

THE STATE OF SOUTH CAROLINA

In the Supreme Court

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APPEAL FROM PICKENS COUNTY

S.C. Supreme Court

Court of Common Pleas

Doyet A. Early, Circuit Court Judge

Case No. 2012-CP-39-01554

Appellate Case No. 2014 - 001110

Julie Freeman.....Appellant – Respondent

v.

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

APPELLANT-RESPONDENT JULIE FREEMAN’S MEMORANDUM IN OPPOSITION TO MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF OF SOUTH CAROLINA BANKERS ASSOCIATION

Plaintiff/Appellant-Respondent Julie Freeman hereby submits this Memorandum in Opposition to the South Carolina Bankers Association’s Motion for Leave to File Brief as Amicus Curiae. The Motion for Leave to file Brief as Amicus Curiae should be denied for the following reasons.

1. The Bankers Association’s Motion for Leave to file Brief as Amicus Curiae should be denied because it is unnecessary and comes from an entity with close ties to J.L.H. Investments, LP, a/k/a Hendrick Honda of Easley’s (“Hedrick”) counsel in this case, Haynsworth Sinker Boyd, P.A. (“Haynsworth”). In fact, Hedrick’s counsel emailed the motion to Ms. Freeman’s

counsel. See Exhibit A, Email from Caroline Warner paralegal for James Becker, attorney of record in this case. Also, the electronic file sent is named “3990667- v1 Rashley Letter to Supreme Court Clerk filing South Carolina Bankers Association Motion for Leave to File an Amicus Curiae Brief, proposed Amicus Brif.PDF.” Id. Not surprisingly, this electronic file is named using the same format that Haynsworth uses on their files. See Exhibit B, Email from Caroline Warner with attachment named “3990642- v1 Preliminary order approving settlement-SpignerHendrick Hyundai North.DOC.” The naming of these files using the same format strongly suggests that the proposed Amicus Brief is authored by Hendrick’s counsel and is an improper attempt by a Party to this appeal to submit additional briefing outside the appellate court rules.

2. Regardless, the Bankers Associations’ arguments about interpretation and a party relying on guidance from the Department of Consumer Affairs are irrelevant to the issues in this appeal and thus are unnecessary. Judge Early’s interpretation of the Closing Fee Statute is the same as: (i) the Department of Consumer Affairs¹; (ii) the South Carolina Automobile Dealers Association (“SCADA”)²; and (iii) the Defendant in this case.³ This is not a case where a party

¹ The Department of Consumer Affairs official interpretation of the statute includes language for a sign with the following limitation describing what the fee can be charged for: “THIS DEALERSHIP CHARGES A CLOSING FEE AS A MEANS OF REIMBURSING IT FOR CERTAIN OVERHEAD COSTS SUCH AS DOCUMENT RETRIEVAL AND DOCUMENT PREPARATION.” R.p. 1732.

²SCADA’s corporate representative testified as follows:

Q: From 1978 to this minute right now, is it still SCADA’s position—
...
--that this fee, must be reasonable and for a service actually performed?
A: Yes.
...

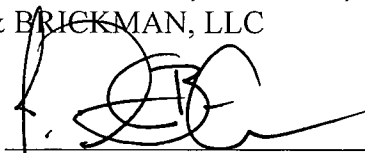
Q: Okay. Why would you advise your dealers to make certain that the fee is reasonable for the service provided?

interpreted a statute in a different way than the trial court or in a different way from the Department of Consumer Affairs. The only people arguing for a different interpretation of the Closing Fee Statute are the lawyers of record in this case who may also be the lawyers for the proffered amicus; the Bankers Association. The issues in this case are adequately briefed by the Parties and any additional briefing would lead to a waste of judicial resources.

In conclusion, Plaintiff/Appellant-Respondent Julie Freeman respectfully requests that the Court exercise its discretion and deny the Bankers Association's request to file an Amicus Curiae brief in this matter.

Respectfully submitted,

RICHARDSON, PATRICK, WESTBROOK
& BRICKMAN, LLC



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Gedney M. Howe, III
LAW OFFICE OF GEDNEY M. HOWE, III
P.A.

A: Because that's what the Department of Consumer Affairs had said to do.

R. p. 783, ll. 1-7 and R.p. 784, ll. 21-25.

³⁴“[I]f a dealership is going to charge a fee and call it by a name, that the fee has to be for reimbursement of cost related to that name.” R.p. 1413, ll.18-22.

