

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

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SC Court of Appeals

**APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas**

Honorable Judge George M. McFaddin, Jr., Circuit Court Judge
Honorable Judge Jennifer B. McCoy, Circuit Court Judge

Appellate Case No. 2026-000201

Cheryl Carter, Pro Se..... Appellant,

v.

McElveen Buick GMC, Inc..... Respondent.

**MOTION FOR LEAVE TO FILE SUR-REPLY IN OPPOSITION TO
RESPONDENT'S MOTION TO DISMISS APPEAL, OR IN THE ALTERNATIVE,
FOR SANCTIONS AND TO COMPEL COMPLIANCE**

TO THE HONORABLE COURT OF APPEALS:

Appellant Cheryl Carter, appearing pro se, respectfully moves this Court for leave to file the accompanying Sur-Reply in Opposition to Respondent's Motion to Dismiss Appeal, or in the Alternative, for Sanctions and to Compel Compliance. In support of this Motion, Appellant states as follows:

1. On or about 24 July 2026, Respondent filed its Motion to Dismiss Appeal, or in the Alternative, for Sanctions and to Compel Compliance ("Motion to Dismiss").

2. Appellant filed her Opposition to the Motion to Dismiss on 28 July, 2026.

3. On July 28, 2026, Respondent filed a Reply to Appellant's Opposition ("Reply"), which raises new factual assertions and characterizations that were not squarely addressed in Appellant's original Opposition, including but not limited to representations regarding service of the initial brief, the circumstances of a returned mailing assessed postage due, and the burden and expense allegedly incurred by Respondent.

4. Appellant seeks leave to file the attached Sur-Reply to correct the record on these points and to ensure the Court has a complete and accurate factual basis before ruling on a motion seeking the severe remedy of dismissal.

5. Good cause exists to grant leave. Courts generally favor allowing a party the opportunity to respond to new factual assertions raised for the first time in a reply, particularly where, as here, the relief requested (dismissal of the appeal) is case-dispositive. Appellant's proposed Sur-Reply is narrowly tailored to the new matters raised in the Reply and will not unduly delay resolution of the pending Motion.

6. No party will be prejudiced by the Court's consideration of the attached Sur-Reply, as it responds only to arguments and characterizations Respondent itself introduced in its Reply.

WHEREFORE, Appellant respectfully requests that this Court grant leave to file the accompanying Sur-Reply, attached hereto as Exhibit A, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Cheryl Carter", with a long horizontal line extending from the end of the signature.

Cheryl Carter, Pro Se Appellant

EXHIBIT A

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Honorable Judge George M. McFaddin, Jr., Circuit Court Judge
Honorable Judge Jennifer B. McCoy, Circuit Court Judge

Appellate Case No. 2026-000201

Cheryl Carter, Pro Se..... Appellant,

v.

McElveen Buick GMC, Inc..... Respondent.

APPELLANT'S SUR-REPLY IN OPPOSITION TO RESPONDENT'S MOTION TO
DISMISS APPEAL, OR IN THE ALTERNATIVE, FOR SANCTIONS AND TO
COMPEL COMPLIANCE

INTRODUCTION

Respondent's Reply mischaracterizes the record on service, misstates the cause of Respondent's litigation expenses, and omits material facts bearing directly on the equities of its request for dismissal and sanctions. Appellant submits this Sur-Reply to correct the record on each point.

I. SERVICE WAS PROPER AND COMPLETE UPON MAILING.

Respondent's Reply asserts that Appellant "failed to properly serve Respondent with critical filings." This mischaracterizes both the record and the governing rule. Appellant has filed a

certificate of service with every motion and notice submitted to this Court, including but not limited to the Certificate of Service dated 17 July, 2026, attached to Appellant's Initial Brief. Under settled South Carolina practice, service by mail is complete upon deposit in the mail, properly addressed and postage paid, not upon receipt by the opposing party. Respondent's Reply does not dispute that Appellant's mailings were properly addressed; it disputes only what happened to a piece of mail after it entered the postal system, which is not a defect attributable to Appellant.

With respect to the specific mailing referenced in Respondent's Reply, the envelope later marked "Refused" and "returned to sender" for \$4.18 postage due. Appellant states that the item was weighed at the post office counter at the time of mailing and postage was paid in full at that time, in which the Appellant has presented to the Court as an Exhibit in her Opposition to Respondent's third Motion to Dismiss. Any subsequent postage-due assessment reflects a postal-service processing matter arising after Appellant's mailing was complete, not an error or omission by Appellant. Upon learning that the item had been returned, Appellant promptly re-served Respondent by certified mail and email on 28 July, 2026 (**USPS Certified Mail Tracking # 9589 0710 5270 3350 5274 22**). Respondent does not identify any prejudice from the brief interval between the original, properly-paid mailing and the confirmed re-service.

