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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Jocelyn Newman, Circuit Court Judge

Opinion No. 2024-UP-378 (S.C. Ct. App. filed November 6, 2024)

Stivers Brothers Automotive, Inc., Petitioner,

v.

W. Warner Peacock and Peacock Automotive, LLC, Respondents.

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for Petitioner hereby certifies that a Petition for Rehearing was made and finally ruled on by the South Carolina Court of Appeals on December 6, 2024.

QUESTIONS PRESENTED

I. Did the Court of Appeals err by applying the plain meaning rule to a single paragraph of an entire chapter to exclude dealers from liability under the Dealers Act for unfair or deceptive acts or practices resulting in injury to another dealer's business or property?

II. Did the Court of Appeals err in interpreting the Dealers Act so as to subject motor vehicle dealers to heightened scrutiny without any rational basis and thus depriving Petitioner of equal protection under the law?

III. Did the Court of Appeals misinterpret this Court's holding in Mid-State Auto Auction of Lexington, Inc. v. Altman which authorized recovery by one dealer against another under the Dealers Act?

IV. Did the Court of Appeals improperly deem "abandoned" the Petitioner's argument that matters outside the pleadings had been considered by the Circuit Court in granting judgment on the pleadings?

V. Did the Court of Appeals err in affirming the denial of Petitioner's motion to amend and supplement the complaint on the grounds of "futility" without conducting a Skydive Myrtle Beach, Inc. v. Horry County analysis?

STATEMENT OF THE CASE

This case arises out of the sabotage of two asset purchase agreements ("APAs") between Petitioner Stivers Brothers Automotive, Inc. as seller and Respondent Peacock Automotive, LLC ("Peacock") as buyer for Petitioner's Chevrolet and Hyundai/Genesis ("Hyundai") dealerships in Columbia. Respondent Peacock, a Florida limited liability company, was then operating automobile dealerships in Jasper County, Lexington County, and Richland County.

Petitioner and Respondent Peacock executed the APAs on January 7, 2020, with the closing set to take place within one hundred and five (105) days. On March 30, 2020, Petitioner received a letter dated March 27, 2020, purporting to terminate the APAs due to the COVID-19 pandemic and the government shutdown orders issued in response thereto. (R. p. 156).

This case was initiated by the filing of a summons and complaint on April 13, 2020, after the Respondents rejected Petitioner's demand for adequate assurance of performance. Therein, Petitioner sought a declaratory judgment to the effect that the APAs remained valid and enforceable, notwithstanding Respondents' purported termination. Petitioner also asserted causes of action for breach of contract, tortious interference with contractual relations, veil piercing, and violation of the Dealers Act.

Despite the ongoing litigation, the parties discussed Peacock's purported interest in salvaging the Hyundai APA. On June 4, 2020, Respondents submitted a letter of intent ("LOI") claiming to have a renewed interest in acquiring Petitioner's Hyundai assets. (R. pp. 159-162). Petitioner rejected the LOI, but subsequently presented Respondents with the "first post-breach APA" in June of 2020 setting forth the terms upon which it would be willing to sell the Hyundai assets. (R. p. 224). Respondents declined to execute the "first post-breach APA" on or about June 27, 2020. (R. p. 225).

An amended complaint was filed on July 2, 2020. Therein, Petitioner sought a declaratory judgment and asserted causes of action for breach of contract, breach of contract accompanied by a fraudulent act, tortious interference with contractual relations, veil piercing, and violation of the Dealers Act. Petitioner asserted that each of the grounds set forth in the letter dated March 27, 2020, had been pretextual and an effort to avoid closing on the APAs when Petitioner's assets appeared less desirable at the onset of the COVID-19 pandemic. Petitioner further contended that Respondents deliberately sabotaged the APAs by failing to respond to a proposed assignment and amendment of the commercial lease for the business premises, and by failing to promptly submit complete applications for approval to the manufacturers.

On July 3, 2020, Respondents initiated a second round of post-breach negotiations to acquire Petitioner's Hyundai assets. (R. p. 225). On July 14, 2020, Petitioner presented the "second post-breach APA" on a take-it-or-leave-it basis. (R. p. 226). When Respondents declined to execute the "second post-breach APA" on July 15, 2020, Petitioner made it clear that there would be no further negotiations, and that it had shifted its focus to litigation. (R. p. 226).

