

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No: 2011-CP-26-9457

Horry County, A body politic,.....Respondent.

v.

Aquasino Partners of South Carolina LLC, Suncruz Casino Cruises, LLC,
Ventures South Carolina, LLC, Suncruz Casinos, LLC and Highland Park
Real Estate Development Corporation,.....Defendants.

Of whom,

Aquasino Partners of South Carolina, LLC, Suncruz Casinos Cruises, LLC
and Highland Park Real Estate Development Corporation Appellants.

RECORD ON APPEAL

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Attorney for Appellants, Aquasino Partners of South
Carolina, LLC, Suncruz Casinos Cruises, LLC, and
Highland Park Real Estate Development Corporation

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SC COURT OF APPEALS

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Defendants timely filed an Answer and Counterclaim. On August 31, 2012, Plaintiff filed a Reply to Defendants' Counterclaim, as well as, an Amended Summons and Complaint. The Amended Summons provided Defendants thirty days to answer the amended complaint.

On September 20, 2012, Plaintiff's Attorney, Philip C. Thompson, filed an Affidavit of Default pursuant to Rule 15(a) SCRCF. On September 21, 2012, attorney Mark D. Neill filed a Notice of Appearance and Answer to the Amended Complaint on behalf of the moving Defendants - Aquasino Partners of South Carolina, LLC, Suncruz Casino Cruises, LLC, and Highland Park Real Estate Development Corporation. On October 9, 2012, the moving Defendants filed a motion to set aside entry of default. On October 19, 2012, an Order of Default was filed holding Defendants in default for failure to timely file an Answer to Plaintiff's Amended Complaint. On November 15, 2012, Defendants timely filed a Motion to Set Aside Order of Default filed on October 19, 2012.

SCRCF Rule 55 (c) provides: For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b). Although SCRCF Rule 15(a) requires a party to plead in response to an amended pleading within fifteen days after service, SCRCF Rule 6 (b) provides: When by these rules or by notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the time may be extended by written agreement of counsel for an additional period not exceeding the original time provided in these rules. In the present case, the Plaintiff's Amended Summons gave the Defendants thirty days to file a responsive pleading. As such, the moving Defendants timely filed a responsive pleading to Plaintiff's Amended Complaint. Accordingly, this Court finds there is good cause to set aside the Affidavit of Default filed On September 20, 2012 and Order of Default filed on October 19, 2012 as to Aquasino

²
/MHC

Partners of South Carolina, LLC, Suncruz Casino Cruises, LLC, and Highland Park Real Estate Development Corporation. Suncruz Casinos, LLC and Ventures South Carolina, LLC remain in default.

Provided, however, this Court previously determined in its Order filed November 2, 2012 that Defendants pleadings were stricken as a result of Defendants' willful and intentional violation of the Court's prior order of July 30, 2012. Accordingly, this Order granting motion for relief from Entry of Default Filed on October 19, 2012 has no effect whatsoever on the November 2, 2012 Order and, the Defendants remain in default because of their violation of the Court's July 30, 2012 Order.

IT IS SO ORDERED!

Benjamin H. Culbertson
Judge Benjamin H. Culbertson
Court of Common Pleas
Fifteenth Judicial Circuit

Dated: March 25, 2013
Georgetown, South Carolina
Georgetown

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-26-09457

HORRY COUNTY

AQUASINO PARTNERS OF SOUTH CAROLINA LLC ETAL

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: *Clerk of Court*

Attorney for: ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: MOTION TO SET ASIDE DEFAULT IS ~~MOTE~~ ^{MOT.} FORMAL ORDER TO FOLLOW BY ATTY MARK D NEHL.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk:

This motion was decided as part of the defendants' "Motion to Reconsider and Set Aside Default."

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	\$ N/A
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Morganauitt Culbertson
Circuit Court Judge

2148
Judge Code

March 5, 2013
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

PHILIP C THOMPSON

MARK D NEILL

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: GRACE HURLEY

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) OF THE FIFTEENTH JUDICIAL CIRCUIT
) Civil Action No: 2011-CP - 26- 9457

Horry County, a Body Politic ,

Petitioner(s)

vs.

Aquasino Partners of South Carolina, LLC,
Suncruz Casino Cruises, LLC, Ventures South
Carolina, LLC, Suncruz Casinos, LLC, and
Highland Park Real Estate Development
Corporation ,

Defendant.

HORRY COUNTY
12 NOV -2 PM 3:19
MELANIE HUGGINS-WARD
CLERK OF COURT
ORDER

This matter comes before me upon Plaintiff's Application for an Order and Rule to Show Cause, Plaintiff's Motion for Sanctions filed September 20, 2012 and the Affidavit of Philip C. Thompson filed September 12, 2012. I signed the Order and Rule to Show Cause on October 4, 2012 requiring the Defendants to appear before me in Courtroom 3-E of the Horry County Courthouse on October 15, 2012 at 2:00 p.m., to show cause, if any they could, why they should not be held in contempt of Court. Attending the hearing for the Plaintiff was Philip C. Thompson, Esquire, Arrigo P. Carotti, Esquire, and Sanford Cox Graves, Esquire, and for all Defendants, J. Todd Kincannon, Esquire.

This action was initiated by the filing of a Summons and Complaint by the Plaintiff on November 10, 2011, wherein the Plaintiff alleged numerous causes of action based upon the Defendants' failure to pay a surcharge fee pursuant to the South Carolina Gambling and Cruise

Act, S.C. Code § 3-11-100 et. seq., Horry County Ordinance No. 09-08, Horry County Resolution R-47-10 and a Surcharge Agreement by and between Suncruz Casino Cruises, LLC and Horry County dated May 5, 2010. The Defendants responded by filing their Motion to Dismiss on January 18, 2012. On February 28, 2012 Plaintiff filed its Motion for Temporary Injunction and Application for Receiver. On May 30, 2012 Plaintiff filed its Motion to Compel Discovery. As a result of numerous delays resulting from the Defendants' association of State Legislators as attorneys of record, the hearing for Defendants' and Plaintiff's Motions was not heard until July 23, 2012, at which time this Court issued its Order denying Defendants' Motion to Dismiss, granting Plaintiff's Motion for Injunction, Application for Appointment of an Escrow Agent, and to Compel and Waiver of Lawyer/Legislator Protection, which was filed July 30, 2012.

At the hearing on July 23, 2012, Defendants' counsel conceded Plaintiff's Motion to Compel and agreed to provide Plaintiff with Defendants' Answers and Responses to Plaintiff's Discovery Requests. Accordingly, I ruled:

"That the Defendant shall provide the Plaintiff with Defendants' Answers and Responses to Plaintiff's First Interrogatories to Defendants dated November 10, 2011, Plaintiff's First Request for Production to the Defendants dated November 10, 2011 and Plaintiff's Supplemental Interrogatories and Requests for Production of Documents dated May 29, 2012 no later than thirty (30) days from the date of this hearing, which date shall be August 22, 2012." (Order filed July 30, 2012, p. 3).

Thereafter, Philip C. Thompson, attorney for the Plaintiff, filed his Affidavit on September 12, 2012 with attached Exhibits "A" and "B" wherein he certified that:

" 3. That by email dated August 27, 2012, J. Todd Kincannon, attorney for the Defendants, requested that he be granted an extension of time to answer the discovery in this matter due to a personal emergency. The extension was granted with a new deadline of August 28, 2012. (See Exhibit "A" attached.)

4. That by letter dated September 5, 2012, I notified J. Todd Kincannon and J. Todd Rutherford, Attorneys for the Defendants that they had missed the Court Ordered deadline of August 22, 2012 and the extended deadline of August 28, 2012. I also demanded answers by September 7, 2012. (See Exhibit "B" attached.)

5. That as of this date, the Defendants have not answered the discovery."

Thereafter, Plaintiff's counsel forwarded his Affidavit and a proposed Rule and Order to Show Cause to the Deputy Clerk. The Plaintiff's Counsel also filed Plaintiff's Motion for Sanctions on September 20, 2012 based upon the same facts contained in his Affidavit and requested sanctions pursuant to Rule 37(b)(2) and (d), SCRPC, to include, but not be limited to an order striking the Defendant's Answer, an order striking the Defendants' counterclaims, an order for entry of default, an order that Defendants be held in contempt, an order awarding Plaintiff's attorney's fees and costs, and for such other and further relief as the Court may deem just and proper.

Having considered my Order of July 30, 2012, the Affidavit of Philip C. Thompson filed September 12, 2012, Plaintiff's proposed Order and Rule to Show Cause, Plaintiff's Motion for Sanctions, the transcript of the July 23, 2012 hearing, the significant delays in this case, arguments of counsel and Rule 37, SCRPC, the Court has determined that the Defendants have willfully and intentionally violated this Court's Order of July 30, 2012 by failing to provide discovery as required therein. The Defendants were unable to provide the Court with any facts or circumstances that would justify the failure to provide the discovery responses as ordered, especially in light of Defendants' counsel's email of August 27, 2012 to Plaintiff's counsel, and Plaintiff's Response that was attached as Exhibit "A" to the Affidavit of Philip C. Thompson, and Plaintiff's counsel's September 5, 2012 letter to Defense counsel that was attached as Exhibit "B" to the Affidavit of Philip C. Thompson.

I have also weighed the nature of the discovery requests, the discovery posture of the case, being that no discovery whatsoever has been conducted since the case was filed in November of 2011, the willfulness of the failure to provide the discovery responses and the prejudice to the Plaintiff in not receiving the discovery responses eleven (11) months after the initial discovery requests were made. Although Plaintiff's counsel represented that Mark Neill, a new attorney for the Defendants who recently filed a Notice of Appearance, provided Plaintiff's counsel with responses to the discovery requests, Plaintiff's counsel further represented to the Court that they were not provided until October 11, 2012 and were not complete. This exemplifies the delays and last minute filings that these Defendants have engaged in throughout this case and will result in further delays for the Plaintiff to obtain complete answers to discovery responses.

Based upon the foregoing, and pursuant to Rule 37, SCRPC, it is,

ORDERED, ADJUDGED, AND DECREED that:

1. Defendants have willfully and intentionally violated this Court's order of July 30, 2012 by failing to provide discovery responses as set forth in said Order;
2. Defendants' Answers and Counterclaims are hereby stricken and as a result the Defendants are in default. As such, the Defendants have admitted all allegations contained in the Plaintiff's Complaint and Amended Complaint;
3. Plaintiff is awarded judgment against the Defendants for its reasonable expenses, including attorney's fees, from August 29, 2012, through and including October 15, 2012, caused by Defendants' failure to comply with the Court's Order of July 30, 2012. Those fees and costs shall be determined at a damages hearing to be set in the near future; and

4. The Plaintiff may proceed at any time and by any method provided by the South Carolina Rules of Civil Procedure as against any party in default to determine its damages against the Defendants.

AND IT IS SO ORDERED this 31st day of October, 2012.

Benjamin J. Culbertson
The Honorable Benjamin J. Culbertson

Georgetown, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2011-CP-26-9457

Horry County, A Body Politic
PLAINTIFF(S)

Aquasina Partners of
South Carolina, LLC, et al.
DEFENDANT(S)

Submitted by: Benjamin H. Culbertson, Presiding Judge

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 40(b), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

Re: Rule to Show Cause - The Defendants are found to have willfully violated the prior order of this court requiring them to comply with the plaintiff's discovery requests by 8/22/2012. The plaintiff extended the response deadline until 8/29/2012; however, the defendants did not respond to discovery until 10/11/2012. Therefore, it is hereby

ORDERED, that the defendants' responsive pleadings in this case are stricken and the defendants are held in default; it is further

ORDERED, that the plaintiff is entitled to recover from the defendants attorney fees and costs incurred from 8/29/2012 until 10/15/2012 for bringing and prosecuting this Rule to Show Cause, said fees and costs to be determined at the damages hearing in this case.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

This case is to be scheduled for a default hearing on damages.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	\$ N/A
If applicable, describe the property, including tax map information and address, referenced in the order.		

SCRCP Form 4C (12/2010)

Page 1

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The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Benjamin H. Culbertson
Benjamin H. Culbertson, Circuit Court Judge

2148
Judge Code

October 19, 2012
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Phillip C. Thompson

J. Todd Kincannon

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: Dede Eubanks

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) OF THE FIFTEENTH JUDICIAL CIRCUIT
) Civil Action No: 2011-CP - 26- 9457

Horry County, a Body Politic ,

Petitioner(s)

vs.

Aquasino Partners of South Carolina, LLC,
Suncruz Casino Cruises, LLC, Ventures South
Carolina, LLC, Suncruz Casinos, LLC, and
Highland Park Real Estate Development
Corporation ,

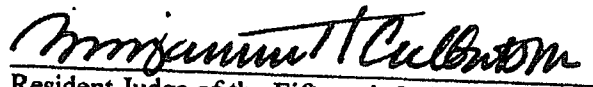
Defendant.

ORDER
OF
DEFAULT

FILED
HORRY COUNTY
12 OCT 19 AM 9:30
MELANIE HUGGINS-WARD
CLERK OF COURT

Wherefore, it appears that the Defendants were properly served with a copy of the Amended Summons and Amended Complaint, and that more than fifteen (15) days have passed since service without the filing of an Answer or responsive pleading to same. Therefore, the Defendants, Aquasino Partners of South Carolina, LLC, Suncruz Casino Cruises, LLC, Ventures South Carolina, LLC, Suncruz Casinos, LLC, and Highland Park Real Estate Development Corporation, have been determined to be in default.

IT IS SO ORDERED this 4th day of October, 2012


Resident Judge of the Fifteenth Judicial Circuit

Conway, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Horry County, a Body Politic,

Plaintiff,

vs.

Aquasino Partners of South Carolina, LLC,
Suncruz Casino Cruises, LLC, Ventures South
Carolina, LLC, Suncruz Casinos, LLC, and
Highland Park Real Estate Development
Corporation,

Defendants.

IN THE COURT OF COMMON PLEAS
OF THE FIFTEENTH JUDICIAL CIRCUIT
Civil Action No: 2011-CP - 26- 9457

ORDER
DENYING DEFENDANTS' MOTION TO
DISMISS, GRANTING PLAINTIFF'S
MOTION FOR INJUNCTION,
APPLICATION FOR APPOINTMENT OF
AN ESCROW AGENT AND TO COMPEL,
AND WAIVER OF LAWYER-LEGISLATOR
PROTECTION

HORRY COUNTY
12 JUL 30 PM 2:22
MELANIE HUGHES-WARD
CLERK OF COURT

This matter comes before me upon Defendants' Motion to Dismiss dated January 14, 2012, Plaintiff's Application for Appointment of Receiver and Plaintiff's Motion for Temporary Injunction, both filed February 28, 2012, and Plaintiff's Motion to Compel filed May 30, 2012. A hearing was held on July 23, 2012. Attending the hearing for the Plaintiff was Philip C. Thompson, Esquire, and for all Defendants, J. Todd Kincannon, Esquire.

Having considered the Defendants' Motion to Dismiss, the Defendant Suncruz Casino Cruises' Memorandum re The Invalidity of the Gambling Cruise Surcharge Scheme Established by Horry County Ordinance 09-08, Plaintiff's Application for Appointment of Receiver and the Exhibits and Affidavit of Barry R. Spivey attached thereto, Plaintiff's Motion for Temporary

Horry County, a body Politic v. Aquasino Partners of South Carolina, LLC, et al.
ORDER ON JULY 23, 2012 HEARING

1/2012

Injunction and the Exhibits and Affidavit of Barry R. Spivey attached thereto, the Complaint filed in this action, all the papers, pleadings and records in this matter, including the Biography of Joseph F. Singleton, arguments of counsel and the statutory and case law governing the issues and matters raised by the Motions, Application and arguments of counsel, the Court has determined that:

Defendants' Motion to Dismiss

Defendants' Motion to Dismiss sought to dismiss Plaintiff's complaint on three grounds:

- (1) under Rule 12(b)(6), SCRPC for failure to state facts sufficient to constitute a cause of action;
 - (2) under Rule 12(f), SCRPC to strike claims for exemplary damages; and (3) under Rule 9(b), SCRPC to dismiss the fraud and related claims for failure to plead those claims with particularity.
- The Defendants presented no argument with regards to their Rule 12(f) and Rule 9(b) grounds.

As for their Rule 12(b)(6) grounds, the Defendants relied upon the Defendant Suncruz Casino Cruises' Memorandum re The Invalidity of the Gambling Cruise Surcharge Scheme Established by Horry County Ordinance 09-08, dated July 23, 2012 and forwarded to the Court and Plaintiff's counsel at 6:03 a.m., the morning of the hearing. In their Memorandum, they claimed that Horry County's Seven and 00/100 (\$7.00) Dollar per boarding passenger, per gambling cruise surcharge violated the statutory caps established by S.C. Code § 3-11-400(c)(2). A determination of that issue requires inquiry into the facts of the case, including, but not limited to how many gambling cruise tickets the Defendants have sold and what the gross proceeds are of their gambling vessel. As no discovery has taken place thus far and the only argument regarding the facts supporting Defendants' position came from Defendants' counsel's oral argument at the hearing, Defendants' Motion to Dismiss is premature. Ordinarily, arguments of counsel may not

be considered as evidence in deciding factual issues. Historic Charleston Foundation v. Krawcheck, 313 S.C. 500, 443 S.E.2d 401 (Ct. App. 1994). Accordingly,

IT IS ORDERED, ADJUDGED AND DECREED that Defendants' Motion to Dismiss is Denied.

Plaintiff's Motion to Compel

Defendants' counsel conceded this issue and agreed to provide Plaintiff with Defendants' answers and responses to Plaintiff's discovery requests. Accordingly,

IT IS ORDERED, ADJUDGED AND DECREED that the Defendants shall provide the Plaintiff with Defendants' answers and responses to Plaintiff's First Interrogatories to the Defendants dated November 10, 2011, Plaintiff's First Requests for Production to the Defendants dated November 10, 2011 and Plaintiff's Supplemental Interrogatories and Requests for Production of Documents dated May 29, 2012 no later than 30 days from the date of this hearing, which date shall be August 22, 2012.

Plaintiff's Motion for Temporary Injunction

The Court finds that Chapter Eleven of Title III of the South Carolina Code of laws, Horry County Ordinance Number 09-08, Horry County Resolution R-47-10, and the May 5, 2010 Surcharge Agreement executed by the Plaintiff and Suncruz Casino Cruises, LLC, authorizes the Plaintiff to seek injunctive relief against any individual charged with the responsibility of operating or managing the daily business of a gambling vessel that violates the above referenced laws and surcharge agreement. Suncruz Casino Cruises, LLC, is in violation of the above referenced County Ordinance and Surcharge Agreement since it has not paid to the Plaintiff the Seven and 00/100 (\$7.00) Dollar per boarding passenger, per gambling cruise surcharge since August 1, 2011. Based on the forgoing, the Plaintiff is entitled to injunctive relief against any

Horry County, a body Politic v. Aquasino Partners of South Carolina, LLC, et al.
ORDER ON JULY 23, 2012 HEARING

3
/mk

individual charged with the responsibility of operating or managing the daily business of any gambling vessel owned, operated or leased by Suncruz Casino Cruises, LLC, or any of the other Defendants that is the subject matter of this action. Accordingly,

IT IS ORDERED, ADJUDGED AND DECREED that any individual charged with the responsibility of operating or managing the daily business of any gambling vessel belonging to, leased or operated by any of the Defendants in Horry County is hereby enjoined from operating or managing the daily business of such vessel until the Defendants pay to the Plaintiff the Seven and 00/100 (\$7.00) Dollar per boarding passenger, per gambling cruise surcharge beginning July 23, 2012, and continuing until the final adjudication of this matter or other order of this Court. The surcharge shall be paid by the Defendants to the order of the Horry County Treasurer on a weekly basis, with payment due the Tuesday of every week hereafter. The payment shall be accompanied by a sworn statement by a member, owner, officer or agent of the Defendants attesting to the number of passengers who boarded the Defendants' vessel during the week for which payment is being made, and any false statements shall subject the attesting person to the penalties of perjury.

Plaintiff's Application for Appointment of Receiver

The Court finds that:

- (1) Good cause exists for appointment of a receiver;
- (2) The Plaintiff has established an apparent right to the Seven and 00/100 (\$7.00) Dollar per boarding passenger, per gambling cruise surcharge which is the subject matter of this action;
- (3) The Seven and 00/100 (\$7.00) Dollar per boarding passenger, per gambling cruise surcharge is in the possession of one or more of the Defendants;

- (4) Such property, being cash or its equivalent, has the potential of being easily lost or materially injured or impaired by being spent;
- (5) The Plaintiff will suffer irreparable injury during the time necessary for a final adjudication of this matter if same is not collected immediately;
- (6) The proposed receiver is qualified to act as a receiver in this case; and
- (7) The parties have agreed to use the term, "Escrow Agent" rather than the term "receiver", but that this shall in no way limit the Escrow Agent's powers.

Accordingly,

IT IS ORDERED, ADJUDGED AND DECREED that:

1. Joseph F. Singleton, Esquire, of the law firm of Singleton, Burroughs & Young, P.A., Post Office Box 1244, Conway, South Carolina 29528-1244, Telephone No. (843) 248-4229, is appointed Escrow Agent in this action. He shall be compensated by the Defendants at the hourly rate of Two Hundred Seventy-five and 00/100 (\$275.00) Dollars.
2. Immediately upon entry and service of this Order, the Defendants and their counsel shall designate one (1) person to act as the primary contact person for the Defendants with whom the Escrow Agent shall communicate with, stating his or her full name, business and residence address, landline and cell phone telephone number(s), fax number and email address. The Defendants' designee hereunder shall promptly and without delay respond to any and all attempts by the Escrow Agent to contact the Defendants' designee.

Horry County, a body Politic v. Aquasino Partners of South Carolina, LLC, et al.
ORDER ON JULY 23, 2012 HEARING

5/
JHC

3. Immediately upon request of the Escrow Agent, the Defendants shall provide to the Escrow Agent any and all documentation he may request, including, but not limited to the passenger manifest and all information supplied to the United States Coast Guard to determine the number of boarding passengers in order to determine the total amount of the Seven and 00/100 (\$7.00) Dollar per boarding passenger, per gambling cruise surcharge fee that is due to the Plaintiff. Upon determination by the Escrow Agent of the amount due for surcharges and/or the Escrow Agent's fees and administrative expenses, the Escrow Agent shall request payment in full and Defendants shall remit payment in full to the Escrow Agent within Seventy-two (72) hours. Any payments of surcharges shall be paid directly to the Plaintiff for deposit in Plaintiff's general operating account, and any payments for the Escrow Agent's fees and administrative expenses shall be payable immediately to the Escrow Agent and shall not be required to be deposited in separate bank accounts.

Upon failure of the Defendants to comply with items (2) or (3) above, the Escrow Agent shall have the following additional powers:

4. Joseph F. Singleton, as Escrow Agent, shall collect and take possession of the Seven and 00/100 (\$7.00) Dollar per boarding passenger, per gambling cruise surcharge from July 23, 2012 to present and continuing until the final adjudication of this matter, and shall have access to any and all of the Defendants' accounts, deposits, cash, certificates of deposit, revenues, profits or any other item(s) or thing(s) of value sufficient to collect said

surcharges pending further order of this Court. In exercising the above mentioned functions, the Escrow Agent shall have the following powers in addition to those specified by law:

- a. to enter upon the premises, property and vessel of any and all Defendants at any time;
 - b. to take any and all actions that the Escrow Agent deems necessary to gain access to the premises, property and vessel of the Defendants, whether in the possession of the Defendants or in the possession of others, including, but not limited to any lock boxes, safes, vaults, cash registers, safety deposit boxes, file cabinets, storage bins, gaming or gambling machines, or any other place or thing which may be used to store cash, credit card receipts, checks, and the books and records of the Defendants, by either obtaining keys and combinations, or by using locksmiths or others capable of gaining access to same.
5. The Escrow Agent may take possession of all the books and records pertaining to the business, assets and property of Defendants, wherever located and however stored, whether manually, on a hard drive or by portable data storage (CD, DVD, or Flash Drives), as the Escrow Agent deems necessary for the proper administration, management, control and collection of the Seven and 00/100 (\$7.00) Dollar per boarding passenger, per gambling cruise surcharge from July 23, 2012 to present and continuing through the final adjudication of this matter, but the books and records shall

be made available to the Defendant as is reasonably necessary. Provided, however that the information contained in these books and records shall be confidential and not public information except to the extent necessary for any proceedings or actions the Escrow Agent or the parties to this action deem necessary to collect the surcharge.

6. The Escrow Agent shall execute and prepare all documents and perform acts, either in the name of the Defendants or in the Escrow Agent's own name which are necessary or incidental to preserving, protecting, managing, collecting and controlling the Seven and 00/100 (\$7.00) Dollar per boarding passenger, per gambling cruise surcharge from July 23, 2012 to present and continuing through the final adjudication of this matter.
7. The Escrow Agent may employ attorneys, legal assistants, agents, servants, employees, guards, clerks, accountants, on-site managers, and management consultants to administer, manage, control and collect the Seven and 00/100 (\$7.00) Dollar per boarding passenger, per gambling cruise surcharge from July 23, 2012 to present and continuing through the final adjudication of this matter as the Escrow Agent deems necessary.
8. The monies coming into possession of the Escrow Agent pursuant to his appointment shall be paid by the Escrow Agent to the Plaintiff for the payment of Defendants' obligation to Plaintiff sued on in the Complaint.
9. The Escrow Agent may establish separate bank accounts or use his law firm's trust account for the deposit of monies and funds collected and received in connection with the Escrow Agent's duties hereunder at any

financial institution the Escrow Agent deems appropriate, provided that any funds on deposit at the financial institution are fully insured by an agency of the United States Government.

10. The Escrow Agent may institute ancillary proceedings in this state or other states and countries as are necessary to preserve and protect the Escrow Agent's estate, and may engage the services of legal counsel for same if necessary. The Escrow Agent shall pay for such services from the funds of the Defendants, in addition to the Seven and 00/100 (\$7.00) Dollar per boarding passenger, per gambling cruise surcharge fee.
11. To the extent feasible, the Escrow Agent shall, within thirty (30) days of his qualification, file in this action an inventory of all property of which the Escrow Agent shall have taken possession pursuant to this Order, and shall conduct periodic accountings afterwards.
12. The Escrow Agent shall prepare periodic interim statements reflecting the Escrow Agent's fees and administrative costs and expenses incurred for the interim period in the operation and administration of the Escrow Agent's estate. On completion of an interim statement, and the mailing of the statement to the parties' respective attorneys of record, or any other designated person or agent, the Escrow Agent shall pay from the Defendants' funds, if any, the amount of that statement, in addition to the Seven and 00/100 (\$7.00) Dollar per boarding passenger, per gambling cruise surcharge fee. Despite the periodic statement of Escrow Agent's fees and administrative expenses, such fees and expenses shall be submitted to

the court for its approval and confirmation, in the form of a notice of an interim request for fees, an agreement among the parties, or the Escrow Agent's final accounting and report.

13. The Escrow Agent, or any party to his action, may, from time to time and on due notice to all parties, make application to this Court for further orders instructing the Escrow Agent, and for orders to show cause for non-compliance with this Order.

IT IS FURTHER ORDERED that Defendants, and all persons and entities now in possession of any part of the Defendants' property and not holding under valid leases or rental agreements, shall forthwith comply with all requests of the Escrow Agent, and that all tenants or lessees in possession of any part of the Defendants' property, and any other persons or entities as may be lawfully in possession of same, are directed, until further order of this Court, to pay over to the Escrow Agent all rents, royalties, and revenues of the Defendants' property now due and unpaid or that may later become due upon request of the Escrow Agent, and if so requested, such persons and entities liable for such rents, royalties, and revenues are enjoined and restrained from paying any rents, royalties, and revenues to the Defendants, their agents, servants, or attorneys.

Waiver of Lawyer-Legislator Protection

The Defendants and their counsel, J. Todd Kincannon, Esquire, have associated Lawyer-Legislators to assist them in this case, the first being Thaddaeus T. Viers, and after his resignation from the Legislature and suspension from the practice of law, James Todd Rutherford, Esquire. The association of said Lawyer-Legislators has resulted in significant delays in the case since Lawyer-Legislators are given protection from being called to a trial, deposition or hearing in any court of competent jurisdiction of this state during the legislative session pursuant to the

Administrative Order of the Honorable Jean H. Toal, Chief Justice of the South Carolina Supreme Court, dated April 21, 2010. Recognizing the significance of those delays, the Defendants and their attorneys waived the Lawyer-Legislative Protection During the Legislative Session provided by Chief Justice Toal's Administrative Order from the date of this hearing and continuing until the final judgment of this case. Accordingly,

IT IS ORDERED, ADJUDGED AND DECREED that the Defendants and their attorneys shall not raise or assert the Lawyer-Legislator Protection provided by Chief Justice Toal's Administrative Order from the date of this hearing and continuing until the final judgment of this case so that no proceedings, depositions, discovery, hearings, trials or any other matters in this case shall be delayed, postponed or rescheduled because any lawyer for the Defendants is also a South Carolina Legislator during any legislative session.

Surcharge Arrearages from August 1, 2011 through July 22, 2012 and Inspection by Horry County Officials

Although not addressed at the hearing on July 23, 2012, the Plaintiff and Defendants have consented and agreed that during the pendency of this action, the Defendants shall not make any profit or dividend distributions, capital improvements or make any expenditures outside of the ordinary course of business such that any excess receipts or revenues shall be preserved to cover surcharge arrearages from August 1, 2011 through July 22, 2012, and any that should accrue and remain unpaid after July 23, 2012, should a final judgment be entered in favor of the Plaintiff with regard to said arrearages. Provided, however that the Defendants may petition the court for court approval for a capital improvement if it can be shown to be in the financial best interest of the Defendants and that the Defendants consent to Horry County having as great as possible a security interest in any such capital improvement, if approved by the Court.

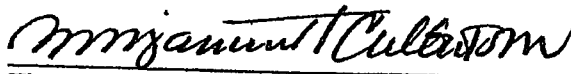
The Plaintiff and Defendants have further consented and agreed that during the pendency of this action, employees, agents and officials of the Plaintiff shall have full access to and the unlimited right to inspect all of the books and records pertaining to the business, assets and property of Defendants, wherever located and however stored, whether manually, on a hard drive or by portable data storage (CD, DVD, or Flash Drives), as the Plaintiff deems necessary in this action. Provided, however that the information contained in these books and records shall be confidential and not for public dissemination, except to the extent necessary for any proceedings or actions the parties to this action deem necessary to prosecute or defend this action. Accordingly,

IT IS ORDERED, ADJUDGED AND DECREED that during the pendency of this action, the Defendants shall not make any profit or dividend distributions, capital improvements or make any expenditures outside of the ordinary course of business such that any excess receipts or revenues shall be preserved to cover surcharge arrearages from August 1, 2011 through July 22, 2012 should a final judgment be entered in favor of the Plaintiff with regard to said arrearages. Provided, however that the Defendants may petition the court for court approval for a capital improvement if it can be shown to be in the financial best interest of the Defendants and that the Defendants consent to Horry County having as great as possible a security interest in any such capital improvement, if approved by the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that during the pendency of this action, employees, agents and officials of the Plaintiff shall have full access to and the unlimited right to inspect all of the books and records pertaining to the business, assets and property of Defendants, wherever located and however stored, whether manually, on a hard drive or by portable data storage (CD, DVD, or Flash Drives), as the Plaintiff deems necessary in this action.

Provided, however that the information contained in these books and records shall be confidential and not for public dissemination, except to the extent necessary for any proceedings or actions the parties to this action deem necessary to prosecute or defend this action.

AND IT IS SO ORDERED this 27th day of July, 2012


The Honorable Benjamin J. Culbertson

Georgetown,
Georgetown, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS

FILED FORM 4
HORRY COUNTY

JUDGMENT IN A CIVIL CASE

CASE NO. 2011-CP-26-9457

12 JUN 29 PM 4: 47

Horry County
PLAINTIFF(S)

CLERK OF COURT

Aquasino Partners of SC, LLC, et al.
DEFENDANT(S)

Submitted by: Benjamin H. Culbertson, Presiding Judge

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

Defendant's Motion to Dismiss, Plaintiff's Motion for Temporary Injunction and Plaintiff's Motion to Appoint Receiver are continued until 9:30 a.m. on 7/23/2012. Attorney Todd Rutherford gave Notice of Appearance as defendant's attorney on 6/27/2012 and asserted legislative immunity.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	\$ N/A
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Benjamin H. Culbertson
Benjamin H. Culbertson, Circuit Court Judge

2148
Judge Code

June 29, 2012
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Arrigo Paul Carotti

Philip Coleman Thompson

ATTORNEY(S) FOR THE PLAINTIFF(S)

Todd Rutherford

J. Todd Kincannon

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: None

Harry County

12 MAY 29 AM 11:09

Aqasino Partners of South

PLAINTIFF(S)

MELANIE HUGGINS-WARD

Carolina LLC et al

DEFENDANT(S)

Submitted by

Attorney for

☐ Plaintiff

☐ Defendant

☐ Self-Represented Litigant

☐

DISPOSITION TYPE (CHECK ONE)

☒

JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐

DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐

ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other

☐

ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Plaintiff's and Defendant's Motions are Continued until June 11th, 2012, term of court.

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk:

ORDER INFORMATION

- Prior continuance until the end of the legislative session is rescinded.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
If applicable, describe the property, including tax map information and address, referenced in the order.		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest and additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the court. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Morganant Culbertson
Circuit Court Judge

2148

Judge Code

May 22nd, 2012

Date

... judgment was entered on the _____ day of _____, 20____
placed in the appropriate attorney's box on this _____ day of _____, 20____
to parties (when appearing pro se) as follows:

and a copy mailed first class or _____ to attorneys of record or _____

Arrigo Paul Carotti

Philip Coleman Thompson

ATTORNEY(S) FOR THE PLAINTIFF(S)

J Todd Kincannon

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: Grace Hurley

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

) FILED
HORRY COUNTY

12 APR 11 PM 4:16 CASE 2011-CP-26-9457

Horry County

MELANIE HUGGINS-WARD
CLERK OF COURT

Aqasino partners of South

VS.

Carolina LLC et al

PLAINTIFF(S)

DEFENDANT(S)

**ORDER
DISPOSITION OF MOTIONS**

Defendant's Motion to Dismiss is continued, Atty: Viers is in ~~Legislation~~ legislative session.

AND IT IS SO ORDERED.


PRESIDING CIRCUIT JUDGE

DATED AT CONWAY, SOUTH CAROLINA THIS 9th DAY OF April, 2012

Arrigo Paul Carotti

Philip Coleman Thompson

PLAINTIFF'S ATTORNEY(S)

J Todd Kincannon

DEFENDANT'S ATTORNEY(S)

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

HORRY COUNTY, A BODY POLITIC

Plaintiff(s)

vs.

AQUASINO PARTNERS OF SOUTH CAROLINA, L. L. C.,
SUNCRUZ CASINO CRUISES, L. L. C., VENTURES
SOUTH CAROLINA, L. L. C., SUNCRUZ CASINOS,
L. L. C., and HIGHLAND PARK REAL ESTATE
DEVELOPMENT CORPORATION,

Defendant(s)

(Please Print)

Submitted By: Arrigo P. Carotti, County Attorney
Sanford Cox Graves, Dept County Atty
Address: Office of the Horry County Attorney
1301 Second Avenue, Suite 2D45
Conway, South Carolina, 29526

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2011-CP - 26-9457

SC Bar #: 14647 / 70282
Telephone #: (843) 915-5270
Fax #: (843) 915-6270
Other:
E-mail: carottia@horrycounty.org
gravess@horrycounty.org

HORRY COUNTY
11 NOV 10 PM 3:31
CLERK OF COURT
JANET L. HARRIS

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

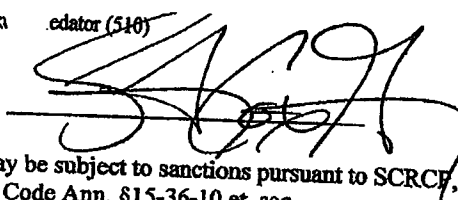
- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☒ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20__-CP-_____ ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Other (799)	Administrative Law/Relief ☐ Reinstate Driver's License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Commission (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex/Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in		

☐ Sex edator (510)

Submitting Party Signature:

A large, stylized handwritten signature in black ink, appearing to be 'S. J. 19'.

Date: November 10, 2011

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FC MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

FIFTEENTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2011-CP-26- **9457**

HORRY COUNTY, A BODY POLITIC,)

Plaintiff,)

v.)

AQUASINO PARTNERS OF SOUTH
CAROLINA, L.L.C., SUNCRUZ CASINO
CRUISES, L.L.C., VENTURES SOUTH
CAROLINA, L.L.C., SUNCRUZ
CASINOS, L.L.C., AND HIGHLAND
PARK REAL ESTATE DEVELOPMENT
CORPORATION,)

Defendants.)

SUMMONS

1) BREACH OF CONTRACT; 2) BREACH
OF CONTRACT ACCOMPANIED BY
FRAUDULENT ACT; 3) FRAUD; 4)
NEGLIGENT MISREPRESENTATION; 5)
BREACH OF FIDUCIARY DUTY; 6)
CONVERSION; 7) UNJUST ENRICHMENT;
8) INJUNCTION

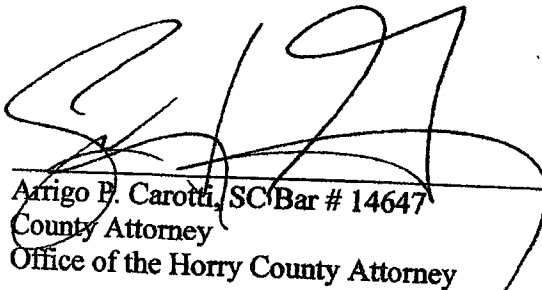
(\$165,000.00 + Actual Damages)

(JURY TRIAL DEMANDED)

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and requested to answer the Complaint in this
action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said
Complaint on the subscriber at his office at 1301 Second Avenue, Suite 2D45, Conway, SC
29526, Post Office Box 1236, Conway, SC 29528 within 30 (30) days after service hereof,
exclusive of the day of service hereof. Upon the Defendants' failure to appear and defend,
judgment by default shall be rendered against the Defendants for the relief demanded in the
Complaint.

This the 10 day of November, 2011.


Arrigo P. Carotti, SC Bar # 14647
County Attorney
Office of the Horry County Attorney

1301 Second Avenue, Suite 2D45
Conway, South Carolina 29526
(843) 915-5270
carottia@horrycounty.org

Sanford Cox Graves, SC Bar # 70282
Deputy County Attorney
Office of the Horry County Attorney
1301 Second Avenue, Suite 2D44
Conway, South Carolina, 29526
(843) 915-7416
gravess@horrycounty.org

Attorneys for the Plaintiff,
Horry County Government

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

FIFTEENTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2011-CP-26- 9457

HORRY COUNTY, A BODY POLITIC,

Plaintiff,

v.

AQUASINO PARTNERS OF SOUTH
CAROLINA, L.L.C., SUNCRUZ CASINO)
CRUISES, L.L.C., VENTURES SOUTH)
CAROLINA, L.L.C., SUNCRUZ)
CASINOS, L.L.C., AND HIGHLAND)
PARK REAL ESTATE DEVELOPMENT)
CORPORATION,)

Defendants.

COMPLAINT

**1) BREACH OF CONTRACT; 2) BREACH
OF CONTRACT ACCOMPANIED BY
FRAUDULENT ACT; 3) FRAUD; 4)
NEGLIGENT MISREPRESENTATION; 5)
BREACH OF FIDUCIARY DUTY; 6)
CONVERSION; 7) UNJUST ENRICHMENT;
8) INJUNCTION**

(\$165,000.00 + Actual Damages)

(JURY TRIAL DEMANDED)

HORRY COUNTY
NOV 10 PM 3:31
CLERK OF COURT

THE PLAINTIFF, by and through its undersigned attorney, Complaining of the Defendants herein, would respectfully allege and show unto this Honorable Court as follows:

1. The Plaintiff, Horry County, (hereinafter "County") a body politic, is an entity with authority to govern within the geographical boundaries of Horry County, South Carolina, pursuant to the South Carolina Constitution, and the Code of Laws of South Carolina, with such powers to include, but not limited to those enumerated within Title 4, Chapter 9 the Code of Laws of South Carolina 1976, (as amended).

2. Upon information and belief, the Defendants, Aquasino Partners of South Carolina, L.L.C., Suncruz Casino Cruises, L.L.C., Ventures South Carolina, L.L.C., Suncruz Casinos, L.L.C. and Highland Park Real Estate Development Corporation as successors in interest and/or affiliates of one

another and are limited liability companies duly organized and existing pursuant to the laws of one of the states of the United States and at all times relevant hereto were conducting business in Horry County, South Carolina.

3. Defendants own and operate a gaming boat and business which conducts a "cruise to nowhere": Passengers board the vessel from real property located within Horry County, sail beyond the seaward territorial boundaries of Horry County and South Carolina to operate their gambling business, and return to Horry County where the passengers disembark having visited no intermediate jurisdiction or destination.

4. The business described above operates under provisions of State and local law including Title 3, Chapter 11, "The Gambling Cruise Act", as applied in duly ordained, enacted, and ordered Horry County Ordinance 09-08, Horry County Resolution R-47-10, and under signed agreements, entitled "Surcharge Agreement" dated May 5, 2010 and Consent Settlement Agreement and General Release dated February 6, 2008. Said S.C. Code provisions, County Ordinance and Resolution, and agreements referenced above are attached hereto and incorporated herein by reference.

5. Relevant portions of Ordinance 09-08, Resolution R-47-10, and the agreements referred to above establish a per-passenger fee by law and contract which is to be collected by Defendants from their passengers/customers and then the collected fees are then to be forwarded, passed-on, and transferred to Horry County.

6. This Honorable Court has subject matter jurisdiction and personal jurisdiction of all matters and all Defendants as set forth hereinabove.

(FOR A FIRST CAUSE OF ACTION)

(BREACH OF CONTRACT)

7. Each and every allegation and fact set forth above is incorporated herein by reference as if realleged herein verbatim.

8. County, for valuable consideration, entered into the agreements referenced above for the Defendants to operate a casino cruise ship originating from within and returning to the territorial boundaries of Horry County.

9. As a material provision of the agreements, the Defendants promised, expressly and impliedly, that they would operate within the parameters set forth within State law, County Ordinances and Resolutions, and the agreements.

10. A part and parcel to these agreements as referenced is Horry County Ordinance 09-08 which establishes the surcharge for gambling businesses operating from within Horry County, S.C.

11. The agreement between the Defendants and the Plaintiff entitled "Surcharge Agreement" includes a material term which requires Defendants to collect a surcharge from each boarding passenger in the amount of \$7.00 which shall be remitted to the County by the 20th of each succeeding month.

12. The agreement between the Defendants and the Plaintiff entitled "Consent Settlement Agreement and General Release" includes terms in which the parties agree to the surcharge provisions of Horry County Ordinance 09-08 and the terms and conditions employed therein.

13. During the term of the agreements, Defendants have continued to collect, but have ceased to pay to the County the surcharges they have collected as they previously indicated and agreed.

14. Plaintiff has made a demand for payment to the Defendants.

15. Defendants have willfully failed and refused to make payments for the months of August and September 2011, and continue to fail and refuse to make payments per the agreements and demand in violation of the agreements and County Ordinance.

16. As a result of such failure and refusal, the Defendants have breached their agreements with the Plaintiff.

17. As a direct and proximate result of Defendants' breach, Plaintiff has suffered monetary losses as a direct and proximate result.

18. Plaintiff has duly performed all the conditions of such agreements on its part, or by the Defendants' actions and conduct of the Defendants was prevented from doing so.

19. By reason of the foregoing facts, the Plaintiff is informed and believes it is entitled to a judgment against the Defendants for the liquidated damages stipulated in the agreements, as well as actual, incidental, and consequential damages incurred by the Plaintiff as a result of the Defendants' breach, together with pre-judgment interest.

(FOR A SECOND CAUSE OF ACTION)

(BREACH OF CONTRACT ACCOMPANIED BY FRAUDULENT ACT)

20. This Plaintiff realleges all of the allegations contained hereinabove as fully as though repeated verbatim.

21. The heretofore mentioned breaches on the part of the Defendants were accompanied by fraudulent intent relating to the breaching of the contracts and fraudulent acts accompanying the breaches, in that the Defendants never intended to complete the agreements under their terms, the Defendants have collected and continue to collect the passenger boarding fees, and continue to represent to passengers that such fees are required to be remitted to Plaintiff, have refused to remit the fees upon request, and have unfairly and unlawfully appropriated Plaintiff's property by design, have dealt with, and continue to deal with Plaintiff dishonestly and unfairly, and operated and continue to operate by way of fraudulent acts, omissions, and concealment as more completely described herein.

22. As a direct and proximate result of the aforesaid breach of agreements accompanied by fraudulent acts on the part of the Defendants, this Plaintiff has incurred and will incur damages as more

fully described herein.

23. As a result of the foregoing, the Plaintiff is informed and believes that it is entitled to a judgment against the Defendants for the liquidated damages stipulated in the agreements, as well as actual incidental, and consequential damages incurred and to be incurred by this Plaintiff, and for such punitive damages as may be deemed appropriate by the court and jury, together with pre-judgment interest.

(FOR A THIRD CAUSE OF ACTION)

(FRAUD)

24. This Plaintiff realleges all of the allegations contained hereinabove as fully as though repeated verbatim.

25. Prior to entering into the agreements referred to hereinabove, the Defendants represented to the Plaintiff that they would act in such a manner consistent with the provisions of the agreements, local legislation, State law, and State and Federal constitutional provisions.

26. Never having intended to comply with the terms and conditions of the agreements, such material representations made by the Defendants were false, known by the Defendants to be false when made or made with a reckless disregard of their truth or falsity, and were made by the Defendants with the intent that they should be acted upon by the Plaintiff.

27. The Plaintiff was not aware of the falsity of those representations made by the Defendants, referred to hereinabove, had a right to rely thereupon and in reasonable reliance on the truth of the representations, entered into agreements with the Defendants, to the Plaintiff's consequent damage.

28. By reason of the foregoing, the Plaintiff is informed and believes that it is entitled to a judgment against the Defendants for actual and punitive damages.

(FOR A FOURTH CAUSE OF ACTION)

(NEGLIGENT MISREPRESENTATION)

29. The Plaintiff realleges all of the allegations contained hereinabove as fully as though repeated verbatim.

30. As set forth hereinabove, the Defendants had a pecuniary interest in making representations to Plaintiff, and giving information concerning the agreements entered into.

31. The Defendants owed a duty to the Plaintiff, if they gave representations or information at all, to do so with due care, and to see that they communicated truthful and complete information to the Plaintiff.

32. The Defendants knew that representations they made and information they provided were desired by the Plaintiff for the purpose of deciding whether to enter into agreements with the Defendants, that the Plaintiff intended to rely thereon, and that if said representations and information were false, erroneous, or incomplete, the Plaintiff would suffer damages.

33. Never having intended to comply with the terms and conditions of the agreements, said material representations made and information given by the Defendants were false, erroneous, incomplete and negligently made by the Defendants, and at the time they were made, the Plaintiff reasonably believed them, and in justifiably reliance thereon entered into agreements with the Defendants to its consequent pecuniary injury and damage.

34. By reason of the foregoing, the Plaintiff is informed and believes that it is entitled to a judgment against the Plaintiff for actual and punitive damages.

(FOR A FIFTH CAUSE OF ACTION)

(BREACH OF FIDUCIARY DUTY)

35. The Plaintiff realleges all of the allegations contained hereinabove as fully as though repeated verbatim.

36. In entering into the agreements referred to above, the Plaintiff imposed a special confidence in the Defendants, with the justifiable belief that the Defendants were acting in the Plaintiff's interests and for its benefit as a partner to the agreements.

37. The Defendants knew of the Plaintiff's trust and confidence in them.

38. The Defendants were bound in equity and in good conscience to act in good faith and with due regard to the interests of the Plaintiff.

39. The Defendants stood in a fiduciary relationship to the Plaintiff.

40. The Defendants violated their fiduciary duty owed to the Plaintiff in particulars more fully set forth hereinabove.

41. As a proximate cause and consequent result of the breach of their fiduciary duty, the Plaintiff has suffered damages.

42. By reason of the foregoing, the Plaintiff is informed and believes that it is entitled to a judgment against the Defendants for actual and punitive damages.

(FOR A SIXTH CAUSE OF ACTION)

(CONVERSION)

43. The Plaintiff realleges all of the allegations contained hereinabove as fully as though repeated verbatim.

44. As described hereinabove, the Plaintiff enacted legislation and entered into contractual agreements for Defendants to operate a gambling cruise business from Horry County in exchange for the Defendants' collection of a \$7.00 per-passenger surcharge to be forwarded to Plaintiff at regular intervals.

45. The Defendants have collected surcharges from passengers totaling approximately \$165,000.00 which have not been remitted to the Plaintiff during the months of August and September, 2011, and continue to collect but not remit monies owed to the Plaintiff.

46. The Defendants, by the aforementioned actions, omissions and misconduct willfully and knowingly breached their agreements with the Plaintiff.

47. The Defendants have failed and refused to remit to Plaintiff the sums of money collected on behalf of the Plaintiff under their agreements despite the fact that Plaintiff has demanded payment of the same.

48. Defendants' refusal to return money rightfully belonging to the Plaintiff was done with malice, ill will or with a conscious indifference to the rights of the Plaintiff, or a reckless disregard thereof.

49. By reason of the foregoing, the Plaintiff is informed and believes that it is entitled to a judgment against Defendants in an amount equal to the monies owed to the Plaintiff per the terms of the agreements of the parties, with legal interest from the date of conversion, and such punitive damages as deemed appropriate under the circumstances.

(FOR A SEVENTH CAUSE OF ACTION)

(UNJUST ENRICHMENT)

50. The Plaintiff realleges all of the allegations contained hereinabove as fully as though repeated verbatim.

51. The Defendants, in collecting the above mentioned sums, pursuant to their agreements with the Plaintiff under the circumstances set forth hereinabove, have been conferred with a non-gratuitous benefit in such amounts, that Defendants have realized such benefit, and retention by Defendants of such benefit is clearly inequitable and unjust under the circumstances.

52. The Defendants have been unjustly enriched at the expense of the Plaintiff in the amounts

hereinabove set forth.

53. As a result of the foregoing, the Plaintiff is informed and believes it is entitled to a judgment against Defendants in an amount equal to the monies owed to the Plaintiff pursuant to the agreement between the parties, and prejudgment interest from the date such monies should have been paid to the date of judgment, together with attorney's fees incurred by the Plaintiff in this matter.

(FOR AN EIGHTH CAUSE OF ACTION)

(INJUNCTION)

54. The Plaintiff realleges all of the allegations contained hereinabove as fully as though repeated verbatim.

55. Based on the aforementioned allegations and the ongoing nature of the injury to the Plaintiff, Plaintiff seeks injunctive relief from this Court over the Defendants in the form of a temporary restraining order, a preliminary injunction, and a permanent injunction.

56. The Plaintiff has no adequate remedy other than an injunction.

57. The Plaintiff will suffer irreparable harm in the absence of an injunction.

58. It is more likely than not that the Plaintiff will prevail on the underlying merits when the matter is brought fully before this Court.

59. The benefit to the Plaintiff outweighs the burden of the Defendants.

60. The Plaintiff's right to the relief sought is clear.

61. As a result of the foregoing, the Plaintiff is informed and believes it is entitled to injunctive relief in the form of a preliminary injunction to enjoin the Defendants to continue to collect the passenger boarding fees on behalf of the Plaintiff, that the Defendants segregate and/or set aside the funds

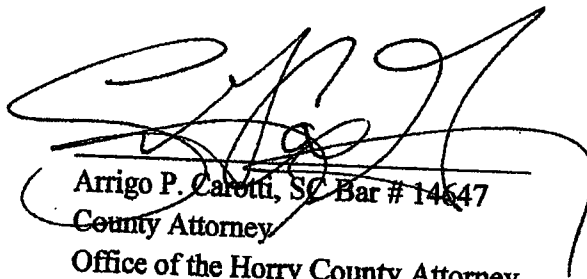
which constitute the basis for this dispute from other funds held or owned by the Defendants. In the alternative, the Plaintiff requests that Defendant be ordered to post a bond with the Clerk of Court in Horry County for the value of the disputed monies ongoing, or to pledge property sufficient to ensure that the monies are available to the Plaintiff in the event of a verdict for the Plaintiff.

62. As a result of the foregoing, the Plaintiff is informed and believes it is entitled to injunctive relief in the form of a permanent injunction enjoining Defendants from operating in contravention to State law, local legislation, and agreements between the parties on an ongoing basis, and to compel Defendants to submit the previously collected surcharges to the County.

WHEREFORE, the Plaintiff prays that this Honorable Court shall inquire into the matters set forth hereinabove and issue its Order:

- a. Finding Defendants in Breach of Contract;
- b. Finding Defendants Breach of Contract is accompanied by a fraudulent act;
- c. Finding Defendants acted to defraud the Plaintiff.
- d. Finding Defendants in Breach of a Fiduciary Duty to the plaintiff;
- e. Finding Defendants have Converted Plaintiff's funds for their own use.
- f. Finding Defendants are unjustly enriched.
- g. Preliminarily and Permanently restraining and enjoining the Defendants from continued violations of the Horry County Ordinances and contract;
- h. Ordering the Defendants to segregate the identified funds in an escrow account until such time as this Court determines the ultimate disposition of such funds;
- i. Finding that the liquidated damages provisions of the agreements are ripe to impose against the Defendants and awarding such to the Plaintiff.

- j. Ordering and awarding the Plaintiff actual damages more than \$165,000.00 from the Defendants, and punitive damages and other damages as prayed for hereinabove.
- k. Ordering the Defendants to limit their on-going activities and conditions in compliance with the contract, Horry County Ordinances and Regulations; and
- l. Ordering the Defendants to pay for costs and expenses associated with this action; and
- m. For such other and further relief as this Honorable Court deems just and proper.



Arrigo P. Carotti, SC Bar # 14647
County Attorney

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1301 Second Avenue, Suite 2D45
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Attorneys for the Plaintiff

Conway, South Carolina
November 10, 2011

CHAPTER 11.

GAMBLING CRUISE ACT

SECTION 3-11-100. Definitions.

For purposes of this chapter:

- (1) "Gambling vessel" means a boat, ship, casino boat, watercraft, or barge kept, operated, or maintained for the purpose of gambling, with one or more gaming establishments aboard, that carries or operates gambling devices for the use of its passengers or otherwise provides facilities for the purpose of gambling, whether within or without the jurisdiction of this State, and whether it is anchored, berthed, lying to, or navigating, and the sailing, voyaging, or cruising, or any segment of the sailing, voyaging, or cruising begins and ends within this State.
- (2) "Gambling" or "gambling device" means any game of chance and includes, but is not limited to, slot machines, punchboards, video poker or blackjack machines, keeno, roulette, craps, or any other gaming table type gambling or poker, blackjack, or any other card gambling game.
- (3) "Intervening stop" occurs when a vessel departs the territorial waters of this State and sails into United States or international waters, and between the time the vessel departs the territorial waters of this State and the time it returns to the territorial waters of this State, the vessel docks at a port of call in another state, possession of the United States, or foreign country.
- (4) "Destination cruise" means a cruise in which a vessel makes one or more intervening stops.
- (5) "Passenger cruise liner" means a vessel that:
 - (a) has a draft that is equal to or larger than the controlled depth of the intercoastal waterway as determined by the United States Army Corps of Engineers;
 - (b) provides separate passenger cabins, including bathroom or head facilities, in a size reasonably suitable to accommodate living and sleeping space in a ratio of at least one cabin for every four passengers;
 - (c) contains kitchen or galley facilities and dining facilities reasonably suitable to offer and accommodate all of the vessel's passengers at seated meals in no more than two sittings for each of the meals at breakfast, lunch, and dinner times;
 - (d) offers other support facilities and services including, but not limited to, exercise facilities, gift shops, medical services, and musical programs;
 - (e) is principally engaged in entertaining and transporting passengers on destination cruises; and
 - (f) is certified or authorized by the United States Coast Guard or equivalent foreign authority to carry passengers for hire upon the open ocean without navigational limitations.

(6) "Per passenger" means the number of passengers allowed on a vessel pursuant to its United States Coast Guard certificate of documentation or equivalent foreign documentation.

SECTION 3-11-200. Delegation of power to regulate gambling vessels to counties and municipalities; exception.

(A) Except as provided for in subsection (B), the General Assembly delegates to a county for the unincorporated areas of a county, and to a municipality for the municipality, the authority conferred to this State by the United States Congress pursuant to the Johnson Act, as amended, 15 U.S.C. Sections 1171 through 1177. The authority delegated herein includes the power to regulate or prohibit gambling aboard gambling vessels while such vessels are outside the territorial waters of the State, when such vessels embark or disembark passengers within their respective jurisdictions for voyages that depart from the territorial waters of the State, sail into United States or international waters, and return to the territorial waters of the State without an intervening stop.

(B) The General Assembly specifically retains and does not delegate to a county or municipality the authority to regulate or prohibit gambling on passenger cruise liners, as defined in this chapter, which is conferred to this State by the United States Congress pursuant to the Johnson Act, as amended, 15 U.S.C. Sections 1171 through 1177.

(C) The authority delegated to a county or municipality under subsection (A) is delegated pursuant to Chapter 9 of Title 4 and Chapter 7 of Title 5, Code of Laws of South Carolina.

SECTION 3-11-210. Penalties under ordinances adopted pursuant to Section 3-11-200.

A county or municipality adopting an ordinance regulating or prohibiting gambling vessels pursuant to Section 3-11-200 may assess only a civil penalty of not more than one hundred dollars per passenger for each violation, with an aggregate total in penalties not to exceed fifty thousand dollars per vessel for a twenty-four hour period. Additionally, a county or municipality may obtain injunctive relief against a person for violation of an ordinance regulating or prohibiting gambling vessels pursuant to Section 3-11-200.

SECTION 3-11-300. Grant of additional authority; vessels outside territorial waters of state; passenger cruise liner exception.

(A) The authority delegated to a county or municipality pursuant to this section is granted pursuant to Chapter 9 of Title 4 and Chapter 7 of Title 5 of the Code of Laws of South Carolina. This authority is separate from and in addition to the authority granted to a county or municipality pursuant to Sections 3-11-200 through 3-11-210, which authorize exercise of this state's Johnson Act authority pursuant to 15 U.S.C. Sections 1171 through 1177, except for passenger cruise liners.

(B) Except as provided for in subsection (C), the General Assembly delegates to a county for the unincorporated areas of a county, and to a municipality for the municipality, the authority to regulate or

prohibit gambling aboard gambling vessels while such vessels are outside the territorial waters of the State, when such vessels embark or disembark passengers within their respective jurisdictions for voyages that depart from the territorial waters of the State, sail into United States or international waters, and return to the territorial waters of the State without an intervening stop.

(C) A county or municipality is prohibited from regulating or prohibiting gambling on passenger cruise liners, as defined in this chapter.

SECTION 3-11-310. Penalties under ordinances adopted pursuant to Section 3-11-300.

A county or municipality adopting an ordinance regulating or prohibiting gambling vessels pursuant to Section 3-11-300 may assess only a civil penalty of not more than one hundred dollars per passenger for each violation, with an aggregate total in penalties not to exceed fifty thousand dollars per gambling vessel for a twenty-four hour period. Additionally, a county or municipality may obtain injunctive relief against a person for violation of an ordinance regulating or prohibiting gambling vessels pursuant to Section 3-11-300.

SECTION 3-11-320. Cruise liners.

