

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

Circuit Court Case No. 2012-CP-39-01554

Appellate Case No. 2014-000642

RECEIVED

MAR 20 2015

S.C. Supreme Court

Julie Freeman Hair APPELLANT-RESPONDENT

v.

J.L.H. Investments, LP a/k/a Hendrick Honda. RESPONDENT-APPELLANT

**PETITION AND MOTION FOR LEAVE TO APPEAR AS AMICI CURIAE
FROM THE SOUTH CAROLINA DEPARTMENT OF CONSUMER AFFAIRS
AND THE SOUTH CAROLINA AUTOMOBILE DEALERS ASSOCIATION**

**SOUTH CAROLINA DEPARTMENT
OF CONSUMER AFFAIRS**

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**SOUTH CAROLINA AUTOMOBILE
DEALERS ASSOCIATION**

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Pursuant to Rule 213 of the South Carolina Appellate Court Rules, the South Carolina Department of Consumer Affairs (“Department”) and the South Carolina Automobile Dealers Association (“SCADA”) hereby respectfully move before the South Carolina Supreme Court in the exercise of its jurisdiction for leave to appear in this case as *amici curiae* and to file their joint brief on certain issues raised in the appeal and cross appeal filed in this matter by the Appellant-Respondent (“Hair”) and Respondent-Appellant (“Hendrick Honda”) as explained herein and do conditionally file their proposed Brief herewith as permitted by Rule 213, SCACR.

The Department and SCADA appear as *amici curiae* to offer additional insight on the specific issue involving the Code and the Department’s regulatory and enforcement authority of the closing fee statute. The Department’s administration of the Code directly affects every automobile dealer who charges closing fees in South Carolina. All automobile dealers that charge, or have charged, a closing fee that has been properly filed with the Department and have complied with the directives of the Department as well as the closing fee statute must be afforded the ability to rely on the standards established by the Department for proper compliance with the Code’s closing fee statute.

The South Carolina Department of Consumer Affairs (“the Department”) is the state’s consumer protection agency. Established in 1974 by the South Carolina Consumer Protection Code (“the Code”), Section 37-1-101 et. seq., the Department is the administrator and enforcer of the Code, as well as other regulatory statutes outside the Code. In this capacity, the Department helps to formulate and modify consumer laws, policies and regulations; regulates the consumer credit marketplace; resolves complaints arising out of the production, promotion or sale of consumer goods or services in South Carolina, whether or not credit is involved; and promotes a healthy competitive business climate with mutual confidence between buyers and sellers.

The Department is the sole state agency designated by the General Assembly to construe and provide official legal interpretations of the Code. See S.C. Code Ann. §§ 37-6-104(1)(b) and 37-6-506. The Department's interpretations of law are afforded deference by the courts and will be upheld if a court determines that the interpretation is consistent with the plain language of the statute and with legislative intent. Lexington Law Firm v. S.C. Dep't of Consumer Affairs, 382 S.C. 580, 677 S.E.2d 591 (2009). Persons relying upon interpretations of the Code issued by the Department are also provided a safe harbor for compliance including protection from penalties unless and until the interpretations are changed or deemed invalid. See S.C. Code Ann. §§ 37-6-104(4) and 37-6-506(3).

The Department has been administering and enforcing Section 37-2-307, the closing fee statute, in a consistent manner since it was enacted in 2000. In 2001, the Department issued an Administrative Interpretation of the statute clarifying, *inter alia*, the parameters under which a closing fee can be charged by a motor vehicle dealer. For more than fourteen years, the Department has processed closing fees filed by dealers, and taken enforcement actions, pursuant to the requirements of the statute as clarified by the 2001 Interpretation.

