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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM Horry COUNTY
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

Case No. 2022-000162

Tammy Batten West, Appellant

v.

American Honda Motor Co., Inc., Respondent

**OPPOSITION TO APPELLANT’S MOTION TO AMEND APPELLANTS’ REPLY
BRIEF IN LIGHT OF CHANGE TO RESPONDENT’S BRIEF**

Respondent American Honda Motor Co., Inc. (AHM) files this Opposition to Appellant Tammy West’s October 28, 2024, Motion to Amend Appellants’ Reply Brief in Light of Change to Respondent’s Brief.

In short, Appellant asks this Court for leave to amend, over twenty-two months after she submitted it, her Final Reply Brief. She asks the Court for leave to remove certain references to a letter that was submitted by both Plaintiff and AHM to the trial court and is included in its entirety five times in the Record on Appeal.

Appellant presents no argument why AHM’s Final Brief violates the Court’s rules or why amendment of AHM’s Final Brief is appropriate. Appellant cannot present any evidence how she was prejudiced by the references cited in AHM’s Final Brief. Appellant presents no argument why she did not raise this issue until October 2024 (twenty-two months after Final Briefs were submitted to the Court). Accordingly, Appellant’s Motion should be denied.

Discussion

Background

This appeal arises following an eve of trial resolution of Appellant’s Enforcement of Express Motor Vehicle Warranties Act (S.C. Code Ann. § 56-28-10, *et seq.*) cause of action on

May 17, 2021, before the Honorable Paul Burch, and Appellant's subsequent request for attorney's fees and costs consistent with S.C. Code Ann. § 56-28-50(D).

Prior to May 17, 2021, AHM and Appellant engaged in a protracted series of communications regarding resolution of the case. One of these communications was written by Appellant's counsel C. Steven Moskos on August 25, 2020, to counsel for AHM. ("Letter"). The first paragraph of the Letter reads: "First, while American Honda may have offered a full repurchase amount to Ms. West for the repurchase of her car, it has not agreed to compensate her fully for her attorney's fees as required under the Lemon Law statute."

The issue of attorney's fees was thoroughly briefed by both Appellant and AHM at the trial court. Appellant filed a Motion for Attorneys' Fees, which included a memorandum of law, affidavit by counsel, affidavit by Appellant, and affidavits by other counsel (R. pp. 696-941) on May 21, 2021.¹ Her submission to the trial court included the Letter in its entirety. (R. pp. 887-888).

AHM filed its opposition and accompanying evidence in support on May 28, 2021. (R. pp. 970-1127). The Opposition refers to the Letter at page 2, page 6, and page 9. (R. pp. 971, 975, 978) AHM's trial court submission included the Letter in its entirety. (R. pp. 1101-1102).

Appellant submitted a reply brief on June 21, 2021. (R. pp. 1128-1153).

The trial court granted in part and denied in part Appellant's Motion on June 28, 2021. (R. pp. 31-40).

Appellant moved for reconsideration of the trial court's decision on July 8, 2021. (R. pp. 1154-1161). AHM opposed the motion on July 20, 2021. (R. pp. 1162-1167). The trial court denied Appellant's motion for reconsideration on January 18, 2022. (R. p. 44). This appeal followed.

Appellate Proceedings

Appellant filed her Initial Brief on June 8, 2022. That Initial Brief contains references to the Letter on page 24, page 38, page 39, and page 40. Appellant included a block quote from the letter on page 39 and argued that the trial court erred if it relied on the Letter for its order on page 40. *Id.*

AHM filed its Initial Brief on August 8, 2022. AHM's Initial Brief, in the Statement of the Case, includes reference to "Plaintiff's counsel even acknowledged in August 2020 that Honda made settlement offers which would fully repurchase the Subject Vehicle, but that he was continuing this litigation solely in the attempt to obtain more attorney's fees. [*Id.* at ¶ 21]."

¹ Appellant submitted an amended brief on May 23, 2021. (R. pp. 942-969).

