

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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JUN 18 2014

**SC Court of Appeals**

APPEAL FROM PICKENS COUNTY  
Court of Common Pleas

The Honorable Doyet A. Early, III

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Appellate Case No. 2014-000642

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Julie Freeman Hair,

Plaintiff/Appellant-Respondent

v.

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

Defendant/Respondent-Appellant

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**REPLY TO APPELLANT-RESPONDENT JULIE FREEMAN HAIR'S RETURN  
IN OPPOSITION TO MOTION TO INTERVENE**

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Dick Dyer & Associates, Inc. ("Dick Dyer") seeks permission to intervene. Simple concerns of fairness support intervention because, without intervention, Dick Dyer may be denied the right to protect its interest in matters before the court in which it was actually a party in the case on appeal.

Appellant-Respondent Julie Freeman Hair ("Hair") seeks to deny Dick Dyer the ability to protect itself. Initially, Hair's return is notable for what it does *not* include. It does not include: (1) an objection to timeliness; (2) any claim that Hair would suffer prejudice of any kind if Dick Dyer were permitted to intervene; or (3) any argument against Dick Dyer's request for

permissive intervention. Instead, Hair focuses solely upon intervention as of right,<sup>1</sup> mischaracterizes Dick Dyer's actions, and exaggerates the consequences of intervention.

### **I. Dick Dyer Has Not Altered Its Position.**

Hair argues that when Dick Dyer consented to severance in the underlying action, it made a choice to proceed separately, and should not be permitted to "rejoin" this matter. This argument lacks merit. Severance operates prospectively. Matters which were formally joined proceed separately from the date of severance forward, but the law does not regard severed claims as *never* having been part of the same case. Dick Dyer does not have to rejoin the case with respect to matters which occurred before the cases were severed – it never left. Dick Dyer was, and remains, a party to all proceedings which occurred prior to severance. Dick Dyer is not attempting to "blow hot and cold."

In any event, Hair's citation to *Quinn v. Sharon Corp.*, 343 S.C.411, 540 S.E.2d 474 (Ct.App. 2000) is misleading. *Quinn* involved judicial estoppel on a question of fact, but the questions involved here are questions of law. Judicial estoppel does not apply to questions of law. *State v. McCall*, 364 S.C. 205, 210, 612 S.E.2d 453, 455 (Ct.App. 2005).

### **II. Intervention Would Promote Judicial Economy.**

Hair argues that judicial economy would suffer because intervention would result in additional work. Intervention would of course result in some additional work, but this concern is present in every case in which intervention is sought. If the work to be done by the intervener itself were enough to preclude intervention, no application for intervention would ever be granted. Moreover, the additional work required here would be minimal. Intervention at the

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<sup>1</sup> Assuming Rule 24, SCRCP applies to appellate intervention, it provides for mandatory and permissive intervention. A party may have an absolute right to intervene in certain circumstances. It may also be granted permission to intervene even where, as here, the applicant's claim and the matter before the court share common questions of fact or law – even if the conditions for mandatory intervention are not satisfied.

appellate level does not require additional depositions, witnesses, opening and closing arguments, or jury charges. Intervention will not affect the Record on Appeal. Rather, intervention would merely require additional briefing and a fifteen minute extension of oral argument.

Additionally, Hair's judicial economy argument misses the forest for the trees. It focuses solely on the minimal additional work which would occur in this appeal as a result of intervention and ignores work which could be *saved* by intervention. Dick Dyer is a party to a pending case involving many of the same issues. Rulings made in this appeal could simplify a future trial of that case or prevent the need for a second, duplicative appeal, following trial of the Dick Dyer matter. Intervention promotes judicial economy in this case.

Hair's argument that others might seek to intervene is a figurative parade of horrors. The parade, however, is mere speculation. No other party has moved to intervene, and the parties identified by Hair are very unlikely to do so. The defendant in *Natalie Armstrong v. Galeana Chrysler Jeep, Inc.* is represented by the same counsel as is Hendrick Honda in this appeal, and Galeana has made no move to intervene. The parties in *Heather Herron v. Overland, Inc., d/b/a Land Rover of Columbia* have, upon information and belief, settled their dispute. The defendant in *Christine Watts v. Sonic Automotive 2752 Laurens Road, Greenville, Inc., d/b/a Century BMW* pursued arbitration from the outset, and, unlike Dick Dyer, is not a party to any of the orders on appeal in this case.<sup>2</sup>

Finally, the additional complications which might result if others sought to intervene are completely within the Court's control. The Court has the authority to either deny any subsequent

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<sup>2</sup> To the extent that Hair now complains that including additional parties will unnecessarily complicate matters, it is Hair who is "blowing hot and cold." Hair and others filed one action against more than 324 separate defendants, and for the next 6 years, maintained a single action against 7 separate defendants. It was Hair's choice to sue multiple parties in the same action which created the current circumstances.

applications for intervention or place conditions on intervention in order to minimize additional work or complications. The complications which might occur in the unlikely event that other parties seek to intervene will be no more than the Court desires.

### **III. It Is Appropriate to Permit Dick Dyer to Protect Its Own Interests.**

Hair argues that attorneys representing Hendrick Honda are fine lawyers and will adequately brief and argue “all issues on appeal.”<sup>3</sup> This argument rests on the adequacy of representation requirement for intervention as of right in Rule 24(a), SCRCF. Assuming this requirement applies to appellate intervention, the burden of demonstrating that the intervener’s interest will not be fully represented by existing counsel is “minimal.” *Berkeley Elec. Co-op., Inc. v. Town of Mt. Pleasant*, 302 S.C. 186, 191, 394 S.E.2d 712, 715 (1990).

