

**NOTICE OF APPEAL FROM THE ADMINISTRATIVE TRIBUNAL**

**THE STATE OF SOUTH CAROLINA IN THE COURT OF APPEAL  
APPELLATE DIVISION**

**kathleen Murray,**

**Plaintiffs-Appellant,**

**CASE NO. 2015CP4003132**

**v.**

**USA/AUTO,**

**Defendant-Respondent.**

**RECEIVED**

**OCT 11 2016**

**SC Court of Appeals**

**APPELLANT OPENING BRIEF AND EXCERT OF RECORD**

**Appeal from the Judgment of Dismissal of  
the court of common pleas Richland County  
dated May 25, 2016  
The Honorable ALISON R. LEE and MEL MAURER**

## **APPELLANT OPENING BRIEF AND EXCERPT OF RECORD**

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### **STATEMENT OF THE CASE**

#### **Nature of the action and relief sought**

#### **Unfair or Deceptive Practice**

This is a action against USA/AUTO unfair or Deceptive Practices damage to Appellant, which appellant allege was damaged as a result of defendant negligence. The trial court dismissed appellant motion for no warranty on vehicle. Appellant state that USA/AUTO sold a vehicle that had deficiency and was unsafe to drive. See. Exhibit A.

Appellant state that USA/AUTO has a history of doing business with consumers selling them defected vehicle. See Exhibit B.

Appellant state that USA/AUTO assured her that there wasn't anything wrong with the vehicle that was being purchase. Appellant, has suffer much from the defendant negligence. And is seeking compensatory damages. And refund of \$4000.00. down payment on vehicle.

#### **Nature of judgment**

The nature of judgment is the dismissal of appellant motion for failure to have warranty

#### **Effective date for appellate purpose**

The judgment of Dismissal was signed April 28, 2015 and was entered same date. The notice of Appeal was filed on May 22, 2015 . See Exhibit C.

### **Summary of argument**

Neither the parties nor the trial court invoked a status, a relationship, or a particular standard of conduct that creates, defines or limit defendant's duty in this case.

The facts in appellant's pleading do not place this case in a category of claimants or claims that require denial of appellant's claim as a matter of law.

A rational factfinder could find defendant's conduct unreasonably posed a foreseeable risk to appellant.

The facts in appellant's pleading are sufficient to state a common law negligence claim.

### **Statement of facts**

On December 15<sup>th</sup> USA/AUTO authorized for the car to be towed to CSI Auto to find out what cause the vehicle to shut down, CSI AUTO informed USA/AUTO that was faulty wiring that cause the engine to stop working

CSI AUTO also notice that on the driver side front wheel rim was crack as well. See Exhibit D.

### **CONCLUSION**

The trial court erred when it ruled the the appellant's didn't have warranty, failed to state ultimate facts sufficient to constitute a claim. The Judgment of Dismissal should be reversed.

