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SC Court of Appeals

In The Court of Appeals

APPEAL FROM FLORENCE COUNTY  
Court of Common Pleas

Honorable Michael G. Nettles, Twelfth Judicial Circuit Court Judge

Case No. 2023-001705

Rideaway Motors, LLC, Christopher Woodbury,  
Trey Cooper Individually and/or d/b/a  
Rideaway Motors, LLC.....

Appellants

v.

Suzanne Silverman . .....

Respondent.

**RESPONDENT'S INITIAL BRIEF**

August 2, 2024

J. Charles Ormond, Jr.  
ORMOND DUNN  
Counsel for Appellant  
301 Stoneridge Drive  
Columbia, SC 29210  
(803) 933-9000

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... ii.

STATEMENT OF ISSUES ON APPEAL..... 1.

STATEMENT OF THE CASE ..... 1.

FACTS..... 2.

ARGUMENTS:

I. AN APPEAL OF THE MOTION TO DENY APPELLANTS’ MOTION TO CHANGE VENUE IS INTERLOCUTORY AND NOT IMMEDIATELY APPEALABLE. 3.

II. APPELLANT WOODBURY IS ACTING PRO SE AND DID NOT HAVE AUTHORITY TO FILE ANY MOTION ON BEHALF OF THE DEFENDANT LLC OR REPRESENT SUCH ENTITY AT THE APPELLATE LEVEL. 4.

III. THE TRIAL COURT’S DENIAL OF APPELLANT WOODBURY’S MOTION TO TRANSFER VENUE WAS CORRECT AS THE MOTION WAS FILED OVER THIRTY (30) DAYS AFTER WOODBURY WAS SERVED WITH THE SUMMONS AND COMPLAINT AND HE DID NOT APPEAR AT THE HEARING TO PROSECUTE SUCH MOTION. 5.

IV. THE TRIAL COURT’S DENIAL OF WOODBURY’S MOTION TO TRANSFER VENUE WAS SUBSTANTIVELY CORRECT PURSUANT TO THE SOUTH CAROLINA VENUE STATUTE. 5.

Conclusion..... 6.

## TABLE OF AUTHORITIES

CASES	PAGE
<i>Babb v. Summitt Teleservices, Inc.</i> , 515 S.E.2d 257 (SC 1999)	4.
<i>Breland v. Love Chevrolet Olds, Inc.</i> , 529 S.E.2d 11 (SC 2000)	3.
<i>Dove v. Gold Kist, Inc.</i> 442 S.E.2d 598, 600 (SC 1994)	6.
<i>Noce v. DDLabs, Inc. et al.</i> , 726 SE 2d. 229 (SC Ct. App. 2012)	3.

## STATUTES

§15-7-10 et seq (Supp. 2013)	6.
S.C. Code Ann. §15-7-10 et seq. (Supp 2013)	6.
S.C. Code Ann. §15-7-30 (B) (Supp. 2013)	6.

## OTHER AUTHORITIES

SCRCP Rule 12 (e).	5.
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## STATEMENT OF ISSUES ON APPEAL

- 1) DO APPELLANTS HAVE THE RIGHT TO IMMEDIATELY APPEAL AN ORDER DENYING A CHANGE OF VENUE.
- 2) DID THE TRIAL COURT ABUSE ITS DISCRETION IN FINDING THAT THE APPELLANTS/DEFENDANTS FAILED TO PROSECUTE THEIR MOTION TO CHANGE VENUE AND HAD NOT ANSWERED AND WERE IN DEFAULT FOR FAILING TO FILE AN ANSWER OR OTHERWISE PLEAD WITHIN THIRTY DAYS OF SERVICE OF THE SUMMONS AND COMPLAINT.
- 3) DID THE APPELLANT WOODBURY, AT THE CIRCUIT COURT LEVEL AND IN THE APPEAL, VIOLATE RULES OF THE PRACTICE OF LAW BY REPRESENTING THE DEFENDANT LLC WITHOUT A LICENSE TO PRACTICE LAW.
- 4) SHOULD THE TRIAL COURT, IN ITS DISCRETION, HAVE UPHOLD THE VENUE CHOSEN BY RESPONDENT (PLAINTIFF), AND DENIED THE SUBSTANCE OF APPELLANTS' MOTION AS TWO OF THE THREE DEFENDANTS RESIDED IN FLORENCE COUNTY.

## STATEMENT OF THE CASE

The Summons and Complaint, filed in April of 2023, is based on breach of contract and tort causes of action. Appellant Woodbury filed a Motion to Change Venue approximately 38 days after he was served with the Summons and Complaint. Appellant has noticed his appeal and also apparently is seeking to represent the Defendant LLC, Ride Away Motors, LLC.

