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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Albright, Justice, concurring:

The majority conclusion, to allow this case to go forward for determination on the merits, is unquestionably correct. However, I write separately to stress that the imposition of the two \$300 repossession fees is wrong as a matter of law and is not an issue that should require further examination upon remand.

As the majority clearly states, the record reveals that Paul White through its agent took action to repossess the vehicle during the ten-day cure period afforded Ms. Banks by the Consumer Credit and Protection Act (CCPA). The language of the CCPA unequivocally states that “[a] **creditor may not . . . commence any action or demand or **take possession** of collateral on account of default **until ten days after notice has been given to the consumer** of his or her right to cure such default.” W.Va. Code § 46A-2-106 (1998) (Repl. Vol. 1999) (emphasis supplied). Because Paul White had no right to repossess the secured good at the time the demand was made, the fees cannot be characterized as “repossession fees” or fees incurred in realizing a security interest at the time the agent demanded them. Additionally, the consumer is protected under the CCPA from “[t]he collection of or the attempt to collect any interest or other charge, fee or expense incidental**

to the principal obligation unless such interest or incidental fee, charge or expense is expressly authorized by the agreement creating the obligation and by statute.” W.Va. Code § 46A-2-128(d) (1990) (Repl. Vol. 1999). Neither the CCPA or the agreement in this case, which expressly recognizes the cure provisions appearing in West Virginia Code § 46A-2-106, furnish such authorization. It simply makes no sense whatsoever to contemplate the possibility of collection of a repossession fee during the time when a creditor is barred by statute from actually repossessing the secured goods.

For the aforesaid reasons, I concur in the majority opinion with the understanding that the repossession fees under the circumstances of this case were imposed contrary to law and should require no further determination upon remand.

I am authorized to state that Justice Starcher joins in this concurring opinion.