

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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Dec 29 2021

S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Case No. 13-CP-40-0319

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

v.

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

**RETURN IN OPPOSITION TO PETITIONER’S SECOND MOTION TO AMEND**

Columbia Automotive Company, LLC d/b/a Midlands Honda (“Midlands” or “Respondent”) submits this return in opposition to the second Motion to Amend filed by Daniel O’Shields and Roger W. Whitley, A Partnership d/b/a O&W Cars (“Petitioner”) in connection with its Petition for a Writ of Certiorari (“Petition”). This delayed effort to add an additional question presented should be denied by this Court.

The Petition was submitted via email at 11:39 on November 29, 2021, the last day it could be filed pursuant to Rule 242, SCACR. Evidently, it was incomplete at that time. Respondent filed an Amended Petition on December 2, seeking to correct various non-substantive matters. Subsequently, Respondent indicated it did not object to a Motion to Amend with respect to the Amended Petition. The Court granted the initial Motion to Amend on December 7. On December 14, Petitioner sought

consent to again amend its Petition to add an additional question presented and additional argument. When Respondent was unwilling to consent, Petitioner served this motion on December 16.

Respondent objects to this request on the following grounds:

1. The Petition has already been amended once.
2. The proposed additional question presented and argument was not included in the Petitioner's Petition for Rehearing and would not be properly presented to this Court.<sup>1</sup> Rule 242(d), SCRCF. By way of analogy, this proposed amendment would be futile and barred even under the liberal standard of Rule 15, SCRCF. *See Jennings v. Jennings*, 389 S.C. 190, 209, 697 S.E.2d 671, 681 (Ct. App. 2010) ("Although leave to amend should generally be 'freely given,' this court has held that it may be denied where the proposed amendment would be futile."), *rev'd on other grounds*, 401 S.C. 1, 736 S.E.2d 242 (2012).

3. Any additional arguments are untimely under Rule 242, SCACR, which requires that a petition for certiorari (including all questions presented) be filed with this Court within thirty days of a ruling on a petition for rehearing by the Court of Appeals.

4. Allowing repeated amendments is contrary to the spirit of this Court's Order 2014-07-16-01, which limits the circumstances and duration of extensions that will be granted through the process of seeking a review of a decision of the Court of Appeals. Consistent with that rule, Respondent is prepared to file its return within thirty days of service of the original Petition.

For these reasons, the Respondent asks that the Motion be denied.

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<sup>1</sup> Petitioner did not mention the additional sustaining ground found in footnote 11 of the Opinion of the Court of Appeals as to the cutoff date for additional attorney's fees in its Petition for Rehearing. It did later file an amended Petition for Rehearing that included a footnote 6 on this point, but it did not seek leave to amend from the Court of Appeals. The order denying the Petition for Rehearing makes no mention of an Amended Petition.

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.

s/ Sarah P. Spruill

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Dated: December 28, 2021