

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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SEP 25 2017  
SC Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

APPELLATE CASE NO. 2017-001897

Marcus Kevin Grant, individually and in a representative capacity for all other  
similarly situated..... Respondent

vs.

Jud Kuhn Chevrolet, .....Appellant

**RESPONDENT’S MEMORANDUM ON APPEALABILITY**

The South Carolina Court of Appeals has requested the parties file a Memorandum addressing the issue of appealability of the lower court’s Order Granting Defendant’s Motion to Compel Arbitration through the American Arbitration Association, but denying the portion of Defendant’s Motion wherein Defendant requests that arbitration be limited to bilateral arbitration as opposed to class wide arbitration.

It is uncertain whether the South Carolina Uniform Arbitration Act would allow this appeal. Generally, the granting of a Motion to Stay and to proceed in arbitration is not appealable under S.C. Code §15-48-200. Nevertheless, a significant portion of the Defendant’s Motion concerning bilateral versus class wide arbitration was decided against the Defendant. Therefore, it is arguable

that the substance the Defendant's Motion was in fact denied by the Court and therefore appealable under §15-48-200(a)(1).

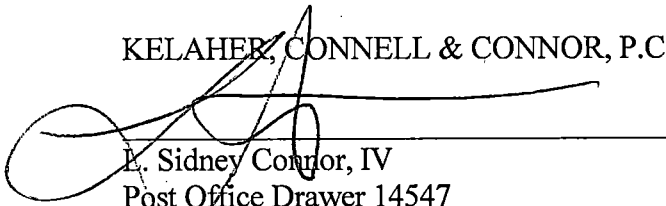
The Court in fact ordered arbitration to proceed with the American Arbitration Association. In doing so, the Court did not rely upon the South Carolina Uniform Arbitration Act but upon general principals of arbitration. It would appear that the contract at issue in this case is governed by the Federal Arbitration Act. It is unclear whether the procedural rules of the Federal Arbitration Act concerning appealability would take precedence over the State court rules concerning appealability.

The Respondent would note, however, that the Fourth Circuit Court of Appeals has recently addressed the issue of class wide arbitrations in the case of Dell Webb Communities, Inc. v. Carlson, 817 F.3d. 867 (4<sup>th</sup> Circuit 2016). In Dell Webb, the Fourth Circuit changed its position with regard to who gets to decide whether an action may proceed as a class action in arbitration. The Court ruled that the availability of class arbitration is reserved for judicial determination and not the arbitrator. Although this issue has not been finally determined by the United States Supreme Court, the Respondent in this case concedes that the Dell Webb decision is correct. Because the issue of class wide arbitration is reserved for judicial determination, and the issue is not specifically addressed by the South Carolina Uniform Arbitration Act, the Respondent believes that this issue is immediately appealable.

Additionally, the Respondent would state that the treatment of a case as bilateral arbitration or class wide arbitration involves such a difference in commitment of resources that the Respondent would urge this Court to decide this issue for the parties prior to the parties expending substantial amounts of time, money and energy in a class wide arbitration only to risk a class wide arbitration being overturned at a later date.

Consequently, the Respondent urges this Court to accept the Appellant's Appeal on class wide versus bilateral arbitration.

KELAHER, CONNELL & CONNOR, P.C.

A handwritten signature in black ink, appearing to read "E. Sidney Connor, IV", is written over a horizontal line. The signature is stylized and overlaps the text below.

E. Sidney Connor, IV  
Post Office Drawer 14547  
Surfside Beach, SC 29587-4547  
(843) 238-5648  
Attorneys for Respondent  
[sconnor@classactlaw.net](mailto:sconnor@classactlaw.net)

September 21, 2017

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PROOF OF SERVICE


PERSONALLY appeared before me, Lynn C. Benton, who being duly sworn, deposes and  
says that she is an employee of KELAHER, CONNELL & CONNOR, P.C., Attorneys at Law, and  
that she has served the **Respondent's Memorandum on Appealability** on the Respondent,  
through its attorney of record, by depositing a copy of same in the United States Mail, postage  
prepaid, to:

H. Clayton Walker, Jr., Esquire  
Robert L. Reibold, Esquire  
WALKER/REIBOLD  
Post Office Box 61140  
Columbia, SC 29260

Date of Mailing: September 22 2017

  
Lynn C. Benton

SWORN to before me this  
22<sup>nd</sup> day of September, 2017

  
Notary Public for South Carolina  
My Commission Expires: 6/11/24

**KELAHER, CONNELL & CONNOR, P.C.**

ATTORNEYS AT LAW

SUITE 209

THE COURTYARD

1500 U.S. HIGHWAY 17 NORTH

P.O. DRAWER 14547

SURFSIDE BEACH, SOUTH CAROLINA 29587

EDWARD T. KELAHER\*  
GENE M. CONNELL, JR.  
L. SIDNEY CONNOR, IV  
LISA POE DAVIS

\* OF COUNSEL

AREA CODE 843

238-5648

FAX: 238-5050

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SEP 25 2017

SC Court of Appeals

September 21, 2017

V. Claire Allen  
Deputy Clerk of Court  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

**Re: Marcus Kevin Grant v. Jud Kuhn Chevrolet  
Appellate Case No.: 2017-001897**

Dear Ms. Allen:

Pursuant to your letter of September 19, 2017, enclosed please find an original plus one (1) copy of **RESPONDENT'S MEMORANDUM ON APPEALABILITY** along with Proof of Service. Please file the original and return a clocked copy in the envelope provided.

By copy of this letter, I hereby serve the Respondents, through their attorney of record, with **RESPONDENT'S MEMORANDUM ON APPEALABILITY**.

With best wishes, I remain

Sincerely,

  
L. Sidney Connor, IV

LSCIV:lb  
Enclosures

cc w/encl.: Harry Clayton Walker, Jr., Esquire

KELAHER, CONNELL & CONNOR, P.C.

ATTORNEYS AT LAW

P. O. DRAWER 14547

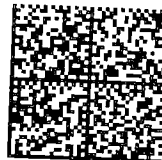
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SC Court of Appeals

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