

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM HORRY COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Honorable D. Craig Brown, Presiding Judge

Case No. 2015-CP-26-902

Appellate Case No. 2018-001678

Harold F. Jones d/b/a Butch Jones Body Shop, PETITIONER

v.

State Farm Mutual Automobile Insurance Company and
Clint Cudd, Respondents.

RETURN OF RESPONDENTS TO APPELLANT'S
PETITION FOR A WRIT OF CERTIORARI

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Attorneys for Respondents

Pursuant to SCACR 242(f), Respondents State Farm Mutual Automobile Insurance Company and Clint Cudd (collectively, “Respondents”) file this Return to the Appellant’s Petition for a Writ of Certiorari. Appellant’s Petition for a Writ of Certiorari (the “Petition”) should be denied because there are no special and important reasons for granting the Petition as indicated by the absence of all of the considerations outlined in SCACR 242(b), the Petition contains self-serving statements made not based on the Record of Appeal to the Court of Appeals, and the Petition fails to point to any error by the Court of Appeals.

SCACR 242(b) specifies that a writ of certiorari is not a matter of right, but left to the sound discretion of the Court. The rule indicates that a writ of certiorari should only be granted where there are “special and important reasons” and, while admittedly not exhaustive, points to a number of reasons that may justify the Court granting a writ of certiorari: 1) Where there are novel questions of law; 2) Where there is a dissent in the decision of the Court of Appeals; 3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court; 4) Where substantial constitutional issues are directly involved; and 5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United State Supreme Court. In his Petition, the only question raised by the Appellant is whether the lower court erred by granting summary judgment in Respondents’ favor prior to hearing the Appellant’s Motion to Compel and/or allowing the Appellant the opportunity to seek further discovery and whether the Court of Appeals erred in affirming the circuit court’s decision. This is hardly a novel question of law, nor does it involve constitutional issues or a federal question.¹ Further, there was no dissent

¹ South Carolina law is clear that a court may grant a motion for summary judgment prior to hearing a motion to compel and/or allowing a party to conduct further discovery where the nonmoving party fails to make a formal motion for a continuance and fails to show further discovery will uncover additional relevant evidence, none of which were done by the Appellant. *E.g.*, *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E. 2d 433, 439 (2003); *Guinan v. Tenet Healthsystems of Hilton Head, Inc.*, 383 S.C. 48, 54, 677 S.E.2d 32, 36 (Ct. App. 2009); *Middleborough Property Regime v. Montedison*, 320 S.C. 470, 465 S.E.2d 765 (Ct. App. 1996).

in the decision of the Court of Appeals and the decision by the Court of Appeals is not in conflict with any prior decision of the Supreme Court of South Carolina nor the United States Supreme Court. Accordingly, none of the reasons outlined in SCACR 242(b) are implicated in this case, indicating the Court should not issue a writ of certiorari in this case.

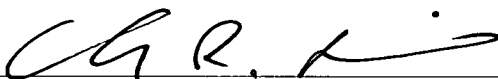
SCACR 242(d) controls the content of a petition for a writ of certiorari and, in relevant part, requires the Petition to contain a direct and concise argument “and specific references to the Record on Appeal.” The Appellant’s Petition contains no citations to the Record on Appeal whatsoever. Rather, the Appellant makes a number of self-serving statements outside of the Record on Appeal in an attempt to re-litigate his case. This is improper under SCACR 242(d), providing further justification for the Court to deny his Petition.

Finally, the purpose of a writ of certiorari is “to review a final decision of the Court of Appeals.” SCACR 242(a). Appellant points to no specific error by the Court of Appeals, besides its general affirmation of the circuit court’s decision, for this Court to review. Instead, the Appellant attempts to make arguments on the merits of the circuit court’s decision that should have been made to the Court of Appeals. As pointed out to the Court of Appeals, the Appellant’s appeal was both procedurally and substantively defective. It was for these reasons the Court of Appeals affirmed the decision of the circuit court. By pointing to no error in the Court of Appeals’ affirmation, the Appellant has given no reason for this Court to issue a writ of certiorari.

For the foregoing reasons, the Appellant’s Petition for a Writ of Certiorari should be denied.

[SIGNATURE PAGE FOLLOWS]

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October 1, 2018

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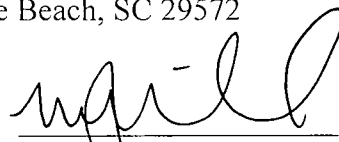
I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, counsel for State Farm Mutual Automobile Insurance Company and Clint Cudd, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified mailing a copy of the same via U.S. Mail, postage paid, and via electronic mail to the following addresses:

Pleadings: RETURN OF RESPONDENTS TO APPELLANT'S PETITION
FOR A WRIT OF CERTIORARI

Counsel Served: Harold F. Jones
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