

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Steven H. John, Circuit Court Judge

Case No. 2016-CP-26-00937

RECEIVED

MAR 05 2018

SC Court of Appeals

Cali Alyson Emory, individually and in a
representative capacity for all others similarly situated.....Appellant

v.

Thag, LLC d/b/a Myrtle Beach Mitsubishi.....Respondent

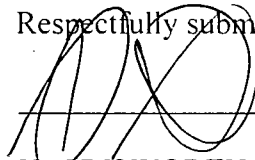
RETURN TO PETITION FOR REHEARING

Appellant has not raised any issues that were overlooked or misapprehended by the Court as contemplated by Rule 221, SCACR in the Petition for Rehearing. Appellant's Petition includes only one argument—essentially, that *Herron v. Century BMW*, 387 S.C. 525, 693 S.E.2d 394 (2010) (“Herron I”), *cert. granted, judgment vacated sub nom. Sonic Auto., Inc. v. Watts*, 563 U.S. 971 (2011), and *opinion reinstated*, 395 S.C. 461, 719 S.E.2d 640 (2011) (“Herron II”) is still good law. This Court has squarely refuted that argument in *York v. Dodgeland of Columbia, Inc.*, 406 S.C. 67, 91–94, 749 S.E.2d 139, 151–53 (Ct. App. 2013), which was cited by the Court here. *York* holds that the case law interpreting the Federal Arbitration Act (“FAA”) regarding the availability of class arbitration applies to cases brought under the South Carolina Dealers Act. As set forth in *York*,

Although our supreme court technically “reinstated” its *Herron I* opinion, in light of (1) that case’s profound preservation deficiencies; (2) the opinion of the Supreme Court of the United States vacating *Herron I*; and (3) the applicable holdings within *Concepcion*, the *Herron I* reinstatement did not signify a post-*Concepcion* position that the Dealers Act provision is immune to FAA preemption. Consistently, numerous other jurisdictions now apply *Concepcion* to preempt similar state laws that, if not preempted, would invalidate class action waivers on public policy grounds. . . . Accordingly, the provisions banning class arbitration in the present case cannot be invalidated based upon public policy considerations embodied within state law. Rather, the arbitration clause[s] at issue here must be enforced according to [their] terms, which requires individual arbitration and forecloses class arbitration.

Id. (citations and quotations omitted); *see also Am. Exp. Co. v. Italian Colors Rest.*, 570 U.S. 228, 233 (2013) (holding that that the goals of the FAA and its policy favoring arbitration are to control even where a statute confers a right to bring an action in a class capacity and stating “[r]equiring the availability of classwide arbitration interferes with fundamental attributes of arbitration and thus creates a scheme inconsistent with the FAA”). Appellant’s Petition should be denied as it is directly contrary to the language quoted above.

Respectfully submitted,



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Attorneys for Respondent

March 1, 2018

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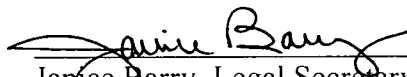
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PROOF OF SERVICE

I, the undersigned employee of Haynsworth Sinkler Boyd, P.A., do hereby certify that I have this 1st day of March, 2018, caused the foregoing *Respondent, Thag, LLC d/b/a Myrtle Beach Mitsubishi's Return to Petition for Rehearing* to be served via U.S. mail, postage prepaid on counsel of record at the address shown below:

L. Sidney Connor, IV, Esq.
Kelaher, Connell, & Connor, P.C.
Post Office Drawer 14547
Surfside Beach, SC 29587



Janice Barry, Legal Secretary
Haynsworth Sinkler Boyd, P.A.
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Haynsworth
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March 1, 2018

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

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SC Court of Appeals

RE: *Cali Alyson Emory, individually and in a representative capacity for all others similarly situated v. Thag, LLC, d/b/a Myrtle Beach Mitsubishi*
Case No. 2016-CP-26-00937
Appellate Case No. 2017-000142
HSB File No. 05688.1313

Dear Ms. Kitchings:

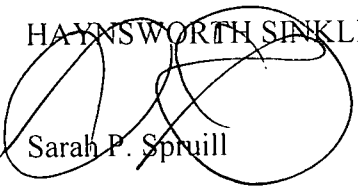
Enclosed for filing, please find an original and seven (7) copies of *Respondent's Return to Petition for Rehearing* in the above-referenced matter, together with our Proof of Service of same. Please return clocked copies to me in the enclosed self-addressed stamped envelope

If you have any questions, please give me a call.

Thank you for your assistance in this matter.

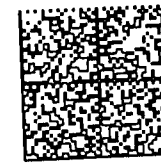
Sincerely yours,

HAYNSWORTH SINKLER BOYD, P.A.

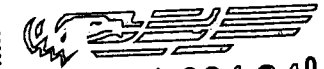

Sarah P. Spruill

SPS/jmb
Enclosures

cc: L. Sidney Connor, IV



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Sinkler Boyd, PA.

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