On July 23, 2020, Respondents attempted to initiate a third round of negotiations by submitting a "third post-breach APA" to Petitioner for consideration. Petitioner reiterated that it was no longer interested in doing business with Respondents.

On or about October 26, 2020, despite no further negotiation taking place, Respondents submitted a "fourth post-breach APA" representing their purported interest in purchasing Petitioner's assets. Petitioner reiterated once more that it was not interested in doing business with Respondents.

On December 29, 2020, Respondent Warner Peacock and his wife sold their home in Beaufort County, South Carolina and moved to Florida, where the other shareholders of Peacock reside.

On February 5, 2021, Petitioner moved to file a second amended and supplemental complaint. The proposed second amended and supplemental complaint contained approximately sixty (60) additional factual allegations based on Respondents' discovery responses served on December 4, 2020, as well as occurrences that had transpired since the filing of the amended complaint. (R. pp. 132-162). The motion was nevertheless denied at the conclusion of arguments at the hearing on March 23, 2021, and subsequently confirmed in a Form 4 Order. (R. pp. 4-6).

The factual allegations in question related to Respondents' deception with respect to acquiring confidential, proprietary information belonging to Petitioner under the guise of performing due diligence, particularly after this action had been filed and the post-breach negotiations were ongoing. Petitioner recently was able to confirm what it had long suspected when Respondents finally acquiesced to multiple court orders compelling the production of all communications with respect to the sale of Respondent Peacock's South Carolina assets.

Petitioner discovered that Respondents were working with Stephens, Inc. ("Stephens") by no later than May 2, 2020, in what was dubbed "Project Palmetto," to offload all of Respondent Peacock's South Carolina assets. Respondents and Stephens courted several entities, including Redwood Capital Investments in early May 2020 and Elysium, LLC in early June 2020, before ultimately selling all of the South Carolina assets to AutoNation.

The entirety of Respondents' post-breach negotiations, from the June 4, 2020, LOI to the first and second round of post-breach negotiations, as well as the unsolicited APAs submitted on July 23, 2020, and October 26, 2020, were acts of bad faith. Respondents feigned interest in

Petitioner's Hyundai assets and submitted offers it knew Petitioner would never accept in order to fabricate the defense that Petitioner had failed to mitigate its damages. (R. p. 95). In fact, Respondents' memorandum in support of its motion for summary judgment, filed March 17, 2021, asserted: "it is undisputed that [Respondents] offered to enter into a new APA on multiple occasions and [Petitioner] refused to accept." Petitioner seeks this Court's review on whether this scheme, perpetrated by one dealer upon another, resulting in injury to its business or property, constitutes unfair or deceptive acts or practices declared unlawful by the Dealers Act.

ARGUMENT

I. THE COURT OF APPEALS ERRED IN AFFIRMING THE JUDGMENT ON THE PLEADINGS WITH RESPECT TO PETITIONER'S CLAIM UNDER THE DEALERS ACT

A. THE COURT OF APPEALS ERRED BY APPLYING THE PLAIN MEANING RULE TO A SINGLE PARAGRAPH OF AN ENTIRE CHAPTER TO EXCLUDE DEALERS FROM LIABILITY FOR UNFAIR AND DECEPTIVE ACTS RESULTING IN INJURY TO ANOTHER DEALER'S BUSINESS OR PROPERTY

The Circuit Court held and the Court of Appeals affirmed that the Dealers Act does not apply to disputes between two motor vehicle dealers because APAs are not contemplated under S.C. Code § 56-15-80. (R. pp. 13-21). This is a novel issue of law.

Rather than construing Title 56, Chapter 15 comprehensively, the Court of Appeals concluded that the rules of statutory interpretation could be disregarded because Section 56-15-80 was "clear and unambiguous." (Op. p. 4). *See* Odom v. Town of McBee Election Comm'n, 427 S.C. 305, 310, 831 S.E.2d 429, 432 (2019). Section 56-15-80 states:

> "The provisions of this chapter shall apply to all written or oral agreements between a manufacturer, wholesaler or distributor with a motor vehicle dealer including, but not limited to, the franchise offering, the franchise agreement, sales of goods, services or advertising, leases or mortgages of real or personal property, promises to pay, security interests, pledges, insurance contracts, advertising contracts, construction or installation contracts, servicing contracts, and all other such

> agreements in which the manufacturer, wholesaler or distributor has any direct or indirect interest."