Any county or municipal ordinance prohibiting or regulating gambling or gambling vessels pursuant to Sections 3-11-200 or 3-11-300 must not be construed to prohibit or regulate a passenger cruise liner from having gambling devices on board so long as there is no gambling allowed while the passenger cruise liner is within the territorial waters of the State.

SECTION 3-11-400. Applicability to United States and foreign-flagged vessels; imposition and collection of surcharges on gambling vessel ticket sales; phasing out of gambling business following enactment of prohibiting ordinance.

(A) This chapter does not apply to any gambling activity conducted on United States-flagged or foreign-flagged vessels during travel from a foreign nation or another state or possession of the United States up to the point of first entry into South Carolina waters or during travel to a foreign nation or another state or possession of the United States from the point of departure from South Carolina waters, provided that such vessels make intervening stops as defined in this chapter. Nothing herein precludes prosecution for any other offense that is unlawful.

(B) The provisions of this chapter must not be construed to:

- (1) repeal or modify any other provision of law relating to gambling, or any existing county or municipal ordinance regulating or prohibiting gambling or gambling vessels;
- (2) repeal or modify any law with regard to bingo or the operation of a device or machine pursuant to Section 12-21-2720(A)(3);
- (3) allow or permit gambling aboard any vessel, gambling vessel, or passenger cruise liner within the

territorial waters of the State;

(4) preclude prosecution for any other applicable gambling offense under state law; or

(5) preclude prosecution for violations of 15 U.S.C. Sections 1172, 1173, 1174, or 1175, to the extent not otherwise prohibited by provisions of the South Carolina Constitution.

(C)(1) For purposes of this section, "gross proceeds" means the total amount wagered or otherwise paid, in cash or credit, by a passenger or user of a gambling device aboard a gambling vessel.

(2) If a county or municipality does not adopt an ordinance prohibiting a gambling vessel from operating, or if a gambling vessel other than a passenger cruise liner is permitted to operate because that gambling vessel, on each cruise, makes an intervening stop in another State, possession of the United States, or foreign country, the county or municipality may assess a surcharge of up to ten percent of each ticket sold per gambling cruise, and a surcharge of up to five percent of the gross proceeds of each gambling vessel.

(3)(a) If a county or municipality assesses the surcharges set forth in item (2), then the proceeds of the surcharges are to be paid to the county or municipality from which the gambling vessel originates its cruise. The county or municipality is responsible for setting forth the procedures by which the proceeds are paid to the county or the municipality.

(b)(i) Each gambling vessel must report to the Department of Revenue, on a monthly basis, the average daily percentage of winnings to losses for each gambling device used on a gambling vessel. The report must be delivered to the Department of Revenue on the twentieth day of the month for the preceding month, in a form and format determined by the department. If no gambling devices are used, the gambling vessel must report to the department that no gambling devices were used. The department must perform an annual audit to verify the accuracy of the reports.

(ii) A gambling vessel that fails to deliver the report of winnings and losses to the department may be assessed a civil penalty up to the amount of one hundred dollars per day per gambling device for each day that the report is late.

(iii) The department must make this information available, on a quarterly basis, to the governing body of the county or municipality from which the gambling vessel originates and to the general public. In addition, quarterly reports must be submitted to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives.

(iv) The department is authorized to promulgate regulations to implement the provisions of this subsection.

(D) When a county or municipality enacts an ordinance pursuant to Sections 3-11-200 or 3-11-300 prohibiting gambling vessels, and a gambling vessel business operating as of January 1, 2005, would cease operation because of enforcement of this ordinance, then the county or municipality must allow the continued operation of the gambling vessel business for a period of five years from the effective date of

the county or municipal ordinance. If, after the enactment of an ordinance pursuant to Sections 3-11-200 or 3-11-300 prohibiting gambling vessels, a county or municipality subsequently enacts an ordinance allowing gambling vessels and then enacts a later ordinance prohibiting gambling vessels and a gambling vessel business, the county or municipality must allow the continued operation of the gambling vessel business for a period of five years from the effective date of the county or municipal ordinance. The gambling vessel business must only operate in the same location with no more than the number of vessels that were operating as of January 1, 2005. The provisions of this subsection are also applicable to a county or municipal ordinance substantially described in Section 3-11-500(A).

SECTION 3-11-500. Prior ordinances; text of ordinance prohibiting gambling vessels.

(A) A county or municipal ordinance prohibiting gambling vessels enacted before the effective date of this chapter, to the extent that it is consistent with the provisions of this chapter, remains in full force and effect after the effective date of this chapter, and is considered as promulgated pursuant to the powers and authority delegated to counties and municipalities by this chapter.

(B) A county or municipality, in order to prohibit gambling vessels in accordance with the provisions of this chapter, may, after the effective date of this chapter, enact an ordinance that substantially reads as follows:

(1) The governing body of _____, in accordance with Section 3-11-200 of the Code of Laws of South Carolina, 1976, as amended, exercises the authority conferred to the State of South Carolina by the United States Congress pursuant to the Johnson Act, as amended, 15 U.S.C. Sections 1171 through 1177, and hereby prohibits within its jurisdiction the docking and embarkation or disembarkation of passengers aboard gambling vessels, as defined in Section 3-11-100(1) of the 1976 Code, that provide gambling aboard voyages that depart from the jurisdiction of _____, leave the territorial waters of the State of South Carolina, sail into United States or international waters, and return to the territorial waters of the State of South Carolina, without making an intervening stop, as defined in Section 3-11-100(3) of the 1976 Code. Nothing herein shall be construed to prohibit, regulate, or otherwise apply to passenger cruise liners, as defined by Section 3-11-100(5) of the 1976 Code, nor does this ordinance apply to vessels described in Section 3-11-400(A) of the 1976 Code.

(2) The governing body of _____, in accordance with the authority delegated by Section 3-11-300 of the Code of Laws of South Carolina, 1976, as amended, hereby prohibits within its jurisdiction the docking and embarkation or disembarkation of passengers aboard gambling vessels, as defined in Section 3-11-100(1) of the 1976 Code, that provide gambling aboard voyages that depart from the jurisdiction of _____, leave the territorial waters of the State of South Carolina, sail into United States or international waters, and return to the territorial waters of the State of South Carolina without making an intervening stop, as defined in Section 3-11-100(3) of the 1976 Code. Nothing herein shall be construed to prohibit, regulate, or otherwise apply to passenger cruise liners, as defined by Section 3-11-100(5) of the 1976 Code, nor shall this ordinance apply to vessels described in Section 3-11-400(A) of the 1976 Code.

(3) Anyone violating this ordinance must be assessed a civil penalty of not more than one hundred dollars

per passenger for each violation, with an aggregate total in penalties not to exceed fifty thousand dollars per gambling vessel for a twenty-four hour period. For the purposes of this ordinance, "per passenger" is defined as the total number of passengers allowed on a vessel pursuant to its United States Coast Guard certificate of documentation or equivalent foreign documentation. In addition, violations of this ordinance are subject to injunctive relief.

(4) The exceptions for passenger cruise liners and Section 3-11-400(D) in this ordinance are so connected with the other sections of the ordinance that they are mutually dependent on each other as conditions and considerations for each other, so that the council would not have adopted this ordinance without them; therefore, should these exceptions be found unconstitutional or invalid, it is the intent of the council that the entire ordinance be found invalid.

(5) Except as provided for in subitem (4), if any other section, subsection, paragraph, item, subitem, subparagraph, sentence, clause, phrase, or word of this ordinance is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of the chapter, the council hereby declaring that it would have passed each and every section, subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, items, subitems, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

RESOLUTION R-47-10

A RESOLUTION AUTHORIZING THE ADMINISTRATOR TO EXECUTE A CONTRACTUAL AGREEMENT BETWEEN HORRY COUNTY AND SUNCRUZ CASINO CRUISES, LLC.

WHEREAS, through the passage of ordinance 09-08, Horry County has established both the terms and the penalties of a surcharge associated with the operation of any gambling vessel being anchored, berthed, navigating, voyaging or cruising within the boundaries of Horry County; and

WHEREAS, Suncruz Casino Cruises, LLC, as evidenced by the Surcharge Agreement accompanying this Resolution, has agreed to be bound contractually to those terms conditions and penalties recited in both ordinance 09-08 and the referenced Agreement; and

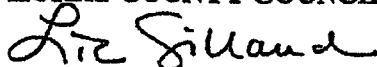
WHEREAS, Horry County Council has reviewed the Surcharge Agreement and finds it to be consistent with the existing local law and in the best interest of Horry County' accordingly

NOW THEREFORE BE IT RESOLVED, that Horry County Council approves the Surcharge Agreement and authorizes the Administrator to execute the contract in behalf of Horry County.

AND IT IS SO RESOLVED

Dated this 4th day of May, 2010

HORRY COUNTY COUNCIL



Liz Gilland, Chairman

ATTEST:



Patricia S. Hartley, Clerk to Council

SURCHARGE AGREEMENT

THIS SURCHARGE AGREEMENT (this "Agreement") is made and entered into as of this 5 day of May, 2010, by and among **SUNCRUZ CASINO CRUISES, LLC**, a South Carolina limited liability company ("SCC") and **HORRY COUNTY**, a body politic (the "County").

WHEREAS, SCC is currently seeking to conduct a gambling cruise-line operation within the county limits of Horry County, South Carolina pursuant to the South Carolina Gambling Cruise Act (the "Business") and Horry County Ordinance No. 09-08 (the "Ordinance"); and

WHEREAS, the Ordinance provides for, among other things, the payment of a surcharge to the County in the initial amount of Seven and 00/100 (\$7.00) Dollars per passenger for an initial term of five years from the Ordinance's passage; and

WHEREAS, the parties hereto desire to clarify the applicability of such surcharge and term provisions to the operation of SCC's cruise-line business.

NOW THEREFORE, in consideration of the mutual agreements and covenants contained herein, including, without limitation, the recitals set forth above, which are hereby made a part, the parties hereto agree as follows:

1. Upon the passage of Resolution 47-10, the parties hereto agree that all provisions of the Ordinance shall be binding upon SCC (with the exception of Section 4 – such Section to be deleted as to SCC) and that on or before the 20th day of each month SCC shall pay to the County Treasurer a surcharge of Seven and 00/100 Dollars per boarding passenger, per cruise for the previous calendar month. The parties hereto acknowledge and agree that the initial surcharge referenced herein shall not be increased by the County prior to December 31, 2012 (such date being five (5) year's from the effective date of the Ordinance). After such date the County may consider an equitable, upward adjustment of the applicable surcharge based upon facts and circumstances then and there existing. Provided, however, any such upward adjustment shall not exceed an additional Three and 00/100 (\$3.00) Dollars during the second five-year period of the Ordinance, expiring December 31, 2017.

2. All notices, instructions and requests required or permitted to be given under the provisions hereof shall be deemed to have been fully given if delivered, or mailed, by registered or certified mail, postage prepaid or overnight courier as follows:

If to SCC:

SunCruz Casino Cruises, LLC
c/o Robert I. Weisberg, Member
4465 Mineola Avenue
Little River, SC 29566

If to County

Horry County
c/o John L. Weaver, County Administrator
(Post Office Box 1236, Conway, SC 29528)
Government and Justice Center
1301 Second Avenue
Conway, SC 29526

3. This Agreement shall be construed and enforced in accordance with the laws of the State of South Carolina.

4. This Agreement may be executed by the parties in any number of counterparts and each shall be deemed an original but all of which together shall constitute one and the same instrument.

5. The recitals set forth at the top of this first page Agreement are incorporated into this Agreement and made a part hereof.

IN WITNESS WHEREOF, the parties have executed this Surcharge Agreement as of the date first written above.

SCC:

SUNCRUZ CASINO CRUISES, LLC
a South Carolina limited liability company

By: Robert I. Weisberg
Robert I. Weisberg
Its: Managing Member

COUNTY:

HORRY COUNTY
a South Carolina County Politic

By: John L. Weaver
John L. Weaver
Its: Administrator

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

ORDINANCE NO.: 09 - 08

AN ORDINANCE PURSUANT TO AND CONSISTENT WITH SOUTH CAROLINA CODE OF LAWS SECTION 3-11-100, ET SEQ. (GAMBLING CRUISE ACT) SO AS TO AUTHORIZE AND DEFINE APPROPRIATE LOCAL LEGISLATIVE ACTION REGARDING ANY GAMBLING VESSEL BEING ANCHORED, BERTHED, NAVIGATING, VOYAGING OR CRUISING WITHIN THE BOUNDARIES OF HORRY COUNTY.

WHEREAS, during its 2005 session, The South Carolina General Assembly and the Governor took steps necessary and appropriate to enact into the State statutory laws the Gambling Cruise Act; and

WHEREAS, consistent with that legislation and pursuant to the delegation of authority given to Horry County through the laws of the State, it is the purpose of this Ordinance and the decision of the Horry County Council to assume the power to regulate gambling aboard gambling vessels while such vessels are outside the territorial waters of the State, when such vessels embark or disembark passengers within Horry County for voyages that depart from the territorial waters of the State, sail into United States or international waters, and return to the territorial waters of the State without an intervening stop.

NOW, THEREFORE, by the power and authority granted to the Horry County Council by the Constitution of the State of South Carolina and the powers granted to the County by the General Assembly of the State, it is ordained and enacted.

1. Establishment of Surcharge: Pursuant to South Carolina Code Section 3-11-400(C)(2), Horry County hereby does assess upon every gambling vessel berthed within the boundaries of the unincorporated waters of this County a surcharge derived from the gross proceeds of a vessel's gambling activities in an amount not to exceed and equal to Seven & no/100 (\$7.00) Dollars per boarding passenger per gambling cruise. Horry County waives its authority to assess any surcharge of each ticket sold per gambling cruise.

2. Payment of Surcharge: On or before the 20th day of each month, every gambling vessel subject to these regulations shall make payment to the Horry County Treasurer in full for the surcharge referenced herein that has been created and accumulated in the proceeding month. Quarterly verification of the three-month total surcharge due to Horry County shall be provided by the gambling vessel's production of a duplicate, signed copy of its IRS Form 720 (Quarterly Federal Excise Tax Return - Line 29) provided to the Internal Revenue Service.

3. **Penalties:** Any gambling vessel subject to these regulations that willfully violates any provision of this ordinance shall be subject to the maximum civil penalty provided by South Carolina statutory law. Specifically, each willful violation shall subject the gambling vessel to a penalty of One Hundred (100.00) Dollars per passenger for each violation – with an aggregate total in civil penalties of not more than Fifty Thousand (50,000.00) Dollars per vessel for a twenty-four (24) hour period in which the willful violation continues. In addition to this civil penalty, a violation of any provision of this ordinance by a gambling vessel shall vest in Horry County the authority to seek injunctive relief against any individual charged with the responsibility of operating or managing the daily business of a gambling vessel.

4. **Retroactive Surcharge Payment:** Pursuant to Horry County Ordinance 174-06, passed June 26, 2007 and effective July 1, 2007, every gambling vessel operating at that time in Horry County's territorial waters was to have paid to Horry County a surcharge derived from the gross proceeds of the vessel's gambling activities in an amount equal to One and 4/10 (1.40%) Percent and Five (5%) Percent of each ticket sold per gambling cruise. No sum of any amount has been paid by any gambling vessel as mandated by that local legislation. So as to resolve that "failure to pay" issue and, secondly, so that the gambling vessels might avoid the possibility of injunctive relief being sought by Horry County as outlined in the prior ordinance, and, lastly, in consideration of the gambling vessels and Horry County mutually agreeing to dismiss, with prejudice, the litigation pending in the Horry County Court of Common Pleas (Civil Action #2007-CP-26-5108), Horry County does hereby waive any and all surcharges that may have accrued between July 1, 2007 and December 31, 2007. As additional consideration for the resolution of the pending litigation, the two (2) operating gambling vessels (SunCruz and Diamond Girl II) shall make an independent, immediate payments to Horry County in the following amounts: Ventures South Carolina, LLC d/b/a SunCruz Casinos – Three Hundred Thousand (\$300,000.00) Dollars and Southern Cruise Lines, Inc. d/b/a Diamond Girl II - One Hundred Thousand (\$100,000.00) Dollars. These independent, immediate payments shall constitute and be credited as each vessel's advance payment of the surcharges at the Seven (\$7.00) Dollar level that has accrued and will continue to accrue on and after January 1, 2008. Beyond this immediate payment, no additional payment will be required by either vessel until, at the earliest, April 20, 2008. At that time, and consistent with the passenger calculations evidenced by the IRS Form 720 for January, February and March, 2008, either additional monies will be due from the vessels if the passenger count at \$7.00 per passenger exceeds the advance payment made or, alternatively, the vessels will owe no additional monies until the monies derived from the 2008 surcharges has exceeded the advance payment. But in no event shall a gambling vessel fail to make a monthly report of its passenger count regardless of whether additional money or additional credit is due.

5. **Term / Sunset:** (A) Notwithstanding the periodic surcharge adjustment referenced hereinafter, the imposition of the surcharge referenced above in Section 1 (without regard to the surcharge amount due at any particular time) shall terminate at the end of the one hundred twentieth (120) month (10 years) following the passage of this ordinance. This commitment made by Horry County in this Ordinance, that is referenced in Section 4 is in consideration of and contingent upon the mutual agreement of Horry County and Ventures South Carolina, LLC d/b/a SunCruz casinos and Southern Cruise Lines, Inc. d/b/a Diamond Girl II to dismiss, with prejudice, the litigation pending in the Horry County Court of Common Pleas (Civil Action #2007-CP-26-5108), is contractual in nature and no change in this commitment shall be taken by any subsequent council during this legislation's ten (10) year existence that is contrary to or inconsistent with the terms recited herein unless Horry County first obtains the written consent of Ventures South Carolina, LLC d/b/a SunCruz Casinos and Southern Cruise Lines, Inc. d/b/a Diamond Girl II. (B) At the end of the sixtieth (60) month following the passage of this ordinance, Horry County Council may consider an equitable, upward adjustment to the surcharge of Seven (\$7.00) Dollars based upon the circumstances and situation then and there existing, taking into consideration such financial information and other relevant matters as may be available for review either through applicable state law or voluntary submission by the gambling vessel owner/operators. However, in no event, shall the upward adjustment, if any, exceed an additional Three (\$3.00) Dollars during the second five (5) year term of this ordinance.

6. **Severability:** If any Section, Subsection, or part of this Ordinance shall be deemed or found to conflict with a provision of South Carolina law, or other preemptive legal principle, then that Section, Sub-section or part of this Ordinance shall be deemed ineffective, but remaining parts of this Ordinance shall remain in full force and effect.

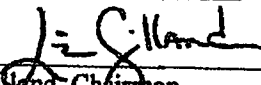
7. **Conflict with Preceding Ordinances:** If a Section, Sub-section or provision of this Ordinance shall conflict with the provisions of a Section, Sub-section or part of a preceding Ordinance of Horry County, then the preceding Section, Sub-section or part shall be deemed repealed and no longer in effect.

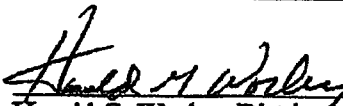
8. **Effective Date:** Upon final Third Reading passage of this ordinance, the effective date will be January 1, 2008.

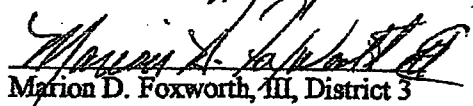
AND IT IS SO ORDAINED, ENACTED AND ORDERED

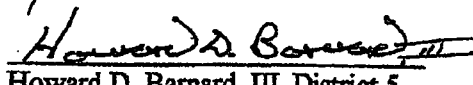
Dated this 5th day of February, 2008

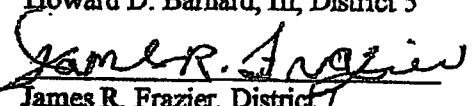
HORRY COUNTY COUNCIL

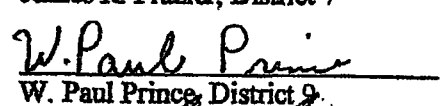

Liz Gilland, Chairman

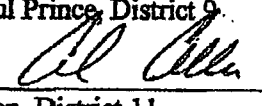

Harold G. Worley, District 1

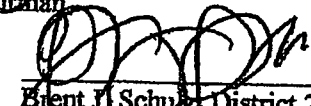

Marion D. Foxworth, III, District 3

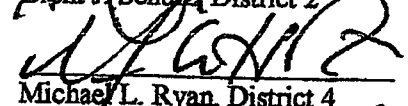

Howard D. Barnard, III, District 5

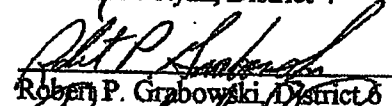

James R. Frazier, District 7

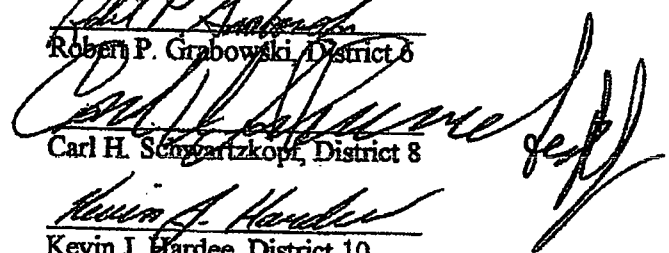

W. Paul Prince, District 9


Al Allen, District 11


Brent J. Schultz, District 2

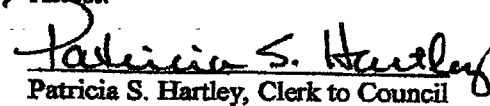

Michael L. Ryan, District 4


Robert P. Grabowski, District 6


Carl H. Schwartzkopf, District 8


Kevin J. Hardee, District 10

Attest:


Patricia S. Hartley, Clerk to Council

Date of First Reading: January 8, 2008

Date of Second Reading: January 22, 2008

Date of Third Reading: February 5, 2008

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Ventures South Carolina, LLC, d/b/a
SunCruz Casinos; and Diamond
Gaming, LLC,

Civil Action No. 2007-CP-26-5108

Plaintiffs,

v.

**CONSENT SETTLEMENT
AGREEMENT AND
GENERAL RELEASE**

Horry County,

Defendant.

Horry County,

Third-Party Plaintiff,

v.

The State of South Carolina,

Third-Party Defendant.

WHEREAS, on June 26, 2007, Horry County Council enacted Ordinance No. 174-06 imposing a surcharge upon every gambling vessel within the boundaries of the unincorporated waters of Horry County; and

WHEREAS, on August 22, 2007, Plaintiffs, Ventures South Carolina, LLC d/b/a SunCruz Casinos and Diamond Gaming, LLC, filed a Summons and Complaint seeking a declaration, *inter alia*, that South Carolina Code Ann. § 3-11-100 et seq. (Supp. 2007) is unconstitutional, that Horry County Ordinance No. 174-06 is void and unconstitutional, seeking injunctive relief enjoining the Defendant, Horry County, from collecting surcharges pursuant to Ordinance No. 174-06, and from imposing injunctive relief and imposing penalties against the Plaintiffs under Horry County Ordinance No. 174-06; and

WHEREAS, on August 21, 2007, Plaintiffs and Defendant entered into a Consent Order holding the enforcement of Horry County Ordinance No. 174-06 in abeyance during the pendency of the instant action; and

WHEREAS, Horry County Council has considered and given two readings to Ordinance No. 09-08, the terms of which supersede and replace Ordinance No. 174-06; and

WHEREAS, the parties are desirous of resolving the instant matter and avoiding the costs and expense of further litigation;

NOW, THEREFORE, the parties hereto agree to resolve the above-entitled action by entering into this Consent Settlement Agreement and General Release (hereinafter referred to as the "Agreement") as follows:

1. Horry County agrees to give Third Reading to and approve Ordinance No. 09-08, a copy of which is attached hereto and is hereby incorporated into this Agreement, which ordinance supersedes and replaces Ordinance No. 174-06. Horry County further covenants and agrees that Ordinance 09-08 will remain in effect for a period of not less than ten (10) years from the date of its Third Reading, and that it will not enact any Ordinances that conflict with or alter the provisions set forth in Ordinance 09-08 during that time period, except to the extent that Ordinance 09-08 specifically provides for a surcharge adjustment as set forth in paragraph 5 thereof.

2. The Plaintiffs hereby acknowledge that Horry County's covenants and agreements contained herein constitute valuable consideration for their agreement to dismiss the above-referenced action, with prejudice, as well as for the release of all

claims against the Defendant, in that Defendant is foregoing the right to collect certain sums of money and exercise certain rights under Ordinance No. 174-06.

3. The Plaintiffs hereby agree to release, forever discharge and promise on behalf of themselves their successors, subsidiaries, affiliated companies, executors, administrators and assigns, never to sue or initiate any claim against Horry County, its County Council members, agents, employees, officers, directors, servants, successors, administrators and assigns (hereinafter collectively "Horry County") from and/or with regard to any all causes of action, claims, attorneys fees, demands, damages, suits at law or in equity, of whatsoever kind or nature or because of any matter or thing done, admitted or suffered to be done, by Horry County, prior to and including the date hereof, arising out of the enactment of Ordinance No. 174-06, and including, but not limited to, any matter set forth or which could have been set forth in the above-captioned action, including any matter arising under the Constitution of the United States and its Amendments, the Constitution of the State of South Carolina and its Amendments, and any other federal, state or local statute and any other matter which in any way relates to matters asserted or which could have been asserted in the above-captioned action by the Plaintiffs.

4. The Plaintiffs acknowledge and agree:

(a) They are settling, as a compromise, disputed claims they have asserted against the Defendant; and

(b) The Defendant, Horry County, denies any liability to Plaintiffs and specifically denies any alleged act of wrong doing; and

(c) This Agreement shall not be deemed in any manner as an admission, finding, or indication for any purposes whatsoever that the Defendant has acted contrary to the law or has violated any rights of Plaintiff or any person at any time.

5. The Defendant hereby consents to this Settlement Agreement and General Release upon the condition that the Plaintiffs dismiss, with prejudice, the above-entitled action. The Plaintiffs hereby consent to this Settlement Agreement and General Release upon the condition that Defendant enact Ordinance 09-08 in the form attached to this Agreement and that Ordinance 09-08 remain in effect in this form for a period of not less than ten (10) years from the date of its Third Reading, and that Defendant not enact any Ordinances that conflict with or alter the provisions set forth in Ordinance 09-08 during that time period, except to the extent that Ordinance 09-08 specifically provides for a surcharge adjustment as set forth in paragraph 5 thereof.

6. Plaintiffs and Defendant each acknowledge that they have read this Agreement and understand its terms and that it has been entered into by each of them voluntarily. Plaintiffs and Defendant further acknowledge and agree that they have had the opportunity to discuss this Agreement with their attorneys.

7. This Consent Settlement Agreement and General Release contains the entire and only agreement between Plaintiffs and the Defendant and any oral or written promise or assurances not contained in this Agreement are waived, withdrawn, and without any legal effect.

8. This Agreement shall be binding upon the Plaintiffs and their successors, subsidiaries, affiliated companies, executors, administrators and assigns, and shall be binding upon Horry County.

9. Plaintiffs shall dismiss the civil action entitled *Ventures South Carolina, LLC, d/b/a SunCruz casinos; and Diamond Gaming, LLC v. Horry County*, Civil Action No. 2007-CP-26-5108, with prejudice, and each party shall bear their own costs and attorneys fees.

10. Plaintiffs also consent to the dissolution of the Consent Order Holding Enforcement of Horry County Ordinance 174-06 in abeyance, dated August 21, 2007, upon the enactment of Horry County Ordinance 09-08 following its Third Reading.

11. This Consent Settlement Agreement and General Release is made and entered into this 6th day of February, 2008.

NELSON MULLINS RILEY
& SCARBOROUGH, L.L.P


Dwight F. Drake
SC Bar No. 001745
C. Mitchell Brown
SC Bar No. 012872
1320 Main Street/17th Floor
PO Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for Ventures South
Carolina, LLC d/b/a SunCruz
Casinos and Gaming, LLC

THOMPSON & HENRY, P.A.

By: Emma Ruth Brittain

Emma Ruth Brittain

SC Bar No. 5298

Charles B. Jordan, Jr.

SC Bar No. 11708

1314 Professional Drive

PO Box 1290

Myrtle Beach, South Carolina 29578

(843) 692-2628

By: John L. Weaver

John L. Weaver, Esquire

Horry County Attorney

Government & Justice Center

PO Box 1236

1301 2nd Avenue

Conway, SC 29526

Attorneys for Horry County

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

FIFTEENTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2011-CP-26- 9457

HORRY COUNTY, A BODY POLITIC,)

Plaintiff,)

v.)

AQUASINO PARTNERS OF SOUTH)
CAROLINA, L.L.C., SUNCRUZ CASINO)
CRUISES, L.L.C., VENTURES SOUTH)
CAROLINA, L.L.C., SUNCRUZ)
CASINOS, L.L.C., AND HIGHLAND)
PARK REAL ESTATE DEVELOPMENT)
CORPORATION,)

Defendants.)

**PLAINTIFF'S FIRST REQUEST
FOR PRODUCTION OF DOCUMENTS
TO DEFENDANTS**

11 NOV 10 PM 3:31
CLERK OF COURT

TO: THE DEFENDANTS, ABOVE NAMED:

YOU ARE HEREBY REQUIRED under the provisions of Rule 34 of the South Carolina Rules of Civil Procedure to produce and permit this Plaintiff, or other persons acting on this Plaintiff's behalf, to inspect, measure, photograph and copy the documents and tangible things designated hereafter. Unless otherwise noted, or agreed to between counsel, the production, inspection, copying, and all acts necessarily related thereto shall take place at the offices of the Plaintiff's counsel, Office of the Horry County Attorney, 1301 Second Avenue, Conway, South Carolina 29526, thirty (30) days from date on or about the close of business and continue from day to day thereafter until said inspection, copying and related acts are completed.

NOTE: This request shall be deemed continuing so as to require supplemental production pursuant to Rule 26(e) of the South Carolina Rules of Civil Procedure.

REQUESTS

1. Copies of any and all documents and recordings which relate to the corporate formation, corporate operations, corporate governance, filings, and functions of Defendants over all periods of time.
2. Copies of all reports, bills or records relating to allegations contained in the Complaint.
3. Copies of all written contracts or agreements between the Plaintiff and Defendants and/or between the Co-Defendants relating to the sale, lease, rental, or permissive occupation of real estate identified as TMS#s: 131-03-13-024, 131-03-13-028, and 131-03-13-030 relating to the Complaint; and the operation and scope of any business thereon since Defendants initiated ownership, and/or business operations within Horry County.
4. Copies of any documents which demonstrate ownership of the Defendants' businesses, any business asset, and any business financial accounts since Defendant's initiated operations in Horry County.
5. Copies of any and all insurance policies, declaration pages, bonds, and coverages which may provide liability insurance coverage to any of the claims and allegations asserted in the Complaint.
6. Copies of any and all filings with the Secretary of State of South Carolina or the Secretary of State of any other state of the United States by any Defendant at any time.
7. Copies of all financial statements and tax returns of the Defendants, both Federal and State returns to include all schedules and attachments, for the past seven (7) years.
8. Copies of any and all police reports or criminal complaints known to or possessed by

any Defendant relating to any Defendant or Defendants' business operations dating from the time operations initiated in Horry County.

9. Copies of documents and information relating to all gaming equipment owned, leased, rented, or operated by any Defendant within Horry County, to include serial numbers, maintenance records, payout and jackpot rates, return to player percentages, insurance policies, any filing with gaming commissions by Defendant and the responses from same, from the date Defendants' operations were initiated within Horry County.

10. Copies of all documents and information regarding the employment and training of Defendants' staff members, past and present, relating to maintenance and operation of gaming equipment and games, operation and maintenance of the current boat and any other sailing vessel which Defendants operated from within Horry County.

11. Copies of any and all documentation relating to the maintenance, safety, and operations of any vessel operated by the Defendants from Horry County, to include, but not limited to, hull surveys, load line reports, seaworthiness reports, accident reports, insurance filings, filings with any federal or state oversight authority including the United States Coast Guard and the South Carolina Department of Resources.

12. Copies of any and all agreements between the Defendants and the United States Coast Guard or the South Carolina Department of Natural Resources, including, but not limited to, financial agreements, records of payments made by any Defendant to the United States Coast Guard or the South Carolina Department of Natural Resources, fines, or any transfer of value from any Defendants to the United States Coast Guard or the South Carolina Department of Natural Resources.

13. Copies of any written complaints from any party, or notes, photographs, videos, or

records taken by any Defendants' owner, officer, or employee, relating to the operation of the Defendants' business within Horry County since the initiation of business operations within Horry County.

14. Copies of all photographs, diagrams, drawings or other similar material relating to the claims set forth in the Complaint.

15. Copies of any and all documents or other written or printed material referred to or involved in answering Defendants' Interrogatories or pertaining thereto.

16. Copies of all statements of possible witnesses, whether written, oral, summarized, or otherwise reproduced in any manner, relating to the matters set forth in the Complaint.

17. Copies of all statements of possible witnesses, whether written, oral, summarized, or otherwise reproduced in any manner, relating to the matters set forth in the Complaint.

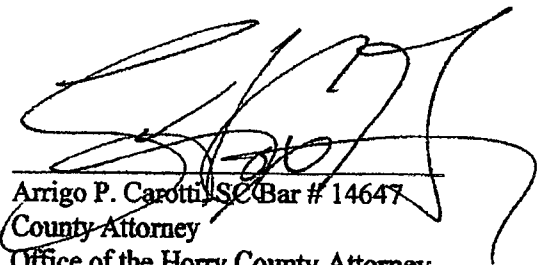
18. Complete and legible copies (color, laser or original copies of photographs) of all records, reports, studies, inspections, correspondence, proposals, estimates, receipts, notes, plans, drawings, graphs, charts, plats, photographs, video recordings, audio recordings and all other written, printed and/or computer stored material in your possession custody or control in any way relating, in part or in whole to the allegations set forth in the Complaint.

19. Copies of all written contracts or agreements between the Plaintiff and any Defendant or Co-Defendant or between the Co-Defendants relating to the sale, lease, rental, or permissive occupation of real property within Horry County and the operation and scope of any business thereon.

20. Copies of documents which indicate the number and identity of passengers allowed or brought aboard any vessel operated by any Defendant to include, but not limited to, boarding lists, passenger lists, passenger counts, manifests, and insurance or Coast Guard filings for the period of

time that Defendants have operated from within Horry County.

21. Financial records relating to the wagers and winnings of all passengers who sailed aboard Defendants' vessels from the initiation of business operations within Horry County.



Arrigo P. Carottia, SC Bar # 14647

County Attorney

Office of the Horry County Attorney

1301 Second Avenue, Suite 2D45

Conway, South Carolina, 29526

(843) 915-5270

carottia@horrycounty.org

Sanford Cox Graves, SC Bar # 70282

Deputy County Attorney

Office of the Horry County Attorney

1301 Second Avenue, Suite 2D44

Conway, South Carolina, 29526

(843) 915-7416

gravess@horrycounty.org

Attorneys for the Plaintiff,
Horry County Government

Conway, South Carolina
November 10, 2011

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

FIFTEENTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2011-CP-26-9457

HORRY COUNTY, A BODY POLITIC,

Plaintiff,

v.

AQUASINO PARTNERS OF SOUTH
CAROLINA, L.L.C., SUNCRUZ CASINO
CRUISES, L.L.C., VENTURES SOUTH
CAROLINA, L.L.C., SUNCRUZ
CASINOS, L.L.C., AND HIGHLAND
PARK REAL ESTATE DEVELOPMENT
CORPORATION,

Defendants.

**PLAINTIFF'S FIRST SET OF
INTERROGATORIES TO
DEFENDANTS**

11 NOV 10 PM 3:31
CLERK OF COURT
WARD

TO: THE DEFENDANTS, ABOVE NAMED:

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, you are required to answer in writing the following Interrogatories within thirty (30) days of the date of service hereof upon you.

NOTE: These Interrogatories shall be deemed continuing so as to require supplementation pursuant to Rule 26(e) of the South Carolina Rules of Civil Procedure.

INTERROGATORIES:

1. If any named Defendant believes it should not be a party included in this lawsuit, set forth the reasons for such assertion, and provide supporting documentation and reasoning for same.
2. If any named Defendant believes it should not be a party included in this lawsuit, set forth the name or corporate identity of parties Defendants know or suspect or should to be a properly named party to this lawsuit.
3. Give the names and addresses of persons known to the parties or counsel to be

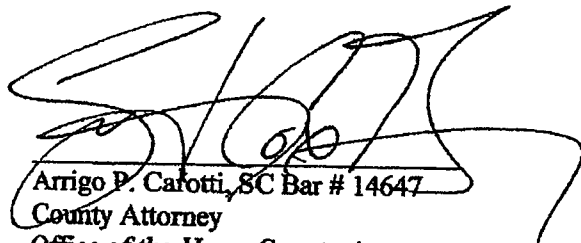
witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

4. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or the defense in the case.

5. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim, and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

6. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

7. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.



Arrigo P. Carotti, SC Bar # 14647

County Attorney

Office of the Horry County Attorney

1301 Second Avenue, Suite 2D45

Conway, South Carolina, 29526

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carottia@horrycounty.org

Sanford Cox Graves, SC Bar # 70282

Deputy County Attorney

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Conway, South Carolina, 29526

(843) 915-7416

gravess@horrycounty.org

Attorneys for the Plaintiff,
Horry County Government

Conway, South Carolina
November 9, 2011

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS

Horry County, a Body Politic,
☐ Plaintiff,

Civil Action No. 2011-CP-26-9457

v.
 Aquasino Partners of South Carolina, L.L.C.;
 Suncruz Casino Cruises, L.L.C.; Ventures South
 Carolina, L.L.C.; Suncruz Casinos, L.L.C.; and
 Highland Park Real Estate Development
 Corporation,
☒ Defendants.

MOTION INFORMATION FORM AND COVER SHEET

Plaintiff's Attorney: Bar No. 14647
 Arrigo P. Carotti & Sanford C. Graves
 Office of the Horry County Attorney
 1301 Second Avenue, Suite 2045
 Conway, South Carolina 29526
 Phone: 843-915-5270 Fax: 843-915-6270
 Email: carottia@horrycounty.org Other:

Defendant's Attorney: Bar No. 76235
 J. Todd Kincannon
 The Kincannon Firm
 P.O. Box 7901
 Columbia, South Carolina 29202
 Phone: 877-992-6878 Fax: 888-704-2010
 Email: todd@thekincannonfirm.com Other: 803-727-4991

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Dismiss / Rule 12(b)(6)

Estimated Time Needed: 1 hour

Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

J. Todd Kincannon
 Signature of Attorney for ☐ Plaintiff / ☒ Defendant

1-14-2012
 Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$25

☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support

(check reason) ☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status

☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act

☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Execution (Rule 69, SCRPC)

☐ Motion for Publication

☐ Proposed order submitted at request of the court; or,
 reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE

Code: _____

Date: _____

CLERK'S VERIFICATION

Collected by: 25.00

Date Filed: 1/20/12

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

SCCA/233 (11/03)

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS

Horry County, a Body Politic,

Plaintiff,

v.

Aquasino Partners of South Carolina,
L.L.C.; Suncruz Casino Cruises, L.L.C.;
Ventures South Carolina, L.L.C.; Suncruz
Casinos, L.L.C.; and Highland Park Real
Estate Development Corporation,

Defendants.

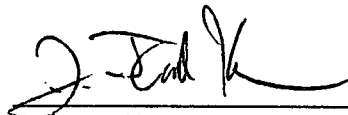
Civil Action No. 2011-CP-26-9457

**DEFENDANTS'
MOTION TO DISMISS**

2012 JAN 20 AM 9:42
CLERK OF COURT
HARRIS-WARD
COUNTY

The Defendants hereby move to dismiss the Plaintiff's Complaint pursuant to Rule 12(b)(6), SCRPC and to strike claims for exemplary damages pursuant to Rule 12(f), SCRPC. Each of the causes of action appearing in the Complaint fail to state facts sufficient to constitute causes of action. Further, with regard to the fraud and related claims, the Complaint does not meet the heightened pleading standards required by caselaw or Rule 9(b), SCRPC. The undersigned certifies compliance with Rule 11, SCRPC in that consultation is not required.

Respectfully submitted,



J. TODD KINCANNON
THE KINCANNON FIRM
P.O. Box 7901
Columbia, South Carolina 29202
Phone: 877.992.6878
Fax: 888.704.2010
Email: Todd@TheKincannonFirm.com
Attorney for Defendants

January 14, 2012

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

HORRY COUNTY, a Body Politic

☒ Plaintiff

v.

AQUASINO PARTNERS OF SOUTH CAROLINA,
LLC, *Et Al.*

☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2011-CP-26-9457

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
Philip C. Thompson, Bar No. 11062
Address: Thompson & Henry, P.A., P.O. Box 1740,
Conway, South Carolina 29528
phone: 843-248-5741 fax: 843-248-6396
e-mail: pthompson@thompsonlaw.com other:

Defendant's Attorney:
J. Todd Kincannon, Bar No.
Address: P.O. Box 7901, Columbia, South Carolina
29202
phone: 877-992-6878 fax:
e-mail: todd@thekincannonfirm.com other:

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion for Injunction

Estimated Time Needed: 15 Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

February 23, 2012
Date submitted

SECTION III: Motion Fee

- ☒ PAID - AMOUNT: \$ 25.00
☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Collected by: JAB

Date Filed: 2/28/12

- ☐ MOTION FEE COLLECTED: 2500
☐ CONTESTED - AMOUNT DUE:

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
OF THE FIFTEENTH JUDICIAL CIRCUIT
Civil Action No: 2011-CP - 26- 9457

Horry County, a Body Politic ,

Petitioner(s)

vs.

MOTION FOR
TEMPORARY INJUNCTION

Aquasino Partners of South Carolina, LLC,
Suncruz Casino Cruises, LLC, Ventures South
Carolina, LLC, Suncruz Casinos, LLC, and
Highland Park Real Estate Development
Corporation ,

Defendant.

HORRY COUNTY
12 FEB 28 PM 3:13
MELANIE HOGGINS-WARD
CLERK OF COURT

TO: THE ABOVE NAMED DEFENDANTS AND THEIR ATTORNEY, J. TODD KINCANNON, ESQUIRE:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, Horry County, a Body Politic, will move before this Court, pursuant to S.C. Code Ann. § 3-11-210 of the Gambling Cruise Act, Horry County Ordinance No. 09-08, Horry County Resolution R-47-10, and Rule 65, SCRCF, requesting the Court to enter a Temporary Injunction enjoining any individual charged with the responsibility of operating or managing the daily business of a gambling cruise line operation owned or operated by Suncruz Casino Cruises, LLC, and any other person or entity in concert or participation with Suncruz Casinos, LLC from conducting a gambling cruise line operation within the county limits of Horry County, South Carolina, pending a trial on the merits. In support of the motion, the Plaintiff showed the following to the Court:

1. Pursuant to Chapter 11 of Title 3 of the South Carolina Code of Laws, the South Carolina General Assembly delegated to Counties and municipalities of this State the authority to prohibit or regulate the operation of gambling vessels that are engaged in voyages that depart from the territorial waters of the state, sailing to United States or international waters, and returning to the territorial waters of the state without an intervening stop.

2. Pursuant to said authority granted to Horry County by the South Carolina General Assembly, Horry County adopted Ordinance No. 09-08 which established a surcharge of Seven and 00/100 (\$ 7.00) Dollar per boarding passenger, per gambling cruise. A copy of said Ordinance is attached hereto as Exhibit "A" and made a part and parcel hereof. The penalty for a willful violation of the Ordinance under the South Carolina Gambling Cruise Act is One Hundred and 00/100 (\$ 100.00) Dollar per passenger for each violation, with an aggregate total of not more than Fifty Thousand and 00/100 (\$ 50,000.00) Dollars per vessel for a twenty-four (24) hour period in which the willful violation continues. In addition to this civil penalty, a violation of the ordinance vests in Horry County the authority to seek injunctive relief against any individual charged with the responsibility of operating or managing the daily business of a gambling vessel.

3. Thereafter, Horry County passed Resolution R-47-10 authorizing the Horry County Administrator to execute a Surcharge Agreement between Horry County and Suncruz Casinos, LLC. A copy of said Resolution is attached hereto as Exhibit "B" and made a part and parcel hereof.

4. On May 5, 2010, Horry County and Suncruz Casino Cruises, LLC did execute the Surcharge Agreement authorized by Resolution R-47-10 wherein and whereby Suncruz Casinos Cruises, LLC agreed to abide by all provisions of Ordinance No. 09-08 including, but not limited to the payment of the Seven and 00/100 (\$ 7.00) Dollar per boarding passenger, per gambling cruise surcharge. A copy of the Surcharge Agreement is attached hereto as Exhibit "C", and is made a part and parcel hereof.

5. Suncruz Casinos, LLC has failed and refused to pay the Seven and 00/100 (\$ 7.00) Dollar per boarding passenger, per gambling cruise surcharge as required under the Surcharge Agreement and Ordinance beginning in the month of August 2011, and continuing to present.

6. The Plaintiff offers the Affidavit of Barry R. Spivey, Finance Director for Horry County, in support of the Motion.

WHEREFORE, the Plaintiff moves that the Court award it the following relief:

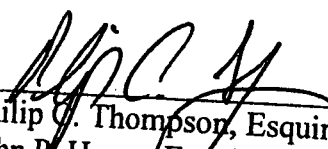
- a. A temporary injunction restraining and enjoining any person or individual charged with the responsibility of operating or managing the daily business of a gambling vessel belonging to or operated by Suncruz Casinos Cruises, LLC, from operating said

vessel within the territorial waters of Horry County, South Carolina; and,

- b. grant such other and further relief in favor of the Plaintiff as the Court deems just and appropriate.

Respectfully submitted.

Thompson & Henry, P.A.


Philip C. Thompson, Esquire
John P. Henry, Esquire
1300 Second Avenue, Third Floor
(Post Office Box 1740 - Zip 29528)
Conway, South Carolina 29526
Telephone (843) 248-5741
Facsimile (843) 248-6396
Co-Counsel for the Plaintiff

2/23, 2012
Conway, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

ORDINANCE NO.: 09 - 08

AN ORDINANCE PURSUANT TO AND CONSISTENT WITH SOUTH CAROLINA CODE OF LAWS SECTION 3-11-100, ET SEQ. (GAMBLING CRUISE ACT) SO AS TO AUTHORIZE AND DEFINE APPROPRIATE LOCAL LEGISLATIVE ACTION REGARDING ANY GAMBLING VESSEL BEING ANCHORED, BERTHED, NAVIGATING, VOYAGING OR CRUISING WITHIN THE BOUNDARIES OF HORRY COUNTY.

WHEREAS, during its 2005 session, The South Carolina General Assembly and the Governor took steps necessary and appropriate to enact into the State statutory laws the Gambling Cruise Act; and

WHEREAS, consistent with that legislation and pursuant to the delegation of authority given to Horry County through the laws of the State, it is the purpose of this Ordinance and the decision of the Horry County Council to assume the power to regulate gambling aboard gambling vessels while such vessels are outside the territorial waters of the State, when such vessels embark or disembark passengers within Horry County for voyages that depart from the territorial waters of the State, sail into United States or international waters, and return to the territorial waters of the State without an intervening stop.

NOW, THEREFORE, by the power and authority granted to the Horry County Council by the Constitution of the State of South Carolina and the powers granted to the County by the General Assembly of the State, it is ordained and enacted.

1. **Establishment of Surcharge:** Pursuant to South Carolina Code Section 3-11-400(C)(2), Horry County hereby does assess upon every gambling vessel berthed within the boundaries of the unincorporated waters of this County a surcharge derived from the gross proceeds of a vessel's gambling activities in an amount not to exceed and equal to Seven & no/100 (\$7.00) Dollars per boarding passenger per gambling cruise. Horry County waives its authority to assess any surcharge of each ticket sold per gambling cruise.

2. **Payment of Surcharge:** On or before the 20th day of each month, every gambling vessel subject to these regulations shall make payment to the Horry County Treasurer in full for the surcharge referenced herein that has been created and accumulated in the proceeding month. Quarterly verification of the three-month total surcharge due to Horry County shall be provided by the gambling vessel's production of a duplicate, signed copy of its IRS Form 720 (Quarterly Federal Excise Tax Return - Line 29) provided to the Internal Revenue Service.

3. **Penalties:** Any gambling vessel subject to these regulations that willfully violates any provision of this ordinance shall be subject to the maximum civil penalty provided by South Carolina statutory law. Specifically, each willful violation shall subject the gambling vessel to a penalty of One Hundred (100.00) Dollars per passenger for each violation – with an aggregate total in civil penalties of not more than Fifty Thousand (50,000.00) Dollars per vessel for a twenty-four (24) hour period in which the willful violation continues. In addition to this civil penalty, a violation of any provision of this ordinance by a gambling vessel shall vest in Horry County the authority to seek injunctive relief against any individual charged with the responsibility of operating or managing the daily business of a gambling vessel.

4. **Retroactive Surcharge Payment:** Pursuant to Horry County Ordinance 174-06, passed June 26, 2007 and effective July 1, 2007, every gambling vessel operating at that time in Horry County's territorial waters was to have paid to Horry County a surcharge derived from the gross proceeds of the vessel's gambling activities in an amount equal to One and 4/10 (1.40%) Percent and Five (5%) Percent of each ticket sold per gambling cruise. No sum of any amount has been paid by any gambling vessel as mandated by that local legislation. So as to resolve that "failure to pay" issue and, secondly, so that the gambling vessels might avoid the possibility of injunctive relief being sought by Horry County as outlined in the prior ordinance, and, lastly, in consideration of the gambling vessels and Horry County mutually agreeing to dismiss, with prejudice, the litigation pending in the Horry County Court of Common Pleas (Civil Action #2007-CP-26-5108), Horry County does hereby waive any and all surcharges that may have accrued between July 1, 2007 and December 31, 2007. As additional consideration for the resolution of the pending litigation, the two (2) operating gambling vessels (SunCruz and Diamond Girl II) shall make an independent, immediate payments to Horry County in the following amounts: Ventures South Carolina, LLC d/b/a SunCruz Casinos – Three Hundred Thousand (\$300,000.00) Dollars and Southern Cruise Lines, Inc. d/b/a Diamond Girl II - One Hundred Thousand (\$100,000.00) Dollars. These independent, immediate payments shall constitute and be credited as each vessel's advance payment of the surcharges at the Seven (\$7.00) Dollar level that has accrued and will continue to accrue on and after January 1, 2008. Beyond this immediate payment, no additional payment will be required by either vessel until, at the earliest, April 20, 2008. At that time, and consistent with the passenger calculations evidenced by the IRS Form 720 for January, February and March, 2008, either additional monies will be due from the vessels if the passenger count at \$7.00 per passenger exceeds the advance payment made or, alternatively, the vessels will owe no additional monies until the monies derived from the 2008 surcharges has exceeded the advance payment. But in no event shall a gambling vessel fail to make a monthly report of its passenger count regardless of whether additional money or additional credit is due.

5. **Term / Sunset:** (A) Notwithstanding the periodic surcharge adjustment referenced hereinafter, the imposition of the surcharge referenced above in Section 1 (without regard to the surcharge amount due at any particular time) shall terminate at the end of the one hundred twentieth (120) month (10 years) following the passage of this ordinance. This commitment made by Horry County in this Ordinance, that is referenced in Section 4 is in consideration of and contingent upon the mutual agreement of Horry County and Ventures South Carolina, LLC d/b/a SunCruz casinos and Southern Cruise Lines, Inc. d/b/a Diamond Girl II to dismiss, with prejudice, the litigation pending in the Horry County Court of Common Pleas (Civil Action #2007-CP-26-5108), is contractual in nature and no change in this commitment shall be taken by any subsequent council during this legislation's ten (10) year existence that is contrary to or inconsistent with the terms recited herein unless Horry County first obtains the written consent of Ventures South Carolina, LLC d/b/a SunCruz Casinos and Southern Cruise Lines, Inc. d/b/a Diamond Girl II. (B) At the end of the sixtieth (60) month following the passage of this ordinance, Horry County Council may consider an equitable, upward adjustment to the surcharge of Seven (\$7.00) Dollars based upon the circumstances and situation then and there existing, taking into consideration such financial information and other relevant matters as may be available for review either through applicable state law or voluntary submission by the gambling vessel owner/operators. However, in no event, shall the upward adjustment, if any, exceed an additional Three (\$3.00) Dollars during the second five (5) year term of this ordinance.

6. **Severability:** If any Section, Subsection, or part of this Ordinance shall be deemed or found to conflict with a provision of South Carolina law, or other preemptive legal principle, then that Section, Sub-section or part of this Ordinance shall be deemed ineffective, but remaining parts of this Ordinance shall remain in full force and effect.

7. **Conflict with Preceding Ordinances:** If a Section, Sub-section or provision of this Ordinance shall conflict with the provisions of a Section, Sub-section or part of a preceding Ordinance of Horry County, then the preceding Section, Sub-section or part shall be deemed repealed and no longer in effect.

8. **Effective Date:** Upon final Third Reading passage of this ordinance, the effective date will be January 1, 2008.

AND IT IS SO ORDAINED, ENACTED AND ORDERED

Dated this 5th day of February, 2008

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

RESOLUTION R-47-10

A RESOLUTION AUTHORIZING THE ADMINISTRATOR TO EXECUTE A CONTRACTUAL AGREEMENT BETWEEN HORRY COUNTY AND SUNCRUZ CASINO CRUISES, LLC.

WHEREAS, through the passage of ordinance 09-08, Horry County has established both the terms and the penalties of a surcharge associated with the operation of any gambling vessel being anchored, berthed, navigating, voyaging or cruising within the boundaries of Horry County; and

WHEREAS, Suncruz Casino Cruises, LLC, as evidenced by the Surcharge Agreement accompanying this Resolution, has agreed to be bound contractually to those terms conditions and penalties recited in both ordinance 09-08 and the referenced Agreement; and

WHEREAS, Horry County Council has reviewed the Surcharge Agreement and finds it to be consistent with the existing local law and in the best interest of Horry County' accordingly

NOW THEREFORE BE IT RESOLVED, that Horry County Council approves the Surcharge Agreement and authorizes the Administrator to execute the contract in behalf of Horry County.

AND IT IS SO RESOLVED

Dated this 4th day of May, 2010

HORRY COUNTY COUNCIL

Liz Gilland

Liz Gilland, Chairman

ATTEST:

Patricia S. Hartley

Patricia S. Hartley, Clerk to Council

SURCHARGE AGREEMENT

THIS SURCHARGE AGREEMENT (this "Agreement") is made and entered into as of this 5 day of May, 2010, by and among **SUNCRUZ CASINO CRUISES, LLC**, a South Carolina limited liability company ("SCC") and **HORRY COUNTY**, a body politic (the "County").

WHEREAS, SCC is currently seeking to conduct a gambling cruise-line operation within the county limits of Horry County, South Carolina pursuant to the South Carolina Gambling Cruise Act (the "Business") and Horry County Ordinance No. 09-08 (the "Ordinance"); and

WHEREAS, the Ordinance provides for, among other things, the payment of a surcharge to the County in the initial amount of Seven and 00/100 (\$7.00) Dollars per passenger for an initial term of five years from the Ordinance's passage; and

WHEREAS, the parties hereto desire to clarify the applicability of such surcharge and term provisions to the operation of SCC's cruise-line business.

NOW THEREFORE, in consideration of the mutual agreements and covenants contained herein, including, without limitation, the recitals set forth above, which are hereby made a part, the parties hereto agree as follows:

1. Upon the passage of Resolution 47-10, the parties hereto agree that all provisions of the Ordinance shall be binding upon SCC (with the exception of Section 4 - such Section to be deleted as to SCC) and that on or before the 20th day of each month SCC shall pay to the County Treasurer a surcharge of Seven and 00/100 Dollars per boarding passenger, per cruise for the previous calendar month. The parties hereto acknowledge and agree that the initial surcharge referenced herein shall not be increased by the County prior to December 31, 2012 (such date being five (5) year's from the effective date of the Ordinance). After such date the County may consider an equitable, upward adjustment of the applicable surcharge based upon facts and circumstances then and there existing. Provided, however, any such upward adjustment shall not exceed an additional Three and 00/100 (\$3.00) Dollars during the second five-year period of the Ordinance, expiring December 31, 2017.

2. All notices, instructions and requests required or permitted to be given under the provisions hereof shall be deemed to have been fully given if delivered, or mailed, by registered or certified mail, postage prepaid or overnight courier as follows:

If to SCC:

SumCruz Casino Cruises, LLC
c/o Robert I. Weisberg, Member
4465 Mineola Avenue
Little River, SC 29566

If to County

Horry County
c/o John L. Weaver, County Administrator
(Post Office Box 1236, Conway, SC 29528)
Government and Justice Center
1301 Second Avenue
Conway, SC 29526

3. This Agreement shall be construed and enforced in accordance with the laws of the State of South Carolina.

4. This Agreement may be executed by the parties in any number of counterparts and each shall be deemed an original but all of which together shall constitute one and the same instrument.

5. The recitals set forth at the top of this first page Agreement are incorporated into this Agreement and made a part hereof.

IN WITNESS WHEREOF, the parties have executed this Surcharge Agreement as of the date first written above.

SCC:

SUNCRUZ CASINO CRUISES, LLC
a South Carolina limited liability company

By: Robert I. Weisberg
Robert I. Weisberg
Its: Managing Member

COUNTY:

HORRY COUNTY,
~~a South Carolina body politic~~

By: John L. Weaver
John L. Weaver
Its: Administrator

STATE OF SOUTH CAROLINA

COUNTY OF Horry

Horry County, a Body Politic,

Petitioner(s)

vs.

Aquasino Partners of South Carolina, LLC,
Suncruz Casino Cruises, LLC, Ventures South
Carolina, LLC, Suncruz Casinos, LLC, and
Highland Park Real Estate Development
Corporation,

Defendant.

IN THE COURT OF COMMON PLEAS
OF THE FIFTEENTH JUDICIAL CIRCUIT
Civil Action No: 2011-CP - 26- 9457

AFFIDAVIT OF
BARRY R. SPIVEY

HORRY COUNTY
12 FEB 28 PM 3:18
MELANIE HODGINS-WARD
CLERK OF COURT

The undersigned, Barry R. Spivey, being duly sworn states as follows:

1. My name is Barry R. Spivey and I am the Finance Director of Horry County, a Body Politic.
2. Part of my responsibilities include the collection of the Seven and 00/100 (\$7.00) Dollar per boarding passenger, per gambling cruise surcharge required under Ordinance No. 09-08, Resolution R-47-10, and the Surcharge Agreement dated May 5, 2010 between Horry County and Suncruz Casino Cruises, LLC.
3. I have read the Plaintiff's Motions for Temporary Injunction and Appointment of a Receiver and all allegations contained therein, and know same to be true and accurate, upon my own personal knowledge.

Further Affiant Sayeth Not.

Barry R. Spivey

Sworn to before me this 27th day of
February, 2012

Omelia L. Snipes (L.S.)
Notary Public for South Carolina
My Commission Expires: 10-03-2012

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) OF THE FIFTEENTH JUDICIAL CIRCUIT
) Civil Action No: 2011-CP - 26- 9457

Horry County, a Body Politic ,

Petitioner(s)

vs.

RULE 11 CERTIFICATION

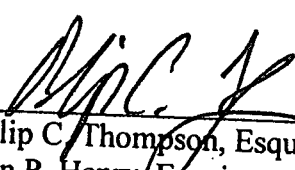
Aquasino Partners of South Carolina, LLC,
Suncruz Casino Cruises, LLC, Ventures South
Carolina, LLC, Suncruz Casinos, LLC, and
Highland Park Real Estate Development
Corporation ,

Defendant.

