

THE STATE OF SOUTH CAROLINA
In The Supreme Court
APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

RECEIVED
Dec 16 2021
S.C. SUPREME COURT

R. Ferrell Cothran, Jr., Circuit Court Judge

Opinion No. 5845

(S.C. Ct. App. Filed August 11, 2021)

Appellate Case No. 2021-001388

Daniel O'Shields And Roger W.
Whitley, A Partnership d/b/a O&W Cars,

Petitioners,

v.

Columbia Automotive Company,
LLC d/b/a Midlands Honda,

Respondent.

Motion to Amend

Petitioners respectfully request leave of Court to file the attached second amended Petition for Writ of Certiorari in the above-mentioned case. The reason for this motion is that counsel had intended to include a request that the Court also reverse an additional sustaining ground that the Court of Appeals stated in a footnote. The attached proposed second amended petition fixes that error. (Ex. 1). It also tidies up the petition. A tracked-change version of the proposed petition is attached. (Exhibit 2.)

Due to the large number of holdings and sub-holdings in the panel's opinion, Petitioners should not be penalized for failing to fully address a point made only in a footnote. There is no prejudice to Respondent. Accordingly, Petitioners request the Court grant their motion.

Affirmation of Consultation

Petitioners' counsel emailed Respondent's counsel on December 14, 2021, seeking consent and attaching a redlined version of the proposed Petition. (Exhibit 3.) Respondent's counsel responded on December 16, "We do not consent to your second requested amendment." (Exhibit 4.) In the interim, Respondent's counsel had responded that the amendment was too close to its response deadline. Petitioners explained that the deadline runs from the date of any order granting leave to amend, and suggested Respondent's counsel call the Clerk to confirm. Petitioners' amendment contains eleven changes. Petitioners had sent a listing of the proposed changes, asking Respondent's counsel to indicate which changes, if any, Respondent would accept. Upon receiving Respondent's counsel's email of December 16, Petitioners' counsel emailed Respondent's counsel, again asking Respondent to specify the changes, if any, to which Respondent does not object, so as to narrow the issues for the Court. (Exhibit 3.) Respondent declined to do so, replying simply "Per my earlier email, we do not consent to your second requested amendment."

12/16/2021

Respectfully submitted,

s/ Brooks R. Fudenberg
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