The Court of Appeals affirmed the Circuit Court's holding that because the language of Section 56-15-80 does not include APAs between two motor vehicle dealers, the other provisions of Title 56, Chapter 15 do not apply to this dispute.

The Court of Appeals' review of Section 56-15-80 under a microscope plainly conflicts with the established rules of statutory interpretation. In Fairfield Waverly, LLC v. Dorchester County Assessor, 432 S.C. 287, 292, 852 S.E.2d 739, 741 (Ct. App. 2020), the Court of Appeals previously stated:

> "We do not look at statutes in isolation. Instead, we consider how the statutes operate with each other when striving to arrive at any one statute's meaning."

The Court of Appeals defied its own precedent. Petitioner's second amended and supplemental complaint never once mentions Section 56-15-80, but rather S.C. Code Ann. § 56-15-30 declaring unfair or deceptive acts or practices to be unlawful, and S.C. Code Ann. § 56-15-40 deeming "any action which is arbitrary, in bad faith, or unconscionable and which causes damage to any of the parties or to the public" to be unfair or deceptive.

"In construing statutory language, the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect." Duke Energy Corp. v. S.C. Dep't of Revenue, 415 S.C. 351, 355, 782 S.E.2d 590, 592 (2016). "Statutory provisions should be given reasonable and practical construction consistent with the purpose and policy of the *entire* act." [*Emphasis Added*]. Stephens v. Avins Const. Co., 324 S.C. 334, 340, 478 S.E.2d 74, 77 (Ct. App. 1996). In fact, the Court of Appeals' opinion cited a previous case in which it specifically interpreted "the Dealers Act as a whole and construed

multiple sections to give each one effect." Ritter & Assocs., Inc. v. Buchanan Volkswagen, Inc., 405 S.C. 643, 653-54, 748 S.E.2d 801, 806 (Ct. App. 2013).

As far as Petitioner is aware, it has never been incumbent upon a claimant to establish that it is privy to an agreement included in Section 56-15-80 in order to seek relief arising from a motor vehicle dealer's unfair or deceptive conduct in violation of S.C. Code Ann. § 56-15-40(1). If the legislature had intended that Section 56-15-80 function as the gatekeeper of all Dealers Act claims, then surely it would have used language to that effect. *See* Ventures S.C., LLC v. S.C. Dep't of Revenue, 378 S.C. 5, 8-9, 661 S.E.2d 339, 341 (2008) ("The statute's language is considered the best evidence of legislative intent"). The legislature did not.

Presumably, based on the Court of Appeals' opinion, consumers would never be entitled to relief under the Dealers Act against a motor vehicle dealer. Nothing within the plain language of Section 56-15-80 indicates that a transaction between a consumer and a motor vehicle dealer would qualify. The implication, then, based on the Court of Appeals' interpretation of Section 56-15-80, is that precedential Dealers Act cases such as Jackson v. Speed, 326 S.C. 289, 486 S.E.2d 750 (1997), Taylor v. Nix, 307 S.C. 551, 416 S.E.2d 619 (1992), and even Freeman v. J.L.H. Investments, LP, 414 S.C. 62, 778 S.E.2d 902 (2015) should all be vacated because the parties were not privy to an agreement between a dealer and a manufacturer contemplated by Section 56-15-80. Such a result would be absurd.

B. THE COURT OF APPEALS' HOLDING VIOLATES THE PETITIONER'S RIGHT TO EQUAL PROTECTION UNDER THE LAW AS A "PERSON" UNDER THE DEALERS ACT

The Court of Appeals dismissed the notion that Petitioner, a motor vehicle dealer, is a "person" within the meaning of Section 56-15-10(n). The definition of "person" is expansive, including "a natural person, corporation, partnership, trust, or other entity." Id.

Clearly, Petitioner, a motor vehicle dealer and South Carolina corporation, is a "person" for purposes of Section 56-15-10(n). This has major implications elsewhere in Title 56, Chapter 15.

