

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM AIKEN COUNTY  
Court of Common Pleas J. Cordell Maddox,  
Jr., Circuit Court Judge

Appellate Case No. 2023-001479  
Case No. 2021-CP-02-00889

Julianne Foster, .....Respondent,

v.

Rhett Riviere, Katherine A. Thomas, Chase Enterprises,  
LLC of South Carolina, and Airbnb, Inc.,..... Defendants,

Of which Airbnb, Inc. is the..... Appellant,

And Rhett Riviere is a..... Respondent.

**RESPONDENT JULIANNE FOSTER’S MOTION FOR ORAL ARGUMENT**

Respondent Julianne Foster moves for the Court to set this case for oral argument in December 2024. This case involves an interlocutory appeal of an order denying a motion to compel arbitration filed by Appellant Airbnb, Inc..The arbitration motion was not filed until *two years* into litigation in the circuit court. Airbnb spent the majority of those two years objecting to discovery and refusing to comply with Orders related to discovery and was found in contempt of court. (**Exhibit A**, Circuit Court Order on RTSC Motion entered August 24, 2023). Because the continued delay of this case prejudices Ms. Foster - a victim of a sexual offense who has been

waiting for three years for her day in court, she respectfully moves the Court to set this case for oral argument in December 2024.

### ARGUMENT

Ms. Foster respectfully moves for the Court to set this case for oral argument in December 2024. Appellants are appealing the denial of its motion to arbitrate, which was belatedly filed two years after the case was initiated. Prompt resolution of an appeal of an order denying arbitration is necessary to expedite prompt resolution of cases and prevent delays. *See, e.g., Evans v. Accent Mfg. Homes, Inc.*, 352 S.C. 544, 550, 575 S.E.2d 74, 76 (Ct. App. 2003) (holding that “[a]rbitration laws are passed in order to expedite the settlement of disputes and should not be used as a means of furthering and extending delays.”). *See also Coinbase v. Bielski*, 599 U.S. 736, 143 S. Ct. 1915, 1922 (2023) (noting that federal appellate courts “possess robust tools to prevent unwarranted delay and deter frivolous interlocutory appeals”). Respondent seeks to obtain a prompt resolution of her claims and to minimize further delays. Opposing counsel’s most recent notice(s) of conflicts with possible dates for the December 2024 term of court, however, is a transparent attempt to further delay a resolution of this case.

Mitch Brown of Nelson Mullins Riley & Scarborough LLP, counsel for Airbnb, has filed conflict letters August 21, 2024 (conflicts for December term) in this case, and in Case No. 2023-001211, on June 20, 2024 (conflicts for September and October terms) and July 18, 2024 (conflicts for November term). His conflict letter dated August 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.<sup>1</sup>

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 has sent in conflicts letters dated June 20, 2024, and July 18, 2024. Of note, there are eight attorneys of record representing Airbnb in this appeal, including Mr. Brown, a partner at one of the largest firms in South Carolina, Nelson Mullins, and two other partners at Nelson Mullins. If Mr. Brown is unable to participate in oral arguments in December 2024, surely, one of his partners or another of Airbnb’s attorneys is available for oral argument in December 2024.

Ms. Foster is the victim of voyeurism - a sexual offense that was perpetrated by Appellant Rhett Riviere, who is also Appellant in Case No. 2023-001211, and facilitated by Airbnb.<sup>2</sup> The

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<sup>1</sup>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.

<sup>2</sup>Rhett Riviere was arrested and charged with “Voyeurism,” on June 3, 2021, related to the events as alleged by another victim that stayed in an Airbnb house owned by Riviere/Chase Enterprises, LLC of South Carolina (“Chase”). (Criminal Case No. 2021-A-02- 10700228, and Civil Case No. 2021-CP-02-00889). Mr. Riviere settled all claims brought against him in the 2021-CP-02-00889 lawsuit in 2022. Mr. Riviere was also sued based on similar voyeuristic activities in Civil Case Nos. 2020-CP-02-01616 and 2021-CP-02-00333, each of which has since been settled, and dismissed, respectively, in June and October of 2021. On July 29, 2022, Mr. Riviere was again

underlying lawsuit in this appeal was filed on April 28, 2021, and served on Airbnb on May 20, 2021. Ms. Foster 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 on May 15, 2023. As a result, discovery in the trial court case, which Airbnb previously attempted to thwart at every turn, is now stayed. Moreover, Airbnb is presently subject to a contempt order in the trial court. (**Exhibit A**, Circuit Court Order on RTSC Motion entered August 24, 2023).