The appeal<sup>1</sup> appears to be based solely on the Circuit Judge's denial of Mr. Woodbury's Motion to Transfer Venue from Florence County to Williamsburg County. Respondent/Plaintiff, concurrent with Defendants' Motion to Transfer Venue, motioned the Court for a default judgment and such was granted as to liability. Appellants have never motioned to set aside such

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<sup>1</sup>Appellants missed their filing deadline and served Respondent by mail three days after filing their initial brief. Respondents received the initial brief on July 3, 2024. Appellants have further not filed his/their designation of the record to be included in the appeal.

default and do not provide that this is an issue in this appeal. ( R. Notice of Appeal)

## FACTS

This case is based on legal theories including breach of contract and torts related to an automobile transaction. The Summons and Complaint was filed electronically with the Circuit Court in Florence County on April 4, 2023.<sup>2</sup> ( R. Complaint) Three Defendants were named in the Summons and Complaint. All three Defendants were served by the Sheriff as follows: Christopher (Chris) Woodbury on May 15, 2023; Trey Cooper on June 8, 2023 individually, and Trey Cooper as service agent for the Ride Away Motors, LLC. (“LLC”) on June 8, 2023. ( R. Sheriff Service Affidavits) Defendant, Trey Cooper, an individual defendant, never answered or provided any motion to the Court and is not a party to this appeal. ( R. Electronic Index) Defendant Woodbury, who was served with process on May 15, 2024, filed a Motion to Transfer Venue on June 23, 2023 with two exhibits attached to the Motion.<sup>3</sup> ( R. Motion to transfer venue) Respondent/Plaintiff’s counsel filed a motion for default judgment on liability on September 1, 2023. ( R. Motion for Default)

The Defendants’ Motion for Change of Venue was filed more than 30 days after Defendant Woodbury was served with the Complaint. Such motion, however, was scheduled to be heard on September 18, 2023. Defendant Woodbury did not appear for the hearing and such Motion was dismissed in a Rule 4 Order by Judge McFaddin for failure to prosecute and filed with the Court on September 22, 2023. ( Order Motion to Transfer) Such Order was mailed to all Defendants. Neither Defendants Woodbury, Cooper or the LLC motioned the Circuit Court for

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<sup>2</sup>J. Charles Ormond, Jr. is the local attorney and Noah Rosner, Esq. was admitted, Pro hac vice on August 4, 2023.

<sup>3</sup>The Motion appears to also be filed on behalf of the Defendant LLC and Trey Cooper.

relief from this Order.<sup>4</sup> The Motion for Default Judgment was mailed by Plaintiff's attorneys on September 12, 2023 and no responsive motion or reply was forthcoming. The Order and entry of Default as to Liability was filed on October 3, 2023 ( R. Order of Default) along with the Judgment of Default. Defendant Woodbury on his own behalf and attempting to act on behalf of the Defendant LLC appealed the Order denying the transfer of venue on October 31, 2023.

### **ARGUMENT:**

#### **I. AN APPEAL OF THE MOTION TO DENY APPELLANTS' MOTION TO CHANGE VENUE IS INTERLOCUTORY AND NOT IMMEDIATELY APPEALABLE.**

The sole issue on appeal, per the initial brief of Appellants, is whether or not the trial level judge abused his discretion in denying Defendants/Appellants' Motion to Transfer Venue from Florence County to Williamsburg County. After the form Order was issued by the Judge, Appellant Woodbury appealed the decision to this Court. The Order denying the transfer of venue is clearly an interlocutory order and, as it has been held in both the Court of Appeals and the Supreme Court, was and is not immediately appealable. *Breland v. Love Chevrolet Olds, Inc.*, 529 S.E.2d 11 (SC 2000); *Noce v. DDLabs, Inc. et al.*, 726 SE 2d. 229 (SC Ct. App. 2012)

Appellants' statement of issues on appeal provides that the sole issue in this appeal is the Circuit Court Judge's denial of their motion to change venue. The denial of such a motion is within the discretion of the trial level judge and, is not immediately appealable. The proper time frame for a party seeking to appeal such an order is subsequent to the final order or judgment.

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<sup>4</sup> See: Appellants' Initial Brief.

II. APPELLANT WOODBURY IS ACTING PRO SE AND DID NOT HAVE AUTHORITY TO FILE ANY MOTION ON BEHALF OF THE DEFENDANT LLC OR REPRESENT SUCH ENTITY AT THE APPELLATE LEVEL.

