

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

**S.C. SUPREME COURT**

Joseph M. Strickland, Master in Equity

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Appellate Case No. 2022-001160  
Case No: 2016-CP-49-6794

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Mathes Auto Sales, Inc.

Respondent

v.

Otis Morris, Jr., Pro Bowl Motors, Inc., Travelers Casualty & Surety Co., of America, Inc.; Gerald Scott Dixon, Michael Tyrone Moore, and Dixon's Automotive, LLC, Defendants, of whom, Gerald Scott Dixon, Michael Tyrone Moore, and Dixon's Automotive, LLC are the Petitioners.

Of Whom Gerald Scott Dixon and Michael Tyrone Moore are the Appellants.

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SUPPLEMENTAL APPENDIX

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## INDEX

Defendant's Memorandum Opposing Plaintiff's Motions to Conform Pleadings to the Evidence  
by Adding Parties.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

MATHES AUTO SALES, INC.,

Plaintiff, ;

vs.

OTIS MORRIS, JR., PRO BOWL

MOTORS,

INC., TRAVELERS CASUALTY &

SURETY CO. OF AMERICA, INC.,

and DIXON'S AUTOMOTIVE, LLC,

Defendants.

) IN IN THE COURT OF COMMON PLEAS

) Ci Civil Action No.: 2016-CP-40-6794

)  
) DEFENDANT'S MEMORANDUM  
) OPPOSING PLAINTIFF'S  
) MOTIONS TO  
) CONFORM PLEADINGS TO THE  
) EVIDENCE BY ADDING PARTIES

STATEMENT OF CASE

This matter came before this court for a hearing on the merits. Over two days the Plaintiff presented evidence to the Court. Following the Plaintiff resting, Plaintiff moved pursuant to Rule 15 SCRCivP to conform the pleadings to the evidence presented asking the Court to add Gerald Dixon, Jr. and Michael Moore as defendants in the action. Counsel objected.

The Court then requested the parties to submit briefs on the issue regarding the adding of Mr. Dixon and Mr. Moore as defendants pursuant to Rule 15, SCRCivP.

ISSUE

Whether it would be error for the Court to grant Plaintiff's motion to conform the pleadings by adding Mr. Dixon and Mr. Michael Moore as defendants to this action.

DISCUSSION

Section 15 of the South Carolina Rules of Civil Procedure provide the mechanism whereby a court, upon motion of a party, may allow the amendment of the pleadings to conform to the evidence following a trial on the merits. A party may request the adding of a cause of action or a defense dependent upon the evidence produced at trial. As is stated in *McMillan v. South Carolina Department of Agriculture*, 364 S.C. 60, 611 S.E.2d 323 (Ct. App. 2005), "The rule covers two situations. First, if an issue not raised by the pleadings is tried by express or implied consent of the parties the court may permit amendment of the pleadings to reflect the issue. Second, if a party objects to the introduction of evidence as not being within the pleadings the court may permit amendment of the pleadings subject to a right to grant a continuance if necessary." *Sunvillas Homeowners Ass'n, v. Square D Co.*, 301 S.C. 330, 334, 391 S.E.2d 868, 870-71 (Ct. App.1990). *McMillan* at p. 331. However, it is section (c) of the Rule which governs the amending of pleadings to add parties.

Rule 15(c), SCRCivP provides, "An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him the party to be brought in by amendment (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him. Thus, there are two requirements that must be met before the Court is to add a party.

The first is whether the party had sufficient notice so that he not would be prejudiced in maintaining his defense on the merits. Mr. Dixon and Mr. Moore were aware that an action had been brought against Dixon Automotive, LLC regarding the sale of a vehicle at the time the company was served with the Complaint in the fall of 2016. Yet at that time, and throughout the

proceedings, there was no any indication that Plaintiff would attempt to involve them in their individual capacities. Up until the time of Plaintiff's motion to amend following the closing of the Plaintiff's case both were merely treated as witnesses in the matter. Neither of them had legal counsel. Neither of them participated, nor had the opportunity to participate in the suit, nor in the final hearing on the merits of Plaintiff's case.

