interlocutory and, therefore, not ripe.

SCADA does not make any argument regarding the second and third issue.

The Supreme Court should deny the petition for writ of certiorari as the question

presented is a matter of state contract law. The trial court's Order and the Court of Appeals' opinion are in conformity with prior State and Federal law. Neither Petitioners nor SCADA have presented any evidence that the lower courts committed any errors.

ARGUMENT

- 1. Federal law requires and State and Federal case law holds that it is for the court to determine whether an arbitration agreement exists between the parties. Hendrick and SCADA argue it is for an arbitrator to decide if an arbitration agreement exists between the parties. Should the Court ignore State and Federal precedent and follow Hendrick's and SCADA's argument that an arbitrator should decide whether an arbitration agreement exists between the parties?**

The court determines whether an arbitration agreement exists between the parties.

9 U.S.C. § 4 ("The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement."); Prima Paint Corp. v. Flood & Conklin Mfg. Co., 388 U.S. 395, 403–04, 87 S.Ct. 1801, 18 L.Ed.2d 1270 (1967) (when a claim goes to the "making" of the arbitration agreement, § 4 of the FAA requires the court to "order arbitration to proceed once it is satisfied that 'the making of the agreement for arbitration ... is not in issue' "); Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 644 S.E.2d 663 (2007) ("where one party denies the existence of an arbitration agreement raised by an opposing party, a court must immediately determine whether the agreement exists in the first place.").

The question presented to the trial court was whether an arbitration agreement existed between the parties. The trial court understood it was the deciding authority as to whether the case had to be sent to an arbitrator. The Court of Appeals agreed.

Neither Savannah Highway nor SCADA have presented any authority that over

rules or contradicts 9 U.S.C. § 4 and State and Federal precedence that the court decides the initial question as to whether an arbitration agreement exists between the parties.

Because Federal law and State and Federal case law require the court to decide whether an arbitration agreement exists between the parties, the trial court's ruling and the Court of Appeals' opinion should be affirmed.

2. If an arbitration agreement does not exist between the parties, one party may not force another to arbitrate a dispute. Savannah Highway and SCADA want to force consumers into arbitration without having a written arbitration agreement between them. Should the Court force Sanders to arbitrate his dispute with Savannah Highway when a written agreement to arbitrate does not exist between them?

"Arbitration is a matter of contract, and a party cannot be required to submit to arbitration any dispute which he has not agreed to submit." Zabinski v. Bright Acres Associates, 346 S.C. 580, 596 (2001).

Savannah Highway has admitted at least nine times that the RISC was fully assigned to Santander. (App. 68-70.) Neither Savannah Highway nor SCADA contest this and Savannah Highway has not tried to withdraw any of these admissions. Additionally, neither has directed the Court to any contract provision wherein Sanders agreed to arbitrate claims with Savannah Highway after the assignment took place.

SCADA admits the RISC was assigned to Santander, but then misstates the scope of the assignment by claiming Savannah Highway assigned only "the right to receive monthly payments under the installment sales contract to Santander Bank, N.A." (SCADA's Amicus Brief page 1 and 5.) This is not supported by the contract and is directly contradicted by Savannah Highway's attorney.

The contract language states, "Seller assigns its interest in this contract to Santander Consumer USA (Assignee) under the terms of Seller's agreement(s) with

Assignee”². This language does not limit the assignment to the monthly payments. This language shows Savannah Highway’s intent to assign all its interest in the contract to Santander. This interpretation is supported by Savannah Highway’s attorney who, when directly questioned by the trial court, stated:

17 THE COURT: I understand the contract, but does the
18 contract reserve a right for you to enforce arbitration once
19 you've assigned it all to the lending institution?
20 MR. LAY: It is fully assigned once it goes to the
21 lending institution.
(App. 143 lines 17-21.)

SCADA has not pointed to any language which contradicts this admission or the contract’s terms.

Since Savannah Highway and SCADA have failed to show the existence of an arbitration agreement between the parties after the assignment, Savannah Highway may not now force Sanders to arbitrate this dispute.

3. Savannah Highway voluntarily assigned all its rights in the contract, including the arbitration clause and any purported delegation clause, to Santander. SCADA claims Savannah Highway retained rights in the contract. Does Savannah Highway’s full assignment of its rights under the RISC allow it to later claim rights in that contract?

