

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2021-001375

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S.C. SUPREME COURT

South Carolina Department of
Consumer Affairs,

Respondent,

v.

Cash Central of South Carolina,
LLC,

Petitioner.

RETURN TO MOTION FOR LEAVE TO FILE AN AMICUS CURIAE BRIEF

Pursuant to Rule 240, SCACR, the South Carolina Department of Consumer Affairs (“Department”) files this Return to the Motion for Leave to File an Amicus Curiae Brief, which was filed on behalf of the South Carolina Automobile Dealers Association¹ (“SCADA”) and Carolinas Independent Auto Dealers Association² (“CIADA”). In the Motion, the associations ask this Court to consider a statute that has not been involved in this appeal and facts that are not a part of this record on appeal. For all reasons stated herein and those argued in the Department’s Return to Petition for Writ of Certiorari as well as the briefs and oral argument in this appeal, all of which

¹ The Department believes this is referring to the South Carolina Automobile and Truck Dealers Association.

² The Department believes this is referring to the Carolinas Independent Automobile Dealers Association, Inc.

are incorporated herein, this Court should deny the associations' Motion for Leave to File an Amicus Curiae Brief.

ARGUMENTS

It would be impossible for this Court to consider the arguments offered by the associations without considering facts that are outside the record of this appeal. The connections, such as there are, amount to no more than these: 1) the automotive and consumer finance industries in South Carolina have tangential similarity in that there are certain regulatory statutes that require filing and posting of rates or charges; 2) they claim concerns that the ruling of the Court of Appeals may have "emboldened" the Department to construe such statutes "strictly," when in fact the position of the Department is in conformity with its historical construction of such statutes and with the rulings of the Court of Appeals and this Court; and 3) James Becker represents Cash Central, has represented SCADA for years (recently joined by Vincent Sheheen as co-counsel), and represents Patriot Chevrolet, one of the automobile dealers used as an example in the brief's exhibits. The amicus curiae brief is not proper because it presents legal arguments and facts outside of the appeal and, essentially, requests this Court to hear a matter within its original jurisdiction. As such, the Motion should be denied.

I. The proposed amicus curiae brief reaches far beyond the argument of the issues on appeal.

Rule 213, SCACR, requires an amicus curiae brief to be limited to argument of the issues on appeal as presented by the parties. *State v. Langford*, 400 S.C. 421, 432, 735 S.E 2d 471, 477 (2012); *James v. Anne's, Inc.*, 390 S.C. 188, 193, 701 S.E. 2d 730, 732 (2010). The court may make exceptions when arguments of an amicus involve matters of significant public interest, but the exception to the rule must be narrowly applied and only under appropriate circumstances.

Langford, supra, at 432, 735 S.E. 2d at 477. See also *Wiggins Bros., Inc. v. Dept. of Energy*, 667 F. 2d 77, 83 (Temp. Emer. Ct. App. 1981); *National Comm'n. on Egg Nutrition v. F.T.C.*, 570 F. 2d 157, 160 (7th Cir. 1977) *cert. den.* 439 U.S. 821 (1960); *Frank v. Peckich*, 257 Pa. Super. 561, 590, n. 15, 391 A. 2d 624, 638, n. 15 (1978); *Giles v. State*, 261 Ark. 413, 418, 549 S.W. 2d 479, 481 (1977); *State ex rel. Baxley v. Johnson*, 293 Ala. 69, 74, 300 So. 2d 106, 110 (1974).

The proposed amicus curiae brief submitted by the associations reaches far beyond the arguments as presented by the parties. The arguments presented center on the closing fees statute, Section 37-2-307, purported facts pertaining to dealerships who are not parties to the current action, and a characterization of the Department's administration and enforcement of the statute. The associations ask this Court to consider this newly provided information and rule that two defenses found in Title 37 apply to violations of the closing fees statute.

The closing fee statute is not involved in the present matter. Patriot Chevrolet and Bennettsville Motors of SC, Inc. ("Bennettsville Ford") are not parties to this action, or any pending action of the Department as of this date. The proposition that the Court needs to hear from the associations due to the Department being "emboldened" by the Court of Appeals ruling in its favor does not coincide with the correspondence attached as brief exhibits. The documents in fact show the Department's initial requests that full refunds be provided by the offending motor vehicle dealer predate the ruling by approximately one year.

Even if the closing fee statute provided some type of evidence of legislative intent as to the availability of certain defenses under the South Carolina Consumer Protection Code, this is an argument Cash Central could have made at the trial. They did not. While we appreciate SCADA and CIADA stating they would not provide an iteration of arguments presented by Cash Central, it is not appropriate to submit new arguments in an attempt to get a second bite at the apple. James

Becker represents Cash Central, has represented SCADA for years (recently joined by Vincent Sheheen as co-counsel), and represents Patriot Chevrolet, an automobile dealer used as an example in the brief's exhibits. He had the opportunity to make such assertions during the Cash Central matter, but failed to do so.

