

95389

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

JAN 19 2022

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable Jocelyn Newman, Circuit Court Judge

SC Court of Appeals

Stivers Brothers Automotive, Inc. Appellant,

v.

W. Warner Peacock and Peacock Automotive, LLC..... Respondents.

Case No. 2020-CP-40-01934
Appellate Case No. 2021-001489

RESPONDENT'S MOTION TO DISMISS APPEAL AS TO
JUDGE NEWMAN'S MARCH 24, 2021 ORDER

Respondents hereby move for the South Carolina Court of Appeals to issue an Order dismissing this Appeal as to Judge Newman's March 24, 2021 Order denying Plaintiff's motion to serve a second amended complaint as that Order is not immediately appealable.

I. Orders Denying a Motion to Amend are Interlocutory

It is well settled in South Carolina that Orders denying a motion to amend an answer are not immediately appealable. First, S.C. Code Ann. § 14-3-330(1), (2)(c) (1977) provides:

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal: (1) Any intermediate judgment, order or decree in a law case involving the merits . . . [and] (2) An order affecting a substantial right made in an action when such . . . (c) strikes out an answer or any part thereof or any pleading in any action." . . .

Judge Newman's Order denying the amendment neither involves the merits nor strikes a pleading. Therefore, the legislature has made clear the Order is not appealable at this time.

Second, an order denying the amendment of a complaint has been found by the South Carolina Supreme Court to be unappealable. This is because the order does not involve the merits or strike a pleading. In *Baldwin Const. Co. v. Graham*, 357 S.C. 227, 230, 593 S.E.2d 146, 147 (2004) the Supreme Court held an order denying a motion to amend a pleading was not immediately appealable because the trial court did not rule on the substantive contents of the pleading sought to be amended. Rather, the trial court merely refused to allow the amended pleading's filing. Also, the Supreme Court held in *Jefferson v. Gene's Used Cars, Inc.*, 295 S.C. 317, 318, 368 S.E.2d 456, 456 (1988) that an order denying a motion to file a late answer was not appealable because it neither involved the merits nor struck a pleading. The order ruled only that the appellants failed to show good cause and refused to allow the pleading's filing.

In the present case, the March 24, 2021 Order did not rule on the contents of the pleading but merely refused to allow the filing of the second amended complaint. Thus, the Order is interlocutory and not immediately appealable.

II. No Nexus Exists Between the Orders

Also, there is no nexus between the Order denying the motion to amend and the Orders granting Respondents' motion for judgment on the pleadings and striking the Dealer's Act.

Courts may not accept appeals of interlocutory orders not ordinarily immediately appealable when appealed with a companion issue proper for review if the issue lacks a sufficient nexus or companionship to justify the exercise of immediate appellate review. *See Brown v. Cty. of Berkeley*, 366 S.C. 354, 362 n.5, 622 S.E.2d 533, 538 n.5 (2005) (finding the denial of a preliminary injunction preventing a special audit and the denial of a motion to dismiss claims for

defamation, defamation *per se*, and intentional infliction of emotional distress lacked a sufficient nexus or companionship to justify immediate appellate review).

The Supreme Court recently affirmed this holding in *Smith v. Tiffany*, 419 S.C. 548, 799 S.E.2d 479 (2017). Justice Kittredge held:

Appellants also appeal a trial court order granting Respondent Walter Smith's motion to quash Appellants' notice of deposition of Smith. We decline to address this issue because a discovery order is ordinarily not immediately appealable, and the issue "lack[s] a sufficient nexus or companionship to justify this Court's exercise of immediate appellate review." *Brown v. Cnty. of Berkeley*, 366 S.C. 354, 362 n.5, 622 S.E.2d 533, 538 n.5 (2005) (recognizing courts may accept appeals of interlocutory orders not ordinarily immediately appealable when appealed with a companion issue proper for review, but declining to do so where the issues appealed lack a sufficient nexus)...

Smith, supra, 419 S.C. at ___; 799 S.E.2d at 488, fn.1.

The Order denying Plaintiff's motion to amend its complaint for a second time is not a companion issue to the Orders granting judgment on the pleadings as to the South Carolina Dealers Act. The November 12, 2021 Order clearly provides that the Court relied on concepts of statutory construction and legislative intent in reaching its decision. The denial of a second amended complaint is wholly unrelated to this reasoning. As in *Brown*, these two motions lack a sufficient nexus or companionship to justify immediate review of the interlocutory order.

