

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III

Appellate Case No. 2014-000642

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SC Court of Appeals

Julie Freeman Hair,

Plaintiff/Appellant-Respondent

v.

J.L.H. Investments, LP, a/k/a Hendrick Honda of Easley,

Defendant/Respondent-Appellant

**BRIEF IN SUPPORT OF
MOTION TO INTERVENE**

Dick Dyer & Associates, Inc. (“Dick Dyer”) hereby submits this Brief in Support of its Motion to Intervene in the above-captioned appeal. Dick Dyer was a party to the proceedings below before it was severed and tried. It is actually an aggrieved party under certain orders made prior to severance and which are currently before the Court in this appeal.

I. Introduction

“A party may move to intervene in an appeal.” Toal, Jean H., et al, *Appellate Practice in South Carolina* at p. 265 (2d. ed. 2002); e.g., *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000) (granting a motion to intervene by the South Carolina Department of Corrections).

Intervention may be allowed where the new party to the appeal was a party to the proceedings

below. *Compass Dev. Inc. v. Blevins*, 876 P.2d 1335, 1337 n.3 (Haw.App. 1994) (because a judgment on appeal would directly affect intervenor's interest, intervenor was entitled to an opportunity to be heard and defend). Even where an intervenor is not a necessary party, intervention may be granted if it will not prejudice the appellant and will bring all interested parties before the court for a final determination of the controversy, thereby preventing further litigation. *Hudson v. Hoster*, 46 N.E.2d 422 (Ohio App. 1942).

Once intervention is permitted, the intervenor ordinarily has the right to raise and litigate independent issues. *Gettler v. Cities Service Co.*, 739 P.2d 515 (Okla. 1987).

As explained in more detail below, Dick Dyer should be permitted to intervene. It was a party to the proceedings below. It is an aggrieved party under two orders which are currently before the Court in this appeal, and intervention is necessary so that Dick Dyer can adequately protect its interests. Moreover, this appeal and Dick Dyer's pending case, *Michael Blease v. Dick Dyer & Associates, Inc.*, Civil Action No. 2013-CP-02-00240 (the "Dick Dyer" matter) were once part of the same action, and, as might be expected, this appeal and Dick Dyer's pending case involve a number of common questions of law. Intervention would bring all remaining interested parties before the Court, and promote judicial economy.

II. Dick Dyer Was a Party to the Proceedings Below, and Intervention Is Necessary So That Dick Dyer May Protect Its Rights and Interests.

In August of 2006, Julie Freeman Hair ("Freeman"), Appellant-Respondent in this appeal, and six others, filed a single complaint against several hundred automobile dealerships, including both Respondent-Appellant Hendrick Honda ("Hendrick Honda") and Dick Dyer. This case was captioned *Heather Herron, et al v. Century BMW, et al*, Civil Action No. 2006-CP-02-1230 (the "Herron" case). One of the orders currently on appeal approved the dismissal of defendants in the Herron case with whom the seven named plaintiffs had no relationship.

Claims against the hundreds of dismissed defendants were subsequently refiled in others cases, which are stayed pending the resolution of the claims in the original Herron case.

After dismissal, seven plaintiffs and seven defendants remained in the original action. The complaint asserted similar, if not identical, claims against each defendant. Moreover, each plaintiff actually sued each defendant, alleging the existence of a civil conspiracy among all of the defendants.

This single case involving multiple parties was litigated for over six years. The trial court eventually entered orders dismissing the civil conspiracy allegations, and severing the cases. The trial of the Hendrick Honda matter is, of course, now complete. The trial of the Dick Dyer matter has not yet taken place.

However, during the initial six year period, Hendrick Honda, Dick Dyer, Freeman and the Plaintiff in the Dick Dyer matter, Michael Blease, were all parties to the same case. During this six year period, the trial court made rulings on motions jointly filed by the defendants, including: (1) the Order Denying Defendants' Motion to Dismiss dated July 31, 2007; and (2) Order on Plaintiff's Rule 41(A) Motion to Voluntarily Dismiss Certain Defendants and Defendants' Rule 59(E) Motion to Reconsider the Denial of Their Motions to Dismiss on Certain Grounds dated January 31, 2008.