“Where an agreement is clear and capable of legal interpretation, the court's only function is to interpret its lawful meaning, discover the intention of the parties as found within the agreement, and give effect to it.’ Park Regency, LLC v. R & D Dev. of the

² Some of the rights assigned include receiving interest payments over time, principal payments for the extended credit by Savannah Highway, dishonored check fees, how the contract can be modified, how the parties will proceed should the vehicle be damaged, destroyed, or missing, limiting the consumers use of the vehicle to the US and Canada, limiting use of the vehicle so it is not taken by a governmental authority, requiring the consumer to maintain insurance on the vehicle, how payments can be made, how the lender may enforce its rights to be paid which include taking the vehicle, the shifting of attorney’s fees to the consumer should payments not be made, how the consumer can get the vehicle back, what the lender will do with the vehicle should payments not be made, and how insurance and service contracts are dealt with should payments not be made.

Carolinas, LLC, 402 S.C. 401, 412–13, 741 S.E.2d 528, 534 (Ct. App.2012); accord Heins v. Heins, 344 S.C. 146, 158, 543 S.E.2d 224, 230 (Ct. App.2001) (stating the court must interpret contractual language in its natural and ordinary sense). Furthermore, a party who signed a contract is deemed to have read and understood ‘the effect’ of the contract. Wachovia Bank v. Blackburn, 394 S.C. 579, 585, 716 S.E.2d 454, 458 (Ct. App. 2011).” York v. Dodgeland of Columbia, Inc., 406 S.C. 67, 749 S.E.2d 139 (Ct. App. 2013).

Contracts are construed strictly against their maker. Coleman v. Dunlap, 18 S.C. 591 (1883); Coastalstates Bank v. Hanover Homes of S.C., LLC, 408 S.C. 510, 759 S.E.2d 152 (Ct. App. 2014). South Carolina Courts analyze an adhesion "contract between a consumer and automobile retailer with 'considerable skepticism.'" Simpson v. MSA of Myrtle Beach, Inc., 644 S.E.2d 663, 373 S.C. 14 (2007).

The adhesion contract drafted by Savannah Highway clearly states, “Seller assigns its interest in this contract to Santander Consumer USA (Assignee) under the terms of Seller’s agreement(s) with Assignee.” The only interpretation of this provision is that Savannah Highway is selling all its interest in the contract to Santander and that it is not retaining any rights in the contract after the moment of assignment. Neither Savannah Highway nor SCADA have provided a different interpretation of this contractual provision. Again, this is supported by Savannah Highway’s admission previously mentioned.

Savannah Highway’s sale of its rights in the RISC was voluntary. Neither Savannah Highway nor SCADA claim Savannah Highway was forced to sell its interest in or that it was coerced into transferring its interest in the RISC.

Citing Orange Bowl Corp. v. Warren, 300 S.C. 47, 386 S.E.2d 293 (Ct. App. 1989), SCADA argues that because “and assignor remains liable to the obligor for the assignee’s

defective performance” Savannah Highway somehow retained rights in the contract. Orange Bowl is not relevant to this matter. The cited holding comes from Baker v. Weaver, 279 S.C. 479, 309 S.E. (2d) 770 (Ct. App. 1983) which dealt with a repair of a boat wherein Baker, the party that was hired to do the work, was found responsible for the negligent repair done by a third-party Baker hired to do the work. In ruling on this agency question, the Court held, “[u]nder settled contract law, a person may not simply delegate a duty to another and thereby extinguish his own liability to fully perform that duty. (citations omitted) For the assignee's defective performance the assignor remains liable to the obligor just as he would be for his own defective performance or that of his agent or servant.” This holding does not add to SCADA’s argument. Neither Orange Bowl nor Baker support SCADA’s premise that because Savannah Highway is still responsible for its wrongdoing that it somehow retained rights in the arbitration agreement.

SCADA’s brief boils down to an admission that car dealers have written their contracts poorly. They now seek the Court’s help in rewriting thousands of contracts so car dealers can forum shop. This would result in the Court carving out an exception in the well-established law of assignment for car dealers. There is no valid reason to do so.

4. The Court should use arguments and case law that apply to the facts of the case when ruling on an issue. SCADA’s arguments and citations are inapplicable to Savannah Highway’s petition. Should the Court use SCADA’s inapplicable arguments and citations to decide whether to grant Savannah Highway’s petition?

SCADA has ignored the initial hurdle its dealers, and Savannah Highway particularly, must clear, the existence of an arbitration agreement which is binding on the parties. Instead, it chooses to ignore this initial requirement, jumping to its arguments that the lower court and the Court of Appeal’s violated the law. SCADA’s arguments

assume that an arbitration agreement exists between the parties. Since neither Savannah Highway nor SCADA have shown the existence of an agreement between the parties, Sanders need not respond to SCADA's arguments relating to the "mode of review" and the "delegation clause".