## TABLE OF AUTHORITIES

### Cases:

<p><b>Medina v. Ford Motor Co.</b>, 40 So.3d 891, 35 Fla. L. Weekly D1644 (Ju. 23, 2010)</p>	<p>Automobile buyer brought action against manufacturer under the Lemon Law and the Magnuson-Moss Warranty Act. After entry of a jury verdict in favor of buyer, the trial court granted manufacturer's motion to set aside the verdict and buyer appealed. The Florida Court of Appeals reversed the order setting aside the jury verdict and remanded to the trial court to reinstate judgment in favor of buyer under the Florida Lemon Law.</p>
<p><b>Arrate v. Volkswagen of America, Inc.</b>, 932 So.2d 363, 31 Fla. L. Weekly D819 (Fla. App. 2 Dist., Mar. 17, 2006)</p>	<p>Appeal from a final judgment dismissing, with prejudice, a civil suit concerning the purchase of an allegedly defective automobile. Appellate Court' reversed trial court's conclusion that the dispute was subject to mandatory arbitration.</p>
<p><b>Moedt v. General Motors Corp.</b>, 60 P.3d 240, 204 Ariz. 100 (Ariz.App., Dec. 24, 2002)</p>	<p>After automobile owner's Lemon Law action against manufacturer was settled, owner sought attorney fees pursuant to Lemon Law provision. The trial court awarded \$712 and manufacturer appealed. The Court of Appeals affirmed holding that owner could recover under Lemon Law provision authorizing award of attorney fees to consumer who prevailed in action.</p>
<p><b>Lemons v. Showcase Motors, Inc.</b>, 207 Ariz. 537, 88 P.3d 1149, 2004-1 Trade Cases P 74, 399, 424 Ariz. Adv. Rep. 17, (Ariz. App. Div. 1, Apr. 29, 2004)</p>	<p>Buyer of an "as is" used car brought action against dealership for breach of implied warranty of merchantability under Magnuson-Moss Warranty Act, alleging brake failure, defective power windows, and frame damage. The Arizona trial court granted summary judgment for dealership and buyer appealed. The Court of Appeals reversed finding genuine issue of fact existed as to whether dealership was party to vehicle dealer service contract precluding summary judgment.</p>

**CERTIFICATE OF SERVICE**

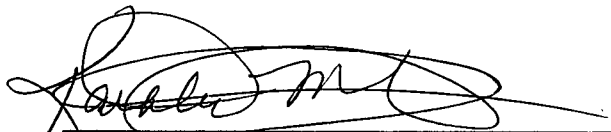
I hereby certify that on September 26, 2016 a true and correct copy of the following document for filing an appeal, will be delivered and served on USA/AUTO SALES

Sworn, Subscribed, Sealed and Affirmed Before Me This 26 day of September, 2016

Notary Public for Georgia Yasia Bahiga Butso

My Commission Expires 10/08/2019

**Official Seal**  
Yasia Bahiga Butso  
Notary Public, Newton County, GA  
My Commission Expires October 8, 2019



Kathleen Murray  
UCC 1-207 1-103.6 1-308

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**SC Court of Appeals**

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Exhibit A

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE MAGISTRATE'S  
COURT

Kathleen Murray  
PLAINTIFF

VS

ORDER FOR JUDGMENT

USA Auto Sales  
DEFENDANT

ON April 28, 2015 THE PARTIES TO THIS ACTION PRESENTED THEIR  
TESTIMONY AND ARGUMENTS BASED ON THE FINDINGS OF FACT, AN AWARD WAS  
MADE TO

THE \_\_\_\_\_ IN THE AMOUNT OF \$ \_\_\_\_\_

PLUS FILING FEES \$ \_\_\_\_\_ FOR A TOTAL OF \$ \_\_\_\_\_

*No Warranty on Vehicle → Action Dismissed*  
SO ORDERED.

This \_\_\_\_\_ DAY OF \_\_\_\_\_ 20

Mel Maurer  
JUDGE MEL MAURER  
DUTCH FORK MAGISTRATE

2015 APR 28 PM 3:08  
DUTCH FORK MAGISTRATE

*Rim problem in NC  
said Cracked rim →  
All pmt on Vehicle*

*No pmts made on loan*

Exhibit B



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## BBB BUSINESS REVIEW

What is a BBB Business Review?

**THIS BUSINESS IS NOT BBB ACCREDITED**

### USA Auto Sales and Super Center

Phone: (803) 750-7171

Fax: (803) 798-5716

View Additional Phone Numbers

2504 Broad River Rd, Columbia, SC 29210-6647



On a scale of A+ to F  
Reason for Rating  
BBB Ratings System Overview

BBB Business Reviews may not be reproduced for sales or promotional purposes.

### BBB Accreditation

USA Auto Sales and Super Center is not BBB Accredited.

Businesses are under no obligation to seek BBB accreditation, and some businesses are not accredited because they have not sought BBB accreditation.

