No. 20-1025

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

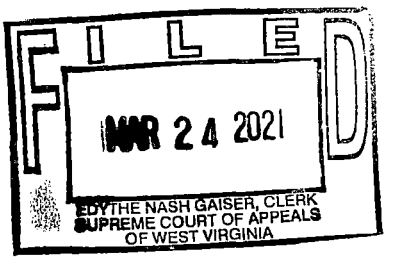
SPECIALIZED LOAN SERVICING LLC,

Defendant Below, Petitioner

vs.

RONALD J. STOVER and
PATTI A. STOVER,

Plaintiffs Below, Respondents.



From the Circuit Court of Raleigh County, West Virginia
Civil Action No. 15-C-770-B

BRIEF OF PETITIONER SPECIALIZED LOAN SERVICING LLC

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ASSIGNMENT OF ERROR

1. The Circuit Court erred in denying SLS's Motion for Summary Judgment and in granting the Stovers' Motion for Summary Judgment as the limited definition of "consumer loan" set forth in both the pre-2016 and post-2016 versions of W. Va. Code § 46A-2-115(b) does not apply to W. Va. Code § 46A-2-115(c) and, therefore, does not limit the exception allowing for the return of partial payments during the reinstatement period set forth in W. Va. Code § 46A-2-115(c).

STATEMENT OF THE CASE

1. Factual History

The facts relevant to this action are undisputed and were largely stipulated to in the below action. Ronald J. Stover and Patti A. Stover (hereinafter "Respondents" or the "Stovers") purchased the property located at 3989 Clear Fork Road, Clear Fork, West Virginia ("Property") on or about October 27, 2000, by obtaining a mortgage loan secured by a deed of trust on the Property ("Loan"). (J.A. 338). The Loan was originated by an entity that is not a bank or savings and loan association or affiliate, is held by private trust, and is not insured by a government-sponsored enterprise. (J.A. 406; J.A. 359; J.A. 338). On December 19, 2014, SLS sent the Stovers a "Notice of Default and Notice of Intent to Foreclose," as the Loan was in default beginning with the November 1, 2014 payment. (J.A. 339). The Stovers were given thirty-three (33) days from the date of the letter—until January 21, 2015—to cure the arrears, which at that time were in the amount of $1,734.67. (*Id.*). At that point, and as made clear in SLS's letter, SLS would only accept a payment in the full amount to reinstate the Loan. However, the Stovers failed to cure the default. (*Id.*).

On May 14, 2015, Seneca Trustees sent a notice of foreclosure to the Stovers, initiating the reinstatement period outlined in—and authorized by—the Deed of Trust. (J.A. 382). Twelve days later, on or about May 26, 2015, Angie Raines (now Angie Stover) sent SLS a partial reinstatement payment in the amount of $556.27. (J.A. 340). In a letter dated June 4, 2015, SLS returned the check and explained that it was unable to accept the payment because it was for less than the total reinstatement amount due. (*Id.*). SLS additionally enclosed an updated reinstatement quote in the amount of $4,371.98. the Stovers sent additional partial payments by MoneyGram on March 17, 2017 and by check on April 3, 2017. (J.A. 342). SLS returned each payment with the same explanation and new reinstatement quotes. (*Id.*).

2. Procedural History

Respondents filed the below civil action on August 18, 2015 in the Circuit Court of Raleigh County, West Virginia alleging several claims arising out of the servicing of their home mortgage loan. (J.A. 2). The Action alleged misrepresentations and unconscionable conduct (Count I), failure to credit payments (Count II), failure to provide a statement of account (Count III), and contacts after notice of attorney representation (Count IV). (J.A. 2-7).[1] Both parties moved for summary judgment with respect to all remaining counts. (J.A. 16; J.A. 324). After the filing of SLS's Motion for Summary Judgment, the Court ordered the Parties to submit joint stipulated facts prior to issuing a ruling on the merits. (J.A. 322-323).

On August 2, 2019, the Court granted in part and refused in part SLS's Motion for Summary Judgment and refused the Stovers' Motion for Summary Judgment. (J.A. 345-357). After the Circuit Court's August 2, 2019 ruling, all claims had either been voluntarily dismissed by the Stovers or dismissed with the granting of SLS's Motion for Summary Judgment except for the Stovers' cause of action alleging SLS unlawfully failed to credit the 2015 and 2017 partial payments in violation of W. Va. Code § 46A-2-115(c) ("Count II"). (*Id.*). Within its August 2, 2019 Order, the Circuit Court held it did not have the information necessary to rule on Count II at that time. (*Id.*)

After the parties submitted additional stipulated facts and further briefing, the Court denied SLS's Supplemental Motion for Summary Judgment and granted the Stovers' Supplemental Motion for Summary Judgment with respect to Count II. The Circuit Court's ruling on Count II resulted from a misinterpretation of W. Va. Code § 46A-2-115(c). (J.A. 467-473). There were two versions of this statute at issue, as the statute was amended in 2016 and the rejected partial