Nonetheless, Sanders believes that certain issues must be addressed. First, are the interests of banks and financial institutions. The assignment agreement states that Savannah Highway assigns its interest in this contract to Santander under the terms of Savannah Highway's agreement with Santander. Savannah Highway has not put this agreement in the record³. It is expected that Santander requires Savannah Highway to assign all its interests to Santander so that if a consumer does not pay, Santander can enforce all the rights under the contract to obtain payment. It is also expected that Savannah Highway does not want to have to assert rights under this contract after it has assigned the contract to Santander. This is emphasized by the non-recourse status of the RISC. Most car dealers simply want to sell cars, they do not want to have to collect payments or otherwise enforce the RISC. Without this agreement in the record, the Court is left with the contract language which clearly and admittedly assigned all of Savannah Highway's interest in the RISC to Santander.

Should the Court determine that Savannah Highway has an interest in the arbitration agreement, can Savannah Highway assert that it retained any other interests in this contract, including receiving payments and repossessing vehicles from

³ Savannah Highway did produce a document purporting to be the Dealer Agreement between Savannah Highway and Santander. The copy produced was basically illegible. (App. 273.) Sanders asked the trial court to require Savannah Highway to produce a better copy of the document. (App. 268.) The court did not rule on the issue and Savannah Highway has not produced a better copy.

consumers? The banks would surely say no. To rule otherwise would negate the assignment clause.

SCADA seems to argue that the Court should protect car dealers regarding the millions of contracts they have written. But what about the banks and Santander specifically. SCADA advocates modifying millions of contracts without the banks having a say in the matter. In this case, neither Savannah Highway nor SCADA have provided the court with the position of the financial institutions that will be directly impacted by a ruling in favor of Savannah Highway. Without knowing their position, the Court should not change the status quo.

Second, SCADA misconstrues Sanders' arguments. Sanders has not and does not contend that the original contract between Savannah Highway and Sanders ceased at the moment of assignment and a new, different, and subsequent contract arose after the assignment. (See SCADA Brief pp. 5 and 6.) All that ceased with the assignment was Savannah Highway's right to enforce any of the provisions in the contract.

Third, the Court is unable to determine if the statistics presented by SCADA are valid or applicable. On page 2 of its Brief, SCADA provides various statistics from the National Association of Automobile Dealers. It then tries to extrapolate a number that might apply in South Carolina. This is improper. Just because nationally "7 out of 10 consumers finance through their dealership" does not mean that same proportion is present in South Carolina. In fact, we do not even know that that statistic is correct as there is nothing in the record to support it.

Fourth, SCADA's reliance on Damico v. Lennar Carolinas, LLC, 430 S.C. 188, 844 S.E.2d 66 (Ct. App. 2020), reh'g denied (July 1, 2020), is misplaced. The issue of the

effect of one party's rights to enforce an arbitration clause after it fully and voluntarily assigned the contract was not before the Damico court. In Damico, the parties agreed that there was an enforceable contract between them. Sanders contends, and Judge Nicholson and the Court of Appeals have ruled, that Savannah Highway did not have any right to enforce any contractual provisions under the RISC.

While SCADA provided the Court a large section of text from Damico (see p. 7 of SCADA's brief), it glaringly omitted a key portion of text which cuts its argument. SCADA omitted the following after the second line of the block quote:

See *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 403–04, 87 S.Ct. 1801, 18 L.Ed.2d 1270 (1967) (arbitrator rather than court must decide claim that underlying contract in which arbitration provision was contained was fraudulently induced, but if fraudulent inducement claim went to the arbitration provision specifically, claim would be for court because such a claim goes to the "making" of the arbitration agreement and § 4 of the FAA requires the court to "order arbitration to proceed once it is satisfied that 'the making of the agreement for arbitration ... is not in issue' ").
(Emphasis added.)

The omitted language eviscerates SCADA's premise that the arbitrator, and not the Courts, must determine whether the arbitrator decides the existence of an arbitration agreement between the parties. (See Sanders Argument 1 above.)⁴ Without an arbitration agreement, Savannah Highway cannot force Sanders into arbitration.

Fifth, missing from SCADA's argument is the effect a ruling would have on the employees of Savannah Highway who were not signatories to the contract in the first place.

⁴ Sanders' Complaint paragraph 46 states that Savannah Highway sold and assigned the RISC to Santander. This goes to the "making" of the agreement. Savannah Highway's Answer admitted this its paragraph 46.