Section 56-15-110(1), titled "Suits for Damages," provides that any "person" who shall be injured in his business or property "by reason of anything forbidden in this chapter" may file an action based on the Dealers Act. It is hard to imagine a better example of injury to business or property than the sabotage of two APAs in the midst of a pandemic.

Petitioner, unquestionably a "person" as defined by Section 56-15-10(n), which is subject to the Chapter pursuant to Section 56-15-20, may pursue a cause of action under Section 56-15-110 based on conduct forbidden in Section 56-15-30 and -40.

The Court of Appeals ruled, despite the language of Section 56-15-110(1), a motor vehicle dealer is not a "person" and may not bring a cause of action under the Dealers Act unless they satisfy an additional hurdle; that is, being privy to an agreement governed by Section 56-15-80. That is a violation of equal protection.

The Court of Appeals' interpretation of the Dealers Act fails to satisfy the rational basis test. *See* Denene, Inc. v. City of Charleston, 359 S.C. 85, 91, 596 S.E.2d 917, 920 (2004). First, the classification of dealers as having fewer rights than any other "person" under the Act, including consumers, manufacturers, wholesalers, and distributors is arbitrary. This classification bears no relation whatsoever to the legislative purpose sought to be affected, particularly given that the Dealers Act contains statutes which are plainly intended to be remedial towards dealers, i.e. Section 56-15-46 and, to an extent, Section 56-15-80. This interpretation of the Dealers Act is clearly punitive in nature towards dealers.

The Court of Appeals' interpretation of the Dealers Act assigns a high level of scrutiny to one particular class of "persons": dealers. Dealers are the first class of "persons" identified thus far which must prove they are in privity of a type of contract encompassed by Section 56-15-80 in order to bring a claim under any provision of the Act. The Petitioner may be the first dealer saddled with this burden, but this precedent will inevitably harm other dealers.

This classification rests upon no rational basis at all. It was the result of the Court of Appeals erroneously deciding that all of the other rules of statutory interpretation could be ignored. Since there is established case law standing for the proposition that statutes—notably, the Dealers Act—should be read together and not in isolation, this classification is not rationally based.

C. THE COURT OF APPEALS MISINTERPRETED THIS COURT'S OPINION IN MID-STATE AUTO AUCTION OF LEXINGTON, INC. v. ALTMAN WHICH AUTHORIZED RECOVERY BY ONE DEALER AGAINST ANOTHER UNDER THE DEALERS ACT

In Petitioner's final brief, it cited the following language from the Connecticut Indemnity Company v. Burdette Chrysler Dodge Corporation, 317 S.C. 406, 453 S.E.2d 902 (Ct. App. 1994) opinion:

> "Had the legislature intended to preclude a motor vehicle dealer from being considered an 'owner of a motor vehicle," the legislature could have used a less inclusive term to define those who could recover under a motor vehicle dealer bond." 317 S.C. at 408, 453 S.E.2d at 904.

Petitioner cited Burdette as an example of a case where a dealer had recovered against another dealer under the Dealers Act. The Court of Appeals' Opinion in this case is in conflict with a prior decision of this Court.

The Court of Appeals erroneously held that the Burdette decision had been overruled in its entirety by Mid-State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 476 S.E.2d 690 (1996). The only part of Burdette that was overruled was the statement that anyone could recover under a dealer's surety bond. To be sure, under Mid-State, a dealer which is an owner of a vehicle contemplated by S.C. Code Ann. § 56-15-320(B)(7) is entitled to recover loss or damage against another dealer and its bond.

Footnote 4 of the Altman decision makes clear that this Court overruled Burdette only "to the extent that it recites the latter part of § 56-15-320 allows recovery by anyone, not just motor vehicle owners." This Court did *not* overrule the conclusion in Burdette that a dealer could be a "motor vehicle owner" under Section 56-15-320, and therefore recover under the Dealers Act. [*Emphasis added*].

D. THE COURT OF APPEALS ERRED IN CONCLUDING THAT PETITIONER ABANDONED THE ARGUMENT THAT MATTERS OUTSIDE THE PLEADINGS WERE IMPROPERLY CONSIDERED BY THE CIRCUIT COURT IN GRANTING JUDGMENT ON THE PLEADINGS

The Court of Appeals concluded that Petitioner argued "in summary fashion without any citation to authority" that the Circuit Court improperly considered matters outside the pleadings during the hearing on Respondent's motion for judgment on the pleadings. The Court of Appeals thus held that Petitioner abandoned the issue on appeal.

