

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

RECEIVED
DEC 12 2012
SC Court of Appeals

Diane R. Henderson Respondent,

v.

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

Of whom Summerville Ford-Mercury, Inc. is the Appellant.

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

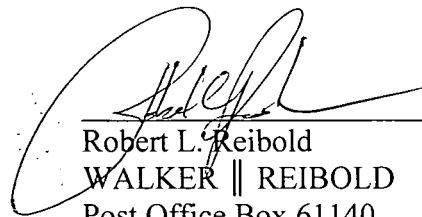
Respondent's initial brief and designation were initially due on June 10, 2012. This deadline has been extended first to July 11, 2012, then to August 10, 2012, then to September 10, 2012, and finally to November 26, 2012. With the granting of the fourth extension, the court noted that "[n]o further extensions will be granted without a showing of extraordinary circumstances."

Respondent now seeks a fifth extension of this deadline. This request should be denied. Respondent has not demonstrated extraordinary circumstances for two reasons. First, the transcript to which Respondent refers in her motion is not the transcript of the

hearing which is the subject of this appeal. It is a transcript of another hearing in the same case, which occurred before a different judge, was not appealed, and was not considered by Judge Dickson in the matter on appeal.¹ The transcript cannot be included in the Record on Appeal, and briefing of this appeal should not be delayed to allow for review of material which cannot be considered on appeal.

Second, while the workload of Respondents' counsel is certainly a circumstance which bears consideration, it is not an extraordinary circumstance in this case. Respondent's initial brief was initially due on June 10, 2012. Respondent has now had almost seven months to prepare her initial brief.

Appellant respectfully requests that Respondent's motion be denied.



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ATTORNEY FOR APPELLANT

December 10, 2012

¹ Appellant objects to the inclusion of this transcript in the Record on Appeal. It was not considered by the judge whose decision has been appealed. If Respondent designates any portion of this transcript for inclusion in the record, Appellant will be unable to certify that the transcript contains no matter which is irrelevant to this appeal.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM DORCHESTER COUNTY
Common Pleas Court

The Honorable Edgar Warren Dickson

Case No. 2009 CP 18-111

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SC Court of Appeals

Diane R. Henderson F/K/A Diane M. Reed, Respondent

vs.

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

Of whom, Summerville Ford-Mercury Inc. is Appellant

PROOF OF SERVICE

I certify that I have served Appellant's Memorandum of Law in Opposition to Fifth Motion for Continuance on Respondent by depositing a copy of it in the United States Mail, postage prepaid, on December 10, 2012, addressed to all counsel: C. Steven Moskos, Esq. 535 Stinson Drive, Charleston, South Carolina 29407; Brooks R. Fudenberg, Esq. 1004 Anna Knapp Blvd., Ste. 3, Mt. Pleasant, SC 29464; Michael Gruenloh, Esq. 9 Broad Street, Ste. C Charleston, SC 29401.

December 10, 2012



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December 10, 2012

The Honorable Jenny Abbott Kitchings
Clerk, SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Diane R. Henderson vs. Summerville Ford-Mercury, et al
C.A. No.: 2009-CP-18-00111

Dear Ms. Kitchings:

Enclosed please find an original and seven copies of the Appellant's Memorandum of Law in Opposition to Fifth Motion for Continuance in the above referenced matter, along with my Certificate of Service. Please return a clocked copy in the self-addressed envelope provided. By copy of this letter I am serving all counsel of record.

Thank you for your assistance.

Sincerely,



Annie Walker
Legal Assistant

/raw
Enclosures

cc C. Steven Moskos, Esq.
Brooks R. Fudenberg, Esq.
Michael Gruenloh, Esq.

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SC Court of Appeals