Appellant, Mr. Woodbury, is or was an employee of the Defendant/Appellant Ride Away Motors, LLC (“LLC”). He is a non lawyer and is effectively representing the LLC in this appeal as well as having represented it at the Circuit Court level. A non attorney may not represent a corporation or separate legal entity in circuit or appellate courts in South Carolina. *Babb v. Summitt Teleservices, Inc.*, 515 S.E.2d 257 (SC 1999)

Mr. Woodbury filed the Motion to Transfer Venue on his own behalf and, apparently, on the behalf of the LLC and Trey Cooper. The central argument for the motion was that the Defendant LLC, Ride Away Motors, has its principal place of business in Williamsburg County. The motion states that Mr. Trey Cooper is the owner (member) of the entity. An attorney did not appear for the entity and the entity was the only Defendant with a potential interest in transferring venue to Darlington. Defendant LLC should be dismissed from this Appeal as it is not represented by an attorney.

III. THE TRIAL COURT’S DENIAL OF APPELLANT WOODBURY’S MOTION TO TRANSFER VENUE WAS CORRECT AS IT WAS FILED WELL OVER THIRTY (30) DAYS AFTER WOODBURY WAS SERVED WITH THE SUMMONS AND COMPLAINT AND HE DID NOT APPEAR AT THE HEARING TO PROSECUTE SUCH MOTION.

Defendant/Appellant Chris Woodbury, was served at his residence by the Florence County Sheriff’s Department on May 15, 2023. ( R. Sheriff Service Affidavits) It is not disputed that Mr. Woodbury, on his own behalf and, apparently, on behalf of Defendant LLC and Mr. Cooper filed no answer and simply filed a Motion to Transfer Venue on June 23, 2023. Mr. Woodbury would not have the legal authority to file such motion on behalf of either the

Defendant LLC or Mr. Cooper. It is undisputed that the Motion was filed approximately thirty eight (38) days after his effective service of the Complaint.<sup>5</sup> There were no communications between Respondent/Plaintiff and any Defendant about an extension to file or any other such waiver. Defendant Woodbury, therefore, filed his Motion outside of the time period in which to either answer or otherwise plead.<sup>6</sup> Further, as the Court indicated, Mr. Woodbury did not appear at the scheduled hearing for the Motion to Transfer Venue.

It is undisputed that Mr. Cooper never made an appearance in this case on his own behalf and it is not disputed that the Defendant LLC is a separate legal entity formed in South Carolina. Even if Mr. Woodbury had filed the Motion within the thirty (30) day period and had legal authority to represent both the LLC and Mr. Cooper in the litigation, he failed to answer within the time period allowed by the South Carolina Rules of Civil Procedure after the Order denying a transfer of venue. Mr. Woodbury did not motion to reconsider or, in any other way, request that the Court grant a stay to answer the complaint which resulted in an Order of Default.

Appellant Woodbury was in default before filing the subject of this appeal; his Motion to Transfer Venue. None of the Defendants appeared at the motion hearing and no Defendant in this case answered the Complaint after the Order denying the change in venue. Defendant Cooper never appeared on his own behalf or on anyone else's behalf. Neither Mr. Woodbury or the Defendant LLC answered within fifteen (15) days of the Court's Order denying the Motion to Change Venue. SCRCF Rule 12 (e). From a technical standpoint, under the SCRCF, Defendants failed to prosecute the case and to timely file an answer or a motion which would

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<sup>5</sup>The service of Cooper and Ride Away Motors, LLC. was in early June.

<sup>6</sup>It is unclear whether a Motion to Transfer Venue would stay the requirement of an answer.

serve to stay an answer pending determination.

IV. THE TRIAL COURT'S DENIAL OF WOODBURY'S MOTION TO TRANSFER VENUE WAS SUBSTANTIVELY CORRECT PURSUANT TO THE SOUTH CAROLINA VENUE STATUTE AND CASE LAW.

The Statute controlling venue in South Carolina is S.C. Code Ann. §15-7-10 et seq (Supp. 2013). In this case, Plaintiff has brought the action against three Defendants. Two are individuals and one is a LLC formed in South Carolina; a domestic entity as defined by S.C. Code Ann. §15-7-10 et seq. Plaintiff has alleged causes of action against all three for the same occurrence and are all proper and necessary Defendants. Venue may be proper in more than one County. *Dove v. Gold Kist, Inc.* 442 S.E.2d 598, 600 (SC 1994)

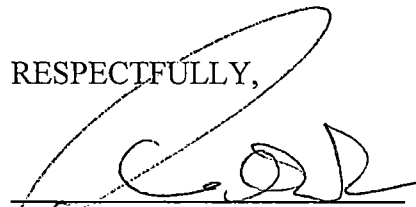
If an action has two or more defendants, the action may be tried in any county where the action properly may be maintained against any one of the defendants. S.C. Code Ann. §15-7-30 (B) (Supp. 2013)(... If there is more than one defendant, the action may be tried in any county maintained against one of the defendants pursuant to this section) In this matter, both individual Defendants reside in Florence County and were served in Florence County. Defendant Cooper, identified as the service agent for the Defendant LLC., lists his Florence County residential address as the proper service address for the LLC. The record in this matter demonstrates that had the Motion been prosecuted and timely, the Circuit Judge did not abuse its discretion in denying the Motion to Change Venue.

