

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

JAN 28 2015

The Honorable Doyet A. Early, III

S.C. Supreme Court

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

**PETITION FOR REHEARING ON MOTION FOR
LEAVE TO APPEAR AS AMICUS CURIAE
BY DICK DYER & ASSOCIATES, INC.**

Dick Dyer & Associates, Inc. ("Dick Dyer") requests rehearing of its motion for leave to appear as amicus curiae in the above-captioned appeal pursuant to Rule 221, SCACR. The Court's ruling has the effect of dismissing or precluding Dick Dyer's appeal of orders to which it was a party. Rehearing should be granted because the Court's ruling compromises Dick Dyer's appellate rights, implicates due process, and may be based on a misapprehension of the risk that the Court may be overwhelmed with amicus briefs from other parties. Dick Dyer believes the Court has overlooked or misapprehended the following the points:

I. Dick Dyer's Petition Is Proper Because the Court's Ruling Effectively Dismisses or Precludes Dick Dyer's Appeal of Orders Before the Court.

The procedural history of this case is unique. Appellant/Respondent Julie Freeman Hair ("Hair") initially sued over 50 dealers in a single case. The number of defendants was then narrowed to seven. These seven defendants, including Respondent/Appellant J.L.H. Investments, LP ("Hendrick") were named in a single complaint, and the case proceeded forward against these seven defendants simultaneously. A number of important pre-trial rulings were made. The cases were later severed for trial. Trial of Dick Dyer's case has not yet occurred, and Dick Dyer has had no opportunity to directly appeal the pre-trial rulings made against it.

Two of the cases have been tried. A jury returned a verdict against the Plaintiffs in the first case. This is the second case. Here, orders entered against Dick Dyer have been appealed and are before the Court. The Court will render a decision on these issues. The legal precedent established will bind Dick Dyer no less securely than the doctrines of res judicata and/or collateral estoppel. In short, Dick Dyer's rights will be determined but Dick Dyer is not a party to this proceeding.

Dick Dyer attempted to protect its rights by filing a motion to intervene in this case. That motion was denied. However, the Court expressly stated that its denial was without prejudice to Dick Dyer's ability to seek leave to appear as amicus curiae. (Order Denying Motion to Intervene dated September 11, 2014). 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).

Dick Dyer accepted the Court's invitation. It prepared an extensive proposed brief, and conditionally filed the brief with its motion for leave to appear as amicus. The

Court's denial of this motion effectively cuts off both avenues by which Dick Dyer might protect its legitimate interest in the rulings made against it by the trial court. Dick Dyer is forced to sit on the sidelines while others decide its fate.

That Dick Dyer might technically appeal these orders at the conclusion of its own case does not cure the harm done to Dick Dyer by barring it from any kind of participation in these proceedings. The legal precedent which is dispositive of Dick Dyer's rights will be decided here, and any technical future appeal rights possessed by Dick Dyer will be rendered moot.

II. The Court's Ruling Compromises Dick Dyer's Appellate Rights.

As discussed above, the Court's decision to allow Dick Dyer to participate in any fashion in this appeal effectively destroys its appellate rights with respect to matters before the Court to which it was a party. Dick Dyer respectfully requests that the practical effect of the Court's ruling be considered before the Court makes a final decision.

III. The Court's Ruling Implicates Procedural Due Process.

Procedural due process requires notice and an opportunity to be heard. *Cameron & Barkley Co. v. South Carolina Procurement Review Panel*, 317 S.C. 437, 440, 454 S.E.2d 892, 894 (1995). The Rules of Appellate Procedure expressly provide parties involved in a motion before the Court with the following opportunities to be heard: (1) the moving party may file a motion and brief in support of the motion; (2) an opposing party may file a return to the motion within ten days of service of the motion; and (3) the moving party is afforded the chance to file a reply to the return within five days after service of the return. Rule 240, SCACR. In this case, the Court ruled prior to the

expiration of Dick Dyer's opportunity to file a reply, and the reply which Dick Dyer timely filed was therefore not considered by the Court.

Dick Dyer filed and served its motion on December 30, 2014. Freeman had ten days from the date of service to respond to the motion. Rule 240(e), SCACR. Freeman timely served her return to the motion on January 9, 2015. Accordingly, Dick Dyer had the right to serve a reply to the return no later than January 16, 2015. Dick Dyer exercised this right, serving its reply by mail on January 15, 2015. Unbeknownst to Dick Dyer, the Court had ruled on the motion earlier that day. Dick Dyer's return was therefore not considered by the Court, and the Court's ruling was premature.

