

October 8, 2024

VIA E-MAIL DELIVERY

Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201
ctappfilings@sccourts.org

Re: *City of North Myrtle Beach, Appellant v. Sun TRS Ocean Club, LLC, Sun TRS Carolina Pines LLC, and Sun Carolina Pines RV, LLC, Respondents*
Appellate Case No. 2024-000144
Case No. 2021-CP-26-07489

Dear Madam Clerk:

Counsel for Respondents respectfully submits this letter seeking a determination that the Record on Appeal submitted by Appellant in the above-referenced matter is deficient and require Appellant to withdraw the Record on Appeal and confer with Respondents prior to resubmission of the corrected record. This letter outlines the procedural posture of the case, explains the issues in dispute, and details Respondents' request for relief.

The Honorable William H. Seals, Jr. of the Horry County Court of Common Pleas issued his Final Order of the Trial Court in this matter on November 20, 2023. Following the denial of Appellant's Motion to Reconsider, Appellant filed its Notice of Appeal on February 2, 2024. The parties subsequently served their Initial Briefs and Designation of Matters on April 18, 2024, and July 19, 2024. After a consent order granting an extension, Appellant filed its Reply Brief on August 30, 2024. On September 30, 2024, without first consulting with Respondents, Appellant filed the Record on Appeal with this Court.

The Record on Appeal, as unilaterally filed by Appellant, contains numerous deficiencies. First, pursuant to Rule 210 (c), SCACR, "the Record on Appeal shall include all matter designated to be included by any party..." and Rule 210(e), SCACR, further specifies that "the act of filing the Record on Appeal constitutes a certification that the Record on Appeal contains all materials proposed to be included by any of the parties..." Despite these clear directives, Appellant's Record on Appeal omits several key documents, including Respondents' Memorandum in Opposition to Appellant's Motion to Reconsider (filed December 12, 2023), which was properly listed as No. 10 on Respondents' Designation of Matter. Additionally, Appellant's Record on Appeal fails to include the summary of exhibits from Respondents' Exhibit 5, as well as an executed version of Respondents' Exhibit 9, both of which were duly designated on Respondents' Designation of Matter at Nos. 22 and 24, respectively.

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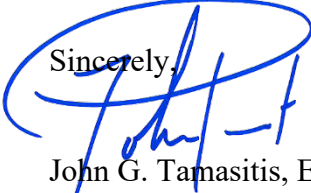
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Further, Appellant's Record on Appeal fails to satisfy Rule 210(e), SCACR, which mandates that the index clearly indicate "the pages on which direct, cross, redirect, and recross begins" for witness testimony. Multiple matters listed in Appellant's Record on Appeal do not match the pleading captions of said documents, such as: (1) "Appellant's Amended Reply to Counterclaims" (filed May 20, 2022); (2) "Respondents' Stipulation of Dismissal of Equal Protection Counterclaim" (filed July 10, 2023); and (3) "Appellant's Memorandum of Law in Opposition to Respondents' Renewed Motion to Vacate Consent Order" (filed August 2, 2023). Moreover, Brian Gibbs is incorrectly listed as counsel of record for Respondents, although Mr. Gibbs withdrew from this case over three months prior to the filing of the Record on Appeal.

Respondents acknowledge that Rule 212(b), SCACR, provides a procedure for supplementing the Record on Appeal with the consent of all attorneys of record. However, the issues identified here—including the improper indexing, incorrect identification of attorneys, and mislabeling of materials—are not appropriate matters for supplemental correction. As such, Respondents contend that the responsibility for rectifying these deficiencies rests solely with Appellant, who failed to adhere to Rule 210, SCACR, by filing the Record on Appeal in its current form without consultation.

Respondents have attempted to consult with counsel for Appellant regarding these issues, to no avail. For the reasons outline above, Respondents respectfully request that the Record on Appeal submitted by Appellant be deemed deficient and require Appellant to withdraw the current submission and collaborate with Respondents to resubmit a corrected Record on Appeal. If the Court wishes for Respondents to file a Motion regarding the above, please so advise.

Sincerely,

John G. Tamasitis, Esquire
Counsel for Respondents

cc: Rhett Douglas Richard, Esquire
Cheryl D. Shoun, Esquire
Richard Hood Willis, Esquire