Such exhibits and corresponding arguments of the brief constitute information and reasonings that were not presented before the lower Court or Court of Appeals in the Cash Central dispute. The record in that matter is closed. For the reasons above, the Motion for Leave to File an Amicus Curiae Brief should be denied.

II. The proposed amicus curiae brief essentially asks this Court to hear a different case in its original jurisdiction.

The second argument in the proposed amicus brief is an attempt to litigate other unrelated cases in the original jurisdiction of this Court. On appeal, generally an amicus will not be allowed to present additional evidence or inject facts that were not put before the trial court. *Wiggins, supra*, at 83; *United States Fid. & Guar. Co. v. Victory Land Co.*, 410 So. 2d 359, 361–62 (La. Ct. App. 1982), *cert. den.* 412 So. 2d 1113. An amicus is without standing to argue a jurisdictional defect not raised by the parties or to file a motion to amend the record on appeal. *M.E. v. T.J.* 275 N.C. App. 528, 588–89, 852 S.E. 2d 74, 106–07 (2020), *aff'd as modified*, 380 N.C. 539, 869 S.E. 2d 624 (2022).

As discussed above, the associations introduce a different statute, the closing fee statute found at Section 37-2-307, that was not argued or related to the statutes at issue in the Cash Central case thus far. The associations also introduce facts that are irrelevant to the Cash Central case, as evidenced by the 36 pages of exhibits attached to the proposed amicus brief. The Department proffers that there are additional facts and legal arguments applicable to at least one of the dealer

examples used in the brief's exhibits but which have not been presented to this Court yet. In essence, these associations are asking this Court to hear these closing fee cases in its original jurisdiction, skipping over all lower courts, to rule on a Motion for Summary Judgment in two particular matters without the opportunity for the parties (including the Department) to engage in discovery and argue the facts and applicable law to a lower court first.

Rule 245(a) of the South Carolina Appellate Court Rules provides the "Supreme Court will not entertain matters in its original jurisdiction when the matter can be determined in a lower court in the first instance, without material prejudice to the rights of the parties." This Court "is and should be primarily concerned with appellate matters; it should not exercise original jurisdiction in matters cognizable in the circuit courts except when necessary in the public interest, or because of emergency, or for some other compelling reason." Modern Finance Co. v. Hicks, 235 S.C. 212, 215, 110 S.E.2d 859, 860 (1959); Key v. Currie, 305 S.C. 115, 116, 406 S.E.2d 356, 357 (1991) (holding that only when there is an extraordinary reason such as a question of significant public interest or an emergency will the Supreme Court exercise its original jurisdiction).

The Department is an administrative agency of the State of South Carolina as defined in S.C. Code Ann. § 1-23-505(2) (2005) of the South Carolina Administrative Procedures Act and is responsible for administering, interpreting, and enforcing the South Carolina Consumer Protection Code. See S.C. Code Ann. § 37-6-506(2) (2015). Pursuant to Title 37, "[a] person who has exhausted all administrative remedies available before the administrator and who is aggrieved by the administrator's determination is entitled to a contested case hearing before the Administrative Law Court as provided in Section 1-23-600(D) and judicial review as provided in Sections 1-23-380(B) and 1-23-610." S.C. Code Ann. § 37-6-414(A) (2015). Furthermore, no person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency without having

the right to judicial review. See S.C. Const. art. I, § 22. Alternatively, the Department can pursue refunds of excess charges collected in violation of Title 37 by filing civil actions in circuit court. S.C. Code Ann. § 37-6-113(A) (2015).

The Department has not issued an administrative order or filed a civil action regarding any of the motor vehicle dealers used as examples in the brief's exhibits. If the Department takes either action, however, the Administrative Law Court or the circuit court would be the appropriate forum for the dealers to assert their arguments.

Because the associations present additional evidence and do not satisfy the parameters for this Court to hear the case in its original jurisdiction, the Motion for Leave to File an Amicus Curiae Brief should be denied. *See Titan Am., LLC v. Darrell*, 2011 U.S. Dist. LEXIS 100340 No. 7:11-CV-52-FL, 2011 U.S. Dist. LEXIS 100340 at *15 (E.D.N.C. Sept. 2, 2011), noting “[a]micus briefs based on factual matters are disfavored” and quoting *Strasser v. Doorley*, 432 F.2d 567, 569 (1st. Cir. 1970) (“an amicus who argues facts should rarely be welcomed”).

CONCLUSION

For all of the reasons stated herein, the Motion for Leave to File an Amicus Curiae Brief should be denied.

Respectfully submitted,

July 7, 2022

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