To be accredited by BBB, a business must apply for accreditation and BBB must determine that the business meets BBB accreditation standards, which include a commitment to make a good faith effort to resolve any consumer complaints. BBB Accredited Businesses must pay a fee for accreditation review/monitoring and for support of BBB services to the public.

### Reason for Rating

BBB rating is based on 16 factors. Get the details about the factors considered.

Factors that lowered USA Auto Sales and Super Center's rating include:

- 7 complaints filed against business
- Failure to respond to one complaint filed against business.
- One complaint filed against business that was not resolved.
- BBB does not have sufficient background information on this business.

### Customer Complaints Summary

[Read complaint details](#)

7 complaints closed with BBB in last 3 years   3 closed in last 12 months	
Complaint Type	Total Closed Complaints
Advertising / Sales Issues	1
Billing / Collection Issues	1
Problems with Product / Service	5
Delivery Issues	0
Guarantee / Warranty Issues	0
<b>Total Closed Complaints</b>	<b>7</b>

Exhibit B



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## BBB BUSINESS REVIEW

What is a BBB Business Review?

CONSUMER COMPLAINTS

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### Customer Complaints Summary

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Complaint Type	Total Closed Complaints
Advertising / Sales Issues	1
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Problems with Product / Service	5
Delivery Issues	0
Guarantee / Warranty Issues	0
<b>Total Closed Complaints</b>	<b>7</b>

### Complaint Breakdown by Resolution

[About Complaint Details](#)

Complaint Resolution Log (7)	
Complaint resolved with BBB assistance (4 complaints)	
04/25/2014	<p>Problems with Product / Service.   <a href="#">Read Complaint Details</a></p> <p><b>Complaint</b> They will not fix my vehicle timing problems engine work need to be done I put 3500 dollars down on my 2007 xl7 suszki firt of all they lied to the financial company in told them I only put 3000 down I have paper work to prove it I purchase the vehicle on Feb 15 2014 I start have problems 2 day after purchase so I took it back to get my money. Back they told be I couldn't get my money back so I also never received in info on my warranty that I'm stuck paying for rite now in I still have no warranty in gwc system the dealer name is *****</p> <p><b>Desired Settlement</b> Money back</p> <p><b>Business Response</b> her car was brought into the shop no problems with the car, she does have a warranty for 36 months or 36000 with GWC Warranty contract# XXXXXXXX XXX-XXX-XXXX</p>
09/08/2014	Problems with Product / Service

Exhibit B

01/03/2013	Problems with Product / Service
05/07/2012	Billing / Collection Issues

The business failed to resolve the complaint issues (1 complaint)

05/10/2012	Advertising / Sales Issues
------------	----------------------------

BBB found business made good faith effort to resolve complaint but customer not satisfied with business response (1 complaint)

