THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY

COURT OF COMMON PLEAS

CARMEN T. MULLEN, JUDGE

CASE NO. 2010-CP-07-4328

APPELLATE CASE NO. 2013-000920

Coral Resorts, LLC and Coral Holdings, LLC,..... Respondents

Vs.

Ted Morris, Lorraine Morris, Coastal Timeshare Creations, LLC d/b/a Coastal Visitors Center and Coastal Activities, Morr Marketing Enterprises, Inc., Tom Page and Scott McCoy,..... Appellants.

INITIAL BRIEF OF THE APPELANTS

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PART A

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PART B

STATEMENT OF ISSUES ON APPEAL

Whether the Lower Court committed error, by finding the Appellants in Contempt of Court, for an alleged violation of a Consent Order of Permanent Injunction, by virtue of having opened an Office, whereas the Consent Order of Permanent Injunction does not contain any provision or language, prohibiting the Appellants from opening an Office.

PART C

STATEMENT OF THE CASE

The Appellant, Coastal Timeshare Creations, LLC, is a South Carolina Limited Liability Company, with its Office located in the Town of Hilton Head Island, in Beaufort County, South Carolina. The Appellant, Coastal Timeshare Creations, LLC, is engaged in the Business of Timeshare Re-sales, and they maintain an Office in the Town of Hilton Head Island, in Beaufort County, South Carolina. The other Appellants, Ted Morris, Lorraine Morris, Morr Marketing Enterprises, Inc., Tom Page and Scott McCoy, are associated with the Appellant, Coastal Timeshare Creations, LLC.

The Respondents, Coral Resorts, LLC and Coral Holdings, LLC, are South Carolina Limited Liability Companies. The Respondents are engaged in the Business of Timeshare Development, and they have several Timeshare Projects in the Town of Hilton Head Island, in Beaufort County, South Carolina.

On a former day, September 28, 2010, the Appellants and the Respondents entered into a Consent Order For A Permanent Injunction. The Consent Order For A Permanent Injunction will be included in the Appellants' Record on Appeal.

Subsequently, the Respondents filed a Rule to Show Cause, seeking an Order of Contempt, against the Appellants, relative to the alleged violation by the Appellants of the Consent Order For A Permanent Injunction, in regard to the opening of an additional Office by the Appellants. The Lower Court entered a Second Order of Contempt, which Order of Contempt, is the subject of this Appeal, and which Order was signed by the Court on January 28, 2013. A copy of the subject Second Order of Contempt will be included in the Appellants' Record on Appeal.

Subsequent to the entry of the subject Second Order of Contempt, pursuant to SCRCP, Rule 59, Subdivision (e), the Appellants filed a Motion to Stay / Reconsider the subject Second Order of Contempt, and a Memorandum in Support of their Motion. A copy of the Motion to Stay / Reconsider the subject Second Order of Contempt and a copy of their Memorandum in Support of the Motion to Stay / Reconsider the subject Second Order of Contempt will be included in the Appellants' Record on Appeal.

In regard to the Appellants' Motion to Stay / Reconsider the subject Second Order of Contempt, the Appellants explained to the Court the reasons they believed that the subject Second Order of Contempt was erroneous. They addressed the issue, relative to an additional Office, which the Appellants had opened, and which the Court found was a violation of the Consent Order For A Permanent Injunction.

As indicated, the Lower Court found that the Appellants had violated the Consent Order For A Permanent Injunction, by opening the additional Office and, therefore, found that the Appellants were in Contempt of Court. In addition, the Court Ordered that the

Appellants must immediately close the Office and, further, to totally vacate the Office, within Seventy Two (72) Hours, from the date of the Hearing.

The Appellants respectfully represented to the Lower Court that the Consent Order For A Permanent Injunction did not prohibit them from opening an additional Office and, as such, the subject Second Order of Contempt was erroneous, and that the Court should reconsider its ruling. However, as indicated, the Court refused to reconsider or amend the subject Second Order of Contempt and, as such, the subject Second Order of Contempt remains in full force and effect.

As indicated, the Lower Court denied the Appellants' Motion to Stay / Reconsider the subject Second Order of Contempt. The Lower Court's Order, in that regard, was a Form 4 Order, which Order was signed on February 20, 2013; however, the Appellants did not receive written Notice of the entry of the Order, until March 28, 2013. A copy of the Order, which was entered by the Lower Court in that regard, being the Form 4 Order, will be included in the Appellants' Record on Appeal.