HORRY COUNTY
12 FEB 28 PM 3:13
MELANIE HUBBINS-WARD
CLERK OF COURT

I hereby certify that prior to filing of this Motion, Plaintiff's attorney affirms that he has communicated, orally or in writing, with opposing counsel and has attempted in good faith to resolve the matter contained in the Motion, or that such consultation would serve no useful purpose or cannot be timely held. This Certification is made in satisfaction of Rule 11(a) of the South Carolina Rules of Civil Procedure.

Thompson & Henry, P.A.


Philip C. Thompson, Esquire
John P. Henry, Esquire
1300 Second Avenue, Third Floor
(Post Office Box 1740 - Zip 29528)
Conway, South Carolina 29526
Telephone (843) 248-5741
Facsimile (843) 248-6396
Co-Counsel for the Plaintiff

2/23, 2012
Conway, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

ORDINANCE NO.: 09 - 08

AN ORDINANCE PURSUANT TO AND CONSISTENT WITH SOUTH CAROLINA CODE OF LAWS SECTION 3-11-100, ET SEQ. (GAMBLING CRUISE ACT) SO AS TO AUTHORIZE AND DEFINE APPROPRIATE LOCAL LEGISLATIVE ACTION REGARDING ANY GAMBLING VESSEL BEING ANCHORED, BERTHED, NAVIGATING, VOYAGING OR CRUISING WITHIN THE BOUNDARIES OF HORRY COUNTY.

WHEREAS, during its 2005 session, The South Carolina General Assembly and the Governor took steps necessary and appropriate to enact into the State statutory laws the Gambling Cruise Act; and

WHEREAS, consistent with that legislation and pursuant to the delegation of authority given to Horry County through the laws of the State, it is the purpose of this Ordinance and the decision of the Horry County Council to assume the power to regulate gambling aboard gambling vessels while such vessels are outside the territorial waters of the State, when such vessels embark or disembark passengers within Horry County for voyages that depart from the territorial waters of the State, sail into United States or international waters, and return to the territorial waters of the State without an intervening stop.

NOW, THEREFORE, by the power and authority granted to the Horry County Council by the Constitution of the State of South Carolina and the powers granted to the County by the General Assembly of the State, it is ordained and enacted.

1. Establishment of Surcharge: Pursuant to South Carolina Code Section 3-11-400(C)(2), Horry County hereby does assess upon every gambling vessel berthed within the boundaries of the unincorporated waters of this County a surcharge derived from the gross proceeds of a vessel's gambling activities in an amount not to exceed and equal to Seven & no/100 (\$7.00) Dollars per boarding passenger per gambling cruise. Horry County waives its authority to assess any surcharge of each ticket sold per gambling cruise.

2. Payment of Surcharge: On or before the 20th day of each month, every gambling vessel subject to these regulations shall make payment to the Horry County Treasurer in full for the surcharge referenced herein that has been created and accumulated in the proceeding month. Quarterly verification of the three-month total surcharge due to Horry County shall be provided by the gambling vessel's production of a duplicate, signed copy of its IRS Form 720 (Quarterly Federal Excise Tax Return - Line 29) provided to the Internal Revenue Service.

3. **Penalties:** Any gambling vessel subject to these regulations that willfully violates any provision of this ordinance shall be subject to the maximum civil penalty provided by South Carolina statutory law. Specifically, each willful violation shall subject the gambling vessel to a penalty of One Hundred (100.00) Dollars per passenger for each violation – with an aggregate total in civil penalties of not more than Fifty Thousand (50,000.00) Dollars per vessel for a twenty-four (24) hour period in which the willful violation continues. In addition to this civil penalty, a violation of any provision of this ordinance by a gambling vessel shall vest in Horry County the authority to seek injunctive relief against any individual charged with the responsibility of operating or managing the daily business of a gambling vessel.

4. **Retroactive Surcharge Payment:** Pursuant to Horry County Ordinance 174-06, passed June 26, 2007 and effective July 1, 2007, every gambling vessel operating at that time in Horry County's territorial waters was to have paid to Horry County a surcharge derived from the gross proceeds of the vessel's gambling activities in an amount equal to One and 4/10 (1.40%) Percent and Five (5%) Percent of each ticket sold per gambling cruise. No sum of any amount has been paid by any gambling vessel as mandated by that local legislation. So as to resolve that "failure to pay" issue and, secondly, so that the gambling vessels might avoid the possibility of injunctive relief being sought by Horry County as outlined in the prior ordinance, and, lastly, in consideration of the gambling vessels and Horry County mutually agreeing to dismiss, with prejudice, the litigation pending in the Horry County Court of Common Pleas (Civil Action #2007-CP-26-5108), Horry County does hereby waive any and all surcharges that may have accrued between July 1, 2007 and December 31, 2007. As additional consideration for the resolution of the pending litigation, the two (2) operating gambling vessels (SunCruz and Diamond Girl II) shall make an independent, immediate payments to Horry County in the following amounts: Ventures South Carolina, LLC d/b/a SunCruz Casinos – Three Hundred Thousand (\$300,000.00) Dollars and Southern Cruise Lines, Inc. d/b/a Diamond Girl II - One Hundred Thousand (\$100,000.00) Dollars. These independent, immediate payments shall constitute and be credited as each vessel's advance payment of the surcharges at the Seven (\$7.00) Dollar level that has accrued and will continue to accrue on and after January 1, 2008. Beyond this immediate payment, no additional payment will be required by either vessel until, at the earliest, April 20, 2008. At that time, and consistent with the passenger calculations evidenced by the IRS Form 720 for January, February and March, 2008, either additional monies will be due from the vessels if the passenger count at \$7.00 per passenger exceeds the advance payment made or, alternatively, the vessels will owe no additional monies until the monies derived from the 2008 surcharges has exceeded the advance payment. But in no event shall a gambling vessel fail to make a monthly report of its passenger count regardless of whether additional money or additional credit is due.

5. **Term / Sunset:** (A) Notwithstanding the periodic surcharge adjustment referenced hereinafter, the imposition of the surcharge referenced above in Section 1 (without regard to the surcharge amount due at any particular time) shall terminate at the end of the one hundred twentieth (120) month (10 years) following the passage of this ordinance. This commitment made by Horry County in this Ordinance, that is referenced in Section 4 is in consideration of and contingent upon the mutual agreement of Horry County and Ventures South Carolina, LLC d/b/a SunCruz casinos and Southern Cruise Lines, Inc. d/b/a Diamond Girl II to dismiss, with prejudice, the litigation pending in the Horry County Court of Common Pleas (Civil Action #2007-CP-26-5108), is contractual in nature and no change in this commitment shall be taken by any subsequent council during this legislation's ten (10) year existence that is contrary to or inconsistent with the terms recited herein unless Horry County first obtains the written consent of Ventures South Carolina, LLC d/b/a SunCruz Casinos and Southern Cruise Lines, Inc. d/b/a Diamond Girl II. (B) At the end of the sixtieth (60) month following the passage of this ordinance, Horry County Council may consider an equitable, upward adjustment to the surcharge of Seven (\$7.00) Dollars based upon the circumstances and situation then and there existing, taking into consideration such financial information and other relevant matters as may be available for review either through applicable state law or voluntary submission by the gambling vessel owner/operators. However, in no event, shall the upward adjustment, if any, exceed an additional Three (\$3.00) Dollars during the second five (5) year term of this ordinance.

6. **Severability:** If any Section, Subsection, or part of this Ordinance shall be deemed or found to conflict with a provision of South Carolina law, or other preemptive legal principle, then that Section, Sub-section or part of this Ordinance shall be deemed ineffective, but remaining parts of this Ordinance shall remain in full force and effect.

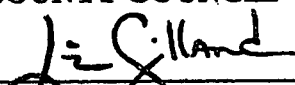
7. **Conflict with Preceding Ordinances:** If a Section, Sub-section or provision of this Ordinance shall conflict with the provisions of a Section, Sub-section or part of a preceding Ordinance of Horry County, then the preceding Section, Sub-section or part shall be deemed repealed and no longer in effect.

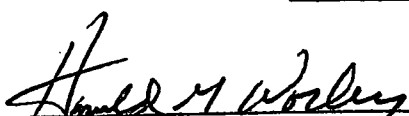
8. **Effective Date:** Upon final Third Reading passage of this ordinance, the effective date will be January 1, 2008.

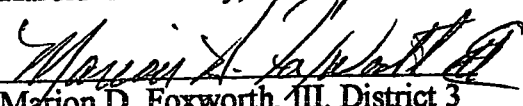
AND IT IS SO ORDAINED, ENACTED AND ORDERED

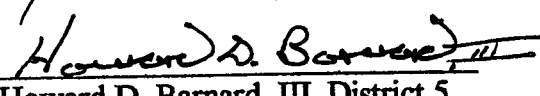
Dated this 5th day of February, 2008

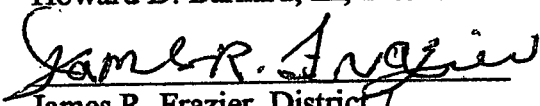
HORRY COUNTY COUNCIL

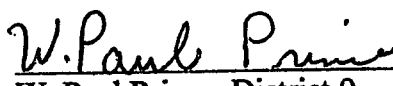

Liz Gilland, Chairman

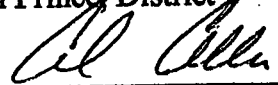

Harold G. Worley, District 1


Marion D. Foxworth, III, District 3

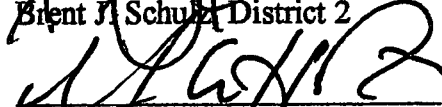

Howard D. Barnard, III, District 5

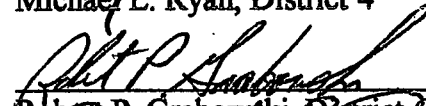

James R. Frazier, District 7

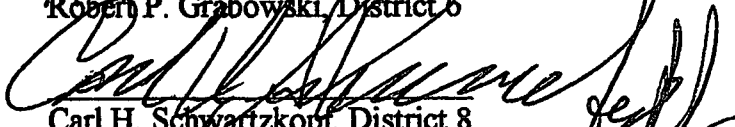

W. Paul Prince, District 9


Al Allen, District 11


Brent J. Schultz, District 2

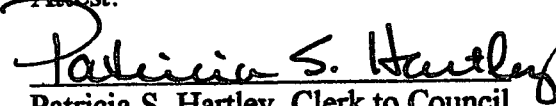

Michael L. Ryan, District 4


Robert P. Grabowski, District 6


Carl H. Schwartzkopf, District 8


Kevin J. Hardee, District 10

Attest:


Patricia S. Hartley, Clerk to Council

Date of First Reading: January 8, 2008

Date of Second Reading: January 22, 2008

Date of Third Reading: February 5, 2008

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Ventures South Carolina, LLC, d/b/a
SunCruz Casinos; and Diamond
Gaming, LLC,

Plaintiffs,

v.

Horry County,

Defendant.

Horry County,

Third-Party Plaintiff,

v.

The State of South Carolina,

Third-Party Defendant.

Civil Action No. 2007-CP-26-5108

**CONSENT SETTLEMENT
AGREEMENT AND
GENERAL RELEASE**

WHEREAS, on June 26, 2007, Horry County Council enacted Ordinance No. 174-06 imposing a surcharge upon every gambling vessel within the boundaries of the unincorporated waters of Horry County; and

WHEREAS, on August 22, 2007, Plaintiffs, Ventures South Carolina, LLC d/b/a SunCruz Casinos and Diamond Gaming, LLC, filed a Summons and Complaint seeking a declaration, *inter alia*, that South Carolina Code Ann. § 3-11-100 et seq. (Supp. 2007) is unconstitutional, that Horry County Ordinance No. 174-06 is void and unconstitutional, seeking injunctive relief enjoining the Defendant, Horry County, from collecting surcharges pursuant to Ordinance No. 174-06, and from imposing injunctive relief and imposing penalties against the Plaintiffs under Horry County Ordinance No. 174-06; and

WHEREAS, on August 21, 2007, Plaintiffs and Defendant entered into a Consent Order holding the enforcement of Horry County Ordinance No. 174-06 in abeyance during the pendency of the instant action; and

WHEREAS, Horry County Council has considered and given two readings to Ordinance No. 09-08, the terms of which supersede and replace Ordinance No. 174-06; and

WHEREAS, the parties are desirous of resolving the instant matter and avoiding the costs and expense of further litigation;

NOW, THEREFORE, the parties hereto agree to resolve the above-entitled action by entering into this Consent Settlement Agreement and General Release (hereinafter referred to as the "Agreement") as follows:

1. Horry County agrees to give Third Reading to and approve Ordinance No. 09-08, a copy of which is attached hereto and is hereby incorporated into this Agreement, which ordinance supersedes and replaces Ordinance No. 174-06. Horry County further covenants and agrees that Ordinance 09-08 will remain in effect for a period of not less than ten (10) years from the date of its Third Reading, and that it will not enact any Ordinances that conflict with or alter the provisions set forth in Ordinance 09-08 during that time period, except to the extent that Ordinance 09-08 specifically provides for a surcharge adjustment as set forth in paragraph 5 thereof.

2. The Plaintiffs hereby acknowledge that Horry County's covenants and agreements contained herein constitute valuable consideration for their agreement to dismiss the above-referenced action, with prejudice, as well as for the release of all

claims against the Defendant, in that Defendant is foregoing the right to collect certain sums of money and exercise certain rights under Ordinance No. 174-06.

3. The Plaintiffs hereby agree to release, forever discharge and promise on behalf of themselves their successors, subsidiaries, affiliated companies, executors, administrators and assigns, never to sue or initiate any claim against Horry County, its County Council members, agents, employees, officers, directors, servants, successors, administrators and assigns (hereinafter collectively "Horry County") from and/or with regard to any all causes of action, claims, attorneys fees, demands, damages, suits at law or in equity, of whatsoever kind or nature or because of any matter or thing done, admitted or suffered to be done, by Horry County, prior to and including the date hereof, arising out of the enactment of Ordinance No. 174-06, and including, but not limited to, any matter set forth or which could have been set forth in the above-captioned action, including any matter arising under the Constitution of the United States and its Amendments, the Constitution of the State of South Carolina and its Amendments, and any other federal, state or local statute and any other matter which in any way relates to matters asserted or which could have been asserted in the above-captioned action by the Plaintiffs.

4. The Plaintiffs acknowledge and agree:

(a) They are settling, as a compromise, disputed claims they have asserted against the Defendant; and

(b) The Defendant, Horry County, denies any liability to Plaintiffs and specifically denies any alleged act of wrong doing; and

(c) This Agreement shall not be deemed in any manner as an admission, finding, or indication for any purposes whatsoever that the Defendant has acted contrary to the law or has violated any rights of Plaintiff or any person at any time.

5. The Defendant hereby consents to this Settlement Agreement and General Release upon the condition that the Plaintiffs dismiss, with prejudice, the above-entitled action. The Plaintiffs hereby consent to this Settlement Agreement and General Release upon the condition that Defendant enact Ordinance 09-08 in the form attached to this Agreement and that Ordinance 09-08 remain in effect in this form for a period of not less than ten (10) years from the date of its Third Reading, and that Defendant not enact any Ordinances that conflict with or alter the provisions set forth in Ordinance 09-08 during that time period, except to the extent that Ordinance 09-08 specifically provides for a surcharge adjustment as set forth in paragraph 5 thereof.

6. Plaintiffs and Defendant each acknowledge that they have read this Agreement and understand its terms and that it has been entered into by each of them voluntarily. Plaintiffs and Defendant further acknowledge and agree that they have had the opportunity to discuss this Agreement with their attorneys.

7. This Consent Settlement Agreement and General Release contains the entire and only agreement between Plaintiffs and the Defendant and any oral or written promise or assurances not contained in this Agreement are waived, withdrawn, and without any legal effect.

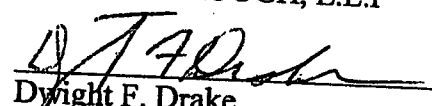
8. This Agreement shall be binding upon the Plaintiffs and their successors, subsidiaries, affiliated companies, executors, administrators and assigns, and shall be binding upon Horry County.

9. Plaintiffs shall dismiss the civil action entitled *Ventures South Carolina, LLC, d/b/a SunCruz casinos; and Diamond Gaming, LLC v. Horry County*, Civil Action No. 2007-CP-26-5108, with prejudice, and each party shall bear their own costs and attorneys fees.

10. Plaintiffs also consent to the dissolution of the Consent Order Holding Enforcement of Horry County Ordinance 174-06 in abeyance, dated August 21, 2007, upon the enactment of Horry County Ordinance 09-08 following its Third Reading.

11. This Consent Settlement Agreement and General Release is made and entered into this 6TH day of February, 2008.

NELSON MULLINS RILEY
& SCARBOROUGH, L.L.P


Dwight F. Drake

SC Bar No. 001745

C. Mitchell Brown

SC Bar No. 012872

1320 Main Street/17th Floor

PO Box 11070 (29211-1070)

Columbia, SC 29201

(803) 799-2000

Attorneys for Ventures South
Carolina, LLC d/b/a SunCruz
Casinos and Gaming, LLC

THOMPSON & HENRY, P.A

By: Emma Ruth Brittain
Emma Ruth Brittain

SC Bar No. 5298

Charles B. Jordan, Jr.

SC Bar No. 11708

1314 Professional Drive

PO Box 1290

Myrtle Beach, South Carolina 29578

(843) 692-2628

By: John L. Weaver

John L. Weaver, Esquire

Horry County Attorney

Government & Justice Center

PO Box 1236

1301 2nd Avenue

Conway, SC 29526

Attorneys for Horry County

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

HORRY COUNTY, a Body Politic

☒ Plaintiff

v.

AQUASINO PARTNERS OF SOUTH CAROLINA,
LLC, Et Al.

☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2011-CP-26-9457

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

Philip C. Thompson, Bar No. 11062

Address: Thompson & Henry, P.A., P.O. Box 1740,
Conway, South Carolina 29528

phone: 843-248-5741 fax: 843-248-6396

e-mail: pthompson@thompsonlaw.com other:

Defendant's Attorney:

J. Todd Kincannon, Bar No.

Address: P.O. Box 7901, Columbia, South Carolina
29202

phone: 877-992-6878 fax:

e-mail: todd@thekincannonfirm.com other:

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Application for Appointment of Receiver

Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

February 27, 2012
Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ 25.00

☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support

(check reason) ☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached
order.

☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Collected by:

Date Filed:

☐ MOTION FEE COLLECTED: 25.00

☐ CONTESTED - AMOUNT DUE:

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
OF THE FIFTEENTH JUDICIAL CIRCUIT
Civil Action No: 2011-CP - 26- 9457

Horry County, a Body Politic ,

Petitioner(s)

vs.

APPLICATION FOR
APPOINTMENT OF RECEIVER

Aquasino Partners of South Carolina, LLC,
Suncruz Casino Cruises, LLC, Ventures South
Carolina, LLC, Suncruz Casinos, LLC, and
Highland Park Real Estate Development
Corporation ,

Defendant.

HORRY COUNTY
12 FEB 28 PM 3:13
MELANIE HARRIS-WARD
CLERK OF COURT

TO: THE ABOVE NAMED DEFENDANTS AND THEIR ATTORNEY, J. TODD KINCANNON, ESQUIRE:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, Horry County, a Body Politic, moves the Court, pursuant to S.C. Code Ann. § 15-65-10, *et seq.*, for the appointment of a receiver of the Defendants to collect a Seven and 00/100 (\$ 7.00) Dollar per boarding passenger, per gambling cruise surcharge owed to the County by Suncruz Casino Cruises, LLC. In support of the Motion, the Plaintiff shows the following to the Court:

1. Pursuant to Chapter 11 of Title 3 of the South Carolina Code of Laws, the South Carolina General Assembly delegated to Counties and municipalities of this State the authority to prohibit or regulate the operation of gambling vessels that are engaged in voyages that depart from the territorial waters of the state, sailing to United States or international waters, and returning to the territorial waters of the state without an intervening stop.

2. Pursuant to said authority granted to Horry County by the South Carolina

General Assembly, Horry County adopted Ordinance No. 09-08 which established a surcharge of Seven and 00/100 (\$ 7.00) Dollar per boarding passenger, per gambling cruise. A copy of said Ordinance is attached hereto as Exhibit "A", and made a part and parcel hereof. The penalty for a willful violation of the Ordinance under the South Carolina Gambling Cruise Act is One Hundred and 00/100 (\$ 100.00) Dollar per passenger for each violation, with an aggregate total of not more than Fifty Thousand and 00/100 (\$ 50,000.00) Dollars per vessel for a twenty-four (24) hour period in which the willful violation continues. In addition to this civil penalty, a violation of the ordinance vests in Horry County the authority to seek injunctive relief against any individual charged with the responsibility of operating or managing the daily business of a gambling vessel.

3. Thereafter, Horry County passed Resolution R-47-10 authorizing the Horry County Administrator to execute a Surcharge Agreement between Horry County and Suncruz Casinos, LLC. A copy of said Resolution is attached hereto as Exhibit "B", and made a part and parcel hereof.

4. On May 5, 2010, Horry County and Suncruz Casino Cruises, LLC did execute the Surcharge Agreement authorized by Resolution R-47-10 wherein and whereby Suncruz Casinos Cruises, LLC agreed to abide by all provisions of Ordinance No. 09-08 including, but not limited to the payment of the Seven and 00/100 (\$ 7.00) Dollar per boarding passenger, per gambling cruise surcharge. A copy of the Surcharge Agreement is attached hereto as Exhibit "C", and is made a part and parcel hereof.

5. Suncruz Casinos, LLC has failed and refused to pay the Seven and 00/100 (\$ 7.00) Dollar per boarding passenger, per gambling cruise surcharge as required under the Surcharge Agreement and Ordinance beginning in the month of August 2011, and continuing to present.

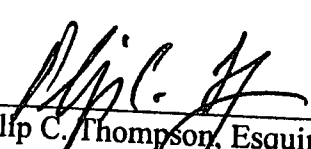
6. The Plaintiff offers the Affidavit of Barry R. Spivey, Finance Director for Horry County, in support of the Motion.

7. The above referenced facts establishes an apparent right by Horry County to the Seven and 00/100 (\$ 7.00) Dollar per boarding passenger, per gambling cruise surcharge which is the subject of the action and which is in the possession of one or more of the Defendants, such property being cash, which is easily lost or is materially injured or impaired by being spent.

WHEREFORE, the Plaintiff moves that the Court award it the following relief:

- a. enter an Order Appointing a Receiver of the Defendants to collect the Seven and 00/100 (\$7.00) Dollar per boarding passenger, per gambling cruise surcharge beginning in the month of August 2011 and continuing until a final judgment is rendered in this matter;
- b. to grant such other and further relief in favor of the Plaintiff as the Court deems just and appropriate.

Thompson & Henry, P.A.


Philip C. Thompson, Esquire
John P. Henry, Esquire
1300 Second Avenue, Third Floor
(Post Office Box 1740 - Zip 29528)
Conway, South Carolina 29526
Telephone (843) 248-5741
Facsimile (843) 248-6396
Co-Counsel for the Plaintiff

2/23, 2012
Conway, South Carolina

COUNTY OF HORRY

**IN THE COURT OF COMMON PLEAS
OF THE FIFTEENTH JUDICIAL CIRCUIT
Civil Action No: 2011-CP - 26- 9457**

Horry County, a Body Politic ,

Petitioner(s)

vs.

**Aquasino Partners of South Carolina, LLC,
Suncruz Casino Cruises, LLC, Ventures South
Carolina, LLC, Suncruz Casinos, LLC, and
Highland Park Real Estate Development
Corporation ,**

Defendant.

**MOTION TO COMPEL
DISCOVERY**

FILED
HURRY COUNTY
2012 MAY 30 PM 3:14
MELANIE HUGGINS-WARD
CLERK OF COURT

**TO: THE DEFENDANTS, AQUASINO PARTNERS OF SOUTH CAROLINA, LLC,
SUNCRUZ CASINO CRUISES, LLC, VENTURES SOUTH CAROLINA, LLC,
SUNCRUZ CASINOS, LLC, AND HIGHLAND PARK REAL ESTATE
DEVELOPMENT CORPORATION AND J. TODD KINCANNON, ATTORNEY
FOR THE DEFENDANTS:**

YOU WILL PLEASE TAKE NOTICE that the PLAINTIFF, Horry County, a body politic, by and through their undersigned attorney, will move before the Presiding Judge of the Fifteenth Judicial Circuit for an Order compelling the Defendants to answer the Plaintiffs' First set of Interrogatories to Defendants and Plaintiff's First Request for Production of Documents to Defendants, both dated November 10, 2011, and served on November 15, 2011.

By letter dated February 21, 2012, counsel for the moving party asked Defendants' counsel to provide the Plaintiff with their responses to said discovery requests within ten (10) days of February 21, 2012. By email dated March 13, 2012, Counsel for the moving party advised Counsel for the Defendants that we were in the process of drafting a Motion to Compel

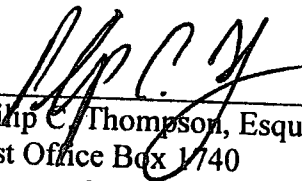
answers to Plaintiff's Discovery. By reply email dated March 21, 2012, Counsel for the Defendants responded that he was "working on the discovery responses".

To date, over two months later, Plaintiffs still have not received responses from the Defendants.

This Motion is made pursuant to Rule 37 of the South Carolina Rules of Civil Procedure. This Motion is further based upon the Defendant's failure and refusal to provide the Answers to Plaintiff's Interrogatories and Request for Production of Documents pursuant to the above referenced discovery requests after more than thirty (30) days have elapsed since service was effected.

Therefore, the Plaintiff, pursuant to the South Carolina Rules of Civil Procedure, hereby move for an Order compelling the Defendants to fully respond to Plaintiff's Interrogatories and Requests for Production of Documents to Defendants, for sanctions, and for such other and further relief as the Court may deem just and proper.

THOMPSON & HENRY, P.A.


Philip C. Thompson, Esquire
Post Office Box 1740
Conway, South Carolina 29528
Telephone (843) 248-5741
Facsimile (843) 248-6396
South Carolina Bar No.: 11062
Attorney for the Plaintiffs

5/25, 2012
Conway, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS

Horry County, a Body Politic,

Plaintiff,

v.

Aquasino Partners of South Carolina,
L.L.C.; Suncruz Casino Cruises, L.L.C.;
Ventures South Carolina, L.L.C.; Suncruz
Casinos, L.L.C.; and Highland Park Real
Estate Development Corporation,

Defendants.

Civil Action No. 2011-CP-26-9457-

ANSWER AND COUNTERCLAIM
(Jury Trial Demanded)

HORRY COUNTY
12 AUG -9 PM 3:38
MELANIE HIGGINS-WARD
CLERK OF COURT

The Defendants answer the Plaintiff's Complaint and counterclaim against the Plaintiff as follows:^{1,2,3}

FOR A FIRST DEFENSE
RESPONSE TO FACTUAL ALLEGATIONS IN THE COMPLAINT

1. Every allegation within the Complaint is denied unless herein specifically admitted.
2. The allegations of Paragraph 1 are admitted subject to the qualification that Horry County may not act pursuant to a state statute if that state statute is legally invalid.
3. In response to Paragraph 2, and as established by the exhibits to the Plaintiff's own Complaint, the Defendants assert that SunCruz Casino Cruises, LLC ("SCC") is the

¹ With regard to the Answer and Counterclaim, any and all inconsistent material is pled in the alternative. Such inconsistent material may—or may not—be specifically designated as such. Further, any allegations of intentional conduct are alternatively pled as negligent, grossly negligent, or reckless conduct.

² To the extent material appearing herein is inconsistent with existing law, Defendants respectfully request to argue in good faith for a change in the law.

³ Dates, times, and locations given are approximate.

only proper defendant to this action. SCC is not affiliated with any of the other entities in any way legally relevant to this action, nor is SCC a successor in interest to any of the other entities in any way legally relevant to this action. Defendants assert that Plaintiff recognized this fact when it entered into the Surcharge Agreement exclusively with SCC dated May 5, 2010 and attached as an exhibit to the Plaintiff's Complaint. No other named defendants are parties to that Surcharge Agreement.

4. The allegations of Paragraph 3 are admitted only as to Defendant SCC.

5. With regard to the allegations of Paragraph 4, Defendant SCC operates under the following provisions of State and local law: (1) The Gambling Cruise Act codified at Title 3, Chapter 11 of the South Carolina Code of Laws; (2) Horry County Resolution R-47-10; and (3) Horry County Ordinance 09-08 with the exception of Section 4. In addition, Defendant SCC is a party to the Surcharge Agreement of May 5, 2010. However, Defendant SCC is not a party to the Consent Settlement Agreement and General Release of February 6, 2008, and Defendant SCC denies that it is in any way bound by the terms of that document.

6. The allegations of Paragraph 5 are legal conclusions to which no response is required. To the extent a response is required, Defendant SCC craves reference to the writings, which speak for themselves. Defendant SCC denies that the per-passenger fee is lawful for reasons described herein.

7. The allegations of Paragraph 6 are admitted subject to the right of all defendants other than SCC to challenge Plaintiff's assertion that they are proper parties to this matter.

8. In response to Paragraph 7, the applicable paragraphs in this Answer are re-

asserted.

9. In response to Paragraph 8, Defendants admit the Plaintiff is a signatory to the two agreements referenced. However, Defendant SCC—the only proper party to this lawsuit—is not a signatory to the Consent Settlement Agreement and General Release of February 6, 2008. Defendant SCC is a signatory to the Surcharge Agreement of May 5, 2010, however SCC denies that the Surcharge Agreement of May 5, 2010 is supported by valuable consideration.

10. In response to Paragraphs 9 through 12, Defendant SCC denies that it made any promises whatsoever within the Consent Settlement Agreement and General Release of February 6, 2008, as Defendant SCC was not a party to that agreement. Defendant SCC is a signatory to the Surcharge Agreement of May 5, 2010, however Defendant SCC agreed only that certain provisions of Horry County Ordinance 09-08 would be applicable to it. At no point did Defendant SCC agree to wait any right to challenge the legality of Horry County Ordinance 09-08 or any South Carolina statutes. Further, Section 6 of Horry County Ordinance 09-08 specifically provides that it may be challenged.

11. In response to Paragraphs 13, 14, and 15, Defendant SCC admits it has ceased remitting the \$7 per-passenger fee to the Plaintiff but avers that it has done so because it is economically incapable of doing so and remaining in business. Further, Defendant SCC avers that the statute, ordinances, and Surcharge Agreement of May 5, 2010 are void and invalid. Therefore, Defendant SCC has no legal obligation to remit any \$7 per-passenger fee to Plaintiff and, in fact, Plaintiff has an obligation to return all \$7 per-passenger fees that Plaintiff has so far received from Defendant SCC.

12. In response to Paragraph 16, Defendant SCC again notes that it is not a party to

and is therefore not bound by the Consent Settlement Agreement and General Release of February 6, 2008. Defendant SCC agrees that it is a signatory to the Surcharge Agreement of May 5, 2010 but denies that such Agreement is valid and enforceable. Further, even if the Surcharge Agreement of May 5, 2010 is valid and enforceable, in no way does that agreement prohibit Defendant SCC from taking the position that Horry County Ordinance 09-08 is invalid. Further, even if the agreement did provide that—and it does not—such provision would itself be invalid and unenforceable. Beyond that, Horry County Ordinance 09-08 itself recognizes that it may be subject to legal challenge.

13. In response to Paragraph 17, Defendant SCC denies that Plaintiff has been damaged because Plaintiff's claims are themselves unlawful.

14. In response to Paragraph 18, Defendant SCC again notes that it is not a party to and is therefore not bound by the Consent Settlement Agreement and General Release of February 6, 2008. As to the Surcharge Agreement of May 5, 2010, that agreement requires no action whatsoever by the Plaintiff. The Plaintiff's only affirmative obligation—to the extent it can be called an affirmative obligation—under the agreement is to accept money sent to Plaintiff by Defendant SCC. This is the basis of Defendant SCC's contention that the Surcharge Agreement of May 5, 2010 is invalid for lack of consideration.

15. No response is required to Paragraph 19. However, Defendants nonetheless deny that Plaintiff is entitled to any relief whatsoever.

16. In response to Paragraph 20, the applicable paragraphs in this Answer are re-asserted.

17. In response to Paragraph 21, Defendant SCC denies in the strongest terms

possible that it has dealt with Plaintiff dishonestly or fraudulently in any way, shape, or form and demands strict proof thereof. Without waiving the right to maintain the inadmissibility of settlement discussions under the South Carolina Rules of Evidence, Defendant SCC avers that it has been forthcoming with Plaintiff at all times as to its status and has attempted in good faith to work with Plaintiff to resolve this matter. However, Defendant SCC avers as a defense that it is Plaintiff, through a former agent, who dealt dishonestly with Defendant SCC. Defendant SCC does not wish to pursue a claim based upon this dishonesty but nonetheless asserts it solely in defense of Plaintiff's baseless and false claims that Defendant SCC has dealt with Plaintiff in a dishonest or fraudulent way.

18. In further response to Paragraph 21, Defendant SCC notes that Plaintiff claims the alleged fraudulent and dishonest acts are "more completely described" elsewhere in the Complaint, yet this is not the case. Nowhere in the Complaint does Plaintiff in any way allege facts establishing any dishonest or fraud by Defendant SCC or any of the Defendants. Plaintiff's allegations as to dishonesty and fraud are purely conclusory and without any factual basis in the pleading.

19. In response to Paragraph 22, Defendants deny that Plaintiff has been in any way harmed because Defendants have no lawful duty to make any of the claimed remittances to Plaintiff.

20. No response is required to Paragraph 23. However, Defendants nonetheless deny that Plaintiff is entitled to any relief whatsoever.

21. In response to Paragraph 24, the applicable paragraphs in this Answer are re-asserted.

22. In response to Paragraph 25, Defendant SCC again notes that it was not a party to the Consent Settlement Agreement and General Release of February 6, 2008. So far as the Surcharge Agreement of May 5, 2010 is concerned, Defendant SCC agrees that at all points in time, Defendant SCC has intended to follow the law and the legally enforceable portions of the agreement. In fact, without waiving the attorney-client privilege Defendant SCC avers that it was not aware that provisions of the agreement were legally unenforceable. Further, under Plaintiff's theory, any breach of contract is automatically fraud, which is clearly not the law.

23. In response to Paragraphs 26 and 27, Defendant SCC again notes that it was not a party to the Consent Settlement Agreement and General Release of February 6, 2008. Further, Defendant SCC denies in the strongest terms that it in any way, shape, or form, engaged in the conduct alleged in the paragraph and demands strict proof thereof. Further, Defendant SCC notes that it remitted the \$7 per-passenger payments referenced in Horry County Ordinance 09-08 for a substantial period of time before economic conditions made further payments impossible. Not only are the allegations of Paragraph 26 not supported by any well-pleaded factual allegations, they are directly contradicted by the actual facts of the case.

24. No response is required to Paragraph 28. However, Defendants nonetheless deny that Plaintiff is entitled to any relief whatsoever.

25. In response to Paragraph 29, the applicable paragraphs in this Answer are re-asserted.

26. Paragraphs 30, 31, 32, 33, and 34 are denied.

27. In response to Paragraph 35, the applicable paragraphs in this Answer are re-

asserted.

28. Paragraphs 36, 37, 38, 39, 40, 41, and 42 are denied.

29. In response to Paragraph 43, the applicable paragraphs in this Answer are re-asserted.

30. Paragraphs 44, 45, 46, 47, 48, and 49 are denied.

31. In response to Paragraph 50, the applicable paragraphs in this Answer are re-asserted.

32. Paragraphs 51, 52, and 53 are denied.

33. In response to Paragraph 54, the applicable paragraphs in this Answer are re-asserted.

34. Paragraphs 55, 56, 57, 58, 59, 60, 61, and 62 are denied.

FOR A SECOND DEFENSE
PLEADING FAILURE

35. The Complaint contains no well-pleaded factual allegations in support of any claims against Defendants other than SCC. In fact, the documents attached as exhibits to the Complaint, which form a part of the Complaint, show that SCC is unquestionably the only proper defendant in this action.

36. The Complaint contains no well-pleaded factual allegations in support of any of the causes of action other than breach of contract.

37. The Complaint fails to plead fraud with particularity.

38. As to the breach of fiduciary duty cause of action, the documents attached to the Complaint establish without question that there is no fiduciary duty whatsoever in this case.

39. As to the conversion claim, failure to pay a debt is not conversion. Further, the

conversion claim suggests that the \$7 per passenger fee is collected from each passenger who boards the boat. This is not accurate as demonstrated by the exhibits to the Complaint, specifically Ordinance 09-08. Ordinance 09-08 specifically states that the per-passenger fee is to be derived from the gross gambling proceeds, not from boarding ticket fees. In fact, the Ordinance specifically waives Plaintiff's right to collect any fee out of boarding ticket fees.

**FOR A THIRD DEFENSE AND FOR A COUNTERCLAIM CAUSE OF ACTION
INVALIDITY OF ORDINANCE 09-08**

40. Horry County Ordinance 09-08 establishes a method for assessing surcharges on gambling vessels that is forbidden by the South Carolina Gambling Cruise Act, codified in Chapter 11 of Title 3.

41. S.C. Code § 3-11-400(c)(2) establishes exactly two methods by which local governments can assess surcharges on gambling cruises:

If a county or municipality does not adopt an ordinance prohibiting a gambling vessel from operating, or if a gambling vessel other than a passenger cruise liner is permitted to operate because that gambling vessel, on each cruise, makes an intervening stop in another State, possession of the United States, or foreign country, the county or municipality may assess a surcharge of up to ten percent of each ticket sold per gambling cruise, and a surcharge of up to five percent of the gross proceeds of each gambling vessel.

42. The General Assembly intended the two methods described in Section 3-11-400(c)(2) to be the exclusive methods by which local governments can assess surcharges on gambling vessels.

43. The method assessed by Horry County's Ordinance 09-08 does not fit either of the two methods. It is a flat-fee charge per passenger, while the two methods allowed by statute are 10% of ticket revenue and 5% of gambling revenue. A \$7 per passenger

surcharge does not comply with either of these two options. Neither flat dollar amount surcharges nor per passenger surcharges are allowed.

44. Because Ordinance 09-08 fails to assesses surcharges in one of the two exclusive ways provided by statute, the portion of Ordinance 09-08 that assesses the \$7 per passenger surcharge is invalid.

45. The Surcharge Agreement calls for SCC to abide by certain terms of Ordinance 09-08.

46. The Surcharge Agreement also provides that it must be construed and enforced in accordance with the laws of the State of South Carolina. Paragraph 3 of the Surcharge Agreement provides: "This Agreement shall be construed and enforced in accordance with the laws of the State of South Carolina."

47. While the Surcharge Agreement calls for SCC to abide by certain terms of Ordinance 09-08, the express terms of the Surcharge Agreement limit this promise solely to the terms of Ordinance 09-08 that comply with the laws of the State of South Carolina. Therefore, if any portion of Ordinance 09-08 violates the laws of the State of South Carolina, the Surcharge Agreement does not bind the parties to that portion of Ordinance 09-08.

48. Because the \$7 per passenger surcharge established by Ordinance 09-08 is not a lawful surcharge under the laws of the State of South Carolina, the Surcharge Agreement must be construed to exclude the illegal surcharge and cannot be enforced to collect the illegal surcharge.

49. Further, Section 6 of Ordinance 09-08 expressly provides for the possibility that provisions of the Ordinance might be "deemed or found to conflict with a provision of

South Carolina law, or other preemptive legal principle[.]” Ordinance 09-08 establishes that in that situation, that illegal “part of this Ordinance **shall be deemed ineffective**, but remaining parts of this Ordinance shall remain in full force and effect.” (emphasis added).

50. Paragraph 3 of the Surcharge Agreement and Section 6 of Ordinance 09-08 each establish that the intent of the parties was that if any part of either of those instruments failed to comply with South Carolina law, that part should be severed and deemed invalid and unenforceable with the remaining terms continuing in force.

51. An agreement to be bound by an illegal ordinance is unenforceable in any event because it violates public policy. Either the Surcharge Agreement must be construed such that it does not require compliance with any illegal provisions of Ordinance 09-08 or the Surcharge Agreement itself is void due to illegality and public policy.

52. Defendants request the Court strike the illegal \$7 per passenger surcharge from Ordinance 09-08 and find that Paragraph 3 of the Surcharge Agreement does not require payment of the illegal \$7 per passenger surcharge by SCC or allow the enforcement of those illegal terms against SCC.

53. Defendants also request the Court order Horry County to refund all illegal \$7 per passenger surcharges collected from SCC thus far. Neither Horry County nor SCC intended that the Surcharge Agreement operate to collect illegal fees, and the Surcharge Agreement expressly provides that it cannot operate in such a fashion. Accordingly, the Surcharge Agreement requires that any fees collected in violation of South Carolina law be returned to SCC.

54. Horry County’s refusal to return the illegal per-passenger surcharges constitutes

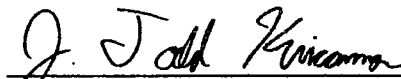
breach of contract under the Surcharge Agreement. The Surcharge Agreement requires the parties to operate under the agreement in a manner consistent with South Carolina law. Horry County has construed and enforced the agreement in a manner inconsistent with South Carolina law by requiring SCC to pay per-passenger surcharges that violate S.C. Code § 3-11-400(c)(2). Accordingly, Horry County must return all illegally collected per-passenger surcharges along with prejudgment interest.

FOR A FOURTH DEFENSE
LACK OF CONSIDERATION

55. The Surcharge Agreement is void for lack of consideration.

PRAYER FOR RELIEF

Wherefore, having fully answered pled the counterclaim, the Defendants demand a jury trial on all issues properly triable by jury and pray for a judgment awarding judgment to Defendants on Plaintiff's claims and all recoveries of actual and exemplary damages, any and all equitable relief requested or otherwise available, attorney's fees, and such other relief as is available under law.



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Attorney for Defendants

August 7, 2012

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) OF THE FIFTEENTH JUDICIAL CIRCUIT
) Civil Action No: 2011-CP - 26- 9457

Horry County, a Body Politic ,

Plaintiff,

vs.

Aquasino Partners of South Carolina, LLC,
Suncruz Casino Cruises, LLC, Ventures South
Carolina, LLC, Suncruz Casinos, LLC, and
Highland Park Real Estate Development
Corporation ,

Defendant.

REPLY TO DEFENDANTS'
COUNTERCLAIM

FILED
HORRY COUNTY
2012 AUG 31 PM 3:39
MELANIE HUGGINS-WARD
CLERK OF COURT

The Plaintiff, replying to the Defendants' Counterclaim, would respectfully show up to this
honorable Court as follows:

1. Each and every allegation of the Defendants' Counterclaim which is not hereinafter specifically admitted, modified or explained is denied and strict proof is demanded thereof.

FOR A FIRST DEFENSE

2. The allegations contained in paragraphs one (1) through thirty-nine (39) of the Defendants' Answer and Counterclaim contain the Defendants' Answer to the Plaintiff's Complaint, and therefore does not require a reply from the Plaintiff. However, to the extent any such allegation could be construed to constitute a cause of action against the Plaintiff, same is denied and strict proof is demanded thereof.

3. The Plaintiff denies the allegations contained in paragraph forty (40) of the Defendants' Counterclaim and demands strict proof thereof.

4. The Plaintiff admits so much of the allegations contained in paragraph forty-one (41) as same sets forth the language contained in S.C. Code §3-11-400(c)(2). The Plaintiff denies the remaining allegations contained in paragraph forty-one (41) and demands strict proof thereof. Further, and by way of explanation, S. C. Code §3-11-400(c)(2) sets forth a maximum surcharge that can be charged in the absence of an express agreement between the parties to the contrary.

5. The Plaintiff denies the allegations contained in paragraph forty-two (42) of the Defendants' Counterclaim and demands strict proof thereof.

6. The Plaintiff admits so much of the allegations contained in paragraph forty-three (43) as same states that Horry County's Ordinance 09-08 is a Seven and 00/100 (\$ 7.00) Dollar per passenger flat fee surcharge. The Plaintiff denies the remaining allegations contained in paragraph forty-three (43) of the Defendants' Counterclaim and demands strict proof thereof.

7. The Plaintiff denies the allegations contained in paragraph forty-four (44) of the Defendants' Counterclaim and demands strict proof thereof.

8. The Plaintiff admits the allegations contained in paragraphs forty-five (45) and forty-six (46) of the Defendants' Counterclaim.

9. The Plaintiff denies the allegations contained in paragraphs forty-seven (47) and forty-eight (48) and demands strict proof thereof.

10. The Plaintiff admits so much of the allegations contained in paragraph forty-nine (49) that are direct quotes of portions of Ordinance 09-08 with emphasis added. The Plaintiff denies the remaining allegations contained in paragraph forty-nine (49) and demands strict proof thereof.

11. The Plaintiff admits so much of the allegations contained in paragraph fifty (50) as are consistent with paragraph three (3) of the Surcharge Agreement and section six (6) of

Ordinance 09-08, which documents speak for themselves. The Plaintiff denies the remaining allegations contained in paragraph fifty (50) and demands strict proof thereof.

12. The Plaintiff denies the allegations contained in paragraphs fifty-one (51), fifty-two (52), fifty-three (53), fifty-four (54), and fifty-five (55), and demands strict proof thereof.

FOR A SECOND DEFENSE

13. Each and every allegation of the First Defense is incorporated herein when not inconsistent herewith.

14. The Defendants voluntarily abandoned and relinquished any and all right to pursue their counterclaims when they entered into and executed the Surcharge Agreement, and fully performed under said Surcharge Agreement for approximately fifteen (15) months.

15. Therefore, the Plaintiff pleads waiver as a complete and absolute bar to the Defendants' Counterclaims.

FOR A THIRD DEFENSE

16. Each and every allegation of the First and Second Defenses is incorporated herein when not inconsistent herewith.

17. When the Defendants entered into the Surcharge Agreement and began performance under said Surcharge Agreement, the Defendant conveyed the impression that the facts were otherwise than and inconsistent with those which the Defendant is subsequently attempting to assert in its counterclaims.

18. Defendants intended or least expected that the Plaintiff would act upon the conduct of the Defendants.

19. The Defendants had knowledge, either actual or constructive, of the true facts, that being that they would not continue to pay the surcharge as they promised under the Surcharge Agreement.

20. The Plaintiff was without knowledge or the means of knowledge of the facts of the conduct intended or expected by the Defendants.

21. The Plaintiff relied upon the Defendants' conduct.

22. The Plaintiff suffered a detrimental change of position by entering into a Surcharge Agreement with the Defendants as a result of the Plaintiff's reliance upon the Defendants' conduct in that it entered into a contract not knowing that it would be breached by the Defendants and that the Plaintiff would have to engage in litigation to enforce same.

23. Therefore, the Plaintiff pleads equitable estoppel as a complete defense and total bar of the Defendants' counterclaims.

FOR A FOURTH DEFENSE

24. Each and every allegation of the First, Second, and Third Defenses is incorporated herein when not inconsistent herewith.

25. The Defendants, in entering into the Surcharge Agreement and paying the surcharges required thereunder for a period of fifteen (15) months before breaching the Surcharge Agreement by not paying the surcharges required thereunder, and then waiting another approximately twelve (12) months before setting forth their counterclaims is an unreasonable delay in the Defendants assertion of an alleged right which has resulted in prejudice to the Plaintiff.

26. Therefore, the Plaintiff pleads laches as a complete defense and bar to the Defendants' counterclaims.

FOR A FIFTH DEFENSE

27. Each and every allegation of the First, Second, Third, and Fourth Defenses is incorporated herein when not inconsistent herewith.

28. The Plaintiff pleads unclean hands as a complete defense and total bar to the Defendants' counterclaims.

FOR A SIXTH DEFENSE

29. Each and every allegation of the First, Second, Third, Fourth, and Fifth Defenses is incorporated herein when not inconsistent herewith.

30. Upon information and belief, one or more of the Defendants, if not all, are made up of and consist of the same Officers, Agents, Employees, Shareholders, Members, or Directors of the Plaintiffs in the case of *Ventures South Carolina, LLC, d/b/a Suncruz Casinos; and Diamond Gaming, LLC vs. Horry County*, Civil Action No.: 2007-CP-26-5108, filed in the office of the Clerk of Court for Horry County, South Carolina, or are so amalgamated and/or the alter egos of one another so as to be one and the same.

31. The issues raised in Defendants' counterclaim were litigated and decided in the 2007 action as evidenced by that Consent Settlement Agreement and General Release filed therein.

32. Therefore, Plaintiff pleads collateral estoppel/issue preclusion as a complete defense and total bar to Defendants' counterclaims.

FOR A SEVENTH DEFENSE

33. Each and every allegation of the First, Second, Third, Fourth, Fifth, and Sixth Defenses is incorporated herein when not inconsistent herewith.

34. Upon information and belief, one or more of the Defendants, if not all, are made up of and consist of the same Officers, Agents, Employees, Shareholders, Members, or Directors of the Plaintiffs in the case of *Ventures South Carolina, LLC, d/b/a Suncruz Casinos; and Diamond Gaming, LLC vs. Horry County*, Civil Action No.: 2007-CP-26-5108, filed in the office

of the Clerk of Court for Horry County, South Carolina, or are so amalgamated and/or the alter egos of one another as to be one and the same.

35. The counterclaims asserted by the Defendants arise out of the same transactions or occurrences that were the subject of the prior 2007 action.

36. Therefore, the Plaintiff pleads the doctrine of res judicata/claim preclusion as a complete defense and total bar to Defendants counterclaims.

FOR AN EIGHTH DEFENSE

37. Each and every allegation of the First, Second, Third, Fourth, Fifth, Sixth, and Seventh Defenses is incorporated herein when not inconsistent herewith.

38. Defendants' counterclaims fail to state facts sufficient to constitute a cause of action against the Plaintiff pursuant to Rule 12(b)(6), SCRCF, and should be dismissed.

FOR AN NINTH DEFENSE

39. Each and every allegation of the First, Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Defenses is incorporated herein when not inconsistent herewith.

40. The Plaintiff pleads release as complete defense and total bar to Defendants' counterclaim based upon the Consent Settlement Agreement and General Release as executed as part of the resolution of the prior 2007 action.

FOR A TENTH DEFENSE

41. Each and every allegation of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Ninth Defenses is incorporated herein when not inconsistent herewith.

42. Plaintiff asserts all allegations and causes of action set forth in its Complaint and Amended Complaint in this action as defenses and affirmative defenses to the Defendants' counterclaim herein.

FOR AN ELEVENTH DEFENSE

43. Each and every allegation of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, and Tenth Defenses is incorporated herein when not inconsistent herewith.

44. Plaintiff hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery and thus reserves the right to amend its reply to assert any such defense(s).

FOR A TWELFTH DEFENSE

44. Each and every allegation of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Defenses is incorporated herein when not inconsistent herewith.

45. The Plaintiff pleads the applicable statute of limitations and/or the applicable statute of repose as a complete defense and total bar to Defendants' counterclaim.

WHEREFORE, having fully replied to the Defendants' counterclaims, the Plaintiff prays:

- a. that the Defendants' counterclaims be dismissed;
- b. for the costs and attorney's fees in defending said counterclaims; and,
- c. for judgment as prayed for in the Plaintiff's Complaint and Amended Complaint.

Thompson & Henry, P.A.


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Co-Counsel for the Plaintiff

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8/31, 2012
Conway, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

FIFTEENTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2011-CP-26-9457

HORRY COUNTY, A BODY POLITIC,

Plaintiff,

v.

AQUASINO PARTNERS OF SOUTH
CAROLINA, L.L.C., SUNCRUZ CASINO
CRUISES, L.L.C., VENTURES SOUTH
CAROLINA, L.L.C., SUNCRUZ
CASINOS, L.L.C., AND HIGHLAND
PARK REAL ESTATE DEVELOPMENT
CORPORATION,

Defendants.

AMENDED SUMMONS

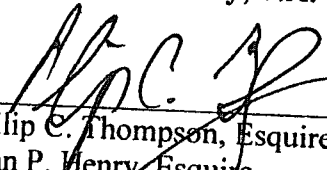
1) BREACH OF CONTRACT; 2) BREACH
OF CONTRACT ACCOMPANIED BY
FRAUDULENT ACT; 3) FRAUD;
4) NEGLIGENT MISREPRESENTATION;
5) BREACH OF FIDUCIARY DUTY;
6) CONVERSION; 7) UNJUST
ENRICHMENT; 8) INJUNCTION;
9) RECEIVERSHIP; 10) PROMISSORY
ESTOPPEL; 11) BREACH OF THE
IMPLIED COVENANT OF GOOD FAITH
AND FAIR DEALING; 12) PENALTIES
PURSUANT TO S.C. CODE § 3-11-210

JURY TRIAL DEMANDED

**TO: THE DEFENDANTS ABOVE NAMED AND THEIR ATTORNEYS, J. TODD
KINCANNON, ESQUIRE AND J. TODD RUTHERFORD, ESQUIRE:**

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint in
this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to
the said Amended Complaint on the subscribers at their office, at 1300 Second Avenue, 3rd Floor,
Conway, South Carolina 29526 or Post Office Box 1740, Conway, South Carolina 29528, within
thirty (30) days after the service hereof; exclusive of the day of such service. Upon Defendants
failure to appear and defend, Judgment by default shall be rendered against the Defendants for the
relief demanded in the Amended Complaint.

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Co-Counsel for the Plaintiff

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FILED
HORRY COUNTY
2012 AUG 31 PM 3:18
MELANIE HUGGINS
CLERK OF COURT

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8/31, 2012
Conway, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

FIFTEENTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2011-CP-26-9457

HORRY COUNTY, A BODY POLITIC,

Plaintiff,

v.

AQUASINO PARTNERS OF SOUTH
CAROLINA, L.L.C., SUNCRUZ CASINO
CRUISES, L.L.C., VENTURES SOUTH
CAROLINA, L.L.C., SUNCRUZ
CASINOS, L.L.C., AND HIGHLAND
PARK REAL ESTATE DEVELOPMENT
CORPORATION,

Defendants.

AMENDED COMPLAINT

1) BREACH OF CONTRACT; 2) BREACH
OF CONTRACT ACCOMPANIED BY
FRAUDULENT ACT; 3) FRAUD;
4) NEGLIGENT MISREPRESENTATION;
5) BREACH OF FIDUCIARY DUTY;
6) CONVERSION; 7) UNLAWFUL
ENRICHMENT; 8) INJUNCTION;
9) RECEIVERSHIP; 10) PROMISSORY
ESTOPPEL; 11) BREACH OF THE
IMPLIED COVENANT OF GOOD FAITH
AND FAIR DEALING; 12) PENALTIES
PURSUANT TO S.C. CODE § 3-11-210

(JURY TRIAL DEMANDED)

THE PLAINTIFF, by and through its undersigned attorney, Complaining of the Defendants herein, would respectfully allege and show unto this Honorable Court as follows:

1. The Plaintiff, Horry County, (hereinafter "County") a body politic, is an entity with authority to govern within the geographical boundaries of Horry County, South Carolina, pursuant to the South Carolina Constitution, and the Code of Laws of South Carolina, with such powers to include, but not limited to those enumerated within Title 4, Chapter 9 the Code of Laws of South Carolina 1976, (as amended).

2. Upon information and belief, the Defendants, Aquasino Partners of South Carolina, L.L.C., Suncruz Casino Cruises, L.L.C., Ventures South Carolina, L.L.C., Suncruz

Horry County, a body Politic v. Aquasino Partners of South Carolina, LLC, et al.
Civil Action No.: 2011-CP-26-9457
AMENDED COMPLAINT

Casinos, L.L.C. and Highland Park Real Estate Development Corporation as successors in interest and/or affiliates of one another, are limited liability companies and corporations duly organized and existing pursuant to the laws of one of the states of the United States and at all times relevant hereto were conducting business in Horry County, South Carolina. Upon information and belief, said Defendants are an amalgamation of corporate interests, entities, and activities so as to blur the legal distinction between the corporations and their activities and are the alter egos of one another.

3. Upon information and belief, the Defendants own and operate a gaming boat and business which conducts a "cruise to nowhere": Passengers board the vessel from real property located within Horry County, sail beyond the seaward territorial boundaries of Horry County and South Carolina to operate their gambling business, and return to Horry County where the passengers disembark having visited no intermediate jurisdiction or destination.

4. Upon information and belief, the business described above operates under provisions of State and local law including Title 3, Chapter 11, "The Gambling Cruise Act", as applied in duly ordained, enacted, and ordered Horry County Ordinance 09-08, Horry County Resolution R-47-10, and under signed agreements, entitled "Surcharge Agreement" dated May 5, 2010 and Consent Settlement Agreement and General Release dated February 6, 2008. Said S.C. Code provisions, County Ordinance and Resolution, and agreements referenced above are attached hereto and incorporated herein by reference.

5. Relevant portions of Ordinance 09-08, Resolution R-47-10, and the agreements referred to above establish a per-passenger fee by law and contract which is to be collected by

Defendants from their passengers/customers and then the collected fees are to be forwarded, passed-on, and transferred to Horry County.

6. This Honorable Court has subject matter jurisdiction and personal jurisdiction of all matters and all Defendants as set forth hereinabove.

FOR A FIRST CAUSE OF ACTION

(BREACH OF CONTRACT)

7. Each and every allegation and fact set forth above is incorporated herein by reference as if realleged herein verbatim.

8. County, for the valuable consideration of allowing the Defendants to operate a casino cruise ship in Horry County, entered into the agreements referenced above for the Defendants to operate a casino cruise ship originating from within and returning to the territorial boundaries of Horry County.

9. As a material provision of the agreements, the Defendants promised, expressly and impliedly, that they would operate within the parameters set forth within State law, County Ordinances and Resolutions, and the agreements.

10. A part and parcel to these agreements as referenced is Horry County Ordinance 09-08 which establishes the surcharge for gambling businesses operating from within Horry County, S.C.

11. The agreement between the Defendants and the Plaintiff entitled "Surcharge Agreement" includes a material term which requires Defendants to collect a surcharge from each

boarding passenger in the amount of \$7.00 which shall be remitted to the County by the 20th of each succeeding month.

12. The agreement between the Defendants and the Plaintiff entitled "Consent Settlement Agreement and General Release" includes terms in which the parties agree to the surcharge provisions of Horry County Ordinance 09-08 and the terms and conditions employed therein.

13. During the term of the agreements, Defendants have continued to collect, but have ceased to pay to the County the surcharges they have collected as they previously indicated and agreed.

14. Plaintiff has made a demand for payment to the Defendants.

15. Defendants have willfully failed and refused to make payments since August 1, 2011, and continue to fail and refuse to make payments per the agreements and demand in violation of the agreements and County Ordinance.

16. As a result of such failure and refusal, the Defendants have breached their agreements with the Plaintiff.

17. As a direct and proximate result of Defendants' breach, Plaintiff has suffered monetary losses as a direct and proximate result.

18. Plaintiff has duly performed all the conditions of such agreements on its part, or by the Defendants' actions and conduct of the Defendants, was prevented from doing so.

19. By reason of the foregoing facts, the Plaintiff is informed and believes it is entitled to a judgment against the Defendants for the liquidated damages stipulated in the

agreements, as well as actual, incidental, and consequential damages incurred by the Plaintiff as a result of the Defendants' breach, together with pre-judgment interest.

FOR A SECOND CAUSE OF ACTION

(BREACH OF CONTRACT ACCOMPANIED BY FRAUDULENT ACT)

20. This Plaintiff realleges all of the allegations contained hereinabove as fully as though repeated verbatim.

21. The heretofore mentioned breaches on the part of the Defendants were accompanied by fraudulent intent relating to the breaching of the contracts and fraudulent acts accompanying the breaches, in that the Defendants never intended to complete the agreements under their terms, the Defendants have collected and continue to collect the passenger boarding fees, and continue to represent to passengers that such fees are required to be remitted to Plaintiff, have refused to remit the fees upon request, and have unfairly and unlawfully appropriated Plaintiff's property by design, have dealt with, and continue to deal with Plaintiff dishonestly and unfairly, and operated and continue to operate by way of fraudulent acts, omissions, and concealment as more completely described herein.

