

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Edgar Warren Dickson, Circuit Court Judge

Case No. 2009-CP-18-00111

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SEP 11 2012

SC Court of Appeals

Diane R. HendersonRespondent,

v.

Summerville Ford-Mercury, Inc.
and Capital One Auto Finance, Inc.,

Of whom Summerville Ford-Mercury, Inc. is theAppellant.

APPELLANT'S MEMORANDUM OF LAW IN
OPPOSITION TO FOURTH MOTION FOR CONTINUANCE

Respondent's initial brief and designation were initially due on June 10, 2012. This deadline has been extended first to July 11, 2012, then to August 10, 2012, and then to September 10, 2012. Respondent now seeks a fourth extension of this deadline, for another thirty days, and potentially longer.

Respondent's motion should be denied. The core issue in the instant appeal is discrete – should the trial judge should have confirmed an arbitration award when that award had already been fully paid, mooted any need for further proceedings. The motion to confirm the arbitration award was heard on August 1, 2011 before the

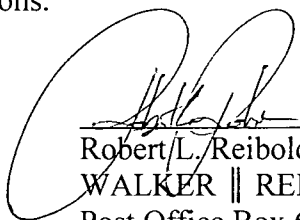
Honorable Edgar Dickson. The trial court confirmed the award on January 6, 2012.

Appellant appealed only the order confirming the arbitration award. No cross appeal was filed.

Respondent does not seek additional time to obtain a transcript of the hearing on the motion to confirm. As required by applicable rule, Appellant long ago obtained a copy of that transcript. Respondent instead seeks additional time to obtain a transcript of a "prior hearing." That prior hearing involved the initial decision on Appellant's motion to compel arbitration. It occurred more than three years ago. The Honorable James C. Williams, Jr. compelled arbitration by order dated June 21, 2009. That order was not appealed, and the matter was arbitrated.

Pursuant to Rule 210(c), SCACR, the prior transcript cannot be made a part of the Record on Appeal or considered by the Appellate Court. Judge Dickson was not a party to the hearing on the initial motion to compel arbitration. The transcript of the initial hearing was neither submitted to nor considered by Judge Dickson. The deadline to appeal any issues related to the initial hearing has long since passed.

Because the transcript of the prior hearing cannot be submitted in this appeal, there is no point in further delaying proceedings in this appeal to obtain it, and Respondent has been given three prior extensions.



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September 7, 2012

VIA FACSIMILE (803) 734-1839 AND USPS

The Hon. Jenny Abbott Kitchings
Clerk, SC Court of Appeals
1015 Sumter Street
Columbia, SC 29201

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SC Court of Appeals

RE: Diane R. Henderson f/k/a Diane Reed vs. Summerville Ford-Mercury, Inc.
C. A. No. 2009 CP 18-111

Dear Ms. Kitchings:

Please find the attached Appellant's Memorandum of Law in Opposition to Fourth Motion for Continuance. I am sending the original and one copy via the U.S. Postal Service today for filing. By copy of this letter I am serving all counsel via the same.

Thank you for your assistance.

Sincerely,



Janet Wrye
Paralegal

/jrw

Enc.

cc C. Steven Moskos, Esq. via facsimile and USPS
Brooks R. Fudenburg, Esq. via facsimile and USPS
Michael Gruehloh, Esq. via facsimile and USPS