<p>06/10/2013</p>	<p>Problems with Product / Service   Read Complaint Details</p> <p><b>Complaint</b>                  I purchased a vehicle with a warranty from the dealer, car had bad engine, warranty a fake, dealer unwilling to pay for lemon they sold me.                  I purchased a vehicle from this dealer in early February, after only a month of having the car on 3/8/13 I had to have the car towed to a shop, after having a mechanic look at it I was told that I was sold a lemon cause the engine was already pretty much gone in it, I infomed the dealer and was told that I had a warranty, so a claim was filed, but the warranty company denied claim saying the dealer had to paid for the warranty yet, so I called back to dealer and was told they would just buy another warranty, but since that day I havent been able to get any resolution to the matter, I asked them to simpy just pay the shop directly for a remanufactured or use engine, but got no reply. I then called my insurance company to see if it would maybe be covered under my comprehensive coverage but after the inspector looked at it he informed it wasnt and said that I had a spun bearing which meant that the engine was bad before sold to me due to the fact that it takes a while for that to happen cause it comes from not changing oil over time and sludge building up in engine. His professional opinion was that the engine was bad at time of purchase. It has been well over a month and I am still making payment to my finance company for this car, I bought this car with a warranty and have not gotten it fixed yet.</p> <p><b>Desired Settlement</b>                  I am only asking that the dealer immediately cut a check directly to repair shop for cost of purchasing and replacing the engine in my car.</p> <p><b>Business' Initial Response</b>                  Mr.***** purchased the car and was financed with Westlake Financial in between the purchase process the car was driven by Mr.*****, a Walmart employee called and advised that the car was spinning out of their parking lot we advised Mr.***** of the complaint and he stated he would stop doing that and driving his car in that manner, after that the next discussion was with Westlake who state Mr.***** did not make his first payment and it was time for his second payment they had sent him a Right to Cure in which he did not bring the account current within the arrangement time given to him by Westlake. We were then notified by Mr.***** that he needed an engine and the car was in the shop. Westlake no longer was financing Mr.***** and the dealership was charged back. We tried to get Mr.***** financed by another lender but he was declined. Mr.***** had also advised me that he had withdrawn the complaint filed that it was filed by the direction of the insurance company. We are not responsible for the driving actions of Mr.***** nor can we or could we had him make his payments to the bank as contracted.</p> <p><b>Consumer's Final Response</b>                  (The consumer indicated he/she DID NOT accept the response from the business.)                  This explanation is shabby and doesn't explain why they, forged my name on a warranty, why the engine is still not fixed, the car has a spun rod bearing which has nothing to do with speeding in car or anything, the engine was bad at time of purchase according to my shop and insurance company, not only that when my tires spun out it was an accident and I told them that, I informed my financial company that I would not make payments until they agreed to fix the car which they didn't, I was not going to pay for a lemon, the financial company understood that and charged back the car which had no ill efect on me in fact Westlake is financing me another car through a different dealer, at this point I only want my payments back made into vehicle seeing as to how I was only able to drive the car for a month, due to the circumstances of me losing my job due to transportation difficulties that arose because of this I have been advised that I am entitled to</p>
-------------------	---

Exhibit B

monies for pain and suffering, but will not pursue if I am paid back in full for what I paid to get the car

BBB did not receive a response from business (1 complaint)

12/15/2014

Problems with Product / Service | Read Complaint Details

**Complaint**

The car isn't any good, I was basically sold a lemon and the owner refuse to fix the car. Stating he is not putting no more money into the car. purchase the car on 10/10/2014 but didn't get to take the car home because they had to replace a piece on the car. Didn't pick up the car until that following Tuesday which was 10/14/2014. Was told by the sales representative that sold me that car "if I had any problems with the car to bring it back to him and he will fix the problem". Took the car home but on my way I'm hearing a loud noise. I had my dad and a mechanic look at it, the water pump was the issue. Call the company back but kept being place on hold and no one coming back to the phone to speak to me. finally got someone and told the car up their. had to wait additional days for the car to be repaired then on top of that had to find A way to work and home. They gave me a ride home and from work by picking me up while I waited on my car. when I got the car back and turn the defroster on the car started smoking and burn so bad until I couldn't see out the window, I though the car was going to catch on fire with me and my son in it. something in the car locker up and cause the belt on the car to pop. i contact them immediately and kept been place on hold, no one would pick up, and even been hanged up on, eventually I contact the financial company which is the lender and inform them on what's going on and they contacted USA Auto and I was told they was going to send a tower to get the car and no one hasn't come yet, the car is still sitting waiting, been calling and going up their no resolve...and this actually cause me to lose my job ...I was inform on 11/14/2014 that the owner state "he is not putting no more money into the car and theirs nothing he can do for me" He even state he was going to charge me to tower the car if he comes and get it .....Been having problems with this car since I had it and kept being told lies or half answers. the car is still sitting not fix and undriveable...It wasn't even a full month yet

**Desired Settlement**

I either want a replace car or someone needs to come get the car and I want it out of my name as soon as possible.