22. As a direct and proximate result of the aforesaid breach of agreements accompanied by fraudulent acts on the part of the Defendants, this Plaintiff has incurred and will incur damages as more fully described herein.

23. As a result of the foregoing, the Plaintiff is informed and believes that it is entitled to a judgment against the Defendants for the liquidated damages stipulated in the agreements, as well as actual, incidental, and consequential damages incurred and to be incurred by this Plaintiff, and for such punitive damages as may be deemed appropriate by the court and

jury, together with pre-judgment interest.

FOR A THIRD CAUSE OF ACTION

(FRAUD)

24. This Plaintiff realleges all of the allegations contained hereinabove as fully as though repeated verbatim.

25. Prior to entering into the agreements referred to hereinabove, the Defendants represented to the Plaintiff that they would act in such a manner consistent with the provisions of the agreements, local legislation, State law, and State and Federal constitutional provisions.

26. Never having intended to comply with the terms and conditions of the agreements, such material representations made by the Defendants were false, known by the Defendants to be false when made or made with a reckless disregard of their truth or falsity, and were made by the Defendants with the intent that they should be acted upon by the Plaintiff.

27. The Plaintiff was not aware of the falsity of those representations made by the Defendants, referred to hereinabove, had a right to rely thereupon and in reasonable reliance on the truth of the representations, entered into agreements with the Defendants, to the Plaintiff's consequent damage.

28. By reason of the foregoing, the Plaintiff is informed and believes that it is entitled to a judgment against the Defendants for actual and punitive damages.

FOR A FOURTH CAUSE OF ACTION

(NEGLIGENT MISREPRESENTATION)

29. The Plaintiff realleges all of the allegations contained hereinabove as fully as

though repeated verbatim.

30. As set forth hereinabove, the Defendants had a pecuniary interest in making representations to Plaintiff, and giving information concerning the agreements entered into.

31. The Defendants owed a duty to the Plaintiff, if they gave representations or information at all, to do so with due care, and to see that they communicated truthful and complete information to the Plaintiff.

32. The Defendants knew that representations they made and information they provided were desired by the Plaintiff for the purpose of deciding whether to enter into agreements with the Defendants, that the Plaintiff intended to rely thereon, and that if said representations and information were false, erroneous, or incomplete, the Plaintiff would suffer damages.

33. Never having intended to comply with the terms and conditions of the agreements, said material representations made and information given by the Defendants were false, erroneous, incomplete, and negligently made by the Defendants, and at the time they were made, the Plaintiff reasonably believed them, and in justifiable reliance thereon, entered into agreements with the Defendants to its consequent pecuniary injury and damage.

34. By reason of the foregoing, the Plaintiff is informed and believes that it is entitled to a judgment against the Plaintiff for actual and punitive damages.

FOR A FIFTH CAUSE OF ACTION

(BREACH OF FIDUCIARY DUTY)

35. The Plaintiff realleges all of the allegations contained hereinabove as fully as

though repeated verbatim.

36. In entering into the agreements referred to above, the Plaintiff imposed a special confidence in the Defendants, with the justifiable belief that the Defendants were acting in the Plaintiff's interests and for its benefit as a partner to the agreements.

37. The Defendants knew of the Plaintiff's trust and confidence in them.

38. The Defendants were bound in equity and in good conscience to act in good faith and with due regard to the interests of the Plaintiff.

39. The Defendants stood in a fiduciary relationship to the Plaintiff.

40. The Defendants violated their fiduciary duty owed to the Plaintiff in particulars more fully set forth hereinabove.

41. As a proximate cause and consequent result of the breach of their fiduciary duty, the Plaintiff has suffered damages.

42. By reason of the foregoing, the Plaintiff is informed and believes that it is entitled to a judgment against the Defendants for actual and punitive damages.

FOR A SIXTH CAUSE OF ACTION

(CONVERSION)

43. The Plaintiff realleges all of the allegations contained hereinabove as fully as though repeated verbatim.

44. As described hereinabove, the Plaintiff enacted legislation and entered into contractual agreements for Defendants to operate a gambling cruise business from Horry County in exchange for the Defendants' collection of a \$7.00 per-passenger surcharge to be forwarded to

Plaintiff at regular intervals.

45. The Defendants have collected surcharges from passengers since August 1, 2011, which have not been remitted to the Plaintiff, and continue to collect but not remit monies owed to the Plaintiff.

46. The Defendants, by the aforementioned actions, omissions, and misconduct willfully and knowingly breached their agreements with the Plaintiff.

47. The Defendants have failed and refused to remit to Plaintiff the sums of money collected on behalf of the Plaintiff under their agreements despite the fact that Plaintiff has demanded payment of the same.

48. Defendants' refusal to return money rightfully belonging to the Plaintiff was done with malice, ill will or with a conscious indifference to the rights of the Plaintiff, or a reckless disregard thereof.

49. By reason of the foregoing, the Plaintiff is informed and believes that it is entitled to a judgment against Defendants in an amount equal to the monies owed to the Plaintiff per the terms of the agreements of the parties, with legal interest from the date of conversion, and such punitive damages as deemed appropriate under the circumstances.

FOR A SEVENTH CAUSE OF ACTION

(UNJUST ENRICHMENT)

50. The Plaintiff realleges all of the allegations contained hereinabove as fully as though repeated verbatim.

51. The Defendants, in collecting the above mentioned sums, pursuant to their

agreements with the Plaintiff under the circumstances set forth hereinabove, have been conferred with a non-gratuitous benefit in such amounts, that Defendants have realized such benefit, and retention by Defendants of such benefit is clearly inequitable and unjust under the circumstances.

52. The Defendants have been unjustly enriched at the expense of the Plaintiff in the amounts hereinabove set forth.

53. As a result of the foregoing, the Plaintiff is informed and believes it is entitled to a judgment against Defendants in an amount equal to the monies owed to the Plaintiff pursuant to the agreement between the parties, and prejudgment interest from the date such monies should have been paid to the date of judgment, together with attorney's fees incurred by the Plaintiff in this matter.

FOR AN EIGHTH CAUSE OF ACTION

(INJUNCTION)

54. The Plaintiff realleges all of the allegations contained hereinabove as fully as though repeated verbatim.

55. Based on the aforementioned allegations and the ongoing nature of the injury to the Plaintiff, Plaintiff seeks injunctive relief from this Court over the Defendants in the form of a temporary restraining order, a preliminary injunction, and a permanent injunction.

56. The Plaintiff has no adequate remedy other than an injunction.

57. The Plaintiff will suffer irreparable harm in the absence of an injunction.

58. It is more likely than not that the Plaintiff will prevail on the underlying merits when the matter is brought fully before this Court.

59. The benefit to the Plaintiff outweighs the burden of the Defendants.

60. The Plaintiff's right to the relief sought is clear. In addition, S.C. Code §3-11-210 gives the Plaintiff the authority to obtain injunctive relief for violation of Plaintiff's ordinance.

61. As a result of the foregoing, the Plaintiff is informed and believes it is entitled to injunctive relief in the form of a preliminary injunction to enjoin the Defendants from operating unless they to continue to collect the passenger boarding fees on behalf of the Plaintiff and pay same to Plaintiff. In the alternative, the Plaintiff requests that Defendant be ordered to post a bond with the Clerk of Court in Horry County for the value of the disputed monies ongoing, or to pledge property sufficient to ensure that the monies are available to the Plaintiff in the event of a verdict for the Plaintiff.

62. As a result of the foregoing, the Plaintiff is informed and believes it is entitled to injunctive relief in the form of a permanent injunction enjoining Defendants from operating in contravention to State law, local legislation, and agreements between the parties on an ongoing basis, and to compel Defendants to submit the previously collected surcharges to the County.

FOR AN NINTH CAUSE OF ACTION

(RECEIVERSHIP)

63. The Plaintiff realleges all of the allegations contained hereinabove as fully as though repeated verbatim.

64. Based on the aforementioned allegations, the Plaintiff is informed and believes that it has an apparent right to the Seven and 00/100 (\$ 7.00) Dollar per boarding passenger, per gambling cruise surcharge which is the subject of this action and which is in the possession of one or more of the Defendants. Such property being cash, which is easily lost or materially injured or impaired by being spent.

65. The Plaintiff is informed and believes that it is entitled to an Order appointing a Receiver of the Defendants' to collect the Seven and 00/100 (\$ 7.00) Dollar per boarding passenger, per gambling cruise surcharge beginning August 1, 2011 and continuing for so long as the Defendants own, manage, operate, maintain, or dock a gaming vessel in Horry County.

FOR A TENTH CAUSE OF ACTION

(PROMISSORY ESTOPPEL)

66. The Plaintiff realleges all of the allegations contained hereinabove as fully as though repeated verbatim.

67. The promise by the Defendants to pay the Seven and 00/100 (\$ 7.00) Dollar per boarding passenger, per gambling cruise surcharge was a promise that was unambiguous in its terms.

68. The Plaintiff relied on the promise of the Defendants to pay said surcharge, and such reliance was reasonable.

69. The Plaintiff's reliance on the Defendants promise to pay the surcharge was both expected and foreseeable.

70. The Plaintiff has suffered injury and reliance on the promise in that the revenues expected by the surcharge were included in the Plaintiff's budget and the non-payment of the surcharge has resulted in a shortfall of that budget.

71. As a result of the foregoing, the Plaintiff is informed and believes that it is entitled to judgment against the Defendants in an amount equal to the monies owed to the Plaintiff pursuant to the agreement between the parties and pre-judgment interest from the date such money should have been paid to the date of judgment, together with attorney's fees incurred by the plaintiff in this matter.

FOR AN ELEVENTH CAUSE OF ACTION

(BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING)

72. The Plaintiff realleges all of the allegations contained hereinabove as fully as though repeated verbatim.

73. The agreements above referenced contained an implied covenant of good faith and fair dealing.

74. In failing to pay the Seven and 00/100 (\$ 7.00) Dollar per boarding passenger, per gambling cruise surcharge, the Defendants have breached the implied covenant of good faith and fair dealing contained in said agreements.

75. The Plaintiff is informed and believes that it is entitled to judgment against the Defendants in an amount equal to the monies owed to the Plaintiff pursuant to the agreements between the parties, prejudgment interest from the date such monies should have been paid to the date of judgment, together with attorney's fees incurred by the Plaintiff in this matter.

FOR A TWELFTH CAUSE OF ACTION

(PENALTIES PURSUANT TO S.C. CODE §3-11-210)

76. The Plaintiff realleges all of the allegations contained hereinabove as fully as though repeated verbatim.

77. S.C. Code §3-11-210 (1976 as amended) states, in part:

“A County or Municipality adopting an ordinance regulating gambling vessels pursuant to §3-11-210 may assess only a civil penalty of not more than One Hundred and 00/100 (\$ 100.00) Dollars per passenger for each violation, with an aggregate total in penalties not to exceed Fifty Thousand and 00/100 (\$ 50,000.00) Dollars per vessel for a twenty-four (24) hour period.”

78. Upon information and belief, each time the Defendants fail to pay to the Plaintiff the Seven and 00/100 (\$ 7.00) Dollar per boarding passenger, per gambling cruise surcharge is a separate violation under S.C. Code §3-11-210.

79. The Plaintiff is informed and believes that it is entitled to penalties pursuant to S.C. Code §3-11-210 totaling in the sum of an amount produced by multiplying One Hundred and

00/100 (\$ 100.00) Dollars times the number of passengers boarding Defendants' vessel and for which the Defendants have not paid to the Plaintiff the Seven and 00/100 (\$ 7.00) Dollar per boarding passenger, per gambling cruise surcharge.

WHEREFORE, the Plaintiff prays that this Honorable Court shall inquire into the matters set forth hereinabove and issue its Order:

- a. Finding Defendants in Breach of Contract;
- b. Finding Defendants Breach of Contract is accompanied by a fraudulent act;
- c. Finding Defendants acted to defraud the Plaintiff.
- d. Finding Defendants in Breach of a Fiduciary Duty to the plaintiff;
- e. Finding Defendants have Converted Plaintiff's funds for their own use.
- f. Finding Defendants are unjustly enriched.
- g. Preliminarily and Permanently restraining and enjoining the Defendants from continued violations of the Horry County Ordinances and contract;
- h. Ordering the Defendants to segregate the identified funds in an escrow account beginning August 1, 2011 and continuing for so long as the Defendants own, manage, operate, maintain, or dock a gaming vessel in Horry County and to pay said funds to the Plaintiff;
- h. Finding that the liquidated damages provisions of the agreements are ripe to impose against the Defendants and awarding such to the Plaintiff;
- i. Ordering and awarding the Plaintiff actual damages in a sum equal to the amount of surcharges that remain unpaid from August 1, 2011 to judgment, and punitive damages and other damages as prayed for hereinabove;

- j. Ordering the Defendants to limit their on-going activities and conditions in compliance with the contract, Horry County Ordinances and Regulations; and
- k. Ordering the Defendants to pay for costs and expenses associated with this action;
- l. For an Order appointing an Receiver;
- m. Finding that the Defendants breached the implied covenant of good faith and fair dealing;
- n. Finding that the Defendants are collectively liable to the Plaintiff by being so amalgamated as to blur their legal distinction and/or because they are the alter ego of one another;
- o. Awarding the Plaintiff the One Hundred and 00/100 (\$ 100.00) Dollar per passenger civil penalty pursuant to S.C. Code §3-11-210; and,
- p. For such other and further relief as this Honorable Court deems just and proper.

Thompson & Henry, P.A.


Philip C. Thompson, Esquire
John P. Henry, Esquire
1300 Second Avenue, Third Floor
(Post Office Box 1740 - Zip 29528)
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Telephone (843) 248-5741
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Co-Counsel for the Plaintiff

Arrigo P. Carotti, SC Bar # 14647
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1301 Second Avenue, Suite 2D45
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carottia@horrycounty.org

Horry County, a body Politic v. Aquasino Partners of South Carolina, LLC, et al.
Civil Action No.: 2011-CP-26-9457
AMENDED COMPLAINT

Sanford Cox Graves, SC Bar # 70282
Deputy County Attorney
Office of the Horry County Attorney
1301 Second Avenue, Suite 2D44
Conway, South Carolina, 29526
(843) 915-7416
gravess@horrycounty.org

8/31, 2012
Conway, South Carolina

Horry County, a body Politic v. Aquasino Partners of South Carolina, LLC, et al.
Civil Action No.: 2011-CP-26-9457
AMENDED COMPLAINT

17

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

HORRY COUNTY, a Body Politic

☒ Plaintiff

v.

AQUASINO PARTNERS OF SOUTH CAROLINA,
LLC, *Et Al.*

☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2011-CP-26-9457

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

Philip C. Thompson, Bar No. 11062

Address: Thompson & Henry, P.A., P.O. Box 1740,
Conway, South Carolina 29528

phone: 843-248-5741 fax: 843-248-6396

e-mail: pthompson@thompsonlaw.com other:

Defendant's Attorney:

J. Todd Kincannon, Bar No.

Address: P.O. Box 7901, Columbia, South Carolina
29202

phone: 877-992-6878 fax:

e-mail: todd@thekincannonfirm.com other:

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Order an Rule to Show Cause

Estimated Time Needed: Court Reporter Needed: ☐ YES / ☒ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

September 12, 2012
Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ 25.00

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status

☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act

☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication

☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,

reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached
order.

☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Collected by: _____

Date Filed: _____

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) OF THE FIFTEENTH JUDICIAL CIRCUIT
) Civil Action No: 2011-CP - 26- 9457

Horry County, a Body Politic ,

Petitioner(s)

vs.

Aquasino Partners of South Carolina, LLC,
Suncruz Casino Cruises, LLC, Ventures South
Carolina, LLC, Suncruz Casinos, LLC, and
Highland Park Real Estate Development
Corporation ,

Defendant.

ORDER AND RULE TO SHOW CAUSE

By Order dated July 30, 2012 and filed July 30, 2012, I ordered that the Defendants, Aquasino Partners Of South Carolina, LLC, Suncruz Casino Cruises, LLC, Ventures South Carolina, LLC, Suncruz Casinos, LLC, and Highland Park Real Estate Development Corporation, answer the Plaintiff's Interrogatories to Defendants, Supplemental Interrogatories and Requests for Production no later than August 22, 2012.

By email to Philip C. Thompson, attorney for the Plaintiff, dated August 27, 2012, J. Todd Kincannon, attorney for the Defendants, requested that he be granted an extension of time to answer the discovery due to a personal emergency. The extension was granted with a new deadline of August 28, 2012. A copy of the emails is attached hereto as Exhibit "A".

By letter dated September 5, 2012, Philip C. Thompson, attorney for the Plaintiff notified J. Todd Kincannon and J. Todd Rutherford, attorneys for the Defendants that they had missed the Court ordered deadline of August 22, 2012 and the extended deadline of August 28, 2012. The

Plaintiff also demanded answers by September 7, 2012. A copy of the letter is attached hereto as Exhibit "B".

To date, the Defendants have not answered the discovery and are now in violation of the Court's Order.

NOW THEREFORE, it is

ORDERED that the Defendants, Aquasino Partners Of South Carolina, LLC, Suncruz Casino Cruises, LLC, Ventures South Carolina, LLC, Suncruz Casinos, LLC, and Highland Park Real Estate Development Corporation, appear before me in Courtroom _____ in the Horry County Courthouse located at 1301 Second Avenue in Conway, South Carolina on the _____ Day of _____, 2012, at _____ o'clock _____.m. to show cause, if any they can, why they would not be held in contempt of Court.

IT IS FURTHER ORDERED that a copy of this Order and Rule to Show Cause be served upon the Defendants forthwith by forwarding a copy of same to their attorneys, J. Todd Kincannon and J. Todd Rutherford.

If the Defendants, Aquasino Partners Of South Carolina, LLC, Suncruz Casino Cruises, LLC, Ventures South Carolina, LLC, Suncruz Casinos, LLC, and Highland Park Real Estate Development Corporation, do not appear as ordered, the Court will issue a Bench Warrant for their arrest.

AND IT IS SO ORDERED.

The Honorable Benjamin H. Culbertson,
Resident Judge for the Fifteenth Judicial Circuit

_____, 2012
Conway, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) OF THE FIFTEENTH JUDICIAL CIRCUIT
) Civil Action No: 2011-CP - 26- 9457

Horry County, a Body Politic ,

Petitioner(s)

vs.

Aquasino Partners of South Carolina, LLC,
Suncruz Casino Cruises, LLC, Ventures South
Carolina, LLC, Suncruz Casinos, LLC, and
Highland Park Real Estate Development
Corporation ,

Defendant.

MOTION FOR SANCTIONS

HORRY COUNTY
12 SEP 20 PM 10:10
MELANIE HOGGINS-WARD
CLERK OF COURT

TO: THE DEFENDANTS, AQUASINO PARTNERS OF SOUTH CAROLINA, LLC, SUNCRUZ CASINO CRUISES, LLC, VENTURES SOUTH CAROLINA, LLC, SUNCRUZ CASINOS, LLC, AND HIGHLAND PARK REAL ESTATE DEVELOPMENT CORPORATION AND J. TODD KINCANNON, ESQUIRE AND J. TODD RUTHERFORD, ESQUIRE, ATTORNEYS FOR THE DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that the PLAINTIFF, HORRY COUNTY, A BODY POLITIC, by and through their undersigned attorney, will move before the Presiding Judge of the Fifteenth Judicial Circuit for sanctions pursuant to Rule 37(b)(2) and (d), to include, but not be limited to the following:

- (a) an Order striking the Defendants' Answer;
- (b) an Order striking the Defendants' Counterclaims;
- (c) an Order for entry of default;
- (d) an Order that the Defendants be held in contempt;
- (e) an Order awarding Plaintiff's attorney's fees and costs; and,

*Horry County, A Body Politic vs. Aquasino Partners of South Carolina, LLC, et al
Motion for Sanctions*

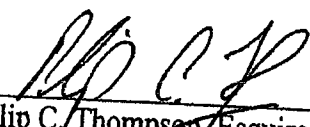
- 1 -

(f) for such other and further relief as this Court may deem just and proper.

The basis for this Motion is that the Defendants have violated this Court's Order of July 27, 2012 with regards to discovery, as a result the Plaintiff has had to file an Affidavit regarding same and apply for an Order and Rule to Show Cause, and the Defendants have failed to timely answer the Amended Complaint and are now in default, and as a result, Plaintiff has had to file an Affidavit of Default and apply an Order of Default.

Respectfully submitted,

THOMPSON & HENRY, P.A.


Philip C. Thompson, Esquire
Post Office Box 1740
Conway, South Carolina 29528
Telephone (843) 248-5741
Facsimile (843) 248-6396
South Carolina Bar No.: 11062
Attorney for the Plaintiffs

9/20, 2012
Conway, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) OF THE FIFTEENTH JUDICIAL CIRCUIT
) Civil Action No: 2011-CP - 26- 9457

Horry County, a Body Politic ,

Petitioner(s)

vs.

Aquasino Partners of South Carolina, LLC,
Suncruz Casino Cruises, LLC, Ventures South
Carolina, LLC, Suncruz Casinos, LLC, and
Highland Park Real Estate Development
Corporation ,

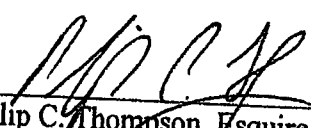
Defendant.

RULE 11 CERTIFICATION

HORRY COUNTY
12 SEP 20 PM 11:10
MELANIE HUGGINS, WARD
CLERK OF COURT

I hereby certify that prior to filing of this Motion for Sanctions, Plaintiff's attorney affirms that he has communicated, orally or in writing, with opposing counsel and has attempted in good faith to resolve the matter contained in the Motion, or that such consultation would serve no useful purpose or could not be timely held. This Certification is made in satisfaction of Rule 11(a) of the South Carolina Rules of Civil Procedure.

Thompson & Henry, P.A.


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(Post Office Box 1740 - Zip 29528)
Conway, South Carolina 29526
Telephone (843) 248-5741
Facsimile (843) 248-6396
Co-Counsel for the Plaintiff

9/20
_____, 2012
Conway, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) OF THE FIFTEENTH JUDICIAL CIRCUIT
) Civil Action No: 2011-CP - 26- 9457

Horry County, a Body Politic ,

Petitioner(s)

vs.

Aquasino Partners of South Carolina, LLC,
Suncruz Casino Cruises, LLC, Ventures South
Carolina, LLC, Suncruz Casinos, LLC, and
Highland Park Real Estate Development
Corporation ,

Defendant.

ORDER
OF
DEFAULT

Wherefore, it appears that the Defendants were properly served with a copy of the Amended Summons and Amended Complaint, and that more than fifteen (15) days have passed since service without the filing of an Answer or responsive pleading to same. Therefore, the Defendants, Aquasino Partners of South Carolina, LLC, Suncruz Casino Cruises, LLC, Ventures South Carolina, LLC, Suncruz Casinos, LLC, and Highland Park Real Estate Development Corporation, have been determined to be in default.

IT IS SO ORDERED this _____ day of _____, 2012

Resident Judge of the Fifteenth Judicial Circuit

Conway, South Carolina

Horry County, a body Politic v. Aquasino Partners of South Carolina, LLC, et al.
ORDER OF DEFAULT

5. With regard to the allegations of Paragraph 4, Defendant Suncruz Casino Cruises, LLC operates under the following provisions of State and local law: (1) The Gambling Act codified at Title 3, Chapter 11 of the South Carolina Code of Laws; (2) Horry County Resolution R-47-10; and (3) Horry County Ordinance 09-08 with the exception of Section 4. In addition, Defendant Suncruz Casino Cruises, LLC is a party to the Surcharge Agreement of May 5, 2010. However, Defendant Suncruz Casino Cruises, LLC is not a party to the Consent Settlement Agreement and General Release of February 6, 2008, and Defendant Suncruz Casino Cruises, LLC denies that it in any way bound by the terms of those documents.
6. As to Paragraph 5, Defendants crave specific reference to said agreements. Any allegation which contradicts the terms of the documents referenced are denied and strict proof demanded thereof.
7. Defendants admit Paragraph 6 of the Amended Complaint.
8. Paragraph 7 of Plaintiff's Amended Complaint is a pleading paragraph and does not require a response; however should it be deemed otherwise, the Defendants deny the allegations contained therein and demand strict proof thereof.
9. The allegations of Paragraphs 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19 are denied and strict proof demanded thereof.
10. Paragraph 20 of Plaintiff's Amended Complaint is a pleading paragraph and does not require a response; however should it be deemed otherwise, the Defendants deny the allegations contained therein and demand strict proof thereof.
11. The allegations of Paragraphs 21, 22, and 23 of the Plaintiff's Amended Complaint are denied and strict proof demanded thereof.
12. Paragraph 24 of Plaintiff's Amended Complaint is a pleading paragraph and does not require a response; however should it be deemed otherwise, the Defendants deny the allegations contained therein and demand strict proof thereof.
13. The allegations of Paragraphs 25, 26, 27 and 28 of the Plaintiff's Amended Complaint are denied and strict proof demanded thereof.
14. Paragraph 29 of Plaintiff's Amended Complaint is a pleading paragraph and does not require a response; however should it be deemed otherwise, the Defendants deny the allegations contained therein and demand strict proof thereof.
15. The allegations of Paragraphs 30, 31, 32, 33, and 34 of the Plaintiff's Amended Complaint are denied and strict proof demanded thereof.
16. Paragraph 35 of Plaintiff's Amended Complaint is a pleading paragraph and does not require a response; however should it be deemed otherwise, the Defendants deny the allegations contained therein and demand strict proof thereof.

17. The allegations of Paragraphs 36, 37, 38, 39, 40, 41, and 42 are denied and strict proof demanded thereof.
18. Paragraph 43 of Plaintiff's Amended Complaint is a pleading paragraph and does not require a response; however should it be deemed otherwise, the Defendants deny the allegations contained therein and demand strict proof thereof.
19. The allegations of Paragraphs 44, 45, 46, 47, 48, and 49 are denied and strict proof demanded thereof.
20. Paragraph 50 of Plaintiff's Amended Complaint is a pleading paragraph and does not require a response; however should it be deemed otherwise, the Defendants deny the allegations contained therein and demand strict proof thereof.
21. The allegations of Paragraphs 51, 52, and 53 are denied and strict proof demanded thereof.
22. Paragraph 54 of Plaintiff's Amended Complaint is a pleading paragraph and does not require a response; however should it be deemed otherwise, the Defendants deny the allegations contained therein and demand strict proof thereof.
23. The allegations of Paragraphs 55, 56, 57, 58, 59, 60, 61, and 62 are denied and strict proof demanded thereof.
24. Paragraph 63 of Plaintiff's Amended Complaint is a pleading paragraph and does not require a response; however should it be deemed otherwise, the Defendants deny the allegations contained therein and demand strict proof thereof.
25. The allegations of Paragraphs 64 and 65 are denied and strict proof demanded thereof.
26. Paragraph 66 of Plaintiff's Amended Complaint is a pleading paragraph and does not require a response; however should it be deemed otherwise, the Defendants deny the allegations contained therein and demand strict proof thereof.
27. The allegations of Paragraphs 67, 68, 69, 70, and 71 are denied and strict proof demanded thereof.
28. Paragraph 72 of Plaintiff's Amended Complaint is a pleading paragraph and does not require a response; however should it be deemed otherwise, the Defendants deny the allegations contained therein and demand strict proof thereof.
29. As to Paragraph 73, Defendants crave specific reference to said agreements. Any allegation which contradicts the terms of the documents referenced is denied and strict proof demanded thereof.
30. The allegations of Paragraphs 74 and 75 are denied and strict proof demanded thereof.

31. Paragraphs 76 and 77 of Plaintiff's Amended Complaint are pleading paragraphs and do not require a response; however should it be deemed otherwise, the Defendants deny the allegations contained therein and demand strict proof thereof.

32. The allegations of Paragraphs 78 and 79 are denied and strict proof demanded thereof.

FOR A SECOND DEFENSE

33. The Defendants re-allege the allegations set forth in the proceeding paragraphs.

34. The Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action and must be dismissed pursuant to S.C.R.C.P. Rule 12(b)(6).

FOR A THIRD DEFENSE

35. The Defendants re-allege the allegations set forth in the proceeding paragraphs.

36. Defendants plead contributory negligence as a complete and affirmative defense.

FOURTH DEFENSE

37. Each and every allegation alleged above is repeated verbatim herein.

38. Defendants plead the intervening acts of others as a complete and affirmative defense.

FIFTH DEFENSE

39. Each and every allegation alleged above is repeated verbatim herein.

40. Defendants plead laches as a complete and affirmative defense.

SIXTH DEFENSE

41. Each and every allegation alleged above is repeated verbatim herein.

42. Defendants plead Plaintiff's own comparative negligence as a defense.

SEVENTH DEFENSE

43. Each and every allegation alleged above is repeated verbatim herein.

44. Defendants plead Statute of Limitations as a complete and affirmative defense.

EIGHTH DEFENSE

45. Each and every allegation alleged above is repeated verbatim herein.
46. Defendants plead Estoppel as a complete and affirmative defense.

NINTH DEFENSE AND COUNTERCLAIM **(Declaratory Judgment)**

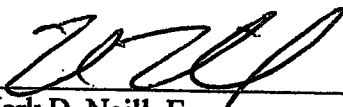
47. Each and every allegation alleged above is repeated verbatim herein.
48. That Defendant, through its counterclaim, seeks a declaratory judgment regarding the rights and obligations of the parties.
49. That this action is brought pursuant to: (1) The Gambling Act codified at Title 3, Chapter 11 of the South Carolina Code of Laws; (2) Horry County Resolution R-47-10; (3) Horry County Ordinance 09-08 with the exception of Section 4; and (4) Surcharge Agreement of May 5, 2010.
50. Defendants believe that Horry County's ordinance contradicts or violates current laws of South Carolina in that Horry County is attempting to collect monies that are not allowed in accordance with South Carolina Law.
51. Defendants are entitled to an Order by the Court declaring that Horry County may not charge or attempt to collect surcharges not authorized by the State and that Horry County must refund any monies or credit the Defendants with monies it collected in violation of State Law.

WHEREFORE, having fully answered the Plaintiff's Amended Complaint, the answering Defendants, pray that:

- a. The Amended Complaint be dismissed with prejudice and that the Defendants be awarded all costs in defending the lawsuit including reasonable attorney fees and costs;
- b. As for the Declaratory Judgment, Defendants are entitled to an Order by the Court declaring that Horry County may not charge or attempt to collect surcharges not authorized by the State and that Horry County must refund any monies or credit the Defendants with monies it collected in violation of State Law, as well as attorney fees incurred and costs; and,
- c. For such other and further relief as this Court deems just and proper.

[signature to follow]

NEILL LAW FIRM, PA



Mark D. Neill, Esq.

P.O. Box 2810

Murrells Inlet, SC 29576

(843) 651-8580

Attorney for Defendants

Suncruz Casino Cruises, LLC, Aquasino

Partners of South Carolina, LLC, Highland

Park Real Estate Development Corporation

Dated: 9/26, 2012
Murrells Inlet, South Carolina.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Horry County, a Body Politic,

Plaintiff,

vs.

Aquasino Partners of South Carolina, LLC,
Suncruz Casino Cruises, LLC, Ventures South
Carolina, LLC, Suncruz Casinos, LLC, and
Highland Park Real Estate Development
Corporation,

Defendant.

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IN THE COURT OF COMMON PLEAS
OF THE FIFTEENTH JUDICIAL CIRCUIT
Civil Action No: 2011-CP - 26-9457

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PLAINTIFF'S REPLY TO DEFENDANTS'
COUNTERCLAIM FOR DECLARATORY
JUDGMENT CONTAINED IN
DEFENDANTS' UNTIMELY ANSWER
TO PLAINTIFF'S AMENDED COMPLAINT

The Plaintiff, specifically alleging and asserting that Defendants' Answer to Amended Complaint and Counterclaim for Declaratory Judgment, dated September 20, 2012, is untimely and specifically rejecting acceptance of said Answer to Amended Complaint and Counterclaim for Declaratory Judgment as being timely, and further specifically reserving and not waiving its rights to seek entry of default against the Defendants for failing to timely provide and answer to Plaintiff's Amended Complaint, and solely out of an abundance of caution, replies to the Defendants' Counterclaim contained in the Defendants' Untimely Answer to Amended Complaint as follows:

1. Each and every allegation of the Defendants' Counterclaim which is not hereinafter specifically admitted, modified or explained is denied and strict proof is demanded thereof.

Horry County, a body Politic v. Aquasino Partners of South Carolina, LLC, et al.
Civil Action No.: 2011-CP-26-9457

Plaintiff's Reply to Defendants' Counterclaim for Declaratory Judgment in
Defendants' Untimely Answer to Plaintiff's Amended Complaint

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FOR A FIRST DEFENSE

2. The allegations contained in paragraphs one (1) through forty-six (46) of the Defendants' Answer to Amended Complaint and Counterclaim for Declaratory Judgment contain the Defendants' Answer to the Plaintiff's Amended Complaint, and therefore does not require a reply from the Plaintiff. However, to the extent any such allegation could be construed to constitute a cause of action against the Plaintiff, same is denied and strict proof is demanded thereof.

3. The Plaintiff denies the allegations contained in paragraphs forty-seven (47), forty-eight (48), forty-nine (49), fifty (50) and fifty-one (51) of the Defendants' Counterclaim and demands strict proof thereof.

FOR A SECOND DEFENSE

4. Each and every allegation of the First Defense is incorporated herein when not inconsistent herewith.

5. The Defendants voluntarily abandoned and relinquished any and all right to pursue their counterclaims when they entered into and executed the Surcharge Agreement, and fully performed under said Surcharge Agreement for approximately fifteen (15) months.

6. Therefore, the Plaintiff pleads waiver as a complete and absolute bar to the Defendants' Counterclaims.

FOR A THIRD DEFENSE

7. Each and every allegation of the First and Second Defenses is incorporated herein when not inconsistent herewith.

8. When the Defendants entered into the Surcharge Agreement and began performance under said Surcharge Agreement, the Defendant conveyed the impression that the facts were otherwise than and inconsistent with those which the Defendant is subsequently attempting to assert in its counterclaims.

9. Defendants intended or least expected that the Plaintiff would act upon the conduct of the Defendants.

10. The Defendants had knowledge, either actual or constructive, of the true facts, that being that they would not continue to pay the surcharge as they promised under the Surcharge Agreement.

11. The Plaintiff was without knowledge or the means of knowledge of the facts of the conduct intended or expected by the Defendants.

12. The Plaintiff relied upon the Defendants' conduct.

13. The Plaintiff suffered a detrimental change of position by entering into a Surcharge Agreement with the Defendants as a result of the Plaintiff's reliance upon the Defendants' conduct in that it entered into a contract not knowing that it would be breached by the Defendants and that the Plaintiff would have to engage in litigation to enforce same.

14. Therefore, the Plaintiff pleads equitable estoppel as a complete defense and total bar of the Defendants' counterclaims.

FOR A FOURTH DEFENSE

15. Each and every allegation of the First, Second, and Third Defenses is incorporated herein when not inconsistent herewith.

16. The Defendants, in entering into the Surcharge Agreement and paying the surcharges required thereunder for a period of fifteen (15) months before breaching the Surcharge Agreement by not paying the surcharges required thereunder, and then waiting another approximately twelve (12) months before setting forth their counterclaims is an unreasonable delay in the Defendants assertion of an alleged right which has resulted in prejudice to the Plaintiff.

17. Therefore, the Plaintiff pleads laches as a complete defense and bar to the Defendants' counterclaims.

FOR A FIFTH DEFENSE

18. Each and every allegation of the First, Second, Third, and Fourth Defenses is incorporated herein when not inconsistent herewith.

19. The Plaintiff pleads unclean hands as a complete defense and total bar to the Defendants' counterclaims.

FOR A SIXTH DEFENSE

20. Each and every allegation of the First, Second, Third, Fourth, and Fifth Defenses is incorporated herein when not inconsistent herewith.

21. Upon information and belief, one or more of the Defendants, if not all, are made up of and consist of the same Officers, Agents, Employees, Shareholders, Members, or Directors of the Plaintiffs in the case of *Ventures South Carolina, LLC, d/b/a Suncruz Casinos; and Diamond Gaming, LLC vs. Horry County*, Civil Action No.: 2007-CP-26-5108, filed in the office of the Clerk of Court for Horry County, South Carolina, or are so amalgamated and/or the alter egos of one another so as to be one and the same.

22. The issues raised in Defendants' counterclaim were litigated and decided in the 2007 action as evidenced by that Consent Settlement Agreement and General Release filed therein.

23. Therefore, Plaintiff pleads collateral estoppel/issue preclusion as a complete defense and total bar to Defendants' counterclaims.

FOR A SEVENTH DEFENSE

24. Each and every allegation of the First, Second, Third, Fourth, Fifth, and Sixth Defenses is incorporated herein when not inconsistent herewith.

25. Upon information and belief, one or more of the Defendants, if not all, are made up of and consist of the same Officers, Agents, Employees, Shareholders, Members, or Directors of the Plaintiffs in the case of *Ventures South Carolina, LLC, d/b/a Suncruz Casinos; and Diamond Gaming, LLC vs. Horry County*, Civil Action No.: 2007-CP-26-5108, filed in the office of the Clerk of Court for Horry County, South Carolina, or are so amalgamated and/or the alter egos of one another as to be one and the same.

26. The counterclaims asserted by the Defendants arise out of the same transactions or occurrences that were the subject of the prior 2007 action.

27. Therefore, the Plaintiff pleads the doctrine of res judicata/claim preclusion as a complete defense and total bar to Defendants counterclaims.

FOR AN EIGHTH DEFENSE

28. Each and every allegation of the First, Second, Third, Fourth, Fifth, Sixth, and Seventh Defenses is incorporated herein when not inconsistent herewith.

29. Defendants' counterclaims fail to state facts sufficient to constitute a cause of action against the Plaintiff pursuant to Rule 12(b)(6), SCRPC, and should be dismissed.

FOR AN NINTH DEFENSE

30. Each and every allegation of the First, Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Defenses is incorporated herein when not inconsistent herewith.

31. The Plaintiff pleads release as complete defense and total bar to Defendants' counterclaim based upon the Consent Settlement Agreement and General Release as executed as part of the resolution of the prior 2007 action.

FOR A TENTH DEFENSE

32. Each and every allegation of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Ninth Defenses is incorporated herein when not inconsistent herewith.

33. Plaintiff asserts all allegations and causes of action set forth in its Complaint and Amended Complaint in this action as defenses and affirmative defenses to the Defendants' counterclaim herein.

FOR AN ELEVENTH DEFENSE

34. Each and every allegation of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, and Tenth Defenses is incorporated herein when not inconsistent herewith.

35. Plaintiff hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery and thus reserves the right to amend its reply to assert any such defense(s).

FOR A TWELFTH DEFENSE

36. Each and every allegation of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Defenses is incorporated herein when not inconsistent herewith.

37. The Plaintiff pleads the applicable statute of limitations and/or the applicable statute of repose as a complete defense and total bar to Defendants' counterclaim.

FOR A THIRTEENTH DEFENSE

38. Each and every allegation of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh and Twelfth Defenses is incorporated herein when not inconsistent herewith.

39. The Plaintiff served the Amended Summons and Amended Complaint on the Defendants on August 31, 2012 as shown on the Affidavit of Mailing filed in this matter on September 4, 2012.

40. Rule 15(a) required the Defendants to Answer the Plaintiff's Amended Complaint within fifteen (15) days after service of the Amended Complaint, which would have been on September 15, 2012.

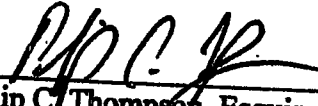
41. The Plaintiff pleads that the Defendants Answer to Amended Complaint and Counterclaim for Declaratory Judgment is untimely and should be dismissed.

WHEREFORE, having fully replied to the Defendants' counterclaims, the Plaintiff prays:

- a. that the Defendants' Answer to Amended Complaint and Counterclaim for Declaratory Judgment be dismissed;

- b. for the costs and attorney's fees in defending said counterclaims; and,
c. for judgment as prayed for in the Plaintiff's Complaint and Amended Complaint.

Thompson & Henry, P.A.


Philip C. Thompson, Esquire
John P. Henry, Esquire
1300 Second Avenue, Third Floor
(Post Office Box 1740 - Zip 29528)
Conway, South Carolina 29526
Telephone (843) 248-5741
Facsimile (843) 248-6396
Co-Counsel for the Plaintiff

Arrigo P. Carotti, SC Bar # 14647
County Attorney
Office of the Horry County Attorney
1301 Second Avenue, Suite 2D45
Conway, South Carolina, 29526
(843) 915-5270
carottia@horrycounty.org

Sanford Cox Graves, SC Bar # 70282
Deputy County Attorney
Office of the Horry County Attorney
1301 Second Avenue, Suite 2D44
Conway, South Carolina, 29526
(843) 915-7416
gravess@horrycounty.org

9/28, 2012
Conway, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

HORRY COUNTY, a Body Polotic,

☐ Plaintiff

v.

Aquasino Partners Of South Carolina, LLC, Et. Al.

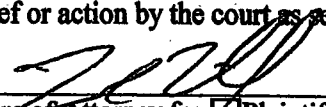
☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2011-CP-26-9457

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

HORRY COUNTY
CLERK OF COURT
JANIE HUGGINS-WARD
OCT 11 PM 3:14

Plaintiff's Attorney: Phillip Thompson, Bar No. Address: P.O. Box 1740, Conway, SC 29528 phone: fax: e-mail: other:	Defendant's Attorney: Mark D. Neill, Bar No. #14273 Address: P.O. Box 2810, Murrells Inlet, Sc 29576 phone: 843-651-8580 fax: 843-651-8586 e-mail: Mneill@neilllawfirm.com other:
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: Notice of Motion and Motion for Substitution of Counsel Estimated Time Needed: 30 min. Court Reporter Needed: ☒ YES / ☐ NO	
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☒ Plaintiff / ☐ Defendant Date submitted: 10/11/12	
SECTION III: Motion Fee ☐ PAID - AMOUNT: ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE: Date:
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____	

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Horry County, A Body Politic,

Plaintiff,

vs.

Aquasino Partners of South Carolina, LLC,
Suncruz Casino Cruises, LLC, Ventures
South Carolina, LLC, Suncruz Casinos, LLC,
And Highland Park Real Estate Development)
Corporation,

Defendants.

) **IN THE COURT OF COMMON PLEAS**
) **FOR THE 15th JUDICIAL CIRCUIT**
)
)
)

) CASE NO: 2011-CP-26-9457
)
)
)
)

) **NOTICE OF MOTION AND MOTION**
) **TO SET ASIDE DEFAULT**
)
)
)

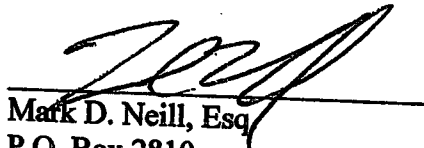
HORRY COUNTY
12 OCT -9 PM 4:28
MELANIE HUGGINS
CLERK OF COURT

TO: PHILIP C. THOMPSON AND ARRIGO P. CAROTTI, COUNSEL FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the Defendants Aquasino Partners of South Carolina, LLC, Suncruz Casinos Cruises, LLC and Highland Park Real Estate Development Corporation, by and through the undersigned attorney, will move before the Presiding Judge of the Fifteenth Judicial Circuit Court, on the tenth day after service hereof, or as soon thereafter as counsel may be heard, for an Order of this Court setting aside the Affidavit of Default of Plaintiff filed on September 20, 2012 and further accepting the Answer to the Amended Complaint of Plaintiff and Counterclaims served upon the attorney for Plaintiff on or about September 20, 2012 and filed on September 20, 2012. This Motion is based upon Rules 55(c) and 60(b) of the South Carolina Rules of Civil Procedure, the furtherance of justice, the attached Answer to Amended Complaint and Counterclaims, the pleadings in this matter and arguments to be made at the time this matter is heard by the Court.

The undersigned affirms, pursuant to *SCRCP 11(a)*, that consultation with opposing counsel would serve no useful purpose.

NEILL LAW FIRM, PA


Mark D. Neill, Esq.

P.O. Box 2810

Murrells Inlet, SC 29576

(843) 651-8580

Attorney for Defendants

Aquasino Partners of South Carolina, LLC,

Suncruz Casinos Cruises, LLC, and

Highland Park Real Estate Dev. Corp.

Dated: 10/3, 2012
Murrells Inlet, South Carolina

0000167

The undersigned affirms, pursuant to *SCRCP 11(a)*, that consultation with opposing counsel would serve no useful purpose.

NEILL LAW FIRM, PA



Mark D. Neill, Esq.

P.O. Box 2810

Murrells Inlet, SC 29576

(843) 651-8580

Attorney for Defendants

Aquasino Partners of South Carolina, LLC,
Suncruz Casinos Cruises, LLC, and
Highland Park Real Estate Dev. Corp.

Dated: 10/11, 2012
Murrells Inlet, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

HORRY COUNTY, a Body Politic,

☐ Plaintiff

v.

Aquasino Partners Of South Carolina, LLC, Et. Al.

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2011-CP-26-9457

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Phillip Thompson, Bar No. Address: P.O. Box 1740, Conway, SC 29528 phone: fax: e-mail: other:	Defendant's Attorney: Mark D. Neill, Bar No. #14273 Address: P.O. Box 2810, Murrells Inlet, Sc 29526 phone: 843-651-8580 fax: 843-651-8580 e-mail: Mneill@neilllawfirm.com other:
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: Notice of Motion and Motion to Disqualify Counsel Estimated Time Needed: 30 min. Court Reporter Needed: ☒ YES / ☐ NO	
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. Signature of Attorney for ☐ Plaintiff / ☒ Defendant 10/11/12 Date submitted	
SECTION III: Motion Fee ☐ PAID - AMOUNT: ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE: Date:
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____	

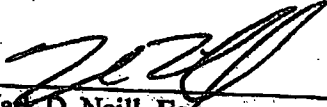
SCCA/233 (11-03)

Additionally Rule 407, SCACR, Rules of Prof. Conduct, Rule 1.10(a) provides "[w]hile lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7, 1.8(c), or 1.9..."

In the present matter, Thompson & Henry, P.A. represented Suncruz Casino Cruises, LLC in drafting and negotiating the agreements which are in dispute in the present, above captioned lawsuit. Members of the lawfirm, attorneys Emma Ruth Brittain and Thomas McGee, have been named as witnesses in the lawsuit. The Thompson & Henry, P.A. have also represented Defendants as to other matters. Furthermore, Thompson & Henry, P.A. are in possession of files belonging to the Defendants which contain confidential and privileged documents.

The undersigned counsel affirms that he consulted with attorney Philip C. Thompson prior to filing this motion.

NEILL LAW FIRM, PA


Mark D. Neill, Esq.

P.O. Box 2810

Murrells Inlet, SC 29576

(843) 651-8580

Attorney for Defendants

Aquasino Partners of South Carolina, LLC,
Suncruz Casinos Cruises, LLC, and
Highland Park Real Estate Dev. Corp.

Dated: 10/11, 2012
Murrells Inlet, South Carolina

ATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

HORRY COUNTY, a Body Polotic,

☐ Plaintiff

v.

Aquasino Partners Of South Carolina, LLC, Et. Al.

☒ Defendant.

CASE NO.
2011-CP-26-9457

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

Phillip Thompson, Bar No.

Address:

P.O. Box 1740, Conway, SC 29528

phone: fax:

e-mail: other:

Defendant's Attorney:

Mark D. Neill, Bar No. #14273

Address:

P.O. Box 2810, Murrells Inlet, Sc 29576

phone: 843-651-8580 fax: 843-651-8580

e-mail: Mneill@neilllawfirm.com other:

HORRY COUNTY
CLERK OF COURT
MELANIE HUGHES-WARD
12 OCT 31 PM 9:10

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTION I and II)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Notice of Motion and Motion to Reconsider

Estimated Time Needed: 30 min. Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☒ Defendant

10/30/12
Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT:

☐ EXEMPT:

☐ Rule to Show Cause in Child or Spousal Support

(check reason) ☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

0000173

2. On October 9, 2012, Defendants, through the undersigned counsel, filed a Motion to Set Aside Default because of prior counsel's failure to timely serve an Answer to Plaintiff's Amended Complaint. Through the undersigned counsel, Defendants filed an Answer to the Amended Complaint of Plaintiff and Counterclaims and served the pleading upon Plaintiff's attorney on or about September 20, 2012. Plaintiff would not be prejudiced if the Defendants were allowed to file its pleading.
3. On October 11, 2012, Defendants, through the undersigned counsel, filed a Motion for Substitution of Counsel.
4. On October 11, 2012, the Affidavits of Spiro Naos and Robert Weisberg were filed.
5. On October 12, 2012, Defendants filed a Motion to Disqualify Counsel representing the Plaintiff due to a conflict of interest.
6. On October 12, 2012, the undersigned counsel again requested that the hearing scheduled for October 15, 2012 because the undersigned counsel would be out of the country and Judge John had previously signed an Order of Protection granting the undersigned attorney protection from all court appearances during that week.

The correspondence, motions, and affidavits referenced above presented the following facts and issues which were not considered by the Court in its Order filed October 22, 2012:

- In South Carolina, an attorney cannot "represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client (1) whose interests are materially adverse to that person; and (2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter, unless the former client gives informed consent, confirmed in writing."
- Rule 407, SCACR, Rules of Prof. Conduct, Rule 1.10(a) provides "[w]hile lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7, 1.8(c), or 1.9..."
- Plaintiff's counsel, Thompson & Henry, P.A., previously represented Defendant Suncruz Casino Cruises, LLC in drafting and negotiating the agreements which are in dispute in the present, above captioned lawsuit. Members of the Thompson & Henry, P.A. lawfirm, attorneys Emma Ruth Brittain and Thomas McGee, have been identified as witnesses in the lawsuit.
- The Thompson & Henry, P.A. have also represented Defendants as to other matters and are in possession of files belonging to the Defendants which contain confidential and privileged documents.

- The Defendants' managing partners, Spiro Naos and Robert Weisberg, were not aware they had been ordered to provide requested information and documentation. They first learned of the Order compelling discovery the week of September 10, 2012 after they personally went to the Courthouse to review the file. The Motion to Compel filed on May 30, 2012 referenced Interrogatories and Requests for Production that they had never seen or heard about.
- Defendants also learned for the first time of the Amended Complaint filed on August 31, 2012 by reviewing the Courthouse file.
- On September 21, 2012, the undersigned attorney filed a notice of appearance on behalf of Defendants Aqasino Partners of South Carolina, LLC, Highland Park Real Estate Development Corporation and Suncruz Casino Cruises, LLC. The undersigned also filed an Answer and Counterclaim to the Amended Complaint.
- The undersigned immediately forwarded a copy of the interrogatories and requests for production of documents to the Defendants. Thereafter, Defendants immediately went to work gathering the requested information. Responses were provided to the Plaintiff on October 11, 2012 – prior to the hearing held on October 15, 2012.
- The undersigned also forwarded correspondence to Defendants referencing an invoice from Mr. Singleton that had not been paid. Defendants immediately paid the invoice once they became aware of its existence.
- The Defendants have continued to make payments to the County as previously ordered by the Court.
- Defendants were not aware that they were potentially in contempt of the Court's prior Order.

Given the facts set forth above, the sanctions imposed by the Court against the Defendants are unduly harsh and oppressive. The Defendants were not aware they were not in compliance with the Court's prior Order. Once they became aware of the fact they needed to provide discovery requests and pay Mr. Singleton's invoice, they immediately did so. There is no evidence that the Defendants knowingly violated the Court's Order or acted in bad faith. The Defendants should not be penalized as a result of the mistakes made by others.

While Rule 37, SCRCP, allows the Court to impose sanctions or order costs against a party or attorney who's conduct necessitated the motion, there must be a showing of intentional disobedience on the part of the sanctioned party. Rule 37(a)(4) provides (emphasis added):

Award of Expenses of Motion. If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust. ... If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

Rule 37(b)(2) further provides:

Sanctions by Court in Which Action Is Pending. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35, or if a party fails to obey an order entered under Rule 26(f), the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

- (A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;
- (B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;
- (C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;
- (D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;
- (E) Where a party has failed to comply with an order under Rule 35(a) requiring him to produce another for examination, such orders as are listed in paragraphs (A), (B), and (C) of this subdivision, unless the party failing to comply show that he is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The provisions of Rule 37 clearly show that sanctions are appropriate only when the party being sanctioned willfully or knowingly disobeyed the Court's Order. Rule 37 also shows that the ordered sanctions must be reasonable, just, and proportional to the determined disobedience. In the present case, the record shows the Defendants were not even aware of the Court's Order. Once Defendants became aware of their responsibilities, they immediately provided discovery responses and paid Mr. Singleton's invoice as ordered. There was no showing of disobedience on behalf of the Defendants. Furthermore, the ordered sanctions are not proportional to the alleged violation.

In CFRE, LLC v. Greenville County Assessor, 395 S.C. 67, 716 S.E.2d 877, 886 (2011), the Supreme Court held "[a] trial court's decision on whether or not to impose discovery sanctions is reviewed for abuse of discretion." The Court cited Original Blue Ribbon Taxi Corp. v. SC Dep't of Motor Vehicles, 380 S.C. 600, 604, 670 S.E.2d 674, 676 (Ct.App.2008) in which the Court of Appeals held the reviewing tribunal may affirm, reverse, or remand the decision of the ALC if "the substantive rights of the petitioner has been prejudiced because the finding, conclusion, or decision is ... arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." An abuse of discretion may be found if the trial court's conclusions regarding an award of sanctions lack reasonable factual support. Ex Parte Bon Secours-St. Francis Xavier Hosp., Inc., 393 S.C. 590, 713 S.E.2d 624 (2011).

In McNair v. Fairfield County, 379 S.C. 462, 466, 665 S.E.2d 830, 832, the Court of Appeals held "severe sanctions, such as the dismissal of an action, should only be imposed in cases involving bad faith, willful disobedience, or gross indifference to the opposing party's rights."

In OZO, Inc. v. Moyer, 358 S.C. 246, 247, 594 S.E.2d 541, 547 (Ct.App.2004), the Court of Appeals provided the following discussion regarding the imposition of sanctions relating to discovery:

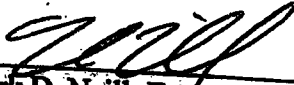
When a party fails to obey an order relating to discovery, the trial court may strike that party's pleadings and enter a default judgment. Griffin, 334 S.C. at 198, 511 S.E.2d at 718 (citing Rule 37(b)(2)(c), SCRPC); *see also* Karppi, 327 S.C. at 542, 489 S.E.2d at 682 (explaining that Rule 37, SCRPC, expressly grants trial court power to order judgment by default for either the violation of a court order or, upon motion, for party's failure to respond to certain discovery requests). When a court orders a sanction that results in default or dismissal, "the end result is harsh medicine that should not be administered lightly." Griffin, 334 S.C. at 198, 511 S.E.2d at 718; *see also* Karppi, 327 S.C. at 547, 489 S.E.2d at 684 (Anderson, J., concurring) ("A sanction which results in a default or dismissal is harsh punishment which should be imposed only if there is some showing of willful disobedience or gross indifference to the rights of the adverse party."). The sanction should be aimed at the specific misconduct of the party sanctioned and should not be used improvidently to prevent a decision on the merits. Griffin, 334 S.C. at 198, 511 S.E.2d at 719; Karppi, 327 S.C. at 543, 489 S.E.2d at 682. The sanction imposed should be reasonable, and the court should not go beyond the necessities of the situation to foreclose a decision on the merits of a case. Karppi, 327 S.C. at 543, 489 S.E.2d at 682. Finally, when a sanction "would be tantamount to granting a judgment by default, the moving party must show bad faith, willful disobedience or gross indifference to its rights to justify the sanction." Griffin, 334 S.C. at 198-99, 511 S.E.2d at 719; *see also* Karppi, 327 S.C. at 543, 489 S.E.2d at 682 ("Before invoking this severe remedy, the trial court must determine that there is some element of bad faith, willfulness, or gross indifference to the rights of other litigants.").

In the present case, the Court struck Defendant's Responsive Pleadings and ordered them held in Default. The Plaintiff did not show the Defendants acted in bad faith, willful disobedience, or in gross indifference to its rights. Nor did the Plaintiff show it had been harmed

by the Defendants. As a result, the Court has prevented a decision on the merits from being determined in this case. This unduly "harsh medicine" is unreasonable in light of the facts and circumstances set forth above.

WHEREFORE, the Defendants respectfully request the Court to reconsider its Order filed on October 12, 2012. The Plaintiff's Motion for Sanctions and Order and Rule to Show Cause should be denied for Defendants have complied with the Court's prior Order. The undersigned affirms, pursuant to *SCRCP 11(a)*, that consultation with opposing counsel is not required.

NEILL LAW FIRM, PA


Mark D. Neill, Esq.
P.O. Box 2810
Murrells Inlet, SC 29576
(843) 651-8580
Attorney for Defendants
Aquasino Partners of South Carolina, LLC,
Suncruz Casinos Cruises, LLC, and
Highland Park Real Estate Dev. Corp.

Dated: 10/30, 2012
Murrells Inlet, South Carolina

2. On October 9, 2012, Defendants, through the undersigned counsel, filed a Motion to Set Aside Default because of prior counsel's failure to timely serve an Answer to Plaintiff's Amended Complaint. Through the undersigned counsel, Defendants filed an Answer to the Amended Complaint of Plaintiff and Counterclaims and served the pleading upon Plaintiff's attorney on or about September 20, 2012. Plaintiff would not be prejudiced if the Defendants were allowed to file its pleading.
3. On October 11, 2012, Defendants, through the undersigned counsel, filed a Motion for Substitution of Counsel.
4. On October 11, 2012, the Affidavits of Spiro Naos and Robert Weisberg were filed.
5. On October 12, 2012, Defendants filed a Motion to Disqualify Counsel representing the Plaintiff due to a conflict of interest.
6. On October 12, 2012, the undersigned counsel again requested that the hearing scheduled for October 15, 2012 because the undersigned counsel would be out of the country and Judge John had previously signed an Order of Protection granting the undersigned attorney protection from all court appearances during that week.

The correspondence, motions, and affidavits referenced above presented the following facts and issues which were not considered by the Court in its Order of Default filed October 19, 2012:

- In South Carolina, an attorney cannot "represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client (1) whose interests are materially adverse to that person; and (2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter; unless the former client gives informed consent, confirmed in writing."
- Rule 407, SCACR, Rules of Prof. Conduct, Rule 1.10(a) provides "[w]hile lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7, 1.8(c), or 1.9..."
- Plaintiff's counsel, Thompson & Henry, P.A., previously represented Defendant Suncruz Casino Cruises, LLC in drafting and negotiating the agreements which are in dispute in the present, above captioned lawsuit. Members of the Thompson & Henry, P.A. lawfirm, attorneys Emma Ruth Brittain and Thomas McGee, have been identified as witnesses in the lawsuit.
- The Thompson & Henry, P.A. have also represented Defendants as to other matters and

- are in possession of files belonging to the Defendants which contain confidential and privileged documents.
- The Defendants' managing partners, Spiro Naos and Robert Weisberg, were not aware they had been ordered to provide requested information and documentation. They first learned of the Order compelling discovery the week of September 10, 2012 after they personally went to the Courthouse to review the file. The Motion to Compel filed on May 30, 2012 referenced Interrogatories and Requests for Production that they had never seen or heard about.
 - Defendants also learned for the first time of the Amended Complaint filed on August 31, 2012 by reviewing the Courthouse file.
 - On September 21, 2012, the undersigned attorney filed a notice of appearance on behalf of Defendants Aqasino Partners of South Carolina, LLC, Highland Park Real Estate Development Corporation and Suncruz Casino Cruises, LLC. The undersigned also filed an Answer and Counterclaim to the Amended Complaint.
 - The undersigned immediately forwarded a copy of the interrogatories and requests for production of documents to the Defendants. Thereafter, Defendants immediately went to work gathering the requested information. Responses were provided to the Plaintiff on October 11, 2012 – prior to the hearing held on October 15, 2012.
 - The undersigned also forwarded correspondence to Defendants referencing an invoice from Mr. Singleton that had not been paid. Defendants immediately paid the invoice once they became aware of its existence.
 - The Defendants have continued to make payments to the County as previously ordered by the Court.
 - Defendants were not aware that they were potentially in contempt of the Court's prior Order.