In Petitioner's Final Brief, it cited Rule 12(c), SCRCP. The South Carolina Rules of Civil Procedure are an authority. Petitioner further cited Falk v. Sadler, 341 S.C. 281, 286, 533 S.E.2d 350, 353 (Ct. App. 2000), and explicitly included the following statement from Falk: "On review of the motion, the court may not consider matters outside the pleadings." Petitioner further cited Russell v. City of Columbia, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991); Pope v. Wilson, 427

S.C. 377, 831 S.E.2d 442 (2019); and Hambrick v. GMAC Mortg. Corp., 370 S.C. 118, 634 S.E.2d 5 (Ct. App. 2006). Case law is also a form of authority. Thus, authority was cited.

The Court of Appeals apparently took exception to the fact that Petitioner's authority appeared in the Standard of Review section of the final brief. The Opinion cited First Sav. Bank v. McLean, 314 S.C. 361, 444 S.E.2d 512 (1994) and R & G Constr., Inc. v. Lowcountry Reg'l Transp. Auth., 343 S.C. 424, 540 S.E.2d 112 (Ct. App. 2000) for support. However, neither McLean nor R & G Constr., Inc. stand for the proposition that the supporting authority must be included in any particular section or page of the brief.

The Court of Appeals also cited case law to support the finding that Petitioner made merely a "conclusory" argument. *See* R & G Constr., Inc. v. Lowcountry Reg'l Transp. Auth., *supra*. "Conclusory" is defined as "expressing a factual inference without stating the underlying facts on which the inference is based." Black's Law Dictionary (12th ed. 2024), conclusory. As discussed below, Petitioner did state the underlying facts upon which the inference was based.

The R&G Constr., Inc. opinion itself cites Solomon v. City Realty Co., Inc., 262 S.C. 198, 203 S.E.2d 435 (1974), wherein this Court discussed abandonment on an issue in the context of a "bald conclusion" in a brief. Petitioner did not set forth merely a bald conclusion, however.

Petitioner cited various direct quotes from the hearing transcript in support of its argument. Petitioner quoted the Circuit Court as stating that although it had not responded to the emails of counsel, it had "read each of them, each and every *condescending* word," and found them to be "*illogical*" and "*disingenuous*" (R. pp. 283-295). [*Emphasis added*]. Petitioner cited an excerpt where counsel was chastised for allegedly not "think[ing] it was possible for the [Circuit Court] to be ready for motion hearings or possibly adequately to do [her] job." Thus, underlying facts were cited.

It was clear that undue prejudice had played a role in the decision, when Rule 12(c), SCRCP is clear that the only factor which ought to be considered is the content of the pleadings themselves. The Court of Appeals held that Petitioner made its argument in summary fashion but plainly overlooked citations to authority and the underlying facts upon which the argument was based. Petitioner did not abandon the argument on appeal.

II. THE COURT OF APPEALS ERRED IN AFFIRMING DENIAL OF PETITIONER'S MOTION TO AMEND AND SUPPLEMENT COMPLAINT

A. THE COURT OF APPEALS ERRONEOUSLY AFFIRMED THE CIRCUIT COURT'S CONCLUSION THAT THE PROPOSED AMENDMENT WAS "FUTILE WITHOUT CONDUCTING A SKYDIVE MYRTLE BEACH, INC. v. HORRY COUNTY ANALYSIS

In the motion and proposed second amended and supplemental complaint, filed on February 5, 2021, Petitioner sought to amend the complaint to bolster the Dealers Act claim, as well as to supplement the pleading with events and occurrences which had transpired since the amended complaint was filed on July 2, 2020. (R. pp. 132-162; 165-188). Specifically, the proposed amended and supplemental factual allegations addressed Respondents' conduct after "Project Palmetto" was underway.