[1] Respondents withdrew Count III of the Complaint at a hearing on June 7, 2017. (J.A. 357).

payments occurred in 2015 and 2017. The general rule, which remained relatively unchanged in both versions of the statute, is that payments to a creditor for "any consumer credit sale or consumer loan shall be credited upon receipt against payment due." The exception in both versions of subsection (c) provides that partial payments received during the reinstatement period outlined within subsection (b) "may be returned by the creditor". Each version of the statute, both before and after the 2016 amendment, include a limited definition of "consumer loan" in subsection (b), which SLS argued and maintains should not apply to the exception in subsection (c). SLS proffers that both versions of W. Va. Code § 46A-2-115(c) incorporate only the "reinstatement period" definition from subsection (b) and the "consumer loans" and "consumer credit sales" referenced in subsection (c) are defined in the general definitions section contained in W. Va. Code § 46A-1-102 of the West Virginia Consumer Credit and Protection Act ("WVCCPA"). However, the Circuit Court, in denying SLS's Supplemental Motion for Summary Judgment with respect to Count II and granting the Stovers' Supplemental Motion, held that the limited definition of "consumer loan" from subsection (b) applied to the subsection (c) exception, and since the Loan did not meet the limited "consumer loan" definition within subsection (b), SLS violated W. Va. Code § 46A-2-115(c) by refusing to accept the Stovers' partial payments. (J.A. 467-473).

On appeal, SLS seeks reversal of the Circuit Court's denial of its Supplemental Motion for Summary Judgment with respect to Count II of the Complaint and the Circuit Court's granting of the Stovers' Supplemental Motion for Summary Judgment with respect to Count II of the Complaint. Therefore, SLS filed the instant appeal of the Circuit Court's final judgment.

SUMMARY OF THE ARGUMENT

In the action below, the Circuit Court was tasked with determining whether SLS properly rejected partial payments under the exception found in W. Va. Code § 46A-2-115(c). The subsection (c) exception defines both *what* transactions are at issue as well as *when* a partial

payment may be rejected. The general rule of W. Va. Code § 46A-2-115(c) outlines that the subsection concerns "any consumer credit sale or consumer loan...". Both "consumer credit sale and "consumer loan" are specifically defined within W. Va. Code § 46A-1-102(13); W. Va. Code § 46A-1-102(15). In both versions of subsection (c) operative to the appeal at bar, a partial payment may be rejected during the "reinstatement period". In that, "reinstatement period" is not specifically defined within W. Va. Code § 46A-1-102, nor at any point prior to W. Va. Code § 46A-2-115, the drafters chose to limit the time period when a partial payment may be rejected by incorporating the definition of "reinstatement period" set forth in W. Va. Code § 46A-2-115(b).

Subsection (b) concerns the recovery of reasonable fees for certain consumer loans and has its own definitions of *what* loans qualify and *when* an expense must be incurred to be considered recoverable. Notably, subsection (b) specifically defines what constitutes a "consumer loan" for this subsection. Under subsection (b), consumer loans are "secured by real property ... [o]riginated by a bank or savings and loan association, or an affiliate, not solicited by an unaffiliated broker," as well as loans held or insured by certain federal and state entities. For when a fee may be incurred and be recoverable, both versions of subsection (b) have a specific definition for the reinstatement period.

While subsection (b) and subsection (c) concern the same reinstatement period due to subsection (c)'s specific incorporation of that time period, the subsections have differing definitions for *what* transactions are governed by that subsection. When drafting subsection (b), the drafters clearly intended to limit what constitutes a "consumer loan" beyond the definition contained in W. Va. Code § 46A-1-102(15) by including a revised and narrowed definition. Instead of continuing this limitation through subsection (c), subsection (c) simply states that "any consumer credit sale or consumer loan" are subject to subsection (c). The decision to refrain from

explicit reference to subsection (b) is a clear indication that the Legislature intended for the definitions of "consumer loan" and "consumer credit sale", as set forth in W. Va. Code § 46A-1-102, to apply to subsection (c). Following the 2016 amendment, the language of subsection (b) even more clearly shows that the limited consumer loan definition merely applies to subsection (b) with the inclusion of language at the beginning of the subsection stating the definitions within are "[w]ith respect to this subsection". The Circuit Court erred in denying SLS's Supplemental Motion for Summary Judgment and in granting the Stovers' Supplemental Motion for Summary Judgment with respect to Count II because the Court improperly incorporated subsection (b)'s limited definition into subsection (c). As the definitions for "consumer loan" and "consumer credit sale" from W. Va. Code § 46A-1-102 apply to subsection (c) the Circuit Court improperly limited the applicability of subsection (c) inconsistent with the legislative intent and plain language of the subsection. When read with the definitions from W. Va. Code § 46A-1-102 in mind, it is clear SLS properly rejected the partial payments under the exception found in subsection (c). Therefore, this Court should reverse the Circuit Court's final judgment.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

SLS states that oral argument is necessary pursuant to the criteria in Rule 18(a). Further, SLS contends that this case is appropriate for Rule 19 argument because it concerns a narrow issue of law. Finally, SLS states that this case is appropriate for a memorandum decision.