Given the facts set forth above, the sanctions imposed by the Court against the Defendants are unduly harsh and oppressive. The Defendants were not aware they were not in compliance with the Court's prior Order. Once they became aware of the fact they needed to provide discovery requests and pay Mr. Singleton's invoice, they immediately did so. There is no evidence that the Defendants knowingly violated the Court's Order or acted in bad faith. The Defendants should not be penalized as a result of the mistakes made by others.

While Rule 37, SCRC, allows the Court to impose sanctions or order costs against a party or attorney whose conduct necessitated the motion, there must be a showing of intentional disobedience on the part of the sanctioned party. Rule 37(a)(4) provides (emphasis added):

Award of Expenses of Motion. If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust. ... If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

Rule 37(b)(2) further provides:

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- (A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;
- (B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;
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The provisions of Rule 37 clearly show that sanctions are appropriate only when the party being sanctioned willfully or knowingly disobeyed the Court's Order. Rule 37 also shows that the ordered sanctions must be reasonable, just, and proportional to the determined disobedience. In the present case, the record shows the Defendants were not even aware of the Court's Order. Once Defendants became aware of their responsibilities, they immediately provided discovery responses and paid Mr. Singleton's invoice as ordered. There was no showing of disobedience on behalf of the Defendants. Furthermore, the ordered sanctions are not proportional to the alleged violation.

In CFRE, LLC v. Greenville County Assessor, 395 S.C. 67, 716 S.E.2d 877, 886 (2011), the Supreme Court held "[a] trial court's decision on whether or not to impose discovery sanctions is reviewed for abuse of discretion." The Court cited Original Blue Ribbon Taxi Corp. v. SC Dep't of Motor Vehicles, 380 S.C. 600, 604, 670 S.E.2d 674, 676 (Ct.App.2008) in which the Court of Appeals held the reviewing tribunal may affirm, reverse, or remand the decision of the ALC if "the substantive rights of the petitioner has been prejudiced because the finding, conclusion, or decision is ... arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." An abuse of discretion may be found if the trial court's conclusions regarding an award of sanctions lack reasonable factual support. Ex Parte Bon Secours-St. Francis Xavier Hosp., Inc., 393 S.C. 590, 713 S.E.2d 624 (2011).

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In OZO, Inc. v. Moyer, 358 S.C. 246, 247, 594 S.E.2d 541, 547 (Ct.App.2004), the Court of Appeals provided the following discussion regarding the imposition of sanctions relating to discovery:

When a party fails to obey an order relating to discovery, the trial court may strike that party’s pleadings and enter a default judgment. Griffin, 334 S.C. at 198, 511 S.E.2d at 718 (citing Rule 37(b)(2)(c), SCRCP); *see also* Karppi, 327 S.C. at 542, 489 S.E.2d at 682 (explaining that Rule 37, SCRCP, expressly grants trial court power to order judgment by default for either the violation of a court order or, upon motion, for party’s failure to respond to certain discovery requests). When a court orders a sanction that results in default or dismissal, “the end result is harsh medicine that should not be administered lightly.” Griffin, 334 S.C. at 198, 511 S.E.2d at 718; *see also* Karppi, 327 S.C. at 547, 489 S.E.2d at 684 (Anderson, J., concurring) (“A sanction which results in a default or dismissal is harsh punishment which should be imposed only if there is some showing of willful disobedience or gross indifference to the rights of the adverse party.”). The sanction should be aimed at the specific misconduct of the party sanctioned and should not be used improvidently to prevent a decision on the merits. Griffin, 334 S.C. at 198, 511 S.E.2d at 719; Karppi, 327 S.C. at 543, 489 S.E.2d at 682. The sanction imposed should be reasonable, and the court should not go beyond the necessities of the situation to foreclose a decision on the merits of a case. Karppi, 327 S.C. at 543, 489 S.E.2d at 682. Finally, when a sanction “would be tantamount to granting a judgment by default, the moving party must show bad faith, willful disobedience or gross indifference to its rights to justify the sanction.” Griffin, 334 S.C. at 198-99, 511 S.E.2d at 719; *see also* Karppi, 327 S.C. at 543, 489 S.E.2d at 682 (“Before invoking this severe remedy, the trial court must determine that there is some element of bad faith, willfulness, or gross indifference to the rights of other litigants.”).

In the present case, the Court struck Defendant’s Responsive Pleadings and ordered them held in Default. The Plaintiff did not show the Defendants acted in bad faith, willful

disobedience, or in gross indifference to its rights. Nor did the Plaintiff show it had been harmed by the Defendants. As a result, the Court has prevented a decision on the merits from being determined in this case. This unduly "harsh medicine" is unreasonable in light of the facts and circumstances set forth above.

WHEREFORE, the Defendants respectfully request the Court to reconsider its Order dated October 31, 2012. The undersigned affirms, pursuant to *SCRCP 11(a)*, that consultation with opposing counsel is not required.

NEILL LAW FIRM, PA


Mark D. Neill, Esq.

P.O. Box 2810

Murrells Inlet, SC 29576

(843) 651-8580

Attorney for Defendants

Aquasino Partners of South Carolina, LLC,

Suncruz Casinos Cruises, LLC, and

Highland Park Real Estate Dev. Corp.

Dated: 11/12, 2012
Murrells Inlet, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Horry County, A Body Politic,

Plaintiff,

vs.

Aquasino Partners of South Carolina, LLC,
Suncruz Casino Cruises, LLC, Ventures
South Carolina, LLC, Suncruz Casinos, LLC,
And Highland Park Real Estate Development
Corporation,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE 15th JUDICIAL CIRCUIT

CASE NO: 2011-CP-26-9457

**BRIEF IN SUPPORT OF
MOTION TO RECONSIDER AND
MOTION TO SET ASIDE
ORDER OF DEFAULT**

FILED
HORRY COUNTY
2013 JAN 25 PM 2:38
MELANIE HUGGINS-WARD
CLERK OF COURT

I. INTRODUCTION:

This case is about an agreement between Horry County and Suncruz Casino Cruises, LLC dated May 5, 2010. Pursuant to the agreement, Suncruz Casino Cruises, LLC agreed to pay Horry County a surcharge of \$7.00 per boarding passenger. Horry County claims that Suncruz Casino Cruises, LLC breached the agreement by failing to pay the surcharge monies for the months of August 2011 through June 2012. Suncruz Casino Cruises, LLC asserts that the agreement is void because it violates State Law.

Unfortunately, instead of the legal claims and defenses being addressed and determined, the Answer and Counterclaim of the Defendants was stricken due to alleged non-compliance with the Court's Order. However, the moving Defendants will show the striking of their pleading was not reasonable because Defendants did not willfully disobey the Court.

II. PROCEDURAL HISTORY:

On November 10, 2011, Plaintiff filed its Summons and Complaint. On January 20, 2012, Defendants filed a Motion to Dismiss the Complaint. On February 28, 2012, Plaintiff filed Motions for Temporary Injunction and Appointment of a Receiver. On May 30, 2012, Plaintiff filed a Motion to Compel discovery responses. On July 30, 2012, an Order was filed denying Defendants' Motion to Dismiss and granting Plaintiff's Motions for Temporary Injunction, Appointment of Receiver, and to Compel Discovery.

Thereafter, on August 9, 2012, Defendants timely filed an Answer and Counterclaim. On August 31, 2012, Plaintiff filed a Reply to Defendants' Counterclaim, as well as, an Amended Summons and Complaint. The Amended Summons gave Defendants thirty days to answer the amended complaint. On September 21, 2012, the undersigned filed a Notice of Appearance and Answer to the Amended Complaint on behalf of Defendants Aquasino Partners of South Carolina, LLC, Suncruz Casino Cruises, LLC, and Highland Park Real Estate Development Corporation. (For ease of reference in this memorandum, said Defendants will be referred to hereinafter as "the Defendants"). The Answer to the Amended Complaint also asserted counterclaims for Declaratory Judgment and refund of monies previously paid to the County pursuant to the Surcharge Agreement. On September 28, 2012, Plaintiff filed a Reply to Defendants' Counterclaims.

On October 15, 2012, a hearing was held pursuant to Plaintiff's Motion and Order and Rule to Show Cause and Motion for Sanctions. On October 22, 2012, a Form 4 Order as to the October 15th hearing was filed in which the Court determined Defendants willfully violated its July 30, 2012 Order. The Court ordered Defendants' responsive pleading stricken and Defendants held in default. A formal Order as to the October 15th hearing was filed on

November 2, 2012. Defendants timely filed a Motion to Reconsider the Form 4 Order on October 22, 2012 and the formal Order on November 15, 2012.

On October 19, 2012, an Order of Default was filed holding Defendants in default for failure to timely file an Answer to Plaintiff's Amended Complaint. On November 15, 2012, Defendants timely filed a Motion to Set Aside Order of Default filed on October 19, 2012.

III. FACTUAL SUMMARY:

A. Surcharge Agreement between SunCruz Casino Cruises, LLC and Horry County:

In 2005, the South Carolina Legislature passed the Gambling Cruise Act, S.C. Code Ann. § 3-11-400 through §3-11-500. S.C. Code Ann. § 3-11-400 (C)(2) provides that if a county does not prohibit a gambling vessel from operation, the county may assess a surcharge of up to ten percent of each ticket sold per cruise and a surcharge of up to five percent of the gross proceeds. "Gross proceeds" is defined as the total amount wagered or otherwise paid by a passenger or user of a gambling device.

On February 5, 2008, Horry County enacted Ordinance No.: 09-08 which established a surcharge for gambling vessels berthed in Horry County. Pursuant to the Ordinance, Horry County would assess a surcharge derived from the gross proceeds of a vessel's gambling activities in an amount not to exceed and equal to \$7.00 per boarding passenger.

On May 5, 2010, Horry County and SunCruz Casino Cruises, LLC entered into an agreement, the "Surcharge Agreement," whereby SunCruz Casino Cruises, LLC agreed to pay the \$7.00 per passenger fee set forth in Horry County Ordinance No. 09-08. The law firm of Thompson and Henry, P.A. represented SunCruz Casino Cruises, LLC in negotiating the surcharge agreement with Horry County. Horry County is presently represented by the law firm

of Thompson and Henry, P.A. (This apparent conflict of interest is the subject of a motion filed by Defendants which has not yet been determined).

In the present lawsuit, Horry County claims SunCruz Casino Cruises, LLC breached the Surcharge Agreement by failing to pay the \$7.00 per passenger surcharge for the months of August 2011 through June 2012. SunCruz Casino Cruises, LLC asserts that the Surcharge Agreement is void because it violates State Law.

B. Hearing Held on July 23, 2012:

A hearing was held before the Court on July 23, 2012. The primary purpose of the hearing was to address Defendants' Motion to Dismiss and Plaintiff's Motions for Injunction and Appointment of Receiver. The Plaintiff wanted a receiver appointed who would have the ability "to step in and have access to everything they have in order to collect the \$7 per person surcharge going back to August 1st of 2011, whether he needs to go opening up one of those gambling machines, whether he needs to get their books, whatever he needs to do to start collecting the money that's owed." Transcript of Hearing, page 40, line 25- page 41, line 5. During the hearing the Court denied Defendant's Motion to Dismiss and granted Plaintiff's Motions for Injunction and Appointment of Receiver.

The Court also heard Plaintiff's Motion to Compel filed on May 30, 2012. The transcript of the hearing reveals that Defendants' attorney thought the motion had previously been resolved because Plaintiff had in fact already been to the Defendants' office and reviewed Defendants' financial records. Plaintiff admitted that it was invited to review the records but felt that it had been "spoon-fed" information. Transcript of Hearing, page 13, lines 13-16; page 41, line 16 -page 42, line 9. In response, Defendant's counsel informed the Court that was the first time he had heard Plaintiff was not satisfied. Transcript of Hearing, page 17, lines 10-14; page

41, line 16 –page 42, line 9. Thereafter, Defendants offered several times to provide the Plaintiff with full access to all financial records. Transcript of Hearing, page 11, lines 20-22; page 17, lines 14-17. Defendants' counsel agreed to provide discovery responses within thirty days with "the understanding that you all are welcome to come anytime you want to get any kind of finances." Transcript of Hearing page 23, lines 2-4.

In the formal Order filed on July 30, 2012 following the hearing, the Court specifically provided:

The Plaintiff and Defendants have further consented and agreed that during the pendency of this action, employees, agents and officials of the Plaintiff shall have full access to and the unlimited right to inspect all of the books and records pertaining to the business, assets and property of the Defendants, wherever located and however stored, whether manually, on a hard drive or by portable data storage (CD, DVD, or Flash Drives), as the Plaintiff deems necessary in this action. Provided, however that the information contained in these books and records shall be confidential and not for public dissemination, except to the extent necessary for any proceedings or actions the parties to this action deem necessary to prosecute or defend this action. (Emphasis added).

Without any objection from the Defendants, the Court granted Plaintiff full access to the Defendants' books and records. There was no limitation as to when and how often inspections could take place or what records could be reviewed. The only limitation was that the information obtained would remain confidential. Most litigants only dream of having such unlimited access to an opposing party's records. Surprisingly, even though it was granted this unusual "free reign" authority to review all of Defendants' books and records, Plaintiff failed to make any effort to do so.

C. Interim Reports of Escrow Agent:

Pursuant to the Court's Order filed July 30, 2012, Attorney Joseph F. Singleton was appointed to serve as an escrow agent. Defendants were required to designate a contact person

with whom Mr. Singleton would communicate. Defendants were required to provide Mr. Singleton with any and all documentation he may request in order to determine surcharge fees due the Plaintiff.

According to the Initial Report of Escrow Agent filed on August 30, 2012, Defendants were in compliance of the Court's Order and no further action was mandated of the Escrow Agent at that time. Subsequently, on December 3, 2012, Mr. Singleton filed an Interim Report of Escrow Agent documenting payments made by Defendants to Plaintiff Horry County from July 23, 2012 through November 25, 2012 totaling \$226,933.00.

D. Plaintiff's Motion for Sanctions and Order and Rule to Show Cause:

On September 13, 2012, Plaintiff filed a Motion and Order and Rule to Show Cause. On September 20, 2012, Plaintiff filed a Motion for Sanctions. The Motions allege Defendants failed to comply with the Court's Order filed July 30, 2012 and that Defendants failed to timely answer the Amended Complaint. As set forth above, Plaintiff's allegations were not accurate. At no time did Plaintiff ever attempt to inspect Defendants' books and records in accordance with the July 30, 2012 Order. Defendants' offers to have Plaintiff review their books and records were ignored. Furthermore, Defendants were not in default because Defendants were provided thirty days to respond to the Amended Pleading. Defendants filed an Answer to Plaintiff's Amended Complaint on September 21, 2012 – less than thirty days after the Amended Complaint was filed and served.

In support of their Motions, Plaintiff filed the Affidavit of one of its attorneys, Phillip C. Thompson on September 12, 2012. In his affidavit, Mr. Thompson informed the Court he granted Mr. Kincannon an extension of time to answer discovery due to a personal emergency

but that Mr. Kincannon failed to provide the promised responses. Attached to his affidavit was an email from Mr. Kincannon dated August 27, 2012 in which he claimed he marked that day as the due date for discovery. He further claimed "I was prepping it and my fiancé was just in a serious car accident. I am wondering if you can give me an extension until tomorrow." Mr. Kincannon's email, and subsequent failure to produce the discovery the following day as promised, shows that the failure to produce discovery responses was due to Mr. Kincannon's personal situation and not due to Defendants' lack of cooperation or intent to disobey the Court.

In fact, the Defendants had no idea answers to discovery requests were due or that the Court ordered responses be provided. See Affidavits of Spiro Naos and Robert Weisberg filed on October 11, 2012. The Defendants did not find out about Plaintiff's discovery requests and that they were supposed to be providing information requested therein until after they retained the undersigned counsel. Once they became aware, Defendants answered the discovery requests as quickly and thoroughly as possible. On October 11, 2012, Defendants' discovery responses were hand delivered to Mr. Thompson.

E. Defendants' Requests for Continuance:

On October 5, 2012, the undersigned requested that Plaintiff's Motion for Sanctions and Order and Rule to Show Cause not be scheduled the week of October 15, 2012. The basis for the request was that the undersigned was out of the country and an Order of Protection previously filed on July 25, 2012 granted the undersigned protection from all Court appearances. Additionally, Defendants were attempting to have the undersigned substituted for Todd J. Kincannon as their attorney of record due to obvious concerns over his representation. Defendants filed a Motion requesting said relief on October 11, 2012. On October 12, 2012,

Defendants once again requested the Court not go forward with the hearing scheduled for October 15, 2012.

The Court denied the requests for continuance. The Court referred to continued delays in bringing matters pending in the case to Court as a result of prior counselors' assertion of legislative protection. As a result of prior counselors' assertion of legislative immunity, there was a six month delay in the scheduling of the hearing which eventually took place on July 23, 2012.

The record shows on April 11, 2012, a Form 4 Order was issued continuing Defendants' Motion to Dismiss on account of Attorney Thad Viers' participation in legislative session. Mr. Viers resigned from the legislature on March 21, 2012 and his law license was later suspended by the Supreme Court. A Form 4 was also filed on May 29, 2012 continuing the motions. On June 29, 2012, a Form 4 Order was filed continuing Defendants' Motion to Dismiss and Plaintiff's Motions for Temporary Injunction and Appointment of Receiver. The Form 4 states Attorney Todd Rutherford gave Notice of Appearance as Defendants' attorney on June 27, 2012 and asserted legislative immunity. Accordingly, it appears that the initial hearing was pushed back from its originally scheduled hearing date of April 11, 2012 to July 23, 2012 – a period of approximately three months.

It is also important to note that while there had been a delay in having the Court determine Defendants' Motion to Dismiss and Plaintiff's Motions for Temporary Injunction and Appointment of Receiver, that delay did not truly affect the scheduling of a hearing to determine Plaintiff's Motion to Compel filed on May 30, 2012.

F. Hearing Held October 15, 2012:

1. Determination of Motion for Sanctions:

At the hearing on October 15, 2012, Plaintiff was represented by Phillip C. Thompson, Arrigo P. Carotti, and Sanford Cox Graves. J. Todd Kincannon appeared on behalf of Defendants. During the hearing, Attorney Thompson affirmed that Defendants provided discovery responses on October 11, 2012 but that he had not reviewed all that was provided. According to his "cursory review," he did not believe Defendants fully answered or responded, however, he provided no specifics as to Defendants' alleged shortcomings. Transcript of Hearing, page 3, lines 14-22. A few minutes later, Mr. Thompson further explained to the Court that because he was dealing with another matter, he had not had a chance to look through the discovery responses. Mr. Thompson added "they are extremely thick." Transcript of Hearing, page 11, line 22 – page 12, line 7.

Mr. Kincannon informed the Court that he had not previously provided written discovery responses as ordered as a result of conversations he had with Mr. Thompson. Mr. Kincannon informed the Court he believed the discovery process would move forward by Horry County having the opportunity to come review documents and records at Defendants' business location. Mr. Kincannon stated Mr. Thompson had consented to outstanding discovery issues being resolved by Defendants providing Horry County with full access to their records. However, Horry County never came to review the records, nor did Horry County request to review records. Transcript of Hearing, page 6, line 7–page 7, line 1.

When the Court asked Mr. Kincannon about responding to interrogatories asking for identity of witnesses and things like that, Mr. Kincannon informed the Court that responses to interrogatories had been provided and that Defendants never intended not to provide discovery

responses. Horry County "had every opportunity to come and get whatever they wanted from day one, from the entry of the Order, and so I think the standard on a Rule to Show Cause and Motion for Sanctions is, there was a willful intent to violate the Court's Order, and there certainly was not. Transcript of Hearing, page 8, lines 8-15. "My client's position in the case has been, they're an open book, anybody - they can come, Horry County can come and look and get whatever they want." Transcript of Hearing, page 9, lines 5-7. "[T]he reason why this was handled the way it was, because we genuinely believe that Horry County could come and get whatever they wanted whenever they wanted, and they simply haven't." Transcript of Hearing, page 9, lines 12-15.

Mr. Kincannon further pointed out to the Court that the issues involved in the case were matters of law, not disputes over facts. "[W]e think that this issue is a matter of law, and if the Court finds against us on a matter of law we lose, and if the Court finds for us on a matter of law we win, so - but beyond all that, Judge, there's no prejudice here..." Transcript of Hearing, page eight, lines 19-23. Horry County did not avail itself of the opportunity to come review Defendants' records. "We were so cooperative in discovery that we put a term in the Order that we wanted in the Order, along with their agreement, that they could come get whatever they wanted whenever they wanted. I think it's hard to say there's willful violation of anything when you are that open-book about something." Transcript of Hearing, page 10, lines 9-14.

Without any showing from the Plaintiff that it had been prejudiced or that Defendants intentionally disobeyed the Court's Order, the Court determined Defendants were in contempt. The Court held, "[t]hey failed to respond as required, so I find them in willful violation of that Order." Transcript of Hearing, page 21, lines 8-17. The Court instructed Mr. Thompson to "prepare an order that basically finds the Defendants in willful violation of the Court's Order,

strikes their Answer and Counterclaim, holds them in default...that you are entitled to judgment against the Defendants for the attorneys' fees and cost incurred..." Transcript of Hearing, page 22, line 24 – page twenty-three, line 5.

2. Determination of Motion for Default:

During the hearing, Mr. Thompson incorrectly informed the Court that the Defendants had not timely filed a responsive pleading to the Plaintiff's Amended Complaint. In response, Mr. Kincannon provided a detailed explanation as to why Defendants were not in default:

In response to our Answer and Counterclaim Mr. Thompson filed three documents. He filed an Amended Summons, which stated that we had thirty days to respond before we would be held in default. He filed Amended Complaint, and he filed a Reply. He didn't just file an Amended Complaint then the time would have been fifteen days. He also filed an Amended Summons saying that they would not move to hold us in default for thirty days. So when that - - when he sent that Summons that said thirty days, rather than fifteen ...if he takes the position no that there were only fifteen days to respond then his Summons is erroneous, and the Summons stating thirty days is why it was calendared for thirty days.

But beyond that, Your Honor, I'll tell you this too. He filed a Reply in addition to an Amended Complaint. There's no reason to file a Reply if you file an Amended Complaint. If you file an Amended Complaint then the other party files a new answer and counterclaim, and then you file a new reply. Because he filed a Reply in addition to an Amended Complaint Rule 15 actually has two different sections that apply to it. Under Rule 15(A) there are thirty days to file an amended an amended answer and counterclaim when a reply is filed. Under Rule 15 (A) also there are fifteen days to reply to an amended complaint, but the summons that he filed along with the amended complaint stated that there were thirty days to respond to the amended complaint. Transcript page 14, line 5- page 15, line 7.

Mr. Thompson did not deny that his Amended Summons gave Defendants thirty days to file an Answer. Additionally, Mr. Thompson failed to inform the Court that an Answer to the Amended Complaint had already been filed and served by Defendants Aquasino Partners of South Carolina, LLC, Suncruz Casino Cruises, LLC, and Highland Park Real Estate

Development Corporation as of September 21, 2012 – less than thirty days after the filing and serving of the Amended Summons and Complaint. The hearing transcript shows the Court did not explicitly rule on whether Defendants timely answered the Amended Complaint. However, the Court did make clear it considered the Defendants in default as a result of the finding of contempt. When Mr. Kincannon asked what's left in the case, the Court responded, "[p]robably not a whole lot, since I strike the Answer and hold the Defendants in default." Transcript of Hearing, page 21, lines 22-15.

G. Orders as to the Hearing Held October 15, 2012:

On October 22, 2012, a Form 4 Order was filed. The Order held Defendants willfully violated the Court's prior Order requiring them to comply with discovery requests, and as such, Defendant's responsive pleadings are stricken and the Defendants are held in default. The Court further ordered Defendants to compensate Plaintiff for attorney fees and costs incurred from August 29, 2012 until October 15, 2012 associated with prosecuting the Rule to Show Cause. The Order further instructed the clerk that a default hearing on damages is to be scheduled.

On November 2, 2012, a formal Order dated October 31, 2012, was filed. The Order provided the Court considered the significant delays in the case and that Defendants failed to provide the Court with any facts or circumstances that would justify the failure to provide discovery as ordered, especially in light of Defendants' counsel's email of August 27, 2012.

The Order went on to state:

I have also weighed the nature of the discovery requests, the discovery posture of the case, being that no discovery whatsoever has been conducted since the case was filed in November 2011, the willfulness of the failure to provide the discovery responses and the prejudice to the Plaintiff in not receiving discovery responses eleven (11) months after the initial discovery requests were made. Although Plaintiff's counsel represented that Mark Neill, a new attorney for the

Defendants who recently filed a Notice of Appearance, provided Plaintiff's counsel with responses to the discovery requests, Plaintiff's counsel further represented to the Court that they were not provided until October 11, 2012 and were not complete. This exemplifies the delays and last minute filings that these Defendants have engaged in throughout this case and will result in further delays for the Plaintiff to obtain complete answers to discovery responses.

The Order made no mention of the fact that the Court's prior Order filed July 30, 2012 gave Plaintiff, and the Court appointed receiver, full access to all of Defendants' records. Plaintiff had ample opportunity to conduct discovery by reviewing all the records it wanted to, but Plaintiff chose not to. Additionally, how could Plaintiff's counsel represent the responses were not complete when he had not even reviewed the written discovery responses or the documents produced or made available for inspection?

The Order failed to consider the fact that Defendants were in full compliance with the Court's Order appointing Mr. Singleton as a receiver. Mr. Singleton filed interim reports showing Defendants were cooperative and responsive to his requests. Mr. Singleton's reports also documented that Defendants were in compliance with the Court's Order requiring them to pay the disputed surcharge monies directly to Horry County.

The Order also failed to address Defendants' Motion for Substitution of Counsel and the Affidavits of Mr. Naos and Mr. Weisberg filed October 11, 2012, in which they informed the Court Defendants had no idea they were in violation of a Court Order. The Order made no findings of fact showing Defendants acted in a willful manner or in disregard of the Court or the Plaintiff. The Order only referenced Mr. Kincannon's email claiming *he* needed an extension because of a personal matter and the delays caused by Mr. Viers' and Mr. Rutherford's assertion of legislative immunity. Those delays were not related to Defendants' response to discovery requests. There are no facts in the record showing delays were caused by Defendants' refusal to provide information or documentation.

Furthermore, the Order made no findings as to how the Plaintiff has actually been prejudiced by the Defendants. How could Plaintiff be prejudiced when it was Plaintiff who made the decision not to exercise its Court appointed authority to review Defendants' books and records? Additionally, the Plaintiff only recently filed an Amended Complaint on August 31, 2012; the case was not on any trial roster; and the primary dispute in the case concerned a question of law, not a determination of disputed facts.

IV. LEGAL ARGUMENT:

A. Standard of Review:

The imposition of sanctions is generally entrusted to the sound discretion of the trial court. Halverson v. Yawn, 328 S.C. 618, 620-21, 493 S.E.2d 883, 884 (Ct.App.1997); Downey v. Dixon, 294 S.C. 42, 46, 362 S.E.2d 317, 318 (Ct.App.1987). The circuit court's decision regarding the imposition of discovery sanctions will not be reversed absent an abuse of discretion. Samples v. Mitchell, 329 S.C. 105, 111, 495 S.E.2d 213, 216 (Ct.App.1997). "In deciding what sanction to impose for failure to disclose evidence during the discovery process, the trial court should weigh the nature of the interrogatories, the discovery posture of the case, willfulness, and the degree of prejudice." Samples, 329 S.C. at 112, 495 S.E.2d at 216. A failure to weigh the required factors demonstrates a failure to exercise discretion and amounts to an abuse of discretion. Id.

B. SCRCP Rule 37:

While Rule 37, SCRCP, allows the Court to impose sanctions or order costs against a party or attorney who's conduct necessitated the motion, there must be a showing of intentional disobedience on the part of the sanctioned party. Rule 37(a)(4) provides:

Award of Expenses of Motion. If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent **whose conduct necessitated the motion or the party or attorney advising such conduct** or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust. ... If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

Rule 37(b)(2) further provides:

Sanctions by Court in Which Action Is Pending. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35, or if a party fails to obey an order entered under Rule 26(f), the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

- (A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;
- (B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;
- (C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;
- (D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;
- (E) Where a party has failed to comply with an order under Rule 35(a) requiring him to produce another for examination, such orders as are listed in paragraphs (A), (B), and (C) of this subdivision, unless the party failing to comply show that he is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust. (Emphasis added).

The provisions of Rule 37 clearly show that sanctions are appropriate only when the party being sanctioned willfully or knowingly disobeyed the Court's Order. Rule 37 also shows that the ordered sanctions must be reasonable, just, and proportional to the determined disobedience. In the present case, the record shows the Defendants were not even aware of the Court's Order. Once Defendants became aware of their responsibilities, they immediately provided discovery responses. There was no showing of disobedience on behalf of the Defendants. Furthermore, the ordered sanctions are not proportional to the alleged violation.

C. Harsh Medicine:

When a court orders a sanction that results in default or dismissal, "the end result is harsh medicine that should not be administered lightly." Griffin Grading and Clearing, Inc., 334 S.C.193, 198, 511 S.E.2d 716, 718 (Ct.App. 1999). The sanction must not go beyond the necessities of the situation to foreclose on the merits of a case. Balloon Plantation, Inc. v. Head Balloons, Inc., 303 S.C. 152, 399 S.E.2d 439 (Ct.App. 1990). Where the sanction would be tantamount to granting a judgment by default, the moving party must show bad faith, willful disobedience or gross indifference to its rights to justify the sanction. Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991).

In his separately concurring opinion in Karppi v. Greenville Terrazzo Co., Inc. and Ogden Teck, Inc., 327 S.C. 538, 489 S.E.2d 679 (Ct.App.1997), Judge Anderson cited 23 Am.Jur.2d Deposition and Discovery §390 and §391 (1983) for the following:

The sanction of striking pleadings should not be lightly used, since it can amount to judgment against the delinquent party without an opportunity to be heard on the merits. A default judgment is clearly a drastic remedy and should be resorted to only in extreme situations, as where it is determined that counsel or a party has acted willfully or in bad faith in failing to comply with rules of discovery or with court orders enforcing the rules or in flagrant disregard of those rules or orders or

persists in an outright refusal to comply with discovery obligations, or where there is a series of episodes of nonfeasance on the part of counsel amounting to a near total dereliction of professional responsibility and going well beyond ordinary negligence.

In the present case, there is no showing of bad faith, willful disobedience or gross indifference on the part of the Defendants. Defendants should not be dealt the harsh medicine of being held in default as a result of their prior counselor's failures. The record shows that Defendants were very cooperative in discovery in that they consented to Plaintiff having full access to their books and records. The Defendants made no attempt to prevent the Plaintiff from reviewing its books and records. It was the Plaintiff that failed to make any efforts to do so.

The record also shows that when Defendants were aware of an Order of the Court, they were obedient. For example, after the July 23, 2012 hearing, the Defendants immediately began making payment of the disputed surcharge monies to the Plaintiff. Furthermore, the record shows Defendants fully cooperated with the Court appointed receiver. The facts of this case simply do not support any finding of willful disobedience on the part of the Defendants.

D. Abuse of Discretion:

In CFRE, LLC v. Greenville County Assessor, 395 S.C. 67, 716 S.E.2d 877, 886 (2011), the Supreme Court held "[a] trial court's decision on whether or not to impose discovery sanctions is reviewed for abuse of discretion." An abuse of discretion may be found if the trial court's conclusions regarding an award of sanctions lack reasonable factual support. Ex Parte Bon Secours-St. Francis Xavier Hosp., Inc., 393 S.C. 590, 713 S.E.2d 624 (2011). As set forth above, in the present case, the Court's imposition of severe sanctions lacks reasonable factual support.

An abuse of discretion may also be found where the sanction is not proportional to the party's disobedience. In Karppi v. Greenville Terrazzo Co., Inc. and Ogden Teck, Inc., 327 S.C. 538, 489 S.E.2d 679 (Ct.App.1997), the Court determined the trial court abused its discretion in striking Ogden Teck's pleadings because the sanction was unduly harsh under the circumstances. The trial court struck Ogden Teck's pleading because it failed to respond to a discovery orders issued by way of a written order and a verbal order during a status conference. In reversing the trial court's order, the Court emphasized that it did not condone Ogden Teck's violation of the discovery orders, but, "[u]nder the circumstances...the harsh sanction imposed was not commensurate with Ogden Teck's disobedience, and any number of lesser, more narrowly tailored sanctions would have sufficed to protect Karppi's rights while adequately punishing the wrongdoing of Ogden Teck. Id. at 545, 683. The Court further provided in a footnote the following:

While we agree that the trial court was well within its power to penalize Ogden Teck for what the court found to be willful disobedience, under these circumstances it seems from the record as though the attorney for Ogden Teck was at least as much to blame as the party itself, for its indiscretions. To penalize Ogden Teck so severely for apparently relying on the advice of its attorney, under these circumstances, is clearly unjust, and would not properly serve the purposes for sanctions. Cf. Dunn v. Dunn, 298 S.C. 499, 381 S.E.2d 734 (1989). Id. at 545, 683.

In a separately concurring opinion, Judge Anderson stated the trial judge's order holding Ogden Teck in default for failing to comply with a discovery order was an abuse of discretion. Judge Anderson cited the U.S. Supreme Court's opinion in Societe Internationale Pour Participations Industrielles et Commerciales, S.A. v. Rogers, 357 U.S. 197, 78 S.Ct.1087, 2 L.E.2d 1255 (1958) for the holding "the sanction imposed should be reasonable, and the Court

should not go beyond the necessities of the situation to foreclose a decision on the merits of a case.” “In other words, the sanction should be a rifle-shot, not a shotgun blast. In the instant case, the sanction was a hydrogen bomb. The defendants were denied the opportunity to present a defense.”

Judge Anderson further cited Hathcock v. Navistar Int’l Transp. Corp., 53 F.3d 36 (4th Cir.1995) in which the Court of Appeals held “[w]hile the imposition of sanction under Rule 37(b) lines within the trial court’s discretion, it is not a discretion without bounds or limits. In the case of ordering default judgment, the ‘range of discretion is more narrow’ than when a court imposes less severe sanctions.” The Hancock opinion further provided: “In particular, this court has emphasized the significance of warning a defendant about the possibility of default before entering such a harsh sanction....a panel of this court considered the failure to warn a “salient fact” which distinguished the case from those in which default was appropriate. (Internal citations omitted).

In the present case, while the record could support the determination that Defendants failed to timely produce discovery responses, that failure does not warrant the imposition of the harshest sanction available. The Court’s sanction was not reasonable in light of the following circumstances: (1) Defendants made all their books and records available to Plaintiff, (2) Defendants were not aware they were in violation of an order, (3) Defendants provided responses to discovery requests once they became aware of their obligation, (3) Defendants’ prior counsel, not the Defendants, was the source of the disobedience, (4) Defendants cooperated and fully complied with other provisions of the Court’s Order, and (5) the Court did not warn Defendants of the possibility of default.

E. Cases in which striking a party's pleading was appropriate:

Unlike the facts presented in the present case, the appellate Court held severe sanctions were appropriate in the following cases:

- In OZO, Inc. v. Moyer, 358 S.C. 246, 594 S.E.2d 541 (Ct.App.2004), the Court determined the trial court did not abuse its discretion in striking Moyer's Answer when the facts showed Moyer intentionally and willfully violated the trial court's discovery order. The trial court previously ordered Moyer to produce a computer in which evidence was thought to be stored. Before turning over the computer, Moyer caused the hard-drive of the computer to be re-formatted which effectively erased any information contained therein. Moyer's actions in destroying evidence clearly showed gross indifference to the rights of the adverse party.
- In Barnette v. Adams Brothers Logging, Inc., 355 S.C. 588, 586 S.E.2d 572 (2003), the Supreme Court upheld a trial court's dismissal of Barnette's complaint given her "persistent refusal to comply with the trial court's orders." The record showed three separate hearings were held in which the trial court ordered Barnette to produce records. During the third hearing on the matter, the trial court warned that Barnette's failure to comply with its orders could result in the imposition of sanctions which may result in dismissing the action. Because Barnette failed to obey the trial court's orders, even after being warned, her complaint was dismissed. The trial court had no other choice given the fact that Barnette was intentionally trying to conceal evidence.
- In McNair v. Fairfield County, 379 S.C. 462, 665 S.E.2d 830 (Ct.App.2008), the Court of Appeals upheld the trial court's decision to strike Fairfield County's pleading. The record showed the County completely ignored and failed to comply with the court's order even after numerous hearings on the matter were held. The court warned the County that it was inclined to strike the County's Answer but would instead give the parties 45 days to reach an agreement and to submit proposed scheduling orders. When the county once again ignored the court and failed to submit a proposed scheduling order, the trial court issued an order striking the County's Answer.

In these three cases, there was a clear showing of willful disobedience and gross indifference of the court and the rights of other parties involved. In OZO, the defendant intentionally destroyed evidence the court ordered be produced. In Barnette and McNair, the defendants continuously ignored the court's numerous orders even after being warned their pleadings may be stricken as a result of their blatant disobedience. The facts and circumstances

of the present case are dramatically different and the forced imposition of default judgment is not reasonable. Defendants are not deserving of such harsh medicine.

V. CONCLUSION:

For the reasons discussed above, the Court's Orders striking Defendants' responsive pleadings and holding them in default for not timely answering the Amended Complaint must be withdrawn.

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Attorney for Defendants

Aquasino Partners of South Carolina, LLC,

Suncruz Casinos Cruises, LLC, and

Highland Park Real Estate Dev. Corp.

Dated: 1/23, 2013
Murrells Inlet, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Horry County, a Body Politic ,

Plaintiff,

**Aquasino Partners of South Carolina, LLC,
Suncruz Casino Cruises, LLC, Ventures South
Carolina, LLC, Suncruz Casinos, LLC, and
Highland Park Real Estate Development
Corporation ,**

Defendant(s).

**IN THE COURT OF COMMON PLEAS
OF THE FIFTEENTH JUDICIAL CIRCUIT
Civil Action No: 2011-CP - 26- 9457**

**FILED
HORRY COUNTY
2013 FEB -5 PM 12:20
MELANIE HUGGINS-WARD
CLERK OF COURT**

**PLAINTIFF'S REPLY
BRIEF TO DEFENDANT'S
MOTION TO RECONSIDER
& MOTION TO SET ASIDE
ORDER OF DEFAULT
WITH EXHIBITS 1-56
(BOOK I OF II)**

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) OF THE FIFTEENTH JUDICIAL CIRCUIT
) Civil Action No: 2011-CP - 26- 9457

Horry County, a Body Politic ,

Plaintiff,

vs.

Aquasino Partners of South Carolina, LLC,
Suncruz Casino Cruises, LLC, Ventures South
Carolina, LLC, Suncruz Casinos, LLC, and
Highland Park Real Estate Development
Corporation ,

Defendants.

**PLAINTIFF'S REPLY BRIEF
IN OPPOSITION TO
DEFENDANTS' MOTION TO
RECONSIDER AND MOTION TO
SET ASIDE ORDER OF DEFAULT**

FILED
HORRY COUNTY
2013 FEB -5 PM 12:20
MELANIE HUGGINS-WARD
CLERK OF COURT

The Defendants, by and through their attorney, Mark Neill, filed their Notice of Motion and Motion to Set Aside Order of Default and/or Reconsider Order of Default dated November 12, 2012, requesting that the Court, pursuant to Rule 59(e) SCRPC, reconsider its Order dated October 31, 2012 and filed November 2, 2012. The Order filed November 2, 2012 was the result of a hearing that occurred on October 15, 2012 that was before the Court solely upon Plaintiff's Application for an Order and Rule to Show Cause and Motion for Sanctions. This Application and Motion was based upon Defendants' failure to comply with discovery previously ordered by this Court by Order dated July 27, 2012 and filed July 30, 2012. It is quite obvious both from Mr. Neill's Brief in Support of his Motion to Reconsider and Motion to Set Aside Order of Default, and his first involvement in this case as the Defendants' fourth attorney more than ten (10) months after the case was filed, that he does not have a good grasp of the history of this case and is relying on flawed information from his clients and previous misrepresentations made to

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the Court by his clients' other counsel. As such, the Plaintiff feels it necessary to provide a historical background for the Court, both factually and procedurally, before addressing the specifics of Defendants' Motion and Brief.

HISTORICAL BACKGROUND
NOVEMBER 20, 2011 – JULY 22, 2012

On November 20, 2011, Plaintiff filed its Summons and Complaint against the Defendants alleging several causes of action arising out of Defendants' failure to pay a Seven and 00/100 (\$ 7.00) Dollar surcharge fee to the Plaintiff pursuant to State law, County ordinance, County resolution, and a Surcharge Agreement between the Plaintiff and Suncruz Casino Cruises, LLC. On November 15, 2011, J. Todd Kincannon, Esquire, on behalf of all Defendants, accepted service of the Civil Action Cover Sheet, Summons, Complaint, Plaintiff's First Request for Production of Documents to Defendants, Plaintiff's First Set of Interrogatories to Defendants, and Acceptance of Service, as shown by the Acceptance of Service filed December 2, 2011 in this action. Thereafter, by Acceptance of Service dated November 18, 2011, Thaddeus T. Viers, Esquire, on behalf of all Defendants, also accepted service of the same documents as shown by the Affidavit of Service filed December 5, 2011 in this matter. A copy of Plaintiff's First Set of Interrogatories to Defendants and Plaintiff's First Request for Production to Defendants that were served on Defendants' counsel and filed November 10, 2011, is marked as Exhibit "1" and incorporated herein as if made a part and parcel hereof, as will be all Exhibits referenced hereinafter in this Reply Brief. Arrigo P. Carrotti, Esquire, County Attorney for Horry County, and Sanford Cox Graves, Esquire, Deputy County Attorney for Horry County, were the only attorneys of record for the Plaintiff at that time.

Thereafter, on December 7, 2011, Mr. Kincannon requested an extension of time to respond to the Complaint, which was granted by Mr. Graves as shown by Exhibit "2". Mr. Kincannon then responded to the Complaint on behalf of all Defendants by filing Defendants' Motion to Dismiss dated January 14, 2012 and received by the County on January 18, 2012, the last date of the extension previously granted, as shown by Exhibit "3" and the pleadings filed in this matter.

Thereafter, the undersigned attorney, Philip C. Thompson, Esquire, of Thompson & Henry, P.A., filed his Notice of Appearance, Application for Appointment of Receiver and Motion for Temporary Injunction on February 28, 2012. These pleadings were served upon Mr. Kincannon by letter dated February 21, 2012, on February 29, 2012, as shown by the Affidavit of Mailing filed February 29, 2012. The letter dated February 21, 2012, and marked as Exhibit "4", stated that the Defendants were served with Plaintiff's First Requests for Production of Documents to Defendants and Plaintiff's First Set of Interrogatories to Defendants on or about November 15, 2011, that as of that date no responses to said discovery requests had been served upon the Plaintiffs and gave notice that pursuant to Rule 11, SCRPC, the Defendants had ten (10) days from the date of the letter to provide the Plaintiffs with the Defendants' responses to Plaintiff's discovery requests. Mr. Kincannon replied that he had not received any discovery requests and asked that Plaintiff's counsel scan in and email a copy of same, which was done on February 27, 2012 as shown by Exhibit "5".

Contrived Use of Legislative Protection, Threats of Bankruptcy and Deceptive Representations Concerning Discovery

Understanding that the Deputy Clerk of Court and Scheduling Coordinator for Non-Jury Motions Rosters had some reservations about scheduling the Motions filed in this matter due to Mr. Viers being shown as an attorney of record and, being a legislator, having legislative

protection, the undersigned counsel began corresponding with Mr. Viers about his involvement in this matter on March 7, 2012. Receiving no definitive response from Mr. Viers as shown by Exhibit "6", the undersigned counsel corresponded with Deputy Clerk Linda Johnson as shown by Exhibit "7". Exhibit "7" sets forth the undersigned's attempt to correspond with Mr. Viers and the undersigned's contact with his employer at the time he accepted service, Coastal Law, LLC. The undersigned contacted Coastal Law on March 12, 2012 and learned that Mr. Viers no longer was associated with that firm, that this particular matter was showing as a closed file at Coastal Law and that Mr. Viers planned to clarify his relationship with the Defendants in a telephone call on March 12, 2012. However, Mr. Viers never responded with that clarification. The purpose of Exhibit "7" was to get the Motions filed by the Defendants and Plaintiff scheduled for hearing. Exhibit "7" was copied to Mr. Kincannon and Mr. Viers.

In response to Exhibit "7", Ms. Johnson requested that the undersigned let her know Mr. Viers' involvement as soon as any information became available, and if he was not retained in the case, that she could set the Motions for the week of April 16, 2012. This response is contained in Exhibit "8" which also includes another request by the undersigned to Mr. Viers asking him whether he planned to be present for the pending Motions. Mr. Kincannon responded that he would check with his client to see if they intended Mr. Viers to appear on their behalf in this litigation and he would let everyone know as soon as possible. He continued, "I suspect the answer will be yes [that Mr. Viers would also be representing the Defendants], and with Mr. Viers' legislative protection, a hearing will not be possible for several months."

Mr. Kincannon represented in an email dated March 21, 2012 that he was "working on discovery responses." This email is marked Exhibit "9". On March 21, 2012, in another email to Ms. Johnson, Mr. Kincannon represented that Mr. Viers "will be continuing in this matter on

behalf of the defendants. That creates a legislative protection issue with regard to the scheduling of these Motions. Mr. Viers' legislative protection will likely end sometime in August. I think a date in late August would very likely work." This March 21, 2012 email is marked Exhibit "10". In response, the undersigned counsel for the Plaintiff told Mr. Kincannon that a Motion to Compel Discovery had not been filed as of yet, and requested that Mr. Kincannon let Plaintiff's counsel know when the Plaintiff could expect to receive Defendants' responses to discovery. That email is marked as Exhibit "11". In that email, as Mr. Kincannon was unresponsive to giving a date, Plaintiff's counsel once again requested "a reasonable date in the very near future" when Plaintiff could expect to receive Defendants' responses to Plaintiff's discovery requests that were served approximately four (4) months prior.

On March 21, 2012, Mr. Viers announced his resignation from The S.C. House of Representatives, as shown by Exhibit "12". Based upon that announcement, Plaintiff's counsel corresponded with Ms. Johnson with the news of Mr. Viers' resignation and requested that the Motions be scheduled as soon as possible. Ms. Johnson responded that she would place the Motions on a roster as shown by Exhibit "13". The Honorable Benjamin H. Culbertson, in response to an email from the undersigned dated April 12, 2012, instructed the undersigned to have Ms. Johnson set all the Motions to be heard during the May 21, 2012 term of court as shown by Exhibit "14".

On April 11, 2012, Mr. Viers was placed on interim suspension by the South Carolina Supreme Court as shown by Exhibit "15". The Motions were set to be heard May 22, 2012 before the Honorable Benjamin H. Culbertson. By Form 4 Order dated May 22, 2012 and filed May 29, 2012, the Court issued an order continuing the motions until the June 11, 2012 term of court, and on May 22, 2012, the undersigned counsel for the Plaintiff corresponded with Judge

Culbertson's law clerk concerning the May 22, 2012 Form 4 Order continuing the hearing. In response to that communication, Mr. Kincannon replied that he was out of town, his scheduler had removed this case from his calendar for the May 22, 2012 hearings, and that he was attempting to associate other counsel on this case. This email is marked Exhibit "16" and Form 4 Order dated May 22, 2012 is marked Exhibit "17".

On May 20, 2012, Plaintiff filed a Motion to Compel Discovery against Defendants and served same on Mr. Kincannon along with Plaintiff's First Supplemental Interrogatories and Request for Production of Documents as shown by the May 31, 2012 letter of the undersigned counsel with attached Supplemental Interrogatories and Request for Production of Documents marked Exhibit "18". By email dated June 22, 2012, Mr. Kincannon requested that Plaintiff's counsel consent to Defendants substituting counsel for Mr. Viers. Mr. Kincannon then stated, "[t]here are two different lawyers who may take Thad's place. Fair warning: both are legislators, so legislative protection will apply for next week's hearing." This June 22, 2012 email is marked Exhibit "19". On the same day, Plaintiff's counsel responded to Mr. Kincannon's June 20, 2012 request with regards to a potential conflict regarding Thompson & Henry, P.A., representing Horry County against the Defendants. After a thorough investigation, Plaintiff's counsel responded that there was no conflict. This email is marked Exhibit "20"

The Motions were rescheduled again for June 27, 2012 before Judge Culbertson. One day before that, on June 26, 2012, Mr. Kincannon notified Plaintiff's counsel that his clients planned on filing bankruptcy in advance of the June 27, 2012 hearing, "which will obviate the necessity for the hearing." This email is marked Exhibit "21". On the date of the hearing, June 27, 2012, at 9:41 a.m., Mr. Kincannon notified Plaintiff's counsel that Representative Todd Rutherford had replaced Mr. Viers in this action as shown by Exhibit "22". Mr. Kincannon also

notified Ms. Johnson of Mr. Rutherford's involvement and stated that "Rep. Rutherford is a legislator, and is in session today in Columbia. Therefore, legislative protection applies and the hearing cannot go forward." This email, along with a letter to Judge Culbertson is attached as Exhibit "23". The letter to Judge Culbertson advised that legislative protection is restored in this matter and also attached a Notice of Appearance of Todd Rutherford, Esquire, that had been signed by Mr. Kincannon only.

After a series of emails back and forth between the parties and the Court, Judge Culbertson, on June 27, 2012 at 10:55 a.m., responded that the hearing would go forward that day at 2:00 p.m. as scheduled, and that although a Notice of Appearance was signed by Mr. Kincannon, dated June 27, 2012, Mr. Rutherford's appearance hours before the hearing did not relieve Mr. Kincannon from appearing for the hearing. Judge Culbertson stated that he would listen to any arguments Mr. Kincannon had for a continuance at 2:00 p.m. that day. This series of emails is marked as Exhibit "24". At 12:03 p.m. on June 27, 2012, Mr. Rutherford forwarded to the Court and Plaintiff's counsel an email with his attached Notice of Appearance, this time signed by Mr. Rutherford. This email and Notice are marked Exhibit "25". By email dated June 27, 2012 at 12:51 p.m. with attached letter, Mr. Rutherford requested Judge Culbertson continue the hearings that were scheduled for 2:00 p.m. This email and letter are marked Exhibit "26". In Mr. Rutherford's letter he alleged legislative protection and specifically stated, "I object to the hearing going forward this afternoon without my presence as my intent is to be in attendance for scheduled hearings from this point forward."

Upon receiving that correspondence, Judge Culbertson rescheduled the hearings to 9:30 a.m. on June 29, 2012, after checking and being informed that the legislative session ended June 28, 2012 as shown by Exhibit "27". At 5:21 p.m. on June 27, 2012, Mr. Rutherford's office sent

to Judge Culbertson and Plaintiff's attorneys his email with attached June 27, 2012 letter and a copy of House Bill 5410 as shown by Exhibit "28". In Mr. Rutherford's letter, he requested that the June 29, 2012 hearing be continued, telling Judge Culbertson to "please be aware that regular session this year technically ends on November 12, 2012 at 5:00 p.m. pursuant to the Sine Die agreement." As a result, Judge Culbertson continued the hearing and rescheduled it to 9:30 a.m. on July 23, 2012. Judge Culbertson also expressed concern about the length of time the Defendants had been claiming legislative immunity even after Mr. Viers was no longer in the legislature, Mr. Rutherford's appearance on the day of the scheduled hearing and the fact that Mr. Kincannon had been counsel of record since the commencement of the action as shown by Exhibit "29". Judge Culbertson entered a Form 4 Order dated and filed June 29, 2012 continuing the Motion hearing to July 23, 2012 as shown by Exhibit "30".

THE JULY 23, 2012 HEARING AND ORDER OF THE COURT

The July 23, 2012 hearing went forward before Judge Culbertson as scheduled and shown by the Transcript of Hearing marked Exhibit "31". Present for the hearing for the Plaintiff was Mr. Thompson and Mr. Carotti. The only attorney appearing for the Defendants was Mr. Kincannon. At the call of the roster, a conversation occurred between Judge Culbertson and Mr. Kincannon wherein Judge Culbertson expressed his concern that Mr. Rutherford was not present, even though Mr. Rutherford had represented to the Court in his June 27, 2012 letter marked Exhibit "26" that his intent was to be in attendance for scheduled hearings from that date forward. Judge Culbertson also expressed his concern with regards to the significant delays that had occurred up to this point. Mr. Kincannon then apologized for that issue. (Transcript of Record, Hearing, July 23, 2012, p. 4, l. 6-7.) Additional conversations between Mr. Kincannon

and the Court on that issue and the continued claims of legislative immunity are contained on p. 20, l. 17 through p. 22, l. 5 where the following transpired:

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[MR. KINCANNON]

17 factual dispute on many of the issues. I think my clients
18 would have no problem whatsoever given the situation they're
19 in trying to expedite this to get a final resolution of it.

20 THE COURT: Well, I'm having a hard time believing
21 that when they've been claiming legislative immunity since
22 February ---

23 MR. KINCANNON: Well, Your Honor ---

24 THE COURT: --- saying that that legislators who
25 represent them are vital to this case and we can't even

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1 proceed with a motion hearing without their presence. Now
2 they're saying they agree to an expedited hearing when these
3 matters have been pending since 2011.

4 MR. KINCANNON: And Your Honor, I'll tell you the
5 difference, the financial situation that they are in and that
6 they are heading towards is going to land them in a bankruptcy
7 court very soon if, if this matter is not addressed.

8 THE COURT: Well, and it might be but it could have
9 been addressed a long, long time ago, but the Court has

10 repeatedly been advised that Representative Viers and then
11 Representative Rutherford's presence was mandatory for the
12 disposition of these issues and now we are finding out that
13 wasn't the case.

14 MR. KINCANNON: Well, Your Honor, and I apologize for
15 that and I will again represent to the Court that it is
16 absolutely the case that Mr. Rutherford contacted me on Friday
17 and asked me about arrangements for coming here. He was
18 flying back in from Miami and was going to come straight into
19 Myrtle Beach if we were going, if the hearing was still on and
20 he had, had had a trial I think in Kershaw County and was going
21 to go into Columbia if the hearing was off, and based upon my
22 discussions with Mr. Thompson I understood that we were -- we
23 had a tentative agreement in place and it looked like we were
24 going to be able to settle.

25 THE COURT: Okay.

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1 MR. KINCANNON: And that fell apart over the weekend
2 and that's why Mr. Rutherford is not here and I apologize to
3 the Court for that.

4 THE COURT: All right, well, I'm going to deny your
5 motion.

Mr. Kincannon also made the following representations to the Court:

1. "... The problem is and this is fundamental, too, it has but it has cut into their bottom line so badly that they can no longer make the payment that is called for by the Horry County ordinances relating to the surcharge of passengers to get on the boat. They contacted me and Mr. Thad Viers in last year, late last year and were telling us that they were having a very difficult time making their payments, asked us to go to Horry County and talk to them and we went to Horry County." (Transcript of Hearing, July 23, 2012, p. 5, lines 11 - 19).
2. "I'll tell Your Honor right now my clients have told me many times if we could pay the \$ 7 per passenger fee we would, and in fact they did for some period of time before it just became economically impossible due to all the illegal competition they face on dry land." (Transcript of Hearing, July 23, 2012, p. 6, lines 1-5).
3. "... The issue, though, Your Honor, is this, if, if the \$7 figure sticks, they're done, and there's no point. They've told me that that they'll have to go to a bankruptcy here in the next three to four weeks given all the competition they're facing." (Transcript of Hearing, July 23, 2012, p. 10, lines 2-6).
4. "... in this case any sort of temporary relief would end their business. Their business will cease to exist and these claims will become the property of a bankruptcy estate." (Transcript of Hearing, July 23, 2012, p. 12, lines 2-4).
5. "... The issue that we are concerned about and my clients in the corner are just one of them conceded to me today that he's just sick at his stomach about all this because they are concerned that if an injunction is granted or a receiver appointed or anything like that their business will fall apart. As a casino if there is a hint of receiver appointment or if they have to file bankruptcy..." (Transcript of Hearing, July 23, 2012, p. 19, lines 14-21).
6. "MR. KINCANNON: Your Honor, I'll admit, I'll concede the motion to compel at this point if that helps because of the 12(B)(6) denial.

THE COURT: Okay, so that'll be - how long do you need to respond? This is to discovery; is that correct?

MR. THOMPSON: That's correct, Your Honor.

THE COURT: All right.

MR. KINCANNON: Your Honor, if I could have -- I can try to get it faster, but 30 days is what I would need if that's all right.

MR. THOMPSON: Is that, may I indulge you, is that for both sets because we did a supplemental set as well.

MR. KINCANNON: That's for everything and also with the understanding that you all are welcome to come anytime you want to get any kind of finances, but yeah, we can do that.

MR. THOMPSON: That'll be fine, Your Honor.

THE COURT: All right, motion to compel is granted. Defendants shall respond to the discovery requests, all discovery requests within 30 days."

(Transcript of Hearing, July 23, 2012, p. 22, l. 15 -- p 23, l. 8).

7. "... they can bear the \$7 per passenger fee in some of the summer months and my understanding is is that after September it's impossible because the decline in business over the winter...." (Transcript of Hearing, July 23, 2012, p. 37, lines 6-9).
8. "... The problem is that the financial position staked out by Mr. Thompson, which I completely understand, was too much for them to operate in the winter and survive; and so, the bankruptcy petition wouldn't be filed next week. It'd be November or something when they run out...." (Transcript of Hearing, July 23, 2012, p. 38, lines 9-14).
9. "THE COURT: All right, Mr. Thompson, if I could get you to prepare an Order and make sure Mr. Kincannon reviews it before you submit it to me. I don't know if it is covered in the one that you've already prepared, but number one, it denies their motion to dismiss. It is going to with their consent grant the motion to compel. They are to respond to all discovery requests within 30 days." (Transcript of Hearing, July 23, 2012, p. 42, lines 16-22).

Thereafter, Plaintiff's counsel provided to both Mr. Kincannon and Judge Culbertson the proposed Order that had been revised according to Judge Culbertson's clarification and conversations with Mr. Kincannon, to which Mr. Kincannon told Judge Culbertson that he "concurred entirely with Phil's comments....", as shown on Exhibit "32". The Order was signed by Judge Culbertson on July 27, 2012 and filed July 30, 2012. The Order provided as follows:

"It is Ordered, Adjudged, and Decreed that the Defendant shall provide the Plaintiff's with Defendants' answers and responses to Plaintiff's First Interrogatories to the Defendants dated November 10, 2011, Plaintiff's First Requests for Production to the Defendants dated November 10, 2011 and Plaintiff's Supplemental Interrogatories and Requests for Production of Documents dated May 29, 2012 no later than thirty (30) days from the date of this Hearing, which date shall be August 22, 2012."