The proposed factual allegations concerned Respondents' deception with respect to acquiring confidential, proprietary information belonging to Petitioner after initiating post-breach negotiations to acquire the Hyundai assets on multiple occasions. Even before the discovery of "Project Palmetto," Petitioner suspected that Respondent never had any intention of purchasing its Hyundai assets. Petitioner wished to dispel Respondents' affirmative defense of failure to mitigate by raising the fact that Respondents refused to execute the second post-breach APA and submitted the third and fourth post-breach APAs knowing that Petitioner would reject them.

Petitioner's motion to amend and supplement the complaint was denied by the Circuit

Court in a Form 4 order filed on March 24, 2021. (R. pp. 4-6). The Court of Appeals affirmed based on the finding that "none of the new allegations in the second amended complaint change our finding that the Dealers Act does not apply to [Petitioner's] action." The Court of Appeals failed to even address Skydive Myrtle Beach, Inc. v. Horry County, 426 S.C. 175, 826 S.E.2d 585 (2019), despite Petitioner asserting that Skydive sets forth the proper standard for "futility"; that is, whether *any* amendment would be futile. [*Emphasis added*].

In Skydive, this Court rebuked the Court of Appeals as well as the trial court for reaching the conclusion that a proposed amendment would be "futile" without "articulating any such analysis." 426 S.C. 183, 826 S.E.2d 859. The same mistake has been repeated. The Form 4 Order issued by the Circuit Court contained no analysis whatsoever. The Court of Appeals nevertheless affirmed the decision of the Circuit Court.

This Court's opinion in Skydive sets forth the criteria by which a court should decide a motion to amend. The appropriate inquiry is for the court "to determine whether, in fact, *any* amendment would be futile." 426 S.C. at 183, 826 S.E.2d at 589. [*Emphasis added*]. The Circuit Court failed to engage in any analysis whatsoever. The Court of Appeals affirmed on grounds which this Court expressly prohibited in Skydive.

Specifically, this Court stated in Skydive that "a court's decision to deny a motion to amend should not be based on the court's perception of the merits of an amended complaint." 426 S.C. at 182, 826 S.E.2d at 589. However, that is precisely the criteria used by the Court of Appeals to excuse the Circuit Court's lack of analysis. The Court of Appeals specifically remarked that "none of the new allegations in the second amended complaint change our finding that the Dealers Act does not apply to [Petitioner's] action." In other words, the Court of Appeals affirmed the Circuit Court because it did not think the Petitioner's Dealers Act claim was meritorious. This was a

blatant error.

In Skydive, this Court affirmed that the circuit court could deny a motion to amend if the proposed amendment would be "clearly futile," but also cautioned that those cases were "rare." 426 S.C. at 182, 826 S.E.2d at 589. This Court stated that such a ruling would be tantamount to "definitively [saying] it is impossible for [the party] to plead a valid claim against [the other party]." 426 S.C. at 187, 826 S.E.2d at 592. In that context, it is understandable that such cases are exceedingly "rare."

Furthermore, the Skydive opinion makes clear that "futility" is a prerequisite to dismissing a complaint in its entirety, not a single cause of action, and *with* prejudice. 426 S.C. at 190-92, 826 S.E.2d at 593-94. Clearly, that did not happen. With the exception of the Dealers Act claim, all causes of action asserted in the amended complaint remain today. No pleading has been dismissed.

The Circuit Court and the Court of Appeals' error is especially baffling because the standard governing motions to amend pursuant to Rule 15(a), SCRCP have been so well defined, and the standard for subsection (d) is precisely the same. Tanner v. Florence County Treasurer, 336 S.C. 552, 558, 521 S.E.2d 153, 156 (1999). Under that standard, leave to amend or supplement shall be freely given, and the burden is on the party opposing the amendment to show how it would be prejudiced. Stanley v. Kirkpatrick, 357 S.C. 169, 175, 592 S.E.2d 296, 298 (2003). That prejudice has been defined as a "lack of notice that the new issue is to be tried" or a "lack of opportunity to refute it." Tanner, 336 S.C. 552, 558-59, 521 S.E.2d 153, 156.

Neither the Circuit Court nor the Court of Appeals considered whether the Respondents would be prejudiced. Given that the proposed Second Amended and Supplemental Complaint was filed nearly four (4) years ago, the Respondents obviously would not be prejudiced in any way

previously envisioned by this Court in the Tanner decision.

CONCLUSION

For these reasons, Petitioner requests that this Court grant the petition for writ of certiorari.

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