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Mar 14 2022

SC Court of Appeals

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

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

MOTION TO STRIKE PORTIONS OF
APPELLANT’S DESIGNATION OF MATTER
AND FOR CORRECTION OF APPELLANT’S
INITIAL BRIEF

I. Appellant’s Designation of Matter Contains Improper Material

Appellant is appealing two Orders of the lower court: (1) an Order granting Respondents’ Motion for Judgment on the Pleadings, striking the Dealers Act; and (2) and Order denying Appellant’s Motion for a Second Amended Complaint. Both Motions were heard by the Honorable Jocelyn Newman on March 23, 2201.

Rule 209(b), SCACR provides that a party shall not include any matter in the Designation which is irrelevant to the appeal. Appellant has designated a number of items that are not relevant including unrelated Orders and Motions.

Rule 210(c), SCACR prohibits any matter in the Record which was not presented to the lower court. Appellant has designated a number of items which were not presented to the lower court. For example, Appellant has designated documents related to a Motion for Warrant of Attachment which was heard and ruled upon by Judge Alison Lee and not filed until six months after Judge Newman heard the matters from which Appellant appeals. *See Croft as Trustee of James A. Croft Trust v. Town of Summerville*, 428 S.C. 576, 597, n. 5, 837 S.E.2d 219, 230 (Ct. App. 2019) (noting the Court of Appeals had ordered Appellants to strike from their designation of matter items relating only to the challenge of an agreement in a separate civil case.)

The following documents are not relevant to the appeal and/or were not before the lower court at the time of the hearing, nor were they referenced in the lower court's Orders; therefore, they should not be included in the Record on Appeal:

1. Form 4 Order entered Mach 23, 2021 at 8:22 a.m. denying Stivers' Motion for Continuance. The denial of the Motion for Continuance is not on appeal and therefore is not relevant.
2. Form 4 Order entered March 24, 2021 at 1:07 p.m. This Order mistakenly denied Respondents' Motion for Judgment on the Pleadings and was immediately corrected the next day. This Order is not being appealed and therefore is not relevant.
3. Form 4 Order entered November 12, 2021 regarding Respondents' Motion for Summary Judgment. Summary Judgment is not a matter on appeal and, therefore, this Order is not relevant.
4. Notice of Dismissal as to Defendants Mary Kaye Peacock, Ken Griffey, Jr. and Jay Brennan filed July 2, 2020. The dismissal of several of the Defendants almost a year

prior to the hearing before Judge Newman is not an issue on appeal and was not a matter before the lower court at the March 23, 2021 hearing.

5. Motion for Early Neutral Evaluation filed July 30, 2020. This Motion was not before the lower court at the March 23, 2021 hearing and is not an issue on appeal. It is not relevant to this appeal.
6. Motion for Continuance. The denial of Appellant's Motion for Continuance is not on appeal.
7. Motion for Warrant of Attachment filed September 22, 2021. This Motion was not before Judge Newman and was not filed until six months after the March 23, 2021 hearing. It is not relevant to the appeal.
8. Hearing Notices. The hearing notices were not matters presented to the lower court and are not relevant to the two Orders from which Appellant has appealed.
9. Motions Roster March 23, 2021. The motions roster was not a matter presented to the lower court and is not relevant to the two Orders from which Appellant has appealed.
10. Affidavit filed September 17, 2021. Again, this Affidavit, filed six months after the March 23, 2021 hearing, was not before Judge Newman and, therefore, is not proper to be included in the Record.
11. Exhibit B to Plaintiff's Memorandum in Support of Motion for Warrant of Attachment, filed September 22, 2021. This document was not before Judge Newman and is not relevant to the two Orders from which Appellant has appealed.
12. Plaintiff's Memorandum in Opposition to Defendant's Motion to Compel, Exhibit A. It is unclear whether Appellant is referring to its September 24, 2021 Memorandum or its June 11, 2021 Memorandum. Neither Memorandum were before Judge Newman.

Respondents request that these items be removed from the Designation of Matter and not included in the Record on Appeal.

II. Statement of the Case

Appellant’s Statement of the Case improperly contains contested matters, disregarding Rule 208(b)(1)(C), SCACR. The very first statement argues that it is an appeal from “two separate but related orders” which is contested by Respondents. The Statement of the Case contains other contested matters such as, “Stivers alleged that Peacock sabotaged the transactions by failing to pursue approval by the manufacturers and by failing to pursue an assignment of the lease.”


The South Carolina Supreme Court has made clear that “the South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State.” *Henning v. Kaye*, 307 S.C. 436, 415 S.E.2d 794 (1992). Respondents respectfully ask that the Court require Appellant to reissue its Initial Brief without the contested matters argued in the Statement of the Case.

Respondent has consulted with Appellant regarding these issues but was unable to reach a resolution.

Respectfully submitted,

Dated:

14 March 22



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Stivers Brothers Automotive, Inc.Appellant,

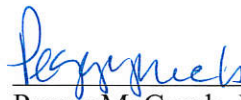
v.

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' Motion to Strike Portions of Appellant's Designation of Matter and for Correction of Appellant's Initial Brief *via email* and by depositing a copy in the U.S. Mail, sufficient first class postage prepaid, on March 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.

March 14, 2022



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March 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

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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 Respondent's Motion to Strike Portions of Appellant's Designation of Matter and for Correction of Appellant's Initial Brief, 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

LWHT/pm

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