ARGUMENT

1. Standard of Review

"Interpreting a statute or an administrative rule or regulation presents a purely legal question subject to *de novo* review." Syl. Pt. 1, *Appalachian Power Co. v. State Tax Dep't of W. Virginia*, 195 W. Va. 573, 578, 466 S.E.2d 424, 429 (1995); Syl. Pt. 1, *Chrystal R.M. v. Charlie A.L.*, 194 W. Va. 138, 139, 459 S.E.2d 415, 416 (1995) ("Where the issue on an appeal from the

circuit court is clearly a question of law or involving an interpretation of a statute, we apply a *de novo* standard of review."). Therefore, "as with [the Court's] review of a circuit court's decision of a question of law, [the Court] also review[s] anew a circuit court's award of summary judgment. *Alan Enterprizes LLC v. Mac's Convenience Stores LLC*, 240 W. Va. 250, 253, 810 S.E.2d 61, 64 (2018) (citing Syl. Pt. 1, *Painter v. Peavy*, 192 W. Va. 189, 190, 451 S.E.2d 755, 756 (1994) ("A circuit court's entry of summary judgment is reviewed de novo.").

2. The plain language of W. Va. Code § 46A-2-115 indicates SLS's rejections of the Stovers' partial payments were proper and that SLS met its burden at the summary judgment stage.

Respondents brought Count II of the Complaint for an alleged failure to credit payments based on SLS's returning of the partial reinstatement payments made on or about May 26, 2015, as well as the partial payments attempted by MoneyGram on March 17, 2017 and by check on April 3, 2017, in alleged violation of W. Va. Code § 46A-2-115. (J.A. 3; J.A. 133). However, SLS's actions were permissible based on the 2015 and 2017 versions of W. Va. Code § 46A-2-115 as in effect at the time of the attempted partial repayments.

When interpreting a statute, "[i]f the statutory language is plain and does not lend itself to multiple constructions, the statute's plain language must be applied as it is written." *Tribeca Lending Corp. v. McCormick*, 231 W. Va. 455, 460, 745 S.E.2d 493, 498 (2013). The 2015 version of W. Va. Code § 46A-2-115(c) stated the following:

> All amounts paid to a creditor arising out of any consumer credit sale or consumer loan shall be credited upon receipt against payments due: *Provided*, That amounts received and applied during a cure period will not result in a duty to provide a new notice of right to cure; and provided further that partial amounts received during the reinstatement period set forth in subsection (b) of this section do not create an automatic duty to reinstate and may be returned by the creditor. Default charges shall be accounted for separately; those set forth in subsection (b) arising during such a reinstatement period may be added to principal.

Important here is the specific exclusion from the general requirement of a creditor to credit partial payments during the reinstatement period "do not create an automatic duty to reinstate and *may be returned by the creditor*." (*Id.*) (emphasis added). The general rule remained the same following the 2016 amendment and the exception contained nearly identical in language. The amendment only changed the reinstatement period's location in "subsection (b)" to a more specific and demarcated "subdivision (3) subsection (b)." The most substantial change in the 2016 amendment was the redefining of the reinstatement period. As outlined below, upon review of the clear language of the W. Va. Code § 46A-2-115(c) exception, it is apparent SLS properly rejected the Stovers' partial payments as the Loan is a "consumer loan" and because the partial payment attempts came during the reinstatement period from subsection (b) as incorporated into subsection (c).

a. The Loan qualifies under the categories contemplated by subsection (c) as defined in W. Va. Code § 46A-1-102.

W. Va. Code § 46A-2-115(c), as applicable in 2015, stated as a general rule that "[a]ll amounts paid to a creditor arising out of any consumer credit sale or consumer loan shall be credited upon receipt against payments due". Following the Statute's amendment, the language of W. Va. Code § 46A-2-115(c) was slightly restructured to state that "[a]ll payments made to a creditor in accordance with the terms of any consumer credit sale or consumer loan shall be credited upon receipt against payments due". The exception also found within W. Va. Code § 46A-2-115(c) under both versions, however, provides that partial payments received during the "reinstatement period" as defined in subsection (b) "do not create an automatic duty to reinstate and *may be returned by the creditor*." (emphasis added). The plain language of W. Va. Code § 46A-2-115(c) indicates the broad scope of the applicability of this subsection. Within subsection (c), the drafters chose to state that the subsection concerns "any consumer credit sale or consumer

loan". These terms are specifically defined in W. Va. Code § 46A-1-102, the "general definitions" section of the WVCCPA, as follows:

> (13)(a) Except as provided in paragraph (b), "consumer credit sale" is a sale of goods, services or an interest in land in which:
>
> (i) Credit is granted either by a seller who regularly engages as a seller in credit transactions of the same kind or pursuant to a seller credit card;
>
> (ii) The buyer is a person other than an organization;
>
> (iii) The goods, services or interest in land are purchased primarily for a personal, family, household or agricultural purpose;
>
> (iv) Either the debt is payable in installments or a sales finance charge is made; and
>
> (v) With respect to a sale of goods or services, the amount financed does not exceed forty-five thousand dollars or the sale is of a factory-built home as defined in section two, article fifteen, chapter thirty-seven of this code.
>
> (b) "Consumer credit sale" does not include a sale in which the seller allows the buyer to purchase goods or services pursuant to a lender credit card or similar arrangement...
>
> (15) "Consumer loan" is a loan made by a person regularly engaged in the business of making loans in which:
>
> (a) The debtor is a person other than an organization;
>
> (b) The debt is incurred primarily for a personal, family, household or agricultural purpose;
>
> (c) Either the debt is payable in installments or a loan finance charge is made; and
>
> (d) Either the principal does not exceed forty-five thousand dollars or the debt is secured by an interest in land or a factory-built home as defined in section two, article fifteen, chapter thirty-seven of this code.

W. Va. Code § 46A-1-102(13); W. Va. Code § 46A-1-102(15). Here, the Loan was a mortgage loan secured by a deed of trust on the Property, thereby clearly falling within W. Va. Code § 46A-1-102's definition of "consumer loan". (J.A. 338). As this was a consumer loan under W. Va. Code § 46A-1-102, the exception to subsection (c) applies. As such, SLS properly rejected the partial payments from the Stovers as the Loan qualified as a "consumer loan" under a plain reading of the

relevant statutes. As indicated below, the partial payment attempts were made during the reinstatement period under both the pre- and post-2016 versions of W. Va. Code § 46A-2-115.

b. SLS properly rejected 2015 partial payment during the reinstatement period as in place under the pre-2016 version of W. Va. Code § 46A-2-115.

The version of W. Va. Code § 46A-2-115(b) in effect in 2015 stated that the reinstatement period, which must be included in the loan agreement, began "with the trustee notice of foreclosure and ending prior to foreclosure sale." Thus, SLS had the right to reject any payments the Stovers submitted during this reinstatement period under the plain language of W. Va. Code § 46A-2-115.

In this case, SLS properly rejected the Stovers' 2015 partial payment because such payment occurred during the reinstatement period. The Deed of Trust signed by the Stovers contains an acceleration clause which states that "[l]ender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant." (J.A. 68). The Deed of Trust further states that the notice will "inform the Borrower of the right to reinstate." (*Id.*) Therefore, the reinstatement period was included in the loan agreement as required by W. Va. Code § 46A-2-115. On May 14, 2015, Seneca Trustees sent a notice of foreclosure to the Stovers, invoking "the power given by said Deed of Trust to sell the above-described real estate." (J.A. 382). Since the reinstatement period in W. Va. Code § 46A-2-115(b) as in effect in 2015 began "with the trustee notice of foreclosure," the reinstatement period commenced on May 14, 2015.

The Stovers submitted their first partial reinstatement payment on May 26, 2015, twelve days after the reinstatement period began. (J.A. 340). Respondents' check was for $556.27, well below the total reinstatement amount of $4,371.98. (*Id.*). the Stovers' check was thus a "partial amount received during the reinstatement period" under the 2015 application of W. Va. Code § 46A-2-115. For the foregoing reasons, SLS properly rejected the Stovers' 2015 partial reinstatement payment in compliance with the period set forth in W. Va. Code § 46A-2-115(b) as

in effect at the time of the attempted partial payment. As such, SLS's Supplemental Motion for Summary Judgment on Count II was improperly denied as SLS has met its burden under Rule 56 of the West Virginia Rules of Civil Procedure.

c. SLS's rejections of the 2017 partial payments were proper under the post-2016 version of W. Va. Code § 46A-2-115.

SLS was permitted to reject Respondents' 2017 partial reinstatement payments under the new reinstatement period set forth in W. Va. Code § 46A-2-115 following its 2016 amendment. The rule and its exception in subsection (c) remained intact after the 2016 amendment, but the reinstatement period set forth in subsection (b) changed. The reinstatement period became the period "after the last day allowed for cure of the consumer's default pursuant to section one hundred six, of this article and before the consumer reinstates the consumer loan or otherwise cures the default." W. Va. Code § 46A-2-115(b)(3).

In this case, SLS sent the Stovers a "Notice of Default and Notice of Intent to Foreclose" on December 19, 2014, as the loan was in default beginning with the November 1, 2014 payment. (J.A. 339). Due to this default and pursuant to W. Va. Code § 46A-2-106, the Stovers were given thirty-three (33) days from the date of the letter—until January 21, 2015—to cure the arrears, which at that time were in the amount of $1,734.67. (*Id.*). By January 21, 2015, the Stovers failed to cure the default, and pursuant to the exception in W. Va. Code § 46A-2-115(c), SLS was permitted to return any payment which did not comprise the entire amount required to reinstate the Loan. The Stovers then attempted partial payments on March 17, 2017 and April 3, 2017. (J.A. 342). SLS denied and returned each of Respondents' payments as they were well below the total reinstatement amounts. (*Id.*). SLS properly rejected these partial payments as each was submitted during the reinstatement period set forth in W. Va. Code § 46A-2-115(b) applicable post-2016. As

such, summary judgment in favor of SLS with respect to Count II is proper and was wrongfully denied by the Circuit Court.

