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THE STATE OF SOUTH CAROLINA
In The Supreme Court

S.C. Supreme Court

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2012-CP-39-01554
Appellate Case No. 2014-000642

Julie Freeman Hair. Appellant-Respondent,

v.

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

**REPLY OF THE ADAMS BUSINESSES TO APPELLANT-RESPONDENT JULIE
FREEMAN’S MEMORANDUM IN OPPOSITION TO MOTION FOR LEAVE TO FILE
AMICUS CURIAE BRIEF**

The Adams Businesses hereby submit this Reply to Appellant-Respondent’s (“Freeman”) Memorandum in Opposition to the Adams Businesses’ Motion for Leave to File an Amicus Curiae Brief as follows:

Freeman wrongfully claims that the Adams Businesses have a joint defense agreement with Hendrick Honda. The truth is that their cases were not joined with Freeman, but they were intentionally sued in a stayed case by Freeman’s lawyers. This is just another attempt by those same lawyers to delay the Adams Businesses a say in the potential industry-wide ramifications of this case. Rule 213, SCACR provides that a motion for leave must identify the interest of the

applicant and state the reasons why an amicus brief is desirable. The Adams Businesses have made such a case in their Motion,¹ as Freeman's Opposition Memorandum concedes.

I. THE ADAMS BUSINESSES DO NOT HAVE TO BE IMPARTIAL

Rule 213 does not require that the Adams Businesses be impartial. In the context of the filing of an amicus brief, as Supreme Court Justice Samuel Alito stated when he was a Third Circuit Judge, “[a]n accepted definition of the term ‘impartial’ is ‘disinterested,’ Black’s Law Dictionary 752 (6th ed. 1990), and it is not easy to envisage an amicus who is ‘disinterested’ but still has an ‘interest’ in the case.” *Neonatology Assocs., P.A. v. Comm’r*, 293 F.3d 128, 131 (3d Cir. 2002); *see also Strasser v. Doorley*, 432 F.2d 567, 569 (1st Cir. 1970) (“by the nature of things an amicus is not normally impartial”). It is “virtually impossible for an amicus to show that it is ‘an impartial individual . . . whose function is to advise in order that justice may be done’ but not a person who is ‘only . . . concerned about the manner in which [the] court will interpret the law.’” *Id.*

Freeman alleges without proof that all “Car Dealer Defendants” have a joint defense agreement and are “jointly defending” this case. Such an allegation is untrue, unsubstantiated, and irrelevant. All that is required is that the Adams Businesses have an “interest” in the matter. While the Adams Businesses certainly have an interest in the outcome of this appeal, and potentially, a pecuniary interest, such does not prohibit them from filing for leave or this Court in granting it. Indeed, corporations, unions, trade associations, and other parties with such interests regularly file for and appear as amici much like the Adams Businesses are doing here. This Court subscribes to this view and has plainly rejected Freeman’s argument, having granted leave

¹ While this Court is empowered with the discretion to grant or deny leave in this circumstance, it is implicit that that a movant meet the requirements of Rule 213. *See Neonatology Assocs., P.A. v. Comm’r*, 293 F.3d 128 (3d Cir. 2002) (Then Circuit Justice Alito stating that “the Rule does not say expressly that a motion for leave to file should be denied if the movant does not meet the requirements . . . [but] this is implicit.”).

and accepted amicus briefs from the Plaintiff² and Defense Bars,³ the Appleaseed Justice Center,⁴ the United States⁵ and South Carolina Chambers of Commerce,⁶ trade associations,⁷ and others.⁸

II. AN INCREASE IN MOTIONS FOR LEAVE TO FILE AMICUS BRIEFS DOES NOT FOLLOW, NOR DOES IT MATTER IN WHETHER TO GRANT LEAVE TO THE ADAMS BUSINESSES

It is undisputed that this appeal is a closely watched one, especially in the automotive community. As the Adams Businesses pointed out in their Motion, the issues raised in this appeal could dramatically affect the approximate 324 automobile dealers in the *Howard Adams, et al. v. Action Ford Mercury, et al.* litigation and their ability to continue to conduct business throughout South Carolina. While the Adams Businesses fall into this category, they also represent South Carolina businesses that are concerned that established statutory law and administrative guidance on that statutory law, which are clear on an issue, have been legislatively altered, not by the General Assembly, but by plaintiffs and lower court judges, which creates legal uncertainty and a violation of the separation of powers.