In fact, an intervener need not establish that an existing party will actually fail to adequately represent its interest. A showing that an existing party “may” not adequately represent its interest is sufficient. *Id.* Courts generally consider: (1) whether the existing parties will undoubtedly make all of the intervener's arguments; (2) whether the existing parties are capable and willing to make such arguments; and (3) whether the intervener offers different knowledge, experience, or perspective on the proceedings that would otherwise be absent. *Id.*

Here, the minimal burden of demonstrating that existing counsel might not adequately represent Dick Dyer’s interest is met. There is no indication that counsel for Hendrick Honda will make *all* of Dick Dyer’s arguments. For example, Dick Dyer and other defendants requested that the trial court recuse itself from this matter, but Hendrick Honda did not join in this motion. While this argument is not present in this appeal, the difference in strategies of the parties on this matter demonstrates generally that Dick Dyer and Hendrick Honda may not

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<sup>3</sup> Dick Dyer agrees that the attorneys representing Hendrick Honda are excellent lawyers.

always pursue the same arguments or tactics. The parties have disagreed in the past and may do so again.

Additionally, even with the expanded page limitations, Hendrick Honda may be forced to exclude or limit discussion on certain issues. Dick Dyer does not, and could not, make any arguments regarding evidentiary issues appealed by Hendrick Honda, and would have more freedom to fully explore legal issues in its submissions.

Finally, Hendrick Honda is independently owned, but is affiliated with the Hendrick Automotive Group, the sixth-largest corporate automotive dealership group in the country. In contrast, Dick Dyer is a single, family owned dealership. Dick Dyer brings a different perspective to these proceedings than does Hendrick Honda.

#### **IV. Intervention May Be Granted Simply Because the Cases Involve Common Questions of Fact or Law.**

While intervention as of right requires adequacy of representation, permissive intervention does not. *See* Rule 24, SCRCPP (Rule 24(a) permits courts to decline intervention if the applicant's interest is adequately represented by existing parties, but Rule 24(b) on permissive intervention contains no such limitation.); *Groves v. Insurance Co. of North America*, 433 F.Supp. 877, 888 (E.D.Pa. 1977) (permissive intervention does not require a showing of inadequacy of representation).

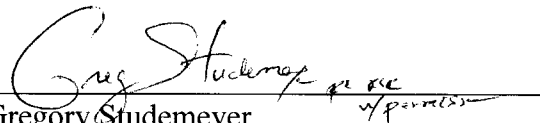
Instead, the Court has discretion to permit intervention simply if Dick Dyer's claim or defense and the action on appeal have a question of law or fact in common. *See* Rule 24(b), SCRCPP. Dick Dyer has argued that its pending action and this action have a number of common questions of law, and Hair cannot deny the existence of these common questions. Both Dick Dyer and Hendrick Honda were sued using the same initial complaint under the same legal theories.

**V. Conclusion**

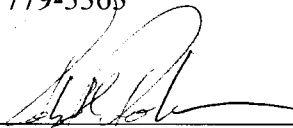
Dick Dyer has a real, legitimate interest in the subject matter of this appeal. It is a party to two orders which have been appealed in this case. Fairness dictates that Dick Dyer be allowed to protect its interest rather than be forced to sit on the side lines and watch while others determine its fate.

In any event, our courts hold that “[i]ntervention should be liberally granted.” *See In re Horry County State Bank*, 361 S.C. 503, 507, 604 S.E.2d 723, 725 (Ct.App. 2004) (discussing intervention at the trial court level). Hair has shown no reason to depart from this standard. Any concerns about additional work created in this matter can be managed by the Court. Intervention will promote judicial economy, and Dick Dyer will add a different, useful, perspective to this appeal.

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June 17, 2014

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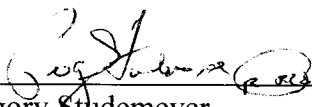
I certify that I have served the Return in Opposition to Intervene on June 17, 2014,  
addressed to the following counsel of record for Appellant-Respondent and Proposed

Intervenors:

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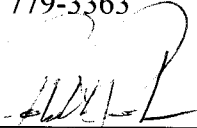
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June 17, 2014

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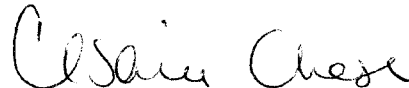
Re: Julie Freeman v. J.L.H. Investments, LP a/k/a Hendrick Honda of Easley  
Appellate Case No.: 2014-000642

Dear Ms. Kitchings:

Enclosed please find an original and seven copies of Dick Dyer & Associates, Inc.'s Return in Opposition to Motion to Intervene and Proof of Service for filing in connection with the above-referenced matter. Please time-stamp one of the copies and return same in the self-addressed stamped envelope provided.

Thank you for your assistance with this matter.

Sincerely,



Cesaire N. Chase  
Legal Assistant

:cnc

Enclosures

cc: James Y. Becker, Esq.  
John T. Lay, Esq.  
Marvin D. Infinger, Esq.  
Brady R. Thomas, Esq.  
Michael E. Spears, Esq.  
Richard A. Harpootlian, Esq.  
A. Camden Lewis, Esq.  
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