

RECEIVED

Jan 30 2025

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2024-002182

Stivers Brothers Automotive, Inc. Petitioner,

v.

W. Warner Peacock and Peacock Automotive, LLC Respondents.

RESPONDENTS' RETURN TO PETITIONER'S MOTION TO CERTIFY

Respondents object to Petitioner's Motion to Certify under Rules 204 and 214, SCACR as follows:

Petitioner's Motion to Certify is Procedurally Improper

Petitioner Stokes Brothers Automotive, Inc. has improperly moved to certify a separate appeal filed by Respondents (Peacock) after losing in the lower court and then the Court of Appeals (twice).¹ The Court of Appeals issued its unanimous opinion on November 6, 2024 (Appellate Case No. 2021-001489) affirming the ruling of the lower court. Petitioner filed a motion for rehearing which was denied. Petitioner then filed a Petition for Certiorari, which is pending before this Court (Case No.

¹ Petitioner files this motion under Appellate Case No. 2024-002182, but requests certification of Appellate Case No. 2025-000063.

2024-002182). It has now filed this motion attempting to bootstrap its unrelated Petition for Writ of Cert.

Rule 204(b), SCACR provides that a motion to certify can be made in a pending case before the Court of Appeals to certify that case to the Supreme Court. It is improper for Stivers to seek certification in this case (Case No. 2024-002182) for an unrelated appeal (Case No. 2025-000063).

The Two Unrelated Appeals Should not be Consolidated

Petitioner's improper attempt to consolidate its Petition for Writ of Certiorari with Respondents' unrelated appeal of separate orders should not be granted. First, Petitioner assumes its Petition for Writ of Certiorari will be granted. Issuance of a Writ is discretionary. Rule 242(a), SCACR. It is, therefore, premature for Petitioner to assume this Court will grant its Petition. Additionally, consolidation is limited to appeals involving the same question, which these appeals do not. Rule 214, SCACR. Petitioner's appeal involves the question of the Dealer Act's applicability (and its attempt to state its case for a third time), while Respondents' appeal deals with mitigation of damages and other contractual defenses.

The background of the case illustrates the appeals are unrelated. Peacock signed two APAs on January 7, 2020 for the potential purchase of Petitioner's Chevrolet and Hyundai/Genesis dealerships. The APAs provided that Petitioner would give Peacock full access to its books and records and would operate the dealerships in the ordinary course until the closing, using its best efforts to maintain the goodwill value of the dealerships. When Petitioner failed to act in accordance with the APAs, Respondents had no alternative but to terminate on March 27, 2020. Petitioner filed suit just weeks later alleging causes of action for breach of contract and violation of the Dealers Act, among others.

Specifically, the two appeals do not arise from the same order. Petitioner appealed from the

following orders of the Honorable Judge Jocelyn Newman: (1) March 24, 2021 order denying Petitioner's motion to file a third complaint; (2) March 25, 2021 order amending March 24th form order to grant Respondents' motion for judgment on the pleadings; and (3) November 12, 2021 formal order holding the Dealers Act does not apply. (Case No. 2021-001489) That appeal involved the finding that contract disputes between two dealers are not within the scope of the Dealers Act and the denial of Petitioner's third attempt to state its case.

Respondents' appeal arises from the following orders of a different judge, the Honorable B. Alex Hyman: (1) July 31, 2023 order granting Petitioner's motion for summary judgment as to the measure of damages; (2) July 31, 2023 order denying Respondents' motion for partial summary judgment regarding damages and mitigation; and (3) December 20, 2024 order denying Respondents' motions to alter or amend. (Case No, 2025-000063)

The issues in the two appeals are unrelated. Petitioner's appeal addressed whether a contract between two dealers is within the scope of the Dealers Act. Respondents' appeal involves potentially ambiguous language in a separate order as to whether the lower court can limit a jury to a single measure of damages potentially doing away with Respondents' defenses of mitigation of damages and contractual limitations. Respondents' issues were not raised in Petitioner's appeal regarding the Dealers Act nor were they implicated in the Court of Appeals' opinion affirming the denial of Petitioner's motion to file a third complaint. Consolidation is, therefore, improper under Rule 214, SCACR. For the same reasons, these are not related pending appeals under Rule 203(e)(1)(B), SCACR.²

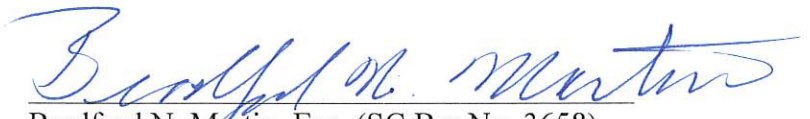
² The term "related appeals" has not been addressed in the context of Rule 203(e)(1)(B) but has been used previously by the Courts in distinguishable cases. *See Christy v. Christy*, 317 S.C. 145, 452 S.E.2d 1 (Ct. App. 1994), motion to recall remittitur and file Cert., denied April 11, 1995. (The parties were divorced by a family court order. The husband appealed and the Court of Appeals modified the monthly alimony award. The husband reduced alimony payments before the remittitur was filed. The husband subsequently appealed an order to pay the original monthly alimony until the remittitur was filed and an award of attorney fees to the wife for a rule to show cause. The wife appealed a different order finding husband was entitled to deduct \$500 monthly from his alimony payment to offset his overpayment from the date of the original family court award

Petitioner Fails to Cite Arguments or Authority in Support of its Motion

Petitioner has cited no arguments or authority in support of its motion. Rule 240(c)(2), SCACR requires that motions include a memorandum with citations of authority in support of the motion. *See also First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (noting when a party fails to cite authority or when the argument is simply a conclusory statement, the party is deemed to have abandoned the issue on appeal).

Therefore, Respondents respectfully request that Petitioner’s motion to certify and consolidate the appeals be denied.

30 January, 2025



Bradford N. Martin, Esq. (SC Bar No. 3658)
Laura W. H. Teer, Esq. (SC Bar No. 16698)
BRADFORD NEAL MARTIN & ASSOCIATES, PA
Post Office Box 10410
Greenville, South Carolina 29603
864.552.9990

ATTORNEYS FOR RESPONDENTS

to the date the remittitur was filed.). Thus, these orders were related since they dealt with alimony. *See also Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 787 S.E.2d 485 (2016), a legal malpractice case arising from a suit filed by Austin against Stokes-Craven after he experienced problems with his used truck and discovered the vehicle had sustained extensive damage prior to the sale. This Court noted the 2010 case in which it affirmed the jury’s verdict (*Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 691 S.E.2d 135 (2010)) was a related appeal to *Austin v. Stokes-Craven Holding Corp.*, 406 S.C. 187, 750 S.E.2d 78 (2013). *Id.* 416 S.C. at 522, n.2, 787 S.E.2d at 488, n.2. The Court specifically noted in the 2013 case that it involved an interpretation of a portion of the Court’s 2010 opinion. *Austin*, 406 at 187, 750 at 78. Again, there are no shared issues in the present case that would require the Court to interpret the Court of Appeals opinion in case No. 2021-001489 to render an opinion in Case No. 2025-000063.