**II. RESPONDENT'S CLAIMED LITIGATION EXPENSES ARE OF ITS OWN
MAKING, NOT ATTRIBUTABLE TO APPELLANT.**

Respondent's Reply repeatedly emphasizes the professional time and fees it has purportedly incurred responding to this appeal. That framing does not withstand scrutiny. In December 2024, Appellant sent Respondent written correspondence requesting a refund of \$1,108 that

Respondent had overcharged her. Respondent did not respond in any way for forty-five (45) days. Only after that silence did Appellant file her civil action in the Berkeley County Court of Common Pleas in January 2025; litigation that could have been avoided entirely had Respondent simply addressed a \$1,108 refund request.

The pattern of non-response continued throughout the litigation. During the proceedings in the Court of Common Pleas, Appellant requested to settle with Respondent's counsel via email on 29 July 2025, in good-faith to minimize any further litigation expense. However, neither Respondent nor its counsel responded; not to accept, deny, or counter. Through information and belief, under the ADR rules set by the South Carolina Supreme Court, parties are required to mediate to resolve dispute issues. The Appellant, acting in good-faith as pro se, made an attempt to resolve this issue in an effort to minimize litigation time, expenses and Court resources.

In the Appellant's correspondence directly with the Respondent, which was proper, pursuant to Rule 4.2, SCRPC, Comment 4 which expressly recognizes that '[p]arties to a matter may communicate directly with each other'; the Rule's restriction applies only to counsel, not to a party acting pro se; the Appellant informed the Respondent that their litigation expense had grossly exceeded the amount she was requesting as a refund, and urged a settlement to minimize their expenses. However, neither the Respondent or its counsel failed to respond to the Appellant, which signified or implicated that litigation expense was of no concern to the Respondent, as argued by the Respondent's counsel, as grounds for dismissal. Then, after Appellant filed her Notice of Appeal, and before any transcript had been ordered or any brief submitted, Appellant again pleaded to the Respondent for a settlement. Once again, the Respondent nor its counsel refused to respond in any way.

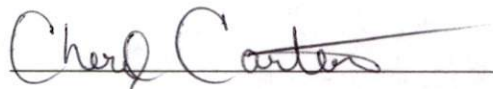
In total, Respondent and its counsel have been given three separate opportunities: one pre-suit and two during litigation, including one before any appellate expense had been incurred, to resolve this matter for a fraction of the cost Respondent now claims to have incurred. Therefore, the Respondent's own consistent refusal to engage forecloses any argument that Appellant is responsible for the litigation expense Respondent's counsel now cites as grounds for dismissal and sanctions. The professional fees and costs Respondent describes are the direct and foreseeable product of Respondent's own litigation choices; including its decision to ignore three settlement overtures and to file the underlying Motion to Dismiss and this Reply, not of any act or omission by Appellant. Sanctions and fee-shifting are not warranted where the movant's own conduct is the proximate cause of the expense it complains of.

Separately, this Court granted Appellant an extension of time to obtain the hearing transcript. During that extension period, no substantive litigation activity was required of, or being conducted by, Respondent's counsel on the merits of the appeal. To the extent Respondent's counsel elected to bill time or incur costs during a period when the appeal was, by the Court's own order, paused pending transcript receipt, that is not a burden properly charged to Appellant.

CONCLUSION

For the foregoing reasons, and for the reasons stated in Appellant's original Opposition, Appellant respectfully requests that this Court deny Respondent's Motion to Dismiss and request for sanctions and attorney's fees, and grant such other relief as the Court deems just and proper.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Cheryl Carter", is written over a horizontal line.

Cheryl Carter, Pro Se Appellant

355 Bradley Bend Dr.

Moncks Corner, SC 29461

(843) 451-6751

CMC6751@gmail.com

Dated:

08/04/2026

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of August, 2026, I served a true and correct copy of the foregoing Designation of Matter to be Included in the Record on Appeal upon counsel for Respondent by depositing the same in the United States Postal Service via Certified mail and email, addressed as follows:

Victoria W. Kurtz, Esq. (SC Bar: 103303)

Johnston Law, LLC

361 N. Shelmore Blvd.

Mt. Pleasant, SC 29464

Victoria@JohnstonLawSC.com

Counsel for Respondent McElveen Buick-GMC, Inc.

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