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**Oct 02 2024**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

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Appellate Case No. 2024-001558

Administrative Law Court Case No. 21-ALJ-17-0182-CC

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CarMax Auto Superstores, Inc., ..... Appellant,

v.

South Carolina Department of Revenue, ..... Respondent.

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**CONSENT MOTION TO RECOGNIZE INAPPLICABILITY OF AUTOMATIC STAY  
TO ALC'S ORDER DENYING SECOND MOTION FOR RECONSIDERATION, OR,  
ALTERNATIVELY, FOR LIMITED REMAND TO ALLOW THAT ORDER TO BE RE-  
FILED**

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Appellant CarMax Auto Superstores, Inc. (“CarMax East” or “Appellant”) with consent of Respondent South Carolina Department of Revenue (the “Department” or “Respondent”) (collectively, the “Parties”) makes this motion requesting that the Court recognize the inapplicability of the automatic stay to the Order Denying Motion for Reconsideration (the “Second Reconsideration Order”) issued by the Administrative Law Court (the “ALC”) on September 20, 2024. *See* Exhibit A, Second Reconsideration Order. In the alternative, Appellant with Respondent’s consent moves for a limited remand order permitting the ALC to re-file the Second Reconsideration Order.

Following a contested case hearing, the Honorable Ralph King Anderson, III issued a Remand Order (the “Original Order”) on July 12, 2024.<sup>1</sup> On July 22, 2024, CarMax East filed a Motion to Reconsider the Remand Order (“Motion to Reconsider”). On July 29, 2024, *ex mero motu*, the ALC rescinded the Original Order while it deliberated on the Motion to Reconsider. On August 15, 2024, the ALC issued *two* new orders: (1) an Amended Final Order (the “Amended Order”); and (2) an Order Granting Motion for Reconsideration (the “Reconsideration Order”). In these two new orders, the ALC substantially stood by its original result in ruling adversely to CarMax East.

However, CarMax East felt compelled to move to reconsider the two new orders to preserve all issues for appeal and thus filed a motion on August 26, 2024. *See* Exhibit B, Mot. to Reconsider Am. Final Order and Reconsideration Order (the “Second Reconsideration Motion”). The Parties dispute the appropriateness of CarMax’s Second Reconsideration Motion.

As a result of these circumstances and to avoid any claim that its appeal was untimely, CarMax East filed and served the Notice of Appeal on September 13, 2024.<sup>2</sup> On September 20, 2024, CarMax East received the Second Reconsideration Order of the ALC.

Because the Notice of Appeal was filed before the issuance of the ALC’s Second Reconsideration Order, the latter could be viewed as having been issued by the ALC while the automatic stay (created by the appeal notice) was in place. However, under these circumstances, the Court should determine that there is no need to consider that the Notice of Appeal created an

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<sup>1</sup> The orders and motions referenced herein are voluminous. CarMax East is happy to provide copies of any of these documents should the Court request them. For the sake of brevity, only the most relevant are attached hereto.

<sup>2</sup> Pursuant to Rule 203(b)(6), SCACR, the Notice of Appeal was timely filed within 30 days of receipt of the orders dated August 15, 2024.

automatic stay that precluded the ALC from ruling on CarMax East's Second Reconsideration Motion. Accordingly, Appellant with Respondent's consent moves that this Court issue an order recognizing that the ALC was empowered to enter its Second Reconsideration Order.

In the alternative, if the Court believes that the automatic stay must be recognized here such that the ALC was not empowered to enter the Second Reconsideration Order, then Appellant with Respondent's consent moves that this Court issue an order granting a limited remand to the ALC for the sole purpose of the ALC re-filing its same Second Reconsideration Order (which is entitled Order Denying Motion for Reconsideration).

Respectfully submitted,

By: s/ Bryson M. Geer

C. Mitchell Brown (SC Bar No. 12872)  
Email: mitch.brown@nelsonmullins.com  
John C. von Lehe, Jr. (SC Bar No. 5719)  
E-Mail: john.vonlehe@nelsonmullins.com  
Bryson M. Geer (SC Bar No. 13606)  
E-Mail: bryson.geer@nelsonmullins.com  
Robert T. Streisel (SC Bar No. 101912)  
E-Mail: bobby.streisel@nelsonmullins.com  
Nelson Mullins Riley Scarborough, LLP  
Post Office Box 1806 (29402-1806)  
Charleston, SC 29401-2239  
(843) 853-5200

Counsel for Appellant CarMax Auto Superstores, Inc.

With consent,

By: s/ Marcus D. Antley, III

Marcus D. Antley, III (SC Bar No. 102176)  
Email: marcus.antley@dor.sc.gov  
Jason P. Luther (SC Bar No. 78021)  
Email: jason.luther@dor.sc.gov  
South Carolina Department of Revenue  
300A Outlet Pointe Blvd.

Columbia, SC 29210  
(803) 898-5623

Counsel for Respondent South Carolina Department of  
Revenue

October 2, 2024

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

Appellate Case No. 2024-001558

CarMax Auto Superstores, Inc., ..... Appellant,

v.