The Order further provided that:

Waiver of Lawyer-Legislator Protection

The Defendants and their counsel, J. Todd Kincannon, Esquire, have associated Lawyer-Legislators to assist them in this case, the first being Thaddeus T. Viers, and after his resignation from the Legislature and suspension from the practice of law, James Todd Rutherford, Esquire. The association of said Lawyer-Legislators has resulted in significant delays in the case since Lawyer-Legislators are given protection from being called to a trial, deposition or hearing in any court of competent jurisdiction of this state during the legislative session pursuant to the Administrative Order of the Honorable Jean H. Toal, Chief Justice of the South Carolina Supreme Court, dated April 21, 2010. Recognizing the significance of those delays, the Defendants and their attorneys waived the Lawyer-Legislative Protection during the Legislative Session provided by Chief Justice Toal's Administrative Order from the date of this hearing and continuing until the final judgment of this case. Accordingly,

IT IS ORDERED, ADJUDGED AND DECREED that the Defendants and their attorneys shall not raise or assert the Lawyer-Legislator Protection provided by Chief Justice Toal's Administrative Order from the date of this hearing and continuing until the final judgment of this case so that no proceedings, depositions, discovery, hearings, trials or any other matters in this case shall be delayed, postponed or rescheduled because any lawyer for the Defendants is also a South Carolina Legislator during any legislative session.

POST JULY 23, 2012 HISTORICAL BACKGROUND

On August 9, 2012, Defendants, by and through Mr. Kincannon, filed their Answer and Counterclaim. This was almost nine (9) months after Plaintiff's Complaint was filed. Thereafter, in an email dated August 27, 2012, Mr. Kincannon contacted Plaintiff's counsel,

stating that he had August 27, 2012 marked as the due date of discovery and was "prepping it" when his fiancée was involved in an accident and he asked for an extension until August 28, 2012. Plaintiff's counsel responded that the due date was actually August 22, 2012 but agreed for an extension until August 28, 2012 as shown by Exhibit "33". On August 31, 2012, Plaintiff filed its Amended Summons and Complaint and replied to Defendants' Counterclaim which was served on Mr. Kincannon and Mr. Rutherford on August 31, 2012 as shown by the Affidavit of Mailing filed September 4, 2012.

Still No Discovery Responses, the Addition of a Fourth Attorney with Scheduling Conflicts, and Belied Representations that the Defendants were Unaware of the Court's previous Order

By letter dated September 5, 2012 and emailed to Mr. Kincannon and Mr. Rutherford, Plaintiff's counsel notified them that no discovery responses had been received as of that date and warned them that if the discovery responses were not received by September 7, 2012, an Order and Rule to Show Cause and/or Motion for Sanctions under Rule 37 SCRPC would be filed as shown by Exhibit "34". Having not received any responses by September 7, 2012, Plaintiff filed the Affidavit of Philip C. Thompson regarding the failure of the Defendants to provide discovery according to the Court's Order. By letter dated September 13, 2012, Plaintiff's counsel delivered to Deputy Clerk Rhonda Lilly, Circuit Court Scheduling Coordinator, a clocked copy of the Affidavit, a Motion Order and Information Form and Cover Sheet and a proposed Order and Rule to Show Cause for the Defendants' violation of Judge Culbertson's July 30, 2012 Order regarding discovery, with copies to Mr. Kincannon and Mr. Rutherford as shown by Exhibit "35". On September 20, 2012, Plaintiff filed its Motion for Sanctions and Affidavit of Default, and forwarded same to Ms. Lilly along with a proposed

Order of Entry of Default as shown by Exhibit "36", which was also copied to Mr. Kincannon and Mr. Rutherford.

Thereafter, on September 21, 2012, Mark D. Neill, Esquire, filed his Notice of Appearance for the Defendants over ten (10) months after the initial Summons and Complaint were filed as shown by Exhibit "37". On the same date, Defendants Aquasino Partners of South Carolina, LLC, Suncruz Casino Cruises, LLC and Highland Park Real Estate Development Corporation filed their Answer to Plaintiff's Amended Complaint and Counterclaim for Declaratory Judgment. No response was filed by the other two Defendants, Ventures South Carolina, LLC and Suncruz Casinos, LLC. On September 28, 2012, Plaintiff filed its Reply to Defendants' Counterclaim for Declaratory Judgment. On the same date, Judge Culbertson's Law Clerk notified Plaintiff's counsel that the recently filed Motions and Order and Rule to Show Cause would be heard Monday, October 15, 2012 at 2:00 p.m. as shown by Exhibit "38". By email with attached letter dated October 5, 2012 from Mr. Neill, Mr. Neill notified Judge Culbertson that he had an Order of Protection from the Court for October 11th - 22nd, 2012 as shown by Exhibit "39".

In response to Mr. Neill's email, Plaintiff's counsel corresponded with Judge Culbertson by email dated October 5, 2012, citing the case of Jackson v. Speed, 326 S.C. 289, 486 S.E. 2d 750 (1997) for the holding that it is not an abuse of discretion to deny a request for a continuance when one of the attorneys of record cannot attend. Plaintiff's counsel objected to a continuance since there were two other attorneys representing the Defendants, one being Mr. Kincannon who had been involved since the very beginning of the case. This email is marked as Exhibit "40". Judge Culbertson denied the request for the continuance and on October 9, 2012, the Defendants Aquasino Partners of South Carolina, LLC, Suncruz Casinos, LLC and Highland Park Real

Estate Development Corporation filed their Notice of Motion and Motion to Set Aside Default. As of that date, default had not been entered. A copy of said Motion is marked Exhibit "41".

More Last Minute Filings by the Defendants and another Request for a Continuance

On October 11, 2012, Defendants Aquasino Partners of South Carolina, LLC, Suncruz Casinos, LLC, and Highland Park Real Estate Development Corporation filed their Notice of Motion and Motion for Substitution of Counsel shown as Exhibit "42". On the same date, Defendants' counsel filed its Motion to disqualify Philip C. Thompson and Thompson & Henry, P.A., a copy of which is marked Exhibit "43" (with notes written on it by Plaintiff's counsel). By email and letter dated October 12, 2012, Mr. Neill forwarded to Judge Culbertson another letter requesting a continuance and included the Affidavits of Robert Weisberg and Spiro Naos, the managing partners of three of the Defendants, Aquasino Partners of South Carolina, LLC, Suncruz Casino Cruises, LLC, and Highland Park Real Estate Development Corporation, all marked Exhibit "44". In Mr. Neill's letter of October 12, 2012, he states in the third paragraph that the escrow agent, Joseph F. Singleton's bill for services had been paid. However, that was untrue as of 2:56 p.m. on October 12, 2012 as shown by the email of Mr. Singleton to Plaintiff's counsel marked Exhibit "46".

The Affidavits of Robert Wiesberg and Spiro Naos were attached to Mr. Neill's letter of October 12, 2012 and filed October 11, 2012. Both state that they had no idea that they had been ordered to provide requested information and documentation. However, both Mr. Naos and Mr. Wiesberg were present at the July 23, 2012 hearing as referenced by Mr. Kincannon on page 19 of that Transcript, beginning on line 15 wherein he stated "and my clients in the corner...." In addition, their Affidavits are of no legal consequence since "the acts of an attorney are directly attributable to and binding on the client." Griffin, Grading and Clearing, Inc. v. Tire Service

Equipment Manufacturing Co., Inc., 334 S.C. 193, 200, 511 S.E.2d 716 (Ct. App. 1999) (rehearing denied March 27, 1999). Once again, Judge Culbertson denied Mr. Neill's request for a continuance based on his concern for the continued delays in bringing pending matters before the Court and because Mr. Kincannon was still counsel of record for the Defendants as shown by Exhibit "46".

THE OCTOBER 15, 2012 HEARING

The Order and Rule to Show Cause previously forwarded to the court was signed October 4, 2012 by Judge Culbertson and required that all Defendants appear before him on Monday, October 15, 2012 at 2:00 p.m. This Order was filed October 19, 2012 and is marked Exhibit "47". The hearing occurred on October 15, 2012 as shown by the Transcript of Record marked Exhibit "48". Present for the Plaintiffs were Mr. Thompson, Mr. Carotti, and Mr. Graves. Present for the Defendants was Mr. Kincannon. Neither Mr. Neill, nor Mr. Rutherford, were present when the case was called. This hearing was strictly a hearing on the Rule to Show Cause issued by the Court on October 4, 2012, requiring all Defendants to appear and show cause why they should not be held in contempt for failure to respond to discovery ordered in Judge Culbertson's July 27, 2012 Order, as well as the Motion for Sanctions based on the same allegations. (Transcript of Record, October 15, 2012, p. 2, l. 18 - p. 3, l. 6). At that time, Plaintiff's counsel was in possession of some discovery responses that were received by Plaintiff's counsel on Thursday, October 11, 2012, but had not been able to fully review those responses. A cursory review revealed that the responses were not full and complete. (Transcript of Record, October 15, 2012, p. 3, l. 7-25, and p. 13, l. 15 -19). Defendants' late discovery responses and their incompleteness will be discussed below in the section regarding the October 11, 2012 late discovery responses.

Representation by Defendants' Counsel that he Now Believed he did Not Have to Respond to Plaintiff's Discovery Requests After All

Once again, at the October 15, 2012 hearing, Mr. Kincannon made additional representations to the Court, most specifically referencing the Court's Order of July 27, 2012 that gave the Plaintiff the right to come inspect the books and financial records of the Defendants. Mr. Kincannon represented to the Court that he believed that was a substitution for any requirement to answer any discovery requests. (Transcript of Record, October 15, 2012, p. 6, l. 7-22; p. 7, l. 13-16; and p. 8, l. 2-7). However, that is contrary to all of Mr. Kincannon's email correspondence representing that he was providing and working on the discovery responses and was prepping for responding to discovery referenced in the aforementioned Exhibits. Plaintiff's counsel never agreed that the right of the Plaintiff to inspect was a substitution, all as shown by the previous Exhibits, particularly Exhibits "33-37". Mr. Kincannon also attempted to once again rehash his arguments made in the July 23, 2012 hearing regarding repeated delays, and the Court expressed concern about that as well. (Transcript of Record, October 15, 2012, p. 17, l. 4-p. 18, l. 8).

Based on the foregoing, Judge Culbertson found that the Defendants had willfully violated the Court's July 30, 2012 Order, struck their Answer and Counterclaim, and held the Defendants in Contempt. He also awarded the Plaintiff attorney's fees from August 22, 2012, through October 15, 2012 for dealing with the Rule to Show Cause. (Transcript of Record, October 15, 2012, p. 21, l. 8-18). An Order of Default dated October 4, 2012, filed October 19, 2012 is marked Exhibit "49", and the Order from the October 15, 2012 hearing was signed October 31, 2012 and filed November 2, 2012 as shown by Exhibit "50".

POST OCTOBER 15, 2012 HISTORY

On October 31, 2012, Mr. Neill filed on behalf of three Defendants, Aquasino Partners of South Carolina, LLC, Suncruz Casino Cruises, LLC and Highland Park Real Estate Development Corporation, his Notice of Motion and Motion to Reconsider. In his Motion, he references the October 9, 2012 Motion to Set Aside Default, the October 11, 2012 Motion for Substitution of Counsel, the October 11, 2012 Affidavits of Spiro Naos and Robert Wiesberg, and the October 12, 2012 Motion to Disqualify Counsel (both Mr. Naos and Mr. Weisberg were present at the October 15, 2012 hearing, sitting with Mr. Kincannon in the gallery as they waited for the case to be called). However, those Motions were not before the Court at the October 15, 2012 hearing, were not ruled upon at the hearing, and could not have been as they were untimely pursuant to Rule 6(d) SCRCP. Those same issues have been raised in Defendants' Brief in Support of its Motion to Reconsider and Motion to Set Aside Order of Default, but are not proper for the same reasons. However, without waiving the right to object to those issues now being raised as being untimely and without a ruling from the Court, and specifically reserving and not waiving any and all rights to object to same, Plaintiff's counsel will address at least the conflict issue towards the end of this brief. This is a red herring that should be dispensed with. It first came up in June of 2012, but no motion regarding the same was filed until October 12, 2012, three days before the October 15, 2012 hearing.

DEFENDANTS' UNTIMELY AND INCOMPLETE ATTEMPT TO RESPOND TO PLAINTIFF'S DISCOVERY ON OCTOBER 11, 2012

As stated above and in the October 15, 2012 hearing, Mr. Neill made an attempt to respond to Plaintiff's discovery requests when he delivered three (3) of the five (5) Defendants' discovery responses to Plaintiff's discovery requests to Plaintiff's counsel on October 11, 2012,

four days before the October 15, 2012 hearing. A copy of the letter is marked Exhibit "51". That letter shows that Mr. Neill is only providing responses for Defendants Aquasino Partners of South Carolina, LLC, Suncruz Casino Cruises, LLC and Highland Park Real Estate Development Corporation. He is not responding on behalf of the other two defendants which are Ventures South Carolina, LLC and Suncruz Casinos, LLC. That is the first incomplete response. Those same three Defendants' responses to Plaintiff's First Interrogatories served eleven (11) months prior are marked as Exhibit "52". The answer to Interrogatory number one (1) is also incomplete as it does not answer the request of why any Defendant believes it should not be a party included in the lawsuit, nor does it set forth the reason for such assertion, or provide supporting documentation and reasoning for the same. It only states that "as set forth in their Answer, the Answering Defendants are not liable for the claims asserted by the Plaintiff." The same response is given as an answer to Interrogatory number two (2), which requests that "If any named Defendant believes it should not be a party included in this lawsuit, set forth the name or corporate identity of parties Defendants know or suspect or should be a properly named party to this lawsuit." Again, this is an improper and incomplete response.

These same three (3) Defendants provided answers to Plaintiff's initial Requests for Production of Documents as shown by Exhibit "53". The very first response to Requests for Production of Documents number one (1) is that "Defendants are currently trying to ascertain the location of said documents and will timely produce." This is eleven (11) months after the initial discovery was served and they still don't know (or probably haven't ever tried to determine) where any documents are. Defendants Aquasino Partners of South Carolina, LLC, Suncruz Casino Cruises, LLC and Highland Park Real Estate Development Corporations' Answer to Supplemental Requests for Production of Documents and supplemental Interrogatory is marked

as Exhibit "54". It requests information related to the corporate formation, corporate operations, corporate governance, filing, and functions of all five (5) Defendants. In response to all initial twenty (20) Requests, they either refer to "documents attached" or state that there are "none". The documents attached, which are marked as Exhibit "55", are incomplete as they pertain to primarily one (1) Defendant, Aquasino Partners of South Carolina, LLC, with the exception of some tax returns for Highland Park Real Estate Development Corporation and Suncruz Casino Cruises, LLC. There is no documentation whatsoever with regards to the remaining Defendants and what documents have been provided are incomplete compared to the Requests for Production of Documents.

The same three (3) Defendants' Responses to Supplemental Requests for Production of Documents and Supplemental Interrogatories served over four (4) months prior, do not give any information with regards to Venture South Carolina, LLC and Sun Cruz Casinos, LLC, give no information with regards to Supplemental Interrogatory number eight 8(e), and provide no list of assets owned by any of the Defendants, or liens, mortgages, judgments, or other secured or unsecured interests encumbering the assets, all as requested in Supplemental Interrogatory number (8) (m) and (n). Interrogatory number nine (9) requests the reason why Suncruz Casino Cruises, LLC has failed and refused to pay the Seven and 00/100 (\$ 7.00) Dollar surcharge fee. Its answer states that it believes that Horry County's Ordinance/Surcharge Agreement contradicts or violates current laws of South Carolina. However, this is contrary to Mr. Kincannon's reasoning set forth at the July 23, 2012 hearing wherein he stated that his clients couldn't afford to pay, and that the alleged illegality of the Ordinance and Surcharge Agreement is merely an argument for trying to get out of paying.

Supplemental Interrogatory number ten (10) requests that the Defendants set forth all the information requested in Supplemental Interrogatory number eight (8) for Ventures South Carolina, LLC, Diamond Gaming, LLC and Suncruz Casinos and Gaming, LLC for the period of October 16, 2007 through and including February 6, 2008. Their answer is "unknown". However, upon information and belief, either Mr. Naos or Mr. Weisberg, or both, were involved in those companies. Supplemental Request for Production number twenty-two (22) requests documents used as a reference or in any way involved in answering Plaintiff's Supplemental Interrogatories numbers eight (8), nine (9), and ten (10). The Answer is to "see documents attached to responses to requests for production". However, none of those documents relate to the other two Defendants, whom Mr. Kincannon, Mr. Neill, and Mr. Rutherford still represent. The documents produced also do not address the other entity, Diamond Gaming, LLC.

The above shows that this October 11, 2012 attempt to respond to discovery approximately two and a half (2½) months after the deadline established by the Court Order, is still incomplete, will require additional motions to obtain complete answers, and was merely provided to try to lessen the impact of the Court's ruling at the October 15, 2012 hearing.

**MISREPRESENTATIONS MADE BY MR. KINCANNON
TO PLAINTIFF'S COUNSEL AND THE COURT**

As shown by the Exhibits referenced above, Mr. Kincannon, on numerous occasions, represented both to Plaintiff's counsel and Court that forcing his clients to pay the Seven and 00/100 (\$7.00) Dollar surcharge they agreed to pay on May 5, 2010, and had paid through July 31, 2011, would cause them to go under, cease to operate or file bankruptcy. Mr. Kincannon gave a three (3) to four (4) week time frame after the July 23, 2012 hearing (Transcript of Record, Hearing July 23, 2012, p. 10, l. 2-6), told the Court it would be impossible to pay the Seven and 00/100 (\$7.00) Dollar per person surcharge fee after September of 2012 (Transcript of

Record, Hearing July 23, 2012, p. 37, l. 6-9), told the Court that a Bankruptcy Petition would be filed in November of 2012 (Transcript of Record, Hearing July 23, 2012, p. 38, l. 9-13) and told the Court that the appointment of a receiver would cause the business to fall apart (Transcript of Record, Hearing July 23, 2012, p. 19, l. 14-21). These are further examples of the Defendants' continued misrepresentations to the Court and Plaintiff's counsel, in addition to the continued delays and the reasons for those delays.

Proof of the Defendants' ability to pay and failure to go out of business or file bankruptcy is shown by Exhibit "56". Exhibit "56" shows weekly payments of the Seven and 00/100 (\$ 7.00) Dollar surcharge fee beginning the week of July 29, 2012 through and including the week ending January 27, 2013. As of this date, and upon information and belief, the Defendants are still operating their gambling boat and have not filed any type of bankruptcy action. In addition, they have replaced the existing gambling vessel with a newer, nicer gambling vessel called the "Jacks or Better" during the week ending November 11, 2012. As seen by Exhibit "56", there was no money remitted to Horry County that week, and an improper payment made for the week of January 13, 2013 that was paid from Jacks or Better SC, LLC to Suncruz Casino Cruises, LLC. That check was returned and replaced the following week as shown by the second remitted form ending January 13, 2013 contained in Exhibit "56".

Also, the Order filed July 30, 2012 appointed an "Escrow Agent" with the same powers of a Receiver. However, the Defendants' businesses have not fallen apart as Mr. Kincannon represented to the Court. The Defendants also have constantly represented to the Court and opposing counsel in emails, at the hearings, and most recently in Defendants' Brief, that this case involves "matters of law, not disputes over facts," (Defendants' Brief, p. 10). This is yet another mis-statement as facts are absolutely necessary to the Plaintiff's causes of action for fraud,

misrepresentation, and its defenses of equitable estoppel, laches, unclean hands, amalgamation of corporate entities/collateral estoppel/res judicata, and release.

LEGAL ARGUMENT

The Plaintiff does not disagree with the case law as it is cited by the Defendants in Section IV, Legal Argument of their Brief in Support of Motion to Reconsider and Motion to Set Aside Order of Default. Therefore, Plaintiff will not recite the cases or law as set forth in them. However, Plaintiff strongly disagrees with how those cases apply to the facts of the instant action. Contrary to Defendants' position, the facts as stated above, which led to long and substantial delays of the simple scheduling of a hearing on the Plaintiff's Motion to Compel, constant requests for answers to discovery that went unanswered, misrepresentations to the Court by the Defendants with regards to responses to Plaintiff's discovery requests, and the incomplete answers to the discovery requests provided two business days prior to the Motion and Order to Rule to Show Cause hearing (which will require additional intervention of the Court to rule on additional Motions to Compel), all show a willful, knowing and intentional disobedience of the Court's July 27, 2012 Order that justifies the harsh sanctions imposed by the Court. The actions of the Defendants evidence bad faith, willful disobedience, and gross indifference to the rights of the Plaintiff. The actions of the Defendants were nothing more than a ploy to delay any type of hearing in this matter. They were also a ploy to delay responding to discovery and an abuse of both the discovery and the judicial processes.

Anything less than striking Defendants' Answer and Counterclaim and holding Defendants in default would have been too lenient given the Defendants' reprehensible actions. "[O]verleniency [in the imposition of sanctions] is to be avoided where it results in inadequate protection of discovery." (internal citations omitted). "Without adequate sanctions, the

procedure for discovery would be ineffectual.” (internal citations omitted). “[T]he most severe in the spectrum of sanctions provided by statute or rule must be available to the district court in appropriate cases, not merely to penalize those whose conduct may be deemed to warrant such a sanction, but to deter those who might be tempted to such conduct in the absence of such a deterrent.” Downey v. Dixon, 294 S.C. 42, 45, 362 S.E.2d 317, 318 (Ct. App. 1987). “The rights of discovery provided by the Rules give the trial lawyer the means to be prepared for trial. Where these rights are not accorded, prejudice must be presumed and, unless the party who has failed to submit to discovery can show a lack of prejudice, reversal is required.” Id. at 46, 319. This case was filed November 10, 2011, and served with discovery requests. The first responses to any discovery were incomplete and provided October 11, 2012, in anticipation of an adverse ruling on a Rule and Order to Show Cause for violation of a previous Court Order requiring discovery to be provided by August 22, 2012. By that time, the case was over eleven (11) months old, and no discovery whatsoever had been provided to the Plaintiff after repeated requests resulting in a Motion to Compel Discovery and an Order compelling that discovery be provided. Significant delays were experienced in simply scheduling hearings on motions based upon assertions by the Plaintiff’s counsel of legislative protection that was contrived and artificial.

In a case cited by the Defendants, Griffin Grading and Clearing, Inc. v. Tire Service Equipment Manufacturing Co., Inc., 334 S.C. 193, 511 S.E.2d 716 (Ct. App. 1999), the striking of the Defendant’s answers as a discovery sanction was affirmed, and is similar to the facts at issue here. In the Griffin case, Griffin’s attempts to conduct discovery were frustrated over and over. Hearings were set on several occasions but continued at Tire Service’s requests. Tire Service consented to fully answer discovery requests within a certain time period, but still did not. The Court found that Tire Service’s pattern of non-compliance constituted evidence of bad

faith and willful, intentional disobedience. The Court stated that Tire Service's conduct was more than just egregious. In the instant action, the Defendants' constant delays, misrepresentations to opposing counsel and refusal to supply discovery responses, is at the very least egregious. Coupled with the numerous misrepresentations made to the Court, the Defendants' conduct is more than egregious.

The Defendants rely heavily upon the case of Karppi v. Greenville Terrazzo Co., Inc., 327 S.C. 538; 589 S.E. 2d 679, (Ct. App. 1997) wherein the court of appeals reversed the trial court's striking of the defendant's pleadings and the entering of a default judgment as a discovery sanction. However, Karppi can easily be distinguished from the instant action. "In Karppi, the court of appeals held that the trial court's sanction of striking the answer of a defendant was unduly harsh under the circumstances, especially because of the profound effect it had to other parties to the litigation." (Griffin at 199-200, 719). "In essence, Terrazzo received a windfall due to the over breadth of the trial Court's sanction, because Terrazzo was wholly removed from the instant discovery dispute." Karppi at 544. Unlike Karppi, the only party in the instant action being punished for discovery abuses are all of the Defendants who all, collectively, clearly, willfully and intentionally committed the abuses.

The Defendants state in the last sentence of the last paragraph on page nineteen (19) of their brief that:

"The Court's sanction was not reasonable in light of the following circumstances: (1) Defendants made all their books and records available to Plaintiff, (2) Defendants were not aware they were in violation of an Order, (3) Defendants provided responses to the discovery requests once they became aware of their obligations, (3) [sic] Defendants' prior counsel and not the Defendants, was the source of the disobedience, (4) Defendants cooperated and fully complied with other provisions of the Court's Order, and (5) The Court did not warn Defendants of the possibility of default."

With regards to number one (1) above, it is clear that such, even if it were true, was not a substitute that was provided for in the July 27, 2012 Order of the Court. In addition, the Plaintiffs already had been to the Defendants' place of business once before, only to be given extremely limited, "spoon-fed" information and denied crucial documentation and information. (Transcript of Record, Hearing July 23, 2012, p.13, l. 13-16). With regards to number two (2) above, the Defendants' principals, Mr. Naos and Mr. Weisberg, were in the courtroom when the Court compelled and their attorney consented to the responding to Plaintiff's discovery requests. Even had they not been, Defendants' assertion that they were not aware of the acts or knowledge of their counsel is no excuse since "the acts of an attorney are directly attributable to and binding on the client." Griffin at 200, 719. With regards to number three (3), Defendants did not provide responses to discovery until October 11, 2012, approximately three (3) months after the July 23, 2012 hearing where they and their attorney consented and were ordered to provide the discovery responses. The discovery requests provided on October 11, 2012 were by no means complete. With regards to the second number (3), see Plaintiff's response to number two (2) above. With regards to number four (4) above, again, this overlooks the fact that they did not comply with the discovery portion of the Court's Order, and that was what the October 15, 2012 hearing concerned. With regards to number five (5), that the Court did not warn Defendants of the possibility of default, although the cases seem to indicate that such is helpful, such is not a requirement of any of the cases cited by the Defendants. Any knowledgeable attorney would know the penalties of default for not complying with an Order compelling discovery under Rule 37, SCRPC.

CONFLICT OF INTEREST

Although this specific issue has never been properly before the Court, as a Motion to Disqualify Counsel was not filed until four (4) days before the October 15, 2012 hearing and some four (4) months after it was first brought up by Mr. Kincannon and addressed by Mr. Thompson, this issue is a red herring for the reasons set forth below. Although Plaintiff's counsel is addressing this at this time, Plaintiff objects to this Motion being addressed by the Defendants in their Motion or Brief for the Court to reconsider at this time, as that issue is not properly before the Court because the Motion to Disqualify was not filed timely under Rule 6 (b) and was not ruled on by the trial court. As such, the Plaintiff specifically reserves its objections to this argument and in no way is waiving its right to defend it based on the untimeliness of the filing of the Motion and the Court's failure to address or rule on that issue.

The Defendants assert in their Motion that Thompson & Henry, P.A. represented Suncruz Casino Cruises, LLC in drafting and negotiating the Surcharge Agreement which is in dispute in the present action. The Motion goes on to state that members of Thompson & Henry, P.A., attorneys Emma Ruth Brittain and Thomas Magee have been named as witnesses in the lawsuit. The Motion also states that Thompson & Henry, P.A. has also represented the Defendants as to other matters and are in possession of files belonging to the Defendants which contain confidential and privileged documents. The Motion is supported by the Affidavit of Spiro Naos and Robert Wiesberg, who merely state that they object to the fact that Thompson & Henry, P.A., is representing Horry County in this lawsuit and that Thompson & Henry, P.A., represented them when they were negotiating surcharges with Horry County back in the Spring of 2010.

This issue was first brought to light by Mr. Kincannon on June 20, 2012 in an email to Mr. Thompson in which Mr. Thompson replied that he had investigated the matter and determined that no such conflict existed. That email is marked Exhibit "20". The investigation that was undertaken by the undersigned counsel consisted of reviewing a computer list of clients of Thompson & Henry, P.A., and determining that two (2) files did in fact exist, one being for Suncruz and one being for Highland Park. However, these files were located with and under the control of former partners of the Thompson & Henry, P.A., law firm and located in the former Myrtle Beach office of Thompson & Henry, P.A. located at 1314 Professional Drive in Myrtle Beach. These files had been handled by former attorneys of Thompson & Henry, P.A.'s Myrtle Beach office, and neither the undersigned counsel nor anyone in the current offices of Thompson & Henry, P.A., had any knowledge whatsoever that those Defendants were ever clients of Thompson & Henry, P.A., until June 20, 2012.

Such a scenario is governed by Rule 407 SCACR, Rule 110, Imputation of Conflicts of Interest; General Rule ¶ (b) which states as follows:

"When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm unless: (1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and (2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter." (emphasis added).

As stated in Defendants' untimely filed Motion to Disqualify Counsel, Emma Ruth Brittain and Thomas Magee (and another attorney not listed or referenced by the Defendants, Charles Jordan) represented Suncruz and Highland Park sometime in 2011 or before. Defendants asserted it was with regards to the negotiation of this Surcharge Agreement. However, neither

the undersigned counsel, nor anyone in the current firm of Thompson & Henry, P.A., is aware of the exact nature of the representation. Those three attorneys were located in the Myrtle Beach office of Thompson & Henry, P.A., located at 1314 Professional Drive in Myrtle Beach. The main office of Thompson & Henry, P.A. both currently and at that time, is located at 1300 Second Avenue in Conway, South Carolina.

In addition, on December 31, 2011, the attorneys located in the Myrtle Beach office of Thompson & Henry, P.A., were bought out by the Conway shareholders of Thompson & Henry, P.A., and the former Myrtle Beach shareholders of Thompson & Henry, P.A., formed a new law firm, Thomas & Brittain, P.A. The undersigned counsel did not begin representing the County in this matter until February of 2012 when he filed his Notice of Appearance. He had no knowledge whatsoever that any member of the former Thompson & Henry had ever represented any of the Defendants at that time. Therefore, even if Rule 110(b)(1) is satisfied, paragraph (2) must also be satisfied in order for there to be a conflict. That subparagraph states:

“any lawyer remaining in the firm has information protected by Rule 1.6 and 1.9(c) that is material to the matter.”

As stated above, neither the undersigned counsel nor anyone in the current firm of Thompson & Henry, P.A. has any information with regards to any files belonging to the Defendants or worked on for the Defendants by former members or attorneys with the former Thompson & Henry, P.A., in Myrtle Beach, other than the understanding that one was an employment matter and one was a real estate lease matter, those files have never been in the Conway offices of the current Thompson & Henry, P.A., and have never been reviewed or touched by any attorney of the current Thompson & Henry, P.A. Those files specifically stayed with the former members of Thompson & Henry, P.A., the current attorneys of Thomas & Brittain, P.A., and are in the possession of Thomas & Brittain, P.A. Therefore, as stated back on

30

Horry County, A Body Politic vs. Aquasino Partners of South Carolina, LLC, et al

Civil Action 2011-CP-26-9457

Plaintiff's Reply Brief in Opposition to Defendants 'Motion to Reconsider and Motion to Set Aside Order of Default

June 22, 2012 to Mr. Kincannon, there is no conflict of interest with the undersigned's representation of Horry County in this matter as against any Defendant.

ORDER OF DEFAULT FILED OCTOBER 19, 2012

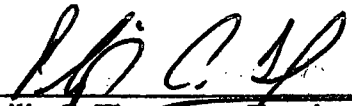
Again, the Order of Default that was signed by Judge Culbertson on October 4, 2012 and filed October 19, 2012, was not ruled upon by the Court at the hearing other than the Court stating that the Order had been signed but not yet filed. Mr. Neill filed his Notice of Motion and Motion to Set Aside Default on October 9, 2012, which was prior to the filing of the Order of Default and like the Motion to Disqualify Counsel, not timely filed pursuant to Rule 6(d), SCRPC, as it was not filed more than ten (10) days prior to the October 15, 2012 hearing. Therefore, it was not properly before the Court and not ruled upon by the Court. Therefore, the Plaintiff objects to this issue being raised in Defendants' motion and brief as being untimely and not ruled upon by the Court, and will not address this argument.

CONCLUSION

Based upon the foregoing and all Exhibits incorporated herein by reference, the Court's Order of October 31, 2012 and filed November 2, 2012 striking Defendants' Answer and Counterclaim and holding them in default was entirely warranted, necessary to protect the discovery process and the integrity of the Court, and was entirely within the sound discretion of the Court. Judge Culbertson weighed the nature of the discovery requests, the discovery posture of the case, being that no discovery whatsoever had been conducted since the case was filed in November 2011, the willfulness of the failure to provide the discovery responses based upon the Defendants' conduct of continuous delays and misrepresentations to the Court, and weighed the prejudice to the Plaintiff in not receiving the discovery responses eleven (11) months after initial discovery requests were made with the knowledge that additional Motions would be necessary

due to the insufficient and late responses provided. As such, Judge Culbertson's Order was proper under the circumstances, Rule 37, SCRCp, and the cases cited by the parties. As such, the Plaintiff respectfully requests that Defendants' Motion to Reconsider be denied.

Thompson & Henry, P.A.


Philip C. Thompson, Esquire
1300 Second Avenue, Third Floor
(Post Office Box 1740 - Zip 29528)
Conway, South Carolina 29526
Telephone (843) 248-5741
Facsimile (843) 248-6396
Co-Counsel for the Plaintiff

2/5, 2013
Conway, South Carolina

Graves, Sanford

From:
nt:
3:
cc:
Subject:

Graves, Sanford
Wednesday, December 07, 2011 4:06 PM
'Todd Kincannon'; 'tviers@yahoo.com'; 'Thad Viers'
Carotti, Arrigo
RE: Aquacasino

Todd & Thad -

We recognize that you have requested the extension permissible under RCP 6(b) and agree to such enlargement with this email serving as the written agreement.

Taking into account that the originally communicated deadline for your answer and responses to discovery requests was December 19, 2011, the additional 30-day time allowance will make the answer and responses due January 18, 2012.

Sincerely -

Sanford Graves

From: Todd Kincannon [<mailto:todd@thekincannonfirm.com>]
Sent: Wednesday, December 07, 2011 2:42 PM
To: Graves, Sanford
Cc: Carotti, Arrigo
Subject: RE: Aquacasino

ntlemen:

Would it be possible to obtain an extension of time to respond to the Complaint in this matter? I honestly don't believe I'll need it but it is foolish to wait until the last possible day to ask.

Todd Kincannon

NOTE NEW ADDRESS BELOW
****PLEASE UPDATE RECORDS****



THE KINCANNON FIRM
O. Box 7901
COLUMBIA, SC 29202
THEKINCANNONFIRM.COM
PHONE: 877.99.COURT
FAX: 888.704.2010

From: Graves, Sanford [mailto:GravesS@HorryCounty.org]
Sent: Friday, December 02, 2011 8:18 AM
To: 'todd@thekincannonfirm.com'
Cc: Carotti, Arrigo
Subject: FW: Aquacasino

Mr. Kincannon,

In an effort to keep the circle of information complete I am forwarding a copy of the Acceptance of Service document which I received from Mr. Viers yesterday with your name and signature attached.

If you have any questions or comments, please let me know.

Sanford Graves
(843)915-7416

From: Thad Viers [mailto:tviers@coastal-law.com]
Sent: Thursday, December 01, 2011 12:26 PM
To: Graves, Sanford
Subject: Aquacasino

Sanford,

Here is a clean scanned copy. The original was put in mail this morning. I was in Washington DC the past 3 days.

Sorry.

Thad

THOMPSON
& HENRY, P.A.

ATTORNEYS AT LAW

1300 SECOND AVENUE, THIRD FLOOR
POST OFFICE BOX 1740
CONWAY, SOUTH CAROLINA 29528

PHILIP C. THOMPSON
PTHOMPSON@THOMPSONLAW.COM

TELEPHONE
(843) 248-5741
FACSIMILE
(843) 248-6396

February 21, 2012

J. Todd Kincannon, Esquire
The Kincannon Firm
Post Office Box 7901
Columbia, South Carolina 29202

Re: Horry County, a Body Politic v. Aquasino Partners of South Carolina, LLC, et al.
Civil Action No.: 2011-CP-26-9457

Dear Mr. Kincannon:

Enclosed you will find with regards to the above referenced matter a Notice of Appearance, Motions for Temporary Injunction, and Appointment of a Receiver which I herewith serve upon you as attorney for the Defendants, along with an Affidavit of Mailing.

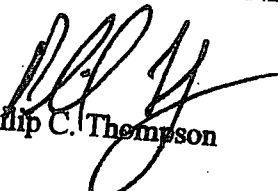
Our records show that the Defendants were served with Plaintiff's First Requests for Production of Documents to Defendants and Plaintiff's First Set of Interrogatories to Defendants on or about November 15, 2011. To date, no responses to said discovery requests have been forthcoming. Please allow this as notice pursuant to Rule 11, SCRPC, that you have ten (10) days from the date of this notice to provide us with Defendants' responses to Plaintiff's discovery requests. Please provide your response so that we may avoid a Motion to Compel.

Also, we are in receipt of Defendants' Motion to Dismiss, dated January 14, 2012 and filed January 18, 2012. Please set forth the specific reasons why each cause of action appearing in the Complaint fails to state facts sufficient to constitute causes of action, what exemplary damages you seek to have stricken and why, what claims related to the fraud cause of action do not meet any heightened pleading standards, and what you believe those heightened pleading standards to be. Again, if I have not received a response from you within ten (10) days, please allow this as notice pursuant to Rule 11 that we will file a Motion To Make More Definite And Certain the basis of your Motion to Dismiss.

With kindest regards, I am

Very truly yours,

THOMPSON & HENRY, P.A.


Philip C. Thompson

PCT/rfb

cc: Arrigo P. Carotti, Esquire and Sanford Graves, Esquire
Enclosure as noted.

0000243

Phil Thompson - RE: Horry County v. Aquasino, et al

From: Phil Thompson
To: Kincannon, Todd
Subject: RE: Horry County v. Aquasino, et al
CC: Carotti, Arrigo; Henry, Pat

Here are unsigned drafts of the Affidavit, Motion for Injunction, Application for Appointment of Receiver and scanned-in copies of the discovery requests and your acceptance of service, in which you acknowledged and accepted service of those requests. Let me know if you need anything else.

>>> Todd Kincannon <todd@thekincannonfirm.com> 2/27/2012 9:57 AM >>>

Mr. Thompson:

I have not received any discovery requests. My firm address changed not long before this litigation began, and it is possible the material was sent to my old address and not forwarded. If you will send it to me again, I would appreciate it. I am happy to accept a scanned-and-emailed copy.

So far as your motions, please advise as to exactly what you're seeking. I have to know that before I can tell you whether I consent or not.

Todd Kincannon

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THE KINCANNON FIRM

P.O. BOX 7901
COLUMBIA, SC 29202
THEKINCANNONFIRM.COM
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FAX: 888.704.2010

From: Phil Thompson [mailto:phil@thompsonlaw.com]
Sent: Monday, February 27, 2012 9:50 AM
To: todd@thekincannonfirm.com
Cc: Arrigo Carotti; Pat Henry
Subject: Horry County v. Aquasino, et al

Mr. Kincannon,

This firm is assisting Horry County with the above referenced action. It is my understanding from your acceptance of service and motion that you represent all of the defendants. We have prepared and are in the process of filing a notice of appearance, motion for injunction and motion for a receiver. I will also be forwarding those to you along with a request to respond to our discovery that is overdue.

My purpose in contacting you this morning is under Rule 11, SCRCP. I would like to avoid filing the motions if you will consent to the injunction and a receiver. Please let me know today as I intend to file those pleadings tomorrow if you will not consent.

Thanks,

Phil

Philip C. Thompson

Phil Thompson - Horry County v. Aquasino Partners, et al., C/A No. 2011-CP-26-9457

From: Phil Thompson
To: Johnson@horrycounty.org
Subject: Horry County v. Aquasino Partners, et al., C/A No. 2011-CP-26-9457
CC: Arrigo Carotti; Graves, Sanford; Pat Henry; todd@thekincannonfirm.com; tviers@yahoo.com

Linda,

Pat Henry and I are assisting Arrigo Carrotti and Sam Graves in this action on behalf of Horry County. We have filed a Notice of Appearance that I have attached.

It is my understanding that you and Mr. Graves have discussed scheduling the attached Motion to Dismiss that Todd Kincannon, the Attorney for the defendants, signed and filed. It is further my understanding that you have reservations in scheduling it right now since there is an Acceptance of Service on file showing that Thad Viers also accepted service in a separate Acceptance from that of Mr. Kincannon. I understand your reservation is that Mr. Viers has legislative protection through the end of this legislative session.

Mr. Viers' Acceptance of Service shows that he was at that time employed by Coastal Law, a copy of which I also attach. I called that office yesterday morning, 3/12/12, and learned that he is no longer with them and that this particular file was showing as a closed file at Coastal Law. I called because I had not received a reply to my emails to Mr. Viers, seeking clarification of his role in this case.

After that telephone conversation with Coastal Law, Mr. Viers responded to my emails stating that he planned to clarify his relationship with Aquasino Partners in a telephone call yesterday, and would call me today to explain that to me. I sent him another email this morning asking if he had spoken to them. I still haven't heard back from Mr. Viers. I also sent an email to Mr. Kincannon today and asked him if he knew what Mr. Viers' role was in this case. I have not received a response from him either.

Therefore, based on Mr. Kincannon's Motion to Dismiss that only lists him as the attorney for all defendants, the lack of any pleading other than an acceptance of service signed by Mr. Viers, and the lack of a response from either on Mr. Viers' role, I would request that Mr. Kincannon's Motion to Dismiss be scheduled as soon as possible. In addition, we have also filed a Motion for Injunction and a Motion for a Receiver, copies of which I also attach below. I am in the process of drafting a Motion to Compel Answers to Plaintiff's Discovery as well. Whenever the Defendants' Motion to Dismiss gets scheduled, we would like to have all four (4) of the motions scheduled at the same

bout:blank

time.

3-13-12 @ 5:49 p.m.
Thanks,

Thanks,

Phil Thompson - RE: Horry County v. Aquasino Partners, et al., C/A No.2011-CP-26-9457

From: Phil Thompson
 To: Arrigo Carotti; Graves, Sanford
 Subject: RE: Horry County v. Aquasino Partners, et al., C/A No.2011-CP-26-9457
 CC: Pat Henry

Arrigo and Sam,

What Fridays are you available in March and April, and at what times?

>>> Todd Kincannon <todd@thekincannonfirm.com> 3/21/2012 6:26 AM >>>

Mr. Thompson,

First, I can confirm that Mr. Viers will continue in this action. That will create a legislative protection issue with the scheduling of the motion hearings. I definitely think we could all benefit from sitting down and discussing this matter. Please let me know when we might be able to do that. Fridays are the best days for me to travel out there from Columbia.

I will also do my best in advance of the meeting to provide you with some more information as to our legal position here. My understanding is that Mr. Viers went into some detail with Mr. Weaver about it, but I gather from your email that we were going to have to start over on that front. That's no problem, I just didn't want you to think we'd been hiding the ball. I am working on discovery responses. I suspect we can stipulate to a number of the operative facts in lieu of some of the discovery.

In the meantime, please shoot us some dates for a meeting and we will get together and chat.

Todd Kincannon

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THE KINCANNON FIRM
 P.O. Box 7901
 COLUMBIA, SC 29202
 THEKINCANNONFIRM.COM
 OFFICE: 877.99.COURT
 FAX: 888.704.2010

From: Phil Thompson [mailto:pthompson@thompsonlaw.com]
 Sent: Monday, March 19, 2012 12:51 PM
 To: Kincannon, Todd
 Cc: Carotti, Arrigo; Graves, Sanford; Henry, Pat; tviers@yahoo.com
 Subject: RE: Horry County v. Aquasino Partners, et al., C/A No.2011-CP-26-9457

Mr. Kincannon,
 Sorry it took so long to get back to you, but I have been out of town since Thursday morning. I can't speak to what transpired between you, your clients and the County before this firm's first involvement in this case in mid-January. However, we welcome the opportunity to sit down with you and your clients to discuss the issues in hopes of resolving this matter without the need for further litigation. Please let me know some dates when you and your client are available and we will do everything possible to facilitate the meeting. I also look forward to hearing from you or Mr. Viers with regards to a definitive answer regarding his involvement in this case. Also, Mr. Henry and I have a meeting with the County tomorrow morning on this matter. If there is any information regarding your client's position, how they would like it resolved, or any other information for that matter, please let me know so I can pass it along to them.
 Thanks,
 Phil

Philip C. Thompson

Phil Thompson - RE: Horry County v. Aquasino Partners, et al., C/A No.2011-CP-26-9457

From: Todd Kincannon <todd@thekincannonfirm.com>
 To: "Johnson, Linda" <ljohnson@horrycounty.org>
 Date: 3/21/2012 6:29 AM
 Subject: RE: Horry County v. Aquasino Partners, et al., C/A No.2011-CP-26-9457
 CC: Phil Thompson <pthompson@thompsonlaw.com>, Arrigo Carotti <carottia@horrycounty.org>, "Graves, Sanford" <GravesS@horrycounty.org>, Pat Henry <phenry@thompsonlaw.com>, <tviers@yahoo.com>

Ms. Johnson:

Mr. Viers will be continuing in this matter as counsel on behalf of the defendants. That creates a legislative protection issue with regard to the scheduling of these motions. Mr. Viers legislative protection will likely end sometime in August. I think a date in late August would very likely work.

Thank you, and please let me know if you have any questions.

Todd Kincannon
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THE KINCANNON FIRM
 P.O. BOX 7901
 COLUMBIA, SC 29202
 THEKINCANNONFIRM.COM
 OFFICE: 877.99.COURT
 FAX: 888.704.2010

From: Phil Thompson [mailto:pthompson@thompsonlaw.com]
 Sent: Wednesday, March 14, 2012 8:59 AM
 To: Johnson, Linda
 Cc: Arrigo Carotti; Graves, Sanford; Pat Henry; todd@thekincannonfirm.com; tviers@yahoo.com
 Subject: RE: Horry County v. Aquasino Partners, et al., C/A No.2011-CP-26-9457

Thanks, Linda. Will do.

Thad, please let us know as soon as you can about whether or not you represent any of the defendants in this action and if so, whether you plan to be present for the pending motions. We would like to move this case along as quickly as possible. As stated in my March 6, 2012 letter to Todd Kincannon (attached), Horry County is also seeking the \$100.00 per passenger penalty for failure to pay the \$7.00 per person surcharge, so the sooner we can resolve this case, the better for all parties and the taxpayers of Horry County.

Thanks,
 Phil

Philip C. Thompson

THOMPSON & HENRY, P.A.

1300 Second Avenue, 3rd Floor (29526)
 P.O. Box 1740
 Conway, S.C. 29528
 Tel. No. (843) 248-5741
 Fax No. (843) 248-6396

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>>> "Johnson, Linda" <Johnson@HorryCounty.org> 3/14/2012 8:14 AM >>>

Phil

Please let me know about Atty Viers as soon as you hear something. If he is not an attorney in the case I might can set the motion for the week of April 16th.

From: Phil Thompson [phil@thompsonlaw.com]
 Sent: Tuesday, March 13, 2012 5:49 PM
 To: Johnson, Linda
 Cc: Carotti, Arrigo; Graves, Sanford; Pat Henry; todd@thekincannonfirm.com; hviere@yahoo.com
 Subject: Horry County v. Aquasino Partners, et al., C/A No. 2011-CP-26-9457

Linda,

Pat Henry and I are assisting Arrigo Carrotti and Sam Graves in this action on behalf of Horry County. We have filed a Notice of Appearance that I have attached.

It is my understanding that you and Mr. Graves have discussed scheduling the attached Motion to Dismiss that Todd Kincannon, the Attorney for the defendants, signed and filed. It is further my understanding that you have reservations in scheduling it right now since there is an Acceptance of Service on file showing that Thad Viers also accepted service in a separate Acceptance from that of Mr. Kincannon. I understand your reservation is that Mr. Viers has legislative protection through the end of this legislative session. Mr. Viers' Acceptance of Service shows that he was at that time employed by Coastal Law, a copy of which I also attach. I called that office yesterday morning, 3/12/12, and learned that he is no longer with them and that this particular file was showing as a closed file at Coastal Law. I called because I had not received a reply to my emails to Mr. Viers, seeking clarification of his role in this case. After that telephone conversation with Coastal Law, Mr. Viers responded to my emails stating that he planned to clarify his relationship with Aquasino Partners in a telephone call yesterday, and would call me today to explain that to me. I sent him another email this morning asking if he had spoken to them. I still haven't heard back from Mr. Viers. I also sent an email to Mr. Kincannon today and asked him if he knew what Mr. Viers' role was in this case. I have not received a response from him either. Therefore, based on Mr. Kincannon's Motion to Dismiss that only lists him as the attorney for all defendants, the lack of any pleading other than an acceptance of service signed by Mr. Viers, and the lack of a response from either on Mr. Viers' role, I would request that Mr. Kincannon's Motion to Dismiss be scheduled as soon as possible. In addition, we have also filed a Motion for Injunction and a Motion for a Receiver, copies of which I also attach below. I am in the process of drafting a Motion to Compel Answers to Plaintiff's Discovery as well. Whenever the Defendants' Motion to Dismiss gets scheduled, we would like to have all four (4) of the motions scheduled at the same time.

3-13-12 @ 5:49 p.m.

Thanks,
 Thanks,
 Phil

Philip C. Thompson

From: Phil Thompson
To: Kincannon, Todd
Subject: RE: Horry County v. Aquasino Partners, et al., C/A No.2011-CP-26-9457

Todd,

I cannot tell if there are any facts in dispute or not as I do not know your clients' defenses since we have never received an answer. However, I am not aware of the duty to respond to discovery requests under the rules being conditioned upon whether there are any facts in dispute. As you know, the rules give you the right to move for a protective order if you deem appropriate, but I don't see any legitimate grounds for that at this point.

Therefore, and again, I am asking you for a reasonable date in the very near future when I can expect to receive defendants' responses to plaintiff's interrogatories and request for production that were served on your clients 4 months ago, in November, 2011.

Thanks,

>>> Todd Kincannon <todd@thekincannonfirm.com> 3/21/2012 10:21 AM >>>

I mean, what facts do you think are at issue here? Im having a hard time thinking of any. Not that I dont treasure the idea of billing for tons of discovery, I just dont see how there are any facts at issue in the case.

I guess your fraud claim has some, but you know as well as I do that dog aint gone hunt. Thatll get 12(b)(6)ed in a heartbeat.

Todd Kincannon
NOTE NEW ADDRESS BELOW
****PLEASE UPDATE RECORDS****



THE KINCANNON FIRM
P.O. BOX 7901
COLUMBIA, SC 29202
THEKINCANNONFIRM.COM
OFFICE: 877.99.COURT
FAX: 888.704.2010

From: Phil Thompson [mailto:pthompson@thompsonlaw.com]
Sent: Wednesday, March 21, 2012 10:20 AM
To: Kincannon, Todd
Subject: RE: Horry County v. Aquasino Partners, et al., C/A No.2011-CP-26-9457

I don't think I have filed the motion to compel yet, so please let me know when I can expect to receive defendants' responses so that I can place it on my calendar.
Phil

Philip C. Thompson



Posted on Wed, Mar. 21, 2012

Wednesday, Mar 21, 2012

S.C. Rep. Thad Viers announces resignation

By Tonya Root

troot@thesunnews.com

State Rep. Thad Viers, who is facing a first-degree harassment charge stemming from an incident last year, has stepped down from his position.

The Horry County attorney, who represented the Socastee area in District 68, announced Wednesday he was resigning from his position in the State House. The 34-year-old Republican has been serving in the State House since 2002 and had been the majority whip since 2003.

"This hasn't happened in a couple years, and I wish I could say that this was a good day for me personally, but I have a lot of mixed feelings about what I'm about to do," Viers said in a speech on the House floor announcing his resignation. "I have to do the honorable thing for this institution, which I have served for almost a third of my life."

Citing his resignation was prompted by an impending indictment over a "few love letters," Viers continued his speech: "I've always stood for what I believe is right in government. I don't just talk the talk. I walk the walk, limited government, lower taxes."

"Because of this politically motivated situation I find myself in, I must now focus all of my efforts and I believe therefore I will be unable to faithfully execute the duties of my office and hereby today tender my resignation immediately from the S.C. House of Representatives," Viers said.

During his tenure Viers has served on the judiciary committee; agriculture, natural resources and environmental affairs committee; vice chairman of the elections subcommittee; vice chairman of the constitutional laws subcommittee; and former chairman of the Horry County Delegation.

But according to the S.C. Legislature Online website, Viers hasn't participated in many recent votes. The site shows Viers cast seven of the 266 recorded votes in March, excluding Wednesday's activities, and 20 of the 54 recorded votes in February.

Viers is a graduate of The Citadel and the University of South Carolina Law School, according to his biography on the State House website. He is a member of Grand Strand Baptist Church.

Viers was charged Jan. 6 after he turned himself into Myrtle Beach police to face the harassment charge involving a 28-year-old ex-girlfriend. The charge is pending.

Viers has been free on \$5,000 personal recognizance bond and said at the time of his arrest that the case likely won't be resolved before the summer so he dropped out of the race for the 7th Congressional District.

At the time of his arrest Viers said he and the victim dated for four years before they broke up in August.

It was the second arrest for Viers, who pleaded no contest in 2006 and was fined \$500 for harassing his ex-wife's boyfriend on charges he left a series of threatening and graphic phone messages on the answering machine of Columbia resident James "Jon" Zeigler.

In the most recent incident, the woman told police she broke off her relationship with Viers in June or July last year, but he continued to call, text, email and show up at her home and work repeatedly, according to the police report.

The woman said she asked Viers to stop harassing her multiple times, but he did not stop.

"The victim has contacted MBPD previously about harassment, but was reluctant to press the issue because she didn't want to injure the offender's reputation and career if the information was made public," according to the incident report.

The officer wrote in the report that he spoke with Viers near the woman's home on Dec. 16 and advised him to not contact the woman, according to the report.

"The offender stated he understood and would comply," the report stated.

On Dec. 22, the victim told police that Viers emailed her and also borrowed a mutual friend's phone to text her on New Year's Eve, according to the report filed Thursday. The woman also had several documents showing the events of harassment, which included a written notice from the woman to Viers to stop contacting her.

The victim's attorney and her father also sent no contact notices to Viers, but he ignored them, according to the report.

Contact TONYA ROOT at 444-1723.

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Phil Thompson

Subject:

Culbertson, Benjamin H.

RE: Horry County v. Aquasino Partners of South Carolina, LLC, C/A 2011-CP-26-9457

Thank you.

Philip C. Thompson

Philip C. Thompson, Esquire

Thompson & Henry, P.A.

1300 Second Avenue, 3rd Floor (29526)

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pthompson@thompsonlaw.com

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From: Culbertson, Benjamin H. [mailto:bculbertsonj@sccourts.org]

Sent: Thursday, April 12, 2012 11:51 AM

To: Phil Thompson

Cc: Culbertson, Benjamin H. Law Clerk (James Austin Thomas); Culbertson, Benjamin Secretary (Ramona Moree); todd@thekincannonfirm.com; Johnson, Linda; Carotti, Arrigo; Johnson, Linda (Johnson@HorryCounty.org)

Subject: RE: Horry County v. Aquasino Partners of South Carolina, LLC, C/A 2011-CP-26-9457

You can have Linda Johnson set all of them together during the 5/21/2012 term of court.

Benjamin H. Culbertson

Circuit Court Judge

P.O. Box 479 (zip code 29442)

401 Cleland St. (zip code 29440)

Georgetown, South Carolina

Phone: (843) 545-3030

Fax: (843) 545-3282

From: Phil Thompson [mailto:PTompson@thompsonlaw.com]

Sent: Thursday, April 12, 2012 10:48 AM

To: Culbertson, Benjamin H.

Cc: Culbertson, Benjamin H. Law Clerk (James Austin Thomas); Culbertson, Benjamin Secretary (Ramona Moree); d@thekincannonfirm.com; Johnson, Linda; Carotti, Arrigo

Subject: Horry County v. Aquasino Partners of South Carolina, LLC, C/A 2011-CP-26-9457

Judge Culbertson,

and Pat Henry represent Horry County as co-counsel with Arrigo Carotti and Sam Graves. Todd Kincannon represents the defendants. Mr. Kincannon filed a motion to dismiss on 1/18/12 and we filed a motion for temporary injunction and an application for appointment of receiver, both on 2/28/12. We have been trying to have these heard, but Thad Viers was also involved in the case on behalf of the defendants and had legislative protection through some part of June. Now, however, due to Mr. Viers' recent resignation from the legislature and the suspension of his license to practice law yesterday, the legislative protection is no longer a consideration and we are ready to move forward on the motions.

I have spoken with Linda Johnson and she is prepared to place the motions on your May non-jury motions roster that runs from May 21-23. She tells me that she cannot schedule them at the same time because you require motions to be scheduled by filing date. That certainly makes sense and is the fairest way to do it, but I was hoping that since these motions have been sitting out there for a while on this one case, you could make an exception and we could have them all heard at the same time. It would certainly save time for us and our clients.

Please let me know if that is possible. If not, I certainly understand. Either way, I will let Ms. Johnson know your decision for scheduling purposes.

Thanks,

Philip C. Thompson

Philip C. Thompson, Esquire

Thompson & Henry, P.A.

1300 Second Avenue, 3rd Floor (29526)

P.O. Box 1740

Conway, South Carolina 29528

Tel. No. (843) 248-5741

Fax No (843) 248-6396

pthompson@thompsonlaw.com

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Phil Thompson

From: Todd Kincannon [todd@thekincannonfirm.com]
Sent: Tuesday, May 22, 2012 9:04 AM
To: Culbertson, Benjamin H. Law Clerk (James Austin Thomas)
Cc: Carotti, Arrigo; Phil Thompson
Subject: RE: Horry County v. Aquasino Partners, C/A # 2011-CP-26-9457

Mr. Thomas:

I am not in town, and my scheduler removed this case from my calendar when it was continued. I am not in any way prepared for an unexpected hearing today involving complex issues of federal and state law that has been continued. I have not filed or even begun preparing a memorandum because the matter had been continued.

Further, the idea that "all Thad Viers did was accept service" is totally inaccurate. Mr. Viers was intricately involved in this matter until his suspension. I am attempting to associate other co-counsel on each case where I was working with Mr. Viers, but it has been difficult to find someone to handle this matter with me due to the nature of the case.

There is no way I can go forward with this today on the spur of the moment.

Todd Kincannon

NOTE NEW ADDRESS BELOW

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THE KINCANNON FIRM

P.O. Box 7901

COLUMBIA, SC 29202

THEKINCANNONFIRM.COM

OFFICE: 877.99.COURT

FAX: 888.704.2010

From: Phil Thompson [mailto:PTThompson@thompsonlaw.com]
Sent: Monday, May 21, 2012 5:03 PM
To: Culbertson, Benjamin H. Law Clerk (James Austin Thomas)
Cc: todd@thekincannonfirm.com; Carotti, Arrigo
Subject: RE: Horry County v. Aquasino Partners, C/A # 2011-CP-26-9457

Justin,

Todd Kincannon has been involved in this case from day one and was the attorney who filed the motion to dismiss. We have also met with him and his clients and have served them with our motions for receiver and injunction. All Mr. Viers did was accept service, which Mr. Kincannon did as well. As I look on the roster, Mr. Kincannon is the only attorney listed for the defendant. By copy of this email to Mr. Kincannon, I am letting him know of our communications, and in case you need to correspond with him. Are these motions going forward tomorrow morning as docketed?

Thanks,

Philip C. Thompson

Philip C. Thompson, Esquire

Thompson & Henry, P.A.