The South Carolina Automobile Dealers Association ("SCADA") is the trade association of approximately 282 franchised automotive dealerships employing 22,568 citizens in jobs throughout the State of South Carolina. SCADA members provide approximately \$1.145 billion in total earnings for South Carolina residents. This jobs total represents close to 10% of the total retail employment in the State of South Carolina. The average individual South Carolina dealership employs 53 people and had an average

payroll of \$2,745,000 in year 2012. SCADA members pay \$192 million in state and local taxes, as well as pay \$190 million in federal payroll taxes. Total dealership sales for SCADA members were almost \$10 billion in 2012. The average dealership sales are roughly \$34.5 million annually with approximately \$465,000 spent in a year on advertising in all types of media outlets (i.e., radio, television, newspaper, Internet, and magazine). The average number of vehicles serviced in one year per dealership is over 15,000. During the period of 2008 through 2012, each individual franchised dealer in South Carolina accounted for a total of \$650,000 dollars in capital improvement expenditures. In addition to being vital contributors to South Carolina's economy, SCADA members provided contributions of \$6 million to charitable causes.

SCADA's member dealers have a substantial business and economic interest in the issues presented by this appeal. SCADA has consistently sought to aid its members in developing and maintaining full compliance with the closing fee statute as interpreted by the Department. Dealers must be able to rely on the Department's determination of exactly what is required by law in order to charge closing fees in compliance with the four requirements of Section 37-2-307.

Fifteen years after the closing fee statute was enacted, SCADA members are confronting a trial court ruling that states ongoing and full compliance with the rulings issued by the State agency directed to enforce the Code is a meaningless exercise and that individual juries will decide if a dealer charged an "unlawful" closing fee. In the current appeal, the ruling by the trial court has resulted in Hair asserting that dealers who have continued to charge closing fees since the present lawsuit was commenced in 2006

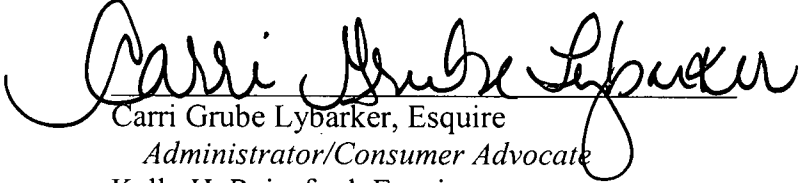
remain in direct violation of the Dealer's Act¹ even when the dealers have properly filed those closing fees with the Department each year in compliance with Section 37-2-307 and the Department's Interpretation. As a result, dealers are now subject to substantial penalties, not authorized by the Code, but under the Dealer's Act that have been imposed on Hendrick Honda by the trial court. Compliance with the statute and the Department's Code Interpretation does not constitute a violation of the Dealer's Act.

The Department respectfully joins with SCADA in requesting that the Court grant their motion to appear as amici curiae and to accept their jointly filed brief. For these reasons, the Department and SCADA further seek leave to file the attached conditionally filed brief.

¹ The South Carolina Regulation of Manufacturers, Distributors, and Dealers Act ("Dealers Act"), S.C. Code Ann. Section 56-15-10 et seq.

Respectfully submitted, this ²⁰ day of March, 2015.

**SOUTH CAROLINA DEPARTMENT OF
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PROOF OF SERVICE

I, the undersigned employee of Richardson Plowden & Robinson, P.A., hereby certify that one copy of the PETITION AND MOTION FOR LEAVE TO APPEAR AS AMICI CURIAE FROM THE SOUTH CAROLINA DEPARTMENT OF CONSUMER AFFAIRS AND THE SOUTH CAROLINA AUTOMOBILE DEALERS ASSOCIATION WITH BRIEF and CERTIFICATE OF COUNSEL in the above-referenced matter were served on the following counsel of record for Appellant-Respondent, in the manner indicated below, on March 20, 2015:

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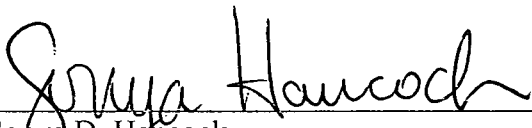
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March ²⁰¹² 2015
Columbia, South Carolina



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