South Carolina Department of Revenue, ..... Respondent.

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Appellant, hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified, pursuant to the Supreme Court Order 2022-05-06-04:

Pleadings: **CONSENT MOTION TO RECOGNIZE INAPPLICABILITY OF AUTOMATIC STAY TO ALC'S ORDER DENYING SECOND MOTION FOR RECONSIDERATION, OR, ALTERNATIVELY, FOR LIMITED REMAND TO ALLOW THAT ORDER TO BE RE-FILED**

Counsel Served: Via E-Mail  
Marcus D. Antley, Esq.  
Jason P. Luther, Esq.  
South Carolina Department of Revenue  
300A Outlet Pointe Blvd.  
Columbia, SC 29210  
marcus.antley@dor.sc.gov  
jason.luther@dor.sc.gov  
Counsel for Respondent

  
\_\_\_\_\_  
Donna Mills  
Administrative Assistant

October 2, 2024

## Donna Mills

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**From:** Donna Mills  
**Sent:** Wednesday, October 2, 2024 1:46 PM  
**To:** 'marcus.antley@dor.sc.gov'; Jason.Luther@dor.sc.gov  
**Cc:** Mitch Brown; John Von Lehe; Bryson Geer; Bobby Streisel  
**Subject:** CarMax Auto Superstores, Inc. v. South Carolina Department of Revenue; Appellate Case No. 2024-001558  
**Attachments:** 2024.10.02 CarMax - F-L to SCCA encl Consent Mtn re Automatic Stay or for Limited Remand.pdf; 2024.10.02 CarMax - Consent Mtn re Automatic Stay or for Limited Remand.pdf

Good afternoon,

Attached for service upon you in the above matter is a Consent Motion to Recognize Inapplicability of Automatic Stay to ALC's Order on CarMax Auto Superstores, Inc.'s Second Reconsideration Motion or, Alternatively, for Limited Remand to Allow that Order to be Re-Filed, Proof of Service, and correspondence with the Court. This is the package that will be filed with the Court.

Thank you,



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DONNA MILLS **ADMINISTRATIVE ASSISTANT**  
donna.mills@nelsonmullins.com

LIBERTY CENTER | SUITE 600  
151 MEETING STREET | CHARLESTON, SC 29401  
T 843.534.4217 F 843.722.8700  
NELSONMULLINS.COM

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Bryson M. Geer  
(Admitted in NC & SC)  
T 843.534.4306  
bryson.geer@nelsonmullins.com

NELSON MULLINS RILEY & SCARBOROUGH LLP  
ATTORNEYS AND COUNSELORS AT LAW

151 Meeting Street | Sixth Floor  
Charleston, SC 29401-2239  
T 843.853.5200 F 843.722.8700  
nelsonmullins.com

October 2, 2024

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Oct 02 2024

SC Court of Appeals

**Via Electronic Filing by Email and Hand Delivery**

The Honorable Jenny Abbott Kitchings  
SC Court of Appeals  
Clerk of Court  
1220 Senate Street  
Columbia, South Carolina 29201

RE: CarMax Auto Superstores Inc. v. S.C. Department of Revenue  
Civil Action No. 21-ALJ-17-0182-CC  
Our File No. 061342/09000

Dear Ms. Kitchings:

Enclosed please find a Consent Motion to Recognize Inapplicability of Automatic Stay to ALC's Order on CarMax Auto Superstores, Inc.'s Second Reconsideration Motion or, Alternatively, for Limited Remand to Allow that Order to be Re-Filed concerning the above-referenced matter. Counsel for Respondent South Carolina Department of Revenue consents to this request. Enclosed is a check in the amount of \$50.00 as the required filing fee for this request.

Thank you for your assistance.

With kind regards,

Bryson M. Geer

BMG:dfm  
Enclosures

cc: Marcus D. Antley, III, Esq.  
Jason P. Luther, Esq. (*Both via Email*)

NELSON MULLINS RILEY & SCARBOROUGH LLP  
ATTORNEYS AND COUNSELORS AT LAW  
PO BOX 11070  
COLUMBIA, SC 29211-1070

SYNOVUS BANK  
COLUMBIA, SC

Date: September 24, 2024

Pay: Fifty and 00/100\*\*\*\*\* \$\*\*\*50.00\*\*\*

PAY TO THE ORDER OF: South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

NELSON MULLINS RILEY & SCARBOROUGH LLP  
ORIGINAL SIGNATURE REQUIRED IF OVER \$500  
VOID AFTER 180 DAYS



Memo:

Payee: South Carolina Court of Appeals

Check #:

Vendor ID:

Vendor Assigned Customer #:

Check Date:

Sep 24/24

Inv #	Inv Date	G/L Acct	Client	Matter	Narrative	Amount	Inv Total
	Sep 24/24					\$50.00	\$50.00
					Vendor: Clerk, SC Court of Appeals Invoice#: Date: 9/24/2024 - CRINV - - 09/24/24 - Motion Filing Fee - Joint Mtn re Automatic Stay or Limited Remand		
					Invoice Totals:	\$50.00	\$50.00