Sixth, SCADA's reliance on Masters v. KOL, Inc., 431 S.C. 28, 846 S.E.2d 893 (Ct. App. 2020) is also misplaced as Masters dealt with a contract that contained different contractual terms than are present here. The Court held, "Further, both arbitration agreements provide that they 'shall survive the termination of any and all of [Purchaser's] business with Dealer.' This language expresses the parties' intent to retain the option of arbitration even after an event such as Purchaser's completion of all installment payments or Dealer's transfer of its right to collect payments to a third party." Thus, the dealer retained its interest in the arbitration agreement through specific language in the contract. SCADA has not shown similar language in the RISC at issue as it does not exist.

Seventh, SCADA's statements regarding the effect this case may have on 1,392,328 contracts written by dealers over the last four years is misleading. SCADA presumes that every dealer uses the exact same contract containing the exact same language as in the contract at issue. This is not the case as is shown by the case law. See Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 644 S.E.2d 663 (2007), Partain v. Upstate Automotive Group, 662 S.E.2d 426, 378 S.C. 152 (Ct. App. 2008), Herron v. Century BMW, 387 S.C. 525, 693 S.E.2d 394 (2010) (a separate one page document.), York v. Dodgeland of Columbia, Inc., 406 S.C. 67, 749 S.E.2d 139 (Ct. App. 2013), Doe v. TCSC, LLC, 430 S.C. 602, 846 S.E.2d 874 (Ct. App. 2020), and Masters v. KOL, Inc., 431 S.C. 28, 846 S.E.2d 893 (Ct. App. 2020).

SCADA's argument also operates under the absurd premise that every contract will result in car dealers being sued. SCADA is being overly dramatic for effect.

Eighth, Sanders again objects to the inclusion of the AAA arbitration rules. These were not before the trial court nor have they been properly entered into the record. Even

if the Court should consider these rules, they do not have any weight in this appeal. As stated, SCADA has failed to present the Court with any language in the contract whereby Savannah Highway retained any rights in the arbitration agreement. Without satisfying this first step, SCADA's argument fails. Additionally, the AAA rule on jurisdiction simply tells those using the rules the extent of the arbitrator's authority. It does not have any bearing on whether Savannah Highway retained any rights in the contract.

Ninth, SCADA, in footnote 8, implies that the Court of Appeals' opinion may be preempted by the FAA. SCADA does not explain what this means. Nonetheless, the Court of Appeals opinion does not "interfere with the fundamental attributes of arbitration". The Court of Appeals' opinion simply enforces the contract as written by Savannah Highway in that all rights in the contract, including arbitration, have been transferred to Santander. This does not interfere with the ability of the appropriate party, Santander, to enforce arbitration nor does it single out arbitration agreements for disparate treatment. The Court of Appeals opinion simply solidifies who may enforce the rights under the contract.

Tenth, SCADA, on page 1 of its Brief, states, "As evidenced by this case, dealership employees are often individually sued in consumer disputes." Besides not coming back to this issue and how it relates to whether an arbitration agreement exists between these parties, it is factually incorrect. The court need only review Wright v. Craft, 372 S.C. 1, 640 S.E.2d 486 (Ct. App. 2006); Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 23–24, 644 S.E.2d 663, 668 (2007), Partain v. Upstate Automotive Group, 662 S.E.2d 426, 378 S.C. 152 (Ct. App. 2008), Austin v. Stokes-Craven Holding Corp., 387 S.C. 22, 691 S.E.2d 135 (2010); Herron v. Century BMW, 387 S.C. 525, 693 S.E.2d 394

(2010), York v. Dodgeland of Columbia, Inc., 406 S.C. 67, 749 S.E.2d 139 (Ct. App. 2013), Doe v. TCSC, LLC, 430 S.C. 602, 846 S.E.2d 874 (Ct. App. 2020), and Masters v. KOL, Inc., 431 S.C. 28, 846 S.E.2d 893 (Ct. App. 2020) none of which have employees listed. This allegation is simply made by SCADA to garner sympathy for its arguments.

SCADA's brief has numerous inapplicable arguments and incorrect analysis of cases. SCADA's brief should be ignored.

CONCLUSION

Adhesion contracts should be looked at skeptically, ambiguities in contracts should be construed against their maker, and contracts should be enforced as written. Savannah Highway admittedly assigned all its rights in the RISC to Santander. By failing to provide to any court proof it retained rights in the arbitration agreement, Savannah Highway concedes that it does not have any rights in the arbitration agreement. Nonetheless, it and SCADA seek to overturn well established assignment law and substantially change the rules regarding how courts construe contracts. For the reasons stated, the Court should deny Petitioners' petition for writ of certiorari, affirm the Court of Appeals decision, and remand the case to Circuit Court so it may be tried there.

Respectfully submitted,

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