3. The Circuit Court erred in finding that the "consumer loan" definition contained in W. Va. Code § 46A-2-115(b)(1) applied to W. Va. Code § 46A-2-115(c).

Despite the above, the Circuit Court found in favor of the Stovers with respect to Count II of the Complaint finding that SLS was not entitled to reject the partial payments under either version of W. Va. Code § 46A-2-115(c) as the Loan did not meet the limited definition of "consumer loan" as outlined in the separate subsection (b). (J.A. 467-473). Each version of W. Va. Code § 46A-2-115(b), both before and after the 2016 amendment, includes a limited "consumer loan" definition which should not be improperly read into to the exception in subsection (c). W. Va. Code § 46A-2-115(b) defines a consumer loan as "(A) Originated by a bank or savings and loan association, or an affiliate, not solicited by an unaffiliated broker," as well as loans held or insured by specific federal and state entities. SLS does not contend the Loan was a "consumer loan" as defined in the limited definition found in subsection (b), and instead maintains this definition does not limit the exception of W. Va. Code § 46A-2-115(c). With its Order, the Circuit Court erred in denying SLS's Supplemental Motion for Summary Judgment and in granting the Stovers' Supplemental Motion for Summary Judgment as 1) the Circuit Court's "general principle" analysis directly conflicts with the plain language of W. Va. Code § 46A-2-115(c), 2) the Circuit Court misinterprets the case law interpreting the subsection (c) exception, and 3) the Circuit Court's misinterpretation creates an absurd result.

a. The Circuit Court's "general principle" analysis conflicts with the language of W. *Va. Code § 46A-2-115(c).*

In its November 24, 2020 Order, the Circuit Court stated the following in support of its position that the limited "consumer loan" definition from subsection (b) must be met in order for the exception for subsection (c) to apply:

> Both versions employ a structure found in many statutes whereby a general principle is stated followed by exceptions to that general principle. As noted above, the exception to the general principle stated in subsection (c) is articulated by reference to language found in subsection (b). This structure does not signal an intention to "cast as wide a net as possible." If it is a "net" that is cast, it is only as wide or as narrow as the Legislature intended by the language it chose.

(J.A. 471). However, this Court has previously held that "[i]t is not for this Court arbitrarily to read into [a statute] that which it does not say. *Just as courts are not to eliminate through judicial interpretation words that were purposely included*, we are obliged not to add to statutes something the Legislature purposely omitted." *Raymond H. v. Cammie H.*, 242 W. Va. 640, 647, 837 S.E.2d 701, 708 (2019) (citing *Assoc. Press v. Canterbury*, 224 W. Va. 708, 713, 688 S.E.2d 317, 322 (2009) (quoting *Banker v. Banker*, 196 W. Va. 535, 546-47, 474 S.E.2d 465, 476-77 (1996))) (emphasis added, brackets in original). Further, This Court previously held "[i]t is always presumed that the legislature will not enact a meaningless or useless statute." Syl. Pt. 4, *State ex rel. Hardesty v. Aracoma - Chief Logan No. 4523, Veterans of Foreign Wars of U.S., Inc.*, 147 W. Va. 645, 645, 129 S.E.2d 921, 922 (1963).

W. Va. Code § 46A-1-102(15) contains the operative definition of "consumer loan" for subsection (c). As stated above, W. Va. Code § 46A-1-102 is the "general definitions" section of the WVCCPA, and contains a more expansive definition of "consumer loan" than set forth in W. Va. Code § 46A-2-115(b). W. Va. Code § 46A-1-102(15). Instead of simply incorporating the "consumer loan" definition from W. Va. Code § 46A-1-102(15) into subsection (b), the West Virginia Legislature clearly intended that subsection (b), and subsection (b) alone, would only apply to loans "secured by real property ... [o]riginated by a bank or savings and loan association, or an affiliate, not solicited by an unaffiliated broker," as well as loans held or insured by certain federal and state entities. The plain language of both versions of W. Va. Code § 46A-2-115(b) illustrate the legislative intent behind the passage of W. Va. Code § 46A-2-115(b), as well as the

reason subsection (c) does not incorporate the limited definition for "consumer loan". For the reasons set forth below, the definitional language of W. Va. Code § 46A-2-115(b) under both versions, as well as the Legislature's refusal to include a specific reference to the same in either version of subsection (c), indicates the Circuit Court improperly transposed the limited definition onto subsection (c).

i. The pre-2016 language of W. Va. Code § 46A-2-115(b) supports contention that limited definition of "consumer loan" does not apply to subsection (c).

