

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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Jan 17 2025

APPEAL FROM RICHLAND COUNTY
Jocelyn Newman, Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No. 2024-002182

Stivers Brothers Automotive, Inc., Appellant,

v.

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

MOTION TO CERTIFY

Stivers Brothers Automotive, Inc. (“Stivers”) hereby moves pursuant to Rule 204(b) SCACR to certify Appellate Case No. 2025-000063 for review by the Supreme Court.

Stivers will show that on January 9, 2025, W. Warner Peacock and Peacock Automotive, LLC (“Peacock”) served and filed notice of appeal of an order denying their motion for summary judgment¹, an order granting Stivers Brothers Automotive, Inc.’s motion for summary judgment, and an order to alter or amend with the South Carolina Court of Appeals. The notice of appeal did not reference the appellate case number in this related case in accordance with Rule 203(e)(1)(B), SCACR.

The underlying dispute arises out of the breach of two asset purchase agreements by Peacock for the purchase of Stivers’ Chevrolet and Hyundai dealerships at the onset of the

¹ “It is well-settled that an order denying summary judgment is never reviewable on appeal.” *Bank of New York v. Sumter County*, 387 S.C. 147, 154, 691 S.E.2d 473 (2010).

COVID-19 pandemic. Stivers asserts that Peacock sabotaged the agreements by failing and refusing to promptly seek manufacturer approval for the transfer of the franchises and by failing and refusing to seek assignment of a commercial lease for the business premises to avoid closing on the agreements.

The petition for writ of certiorari before this Court seeks review of a final decision of the Court of Appeals affirming the lower court’s ruling that the Regulation of Manufacturers, Distributors and Dealers Act (“the Dealers Act”) does not apply to unfair and deceptive acts or practices committed by one dealer against another dealer. The related appeal before the Court of Appeals challenges the lower court’s adoption of the “market measure” of damages, ie, the difference between the contract price and the fair market value of the assets at the time of the breach.

Stivers submits that these related appeals involve issues of significant public interest and legal principles of major importance. For these reasons and in the interest of judicial economy, Stivers requests that this Court exercise its discretion to certify Appellate Case No. 2025-000063 and review these related matters together.

Signatures on following page.

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