In 2016, the South Carolina Court of Appeals upheld the ruling of a probate court after it added a party to a matter in Probate Court following a hearing. The Court analyzed the prejudice prong of the analysis as to "Abbie" being added as a party. It found no prejudice. "The probate court's comments demonstrated it intended to allow Appointed Attorney and Abbie's GAL to fully participate at trial..... The record demonstrates Abbie, through Appointed Attorney and Abbie's GAL, fully participated in the proceedings through depositions, presented an opening statement, and participated in cross-examination of the other parties' witnesses before she was officially named a party to the petitions." *Dorn v. Cohen, et al.*, 418 S.C. 126, 791 S.E.2d 313 (Ct. App. 2016).

Mr. Dixon and Mr. Moore, although present during the trial, were never called by the Plaintiff as witnesses in his case. The only evidence presented by Plaintiff were excerpts from depositions of Mr. Moore individually and as the LLC representative, and Mr. Dixon, individually. The fact that they were without legal counsel, without the ability to participate, had never been given notice that the Plaintiff would seek an individual judgment against each of them after having presented his case flies in the face of civil due process because the extent of prejudice suffered by them in the granting of such a motion would be extreme.

And yet, not only does the Plaintiff not satisfy the first prong of the test, but he also fails regarding the second test in that Mr. Dixon and Mr. Moore never knew or should have known

that, but for a mistake concerning the identity of the proper party, the action would have been brought against either, or both of them. Plaintiff attempts to argue that Dixon and Moore were acting partners in a legal partnership, as opposed to an LLC and that they tried to hide the LLC "shield" from the public eye. Plaintiff's partnership argument is based only on the fact Mr. Moore and Mr. Dixon described their relationship as "partners". The use of this term by lay people untrained in the law is reasonable without it designating one form of business designation from another.

And there is no evidence in the record that they attempted to hide the LLC shield from the public. The Plaintiff certainly had no trouble in correctly identifying the entity involved in the transaction of the automobile for Plaintiff got it correct on his first try when he amended his Complaint to add Dixon Automotive, LLC as a defendant.

Finally, to add a party by way of conforming the pleadings to the evidence, there must be evidence. And the record has no evidence in it to justify the adding of Mr. Dixon and Mr. Moore as individual defendants regarding a cause of action for fraud under the South Carolina's Dealer's Act. The Plaintiff offered no evidence as to any involvement either Mr. Dixon or Mr. Moore, nor Dixon Automotive, LLC had in conjunction with the Defendant Otis Morris, Jr. and Pro Bowl Motors, Inc, in the sale of the vehicle in May, 2016. Actually, the only evidence in the record was that Dixon Automotive, LLC, and thus Mr. Moore and Mr. Dixon, were told of the problem with the title and the May 2016 sale in October, 2016, (Deposition of Michael Moore.) There is no evidence that their actions were "tortious" against the Plaintiff.

The only parts of the record that deals with Mr. Dixon and Mr. Moore are excerpts of their depositions. Those depositions were taken 5 months prior to this matter being heard on the merits. No new testimony was offered from either Mr. Dixon or Mr. Moore. The Plaintiff never

called them as witnesses. For 5 months the Plaintiff had the information he now unsuccessfully uses to try and have them added as parties to the matter. It is submitted that Plaintiff, by way of his motions, is trying to merely increase the number of defendants in case he receives a judgment he needs to have paid.

CONCLUSION

It is submitted that adding Mr. Dixon and Mr. Moore would cause severe prejudice to them. At no time was there any confusion as to who, or which entity, was the defendant in this matter. There is no evidence which justifies the ignoring of Dixon Automotive, LLC as a limited liability corporation under South Carolina law. For the above reasons, it is submitted it would be clear error for this Court to grant Plaintiff's motions to amend the pleadings to add Mr. Dixon and Mr. Moore as individual defendants.

Respectfully submitted,

s/ Leland B. Greeley

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March 9, 2018.

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**From:** lgreeley@lbgreeleylaw.com  
**Sent:** Friday, March 9, 2018 2:23 PM  
**To:** 'JOSEPH STRICKLAND'; 'Greg Studemeyer'; 'H. Ronald Stanley'  
**Cc:** 'athomas@lbgreeleylaw.com'  
**Subject:** Dixon Automotive, LLC Memorandum  
**Attachments:** Defendants Final Memorandum as to Rule 15.docx

Dear Judge Strickland:

Please find attached the Memorandum in Opposition to Plaintiff's motions to amend pleadings under Rule 15 SCRCivP.

I am currently preparing the Proposed Order requested and will be to you via email before 5:00 p.m. Monday, March 12, 2018.

Leland B. Greeley  
Attorney for Dixon Automotive, LLC.