As in effect in 2015, W. Va. Code § 46A-2-115(a) included a blanket prohibition for the collection of charges as a result of default except for "reasonable expenses included costs and fees authorized by statute". Subsection (b) authorized the recovery of certain fees "in addition to those authorized by this chapter" if the subject loan met certain requirements. To qualify for the recovery of certain additional fees under subsection (b), the loan must be

> A consumer loan secured by real property: (1) Originated by a bank or savings and loan association, or an affiliate, and not solicited by an unaffiliated broker; (2) held by a federal home loan bank, the federal national mortgage association, the federal home loan mortgage corporation, the government national mortgage association, the West Virginia housing development fund; or (3) insured or guaranteed by the farmers home administration, the veteran's administration, department of housing and urban development, which includes in the loan agreement a reinstatement period beginning with the trustee notice of foreclosure and ending prior to foreclosure sale...

W. Va. Code § 46A-2-115(b). Put simply, to qualify for the recovery of additional fees under subsection (b), the loan must be 1) a consumer loan and 2) meet the specification outlined in subparts 1, 2, and 3 of the subsection. This subsection does not redefine "consumer loan" for the purposes of other portions of the West Virginia Code, but simply adopts a limited version of the definition of "consumer loan" as found in the general definitions section of W. Va. Code § 46A-1-102(15).

The pre-2016 version of subsection (c), on the other hand, contains no such limiting language as it relates to the definition of "consumer loan". Instead, W. Va. Code § 46A-2-115(c)

clearly sets forth that the subsection is applicable to "any consumer credit sale or consumer loan". The absence of any limiting language such as that found in subsection (b) indicates that the pre-2016 version of subsection (c) is meant to adopt the general WVCCPA definition of "consumer loan" as found within W. Va. Code § 46A-1-102(15).

ii. The post-2016 language of W. Va. Code § 46A-2-115(b) supports the contention that the limited definition of "consumer loan" does not apply to subsection (c).

The format chosen by the drafters of W. Va. Code § 46A-2-115(b) post-2016 further indicates that the limited "consumer loan" definition from subsection (b) does not apply outside its own subsection. Before breaking into its three subdivisions, subsection (b), as amended, states that each subdivision applies only "with respect to this subsection". W. Va. Code § 46A-2-115(b). With its ruling, the Circuit Court found that the limited definition of "consumer loan" found in (b)(1) applied to the reinstatement period in (b)(3), and thus to (c) by loose association. However, subsection (b) now expressly limits the scope of its own application. The reinstatement period is only found within subdivision (b)(3), and does not contain the limited definition of "consumer loan" as found in subdivision (b)(1). Further, when subsection (c) references the reinstatement period, it does so by referencing "*subdivision (3)* subsection (b)," not subsection (b) as a whole. (emphasis added). The statutory construction specifically limits subsection (c)'s reach into subsection (b) to include only the third subdivision. The specificity in subsection (c) clarifies the legislature's intent that the definitions in (b)(1) should not apply to subsection (c). As such, the partial payments exception, allowing SLS to reject Respondents' partial payments, should apply as the Circuit Court erred in its interpretation of W. Va. Code § 46A-2-115(c).

Furthermore, the plain language of W. Va. Code § 46A-2-115(b) following the 2016 amendment indicates the limited "consumer loan" definition merely applies to subsection (b). The entirety of W. Va. Code § 46A-2-115(b)(1) states as follows:

> *The phrase "consumer loan" shall mean a consumer loan* secured by real property: (A) Originated by a bank or savings and loan association, or an affiliate, not solicited by an unaffiliated broker; (B) held by a federal home loan bank, the federal National Mortgage Association, the federal Home Loan Mortgage Corporation, the Government National Mortgage Association, the West Virginia Housing Development Fund; or (C) insured or guaranteed by the Farmers Home Administration, the Veterans Administration or the Department of Housing and Urban Development.

(emphasis added). As shown, and much like the pre-2016 version before it, the limited definition found in subdivision (3) of subsection (b) defines what constitutes a consumer loan with respect to subsection (b) as a consumer loan with additional limiting qualifiers. A plain reading of this limited definition indicates the drafters incorporated the general definition found in W. Va. Code § 46A-1-102(15) into subsection (b), subdivision (3), then provided additional limiting language to limit under what circumstances certain additional fees may be recovered. Once again, subsection (c) merely governs "any consumer credit sale or consumer loan" with no such limitation. W. Va. Code § 46A-2-115(c). As no limiting language is found within subsection (c), it is clear the legislature intended for the general definition of "consumer loan" as found within W. Va. Code § 46A-1-102(15) should apply to subsection (c).

iii. Specific incorporation of the reinstatement period definition supports the contention that the limited definition of "consumer loan" does not apply to subsection (c).