Subsequent to the denial of the Lower Court to Stay / Reconsider the subject Second Order of Contempt, the Appellants filed a Notice of Intent to Appeal, which Notice of Intent to Appeal was filed on April 25, 2013. Thereafter, the Appellants filed an Amended Notice of Appeal on May 2, 2013.

The subject Second Order of Contempt is now a Final Order of the Court, and, therefore, the Appellants are filing this Appeal. S.C. Code Ann. § 14-3-330 (1976), specifically provides for the concept of Appellate Jurisdiction in Law Cases. Subdivision 3, of § 14-3-330 S.C. Code Ann. (1976), provides, in essence, that an Appeal may be taken

from a Final Order affecting a substantial right made in any special proceeding. Further, the S.C. Code Ann. § 18-9-10 (Supp. 1999), provides that an Appeal may be taken to the Supreme Court, or to the Court of Appeals, in the Cases set forth in S.C. Code Ann. § 14-3-330 (1976).

The Appellants respectfully submit that an Order, "involves the merits," as that term is used in the Statute, outlining Appellate Jurisdiction in Law Cases, and is immediately Appealable, when it finally determines some substantial matter forming the whole or part of the Cause of Action. *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 630 S.E. 2d. 464 (2006). The Appellants respectfully submit that the Order of Contempt, which is the subject of this Appeal, "involves the merits," as that term is used in the Statute, outlining Appellate Jurisdiction in Law Cases and, as such, is immediately Appealable, whereas it finally determines some substantial matter, which, in this particular Case, is the right of the Appellants to open an Office. Therefore, the Appellants respectfully submit that the Order, which is the subject of this Appeal, is a Final Order, on the Mertis, and it substantially affects their rights. In addition, as the South Carolina Appellate Courts have ruled, an Order of Contempt is immediately Appealable, as in this Case. *Grosshuesch v. Cramer*, 377 S.C. 12, 659 S.E. 2d. 112 (2008).

PART D

ARGUMENT

On a former day, January 28, 2013, the Lower Court entered an Order captioned, Second Order of Contempt, in this Case, which Second Order of Contempt, was issued in favor of the Respondents, against the various Appellants. The salient parts of the subject Second Order of Contempt deal with the issue of an additional Office, which the Appellants

had opened at 32 Office Park Road, in the Town of Hilton Head Island, in Beaufort County, South Carolina.

The Appellants respectfully submit that the Consent Order For A Permanent Injunction does not prohibit them from opening that Office. The Appellants respectfully submit that the cannon of construction, and the maxim of "expressio unius est exclusio alterius" or "inclusio unius est exclusion alterius" holds that to "to express or to include one thing, implies the exclusion of another, or in the alternative." This is a rule, a maxim of construction, that has been used by the Courts, over the years in various situations. This Doctrine of "exclusio non inclusio" is recognized in this Jurisdiction. Please see the Cases of *Hodges v. Rainey 341 S.C. 79, 533 S.E. 2d* 578 (2000). *Scholtec v. Estate of Reeves, 327 S.C. 551, 409 S.E.2d.* 603 (Ct. App. 1997). *Cowan v. Allstate Ins. Co., 351 S.C. 626, 571 S.E.2d.* 715 (Ct. App. 2002).

The Appellants respectfully submit that, whereas the Consent Order of Injunction included certain prohibitions and activities, the exclusion of any other prohibition or activity, would not be a part of the Consent Order of Injunction. As such, whereas the Injunction does not specifically state that the Defendants cannot open an Office, within Seventy-Five (75) yards of the parking lot of the Respondent, Coral Sands', Sales Office, therefore, it would not be included in the Consent Order For A Permanent Injunction and, therefore, they would not have been prohibited from opening the Office at 32 Office Park Road.