It isn't just automotive dealers that will be concerned about such issues, as the Court has received another motion from non-automotive business interests. This Brief represents the only opportunity these many South Carolina businesses can have to provide input on this most important case.

Unlike Dick Dyer & Associates, this Motion is made on behalf of dozens of businesses having had to sit on the sidelines for over seven years; they were not part of the handpicked "Herron 7" by Freeman's lawyers. It is necessary for them to assist the Court in the potential far

² *Omni Ins. Group v. Tidwell*, App. No. 2012-211567 (appeal filed April 18, 2012).

³ *Bone v. U.S. Food Service and Indemnity Ins. Co.*, App. No. 2010-171946 (appeal filed Sept. 13, 2010).

⁴ *Stogsdill v. SC DHHS*, App. No. 2014-002513 (appeal filed Nov. 24, 2014).

⁵ *Cephalon, Inc. v. Alan Wilson*, App. No. 2014-001465 (appeal filed July 7, 2014).

⁶ *State v. Ortho-McNeil-Janssen*, App. No. 2012-206987 (appeal filed Jan. 18, 2012).

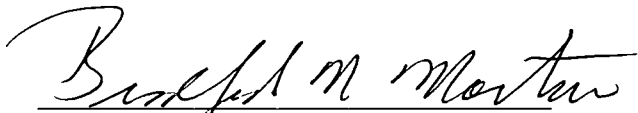
⁷ *Carmax Auto Superstores West Coast, Inc. v. SCDOR*, App. No. 2012-212203 (appeal filed June 6, 2012).

⁸ *Bell v. Progressive Direct Insurance Co.*, App. No. 2011-195286 (appeal filed July 15, 2011).

reaching ramifications of this case. Further, any “waterfall effect” can be handled in the discretion of this Court in how many briefs it may grant to accept. Historically, this Court has accepted several amicus briefs in important cases with potentially wide ramifications. Finally, it is no reason to deny acceptance of a brief because the corresponding plaintiffs may or may not file a motion.

WHEREFORE, based on the above arguments and prior Motion, the Adams Businesses respectfully request that this Court grant them leave to file an amicus brief and to address the Court at oral argument.

February 16, 2015


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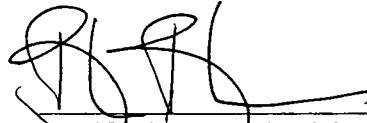
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PROOF OF SERVICE

I certify that I have served Reply of the Adams Businesses to Appellant-Respondent Julie Freeman's Memorandum in Opposition to the Motion for Leave to File Amicus Curiae Brief by depositing a copy in the U.S. Mail, postage prepaid, on February 16, 2015, addressed to Terry E. Richardson, Jr., Esq., Brady R. Thomas, Esq., James David Butler, Esq., Richardson, Patrick, Westbrook & Brickman, LLC, P.O. Box 1368, Barnwell, South Carolina 29812; A. Camden Lewis, Esq., Lewis & Babcock, LLP, PO Box 11208, Columbia, SC 29211; Gedney M. Howe, III, Esq., Gedney M. Howe, III, PA, Post Office Box 1034, Charleston, South Carolina 29402; Michael E. Spears, Esq., Michael E. Spears, PA, Post Office Box 5806, Spartanburg, South Carolina 29304; Richard A. Harpootlian, Esq., Richard A. Harpootlian, PA, Post Office Box 1090, Columbia, South Carolina 29211, James Y. Becker, Esq., Mary Caskey, Esq., Sarah P. Spruill, Esq., Haynsworth Sinkler Boyd, PA, PO Box 11889, Columbia, SC 29211; Marvin Infinger, Esq., Nexsen Pruet, LLC, P.O. Box 486, Charleston, SC 29402; and John T. Lay, Esq., Gallivan, White & Boyd, PA, 1201 Main St., Ste. 1200, Columbia, SC 29201.

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