1300 Second Avenue, 3rd Floor (29526)

P.O. Box 1740

Conway, South Carolina 29528

Tel. No. (843) 248-5741

Fax No (843) 248-6396

pthompson@thompsonlaw.com

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From: Culbertson, Benjamin H. Law Clerk (James Austin Thomas) [<mailto:BCulbertsonlc@sccourts.org>]
Sent: Monday, May 21, 2012 4:22 PM
To: Phil Thompson
Subject: RE: Horry County v. Aquasino Partners, C/A # 2011-CP-26-9457

Mr. Thompson,

I see where Mr. Viers resigned from the Legislature and was suspended from the practice of law in South Carolina. Do you know whether or not somebody has been appointed to take care of his pending matters?

Best Regards,
Austin

From: Phil Thompson [<mailto:PTHompson@thompsonlaw.com>]
Sent: Thursday, May 03, 2012 11:34 AM
To: Culbertson, Benjamin H. Law Clerk (James Austin Thomas); Culbertson, Benjamin Secretary (Ramona Moree)
cc: Carotti, Arrigo; todd@thekincannonfirm.com; Pat Henry
Subject: Horry County v. Aquasino Partners, C/A # 2011-CP-26-9457

I just received the attached Form 4 Order continuing the motions in this case that are set for May 22, 2012 before Judge Culbertson due to Attorney Viers being in Legislative Session. According to the information I have (all from the media including the attached Sun News article), Mr. Viers resigned from the Legislature March 21, 2012. Please pass this information along to Judge Culbertson and let me know if those motions can go forward as scheduled.

Thank you,

Philip C. Thompson

Philip C. Thompson, Esquire

Thompson & Henry, P.A.

1300 Second Avenue, 3rd Floor (29526)

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Conway, South Carolina 29528

Tel. No. (843) 248-5741

Fax No (843) 248-6396

pthompson@thompsonlaw.com

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THOMPSON
& HENRY, P.A.

ATTORNEYS AT LAW

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(843) 248-5741
FACSIMILE
(843) 248-6396

31
May 25, 2012

J. Todd Kincannon, Esquire
The Kincannon Firm
Post Office Box 7901
Columbia, South Carolina 29202

Re: Horry County, a Body Politic v. Aquasino Partners of South Carolina, LLC, et al.
Civil Action No.: 2011-CP-26-9457

Dear Todd:

Enclosed you will find for service upon you the following:

1. A clocked copy of the Plaintiff's Motion Coversheet and Motion to Compel Discovery;
2. Plaintiff's First Supplemental Interrogatories and Request for Production of Documents to Defendants;
3. Affidavit of Mailing.

With kindest regards, I am

Very truly yours,

THOMPSON & HENRY, P.A.


Philip C. Thompson

PCT/rlb

cc: Arrigo P. Carotti, Esquire

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
OF THE FIFTEENTH JUDICIAL CIRCUIT
Civil Action No: 2011-CP - 26- 9457

Horry County, a Body Politic ,

Petitioner(s)

vs.

Aquasino Partners of South Carolina, LLC,
Suncruz Casino Cruises, LLC, Ventures South
Carolina, LLC, Suncruz Casinos, LLC, and
Highland Park Real Estate Development
Corporation ,

Defendant.

**SUPPLEMENTAL
INTERROGATORIES AND
REQUESTS FOR PRODUCTION
OF DOCUMENTS**

**TO: THE DEFENDANTS, AQUASINO PARTNERS OF SOUTH CAROLINA, LLC,
SUNCRUZ CASINO CRUISES, LLC, VENTURES SOUTH CAROLINA, LLC,
SUNCRUZ CASINOS, LLC, AND HIGHLAND PARK REAL ESTATE
DEVELOPMENT CORPORATION AND J. TODD KINCANNON, ATTORNEY
FOR THE DEFENDANTS:**

You are hereby served the following Supplemental Interrogatories under the provisions of Rule 33 of the South Carolina Rules of Civil Procedure. You are required to answer these Supplemental Interrogatories separately and fully, in writing under oath, and to serve a copy of your answers on the undersigned at Post Office Box 1740, Conway, South Carolina 29528, within thirty(30) days after service hereof.

Note: These Supplemental Interrogatories shall be deemed continuing so as to require supplemental answers pursuant to Rule 26(e) and Rule 33(b) of the South Carolina Rules of Civil Procedure.

*Horry County, A Body Politic vs. Aquasino Partners of South Carolina, LLC, et al
Supplemental Interrogatories*

SUPPLEMENTAL INTERROGATORIES

8. With regards to Aquasino Partners of South Carolina, LLC, Suncruz Casino Cruises, LLC, Ventures South Carolina, LLC, Suncruz Casinos, LLC, Highland Park Real Estate Development Corporation, Ocean Casino Cruises, Inc., Diamond Gaming, LLC, South CRE Venture 2010-2, LLC, and Suncruz Casinos and Gaming, LLC please provide the following information from the date of incorporation, or the date of organization to present the following information. Please include any and all dates when any changes or amendments were made as well:

- a. Give the names, addresses and telephone numbers of the Members and/or Managers of each LLC and the Shareholders of any corporations;
- b. Provide the percentage of ownership interest of each Member of any LLC and Shareholder of any corporation;
- c. Provide the names, addresses and telephone numbers of any and all Officers of any LLC or corporation, setting forth what position such person holds;
- d. Set forth the names, addresses and telephone numbers of any and all Members of the Board of Directors of any LLC or corporation and what position was or is held by each;
- e. Set forth the principal office address and telephone number of each corporation and LLC;
- f. Set forth the names, addresses and telephone numbers of all employees of each LLC and each corporation;
- g. Set forth the Registered Agent for service of process for each LLC and corporation;
- h. Set forth the address and telephone number for each registered office for service of process for each LLC and corporation;

- i. Set forth the primary purpose for which each LLC and corporation was formed;
- j. Set forth the business which each corporation and LLC is engaged;
- k. Set forth the name, address and telephone number of the person, persons, entity or entities who provided the legal services for forming the LLCs and corporations;
- l. Set forth the name, address and telephone number of the person, persons, entity or entities who provide accounting services for the corporations and LLCs;
- m. Provide a detailed list of assets owned by the LLCs and corporations;
- n. Provide a detailed list of any liens, mortgages, judgments or other secured or unsecured interests encumbering the assets owned by the LLCs and corporations;
- o. Set forth the address and telephone number of the corporate offices of the LLCs and corporations; and,
- p. Set forth the primary contact person for the LLCs and corporations.

9. Set forth in detail why Suncruz Casino Cruises, LLC has failed and refused to pay the Seven and 00/100 (\$ 7.00) Dollar per person surcharge pursuant to Horry County Ordinance 09-08, Horry County Resolution R-47-10, and/or the Surcharge Agreement between Suncruz Casino Cruises, LLC and Horry County dated May 5, 2010.

10. If you have not already provided this information in response to Supplemental Interrogatory number Eight (8), set forth all of the information requested in Interrogatory number Eight (8) sub paragraphs a. through p. for Venture South Carolina, LLC, Diamond Gaming, LLC and Suncruz Casinos and Gaming, LLC for the period of August 16, 2007 through and including February 6, 2008.

SUPPLEMENTAL REQUESTS FOR PRODUCTION

22. Copies of all documents used as a reference or in any way involved in answering Plaintiff's Supplemental Interrogatories to the Defendants numbers eight (8), nine (9) and ten (10).

Thompson & Henry, P.A.


Philip C. Thompson, Esquire
John P. Henry, Esquire
1300 Second Avenue, Third Floor
(Post Office Box 1740 - Zip 29528)
Conway, South Carolina 29526
Telephone (843) 248-5741
Facsimile (843) 248-6396
Co-Counsel for the Plaintiff

5/29, 2012
Conway, South Carolina

Phil Thompson

From:
ent:
o:
Subject:

Todd Kincannon [todd@thekincannonfirm.com]
Friday, June 22, 2012 12:42 PM
Phil Thompson; Carotti, Arrigo
Substitution of Counsel

Gentlemen:

Will you guys consent to us substituting counsel for Thad Viers? There are two different lawyers who may take Thad's place. Fair warning: both are legislators, so legislative protection will apply for next week's hearing.

I promise I'm not playing games with legislative protection. It just so happens that most of the lawyers I know and deal with are legislators given my political background.

Todd Kincannon

*****NOTE NEW ADDRESS BELOW*****
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THE KINCANNON FIRM
P.O. Box 7901
COLUMBIA, SC 29202
THEKINCANNONFIRM.COM
OFFICE: 877.99.COURT
FAX: 888.704.2010

Phil Thompson

From: Phil Thompson
Sent: Friday, June 22, 2012 5:06 PM
To: 'Todd Kincannon'
Cc: Carotti, Arrigo; Graves, Sanford
Subject: RE: Horry County v. Aquasino Partners, C/A # 2011-CP-26-9457

Todd,

I have now had an opportunity to review this matter, speak to the attorneys involved and research the validity of your alleged conflict. I find without question that there is no conflict.

Thanks,

Philip C. Thompson

Philip C. Thompson, Esquire

Thompson & Henry, P.A.

1300 Second Avenue, 3rd Floor (29526)

P.O. Box 1740

Conway, South Carolina 29528

Tel. No. (843) 248-5741

Fax No (843) 248-6396

thompson@thompsonlaw.com

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From: Todd Kincannon [<mailto:todd@thekincannonfirm.com>]
Sent: Wednesday, June 20, 2012 11:12 AM
To: Phil Thompson
Subject: Horry County v. Aquasino Partners, C/A # 2011-CP-26-9457

Phil,

This is a little odd, but my clients and I have been putting together a settlement proposal, one of them noticed that your firm has a relationship with one of the defendants, the Highland entity. My clients didn't realize it until they recognized the letterhead—you weren't involved in it personally, but it appears there's a conflict potential here.

What's the situation with all that?

Todd Kincannon



THE KINCANNON FIRM
P.O. Box 7901
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OFFICE: 877.99.COURT
FAX: 888.704.2010

Phil Thompson

From: Culbertson, Benjamin H. [bculbertsonj@sccourts.org]
Sent: Wednesday, June 27, 2012 10:55 AM
To: CarottiA@HorryCounty.org; toddrutherford@gmail.com; Phil Thompson;
todd@thekincannonfirm.com; GravesS@horrycounty.org
Cc: Culbertson, Benjamin H. Law Clerk (James Austin Thomas)
Subject: RE: Horry County v Aquasino Partners of South Carolina (2011-CP-26-9457)

I anticipate that the hearing in this case will go forward today at 2:00 p.m. as scheduled. Rep. Rutherford's Notice of Appearance is signed by Mr. Kincannon and dated today, presumably while Rep. Rutherford is in legislative session. Otherwise, Rep. Rutherford would have signed the Notice of Appearance or requested a continuance himself. Even if Rep. Rutherford is one of the defendant's attorneys, his appearance hours before the hearing does not relieve Mr. Kincannon (who has been defendant's attorney in this case for quite some time) from appearing for the hearing.

I will listen to any arguments Mr. Kincannon has for a continuance at 2:00 p.m. this afternoon but, Mr. Kincannon must personally attend the 2:00 p.m. hearing to make his arguments. I will not entertain any requests for continuance without a personal appearance. Even with an appearance, I anticipate going forward with the hearing since Mr. Rutherford just appeared in the case via another attorneys signed notice.

Sincerely,

Benjamin H. Culbertson

Circuit Court Judge

P.O. Box 479 (zip code 29442)

11 Cleland St. (zip code 29440)

Georgetown, South Carolina

Phone: (843) 545-3030

Fax: (843) 545-3282

From: Culbertson, Benjamin H. Law Clerk (James Austin Thomas)
Sent: Wednesday, June 27, 2012 10:29 AM
To: Culbertson, Benjamin H.
Subject: FW: Horry County v Aquasino Partners of South Carolina (2011-CP-26-9457)

From: Carotti, Arrigo [mailto:CarottiA@HorryCounty.org]
Sent: Wednesday, June 27, 2012 10:22 AM
To: Culbertson, Benjamin H. Law Clerk (James Austin Thomas)
Cc: toddrutherford@gmail.com; Phil Thompson; Graves, Sanford; 'Todd Kincannon'
Subject: RE: Horry County v Aquasino Partners of South Carolina (2011-CP-26-9457)

I am puzzled now whether or not Mr. Kincannon represents Rep. Rutherford, as he signed a purported Notice of Appearance on his behalf, which was sent ex parte to the Judge at the 11th hour. Mr. Kincannon represented to the Court on May 22, when these hearings were last scheduled, that he needed additional time to get up to speed on this matter (which now has been pending over seven months). Over a month later, he is purportedly engaging additional counsel, who just happens to be a legislator, and claiming legislative privilege. Please convey to the Judge counsel's plea that the hearings proceed as scheduled, as the County is losing hundreds of thousands of dollars as the clock ticks, a delay in the process clearly inuring to the benefit of the casino boat owners, and which appears to be their modus operandi.

Arrigo

Arrigo P. Carotti
County Attorney
Horry County
(843) 915-7412 (direct tele #)
(843) 915-6270 (fax)

From: Todd Kincannon [mailto:todd@thekincannonfirm.com]
Sent: Wednesday, June 27, 2012 10:08 AM
To: Culbertson, Benjamin H. Law Clerk (James Austin Thomas)
Cc: toddrutherford@gmail.com; Phil Thompson; Carotti, Arrigo; Graves, Sanford
Subject: RE: Horry County v Aquasino Partners of South Carolina (2011-CP-26-9457)

Mr. Thomas:

I meant to send this to you as well. Please see the attached and please let me know if you have any questions.

Todd Kincannon

NOTE NEW ADDRESS BELOW
****PLEASE UPDATE RECORDS****



THE KINCANNON FIRM
P.O. Box 7901
COLUMBIA, SC 29202
THEKINCANNONFIRM.COM
OFFICE: 877.99.COURT
FAX: 888.704.2010

From: Todd Kincannon [mailto:todd@thekincannonfirm.com]
Sent: Wednesday, June 27, 2012 10:04 AM
To: 'Carotti, Arrigo'; 'Johnson, Linda'; 'Culbertson, Benjamin H. Law Clerk (James Austin Thomas)'; 'todd@thekincannonfirm.com'; 'todd@kincannonfirm.com'; 'Phil Thompson'; 'todd@kincannonfirm.com'
Subject: RE: Horry County v Aquasino Partners of South Carolina (2011-CP-26-9457)

The Supreme Court's Order, <http://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2010-04-21-01>, establishes absolute protection for lawyer-legislators during legislative sessions. This case was subject to that order until Rep. Viers resigned. Now that Rep. Rutherford has appeared, that order is in effect again.

Mr. Carotti has convinced himself this is some sort of game. It is not. The Plaintiff in this action has three lawyers of record and two law firms (the Horry County Attorneys' Office and Thompson & Henry). I am a solo practitioner. My clients have every right to find another lawyer to become my co-counsel in this matter after my prior co-counsel was suspended.

I am sorry you have been drug into this.

Todd Kincannon

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P.O. Box 7901

COLUMBIA, SC 29202

THEKINCANNONFIRM.COM

OFFICE: 877.99.COURT

FAX: 888.704.2010

From: Carotti, Arrigo [<mailto:CarottiA@HorryCounty.org>]

Sent: Wednesday, June 27, 2012 9:55 AM

To: Johnson, Linda; Culbertson, Benjamin H. Law Clerk (James Austin Thomas)

Cc: todd.rutherford@gmail.com; 'Todd Kincannon'; Phil Thompson; todd@kincannonfirm.com

Subject: RE: Horry County v Aquasino Partners of South Carolina (2011-CP-26-9457)

Linda:

As you are aware, what Mr. Kincannon is attempting to do is not allowable under Rule 11(b) of the South Carolina Rules of Civil Procedure. It is another attempt to have these hearings postponed yet again. We also are prepared to present evidence to the Court of other attempts that have occurred during the past week to accomplish the same, which I can say with certainty, I have not seen in all my years of practice. I would implore the Court to proceed with the scheduled hearings so that all these matters can be brought before the Court.

Thank you,

Arrigo

Arrigo P. Carotti
County Attorney
Horry County
(843) 915-7412 (direct tele #)
(843) 915-6270 (fax)

From: Todd Kincannon [<mailto:todd@thekincannonfirm.com>]
Sent: Wednesday, June 27, 2012 9:47 AM
To: Johnson, Linda; Carotti, Arrigo; Phil Thompson; todd@kincannonfirm.com
Cc: todd@kincannonfirm.com
Subject: RE: Horry County v Aquasino Partners of South Carolina (2011-CP-26-9457)

Linda,

Please see the attached. Rep. Todd Rutherford also represents the Defendants, replacing Thad Viers in this matter. Rep. Rutherford is a legislator and is in session today in Columbia. Therefore, legislative protection applies and the hearing cannot go forward.

I apologize for the late notice on this—it has been difficult to obtain counsel to replace Mr. Viers.

Todd Kincannon

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THE KINCANNON FIRM
P.O. Box 7901
COLUMBIA, SC 29202
THEKINCANNONFIRM.COM
OFFICE: 877.99.COURT
FAX: 888.704.2010

From: Johnson, Linda [<mailto:Johnson@HorryCounty.org>]
Sent: Tuesday, June 26, 2012 4:47 PM
To: Carotti, Arrigo; 'Phil Thompson'; todd@kincannonfirm.com
Subject: RE: Horry County v Aquasino Partners of South Carolina (2011-CP-26-9457)

the attorneys listed above:

06/27/2012	17:2:00	00:15	Motion/Temporary Injunction	Horry County-PLT	02/28/2012	2011CP2609457	Breach of Contract 140	Arrigo Paul Carotti (843) 248-7225 Phillip Coleman Thompson (843) 248-5741	J Todd Kincannon (877) 992-6878

Administrative Assistant/ Non Jury Coordinator
Horry County Clerk of Court
P O Box 677
Conway, SC 29528
T- (843) 915-6803
F- (843) 915-6086
e-mail: johnson@horrycounty.org

Phil Thompson

From: Todd Rutherford [trutherford@sc.rr.com]
Sent: Wednesday, June 27, 2012 12:51 PM
To: BCulbertson1c@sccourts.org; CarottiA@horrycounty.org; GravesS@horrycounty.org; Phil Thompson
Cc: todd@thekincannonfirm.com; 'Stephanie'
Subject: Horry County v. Aquasino Partners of SC (2011-CP-26-9457
Attachments: Request for Continuance.pdf

Dear Judge Culbertson,

Attached is a formal letter requesting a continuance in the above referenced matter scheduled for this afternoon.

Thank you,

J. Todd Rutherford, Esq.
RUTHERFORD LAW FIRM
2113 Park Street (29201)
Post Office Box 1452
Columbia, SC 29202
Phone: (803) 256-3003
Facsimile: (803) 256-9698

THE RUTHERFORD LAW FIRM, LLC

J. TODD RUTHERFORD
ATTORNEY AT LAW

2113 PARK STREET
P.O. Box 1452
COLUMBIA, SC 29202
TELEPHONE: (803) 256-3003
FACSIMILE: (803) 256-9698

909 WEST EVANS STREET
FLORENCE, SC 29505
TELEPHONE: (843) 407-5061
FACSIMILE: (843) 407-5063

ALEXANDRA BENEVENTO
ATTORNEY OF COUNSEL

June 27, 2012

Via Email: BCulbertsonlc@sccourts.org

Honorable Benjamin H. Culbertson
Horry County Judicial Center
1701 Main Street
Columbia, SC 29201

Re: Horry County v. Aquasino Partners of South Carolina, LLC et al.
C/A Number: 2011-CP-26-9457

Dear Judge Culbertson,

Please accept this correspondence as a written request for a continuance with regard to the above referenced matter scheduled for this afternoon at 2:00 p.m. This request is being made due to my presence being called back into Legislative Session this week. I object to the hearing going forward this afternoon without my presence as my intent is to be in attendance for scheduled hearings from this point forward. It is necessary that this be continued due to my duties in the General Assembly.

It would be greatly appreciated if you would reschedule this matter for a later date and time and notify my office so that I may appear on behalf of my client.

I thank you in advance for your attention and consideration in this matter. Should you have any questions regarding this correspondence, please feel free to contact my office at (803) 256-3003.

Sincerely,

Todd Rutherford

J. Todd Rutherford, Esquire

JTR/saj

CC: CarottiA@HorryCounty.org; PTompson@thompsonlaw.com;
GravesS@horrycounty.org; todd@thekincannonfirm.com

Phil Thompson

From: Culbertson, Benjamin H. [bculbertson@sccourts.org]
Sent: Wednesday, June 27, 2012 1:05 PM
To: CarottiA@HorryCounty.org; toddrutherford@gmail.com; Phil Thompson;
todd@thekincannonfirm.com; GravesS@horrycounty.org
Cc: Culbertson, Benjamin H. Law Clerk (James Austin Thomas); Johnson, Linda
(Johnson@HorryCounty.org)
Subject: RE: Horry County v Aquasino Partners of South Carolina (2011-CP-26-9457)

I've received confirmation that Rep. Rutherford is co-counsel for the defendant and is in legislative session. I have also checked and been informed that the legislative session will end tomorrow. Therefore, the hearing in this case will be held at 9:30 a.m. on 6/29/2012 in the Horry County Judicial Center, Courtroom 3-D, in Conway, SC. All attorneys in this case must attend this hearing.

Sincerely,

Benjamin H. Culbertson

Circuit Court Judge
P.O. Box 479 (zip code 29442)
401 Cleland St. (zip code 29440)
Georgetown, South Carolina
Phone: (843) 545-3030
Fax: (843) 545-3282

From: Culbertson, Benjamin H.
Sent: Wednesday, June 27, 2012 10:55 AM
To: 'CarottiA@HorryCounty.org'; 'todd@thekincannonfirm.com'; 'GravesS@horrycounty.org'; 'todd@thekincannonfirm.com'; 'GravesS@horrycounty.org'; Phil Thompson (PThompson@thompsonlaw.com);
Cc: Culbertson, Benjamin H. Law Clerk (James Austin Thomas)
Subject: RE: Horry County v Aquasino Partners of South Carolina (2011-CP-26-9457)

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Arrigo P. Carotti
County Attorney
Horry County
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Mr. Thomas:

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Todd Kincannon

NOTE NEW ADDRESS BELOW

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THE KINCANNON FIRM

P.O. Box 7901

COLUMBIA, SC 29202

THEKINCANNONFIRM.COM

OFFICE: 877.99.COURT

FAX: 888.704.2010

From: Todd Kincannon [mailto:todd@thekincannonfirm.com]
Sent: Wednesday, June 27, 2012 10:04 AM
To: 'Carotti, Arrigo'; 'Johnson, Linda'; 'Culbertson, Benjamin H. Law Clerk (James Austin Thomas)'
Cc: 'todd@rutherford@gmail.com'; 'Phil Thompson'; 'todd@kincannonfirm.com'
Subject: RE: Horry County v Aquasino Partners of South Carolina (2011-CP-26-9457)

Linda:

...e Supreme Court's Order, <http://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2010-04-21-01>, establishes absolute protection for lawyer-legislators during legislative sessions. This case was subject to that order until Rep. Viers resigned. Now that Rep. Rutherford has appeared, that order is in effect again.

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Todd Kincannon

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THEKINCANNONFIRM.COM
FFICE: 877.99.COURT
AX: 888.704.2010

From: Carotti, Arrigo [<mailto:CarottiA@HorryCounty.org>]
Sent: Wednesday, June 27, 2012 9:55 AM
To: Johnson, Linda; Culbertson, Benjamin H. Law Clerk (James Austin Thomas)
Cc: toddrutherford@gmail.com; 'Todd Kincannon'; Phil Thompson; todd@kincannonfirm.com
Subject: RE: Horry County v Aquasino Partners of South Carolina (2011-CP-26-9457)

Linda:

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Thank you,

Arrigo

Arrigo P. Carotti
County Attorney
Horry County
(843) 915-7412 (direct tele #)
(843) 915-6270 (fax)

From: Todd Kincannon [<mailto:todd@thekincannonfirm.com>]
Sent: Wednesday, June 27, 2012 9:47 AM
To: Johnson, Linda; Carotti, Arrigo; Phil Thompson; todd@kincannonfirm.com
Cc: toddrutherford@gmail.com
Subject: RE: Horry County v Aquasino Partners of South Carolina (2011-CP-26-9457)

Linda,

Please see the attached. Rep. Todd Rutherford also represents the Defendants, replacing Thad Viers in this matter. Rep. Rutherford is a legislator and is in session today in Columbia. Therefore, legislative protection applies and the hearing cannot go forward.

I apologize for the late notice on this—it has been difficult to obtain counsel to replace Mr. Viers.

Todd Kincannon

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THE KINCANNON FIRM

P.O. Box 7901

COLUMBIA, SC 29202

THEKINCANNONFIRM.COM

OFFICE: 877.99.COURT

FAX: 888.704.2010

From: Johnson, Linda [mailto:Johnson@HorryCounty.org]

Sent: Tuesday, June 26, 2012 4:47 PM

To: Carotti, Arrigo; 'Phil Thompson'; 'todd@kincannonfirm.com'

Subject: RE: Horry County v Aquasino Partners of South Carolina (2011-CP-26-9457)

To the attorneys listed above:

*e motions listed below have been changed back to 2:00 pm on Wednesday, June 27, 2012. Judge Culbertson now has a court reporter for the afternoon.
I know you are a little confused but he can now hear the motions at 2:00 pm.*

06/27/2012	17:00	0:15	Motion/Temporary Injunction	Horry County-PLT	02/28/2012	2011CP2609457	Breach of Contract 140	Arrigo Paul Carotti (843) 248-7225 Philip Coleman Thompson (843) 248-5741	J Todd Kincannon (877) 992-6878
06/27/2012	17:00	0:15							

Linda M Johnson

Administrative Assistant/ Non Jury Coordinator
Horry County Clerk of Court

P O Box 677

Conway, SC 29528

T- (843) 915-6803

F- (843) 915-6086

e-mail: johnson@horrycounty.org

Phil Thompson

From: Stephanie [Stephanie.Jones@sc.rr.com]
Sent: Wednesday, June 27, 2012 5:21 PM
To: BCulbertsonlc@sccourts.org; GravesS@horrycounty.org; CarottiA@horrycounty.org; Phil Thompson
Subject: 'Todd Kincannon'
Attachments: FW: Horry County v. Aquasino Partners of SC (2011-CP-26-9457)
Request for 6.30.12.pdf, 5410.docx

The email was sent without the bill...my apologies.

Stephanie Jones

From: Stephanie [mailto:Stephanie.Jones@sc.rr.com]
Sent: Wednesday, June 27, 2012 5:20 PM
To: 'BCulbertsonlc@sccourts.org'; 'GravesS@horrycounty.org'; 'CarottiA@horrycounty.org'; 'PTompson@thompsonlaw.com'
Cc: 'Todd Kincannon'
Subject: Horry County v. Aquasino Partners of SC (2011-CP-26-9457)

Dear Judge Culbertson,

Attached is a letter Mr. Rutherford asked me to forward to all the parties, along with House Bill 5410.
If you have any questions, please contact Mr. Rutherford or the office at the number below.

Sincerely,

Stephanie A. Jones
Legal Assistant to J. Todd Rutherford

Rutherford Law Firm
2113 Park Street (29201)
Post Office Box 1452
Columbia, South Carolina 29202
(803) 256-3003 phone
(803) 256-9698 fax

This electronic communication and any files transmitted with it, or attached to it, are confidential and are intended solely for the use of the individual or entity to whom it is addressed and may contain information that is confidential, legally privileged, protected by privacy laws, or otherwise restricted from disclosure to anyone else. If you are not the intended recipient or the person responsible for delivering the email to the intended recipient, be advised that you have received this e-mail in error, and that any use, dissemination, forwarding, printing, or copying of this email is strictly prohibited. If you received this email in error, please return the email to the sender, delete it from your computer and destroy any printed copy of it. Although our company attempts to sweep email and attachments for viruses, it does not guarantee that either are virus-free and accepts no liability for any damage sustained as a result of viruses.

THE RUTHERFORD LAW FIRM, LLC

J. TODD RUTHERFORD
ATTORNEY AT LAW

2113 PARK STREET
P.O. BOX 1452
COLUMBIA, SC 29202
TELEPHONE: (803) 256-3003
FACSIMILE: (803) 256-9698

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FLORENCE, SC 29505
TELEPHONE: (843) 407-5061
FACSIMILE: (843) 407-5063

ALEXANDRA BENEVENTO
ATTORNEY OF COUNSEL

June 27, 2012

Via Email: BCulbertsonlc@sccourts.org

Honorable Benjamin H. Culbertson
Horry County Judicial Center
1301 Second Avenue
Conway, SC 29526

Re: Horry County v. Aquasino Partners of South Carolina, LLC et al.
C/A Number: 2011-CP-26-9457

Dear Judge Culbertson,

I am writing this letter to explain my position as to the rescheduling of the hearing to Friday morning. The Supreme Court Order specifies that member of the General Assembly are protected until two weeks after the regular legislative session ends. Please be aware that regular session this year technically ends on November 12, 2012 at 5pm pursuant to the Sine Die agreement. While I do not seek to continue the case until November, I do request that it is continued from Friday. The Sine Die agreement provides the ending of every regular session and was decided by *McConnell v. Haley*, 393 S.C. 136, 711 S.E.2d 686 (2011). It illustrates that members are not out of legislative session until this agreement says we are.

I thank you in advance for your attention and consideration in this matter. Should you have any questions regarding this correspondence, please feel free to contact my office at (803) 256-3003.

Sincerely,



J. Todd Rutherford, Esquire

JTR/saj

CC: CarottiA@HorryCounty.org; PThompson@thompsonlaw.com;
GravesS@horrycounty.org; todd@thekincannonfirm.com

H. 5410

STATUS INFORMATION

Concurrent Resolution

Sponsors: Rep. Harrell

Document Path: I:\council\bill\sdka\4171sd12.docx

Introduced in the House on June 19, 2012

Introduced in the Senate on June 20, 2012

Last Amended on June 26, 2012

Adopted by the General Assembly on June 27, 2012

Summary: Not yet available

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
6/19/2012	House	Introduced, adopted, sent to Senate (House Journal-page 74)
6/20/2012	Senate	Introduced (Senate Journal-page 27)
6/20/2012	Senate	Referred to Committee on Judiciary (Senate Journal-page 27)
6/20/2012	Senate	Recalled from Committee on Judiciary (Senate Journal-page 31)
6/26/2012	Senate	Amended (Senate Journal-page 16)
6/26/2012	Senate	Adopted (Senate Journal-page 16)
6/26/2012	Senate	Roll call Ayes-32 Nays-1 (Senate Journal-page 16)
6/26/2012	Senate	Returned to House with amendments (Senate Journal-page 16)
6/27/2012	House	Concurred in amendment
6/27/2012	House	Roll call Yeas-96 Nays-0

View the latest legislative information at the LPITS web site

VERSIONS OF THIS BILL

6/19/2012

6/26/2012

1 AMENDED
2 June 26, 2012
3

4 **H. 5410**
5

6 Introduced by Rep. Harrell
7

8 S. Printed 6/26/12--S.

9 Read the first time June 20, 2012.
10
11

[5410-1]

1
2
3
4
5
6
7
8
9 **A CONCURRENT RESOLUTION**

10
11 TO PROVIDE THAT PURSUANT TO SECTION 9, ARTICLE
12 III, OF THE CONSTITUTION OF THIS STATE, 1895, WHEN
13 THE RESPECTIVE HOUSES OF THE GENERAL ASSEMBLY
14 ADJOURN ON THURSDAY, JUNE 7, 2012, NOT LATER
15 THAN 5:00 P.M., OR ANYTIME EARLIER, EACH HOUSE
16 SHALL STAND ADJOURNED TO MEET IN STATEWIDE
17 SESSION AT 12:00 NOON ON TUESDAY, JUNE 19, 2012,
18 AND CONTINUE IN STATEWIDE SESSION, IF NECESSARY,
19 UNTIL NOT LATER THAN 5:00 P.M. ON THURSDAY, JUNE
20 21, 2012, FOR THE CONSIDERATION OF CERTAIN
21 SPECIFIED MATTERS, AND TO PROVIDE THAT WHEN
22 THE RESPECTIVE HOUSES OF THE GENERAL ASSEMBLY
23 ADJOURN NOT LATER THAN MONDAY, NOVEMBER 12,
24 2012, THE GENERAL ASSEMBLY SHALL STAND
25 ADJOURNED SINE DIE.

26 Amend Title To Conform

27
28 Be it resolved by the House of Representatives, the Senate
29 concurring:

30
31 (A) Pursuant to the provisions of Section 9, Article III of the
32 South Carolina Constitution, 1895, and by the two-thirds vote
33 required by that section in order to recede for more than thirty
34 consecutive calendar days, each house agrees, in this resolution, to
35 recede from the other body either for a period less than thirty days
36 or for more than thirty days as the case may be.
37 (B) Further, the General Assembly by this resolution agrees to
38 bind itself subject to the provisions of this resolution. The Sine Die
39 adjournment date for the General Assembly for the 2012 session is
40 recognized and extended to permit the General Assembly to
41 continue in session after Thursday, June 7, 2012, under the terms
42 and conditions stipulated in this resolution and for this purpose

[5410]

1 each house agrees that when the Senate and the House of
2 Representatives adjourn on Thursday, June 7, 2012, not later than
3 5:00 p.m. or at any time prior, each house shall stand adjourned to
4 meet in statewide session on Tuesday, June 19, 2012, at 12:00
5 noon and to continue in statewide session, if necessary, until not
6 later than 5:00 p.m. on Thursday, June 21, 2012. Each house
7 agrees to limit itself to consideration of the following matters and
8 subject to the following conditions, as applicable:

9 (1) receipt and consideration of gubernatorial vetoes;

10 (2) receipt and consideration of the General Appropriations
11 Bill, the Capital Reserve Fund Bill, and introduction, receipt, and
12 consideration of a Continuing Resolution to fund the ordinary
13 expenses of state government until the passage of the General
14 Appropriations Bill, concurrence and nonconcurrence and
15 amendments to these bills returned from the other house, and the
16 appointment of members to conference and free conference
17 committees and receipt, consideration, and disposition of
18 conference and free conference reports on the matters identified in
19 this item;

20 (3) introduction, receipt, and consideration of resolutions
21 affecting Sine Die adjournment;

22 (4) receipt, consideration, and confirmation of appointments;

23 (5) introduction, receipt, and consideration of resolutions
24 expressing sympathy or congratulations;

25 (6) receipt and consideration of local legislation which has
26 the unanimous consent of the affected delegation;

27 (7) receipt, consideration, and disposition of conference and
28 free conference reports on matters not provided for in item (2), for
29 which a committee of conference has been appointed prior to 5:00
30 p.m. on June 7, 2012; and

31 (8) convening of a joint assembly to conduct elections for
32 offices or vacancies in any offices filled by election of the General
33 Assembly.

34 (C) When each house recesses subject to subsection (A) and not
35 later than 5:00 p.m. on Thursday, June 21, 2012, the General
36 Assembly shall stand in recess subject to the call of the Speaker of
37 the House for the House of Representatives and the President Pro
38 Tempore of the Senate for the Senate at times they consider
39 appropriate for their respective bodies to meet for the consideration
40 of the following matters and subject to the following conditions, as
41 applicable:

42 (1) introduction, receipt, and consideration of resolutions
43 affecting Sine Die adjournment;

1 (2) receipt and consideration of gubernatorial vetoes;
2 (3) receipt and consideration of the General Appropriations
3 Bill, the Capital Reserve Fund Bill, and introduction, receipt, and
4 consideration of a Continuing Resolution to fund the ordinary
5 expenses of state government until the passage of the General
6 Appropriations Bill, concurrence and nonconcurrence and
7 amendments to these bills returned from the other house, and the
8 appointment of members to conference and free conference
9 committees and receipt, consideration, and disposition of
10 conference and free conference reports on the matters identified in
11 this item;
12 (4) receipt and consideration of legislation necessary to
13 address any shortfall in revenue meeting the conditions of Section
14 11-9-890;
15 (5) introduction, receipt, and consideration of resolutions
16 expressing sympathy or congratulations;
17 (6) convening of a joint assembly to conduct elections for
18 offices or vacancies in any offices filled by election of the General
19 Assembly;
20 (7) receipt, consideration, and confirmation of magistrate
21 appointments;
22 (8) concurrence or nonconcurrence in H. 3508, provided that
23 this item shall expire at 5:00 p.m. on June 27, 2012;
24 (9) concurrence or nonconcurrence in S. 1419;
25 (10) concurrence or nonconcurrence in H. 4494;
26 (11) granting of free conference powers and the consideration
27 of a free conference report on S. 45; and
28 (12) third reading of S. 1340.
29 (D) The President Pro Tempore of the Senate and the Speaker
30 of the House of Representatives may set a mutually agreed upon
31 time or times prior to Sine Die adjournment for officers of the
32 Senate and House to ratify acts.
33 (E) Unless the session is otherwise adjourned Sine Die at an
34 earlier date, the 2012 session of the General Assembly shall stand
35 adjourned Sine Die not later than Monday, November 12, 2012,
36 when the terms of office of the senators and representatives chosen
37 at the 2012 general election begin.
38 (F) For purposes of Section 1-3-210 and after June 21, 2012,
39 when neither the House of Representatives or the Senate have been
40 called into session pursuant to the provisions of this resolution, the
41 General Assembly intends that the legislature be considered in
42 recess for purposes of the Governor being allowed to fill vacancies
43 by interim appointments, except for the office of magistrate which

[5410]

1 may only be filled by interim appointment upon recommendation
2 of the respective Senatorial delegation.

3 (G) For purposes of the Administrative Procedures Act in
4 regard to the one hundred twenty day period the General Assembly
5 has to review state agency regulations, this one hundred twenty
6 day period is tolled Friday, June 8, 2012, until January 8, 2013.

7 ---XX---
8

Phil Thompson

From: Culbertson, Benjamin H. [bculbertsonj@sccourts.org]
it: Thursday, June 28, 2012 11:03 AM
cc: StephanieJones@sc.rr.com; GravesS@horrycounty.org; CarottiA@horrycounty.org; Phil Thompson; todd@thekincannonfirm.com; toddrutherford@gmail.com
Subject: Culbertson, Benjamin H. Law Clerk (James Austin Thomas); Johnson, Linda (Johnson@HorryCounty.org)
RE: Horry County v. Aquasino Partners of SC (2011-CP-26-9457)

The motion in the above referenced case scheduled for hearing tomorrow morning is continued until **9:30 a.m. on 7/23/2012.**

Benjamin H. Culbertson

Circuit Court Judge
P.O. Box 479 (zip code 29442)
401 Cleland St. (zip code 29440)
Georgetown, South Carolina
Phone: (843) 545-3030
Fax: (843) 545-3282

From: Culbertson, Benjamin H.
Sent: Thursday, June 28, 2012 9:30 AM
To: 'StephanieJones@sc.rr.com'; 'GravesS@horrycounty.org'; 'CarottiA@horrycounty.org'; 'PThompson@thompsonlaw.com'; todd@thekincannonfirm.com; toddrutherford@gmail.com
Cc: Culbertson, Benjamin H. Law Clerk (James Austin Thomas); Johnson, Linda (Johnson@HorryCounty.org)
Subject: RE: Horry County v. Aquasino Partners of SC (2011-CP-26-9457)

In that his matter has been pending for 5 months under the defendant's claim of legislative immunity (even after Mr. Viers was no longer in the legislature) and due to Rep. Rutherford's appearance on the day of the scheduled hearing and in that Mr. Kincannon has been a counsel of record since the commencement of this action, the hearing scheduled for Friday morning will go forward.

Benjamin H. Culbertson

Circuit Court Judge
P.O. Box 479 (zip code 29442)
401 Cleland St. (zip code 29440)
Georgetown, South Carolina
Phone: (843) 545-3030
Fax: (843) 545-3282

From: Culbertson, Benjamin H. Law Clerk (James Austin Thomas)
Sent: Thursday, June 28, 2012 8:35 AM
To: Culbertson, Benjamin H.
Subject: FW: Horry County v. Aquasino Partners of SC (2011-CP-26-9457)

From: Stephanie [mailto:StephanieJones@sc.rr.com]
it: Wednesday, June 27, 2012 5:20 PM
cc: Culbertson, Benjamin H. Law Clerk (James Austin Thomas); GravesS@horrycounty.org; CarottiA@horrycounty.org; PThompson@thompsonlaw.com

Cc: 'Todd Kincannon'

Subject: Horry County v. Aquasino Partners of SC (2011-CP-26-9457)

ar Judge Culbertson,

Attached is a letter Mr. Rutherford asked me to forward to all the parties, along with House Bill 5410.

If you have any questions, please contact Mr. Rutherford or the office at the number below.

Sincerely,

Stephanie A. Jones

Legal Assistant to J. Todd Rutherford

Rutherford Law Firm

2113 Park Street (29201)

Post Office Box 1452

Columbia, South Carolina 29202

(803) 256-3003 phone

(803) 256-9698 fax

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Phil Thompson

From: Todd Kincannon [todd@thekincannonfirm.com]
Sent: Monday, August 27, 2012 6:49 PM
To: Phil Thompson
Subject: RE: Discovery in Suncruz

Thank you, Phil. I appreciate it.

Todd Kincannon

NOTE NEW ADDRESS BELOW

****PLEASE UPDATE RECORDS****



THE KINCANNON FIRM

P.O. BOX 7901

COLUMBIA, SC 29202

THEKINCANNONFIRM.COM

OFFICE: 877.99.COURT

FAX: 888.704.2010

From: Phil Thompson [mailto:PTThompson@thompsonlaw.com]
Sent: Monday, August 27, 2012 3:30 PM
To: Todd Kincannon
Subject: RE: Discovery in Suncruz

Sorry to hear about the accident, but glad she is going to be OK.

Regarding the discovery, it was actually due last Wednesday, August 22, 2012 (see attached order). However, tomorrow will be fine.

Philip C. Thompson

Philip C. Thompson, Esquire

Thompson & Henry, P.A.

1300 Second Avenue, 3rd Floor (29526)

P.O. Box 1740

Charleston, South Carolina 29528

Tel. No. (843) 248-5741

Fax No (843) 248-6396

pthompson@thompsonlaw.com

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From: Todd Kincannon [<mailto:todd@thekincannonfirm.com>]

Sent: Monday, August 27, 2012 3:20 PM

To: Phil Thompson; Phil Thompson

Subject: Discovery in Suncruz

Phil,

I have today marked as the due date of discovery. I was prepping it and my fiance was just in a serious car accident. I am wondering if you can give me an extension until tomorrow. Thankfully she's gonna be fine but issues with other driver and automobile as you can imagine.

Todd

**THOMPSON
& HENRY, P.A.**

ATTORNEYS AT LAW

1300 SECOND AVENUE, THIRD FLOOR
POST OFFICE BOX 1740
CONWAY, SOUTH CAROLINA 29528

PHILIP C. THOMPSON
PTHOMPSON@THOMPSONLAW.COM

TELEPHONE
(843) 248-5741
FACSIMILE
(843) 248-6396

VIA EMAIL ONLY TO:

September 5, 2012

todd@thekincannonfirm.com

J. Todd Kincannon, Esquire
The Kincannon Firm
Post Office Box 7901
Columbia, South Carolina 29202

trutherrford@sc.rr.com

J. Todd Rutherford, Esquire
Rutherford Law Firm
Post Office Box 1452
Columbia, South Carolina 29202

Re: Horry County, a Body Politic v. Aquasino Partners of South Carolina, LLC, et al.
Civil Action No.: 2011-CP-26-9457

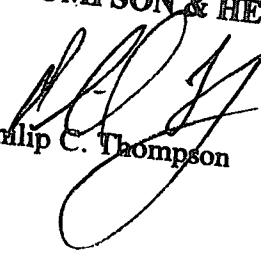
Dear Counselors:

By Order dated July 30, 2012, the Defendants were ordered to provide Horry County with the Defendants' Answers and Responses to Plaintiff's First Interrogatories to Defendants dated November 10, 2011 and Plaintiff's First Requests for Production to Defendants dated November 10, 2011 and Plaintiff's Supplemental Interrogatories and Requests for Production of Documents dated May 29, 2012, not later than August 22, 2012. On August 27, 2012, Todd Kincannon sent me an email that he had that date marked as the due date of discovery and asked for an extension until August 28, 2012. By email of the same date, I granted that extension.

We are now over a week past that date and I still have not received any discovery responses. Please provide me with complete responses to the discovery requests ordered to be answered by August 22, 2012 by the end of this week. If I have not received them by Friday, September 7, 2012, I will have no option but to file an Order and Rule to Show Cause and/or a Motion for Sanctions under Rule 37 SCRPC.

With kindest regards, I am

Very truly yours,
THOMPSON & HENRY, P.A.


Philip C. Thompson

PCT/rlb

cc: Arrigo P. Carotti, Esquire. Sam Graves, Esquire.

**THOMPSON
& HENRY, P.A.**

ATTORNEYS AT LAW

1300 SECOND AVENUE, THIRD FLOOR
POST OFFICE BOX 1740
CONWAY, SOUTH CAROLINA 29528

PHILIP C. THOMPSON
PTHOMPSON@THOMPSONLAW.COM

TELEPHONE
(843) 248-5741
FACSIMILE
(843) 248-6396

September 13, 2012

VIA HAND DELIVERY TO:

Ms. Rhonda Lilly
Circuit Court Scheduling Coordinator
Horry County Government & Judicial Bldg.
1301 Second Avenue
Conway, South Carolina 29526

RE: Horry County, a Body Politic v. Aquasino Partners of South Carolina, LLC, et al.
Case No.: 2011-CP-26-9457

Dear Rhonda:

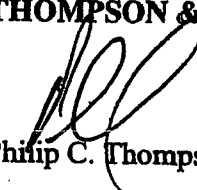
Enclosed you will find a clocked copy of my Affidavit, a Motion and Order Information Form and Cover Sheet, and a proposed Order and Rule to Show Cause in the above referenced case. Also, enclosed is our check in the amount of Twenty-Five and 00/100 (\$ 25.00) Dollars to cover the costs of an Order. The Defendants are in violation of Judge Culbertson's July 30, 2012 Order regarding discovery and I am requesting a hearing at Judge Culbertson's earliest convenience for the Defendants to show cause or be held in contempt of Court for failure to respond to our discovery.

If this meets to the Court's approval, I would ask that you have Judge Culbertson sign it and set a date and time for the hearing. I would respectfully request that the hearing not be set on September 17, 18, 21, 24, October 1, 5, or 10 as I have previously scheduled conflicts on those Dates. Once that is done, if you will please call me or my paralegal, Rhonda Bessett, at (843) 248-5741, we will have the Order and Rule to Show Cause picked up, filed and served on defense counsel.

By copy of this letter with attachments, I am notifying Mr. Rutherford and Mr. Kincannon of my communications with the Court regarding this mater.

With kindest personal regards, I am

Very Truly Yours,
THOMPSON & HENRY, P.A.


Philip C. Thompson

PCT/rlb

Enclosure as noted.

Cc: Arrigo Carrotti, Sam Graves, Todd Kincannon, Todd Rutherford

Phil Thompson

From: Phil Thompson
nt: Friday, October 05, 2012 11:03 AM
: 'Lisa Hnizdil'; bculbertsonj@sccourts.org
Cc: Todd Kincannon; 'Johnson, Linda'; 'Mark Neill'; 'Culbertson, Benjamin H. Law Clerk (Megan Moricle)'; 'Carotti, Arrigo'; 'Graves, Sanford'; Todd Rutherford
Subject: RE: Horry County vs. Aquasino Partners of SC LLC, et al. Case NO: 2011-CP-26-9467
Attachments: Jackson v Speed.rtf

Judge Culbertson,

I just received Mr. Neill's email with his attached letter requesting a continuance of the hearings scheduled in this matter on October 15, 2012, based upon Judge John's Order granting Mr. Neill protection that week. While it is certainly in your discretion to grant or deny his request, I would respectfully request that it be denied and the hearings go forward on October 15, 2012. Under the holding of *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997), a copy of which is attached hereto, it is not an abuse of discretion to deny a request for a continuance when one of the attorneys of record cannot attend. Similar to the facts in Jackson, there are two other lawyers of record, Mr. Kincannon and Mr. Rutherford. They, or at the very least Mr. Kincannon, have knowledge of this case. Mr. Kincannon has been involved since the very beginning of this case. The facts that give rise to the need for the hearings (failure to comply with your Honor's order requiring the Defendants to respond to discovery, which Mr. Kincannon consented to at the July 23, 2012 hearing) occurred, in part, if not all, before Mr. Neill filed his notice of appearance. Therefore, Mr. Kincannon may have more knowledge of those facts and may be better able to explain them than Mr. Neill.

As your Honor is well aware, this case is old and it took quite some time to schedule a hearing and get an answer from the Defendants. Our initial discovery requests were served on them at the same time the pleadings were served on them, November 15, 2011, almost 11 months ago. Our supplemental discovery was served on them on or about May 25, 2012. These significant delays and lack of discovery prevent the Plaintiff from obtaining the information we need to prepare our case for trial, and given the age of this case, it could start appearing on a trial roster in a couple of months.

Therefore, the Plaintiff respectfully requests that Mr. Neill's request for a continuance be denied.

With kindest regards,

Philip C. Thompson

Philip C. Thompson, Esquire

Thompson & Henry, P.A.

10 Second Avenue, 3rd Floor (29526)

P.O. Box 1740

Conway, South Carolina 29528
Tel. No. (843) 248-5741
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hompson@thompsonlaw.com

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From: Lisa Hnizdil [<mailto:lhizdil@neilllawfirm.com>]
Sent: Friday, October 05, 2012 10:20 AM
To: bculbertsonj@sccourts.org
Cc: Phil Thompson; Todd Kincannon; 'Johnson, Linda'; 'Mark Neill'
Subject: Horry County vs. Aquasino Partners of SC LLC, et al. Case NO: 2011-CP-26-9467

Dear Judge Culbertson – Attached please find correspondence for your review regarding the above matter. Thank you.



LISA A. HNIZDIL
Litigation Paralegal
Neill Law Firm, PA
Post Office Box 2810
Murrells Inlet, SC 29576

Phone: 843.651.8580
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Phil Thompson

From: Culbertson, Benjamin H. [bculbertsonj@sccourts.org]
Sent: Friday, October 12, 2012 12:16 PM
To: Lisa Hnizdil
Cc: Phil Thompson; 'Johnson, Linda'; 'Mark Neill'; Culbertson, Benjamin H. Law Clerk (Megan Moricle)
Subject: RE: Horry County vs. Aquasino Partners of SC, LLC, et al.

Mr. Neill:

Again, your request for a continuance is denied. The primary concern I have is the continued delays in bringing pending matters in this case before the court. Your clients retained Mr. Viers in addition to Mr. Kincannon and, due to Mr. Viers' claim of legislative protection, the last hearing was continued from February until June. In fact, your clients requested legislative protection after Mr. Viers was suspended from the practice of law. The hearing was to be held in June but, your clients stated that they were going to retain Mr. Rutherford (in addition to ongoing representation by Mr. Kincannon) to replace Mr. Viers. Mr. Rutherford, likewise, claimed legislative protection and the hearing was continued until July. When the hearing finally came for hearing in July, only Mr. Kincannon appeared and none of the attorneys who obtained continuances for legislative protection were representing your clients. Therefore, the court is concerned with your clients' constant association of attorneys in what appears to be stalling tactics. Mr. Kincannon is still counsel of record for your clients, has not been relieved as attorney of record for your clients and, as I understand, will be appearing on their behalf.

I apologize for not being more accommodating but, given the 6 month continuance in the last motion hearing, the hearing currently scheduled will go forward.

Sincerely,

Benjamin H. Culbertson

Circuit Court Judge
P.O. Box 479 (zip code 29442)
401 Cleland St. (zip code 29440)
Georgetown, SC
Phone: (843) 545-3030
Fax: (843) 545-3282
Email: bculbertsonj@sccourts.org

From: Lisa Hnizdil [<mailto:lhizdil@neilllawfirm.com>]
Sent: Friday, October 12, 2012 11:03 AM
To: Culbertson, Benjamin H.
Cc: pthompson@thompsonlaw.com; 'Johnson, Linda'; 'Mark Neill'
Subject: Horry County vs. Aquasino Partners of SC, LLC, et al.

Dear Judge Culbertson – Attached for your review, please find correspondence and the Affidavits of Robert Weisberg and Spiro Naos regarding the above matter and the hearing scheduled for Monday, October 15, 2012. Thank you.



LISA A. HNIZDIL
Litigation Paralegal
Neill Law Firm, PA
Post Office Box 2810
Murrells Inlet, SC 29576

Phone: 843.651.8580
Fax: 843.651.8586
lhizdil@neilllawfirm.com
www.NeillLawFirm.com

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0000297

29575

No Statements

Mr. Naos is managing partner of Suncruz Casino Cruises, LLC and has knowledge of the parties claims and defenses.

Robert I. Weisberg c/o

Neill Law Firm

P.O. Box 2810

Murrell Inlet, SC

29575

No Statements

Mr. Weisberg is the managing member of Suncruz Casino Cruises, LLC and has knowledge of the parties claims and defenses.

Edward Boatright c/o

Neill Law Firm

P.O. Box 2810

Murrell Inlet, SC

29575

No Statements

Mr. Boatright is chief financial officer of Suncruz Casino Cruises, LLC and has knowledge of the parties claims and defenses.

Emma Ruth Brittain

Thompson Law Firm Pa

1314 Professional Dr

Myrtle Beach SC

(843) 692-2628

Ms. Brittain represented Defendants in negotiating the disputed contract with the County.

Thomas McGee

Thompson Law Firm Pa

1314 Professional Dr

Myrtle Beach SC

(843) 692-2628

Mr. McGee represented Defendants in negotiating the disputed contract with the County.

John Weaver

Thompson Law Firm Pa

1300 2nd Ave Fl 3

Conway, South Carolina 29526

Mr. Weaver represented Horry County in negotiating the disputed contract with Defendants.

4. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the party that relate to the claim or defense in the case.

Answer: Please see documents attached to Responses for Requests for Production.

5. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim, and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

Answer: No coverage specifically related to claim. Please see insurance policy attached to Responses for Requests for Production.

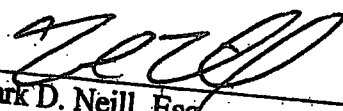
6. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

Answer: None at this time.

7. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

Answer: See Answer to Interrogatory #1.

NEILL LAW FIRM, PA


Mark D. Neill, Esq.
P.O. Box 2810
Murrells Inlet, SC 29576
(843) 651-8580
Attorney for Defendants

Dated: 10/11, 2012
Murrells Inlet, South Carolina

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY)	2011-CP-26-9457
Horry County, a Body)	
Politic,)	
Plaintiff,)	Transcript of Record
vs.)	Hearing
Aquasino Partners of)	July 23, 2012
South Carolina, LLC,)	
Et al.,)	
Defendants.)	

B E F O R E :

Honorable Benjamin H. Culbertson
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

Phillip C. Thompson, Esquire
Arrigo Carotti, Esquire
Attorneys for Plaintiff

J. Todd Kincannon, Esquire
Attorney for Defendants

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

1 (There were no exhibits marked during the hearing.)
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1 (On the record, July 23, 2012.)

2 THE COURT: All right, the next one is 2011-CP-26-
3 9457, this is the case of Horry County, a Body Politic versus
4 Aguasino Partners of South Carolina, LLC, Suncruz Casino
5 Cruises LLC, Ventures South Carolina LLC, Suncruz Casinos,
6 LLC, and Highland Park Real Estate Development Corporation.

7 According to my roster we have before the Court a motion
8 to dismiss by the Defendants, a motion for temporary
9 injunction by the Plaintiff, a motion for appointment of a
10 receiver by the Plaintiff, a motion to compel by the
11 Plaintiff; is that correct?

12 MR. KINCANNON: Yes, sir.

13 MR. THOMPSON: That's correct, Your Honor.

14 THE COURT: All right, please give the court reporter
15 your names and who you represent.

16 MR. KINCANNON: Todd Kincannon on behalf of all
17 Defendants.

18 THE COURT: All right.

19 MR. THOMPSON: Phil Thompson on behalf of Horry County.

20 THE COURT: All right, is everybody here needed for
21 these motions?

22 MR. THOMPSON: That's correct, Your Honor.

23 THE COURT: All right, does it matter what order we
24 take the motions in?

25 MR. THOMPSON: Probably the motion to dismiss.

1 THE COURT: All right.

2 MR. KINCANNON: Yes, sir, I think that makes sense.

3 THE COURT: All right, Mr. Kincannon, let me hear from
4 you.

5 MR. KINCANNON: Thank you, Your Honor.

6 First of all I want to apologize again for the issue we
7 talked about earlier.

8 THE COURT: All right.

9 MR. KINCANNON: I sincerely apologize to the Court
10 and I'd like to get into this case just a little bit by giving
11 just a little bit of background.

12 South Carolina and I think anybody around here has seen
13 has had a proliferation of late of sweepstakes, slot machines
14 and whatnot in gas stations and just all over the place, just
15 a massive proliferation of them. That's created a problem for
16 my client, a severe problem and it may not be survivable for
17 them in the long run, whatever happens here today.

18 My client invested a lot of money in a business entity
19 that went and rents a boat and operates casino cruises. They
20 have a lot of very similar equipment to what you find in one
21 of these gas stations. The difference is you have to pay a
22 lot more money to get on their boat. They go out into
23 international waters and you're allowed to gamble in
24 international waters and have to go out three miles. So, it's
25 a long trip. Then you come back. The problem, Your Honor,

1 and this is not Horry County's fault, it's just a reality of
2 the situation, these folks have invested a fortune in legal,
3 one of the very few legal gambling options in South Carolina.
4 They've invested their lives, their fortunes in this and for
5 what many people around the state who see an illegal
6 opportunity have set up all kinds of different little outfits
7 to where instead of going and paying to get on their boat,
8 riding out in the Atlantic Ocean, gambling, coming back, you
9 can just go down the street. They, as I understand, they
10 drive by these outfits on the way to their boat and it
11 infuriates them and I understand why. The problem is and this
12 is fundamental, too, it has cut into their bottom line so
13 badly that they can no longer make the payment that is called
14 for by the Horry County ordinances relating to the surcharge
15 of passengers to get on the boat.

16 They contacted me and Mr. Thad Viers in last year, late
17 last year and were telling us that they were having a very
18 difficult time making their payments, asked us to go to Horry
19 County and talk to them and we went to Horry County. They
20 told us to bring the account current and they'd talk. We
21 brought the account current. They weren't that receptive. I
22 won't say they didn't talk, weren't that receptive and that,
23 and that's fine, Your Honor. I understand their position on
24 that. What that necessitated then I think is that my clients
25 had to start looking for a legal way out of their problem, and

1 I'll tell Your Honor right now my clients have told me many
2 times if we could pay the \$7 per passenger fee we would, and
3 in fact they did for some period of time before it just became
4 economically impossible due to all the illegal competition
5 they face on dry land.

6 What brought us here today is Horry County filed a
7 lawsuit very late last year and not much happened in it,
8 motions were filed, there's been some postponements we've
9 talked about here, and today my clients are in a position, and
10 by the way, there's another boat. They are not in as dire
11 straits yet but they are heading in that direction. My
12 clients' boat is much bigger than their competitor; and so, it
13 has a lot more fixed costs. So, illegal competition hit them
14 sooner.