Importantly, both versions of subsection (c) incorporate the "reinstatement period" defined within subsection (b) or (b)(3) by making a specific reference that subsection or subdivision. W. Va. Code § 46A-2-115(b)-(c). This incorporation does not stand for the premise that the Legislature intended the entirety of W. Va. Code § 46A-2-115(b) be incorporated into subsection (c), but merely provided the subsection (c) exception with a time period for which partial payments may be rejected. Unlike "consumer loan" or "consumer credit sale", "reinstatement period" is not elsewhere defined within W. Va. Code § 46A-1-102. Therefore, the drafters could either 1) transpose every word of the "reinstatement period" from subsection (b) into (c) or 2) specifically

incorporate only the "reinstatement period" definition into subsection (c). The drafters chose the latter, and their decision should not be considered an attempt to incorporate the entirety of W. Va. Code § 46A-2-115(b) into the subsection (c) exception.

b. The Circuit Court misinterprets the related case law.

Courts in West Virginia have not incorporated the "consumer loan" definition found in subsection (b) into the subsection (c) exception, neither before the 2016 amendment to W. Va. Code § 46A-2-115 nor after. In *Long*, the court granted summary judgment to that defendant on the issue of partial payments without analyzing the definitions in W. Va. Code § 46A-2-115(b)(1). *Long v. Nationstar Mortg. LLC*, No. 2:15-CV-01202, 2018 WL 1247479, at *6 (S.D.W. Va. Mar. 9, 2018)). In that case, the plaintiff made partial payments on his loan after the foreclosure process had begun on his property, and that defendant returned the partial payments to the plaintiff because the payments were insufficient to cure the default on his loan. *Id.* at *7. that court stated that "a lender may reject partial payments received after the foreclosure process has begun." *Long*, 2018 WL 1247479, at *7 (quoting *Kesling v. Countrywide Home Loans, Inc.*, No. CIV.A. 2:09-588, 2011 WL 227637, at *3 (S.D.W. Va. Jan. 24, 2011)). The rule statement is succinct and involves no mention of or concern for the definitions in subsection (b). Neither did that court consider the (b)(1) limited definition when applying the law, holding that the defendant could reject the plaintiff's partial payments. *See Long*, 2018 WL 1247479, generally.

However, in its November 24, 2020 Order, the Circuit court held that neither *Long*, nor the internally cited *Kesling*, apply to the action at bar, finding that while "[t]he (b)(3) criteria as to the origination, holder, or guarantor of the loan are not referenced" in either *Long* or *Kesling*, "[t]he point that an issue is not mentioned in an opinion does not tell us why it was not mentioned, although one might speculate that an issue on that point might not have been presented...". (J.A.

473). This contradicts language within the same Order, wherein the Circuit Court found the following:

> The point that the payment was rejected because it occurred after the notice of foreclosure addresses only one of the criteria necessary to qualify for the (b)(3) exception. The stipulation that the loan is "not insured or guaranteed by the Farmers Home Administration, the Veteran's Administration, Department of Housing and Urban Development," *requires the finding that requirements of this exception are not satisfied* under the version of the statute in effect in 2015.

(J.A. 470) (emphasis added). Notably, neither the Circuit Court, nor the Stovers' in the action below, have cited *any* cases from *any* court that held that satisfaction of the requirements W. Va. Code § 46A-2-115(b) was a prerequisite of W. Va. Code § 46A-2-115(c).

In its final Order, the Circuit Court did not cite a single case for the proposition that the limited "consumer loan" definition from subsection (b) must be met in order for a creditor to utilize the subsection (c) exception. (J.A. J.A. 467-473). In the action below, the Stovers merely cited cases in support of the fact that W. Va. Code § 46A-2-115(c) requires a lender to credit any full or partial payments received from the borrower, as is set forth in the language of the statute, but none of the cases cited hold that the limited "consumer loan" definition contained within W. Va. Code § 46A-2-115(b) is incorporated into the subsection (c) exception. (J.A. 410 (citing *Kesling*, 2011 WL 227637, at *3; *Ballenger v. Nat'l City Mortg., Inc.*, No. 1:14CV81, 2015 WL 5062770, at *15 (N.D.W. Va. Aug. 26, 2015); *McNeely v. Wells Fargo Bank, N.A.*, No. 2:13-CV-25114, 2014 WL 7005598, at *8 (S.D.W. Va. Dec. 10, 2014); *Pannell v. Green Tree Servicing, LLC*, No. 5:14-CV-14198, 2014 WL 3361984, at *4 (S.D.W. Va. July 8, 2014); *Patrick v. PHH Mortg. Corp.*, 937 F. Supp. 2d 773, 783 (N.D.W. Va. 2013))).