Also, it is interesting to note that, apparently, the Respondents are attempting to imply that there was a "Covenant Not to Compete" and/or other type of Restrictive

Covenant by and between the Respondents and the Appellants. However, it is important for the Court to note that, although the Appellants, Lorraine Morris and Ted Morris, worked for the Respondent, Coral Resorts, for a time; nevertheless, they did not, at any time, enter into any type of formal Employment Agreement and/or any other type of Agreement, containing any type of Restrictive Covenant and/or Covenant Not to Compete. The Respondents are attempting to imply that there was such a Covenant Not to Compete and, therefore, they are attempting to imply that the Appellants cannot be engaged in a competitive Business with the Respondents. The Respondents should not be allowed to interfere, in any way, with the rights of the Appellants, to be lawfully engaged in their Business, although their Business is in competition with the Respondents. The fact that the Appellants are engaged in a competitive Business does not, in and of itself, ipso facto, allow the Respondents to unduly constrain the Appellants of their right to be engaged in Business. After all, Capitalism and the Principles of Free Enterprise are viable in the United States of America.

As the Court will note, upon review of the Consent Order For A Permanent Injunction, there is no prohibition against the Appellants from opening an Office, at or near the locations of the Respondent's Business operations. The Appellants respectfully submit that it is a general rule of Law, that a Consent Order, such as the Consent Order for Permanent Injunction in this Case, is analyzed, based upon the application of Contract Interpretation Principles. *Young-Henderson v. Spartanburg Area Mental Health Center, 945 F.2d. 770 (1991).* The Court has also noted, in previous Cases, that a Consent Order has many of the attributes of an ordinary contract, and it should be construed, for enforcement

purposes, basically, as a contract. Accordingly, the Consent Order of Injunction in this Case must be construed as written. In Re: *Blanton 78 B.R. 442 (1989).*

In that regard, the Appellants respectfully submit that, relative to the construction and interpretation of the Consent Order, Contract Principles of Law would be applicable to the Consent Order for Injunction in this Case, and the Court is duty bound, when the Contract is clear and unequivocal, that its meaning must be determined by its contents alone. The Contract must be construed, according to the terms the Parties have used. *Auto-Owners Ins. v. Carl Brazell Builders, Inc. 356 S.C. 156, 558 S.E.2d. 112 (2003).* Also, the Court has recognized that it is the Court's duty to enforce a Contract, such as the Consent Order in this Case, made by the Parties, regardless of the Parties' failure to guard their rights carefully. *Ellis v. Taylor, 316 S.C. 245, 449 S.E.2d 487 (1994).*

Also, the Law in South Carolina is to the effect that the Court is confined to enforce a Contract, such as the Consent Order of Injunction in this Case, as it is written. *Laidlaw Environmental Services, Inc. v. Honeywell, Inc.*, 966 F.Supp. 401 (1996). In addition, as a point of Law, a Contract must be construed, according to the terms that the Parties have used. *Auto-Owners Ins. Co. v. Carl Brazwell Builders, Inc.*, 356 S.C. 156, 588 S.E.2d. 112 (2003). The language alone determines the Contract's force and effect. *Lewis v. Premium Inv. Corp.*, 351 S.C. 167, 568 S.E.2d 361 (2002).

As such, based upon the previous Doctrine and Maxim, relative to the cannon of construction, being, "Exclusio Non Inclusio," the fact that the Respondents did not include a provision in the Consent Order of Injunction, relative to the operation of an Office by the Appellants, the Court, irrespective of the Respondents' position, cannot rewrite the

Consent Order for Permanent Injunction and, likewise, the Respondents cannot insert terms or provisions that were not in the Consent Order for Permanent Injunction, as previously entered into by the Parties.

In addition, there is another concept, upon which the Appellants rely in this Case, the concept of Estoppel. The concept of "Estoppel by Record" is the preclusion to deny the truth of matters set forth in a record, such as an Order entered by the Court, such as the Consent Order of Injunction in this Case. *Watson v. Goldsmith, 205 S.C. 215, 31 S.E.2d 317 (1944).* Also, the concept of "Judicial Estoppel," provides that, once the Court has approved a Consent Order, it cannot be changed by the Parties. The concept of "Judicial Estoppel" is designed to prevent the Parties from playing fast and loose with the Court, and to protect the essential integrity of the Judicial Process. *Johnson v. Ashcraft, 329 F.Supp 2d 715 (2004).* The essential element of the concept of Estoppel is to prevent injustice. The Principle of Estoppel stands upon the very foundation of right and fair dealing, and it considers and weighs the conduct of the Parties in their dealings with each other, and it gives that effect and meaning to their action which Justice dictates. *General Motors Acceptance Corp. v. Herlong, 248 S.C. 577, 149 S.E.2d. 51 (1966).*

