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SC Court of Appeals

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August 29, 2024

Catherine S. Harrison
Chief Deputy Clerk
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RE: *Foster v. Airbnb*, Appellate Case No. 2023-001479
(*Riviere v. Airbnb*, Appellate Case No. 2023-001211)

Dear Ms. Harrison:

This letter is on behalf of our client, Respondent Julianne Foster in Case No. 2023-001479, and is in response to opposing counsel's most recent notice(s) of conflicts with possible dates for the December term of court. Specifically, the conflicts letters from opposing counsel sent August 21, 2024 (conflicts for December term) in this case, and in Case No. 2023-001211,¹ on June 20, 2024 (conflicts for September and October terms) and July 18, 2024 (conflicts for November term).

Mitch Brown of Nelson Mullins is counsel for Airbnb. His conflict letter dated Aug. 21, 2024 states he is counsel in the three appeals on the preliminary list for December 2024, including the instant case. The letter states he has a Firm Management Committee meeting on December 2nd and from December 4-6, he is attending a conference in New York. His letter offers December 3rd as the only date he can be available, and then requests that only one of the three appeals be scheduled for that day. Mr. Brown's letter suggests the Court schedule the *Wingo* appeal for oral argument and continue the instant appeal, *Foster v. Airbnb*. He reasons the briefing was complete in *Wingo* on September 22, 2023, and the briefing was not complete in *Foster v. Airbnb* until April 12, 2024.²

¹ Notably, in the "companion" Case No. 2023-001211, Airbnb is the Respondent to an appeal of a denial to compel arbitration filed by Appellant Rhett C. Riviere.

² In an appeal of an order denying a motion to compel arbitration under S.C. Code Ann. § 15-48-200(a)(1), such as this appeal, the parties had almost certainly already fully researched and briefed the issues in the lower court, months before any notices of appeal(s) were filed. That is the case with this appeal. As such very little, if any additional research was needed to prepare and file these briefs.

Respectfully, Ms. Foster suggests that her case be scheduled for oral argument in December – either on December 3rd or on another date in December. In addition to seeking extensions of most, if not all, all brief filing deadlines in this matter, Airbnb’s counsel have now raised scheduling conflicts for all proposed terms of court (*e.g.*, June 20, 2024 letter and July 18, 2024 letter, a/k/a “not November”). These conflicts letters have apparently contributed to this case not being scheduled for oral argument. In addition, in the “companion” appeal wherein Airbnb is Respondent, Case No. 2023-001211, as noted above, Airbnb’s counsel have sent in conflicts letters dated June 20, 2024, and July 18, 2024.

Ms. Foster is the victim of a sexual offense that was perpetrated by Mr. Rivere (Appellant in Case No. 2023-001211) and facilitated by Airbnb. The underlying lawsuit was filed on April 28, 2021 and served to Airbnb on May 20, 2021. She has been waiting for her day in court for over three years. This interlocutory appeal of the Circuit Court’s order denying Airbnb’s Motion for Arbitration was not filed until two years after the lawsuit was filed and served. The motion to compel arbitration was not even filed until May 15, 2023. As a result, discovery in the trial court case is stayed. Moreover, Airbnb is presently subject to a contempt order in the trial court.

By virtue of this 11th hour motion to compel arbitration and resultant appeal, Airbnb has already managed to delay discovery in the trial court for 15 months (as of today). By virtue of these ongoing conflicts letters, Airbnb is stating it will not be ready to argue the appeals until sometime in 2025. By that time, the strategic delay achieved could be as long as two years.

For these reasons, Ms. Foster’s case is unlike most other pending appeals which have completed discovery, and have fully developed evidentiary records. The numerous delays caused by this appeal and opposing counsel’s never-ending series of conflicts letters continues to deprive Ms. Foster of her day in court, and further jeopardizes preservation of evidence. Accordingly, on behalf of Ms. Foster, we respectfully request this appeal be scheduled for oral argument in December.

Thank you for your consideration.

Sincerely,

s/Deborah B. Barbier
DEBORAH B. BARBIER