In fact, these cases support Respondent's position. For instance, in *Pannell*, the United States District Court for the Southern District of West Virginia evaluated the reinstatement period with no mention of subsection (b)'s limited consumer loan definition. *Pannell*, 2014 WL 3361984,

at *4. *Kesling* mentions nothing of any limitation imposed on this exception by the "consumer loan" definition of subsection (b). *Kesling*, 2011 WL 227637, at *3. Similarly, the *McNeely* Court specifically recognized that, "[i]n simple terms, this subsection 'requires a lender of a consumer loan to credit any full or partial payments received from the borrower, subject to the exception that a lender may reject partial payments received after the foreclosure process has begun'" with no mention of the limited "consumer loan" definition from subsection (b). *McNeely*, 2014 WL 7005598, at *8 (quoting *Kesling*, 2011 WL 227637, at *3). As this Court has not, nor has any other, interpreted the exception found in W. Va. Code § 46A-2-115(c) as incorporating the limited definition of "consumer loan" from subsection (b), despite the Circuit Court's ruling such a finding is necessary, the Circuit Court erred in its November 24, 2020 ruling.

c. *The Circuit Court's ruling would result in an absurd reading and application of W. Va. Code § 46A-2-115(c).*

The Circuit Court's reading of W. Va. Code § 46A-2-115(c) results in a disjointed reading of the statute that creates an absurd result. Subsection (c) contains three terms defined elsewhere in the WVCCPA: 1) consumer loan, 2) consumer credit sale, and 3) reinstatement period. Pursuant to the Circuit Court's ruling, the first term would be defined by the limited definition of subsection (b), the second by the definition set forth within W.Va. Code § 46A-1-102(13), and the third by subsection (b). This Court has previously held that "[w]here a particular construction of a statute would result in an absurdity, some other reasonable construction, which will not produce such absurdity, will be made." Syl. Pt 2, *Newhart v. Pennybacker*, 120 W. Va. 774, 200 S.E. 350 (1938). If the "consumer loan" definition in subsection (c) were truly limited to consumer loans as defined within subsection (b) as suggested by the Circuit Court's ruling, then SLS would not be subject to the statutory mandate that "all amounts paid to a creditor arising out of any consumer credit sale or consumer loan shall be credited upon receipt against payments due." W. Va. Code § 46A-2-

115(c). Stated differently, the inclusion of the limited definition of "consumer loan" set forth in subsection (b), renders subsection (c), and it's requirement to credit payments upon receipt against payments due, inapplicable to SLS. Therefore, if the Circuit Court's statutory interpretation and construction is taken to its logical conclusion, SLS cannot be said to have violated W. Va. Code § 46A-2-115(c), as it is applicable only to "consumer loans", as defined in W. Va. Code § 46A-2-115(b). The consequences of utilizing the limited definition of "consumer loan" as set forth in W. Va. Code § 46A-2-115(b), would be to eliminate the obligation of "consumer loans", as defined in W. Va. Code § 46A-1-102(15), to credit payments upon receipt. Such a reading could not have been contemplated by the Legislature, as it is oxymoronic that the drafters would intend for an expansive reading of "consumer credit sale", yet limit the applicability of subsection (c), generally, to a limited class of "consumer loans".

Here, the drafters intentionally chose to refrain from adopting the limited definition of "consumer loans" from subsection (c) and instead simply adopted the "reinstatement period" definition. If this Court were to uphold the Circuit Court's ruling that the limited "consumer loans" definition was incorporated into subsection (c) via the explicit incorporation of only the reinstatement period from subsection (b), it would be a reading of the statute inconsistent with the statutory construction and the intent of the Legislature. Accordingly, SLS respectfully requests reversal of the Circuit Court's final Order.

CONCLUSION

For the foregoing reasons, the Circuit Court erred in its denial of SLS's Supplemental Motion for Summary Judgment and in its granting of the Stovers' Supplemental Motion for Summary Judgment. As evidenced above, the clear language of W. Va. Code § 46A-2-115 instructs that subsection (c) merely incorporates the time period for when a partial payment may be rejected (i.e. the "reinstatement period"), and does not incorporated the limited definition of

"consumer loan" set forth in W. Va. Code § 46A-2-115(b). Accordingly, this Court should reverse the decision of the Circuit Court and grant SLS's Supplemental Motion for Summary Judgment and deny the Stovers' Supplemental Motion for Summary Judgment.

Respectfully submitted,

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Huntington, West Virginia
March 24, 2021

No. 20-1025

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

SPECIALIZED LOAN SERVICING LLC,

Defendant Below, Petitioner

vs.

RONALD J. STOVER and
PATTI A. STOVER,

Plaintiffs Below, Respondents.

From the Circuit Court of Raleigh County, West Virginia
Civil Action No. 15-C-770-B

CERTIFICATE OF SERVICE

I, Randall L. Saunders, counsel for Defendants/Respondents, do hereby certify that on this 24th day of March 2021, I have served a true and exact copy of the foregoing "Brief of Petitioner Specialized Loan Servicing LLC" and "Appendix" upon the following, by depositing the same into the U.S. mail, first class, postage pre-paid:

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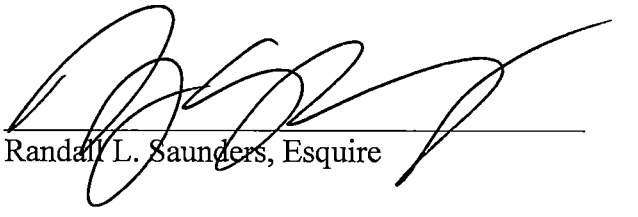

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