Both of these orders are currently on appeal in this very case. Because Dick Dyer was a party to the motions which generated these orders, and because the trial court denied the relief sought by Dick Dyer, Dick Dyer is aggrieved by these orders. It has a direct interest in the subject of this appeal.

Moreover, the Court's rulings on these issues may, as a practical matter impair or impede Dick Dyer's ability to protect that interest. The decision in this case will produce an opinion

which may be binding precedent. The opinion will literally be on all four corners with the Dick Dyer matter. It will involve the identical motions, identical oral arguments in the trial court, identical issues of law, and the identical transcript and Record on Appeal.

If Dick Dyer is not permitted to participate in this appeal, it will have to sit as a spectator while its fate is decided by third parties.

III. Intervention Will Promote Judicial Economy.

Because this appeal and the Dick Dyer matter both arise from a single complaint asserting similar, if not identical claims against Hendrick Honda and Dick Dyer, it is no surprise that this appeal and the Dick Dyer matter have a number of questions of law in common. These issues include, but are not limited to:

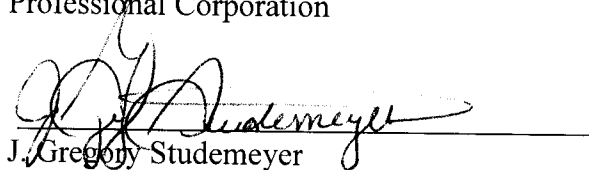
- (1) whether the Dealers Act (S.C. Code Ann. § 56-15-10 *et seq.*) creates a substantive right for plaintiffs to bring a group action;
- (2) whether the plaintiff had to comply with Rule 23, SCRCP;
- (3) whether the plaintiff can represent customers who purchased from the defendant dealers *after* the filing of the initial complaint;
- (4) whether the voluntary payment defense is a valid defense;
- (5) whether the trial court correctly defined the term “closing fee”;
- (6) whether Consumer Protection Code (“Code”) remedies are exclusive;
- (7) whether the good faith error provision of the Code is a valid defense; and
- (8) whether the safe harbor provision of the Code is a valid defense.

Because these issue in this appeal will also be present in the trial of the Dick Dyer matter, it serves judicial economy to allow Dick Dyer to present its arguments on these issues at this time.

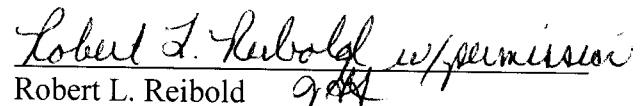
IV. Conclusion

Because Dick Dyer is literally a party to two orders currently on appeal, and because intervention will promote judicial economy, Dick Dyer respectfully requests that it be permitted to intervene generally as an appellant on all issues of law raised by Hendrick Honda in this Appeal. Alternatively, Dick Dyer requests that it be permitted to intervene in a limited capacity as an appellant on all issues related to the two orders which are currently on appeal and to which it is a party. If intervention is granted, Dick Dyer asks that it be given its own allocation of time at oral argument, so as not to limit or hinder Hendrick Honda in the presentation of its case.

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 _____, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

Appellate Case No. 2014-000642

Julie Freeman Hair, individually and for the benefit of all car buyers whom paid "Administrative Fees" to Defendant

Respondent

v.

J.L.H. Investments, LP, a/k/a Hendrick Honda of Easley,

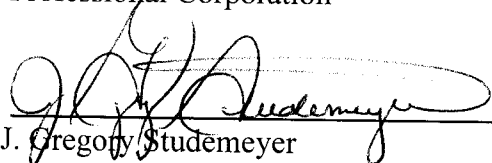
Appellant

PROOF OF SERVICE

I certify that I have served the Motion to Intervene and Brief In Support Of Motion To Intervene on Julie Freeman Hair, by depositing copies of them in the United States Mail, postage prepaid, on June 2, 2014, addressed to its attorney of record, Brady R. Thomas, Esq. at Richardson, Patrick, Westbrook & Brickman, LLC, 1730 Jackson Street, Post Office Box 1368, Barnwell, South Carolina 29812.

June 2, 2014

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