

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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**S.C. SUPREME COURT**

APPEAL FROM PICKENS COUNTY  
Court of Common Pleas

The Honorable Doyet A. Early, III

Appellate Case No. 2014-000642

Julie Freeman Hair,

Plaintiff/Appellant-Respondent

v.

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

Defendant/Respondent-Appellant

**DICK DYER & ASSOCIATES, INC.'S  
REPLY TO FREEMAN'S OPPOSITION FOR  
LEAVE TO APPEAR AS AMICUS CURIAE**

Plaintiff /Appellant-Respondent Julie Freeman Hair ("Freeman") opposes Dick Dyer & Associates, Inc.'s ("Dick Dyer") motion for leave to appear as amicus curiae. Freeman, however, has not identified any prejudice she will suffer if Dick Dyer's motion is granted. She does not suggest that the requirements of Rule 213, SCACR, have not been satisfied. She does not even respond to some of Dick Dyer's central arguments, including the following:

1. Dick Dyer has a direct interest in this appeal and previously sought to intervene. While this motion was denied, it was denied without prejudice to Dick Dyer's ability to seek leave to appear as amicus curiae. Status as amicus curiae is frequently granted in lieu of

intervention. *E.g., Resort Timeshare Resales, Inc.*, 764 F.Supp. 1495, 1501 (S.D.Fla. 1991) (“[s]everal courts have approved the use of such appearances in lieu of intervention”); and

2. This case involves a matter of public interest. Leave to file a brief as amicus curiae is ordinarily granted in such cases. *See Empire State Ass’n of Assisted Living, Inc. v. Daines*, 887 N.Y.S.2d 452, 455-56 (N.Y. Sup. 2009); 3B C.J.S., *Amicus Curiae* § 3 (Database Updated Dec. 2014).

Instead, Freeman opposes Dick Dyer’s motion because: (1) Dick Dyer is interested in this case, and is therefore not a “friend of the court,” and (2) granting leave might encourage a number of others to seek leave to appear as amicus curiae. These concerns are unfounded. Granting amicus curiae status to Dick Dyer is appropriate.

**I. Dick Dyer’s Interest in this Appeal Supports Its Request for Leave to Appear as Amicus Curiae.**

Freeman argues that because Dick Dyer participated as a defendant in proceedings below, it is not disinterested, and is therefore, not a “friend of the court.” This objection may have historical significance, but the role of amicus curiae has changed over time.

The idea that a person appearing as amicus curiae must be impartial became outdated long ago. *Neonatology Associates, P.A. v. Commissioner of Internal Revenue*, 293 F.3d 128, 131 (3<sup>rd</sup> Cir. 2002) (citing Samuel Krislov, *The Amicus Curiae Brief: From Friendship to Advocacy*, 72 Yale L.J. 694, 703 (1962)); *see also Strasser v. Doorley*, 432 F.2d 567, 569 (1<sup>st</sup> Cir. 1970) (“by the nature of things an amicus is not normally impartial”). Black’s Law Dictionary now defines amicus curiae as “[a] person who is not a party to a lawsuit but who petitions the court or is requested by the court to file a brief in the action *because that person has a strong interest in the subject matter.*” Black’s Law Dictionary (9th ed. 2009) (emphasis added).

Not only is an interest in the proceedings expected of an amicus curiae, it is required by Rule 213, SCACR. This rule requires a person seeking leave to appear as amicus curiae to “identify the interest of the applicant.” A rule which required applicants to be disinterested would, as a practical matter, eliminate any applicants. Who would undertake the expense of retaining counsel, drafting a motion and brief, and filing the motion and brief with the Supreme Court if his or her interest was not somehow affected by the outcome of the appeal? Dick Dyer’s interest does not disqualify it from status as amicus curiae.

## **II. Amicus Flood Gates Will Not Open.**

Freeman also suggests that granting Dick Dyer leave to appear as amicus curiae may lead to submission of additional briefs from over 300 other dealers. This fear is both speculative and unfounded. While Dick Dyer shares many concerns with other dealers, its position differs from that of most other dealers in one crucial way – it was a party to this case. There are very few dealers in this position, and, accordingly, very few dealers will have the same motivation to participate in this appeal. In any event, the Court has discretion over how many briefs will be accepted, regardless of the number of submissions, and can impose whatever limits are necessary to manage the concerns raised by Freeman.

## **III. Permission for Michael Blease to File a Brief Is Not Required.**

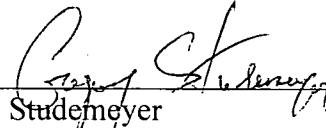
Freeman also states that, if leave is granted, Michael Blease, the plaintiff in the pending action against Dick Dyer, should also be granted leave to appear as amicus curiae. Dick Dyer believes it would be proper for Freeman, rather than Blease, to submit a reply to Dick Dyer’s brief. Freeman is the Appellant/Respondent in this appeal and Rule 213 provides that if Dick Dyer is granted leave, the Court will specify a period of time in which Freeman may submit a response to Dick Dyer’s brief. Should Michael Blease seek to leave to appear as amicus curiae,

that motion can be evaluated on its own merits. There is however no reason to grant rights to Mr. Blease at this time. He has neither requested such relief nor attempted to appear in this appeal.

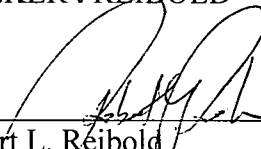
In conclusion, Dick Dyer respectfully requests that its motion to appear as amicus curiae be granted.

Respectfully submitted,

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Attorneys for Dick Dyer & Associates

January 15, 2015

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In the Court of Appeals

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**PROOF OF SERVICE**

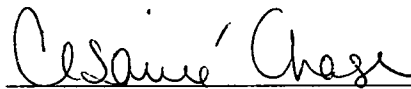
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I certify that I have served the Reply to Freeman's Opposition for Leave to Appear as Amicus Curiae on January 15, 2015, addressed to the following counsel of record for Appellant-Respondent and Proposed Intervenors via mail and email:

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