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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM Horry COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Appellate Case No.: 2022-001529

Frederick E. Brown, Charles O. Pakosta, Conrad A. Calvano, Gayle N. Scott, and Philip D. Cox, individually and derivatively on behalf of Myrtle Beach Resort Homeowners' Association, Inc., and on behalf of all other similarly situated Co-owners, and Lori Niedzwiecki, and Robert S. Rosencrans, individually and derivatively on behalf of the Myrtle Beach Resort Homeowners' Association, Inc. for its right and benefit.....Appellants,

v.

Jeffery L. Richardson and Nancy L. Moore, individually and as current members of the Board of Directors for Myrtle Beach Resort Homeowners' Association, Inc., and Peter A. Grusauskas and Jim Perkins, individually and as former members of the Board of Directors for Myrtle Beach Resort Homeowners' Association, Inc.....Respondents,

Myrtle Beach Resort Homeowners' Association, Inc.,.....Nominal Respondent

APPELLANTS' DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL

Appellants, Frederick E. Brown, Charles O. Pakosta, Conrad A. Calvano, Gayle N. Scott, and Philip D. Cox, individually and derivatively on behalf of Myrtle Beach Resort Homeowners' Association, Inc., and on behalf of all other similarly situated Co-owners, and Lori Niedzwiecki, and Robert S. Rosencrans, individually and derivatively on behalf of the Myrtle Beach Resort Homeowners' Association, Inc. for its right and benefit, pursuant to Rule 209, SCACR, designate the following material to be included in the Record on Appeal:

1. ORDERS
 - a. Order Appointing Kenneth Moss as a Fifth Board Member (*filed December 12, 2018*)
 - b. Order for Case Assignment to the Business Court (*filed April 24, 2020*)
 - c. Order Granting Defendants' Motion for Partial Summary Judgment and Denying Plaintiffs' Motion for Summary Judgment (*filed January 10, 2022*)

- d. Order for Case Assignment to the Business Court (*filed August 26, 2022*)
 - e. Order Denying Plaintiffs' Motion to Reconsider, Alter, or Amend (*filed October 5, 2022*)
2. PLEADINGS IN *Frederick E. Brown, et al. vs. Jeffery L. Richardson, et al. vs Myrtle Beach Resort Homeowners' Association, Inc.*, Civil Action No. 2018-CP-26-03173
- a. Members' Verified Derivative Complaint, including exhibits A-F (*filed May 24, 2018*)
 - b. Answer of Defendants Jeffery L. Richardson and Peter A. Grusauskas (*filed July 13, 2018*)
 - c. Nominal Defendant Myrtle Beach Resort Homeowners' Association, Inc.'s Answer to Members' Derivative Complaint (*filed July 30, 2018*)
 - d. Answer of Defendants Nancy L. Moore and Jim Perkins (*filed August 24, 2018*)
 - e. Plaintiffs' Notice of Motion and Motion for the Appointment of a Temporary Custodian to Operate and Manage Myrtle Beach Resort Homeowners' Association, Inc., including exhibits A-C (*filed November 14, 2018*)
 - f. Amended Members' Derivative Complaint, with exhibits (*filed February 17, 2020*)
 - g. Answer of Defendants Nancy L. Moore and Jim Perkins to Amended Members' Derivative Complaint (*filed March 16, 2020*)
 - h. Answer of Defendants Jeffery L. Richardson and Peter A. Grusauskas to Amended Members' Derivative Complaint (*filed March 16, 2020*)
 - i. Plaintiffs' Notice of Motion and Motion for(Summary Judgment (*filed March 24, 2020*)
 - j. Defendants' Notice of Motion and Motion for Partial Summary Judgment on Plaintiffs' Third Cause of Action, including exhibits (*filed March 22, 2021*)
 - k. Defendants' Memorandum in Support of Motion for Partial Summary Judgment on Plaintiffs' Third Cause of Action (*filed April 28, 2021*)
 - l. Memorandum in Support of Plaintiffs' Motion for Partial Summary Judgment and in Opposition of Defendants' Motion for Partial Summary Judgment, including exhibits A-F (*filed April 30, 2021*)
 - m. Plaintiffs' Notice of Motion and Motion and Memorandum in Support of Motion to Reconsider, Alter, or Amend the Court's Order Granting Defendants' Motion for Summary Judgment and Also Denying Plaintiffs' Motion for Summary Judgment Pursuant to Rules 52 and 59, SCRCPC (*filed January 18, 2022*)
 - n. Defendants' Responses to Plaintiffs' Requests for Admission of Fact (*dated September 28, 2018*)
3. AFFIDAVITS
- a. Affidavit of Freddy Brown (*filed April 23, 2021*)
 - b. Affidavit of Daniel L. Patrick (*filed April 30, 2021*)
 - c. Affidavit of Otis Allen Jeffcoat (*filed April 23, 2021*)
 - d. Affidavit of Michael Parades (*filed April 13, 2022*)