By virtue of this 11th hour meritless motion to compel arbitration and resultant appeal, Airbnb has already managed to delay discovery in the trial court for over 16 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.

Additionally, 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, Ms. Foster respectfully requests that the Court scheduled this case for oral argument in December.

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arrested and charged with two counts of “Voyeurism,” in violation of S.C. Code Ann. § 16-17-470. (Criminal Case Nos. 2022-A-02-10700181 and 02-10700182). Heather and Gabriel Crespo are the victims in these two criminal cases; Mr. Riviere surreptitiously recorded them in the bedroom and bathroom of his rental property while naked and engaged in intimate activities. Recently, an Aiken County jury awarded the couple \$45 million in actual and punitive damages. *See* Civil Case Nos. 2022-CP-02323 and 2022-CP-02324.

## CONCLUSION

Based on the foregoing, Ms. Foster respectfully request this appeal be scheduled for oral argument in December 2024.

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October 7, 2024  
Columbia, South Carolina

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS  
2<sup>ND</sup> JUDICIAL CIRCUIT

JULIANNE FOSTER,  
Plaintiff,

v.

RHETT RIVIERE, KATHERINE A.  
THOMAS, CHASE ENTERPRISES,  
LLC OF SOUTH CAROLINA,  
AND AIRBNB, INC,

Defendants.

C/A No. 2021-CP-02-00889

**ORDER GRANTING PLAINTIFF'S MOTION  
FOR RULE TO SHOW CAUSE  
AGAINST AIRBNB, INC.**

This matter came before the Court pursuant to Plaintiff's Motion for a Rule to Show Cause, filed June 8, 2023. A hearing was held on the matter on June 13, 2023. Having fully considered the matter, including the motion, exhibits, and the parties' arguments, it is hereby **ORDERED** that Plaintiff's Motion for a Rule to Show Cause is **GRANTED**.

On June 7, 2022, Plaintiff served Airbnb, Inc. ("Airbnb") with her Requests for Production Nos. 16-44.<sup>i</sup> In its responses, Airbnb objected on numerous grounds. (Ex. B, Feb. 10, 2023 Motion to Compel). On February 10, 2023, Plaintiff filed a Motion to Compel regarding her Requests for Production Nos. 16-44.

On November 1, 2022, Plaintiff served Airbnb with her Requests for Production Nos. 45-48. In its responses, Airbnb objected on numerous grounds. (Ex. B, Jan. 18, 2023 Motion to Compel). On January 18, 2023, Plaintiff filed her Motion to Compel regarding Requests for Production Nos. 45-48.

Each of Plaintiff's above-identified motions to compel were heard on April 5, 2023. The Court granted the motions during the hearing – giving Airbnb 60 days within which to comply and

produce the documents requested. Subsequently on May 25, 2023, the Court entered a Form 4 Order memorializing its decision.

On June 5, 2023, Airbnb produced some documents to Plaintiff, but informed her that it was unilaterally withholding production of other responsive documents, stating as follows:

Contemporaneous with this production, Airbnb is filing a motion for reconsideration<sup>ii</sup> and to stay enforcement with respect to Plaintiff's Request for Production Nos. 45, 46, 47 (Non-Party Guest Contact Information) and 48 (Non-Party Host Criminal Convictions). Consequently, Airbnb is withholding production of documents responsive to these requests at this time.

(Ex. 6, Plaintiff's June 8, 2023 Motion for Rule to Show Cause ("RTSC Motion")).