(Respondent’s Initial Brief at p. 3). The reference to the record is to an affidavit submitted by AHM’s counsel in its opposition, where the Letter is directly identified.²

Appellant filed her Initial Reply Brief on September 19, 2022. Appellant identifies the Letter in her Summary of Argument (Initial Reply Brief p. 1, p. 3) and in her Reply to Respondent’s Statement of the Case at pages 5 and 6 of the Initial Reply Brief. She references the Letter at page 16 and footnote number 9 of the Initial Reply Brief. She references the Letter in her Conclusions on page 22 of the Initial Reply Brief.

The Record on Appeal was submitted on November 18, 2022. The Letter is included it is in entirety in the Record on Appeal at pages 120-121, 508-509, 683-684, 887-888, and 1101-1102. It is also identified in the Affidavit of C. Steven Moskos in Support of an Award of Attorney’s Fees in the Record on Appeal at page 771.

Consistent with Rule 211 SCACR, AHM prepared and filed its Final Brief on December 8, 2022. AHM’s Final Brief was identical to its Initial Brief, with the addition of references to the record, consistent with Rule 211(b). In its Final Brief, AHM appropriately cited to both the page from counsel’s affidavit and to the Letter. AHM did not change or revise any of its statement of the issues on appeal, statement of the case, standard of review, or argument from its Initial to its Final Brief.

Appellant’s October 27, 2024 Motion

Over twenty-two months later, and the week after the Court requested bound copies of the Final Briefs, Appellant filed this Motion on Sunday, October 27, 2024. Appellant’s primary request appears to be that she be permitted to revise her Final Reply Brief to remove references that the Letter was submitted to the trial court.

Appellant did not request that her Final Brief be amended.

Appellant’s Motion does not identify any court rules or case law that supports her Motion. Appellant does not identify, nor could she identify, any prejudice she could have received from AHM’s Final Brief. To the contrary, the record is replete with references to the Letter and how it was submitted to the trial court by both Appellant and AHM. And as discussed above, she identified the Letter in her Initial Brief to the Court.

Conclusion

Respondent respectfully requests that this Court deny Appellant’s Motion.

Respectfully submitted,

Bowman and Brooke LLP

² Paragraph 21 of the Opposition (R. p. 0994) states: “Plaintiff’s counsel acknowledged on August 25, 2020, that AHM offered a full repurchase amount to Plaintiff. *See* Letter from Steven Moskos, August 25, 2020, attached as Exhibit N. Exhibit N is a copy of the Letter. (R. p. 1101-1102).

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Attorney for Respondent
American Honda Motor Co., Inc.

November 6, 2024

Columbia, South Carolina

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PROOF OF SERVICE

I certify that a copy of the Respondent’s Opposition to Appellant’s Motion to Amend Appellants’ Reply Brief in Light of Change to Respondent’s Brief, was served today on Respondent by serving Appellant’s Counsel of Record, Brooks R. Fudenberg, via email addressed to:

Brooks R. Fudenberg@Fudenberglaw.com.

A copy of the email serving Appellant is attached.

Bowman and Brooke LLP

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Attorney for Respondent
American Honda Motor Co., Inc.

November 6, 2024

From: [Sue Watson](#)
To: brooks.r.fudenberg@fudenberglaw.com; Brooks.R.Fudenberg@FudenbergLaw.com; steve@moskoslawfirm.com
Cc: [Patrick Cleary](#)
Subject: West VS American Honda Motor Co. Inc, 2022-000162 - Respondent's Opposition to Appellant's October 27, 2024 Motion
Attachments: [West; 2024-11-06; Opposition to Appellant's Motion to Amend.pdf](#)
[West; 2024-11-06; Proof of Service for Respondent's Brief.pdf](#)

Dear Mr. Fudenberg:

Attached is Respondent American Honda Motor Co, Inc.'s Opposition to Appellant's October 27, 2024 Motion for Leave to Amend and Proof of Service of the same.

Sincerely,
Sue Watson

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Legal Administrative Assistant
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