### CONCLUSION

Appellants cannot immediately appeal the denial of a motion to change venue and the underlying motion was filed later than the SCRCP allow. Mr. Woodbury did not answer or

otherwise plead in a timely fashion with his Motion to Change Venue or after the denial of his Motion. Mr. Woodbury purports to represent the Defendant LLC in this appeal and is not a licensed South Carolina attorney. Finally, it is undisputed that both individual Defendants reside in Florence County and venue in Florence County is a proper venue pursuant to the South Carolina Venue Statute. THEREFORE, for the reasons set forth above, the Court should affirm the Circuit Court Order.

RESPECTFULLY,



Charles Ormond, Jr.  
ORMOND DUNN  
ATTORNEY FOR RESPONDENT  
301 STONERIDGE DRIVE  
COLUMBIA, SC 29210  
803 933 9000

August 2, 2024

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Honorable George M. McFaddin, Circuit Court Judge

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Trey Cooper Individually and/or d/b/a  
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v.

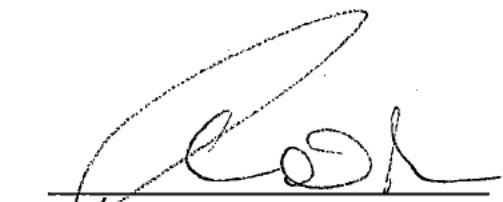
Suzanne Silverman .....

Respondents.

**PROOF OF SERVICE**

I certify that I have served a copy of the **Respondent's Initial Brief and Designation of Matter to be included in the Record on Appeal (ROA)**, at his/their address of record: Christopher Woodley, Trey Cooper address: 407 West Smith Street, Timmonsville, SC 29161, directly by depositing same in the United States Mail, postage prepaid, on the Date set forth below: .

August 2, 2024



Ormond - Dunn  
J. Charles Ormond, Jr.  
Attorney for Plaintiff/Appellant  
301 Stoneridge Drive  
Columbia, SC 29210  
(803) 933-9000

**ormond | dunn**  
Attorneys at Law

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SC Court of Appeals

301 Stoneridge Drive  
Columbia, South Carolina 29210  
(p) 803.933.9000 (f) 803.828.7404

\*J. Charles Ormond, Jr. (Chuck)  
cormond@aol.com  
\* Mediator / Prof. Geologist

August 2, 2024

**Via U. S. Mail**

The Honorable Jenny Abbott Kitchings  
Catherine Harrison, Deputy Clerk  
Clerk of the South Carolina Court of Appeals  
1015 Sumpter Street  
P. O. Box 11692  
Columbia, South Carolina 29211

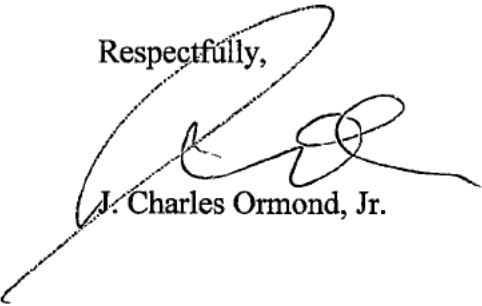
**Re: Suzanne Silverman v. Ride Away Motors. Appeal #2023-001705.  
Initial Brief and Designation of Matter:**

Dear Ms. Kitchings:

Please find the enclosed Respondent's Initial Brief and Designation of Matter to be included in the Record on Appeal of Respondent along with proof of service. We were under the assumption that an Order from the Court allowing the last extension request would be necessary prior to filing these documents.

Please write or call with any further requirements.

Respectfully,

  
J. Charles Ormond, Jr.

Enclosures / above  
cc: Christopher Woodbury / via us mail.

Ormond | dunn

Attorneys at Law

301 Stoneridge Drive

Columbia, South Carolina 29210

PITNEY BOWES

\$1.25<sup>0</sup>

US POSTAGE<sup>SM</sup>

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The Honorable Jenny Abbott Kitchings  
Cather Harrison, Deputy Clerk  
Clerk of the South Carolina Court of Appeals  
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Columbia, SC 29211