Also, it is important to note that the Respondents are attempting to imply that the term, "loiter," implies the notion that having an Office is, tantamount, to "loitering." There is absolutely no basis for such an interpretation, and this Court should not allow the Respondents to play "fast and loose" with the Court, and have the Court adopt an interpretation of words that is beyond the pale. As such, their argument that the Office, was a type of "loitering," or that the Parties, ingressing and egressing to that Office, would be, in any way, a type or form of "loitering," is absurd. The Appellants have every right to

be engaged in the operation of their Business, at such a place as they deem to be most effective for them.

There comes a point in this Litigation, when the Respondents must be constrained from trying to stretch beyond their legal rights and, infringe upon the legal rights of the Appellants. This same principle is true, relative to the notion that the Respondents are trying to imply that the mere fact that the Appellants have an Office at 32 Office Park Road is a form of "solicitation" of the Respondents' potential customers. This assentation is, likewise, absurd, and beyond the scope of rational, logical, legal application.

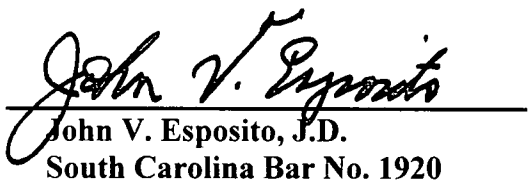
PART E

CONCLUSION

WHEREFORE, the Appellants respectfully submit that, based upon the Facts, and the Law appertaining to the Issue of this Appeal, the Second Order of Contempt should be rescinded and/or modified accordingly. In particular, the Appellants respectfully submit that, based upon the Facts, and the Law appertaining to the Issue in this Case, the Lower Court committed error, by finding that the Appellants were in Contempt of Court, for the alleged violation of the Consent Order of Injunction, relative to the opening of an Office. The Appellants respectfully submit that, as set forth in this Brief, the Ruling by the Lower Court was erroneous and, therefore, the Second Order of Contempt should be rescinded and/or modified accordingly. Thank you.

Respectfully submitted,

THE APPELLANTS /
TED MORRIS,
LORRAINE MORRIS,
COASTAL TIMESHARE CREATIONS, LLC,
MORR MARKETING ENTERPRISES, INC.,
TOM PAGE
and
SCOTT MCCOY
BY COUNSEL

By: 

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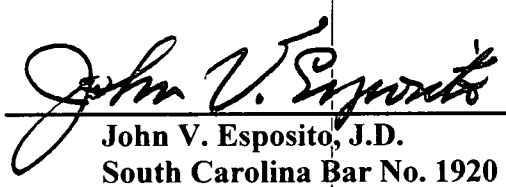

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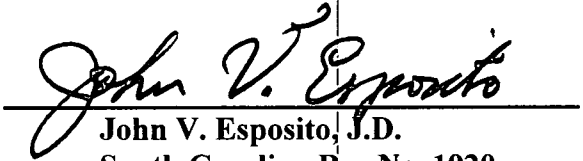

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Appellants' Designation of Matter To be Included in the Record on Appeal

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CERTIFICATION

I, John V. Esposito, J.D., Counsel for the Appellants, relative to this Appeal, do hereby Certify that the Appellants' Designation of Matter to be Included in the Record on Appeal contains all of the material proposed to be included by the Appellants, at this point in time, and not any other material.

By: John V. Esposito

John V. Esposito, J.D.
Counsel for the Appellants

Executed this 16th **day of** September **, 2013,**

in Hilton Head Island, S.C. .

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Ted Morris, Lorraine Morris, Coastal Timeshare Creations, LLC d/b/a Coastal Visitors Center and Coastal Activities, Morr Marketing Enterprises, Inc., Tom Page and Scott McCoy,..... Appellants.

PROOF OF SERVICE

I certify that I have served a copy of the Appellants' Designation of Matter to be Included in the Record on Appeal, upon Joseph DuBois, the other Counsel for the Appellants in the Lower Court, by depositing a copy of the subject Document, in the United States Mail, postage prepaid, on September 16th, 2013, and addressed to Joseph DuBois, c/o Naret & DuBois, Post Office Box 7228, Hilton Head Island, SC 29938.

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