**Industry Comparison | Chart**

Auto Dealers-Used Cars

As a matter of policy, BBB does not endorse any product, service or business.

BBB Business Reviews are provided solely to assist you in exercising your own best judgment. Information in this BBB Business Review is believed reliable but not guaranteed as to accuracy.

BBB Business Reviews generally cover a three-year reporting period. BBB Business Reviews are subject to change at any time.

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2015CP4003132

Kathleen Murray

USA Auto

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: \_\_\_\_\_

Attorney for :  Plaintiff  Defendant or  Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award  Other \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

**ORDER INFORMATION**

*Appeal Dismissed. No errors of law.*

This order  ends  does not end the case.

Additional Information for the Clerk : \_\_\_\_\_

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: \_\_\_\_\_

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge [Signature] Judge Code 2061 Date 5-20-16

**For Clerk of Court Office Use Only**

This judgment was entered on the 25 day of May, 2016 and a copy mailed first class or placed in the appropriate attorney's box on this 25 day of May, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Kathleen Murray

USA Auto

Kathleen Murray

USA Auto

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter \_\_\_\_\_

Clerk of Court [Signature]



JEANETTE W. BRIDGE  
CLERK OF COURT  
2016 MAY 24 AM 8:45  
RICHLAND COUNTY  
FILED

Exhibit D

On Dec 15th USA Auto authorized for the car to be towed to CSI Auto to find out what cause the vehicle to shut down, CSI Auto informed USA Auto that it was faulty wiring that cause the engine to stop working. CSI Auto also notices that on the driver side front wheel rim was cracker as well. USA Auto paid for the wiring to be fix, Dec 17<sup>th</sup> the vehicle shut down again due to the key ignition switch broken inside. USA Paid for that to fixed as well. On Dec 19<sup>th</sup> the vehicle was towed for the third time due to ticking in the engine. CSI Auto informed me Kathleen Murray and USA Auto that it was the rocker arm assemblies with left and right bank, that's when my friend Charles Kelley and I went to USA Auto on Dec 22<sup>nd</sup> 2014 to see if we could get USA Auto to give me another vehicle and we were told they had nothing on the lot that was safe for me to drive, that they will do everything to make it right with the Chrysler 300, that they were going to ship the tires and rims to CSI Auto that never was shipped. I called CSI Auto on Dec 23<sup>rd</sup> 2014 to find out when could I come pickup my vehicle and I was told that USA Auto had not paid them as of yet for the diagnostic of the engine also that the engine was never fixed. USA Auto gave me the run around from Dec 19<sup>th</sup> 2014 to Jan 23<sup>rd</sup> 2015. USA Auto left the vehicle abandoned at CSI Auto from Dec 19<sup>th</sup> 2014 to Jan 23<sup>rd</sup> 2015 for non-payment on that same day Jan 23<sup>rd</sup> 2015 I receive a call from CSI Auto informing me that USA Auto sent a tow truck to tow the vehicle back to them and paid them as well for the diagnostic. After hanging up with CSI Auto I then called USA Auto and ask them to refund my money back and I was told they was not going to refund my money that's when I had informed USA Auto that they left me no choice, but to take them to court that I was out of my 4,000 dollars and a vehicle as well and USA Auto hung up the phone on me. \$4,000 down payment, \$171 car Insurance, I had to take off of work to attend court \$1,000 all the gas money I had to send getting back and forward \$300, all the court fees \$600, car rentals \$700 that USA Auto said they will pay me back, but never did. Two years of pain and suffering this dealership put me thru \$5,000

