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Feb 01 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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

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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

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RESPONDENTS’ REPLY TO APPELLANT’S RETURN TO  
RESPONDENTS’ MOTION TO DISMISS APPEAL AS TO  
JUDGE NEWMAN’S MARCH 24, 2021 ORDER

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**I. APPELLANT FAILS TO DEMONSTRATE HOW THE ORDER HAS A  
SUFFICIENT NEXUS OR COMPANIONSHIP TO JUSTIFY IMMEDIATE  
APPELLATE REVIEW**

Appellant does not dispute that an order denying the amendment of a complaint is interlocutory and not immediately appealable. *See Baldwin Const. Co. v. Graham*, 357 S.C. 227, 230, 593 S.E.2d 146, 147 (2004). Nor does Appellant explain how the denial of a second amendment has sufficient nexus or companionship to the Order granting judgment on the pleadings as to the South Carolina Dealers Act.<sup>1</sup> A nexus is not created between the Orders merely because

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<sup>1</sup> The only part of Appellant’s Return dealing with nexus or companionship is its naked statement in the next to last paragraph that “[t]here could be no closer nexus or companionship between issues than an order dismissing a claim under the Dealers Act.” No facts or reasoning are presented explaining this nexus.

the proposed amended complaint contained a cause of action for violation of the South Carolina Dealers Act. Nor is a nexus created by the fact that separate motions are heard by the lower court on the same day.

## **II. RESPONDENTS' CITED CASES DIRECTLY ADDRESS THE RELEVANT ISSUE**

Respondents' cited cases have everything to do with the nexus required between an interlocutory order and one that is immediately appealable. *Baldwin*<sup>2</sup> dealt with the appealability of a motion denying an amendment where, as here, the trial court did not rule on the substantive contents of the pleading sought to be amended. *Jefferson*<sup>3</sup> also dealt with the appealability of a motion regarding a pleading. *Brown*<sup>4</sup> dealt directly with nexus and companionship issues. *Smith*<sup>5</sup> also dealt with the issue of a sufficient nexus.

Appellant erroneously cites *Pitts v. Jackson Nat. Life Ins. Co.*, 352 S.C. 319, 574 S.E.2d 502 (Ct. App. 2002) as the relevant case. This case is clearly distinguishable from *Pitts* in which the Court of Appeals found the circuit court's interlocutory denial of the motion for summary judgment on the unjust enrichment claim could be properly reviewed because it constituted a basis for the immediately appealable grant of summary judgment to Jackson National. *Id.* 352 S.C. at 338.<sup>6</sup> The lower court made no such finding in the present case.

## **III. THE COURT'S RULING ON THE AMENDED MOTION IS NOT RELATED TO THE DISMISSAL OF THE DEALERS ACT**

Appellant included a portion of the lower court's hearing transcript in its Return (but fails to cite in its Return) in which the Court clearly articulated that the denial of Plaintiff's motion to

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<sup>2</sup> *Id.*

<sup>3</sup> *Jefferson v. Gene's Used Cars, Inc.*, 295 S.C. 317, 318, 368 S.E.2d 456, 456 (1988)

<sup>4</sup> *Brown v. Cnty. of Berkeley*, 366 S.C. 354, 362 n.5, 622 S.E.2d 533, 538 n.5 (2005)

<sup>5</sup> *Smith v. Tiffany*, 419 S.C. 548, 799 S.E.2d 479 (2017)

<sup>6</sup> The Court of Appeal further found the parties consented to have the denial of the motion for summary judgment decided by the Court of Appeals by briefing the merits of the issue. *Id.* 352 S.C. at 339. Respondent does not consent and respectfully requests the Court determine this issue before the merits are briefed.

amend was based on the inclusion of improper material in the proposed amended complaint and not related to its decision to grant judgment on the pleadings as to the South Carolina Dealers Act:

THE COURT: But truly, I think that this amendment is futile. I do understand that your client may claim some additional damages as a result of the back and forth that continues to occur, and I don't think that is inappropriate. And I think that certainly defendants are on notice that the damages could be -- you know, they are not quantified in the amended complaint as it is. Certainly they are not quantified. There is no number put on them in the amended complaint, but I think all of that goes to the issue of damages, but to include what really are settlement negotiations to some extent, particularly where there is a demand for specific performance in the amended complaint, right, and so they come back and forth about this, these are settlement negotiations. They are not appropriate for pleadings, and so the motion to amend the complaint is denied because they are futile.

(March 23, 2021 Transcript of Proceedings, p. 21, l. 16-p. 22, l. 8).

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.

Accordingly, Appellant has failed to demonstrate why Judge Newman's March 24, 2021 order denying Plaintiff's motion to serve a second amended complaint should be immediately appealable.

Respectfully submitted,

Dated: February 1, 2022



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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

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Appellate Case No. 2021-001489

Stivers Brothers Automotive, Inc. .... Appellant,

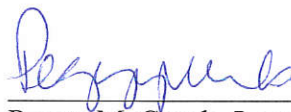
v.

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 Respondents' Reply to Appellant's Return to Respondents' 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 February 1, 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.

February 1, 2022



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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

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

February 1, 2022

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

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**Feb 01 2022**  
**SC Court of Appeals**

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

Dear Ms. Kitchings:

Enclosed please find an original and six (6) copies of Respondents' Reply to Appellant's Return to Respondents' Motion to Dismiss Appeal as to Judge Newman's March 24, 2021 Order, and a Proof of Service.

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

Sincerely,



Laura W.H. Teer

LWHT/pm  
Enclosures

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