IV. The Court Misapprehends the Risk that It Might Be Overwhelmed by Others Seeking Amicus Status.

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. Only Dick Dyer and one other dealer occupy this position.¹ Granting Dick Dyer's motion for leave to appear as amicus curiae will therefore not lead to a flood of briefs from over 300 dealers. In any event, as the Court demonstrated by its denial of

¹ This case was originally filed by seven plaintiffs, including Freeman and Michael Blease, against over 50 automobile dealers. The first named Plaintiff was Heather Herron, and, for convenience sake, the case was referred to as the *Herron* matter for a number of years. The defendants with whom none of the named plaintiffs had transacted business were dismissed (Plaintiffs' counsel refiled those claims as part of another action against hundreds of dealers, which has been stayed pending resolution of the *Herron* cases).

The dismissal left seven initial plaintiffs and seven initial defendants in one suit. Most of the claims against these initial defendants have been resolved in some form or another. Defendant Taylor Toyota received a defense verdict at trial. Defendants Century BMW and Overland, Inc. have settled. Defendant Toyota of Greenville's case has been referred to arbitration. Hendrick's case has been tried and is the subject of this appeal. The only remaining original defendants who are aggrieved by orders entered in this case and which face a trial in court are Dick Dyer and Galeana Chrysler Jeep. In short, Dick Dyer's position is far different from the vast majority of other dealers.

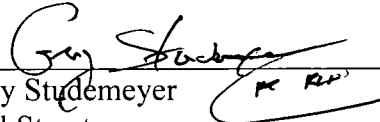
Dick Dyer's motion, the Court may refuse to allow submission of briefs, and may limit the number of briefs accepted to any number with which the Court feels comfortable. There is no risk that the Court will be overwhelmed by the materials it would consider in deciding this case.

Conclusion

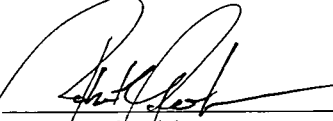
Dick Dyer respectfully requests that the Court reconsider its prior ruling and permit Dick Dyer to appear as amicus curiae in this matter.

Respectfully submitted,

J. Gregory Studemeyer
Professional Corporation

By: 
J. Gregory Studemeyer
1804 Bull Street
Post Office Box 12201
Columbia, South Carolina 29211-2201
(803) 779-3363

WALKER | REIBOLD

By: 
Robert L. Reibold
WALKER & REIBOLD, LLC
Post Office Box 61140
Columbia, South Carolina 29260
(803) 454-0955

Attorneys for Dick Dyer & Associates

January 28, 2015

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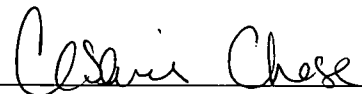
I certify that I have served the Petition for Rehearing on Motion for Leave to Appear as Amicus Curiae on January 28, 2015, addressed to the following counsel of record for Appellant-Respondent and Proposed Intervenors via mail and email:

James Y. Becker, Esq.
Sarah P. Spruill, Esq.
Mary M. Caskey, Esq.
Haynsworth Sinkler Boyd, PA
PO Box 11889
Columbia, SC 29211
jbecker@hsblawfirm.com
sspruill@hsblawfirm.com
mcaskey@hsblawfirm.com

Brady Ryan Thomas, Esq.
Terry E. Richardson, Jr., Esq.
Richardson Patrick Westbrook & Brickman,
LLC
PO Box 1368
Barnwell, SC 29812
bthomas@rpwb.com
trichardson@rpwb.com

And via email only:

John T. Lay, Jr., Esq. Gallivan White & Boyd, PA 1201 Main Street – Ste. 1200 Columbia, SC 29201 jlav@gwblawfirm.com	Marvin D. Infinger, Esq. Nexsen Pruet, LLC PO Box 486 Charleston, SC 29402 minfinger@nexsenpruet.com
Michael E. Spears, Esq. Michael Spears, PA PO Box 5806 Spartanburg, SC 29304 mspears@mikespearspa.com	Richard A. Harpootlian, Esq. Richard A. Harpootlian, PA PO Box 1090 Columbia, SC 29202 rah@harpootlianlaw.com
A. Camden Lewis, Esq. James M. Griffin, Esq. Margaret N. Fox, Esq. Lewis, Babcock & Griffin, LLP PO Box 11208 Columbia, SC 29211 acl@lbglegal.com jmg@lbglegal.com mnf@lbglegal.com	Gedney M. Howe, III, Esq. Law Office of Gedney M. Howe, III, PA PO Box 1034 Charleston, SC 29402 ghowe@gedneyhowe.com



Cesaire N. Chase - Legal Assistant
WALKER & REIBOLD, LLC
Post Office Box 61140
Columbia, South Carolina 29260
(803) 454-0955