Yours Truly

Kathleen Murray

**Charles E Kelley  
246 Evans Street North West  
Concord, NC 28027**

## **AFFIVADIT OF TRUTH**

**I Charles Kelley swear that the statement that I am giving here today is the truth and nothing else but the truth so help me God. A close friend of mine by the name of Kathleen Murray, had informed me on December 13<sup>th</sup> 2014. That she had purchase a Chrysler 300 from USA Autos in Columbia South Carolina. And that she needing to come to Concord North Carolina, while she was there she could have the vehicle inspected by a professional auto mechanic. So I called CSI Auto on her behalf to set up an appointment with them for Kathleen Murray, to have her vehicle inspected. Which was on December 13<sup>th</sup> 2014. As I was waiting for Kathleen Murray, arrival I had received a call from her expressing to me that the car had broken down in route and that she was going to have to have the vehicle towed to a family member house. When the vehicle finally got to CSI Auto December 15<sup>th</sup> 2014, I was privilege to test drive the vehicle on December 16<sup>th</sup> 2014 and had notice that there was something quite wrong with the vehicle. I feel that USA Autos should have never sold that vehicle knowingly that it was not in good driving condition. I also had the privilege of meeting Mr. Anthony Carroway along with Kathleen Murray at his office at USA Autos on December 22<sup>nd</sup> 2014 to express my concerns on giving Kathleen another vehicle that was in a good working condition Mr. Anthony stated that he had nothing else on the lot to give her and that he was going to send the tires and rims to CSI Auto, and promise he would do everything to get the car fixed and back to her. I then at that time explained to him that the vehicle was not safe for anyone to drive. Kathleen could have been seriously hurt or lost her life on that highway, because of USA Autos Negligent. It has been an ongoing problem with one lie after another with this company from the start even in court back in April 2014, I truly feel they took advantage of an honest person.**

**Yours Truly**

**Charles Kelley**

I affirm that all of the foregoing is true and correct. I affirm that I am of lawful age and am competent to make this Affidavit. I hereby affix my own signature to all of the affirmations in this entire document with explicit reservation of all my unalienable rights and my specific common law right not to be bound by any contract or obligation which I have not entered into knowingly, willingly, voluntarily, and without misrepresentation, duress, or coercion.

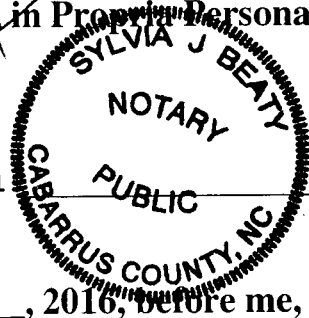
The use of notary below is for identification only, and such use does NOT grant any jurisdiction to anyone.

**FURTHER AFFIANT SAITH NOT.**

Subscribed and sworn, without prejudice, and with all rights reserved,  
(Print Name Below)

*Charles E. Kelley* *Charles E. Kelley*  
Principal, by Special Appearance, in Propria Persona, proceeding Sui Juris.

My Hand and Mark as Subscriber



(Sign Name Below)

Date: 5-14-16 Common Law Seal

On this 14<sup>th</sup> day of May, 2016, before me, the undersigned, a Notary Public in and for NC (state), personally appeared the above-signed, known to me to be the one whose name is signed on this instrument, and has acknowledged to me that s/he has executed the same.

Signed: *Sylvia J. Beatty*

Printed Name: Sylvia J. Beatty

Date: 5-14-16 Commission expires April 17, 2021

Kathleen Murray  
1704 Bentley Court  
Columbia, SC 29210

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OCT 11 2016

SC Court of Appeals

To whom It May Concern:

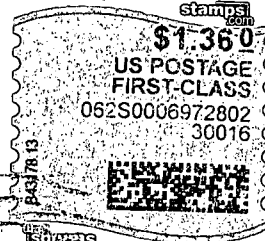
I Kathleen Murray am requesting that you send me a stamped certified copy of this brief

For my record.

Yours Truly

Kathleen Murray

Kathleen Murray  
1704 Bentley Ct  
Columbia, SC 29210



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OCT 11 2016

SC Court of Appeals

COLUMBIA SC 292

THU 06 OCT 2016 PM

South Carolina Court of Appeals  
Jenny Abbott Kitchening Clerk  
P.O. Box 11629  
Columbia, SC 29211