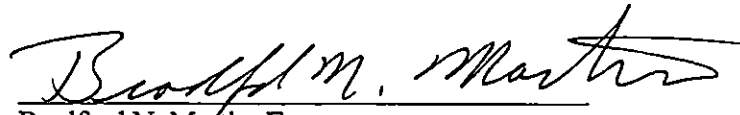
III. Ruling on the Interlocutory Order will not Avoid Unnecessary Litigation

Finally, this Court's ruling on the Plaintiff's motion to serve a second amended complaint will not avoid unnecessary litigation. See *Morris v. Anderson County*, 349 S.C. 607, 564 S.E.2d 649 (2002); *Watson v. Underwood*, 407 S.C. 443, 756 S.E.2d 155 (Ct. App. 2014). The Second Amended Complaint adds no new causes of action, and all (with the exception of the Dealers Act) remain to be tried; Plaintiff will be allowed to argue the evidence it asserts to support its causes of action.

Accordingly, the appeal of Judge Newman's March 24, 2021, Order denying Plaintiff's motion to serve a second amended complaint should be dismissed as interlocutory and not immediately appealable.

Respectfully submitted,

Dated: 14 January 22



Bradford N. Martin, Esq.
Laura W. H. Teer, Esq.
Bradford Neal Martin & Associates, PA
Post Office Box 10410
Greenville, South Carolina 29603
864.552.9990
Attorneys for Respondents

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2021-001489

RECEIVED

JAN 18 2022

SC Court of Appeals

Stivers Brothers Automotive, Inc. Appellant

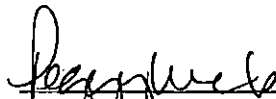
v.

W. Warner Peacock and Peacock Automotive, LLC Respondents

PROOF OF SERVICE

I, Peggy McComb, Legal Assistant to attorneys for Respondents, W. Warner Peacock and Peacock Automotive, LLC, certify that I have served a copy of Respondent's Motion to Dismiss Appeal as to Judge Newman's March 24, 2021 Order *via email* and by depositing a copy in the U.S. Mail, sufficient first class postage prepaid, on January 14, 2022 addressed to J. Gregory Studemeyer, Esq. and Ryan Studemeyer, Esq., Studemeyer Law Firm, P.C., Post Office Box 1014, Irmo, SC 29063 and J. Michael Baxley, Esq., Douglas Jennings Law Firm, LLC, 225 Seven Farms Drive, Suite 202, Charleston, SC 29492.

January 14, 2022



Peggy McComb, Legal Assistant to
Bradford N. Martin, Esq. (SC Bar No. 3658)
Laura W. H. Teer, Esq. (SC Bar No. 16698)
BRADFORD NEAL MARTIN & ASSOCIATES, PA
Post Office Box 10410
Greenville, South Carolina 29603
864.552.9990
864.552.9992 (facsimile)

BRADFORD NEAL MARTIN & ASSOCIATES, PA

ATTORNEYS AT LAW

201 West McBee Avenue, Suite 302
Post Office Box 10410 (29603)
Greenville, South Carolina 29601

bmartin@bnmlaw.com
Phone: (864) 552-9990
FAX: (864) 552-9992

January 14, 2022

Via email ctappfilings@sccourts.org and U.S. Mail
The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29021

RECEIVED

JAN 18 2022

SC Court of Appeals

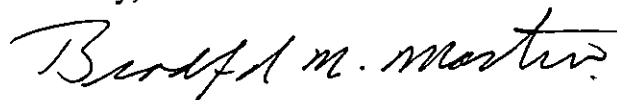
Re: *Stivers Brother Automotive, Inc. Appellant v. W. Warner Peacock and Peacock
Automotive, LLC, Respondent*
Appellate Case No. 2021-001489

Dear Ms. Kitchings:

Enclosed please find an original and six (6) copies of Respondent's Motion to Dismiss Appeal as to Judge Newman's March 24, 2021 Order, and a Proof of Service. The filing fee for this Motion is being mailed to the Court today.

Thank you for your attention to this matter. Should you have any questions, please do not hesitate to contact me.

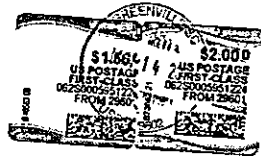
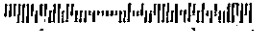
Sincerely,



Bradford N. Martin

BNM/pm
Enclosures

cc: J. Gregory Studemeyer, Esq.
Ryan Studemeyer, Esq.
J. Michael Baxley, Esq.



Bradford Neal Martin & Associates, PA
P.O. Box 10410
Greenville, SC 29601

The Hon. Jenny Abbott Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29021

RECEIVED
JAN 18 2012
SC Court of Appeals