4. TRANSCRIPTS

- a. Transcript of May 4, 2021 Motions Hearing for Partial Summary Judgment, pp. 16-29
- b. Transcript of Deposition of Barbara Johnson, pp. 23, 24 25, 26, 27, 28, 29, 36, 40, 43, 44, 61, 62, 65, 66, 67, 130, 131

5. OTHER

- a. Defendants' Responses to Plaintiffs' Requests for Admission of Fact (*dated September 28, 2018*)
- b. Letter from Empress Management to Board of Directors at Myrtle Beach Resort Homeowners Association (*dated October 23, 2018*)
- c. Assignment of Declarant Rights recorded March 18, 1987 in the Office of the R.M.C. for Horry County in Deed Book 1121, Page 401 on *March 18, 1987*
- d. Assignment of Rights recorded on February 2, 1989 in the Office of the R.M.C. for Horry County in Deed Book 1284 at Page 239
- e. Master Deed and By-Laws of Myrtle Beach Resort Horizontal Property Regime recorded on June 6, 1982 in the Office of the R.M.C. for Horry County in Deed Book 750, at Page 642
- f. Master Deed and By-Laws of Myrtle Beach Resort Ocean Front Spa Horizontal Property Regime recorded on April 25, 1983 in the Office of the R.M.C. for Horry County in Deed Book 789, at Page 362
- g. Master Deed and By-Laws of The Renaissance Tower Horizontal Property Regime recorded on November 28, 1984 in the Office of the R.M.C. for Horry County in Deed Book 917, at Page 885
- h. Master Deed and By-Laws of Myrtle Beach Resort Five Seasons Centre Horizontal Property Regime recorded on June 20, 1985 in the Office of the R.M.C. for Horry County in Deed Book 966, at Page 654
- i. Deed recorded October 10, 1987 in the Office of the R.M.C. for Horry County in Deed Book 1173, at Page 404
- j. Deed recorded January 19, 1988 in the Office of the R.M.C. for Horry County in Deed Book 1192, at Page 467
- k. Deed recorded February 2, 1989 in the Office of the R.M.C. for Horry County in Deed Book 1284, at Page 223
- l. Deed recorded February 3, 1989 in the Office of the R.M.C. for Horry County in Deed Book 1284 at Page 624
- m. Declaration of Covenants, Conditions and Restrictions for The Myrtle Beach Resort Homeowners' Association, Inc. and filed of record on April 25, 1991 in the Office of the R.M.C. for Horry County in Deed Book 1465 at Page 329
- i. Amended By-Laws of The Myrtle Beach Resort Homeowners' Association, Inc. and filed of record on April 25, 1991 in the Office of the R.M.C. for Horry County in Deed Book 1465 at Page 347

February 6, 2023

BELLAMY, RUTENBERG, COPELAND,
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APPELLANTS' RULE 209(c) CERTIFICATION

The undersigned attorney for the Appellants Frederick E. Brown, Charles O. Pakosta, Conrad A. Calvano, Gayle N. Scott, and Philip D. Cox, individually and derivatively on behalf of Myrtle Beach Resort Homeowners' Association, Inc., and on behalf of all other similarly situated Co-owners, and Lori Niedzwiecki, and Robert S. Rosencrans, individually and derivatively on behalf of the Myrtle Beach Resort Homeowners' Association, Inc. for its right and benefit, certifies, pursuant to Rule 209(c), SCACP, that the Record on Appeal, served herewith, contains no matter which is irrelevant to the appeal.

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.

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Myrtle Beach, South Carolina
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