"Direct contempt involves contemptuous conduct in the presence of the court." State v. Jolly, 405 S.C. 622, 629, 749 S.E.2d 114, 118 (Ct. App. 2013) (citing State v. Kennerly, 337 S.C. 617, 620, 524 S.E.2d 837, 838 (1999)). South Carolina courts "have held the 'presence of the court' extends beyond the mere physical presence of the judge or the courtroom to encompass all elements of the system." Id.; see also S.C. Code Ann. § 14-5-320 (providing, "The circuit court may punish by fine or imprisonment, at the discretion of the court, all contempts of authority in any cause or hearing before the same.").

I find that the record before this Court shows an ongoing discovery dispute. Rule 11, SCRCPP, requires counsel to ensure the factual accuracy of all allegations in their filings. Airbnb did not dispute the accuracy of the dates upon which it was served with the Plaintiff's Requests for Production Nos. 16-44 or 45-48 (Exs. 1 and 3, RTSC Motion), and also did not dispute the dates for which it served its objections thereto. (Exs. 2 and 4, RTSC Motion). Certainly, Airbnb does not dispute the facts it presented in its June 5, 2023 letter to counsel to Plaintiff. (Ex. 6, RTSC Motion).

The record before this Court on the matters put at issue is not disputed. As shown by Airbnb's own statements in the record, it is acting in direct defiance of this Court's order dated May 25, 2023. Accordingly, I find Airbnb's actions show continuing "contemptuous conduct" towards the authority of this Court, and its orders.

Plaintiff has additionally argued and noted Airbnb has failed to produce other responsive documents, including, for example, none of its internal email communications, and no privilege log. (Ex. 7, RTSC Motion, at p. 5 of 5). Prior to the filing of her motion for a Rule to Show Cause, Plaintiff sought to communicate with Airbnb about how it intended to perform its searches for responsive ESI, but Airbnb did not respond. Instead, Plaintiff contends and the record reflects Airbnb simply decided which documents it would produce and withheld the remainder. This is undeniable in view of the block quote above taken from Airbnb's June 5, 2023 letter to Plaintiff's counsel (Ex. 6, RTSC Motion).

This Court finds Airbnb's stated plans to not comply with this Court's May 25, 2023 Order on the Motions to Compel and violate this Court's order. Airbnb must comply with this Court's May 25, 2023 Order on the Motions to Compel and produce all responsive documents to Plaintiff within forty-five (45) days of the date of this order.

**IT IS SO ORDERED.**

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The Honorable J. Cordell Maddox, Jr.  
Presiding Judge, 2<sup>nd</sup> Judicial Circuit

July \_\_, 2023  
Anderson, South Carolina

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<sup>i</sup> Plaintiff notes her Request for Production Nos. 16-44 are substantially identical in scope and substance to the 24 topics in her 30(b)(6) deposition notice, which has already been the subject of two Airbnb motions. (*see e.g.*, Orders on 30(b)(6) motions, filed Aug. 3, 2022 (at pp. 4-7, approving 24 topics) and Oct. 11, 2022 (denying reconsideration motion filed August 4, 2022)). This is the same notice for which Airbnb initially sought a protective order via motion filed June 14, 2022, and later its first motion to

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reconsider on Aug. 4, 2022. Both of those motions were denied. As of the hearing on April 5, 2023, Airbnb had yet to provide any documents in response to these requests. (*See* April 5, 2023 Hearing Transcript, at pp. 105 to 110 (Airbnb continuing argument in support of its “compromise position” rejected)).

ii Airbnb has already filed two motions to reconsider this Court’s discovery orders, as follows: (i) Motion to Reconsider Denial of Airbnb’s Motion for Protective Order [as relates to Plaintiff’s 30(b)(6) deposition notice], filed August 4, 2022; and (ii) Airbnb, Inc.’s Motion to Reconsider and to Stay Enforcement, filed June 5, 2023. By the time Airbnb’s Aug. 4, 2022 first motion to reconsider was fully briefed, Airbnb had filed and presented 51 pages (6 + 30 + 15 = 51) of argument in support of its motion, which was denied in all substantive respects by order dated October 11, 2022.



Aiken Common Pleas

**Case Caption:** Julianne Foster , plaintiff, et al VS Rhett Riviere , defendant, et al

**Case Number:** 2021CP0200889

**Type:** Order/Rule To Show Cause

So Ordered

s/ J. Cordell Maddox Jr.