

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

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Dec 30 2021

S.C. SUPREME COURT

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.

Reply in Support of Motion to Amend

Respondent's return is about a footnote. In a footnote, the Court of Appeals' opinion provided, for one sub-issue, an additional sustaining ground that is so obviously wrong it should go without stating: that fee-shifting statutes provide no fees for one who has to work to correct trial court errors that limited his award. (Op. p. 11 n. 11).

This goes, within the issue of fees, to the sub-issue of whether the trial court properly ceased the accruing of fees.

Respondent argues that this footnoted sustaining ground was discussed only in the amended petition for rehearing, and not in the original, and therefore this Court should not consider Petitioners' challenge to that sustaining ground. This is gamesmanship of the worst sort. Respondent argues that Petitioners filed no motion with the Court of Appeals to amend the

petition. However, as shown on C-Track, the amended petition was accepted by that Court's Clerk. Moreover, the undersigned represents that he was in communication with the Office of the Clerk of the Court of Appeals, and followed its directions. Those directions were to simply file the amended petition without a motion to amend, and that "If the Court thinks it requires a motion, they will let us know."

Respondent will not be prejudiced by the grant of the present motion. Respondent was informed of the proposed changes and sent a tracked-change copy of the proposed petition on December 14, 2021. (Ex. 3 to Motion p. 7). When Respondent's counsel responded the next day that she considered it too close to the deadline for Respondent's return, Petitioners' counsel replied that the deadline to respond runs from the date of filing of the operative petition, and suggested Respondent's counsel may contact the case manager to confirm. (*Id.* pp. 4-6). Instead, Respondent chose to file its return within 30 days of the filing of the original petition. Were there any prejudice, which there is not, such prejudice would be of Respondent's own making.

As Respondent was aware of the issue of the sustaining-ground footnote when it wrote its return to the petition for certiorari, and addressed that sustaining ground in its return to the petition, the Court should grant the motion and perhaps allow Respondent time after the motion is granted to amend its return, if Respondent so desires.

Given the large number of issues addressed in the Court of Appeals' opinion, it is understandable that an issue raised only in a footnote was not fully addressed. Petitioners' appeal has already resulted in the reversal of several errors of law by the trial court. The Court should accept the second amended petition so that the appropriate issues and sub-issues may be addressed to do justice to all the parties.

12/29/2021

Respectfully submitted,

s/ Brooks R. Fudenberg

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