Michael E. Spears
MICHAEL E. SPEARS, P.A.

| March 9, 2015

ATTORNEYS FOR THE APPELLANT-RESPONDENT

THE STATE OF SOUTH CAROLINA

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Appellate Case No. 2014 - 001110

Julie Freeman.....Appellant – Respondent

v.

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

PROOF OF SERVICE

The undersigned of the law offices of Richardson, Patrick, Westbrook & Brickman, LLC attorneys for the Respondent, do hereby certify that service of:

APPELLANT-RESPONDENT JULIE FREEMAN’S MEMORANDUM IN OPPOSITION TO MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF OF SOUTH CAROLINA BANKERS ASSOCIATION

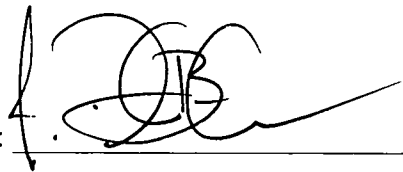
was made on all counsel of record, specified below, by mailing a copy of the same by United States Mail, postage prepaid, to the following addresses:

James Y. Becker, Esq.
Sarah P. Spruill, Esq.
Mary M. Caskey, Esq.
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By:  _____

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March 9, 2015

Attorneys for Appellant-Respondents.

EXHIBIT A

Brady Thomas

From: Warner, Caroline <cwarner@hsblawfirm.com>
Sent: Thursday, February 26, 2015 3:53 PM
To: Terry Richardson; Brady Thomas; Dave Butler; Mspears@mikespearspa.com; ghowe@gedneyhowe.com; acl@lewisbabcock.com; jlay@gwblawfirm.com; MInfinger@nexsenpruet.com; jmg@lbglegal.com; mnf@lbglegal.com
Cc: Becker, James; Caskey, Mary; Spruill, Sarah; Valdes, Beth; nrashley@scbankers.org
Subject: Julie Freeman v. J.L.H. Investments, LP a/k/a Hendrick Honda
Attachments: 3990667-v1 Rashley Letter to Supreme Court Clerk filing South Carolina Bankers Association Motion for Leave to File an Amicus Curiae Brief, proposed Amicus Brief.PDF

RE: *Julie Freeman v. J.L.H. Investments, LP a/k/a Hendrick Honda*
Appellate Case No. 2014-001110
HSB File No. 32239.0001

Please see the attached letter sent on behalf of South Carolina Bankers Association.

Thank you,

Caroline Warner

**Haynsworth
Sinkler Boyd, PA.**

ATTORNEYS AND COUNSELORS AT LAW

Caroline A. Warner | Legal Assistant | Haynsworth Sinkler Boyd, P.A.

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EXHIBIT B

Brady Thomas

From: Warner, Caroline <cwarner@hsblawfirm.com>
Sent: Friday, March 06, 2015 11:38 AM
To: Terry Richardson; Dave Butler; Brady Thomas
Cc: Becker, James; Spruill, Sarah; Willoughby, Amanda; Caskey, Mary
Subject: Freeman v. Hendrick Honda
Attachments: 3990642-v1 Preliminary order approving settlement - SpignerHendrick Hyundai North.DOC; 3990634-v1 Preliminary order approving settlement - McCleaveHonda Cars of Rock Hill.DOC; 3990632-v1 Preliminary order approving settlement - PopowskiVolvo of Charleston.DOC; 3990566-v1 Preliminary order approving settlement - RamaHendrick Lexus Charleston.DOC; 3990558-v1 Preliminary order approving settlement - KrahamHendrick Hyundai Charleston.DOC; 3990553-v1 Preliminary order approving settlement - FerraoHendrick Toyota Scion North Charleston.DOC; 3990538-v1 Preliminary order approving class action settlement - SmithRick Hendrick Jeep Chrysler Dodge Ram.DOC; 3990533-v1 Preliminary order approving class action settlement - RangelRick Hendrick BMW Charleston.DOC; 3990524-v1 Preliminary order approving class action settlement - MillerRick Hendrick Chevrolet.DOC; 3990521-v1 Preliminary order approving class action settlement - FeagleyRick Hendrick Dodge Chrysler Jeep Ram.DOC; 3990511-v1 Preliminary order approving class action settlement - Legare Hendrick Honda of Charleston.DOC; 3941823-v5 Preliminary Order Approving Settlement_Freeman_final.DOC

Please see the attached orders for your approval.

Thank you,

Caroline Warner

**Haynsworth
Sinkler Boyd, PA.**

ATTORNEYS AND COUNSELORS AT LAW

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