15 The situation is this, in a search for a legal remedy to
16 their problem I discovered what I believe to be a fundamental
17 and fatal flaw in Horry County's surcharge setup. The
18 surcharge that they have is and it's embodied in ordinance 09-
19 08 requires my clients to pay \$7 per passenger that gets on
20 the boat. So, when you get on the boat and go out that's \$7
21 per passenger, that's Horry County Ordinance 09-08, but all of
22 this is made possible by a South Carolina statute called the
23 Gambling Cruise Act and it's codified in Chapter 11 of Title 3
24 and the Gambling Cruise Act contains provisions in Section 400
25 either 2-C or C-2, I can't recall, and in those provisions the

1 legislature sets out two different surcharge methods that
2 counties can use and the counties, the counties that allow
3 gambling cruises. Counties that ban gambling cruises they
4 have five years to leave tax free and my clients have said to
5 me many times they wish Horry would just ban them so they'd
6 have five years tax free to just get out. I say tax. It's
7 not a tax. It's a surcharge, but in any event, for counties
8 that allow gambling cruises there are two methods in statute
9 that by which a local government can charge a surcharge. One
10 of those methods is that they may charge up to ten percent of
11 the ticket price. They may also charge up to five percent of
12 gross revenues and gross receipts based on the gambling that
13 takes place on the boat. Those are the only two methods the
14 statute lays out and I've sent a memorandum to the Court this
15 morning and have it with me that and it's, it's a somewhat
16 lengthy memorandum, but the issue is pretty simple, as the
17 exclusio unius est inclusio alterius can in a statutory
18 interpretation where the legislature has laid out two things,
19 then it intends that nothing else can also be there and it
20 says these are the two ways and nothing else.

21 There are situations in statutory interpretation where
22 that doesn't work, but this case it does I think, Your Honor,
23 and the reason is the cardinal and our Supreme Court said
24 repeatedly that the cardinal rule of statutory interpretation
25 is to ascertain the intent of the legislature and in this

1 statute it is clear at least to me, and I think, I think I'm
2 right about this, I really do, this is not puffing in court, I
3 think this is absolutely accurate, when the legislature said
4 up to ten percent of tickets, up to five percent of gross
5 revenues, the legislature was authorizing the counties to set
6 surcharges within a range but no more and the \$7 per passenger
7 method is not mentioned in the statute, it's either up to a
8 ten percent of tickets or up to five percent of revenues.
9 There's no per passenger authorization in the statute. I
10 believe and I think it's very clear from the language that the
11 legislature was concerned that local governments would charge
12 too much, then they'd set their surcharges too high, thus the
13 up to threshold. What Horry County has done and I understand
14 why, they've come up with a different method whereby they
15 based on all the numbers that I have seen and understand can
16 far exceed the surcharge that they would get if they were
17 limited to the two methods in the statute. So, and just by
18 way, by way of example the numbers I understand are the
19 average ticket price of my clients is about \$10. So, 10
20 percent of \$10 is a dollar. The average person that goes on
21 the boat gambles about \$20 mostly on slot machines and five
22 percent of \$20 is also a \$1. Those numbers aren't firm. They
23 move around a little bit but that's ballpark. Under the South
24 Carolina statutes adopted by the General Assembly it is our
25 position that the maximum Horry County can charge in a

1 surcharge, a per-passenger surcharge would be \$2 and the
 2 statute does allow both at the same time. They can have both
 3 of the methods. Our position is that when the statute says
 4 that there is a \$2 cap then going to \$7 in a per-passenger
 5 regime Horry County has exceeded its authority, and again the
 6 up to language indicates without any question I think the
 7 legislature wanted to cap this. There's some other examples
 8 in this statute. They cap fines at up to \$100, up to 50,000.
 9 There's broad regulatory authority granted to the counties and
 10 municipalities by the Gambling Cruise Act but the legislature
 11 did put in those caps on the numbers and we think it's
 12 applicable here. If we are right, if we are right in our
 13 legal interpretation, I believe we are and it's relevant to
 14 all the issues before you today, then our obligation is to pay
 15 Horry County nothing, but even if they had adopted the best
 16 ordinance they could have we are far ahead in our payments and
 17 have not gone behind since. We are far, far ahead.

18 The issue then is this, my clients cannot continue to
 19 operate if they are forced to pay the \$7 per passenger fee,
 20 and what they seek at this point in time is simply to continue
 21 operating until they've had a chance to have this matter heard
 22 in full and have an opportunity for appeal if necessary and
 23 continue operating up until then and my clients would have
 24 absolutely no problem whatsoever with paying Horry County the
 25 maximum statutory fee, what we believe, what this - what the

1 statutes say is the maximum they would happily pay if they
2 could continue on till the end. The issue, though, Your
3 Honor, is this, if, if the \$7 figure sticks, they're done, and
4 there's no point. They've told me that they'll have to go to
5 a bankruptcy here in the next three to four weeks given all
6 the competition they're facing.

7 Horry County's position appears to be, and we haven't had
8 much discussion or any discussion on what I just said to you,
9 Your Honor, but I expect Horry County will say that my clients
10 did something a little different than usual. They signed a
11 contract to be bound by this ordinance and that is absolutely
12 true, they signed an agreement to be bound by this \$7 per
13 passenger fee. Our position is that doesn't change anything
14 whatsoever. Horry County we don't believe can achieve a
15 result by contract that it could not achieve by ordinance.
16 When the Gambling Cruise Act says these are the surcharge
17 limits then that statute applies to any sort of local
18 governmental action. It doesn't matter whether it's a
19 contract or an ordinance. My clients' agreement to that
20 ordinance also or to the contract and I think this is really
21 the only other issue in the case, the only other main issue in
22 the case, the contract, if one reviews it, is unsupported by
23 consideration. The material provisions of that agreement are
24 our client agrees to be bound by an ordinance that already
25 exists and Horry County agrees to receive payments pursuant to

1 that ordinance. That's unsupported by consideration. Horry
2 County is doing nothing except taking money in terms of
3 material provisions, and frankly, my client is also not giving
4 consideration. They're just agreeing to be bound by an
5 ordinance of general applicability that they're already bound
6 by. So, our position boils down to this, both on the 12(B)(6)
7 motion because all of these matters are either in the
8 pleadings or in law, and on all of the other issues as well.
9 We believe we have - we should win this now or later and on a
10 12(B)(6) standard the issue is do we win as a matter of law
11 and I believe we do, but Your Honor, I can tell you right now
12 there are 200 jobs at stake and I would have no problem
13 whatsoever if that issue were postponed for a consideration at
14 a later day. The - and I would withdraw my motion to dismiss
15 in an absolute heartbeat if we could avoid an order here today
16 that would force my clients into immediate bankruptcy. What,
17 what I would suggest, Your Honor, is my clients are ready,
18 willing and able to pay the maximum statutory amount going
19 forward in this litigation, pay it directly to Horry County,
20 no need for escrow, nothing, give Horry County full access to
21 financial records. They can look at any financial records my
22 client has anytime they want to. If they believe that we're
23 not telling the truth by the financial situation they'll find
24 out that we are telling the truth about it, but the
25 fundamental issue here is that my client has a - not a due

1 process right, but a due process is definitely implicated
2 because in this case any sort of temporary relief would end
3 their business. Their business will cease to exist and these
4 claims will become the property of a bankruptcy estate. They
5 may be asserted, they may not be asserted. Frankly, I expect
6 they won't be and my clients will never have an opportunity to
7 hear what Your Honor has to say about this, what the Supreme
8 Court would have to say about it eventually. They would never
9 have that opportunity, and given the situation that we are in,
10 the dire situation that we're in, I would ask the Court today
11 to grant my 12(B)(6) motion to dismiss on the grounds that
12 I've put before you.

13 In the alternative we would ask that the Court fashion
14 some relief and we are more than happy to participate in that
15 whereby this business can continue to operate and pay what,
16 what a reasonable view of the evidence would say we should
17 pay, which I believe is the statutory capped amount pending
18 the outcome of this litigation, and Your Honor, again, I
19 apologize for the situation with postponements and I hope Your
20 Honor understands I am here in good faith today and everything
21 I represent to the Court we can show you with any sort of
22 financial representation or financial data whatsoever, but in
23 terms of this statutory issue we truly believe that we have a
24 - not only a high likelihood of success on the merits, but a
25 guaranteed victory at the end of the day, and based upon that

1 that is why we are asking for what we're asking for. So,
2 there are, there are other issues in this case but it would be
3 a waste of the Court's time to really get into them until
4 we've heard what you would like to do with that, I believe.
5 Now I can cover them or I can wait.

6 THE COURT: All right. Mr. Thompson.

7 MR. KINCANNON: Thank you.

8 THE COURT: Thank you.

9 MR. THOMPSON: Thank you, Your Honor.

10 Your Honor, this, this case has nothing to do with the
11 convenience stores he's talking about that has sweepstakes.
12 It has nothing to do with what their bottom line is we don't
13 think because we don't know. We've tried to get financial
14 information from them and they invited us up there one time
15 before under these previous hearings and spoon-fed us some
16 information that would give us nothing. Up until today - this
17 case was filed in November of 2011. We don't have an answer.
18 We've only got this motion to dismiss that's been put off till
19 now, August. They haven't paid a dime since August 1st of 2011
20 and we have received no discovery whatsoever from them. So,
21 we don't know if what they're telling us is true or not.
22 According to the Big M Casino, which is the other boat that
23 Mr. Kincannon spoke of that's not doing well, they told Mr.
24 Carotti this morning that they're doing absolutely fantastic,
25 having one of the best years and think that this, Mr.

1 Kincannon's clients is having the same year as well. So, we
2 don't know. We can't get into it. We have no idea.

3 THE COURT: Well, what is the \$7 per passenger
4 surcharge based on?

5 MR. THOMPSON: What happened was and that's another,
6 that's another issue that we need to get into and the reason
7 why this case should not be dismissed, it's way too early. We
8 don't have the facts of this case, and if I may, Your Honor, I
9 want to hand up for your consideration, this is a 2007 case
10 that was filed in August 2007. This is a case of Ventures
11 South Carolina LLC, doing business as Suncruz Casinos and
12 Diamond Gaming. Ventures South Carolina LLC is a Defendant in
13 this case and we believe that and this is another area we need
14 to get into some discovery as to whether these Defendants in
15 this case are the same Plaintiffs in this case and I can get
16 into that history in a moment but to come back to where - what
17 you're asking me here is this lawsuit was filed in 2007 by the
18 gambling boats up there which we - are either the same or were
19 purchased out of bankruptcy, one of the two. They were both
20 involved with Mr. Weisberg who is a principle in the
21 Defendants today and Mr. Naos, Mr. Naos's uncle started these
22 back in, I think it's the nineties if I'm not mistaken, but
23 what happened was is there was an Horry County ordinance then
24 that followed the state law and I think it was one and a
25 quarter percent of one of the numbers and up to four percent

1 of the other number. I can't - believe it's the same statute
2 and they've challenged it for the same reasons that we have
3 heard up until today, which was due process, equal protection,
4 that type of thing; and so, once they filed that and that's
5 under tab number one there, then a - that was filed by Nelson,
6 Mullins and Riley. We found a letter where Horry County had
7 gotten an opinion on charging a surcharge agreement from
8 Nelson, Mullins and Riley that said it was a valid way of
9 assessing the money, and basically what it says is that these
10 are, as Mr. Kincannon says, statutory caps up to five percent
11 and five percent, whatever the percentages are of the gross
12 proceeds and the ticket sales, those are caps. As long as the
13 \$7 surcharge doesn't exceed the caps then it's valid. Well,
14 the - getting into those five percent of the gross proceeds
15 and that type of thing requires us to have to go delve into
16 their books. Books are, for lack of a better word, if there's
17 garbage in there's garbage out. Books can be cooked; and so
18 in order ---

19 THE COURT: So, you're disputing that they're only
20 making \$30 per person on the boat.

21 MR. THOMPSON: Absolutely, we don't know how much they're
22 making.

23 THE COURT: Okay, well, that's what they've
24 represented to the Court is that they make \$30 per person.

25 MR. THOMPSON: And we have no facts to support that.

1 THE COURT: Okay.

2 MR. THOMPSON: All we have is a statement by an attorney.
3 We've not been able ---

4 THE COURT: Well, you've got a court record now ---

5 MR. THOMPSON: Right.

6 THE COURT: --- where that - that's where they're
7 saying so you've got that on a court record now that they're
8 making \$30 a person, so.

9 MR. THOMPSON: Right, we, we haven't been able to get in
10 discovery to see if that is true or not.

11 THE COURT: Okay.

12 MR. THOMPSON: But as a result of not having to go
13 through the books and having to deal with the books what the
14 County did at that time was reached an agreement with these
15 Plaintiffs in this case, in this 2007 case, "Let's do the
16 surcharge agreement. Let's do \$7 a head. That way we don't
17 have to look in your books. We don't have to do anything like
18 that." They agreed to that, and then Mr. Weisberg, who on
19 behalf of Suncruz Casinos, signed, excuse me, signed a
20 surcharge agreement that was authorized by the resolution that
21 said that he would agree to pay the \$7, the - he would agree
22 to pay the \$7 that was required by the ordinance that Mr.
23 Kincannon mentioned. So, what you've got is all you got is a
24 statutory cap. It doesn't say where the money comes from. It
25 just says it doesn't exceed that much. We don't know whether

1 it does or whether it doesn't. We do know that they entered
2 into a contract, the surcharge agreement that said that they
3 would pay it. As far as consideration they pay \$7. Horry
4 County lets them operate. There's consideration.

5 THE COURT: Okay, all right, that's good. Mr.
6 Kincannon, how do we know the \$7, how do we know or how does
7 the Plaintiff know that \$7 exceeds the cap that you're
8 alleging if you all don't give them your books that shows what
9 you're making?

10 MR. KINCANNON: Your Honor, I represent to the Court that
11 I have offered them the books. They, they say they were
12 spoon-fed information, and Your Honor, in all candor to the
13 Court the first I heard of that was Friday or possibly
14 Thursday of this past week. They are welcome at any point in
15 time to come and look at the books, absolutely any point in
16 time they want to, they can get any kind of financial
17 information they want. We are, we are more than happy to do
18 that, and if it turns out that, that, you know, if they, if
19 they find that more money is being made then they do and
20 that's fine and they'll get their money but, I mean, what I
21 understand, what I've been told by my clients is that the \$30
22 is about right and they get - they're entitled to about ten
23 percent of the \$10 figure and about five percent of the \$20
24 figure.

25 THE COURT: Okay.

1 MR. KINCANNON: And Your Honor, I'll say also with
2 regard to this business, if they're willing to concede that
3 the \$7 can't exceed the statutory cap, then I don't, I don't
4 think it can, then I believe we might be able to resolve this
5 case very quickly because that, that puts my clients in a
6 position. Here's, here's the fundamental issue, Your Honor.
7 The five percent, ten percent in the statute automatically
8 adjusts for bad economy, land based competition, etcetera. If
9 they only have to pay ten percent of their ticket price or
10 five percent of their gross revenues, when ticket prices, when
11 they're having to lower ticket prices to get people on board
12 then the ten percent figure goes down. When people aren't
13 walking in with as much money the five percent figure goes
14 down. The problem with what Horry County has done here, Your
15 Honor, is real simple, this \$7 figure does not adjust for a
16 horrible economy, for giant fixed costs, for fuel prices
17 skyrocketing and them having an almost half empty boat.
18 THE COURT: Well, and I understand all that. The
19 problem I'm having, Mr. Kincannon, is since your clients have
20 not filed any responsive pleadings that issue's not even in
21 front of the Court. What you've got to do is file a
22 responsive pleadings where you allege that there is a
23 violation of the statute or you've got to get something in
24 front of the Court. All we've got is a motion to dismiss
25 pursuant to Rule 12(B)(6) that says they've failed to state a

1 cause of action. I'm going to deny your motion because I
2 think they have. That doesn't mean that you all can't get
3 these issues addressed, but you're going to have to file your
4 answer, you're going to have to get that issue before the
5 Court.

6 MR. KINCANNON: Your Honor, I'll be happy to and I
7 think here's the, here's the issue with that, no problem doing
8 it whatsoever. My, my understanding was that because the
9 injunction matter was up today before the Court in the context
10 of seeking an injunction the parties have to explain who has a
11 greater likelihood of success on the merits, and I'll be
12 honest with you, no problem whatsoever ---

13 THE COURT: Well ---

14 MR. KINCANNON: --- with denying the 12(B)(6). The
15 issue that we are concerned about and my clients in the corner
16 are just one of them conceded to me today that he's just sick
17 at his stomach about all this because they are concerned that
18 if an injunction is granted or a receiver appointed or
19 anything like that their business will fall apart. As a
20 casino if there is a hint of receiver appointment or if they
21 have to file bankruptcy ---

22 THE COURT: Well, we're getting ready to get into
23 that.

24 MR. KINCANNON: Yes.

25 THE COURT: And I don't know what - all I can deal

1 with the likelihood of success is I don't know because your
2 clients have not asserted any defenses. They have not
3 asserted any statute. They have not asserted anything that
4 says that they're going to prevail against the Plaintiff's
5 complaint. All we've got now is a complaint and your motion
6 to dismiss and then the Plaintiff's motions for injunction,
7 motion for appointment of receiver, motion to compel. There's
8 nothing from your clients that even asserts the statute or
9 violation of the statute other than your appearance this
10 morning in making the argument.

11 MR. KINCANNON: Yes, sir, and we'll - and I apologize
12 for that. My understanding is is that I can do that but I
13 certainly - I mean, honestly, Your Honor, if I had had any
14 idea that that was necessary to do sooner I certainly would
15 have and what I would request of the Court, and by the way, I
16 think this case is one where there's not really much of a
17 factual dispute on many of the issues. I think my clients
18 would have no problem whatsoever given the situation they're
19 in trying to expedite this to get a final resolution of it.

20 THE COURT: Well, I'm having a hard time believing
21 that when they've been claiming legislative immunity since
22 February ---

23 MR. KINCANNON: Well, Your Honor ---

24 THE COURT: --- saying that the legislators who
25 represent them are vital to this case and we can't even

1 proceed with a motion hearing without their presence. Now
2 they're saying they agree to an expedited hearing when these
3 matters have been pending since 2011.

4 MR. KINCANNON: And Your Honor, I'll tell you the
5 difference, the financial situation that they are in and that
6 they are heading towards is going to land them in a bankruptcy
7 court very soon if, if this matter is not addressed.

8 THE COURT: Well, and it might be but it could have
9 been addressed a long, long time ago, but the Court has
10 repeatedly been advised that Representative Viers and then
11 Representative Rutherford's presence was mandatory for the
12 disposition of these issues and now we're finding out that
13 wasn't the case.

14 MR. KINCANNON: Well, Your Honor, and I apologize for
15 that and I will again represent to the Court that it is
16 absolutely the case that Mr. Rutherford contacted me on Friday
17 and asked me about arrangements for coming here. He was
18 flying back in from Miami and was going to come straight into
19 Myrtle Beach if we were going, if the hearing was still on and
20 he had, he had a trial I think in Kershaw County and was going
21 to go into Columbia if the hearing was off, and based upon my
22 discussions with Mr. Thompson I understood that we were - we
23 had a tentative agreement in place and it looked like we were
24 going to be able to settle.

25 THE COURT: Okay.

1 MR. KINCANNON: And that fell apart over the weekend
2 and that's why Mr. Rutherford is not here and I apologize to
3 the Court for that.

4 THE COURT: All right, well, I'm going to deny your
5 motion.

6 All right, Mr. Thompson, let me hear from your motion
7 now.

8 MR. THOMPSON: Thank you, Your Honor.

9 THE COURT: We've got temporary injunction,
10 appointment of receiver and a motion to compel. Does it
11 matter what order we take them in ---

12 MR. THOMPSON: If we could, Your Honor ---

13 THE COURT: --- or can we do them all at once?

14 MR. THOMPSON: --- just take ---

15 MR. KINCANNON: Your Honor, I'll admit, I'll concede
16 the motion to compel at this point if that helps because of
17 the 12(B)(6) denial.

18 THE COURT: Okay, so, that'll be - how long do you
19 need to respond? This is to discovery; is that correct?

20 MR. THOMPSON: That's correct, Your Honor.

21 THE COURT: All right.

22 MR. KINCANNON: Your Honor, if I could have - I can
23 try to get it faster, but 30 days is what I would need if
24 that's all right.

25 MR. THOMPSON: Is that, may I indulge you, is that for

1 both sets because we did a supplemental set as well.

2 MR. KINCANNON: That's for everything and also with the
3 understanding that you all are welcome to come anytime you
4 want to to get any kind of finances, but yeah, we can do that.

5 MR. THOMPSON: That'll be fine, Your Honor.

6 THE COURT: All right, motion to compel is granted.
7 Defendants shall respond to the discovery requests, all
8 discovery requests within 30 days.

9 MR. THOMPSON: Thank you, Your Honor.

10 THE COURT: All right, let me hear from you on your
11 temporary injunction and appointment of receiver.

12 MR. THOMPSON: That's correct, Your Honor.

13 Your Honor, on this same state statute, this is the
14 Gambling Cruise Act, if I may hand up to you, Your Honor, just
15 to make it easier for everybody - to keep from having to thumb
16 through the file.

17 THE COURT: All right.

18 MR. THOMPSON: This is Section 3-11-210, penalties under
19 ordinance adopted pursuant to 3-11-200, I've supplied the
20 Court with a - my motion for temporary injunction that states
21 that they haven't made any payments whatsoever, the \$7
22 surcharge since 2000 - August 1st of 2011, also attached to
23 that the ordinance and the surcharge agreement, the resolution
24 and also the affidavit of Barry R. Spivey who states that he
25 is the finance director of Horry County. Part of his

1 responsibilities include the collection of the \$7 per boarding
2 passenger fee and that he's read my motion for temporary
3 injunction and appointment of receiver and that it is correct,
4 they have not made any payments whatsoever. That is a
5 violation of the 3-11-210 which states that in addition to the
6 \$7, that if there's a violation, there can be a \$100 per
7 passenger per gambling cruise penalty to be paid up to \$50,000
8 a day, and just for the Honor's, Your Honor's information we
9 estimate. We don't know. We don't have the per head
10 passenger manifest for 2012. We only have it up to 2011,
11 December 2011. We are estimating based on those numbers that
12 they owe Horry County somewhere in the neighborhood of
13 \$800,000 just in the \$7 fee. If we threw in the \$100 per
14 person penalty, we're talking about 11 or 12 million dollars
15 is what that would be but just, that's just for Your Honor's
16 information, but the last part of 3-11-210 states,
17 "Additionally a county or municipality may obtain injunctive
18 relief against a person for violation of an ordinance,
19 regulation, regulating or prohibiting gaming, gambling vessels
20 pursuant to that section." Ordinance number 9-08 is attached
21 to the motion, if I may, Your Honor, just so you, just so you
22 can have that in front of you, it also, this is the ordinance
23 that establishes the \$7 surcharge, and if you will look on the
24 second page penalties, paragraph three has the same language
25 in it as the statute does and also says, that last sentence,

1 "In addition to civil penalties, a violation of any provision
2 of this ordinance by a gambling vessel shall vest in Horry
3 County the authority to seek injunctive relief against any
4 individual charged with the responsibility of operating or
5 managing the daily business of a gambling vessel."

6 Now, Your Honor, here's, here's the point and the issue
7 that was brought up a minute ago about - I think he got into
8 maybe the equitable part of granting an injunction, there is
9 very little law on that but ---

10 THE COURT: What is, I mean, what, what kind of
11 injunction are you asking? What are you asking the Court to
12 do?

13 MR. THOMPSON: To stop the business from operating.

14 THE COURT: Okay.

15 MR. THOMPSON: Stop, just what the statute said and the
16 ordinance says, stop anybody from operating the business. If
17 they're not going to be paying they don't need to be
18 operating.

19 THE COURT: I got you.

20 MR. THOMPSON: And that's what we're asking for, and Your
21 Honor, if I may hand this up, like I said, there's very little
22 law when you have an injunction that is allowed by statute but
23 this is Am. Jur. 2d, injunctions specifically authorized by
24 statute, basically the second sentence there it says, "When
25 permanent injunctive relief is sought pursuant to statutory

1 authority courts consider only two factors, whether the
2 statute has been violated and whether future violations are
3 likely. In such circumstances no showing of irreparable harm
4 need to be made by the party seeking an injunction nor must
5 the Court consider whether the injunction is in the public
6 interest." So, you don't have to get into the equity of
7 granting injunctions. You show a violation of the statute and
8 it's likely to occur in the future, and that's all you need to
9 get an injunction under this statute and it makes sense
10 because one of the things for denying an injunction is that
11 there is a remedy at law, which means money. Well, the only
12 thing required under this statute, under the ordinance, under
13 the resolution, the surcharge agreement is money. So, it
14 makes sense. So, we have an affidavit here showing that they
15 haven't paid the money, that's a violation of the statute and
16 for that reason, Your Honor, we're asking for an injunction.
17 THE COURT: All right.

18 MR. KINCANNON: Your Honor, in response, our
19 position, first of all as to this statutory injunction stuff,
20 there are - there's some very important points and I
21 respectfully disagree with Mr. Thompson on. First of all, our
22 position is is that because this statute or this ordinance
23 that has been violated it relates to gathering surcharge fees.
24 If one looks at the - and I didn't think of this until I just
25 heard what Mr. Thompson said, but if one looks at section 3-

1 11-400, which is the statutory authority for enacting that
2 ordinance, and of course, we think there was none, but in any
3 event, if it was enacted properly that authority came from 3-
4 11-400 and it says that in the ordinance.

5 3-11-400 very distinctly does not include the injunction
6 language, and this gets to a fundamental point about the way
7 the Gambling Cruise Act is structured. The Gambling Cruise
8 Act is Title 3, or Title, yeah, Title 3, Chapter 11, has a
9 number of different statutes in it and some of them it says
10 that a court may, and may is important, may grant injunctive
11 relief for a violation of this, but the 400 one doesn't, and
12 again, back to exclusio unius est inclusio alterius,
13 injunction, our position is cannot - there's no statutory
14 basis for granting an injunction for failing to remit these
15 fees.

16 THE COURT: Well, what is the County's recourse, let's
17 say you prevail on everything, they're charging too much on a
18 surcharge, they only have to pay the five percent or the ten
19 percent, but they just say, "We ain't going to pay it," what
20 is the County's recourse? They say, "We're not," and as I
21 understand you have not paid one dime to the County since
22 when, October?

23 MR. THOMPSON: August of - the 1st, 2011.

24 THE COURT: August of 2011 you have not paid one penny
25 to the County. So, what is the County's recourse if you're

1 saying you can't issue an injunction because the ordinance
2 doesn't provide for it?

3 MR. KINCANNON: Your Honor, let me say and let me
4 rephrase, I'm not saying you can't enter an injunction. I'm
5 saying you don't, you can't enter, and I don't mean to say you
6 can't, but the standard that Mr. Thompson put out for
7 statutory injunctions doesn't apply and it goes back to the
8 common law standard for injunction. So, a common law
9 injunction could still be granted, common law injunctive
10 relief could still be granted at that point in time. This is
11 very important because Mr. Thompson's position is that the
12 issue is statute violated, you're done, ordinance violated,
13 you're done, because it provides for injunctive relief. Our
14 position here is that this statute, the statute relating to
15 fees or surcharges doesn't provide for injunctive relief. So,
16 you don't get that automatic grant of injunction upon a
17 showing of violation. It goes back to the common law
18 standard, and under the common law standard the Court has an
19 opportunity to balance the equities, and in that situation and
20 by the way one other point briefly on this statutory business,
21 and I don't have it with me because I didn't realize we'd get
22 into this but I believe the Pick a Flick [spelled
23 phonetically] case is a case from our Supreme Court, and in
24 that case the court looked - there's - the - and this Am. Jur.
25 article is missing an important point, the Am. Jur. article

1 presumes that the statute that has been violated there is no
2 question as to its lawfulness. In the Pick a Flick case from
3 the Supreme Court there was a - I believe it was an obscenity
4 statute and it was a very dubious First Amendment validity and
5 a court in that case declined to issue an injunction because
6 the statute itself had severe problems. It was - the statute,
7 I think it was an ordinance actually. Our position in this
8 case is is that if Your Honor goes with the statutory
9 standard, even though that's not in the statute, then it gets
10 back to our position that Horry County is vastly overcharging
11 and their regime is not provided for in the statutes. The
12 statutes have the two, Horry's is not one of them. So, given
13 that, the Court does get to look at that issue, too, because
14 of the Pick a Flick case, and if the Court doesn't find that
15 they have a likelihood of success, if it's just up in the air
16 ---

17 THE COURT: Well, I mean, I think you're going to have
18 to admit that they do have some success, that even if you all
19 win the case lock, stock and barrel, you have not paid one
20 penny since August of 2011, even if it is a five percent
21 surcharge there's going to be a lot of money owed.

22 MR. KINCANNON: No, sir, don't believe so, and let me
23 explain why. There are two reasons why. One reason is, and I
24 wish - if I'd known this was going to come up I'd have the
25 figures right in front of me, they made payments, the \$7

1 figure from when this started I think in early 2010 or maybe
2 mid 2010 up until late 2011 of the \$7 figure. So, if the
3 Court were to find that the two or \$3 cap, whatever, is in
4 place, then that'd be a credit against what hadn't been paid
5 in the past eight or nine months, and \$7 as against \$2 or \$7
6 as against \$3 that credit would continue probably for about
7 another eight or nine months. So, they are if ---

8 THE COURT: I mean, you all haven't sought a credit.
9 You all haven't alleged, you aren't seeking a credit in this.

10 MR. KINCANNON: Well, and there's a reason, there's a
11 reason, we will when we file an answer and counterclaim, Your
12 Honor, and, and here's ---

13 THE COURT: At this juncture you're not seeking a credit.

14 MR. KINCANNON: Well, I think, Your Honor, I think at
15 this point in time it's fair to say that any - if the Court
16 finds an arrearage based on the two to \$3 cap we'd have a
17 setoff defense to that based upon, I think that's clear.

18 THE COURT: Well, you're going to have to allege it.
19 I don't know.

20 MR. KINCANNON: Well, sure, and Your Honor, again, I
21 apologize that, you know, I'm here defending an injunction and
22 not making affirmative claims, and quite frankly, one of the
23 reasons that I - we haven't made a demand on them for payment
24 for all the old stuff is because we want to continue
25 operating. We wanted to negotiate with them. We wanted to in

1 good faith and try to come up with a reason, and frankly, it
2 was my judgment that demanding they pay all this money back
3 was probably a bad idea and that, and that is, that's why that
4 has happened the way it has, but let me say this, too, that's
5 one way that we can prevail. The other way that we can
6 prevail, which I like better because my clients would get more
7 money out of it but is also an alternative way, is if the
8 Court just strikes down the ordinance entirely saying that
9 this, this scheme is not provided for in the statute,
10 therefore it's invalid, and everything that's been due in the
11 past is no more and anything that's paid in the past has to be
12 refunded. That's an alternative way. We could prevail either
13 way and under either circumstance we are not in arrears. We
14 could be at some point in the future but we are not now, and
15 Your Honor, I'll say this, too, my clients, my client, what
16 the last offer and I hate to get into settlement discussions
17 but it's relevant to an injunction, my clients would consent
18 to an injunction if the, if the relief were to make payments
19 at a level they could afford while turning over all of the
20 finances to them so they could verify that there's no game
21 playing. My clients would consent to that and we've tried our
22 best, I tried my best and I think Mr. Thompson tried his best
23 to try to get something like that worked out. We were just
24 too far apart. The reason we were too far apart was my
25 clients and everybody in Myrtle Beach knows the winter months

1 are tough and my clients go in the red in the winter months,
2 and quite frankly, the issue became whether or not there'd be
3 an ability to have some sort of a cash sitting out there so
4 they didn't go in bankruptcy in the winter months. So, Your
5 Honor, to answer your question we would consent to an
6 injunction and pay them everything we could afford to pay them
7 to stay in business pending the outcome of this litigation,
8 have no problem doing that, Your Honor. It's just a matter
9 right now of there - I'm deeply concerned about the - frankly
10 I'm deeply concerned about their business about being
11 destroyed right now in the interim, and we obviously don't
12 want that and our position is is that we should win at the end
13 either way, but we're happy to do what we can in the interim
14 to stay afloat and Horry, we can start paying them as much as
15 we can, again, give them the financials, we'd consent to that
16 injunction in a heart beat. Thank you.

17 THE COURT: All right. All right, Mr. Thompson, let
18 me hear from you on the appointment of receiver.

19 MR. THOMPSON: On the appointment of the receiver?
20 THE COURT: Yeah.

21 MR. THOMPSON: Your Honor, again, I have provided the
22 Court with an application for appointment of receiver that
23 basically is about the same thing as the injunction, it sets
24 forth those type of - what's happened so far, the last thing
25 says, "The above-referenced facts establishing apparent right

1 by Horry County to the \$7 per boarding passenger per gambling
2 cruise surcharge which is the subject of this action and which
3 is in the possession of one or more of the Defendants, such
4 property being cash, which is easily lost or materially
5 injured or impaired by being spent."

6 I brought this application, if I may again approach, Your
7 Honor ---

8 THE COURT: All right.

9 MR. THOMPSON: --- with some of the law in front of you,
10 I brought it pursuant to Section 15-65-10, appointment of
11 receiver, under number one or five as it may be, "A receiver
12 may be appointed by a Judge of the Circuit Court either in or
13 out of court, number one, before judgment on the application
14 of either party when it establishes an apparent right to
15 property which is the subject of the action and which is in
16 the possession of an adverse party and the property or its
17 rents or profits are in danger of being materially lost or
18 materially injured or impaired." I've attached an affidavit
19 of, again, Barry Spivey to this application. Clearly we're
20 entitled to the \$7 surcharge according to the agreement,
21 according to the ordinance, according to the statute. They
22 have not paid it. That means they are in the possession of
23 it. This business is, as most gambling places are, cash-base
24 and we know how easy it is for cash to get gone, to get lost,
25 to get put away, to get spent, and for that reason we're

1 asking for the appointment of a receiver, and Your Honor, I
2 have here as well the person that we're asking for to be
3 appointed as a receiver is Joey Singleton, Joseph F.
4 Singleton, and I had his biography right here and he's in
5 court today. I have it right here. Mr. Singleton's a local
6 attorney who has been practicing for quite some time and he
7 has acted as a receiver in his career and has acted as an
8 attorney for receivings in his career and he also has his
9 hourly rate on there of \$275 per hour.

10 We - and Your Honor, to get back to what Mr. Kincannon
11 was talking about, our agreement, as usual at the eleventh
12 hour this started Thursday afternoon about trying to work out
13 something, trying to do something with it because it looked
14 like this time the hearings weren't going to get continued,
15 they were going forward. We did work hard on not - with the
16 threat of the injunction helped because that was always the
17 worry, the injunction, they'd shut down. Naturally Horry
18 County would rather them be operating and be getting that \$7
19 per head surcharge, everybody, that's, that's better for
20 everybody, but if they're not going to do it we want them shut
21 down, but as for the receiver that's what we worked on. We
22 worked out a receivership agreement. We even came up - I
23 drafted a stipulation of agreement pursuant to Rule 43(K) for
24 Mr. Kincannon to sign. He said, "Okay, we're going to do it.
25 It's done." That's Friday afternoon. Friday afternoon at

1 about six o'clock I sent over a consent order appointing a
2 receiver. All that was supposed to be signed or at least a
3 stipulation was supposed to be signed by five o'clock on
4 Friday. He was in a deposition, said that he would get it
5 done later that day. I checked my e-mail at home in the
6 middle of the day, three o'clock on Saturday and I see that
7 it's all falling apart, everything that's been agreed to has
8 been backed out by he and his client. So, we worked at it
9 hard, but it all fell apart because of them.

10 THE COURT: All right, Mr. Kincannon, let me hear from
11 you on that motion for appointment of a receiver.

12 MR. KINCANNON: Yes, sir, I want to - I - at first I
13 want to represent to the Court I - Mr. Thompson and I did work
14 very hard on this and I have to say that the issue on the
15 receivership itself I don't believe we were far apart. I
16 believe we were together on that. I believe the one issue
17 that ended it was the way the money came together and let me
18 explain. First of all, my clients have indicated to me that
19 they would - if a receiver is appointed named a receiver that
20 will end their business because it will create an issue as to
21 their, their financial solvency for gamblers who gamble.
22 Gamblers won't walk on a ship and gamble if they're afraid
23 that if they hit a big jackpot the money's not there to cover
24 it. So, a gambling operation has to have some cash on hand to
25 pay out big winners, and if it doesn't, you hit a jackpot and

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21 their, their financial solvency for gamblers who gamble.
22 Gamblers won't walk on a ship and gamble if they're afraid
23 that if they hit a big jackpot the money's not there to cover
24 it. So, a gambling operation has to have some cash on hand to
25 pay out big winners, and if it doesn't, you hit a jackpot and

1 money's not there word gets around, that's it. That's it for
2 the gambling operation. So, that, that is an issue for them,
3 and the problem with this is if a receiver's appointed people
4 think that that indicates financial problems and they - that
5 they get the same impression. What Mr. Thompson and I
6 discussed and what I - my clients are still perfectly okay
7 with is if Mr. Singleton were appointed as an escrow agent
8 rather than a receiver, but - and that if Mr. Singleton's
9 power was to do whatever he wants with their finances and
10 determine what, you know, what, what is going on with their
11 finances and then take from their finances an amount they can
12 bear and still function in business and not go out of business
13 as a result of that. They're fine with that. The terms in
14 the order that, that and Mr. Thompson and I did have an
15 agreement in principle on that and Mr. Thompson sent a
16 standard receivership order to me and I noticed in there some
17 of the terms about that, you know, the receiver has the right
18 to initiate actions and that the receiver basically is in
19 charge of the business. My clients are very concerned that if
20 that were the case, you can't find a receiver that knows how
21 to operate a gambling boat operation. There are not many of
22 them in the country, and my clients, what they would request
23 is is they remain in management but that an escrow agent be
24 appointed to look through their finances and take an amount of
25 money that they are still able to function with it gone and

1 that's fine, that is all what we would consent to. We will
2 consent to that in a heartbeat.

3 Here's the one other problem though with that and this
4 was the sticking point between me and Mr. Thompson, my clients
5 indicate to me that if the receiver is appointed to take this
6 \$7 per passenger fee then what will happen is they can bear
7 the \$7 per passenger fee in some of the summer months and my
8 understanding is is that after September it's impossible
9 because the decline in business over the winter, and Your
10 Honor, what I would, what I would request is that my clients
11 be able to pay what they can and Mr. - I would suppose the
12 escrow agent ---

13 THE COURT: So, who's going to determine that?

14 MR. KINCANNON: Well, that's an issue. I would have
15 no problem whatsoever with - frankly, Your Honor, I think
16 this. I think that if that's what you order then I believe
17 Mr. Thompson and I can come to an agreement as to how that's
18 done. Mr. Thompson wants a set number and that's just not
19 going to work in the fall, but if you did order that I believe
20 we could in good faith come together and figure out how that's
21 to be calculated, and again, full financial information,
22 everything given to them and an escrow agent in place to get
23 it, to look through all finances he wants to, but I think
24 reasonable people can look at balance sheets and can look and
25 see the operation of business and see what that business needs

1 to survive, and if they - if - this is what I would say, first
2 of all, consent entirely that no expenditures outside of the
3 ordinary course, clearly we'd be happy to do that, and
4 secondly, you know, if the escrow agent goes too easy on them
5 one month and there's still some cash sitting around and it's
6 clear that they have extra time, extra next month he can take
7 it the next month. I think all of us as reasonable people
8 could agree on that and I'll tell you, Your Honor, my clients
9 will do what they can to continue operating. The problem is
10 is that the financial position staked out by Mr. Thompson,
11 which I completely understand, was too much for them to
12 operate in the winter and survive; and so, the bankruptcy
13 petition wouldn't be filed next week. It'd be November or
14 something when they run out. So, I really believe, Your
15 Honor, that if you order that they are to pay what they can
16 and for all of us to sit down and come up with a formula for
17 what they can to continue operating pending the outcome of the
18 litigation I believe we can all do that. I really do.

19 THE COURT: See, and I don't think you can. I really
20 don't.

21 MR. KINCANNON: Well, then what I would tell you is
22 is that we could - what I would suggest is once, once it's
23 established that only ordinary course expenditures are
24 allowed, once that's established then my clients can pay their
25 entire net profit figure in to the receiver or to the escrow

1 agent, and that money would - could sit there, and in the
2 winter if they end up in shortfall situations, with the
3 receiver's consent or the escrow agent's consent, with his
4 consent they could draw down what they needed to get through
5 the winter and start building it back up again next year.
6 They would agree to that, net profit figure, full financial
7 disclosure, the only sticking point, the only sticking point
8 was that they be able to draw down from the money in escrow
9 upon the receiver's reasonable consent for ordinary course
10 expenditures in the winter when they're - because they don't
11 lay people off in the winter. A lot of businesses in Horry
12 County do. They don't. They keep their people on staff and
13 in jobs through the winter and they want to continue that,
14 quite frankly, and that's - and I think it, it's - that's good
15 for a number of reasons, but Your Honor, and the reason,
16 frankly, that Mr. Thompson and I fell apart on this was
17 because of a misapprehension of mine. It - I - stupidly did
18 not occur to me that a, that a seasonal business ends up with
19 red months in the winter. I, when I was talking to Mr.
20 Thompson and I think we agreed on everything, I agreed on
21 monthly net profit. If, if we're annual net profit
22 everything's fine, but the problem is is that these people
23 don't have a monthly net profit in the winter because they
24 keep their staff on the payroll and don't fire them and around
25 here in the winter you don't have all the tourists. It's as

1 simple as that. So, I think if those were the terms of the
2 order, Your Honor, Horry County would start getting money back
3 in, it'd go into escrow and the money would be there if they
4 win a judgment, it would be there waiting for them. It
5 wouldn't be wasted. They'd get full net profit during that
6 and the only, the only thing I need for my clients is that
7 they be able to get some of that back, a little of it back to
8 get through the winter with the escrow agent's consent.
9 That's fine. That's all we ask, Your Honor, and I - and my
10 problem is is I think that they're so - it's so tight right
11 now with all the competition they're facing that I don't know
12 that the final number is going to be quite \$7 per passenger.
13 I don't know what it'll be, but I have no problem saying that,
14 that every bit of net profit that they can spare, you know,
15 every bit of net profit they have they'll put in escrow
16 pending the outcome of this litigation just to continue
17 operating. That's what we'll do.

18 THE COURT: All right, now, Mr. Thompson, let me ask
19 you, how - this receiver, stepping in running the casino boat
20 or what is it you're asking the receiver to do?

21 MR. THOMPSON: We, we do not want him running the casino
22 boat, Your Honor.

23 THE COURT: Well, what are you asking?

24 MR. THOMPSON: There are special people that can do that.
25 We want him to step in and have access to everything they have

1 in order to collect the \$7 per person surcharge going back to
2 August 1st of 2011, whether he needs to go opening up one of
3 those gambling machines, whether he needs to get in a lock
4 box, a vault, whether he needs to get their books, whatever he
5 needs to do to start collecting that money that's owed. I've
6 got a proposed order that I have here, Your Honor, and I, I'll
7 disagree with Mr. Kincannon, we cannot agree. We will not be
8 able to agree.

9 THE COURT: Okay.

10 MR. THOMPSON: Our clients would not be able to agree or
11 us on what net profits are or anything like that. They won't
12 even show us a balance sheet ---

13 MR. KINCANNON: Your Honor, I've ---

14 MR. THOMPSON: --- whenever we go there we get spoon fed
15 and so we can't agree with that.

16 MR. KINCANNON: Your Honor, I will state without
17 hesitation that my clients will give all financial information
18 and have and if Mr. Thompson's clients felt that they had been
19 spoon - we invited them to come to the offices and review all
20 of the finances that they wanted to.

21 THE COURT: When did you do that?

22 MR. KINCANNON: This was some months ago, maybe
23 April.

24 MR. THOMPSON: And we did it and they've spoon-fed us up
25 to this point.

1 MR. KINCANNON: And Your Honor, I didn't ---

2 THE COURT: Oh, okay.

3 MR. KINCANNON: And Your Honor, I didn't know that
4 they had a problem. My clients called ahead of time and said,
5 "What do we need to give them? You know, what should we have
6 ready for them," and I said, "Let them go into everything they
7 want to," and apparently they came away feeling spoon-fed but,
8 Your Honor, I didn't know that until this past week and they
9 can go back anytime they want to.

10 THE COURT: Okay.

11 MR. KINCANNON: Your Honor, my, my point is as far,
12 I'd be happy ---

13 THE COURT: I understand. I got your point. I
14 understand.

15 MR. KINCANNON: Okay, thank you.

16 THE COURT: All right, Mr. Thompson, if I could get
17 you to prepare an order and make sure Mr. Kincannon reviews it
18 before you submit it to me. I don't know if it's covered in
19 the one that you've already prepared, but number one, it
20 denies their motion to dismiss. It is going to with their
21 consent grant the motion to compel. They are to respond to
22 all discovery requests within 30 days. It is going to grant
23 the Plaintiff's motion for a temporary injunction and motion
24 for appointment of receiver. The temporary injunction states
25 that they cannot operate the boat without payment of the \$7

1 per passenger surcharge. It'll appoint Mr. Singleton as
2 receiver. As receiver he is to collect the \$7 per passenger
3 surcharge as well as his fees of 275 per hour. So, he's going
4 to need to keep an account of that.

5 MR. KINCANNON: Your Honor, may I ask for one favor?
6 THE COURT: What's that?

7 MR. KINCANNON: May we call him an escrow agent
8 instead of a receiver simply for the purposes of the operation
9 of the business?

10 THE COURT: Does that make any legal distinction?

11 MR. THOMPSON: Your Honor, as long as he has the same
12 authority as a receiver would have under statute ---

13 THE COURT: That'll be fine.

14 MR. THOMPSON: --- that's fine.

15 MR. KINCANNON: Be happy, happy ---

16 THE COURT: We'll call it whatever you want to call it
17 but he can - he is to monitor how many passengers, collect the
18 \$7 per surcharge, and I guess he would have to hold - how are
19 we going to address that, what he does with that, whether to
20 hold that in trust?

21 MR. THOMPSON: Your Honor, that was something that we
22 were ---

23 MR. KINCANNON: Your Honor ---

24 MR. THOMPSON: --- Mr. Kincannon and I discussed.

25 MR. KINCANNON: --- I have no problem, Your Honor,

1 with him, and this is and I have a question. I don't distrust
2 Horry County. I have no problem with it being paid into the
3 Horry County general fund. The only issue that I have with
4 that is that I suspect that in the winter months I'll be
5 filing a motion in this court begging Your Honor to release
6 some of the funds in escrow so they can get through a couple
7 of months. I don't know whether you'd grant it or not, but
8 the only problem that I have ---

9 THE COURT: Well, the thing with these cases it's
10 going to be hard to get a hearing. If we've got legislative
11 immunity you've got about a three week period during the
12 summer when you can hear motions and that's it.

13 MR. THOMPSON: Your Honor ---

14 MR. KINCANNON: And Your Honor, we've waived on the
15 record legislative immunity going forward and I'll say, and
16 I'll say this much, it'd be my preference that the money
17 remain in escrow simply for the purpose that it - we have
18 ability to request Your Honor's permission to draw down to
19 survive in the winter months. That's the only reason I would
20 say that and that'd be what I request.

21 THE COURT: All right, Mr. Thompson.

22 MR. THOMPSON: Your Honor, we prefer that the money gets
23 paid to Horry County because it's owed to Horry County. It's
24 over \$800,000 now that's owed to us. We're having to not
25 fulfill some of Horry County's obligations because of the lack

1 of funds, not being able to fill positions because of the lack
2 of funds. Horry County's pretty solvent when it comes to a
3 lawsuit, too, if he thinks that - if they think they can
4 prevail.

5 THE COURT: Well, I guess the reason I'm looking at
6 without the responsive pleadings from the Defendant I don't
7 even know what the issues are in the case, okay? Let's do it
8 this way, I'm going to put right now that it is paid into, the
9 \$7 per person surcharge is paid to Horry County. Now, in your
10 responsive pleadings if you'll - you can ask that it be paid
11 into escrow, set it up for a motion hearing and we'll address
12 that, but without something from the Defendant even asking
13 that it be paid into an escrow account or even asking or even
14 saying that you're entitled to an offset or even saying that
15 the \$7 exceeds the amount, other than your arguments here
16 today, I'm going to allow it to go into the Horry County
17 general fund or whatever fund Horry County has. That does not
18 mean that it's going to be that way throughout the trial of
19 the case. Once the Defendant files responsive pleadings where
20 they say that that's in excess of what they're able to pay or
21 they're entitled to some type of offset or they're entitled to
22 some of these funds back then we'll address whether or not it
23 needs to go into an escrow account; okay, and we'll do it that
24 way.

25 MR. THOMPSON: Fine, Your Honor.

1 MR. KINCANNON: Thank you, Your Honor, and we
2 appreciate it.

3 THE COURT: All right?

4 MR. THOMPSON: Thank you, Your Honor.

5 THE COURT: All right, thank you. Also, you can put -
6 let me ask Mr. Kincannon this.

7 MR. KINCANNON: Yes, sir.

8 THE COURT: Can he put into his order that the
9 Defendant waives legislative immunity?

10 MR. KINCANNON: Your Honor, I never want to try that,
11 I never want to discuss ---

12 THE COURT: Okay.

13 MR. KINCANNON: --- legislative immunity again as
14 long as I live.

15 THE COURT: I got you.

16 MR. KINCANNON: Yes, sir.

17 THE COURT: Okay, all right, thank you.

18 MR. KINCANNON: Thank you, Judge, we appreciate it.

19 MR. THOMPSON: Thank you, Your Honor.

20 (Adjourned.)

21

22

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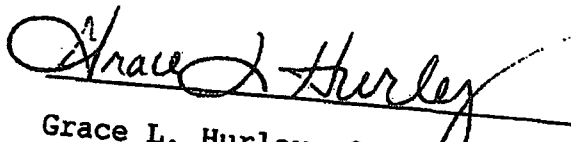
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C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of Horry County versus Aquasino Partners, et al., held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on July 23, 2012.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Grace L. Hurley, CVR-OM
Official Reporter

August 27, 2012.

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS NONJURY
2 COUNTY OF HORRY) (2011-CP-26-09457)
3)
4 HORRY COUNT, a Body)
5 Politic)
6)
7 versus) TRANSCRIPT OF RECORD
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B E F O R E:

HONORABLE BENJAMIN CULBERTSON, Judge.

A P P E A R A N C E S:

PHILLIP C. THOMPSON, SR., Esq.
ARRIGO PAUL CAROTTI, Esq.
SANFORD COX GRAVES, Esq.
ATTORNEYS FOR PLAINTIFF

J. TODD KINCANNON, ESQ.
ATTORNEY FOR DEFENDANT

DIXIE COX EUBANK
CIRCUIT COURT REPORTER
FIFTEENTH JUDICIAL CIRCUIT

1 (THE FOLLOWING TAKES PLACE ON OCTOBER 15, 2012.)

2 THE COURT: All right. I think the first thing I have
3 scheduled this afternoon is case number (2011-CP-26-09457),
4 Horry County, a body politic versus Aquasino Partners of South
5 Carolina, LLC, and others.

6 All right, please give the Court Reporter your name and
7 who you represent.

8 MR. THOMPSON: I'm Phil Thompson, Thompson and Henry,
9 here for Horry County. I also have Mr. Arrigo Carotti, Horry
10 County, and Mr. Sam Graves present.

11 THE COURT: All right.

12 MR. KINCANNON: I'm Todd Kincannon, here on behalf of
13 all Defendants in the action. And Todd Rutherford was flying
14 in and he's enroute, and he has not arrived yet.

15 THE COURT: All right. Is his presence required?

16 MR. KINCANNON: No sir. I think I can handle it
17 without him.

18 THE COURT: All right.

19 All right, Mr. Thompson, this is a Rule to -- well,
20 first let's see. It's a Rule to Show Cause issued by the
21 Court on October 4th, 2012, requiring the Defendants, Aquasino
22 Partners of South Carolina, LLC, Sun Cruise Casino Cruises,
23 LLC, Ventures South Carolina, LLC, Sun Cruise Casinos, LLC,
24 and Highland Park Real Estate Development Corporation to
25 appear and show cause why they should not be held in contempt,

1 the allegations being -- what are the allegations?

2 MR. THOMPSON: Your Honor, failure to respond to
3 discovery ordered in your July 30th, 2012 Order.

4 Your Honor, there is also a Motion for Sanctions that
5 are -- that's the same thing, the basis upon the same
6 allegations. It was filed, I think maybe eight days later.

7 THE COURT: All right now, the Order provided that they
8 were to -- what is it that you are saying they haven't done?

9 MR. THOMPSON: They have not responded to discovery,
10 Your Honor.

11 THE COURT: To any of it?

12 MR. THOMPSON: They have as of Thursday.

13 THE COURT: Okay.

14 MR. THOMPSON: I have not had a chance to go through
15 that, and I've already had -- I've done a cursory review of
16 that because, as Your Honor can see, that's what I was
17 supplied sometime Thursday, and I have not had a chance to go
18 through all of that, on through the initial responses. I have
19 not had a chance to go through those -- all the documents to
20 compare, but I note just from the Answers to Interrogatories
21 and Requests to Produce, just the preliminary, that I don't
22 believe they've fully answered or responded to that as well,
23 but their responses are not timely according to your Order.
24 That's where this -- why I filed all these motions and
25 sanctions.

1 **THE COURT:** All right. And I'm looking through the
2 file. Do you know the date of that Order, or when it was
3 filed?

4 **MR. THOMPSON:** July 30th. It's from the July 23rd
5 hearing. It's a rather lengthy Order because it had Motion to
6 Compel, and Motion to Dismiss, and ---

7 **THE COURT:** I see it. It is Ordered that the
8 Defendants shall provide the Plaintiff the Defendants' answers
9 and responses to Plaintiff's First Interrogatories to the
10 Defendants dated November 10th, 2011, Plaintiff's First
11 Request for Production to Defendants dated November 10th,
12 2011, and Plaintiff's Supplemental Interrogatories and Request
13 for Production of Documents dated May 29th, 2012 no later than
14 thirty days from the date of the hearing, which date shall be
15 August 22nd, 2012.

16 **MR. THOMPSON:** That's correct, Your Honor.

17 **THE COURT:** All right.

18 All right, Mr. Kincannon, let me hear from you.

19 **MR. KINCANNON:** Judge Culbertson, I appreciate -- and I
20 want to ask one question. Do we have a Motion for a Default
21 Judgment here today or not? Has that been resolved?

22 **MR. THOMPSON:** No, it has not.

23 Your Honor, I have -- also sent out an Affidavit of
24 Default, with a proposed Order of the Entry of Default. That
25 has not been ruled on yet, and Mr. -- the new -- another

1 attorney who has been -- a Notice of Appearance, Mark Neill,
2 he's made a Motion for Relief from Entry of Default, which was
3 just served last week as well, and so it's not -- hasn't had
4 the ten days, or not properly before the Court.

5 THE COURT: Well, I've got -- I don't know why this
6 hasn't been filed. I received an Order of Default, mailed to
7 Rhonda Lilly, Circuit Court Scheduling Coordinator, on
8 September 20th, 2012, and it's got my signature on it, on
9 October 4th, 2012 ---

10 MR. THOMPSON: I didn't -- I haven't gotten a copy.

11 THE COURT: ---But it hasn't been filed. Because I've
12 got -- I'm assuming that that's one of those default matters
13 that they just -- when they stack up they give them to us, we
14 pull the file, we look through, and if there is no answer
15 filed we go ahead and sign it, and it appears that I went
16 ahead and signed the Order of Default on October 4th. Why
17 they did not file it, I don't know.

18 MR. KINCANNON: Your Honor, if we might briefly address
19 that here today too I think it might save the Court another
20 hearing.

21 THE COURT: Well ---

22 MR. KINCANNON: I think there's an easy way out of
23 that, Judge. I think it -- it's something I don't think that
24 has been ---

25 THE COURT: Let's go ahead and do the sanctions, and --

1 -
2 MR. KINCANNON: Yes sir.

3 THE COURT: ---And Rule to Show Cause first.

4 MR. KINCANNON: Yes sir.

5 THE COURT: So let me hear from you, Mr. Kincannon, on
6 that.

7 MR. KINCANNON: Your Honor, after the -- when we were
8 dealing with the Order after the Court ruled on the 22nd or
9 the 23rd of July Mr. Thompson and I had conversation about
10 adding a term which I understood, and which I believe Mr.
11 Thompson understood, to be how discovery would begin going
12 forward. The term at the end of -- is at the end of the
13 Order, and it says that Horry County has the right to come,
14 whenever they would like, and get whatever documents they
15 would like from my client. The reason for that, Your Honor,
16 is because I'm in Columbia. Mr. Viers is on this case. He's
17 not any more. It's difficult for us to come out and handle
18 these things, or for me at least, and so my understanding was,
19 that term is what -- how discovery would be handled, and so
20 that is -- and that is in the Order at the very end. It says
21 they are entitled to come whenever they would like and get
22 whatever documents they would like.

23 They have never come. They have never asked to since
24 that Order was signed. They could have come the next day and
25 gone to the offices and requested whatever they wanted and

1 gotten whatever they wanted, Your Honor.

2 **THE COURT:** But as I understand there was also
3 Interrogatories. I'm assuming you asked for witnesses, and
4 addresses, and things like that.

5 **MR. THOMPSON:** I did, Your Honor, and ---

6 **THE COURT:** What about the response to that? I mean,
7 that might have some play with requests for productions, but -
8 --

9 **MR. KINCANNON:** Yes sir.

10 **THE COURT:** But it certainly doesn't identify exhibits
11 or witnesses or ---

12 **MR. KINCANNON:** Yes sir. No, I understand, and my
13 conversation with Mr. Thompson, what I understood was, that
14 provision would handle the entirety of this first two sets of
15 discovery, Your Honor. I thought that would handle all of it
16 from my discussions with him.

17 And Your Honor, they've been provided the
18 interrogatories now, and I think it was -- in fact, I think
19 Mr. Thompson had forgotten about that when he filed his
20 motion. I don't want to represent to the Court that I think
21 Mr. Thompson is playing any sort of game here, and I -- I just
22 don't, and in fact, Your Honor, I sent him an e-mail once,
23 after -- my fiance had been in a bad car accident, and I was
24 on the scene, and I had remembered that there was a response
25 calendar, and I was sending multiple e-mails to various people

1 that day, Judge, trying to ascertain if I was going to be able
2 to get extensions for things that were due. I sent him an e-
3 mail and mentioned to him about the discovery. But then after
4 I returned to my office, Judge, I remembered that we had put
5 that term in the Order allowing Horry County to come and get
6 whatever they would like, to cover the entirety of the first
7 round of discovery.

8 And if he has any other issues, or wants to know
9 anything, Judge, happy to provide it, but the truth is, Your
10 Honor, that we had actually no intention of not giving him
11 discovery, and in fact, they had every opportunity to come and
12 get whatever they wanted from day one, from the entry of the
13 Order, and so I think the standard on a Rule to Show Cause and
14 Motion for Sanctions is, there was a willful intent to violate
15 the Court's Order, and there certainly was not.

16 Your Honor, in fact, this case is one where discovery --
17 it's difficult to understand what discovery might be, because
18 quite frankly, Your Honor, I don't think anyone disputes - or
19 at least we don't dispute, that we think that this issue is a
20 matter of law, and if the Court finds against us on a matter
21 of law we lose, and if the Court finds for us on a matter of
22 law we win, so -- but beyond all that, Judge, there's no
23 prejudice here, and again, that was what we understood to be
24 good provision that would handle the discovery issues.

25 And again, that didn't come up at the hearing. It was

1 added by consent later, and the reason that I understood - I
2 believe Mr. Thompson understood the reason it was added by
3 consent, was to make it a more inexpensive way and an easier
4 way to handle discovery.

5 My client's position in the case has been, they're open
6 book, anybody -- they can come, Horry County can come and look
7 and get whatever they want.

8 But that's the reason why this happened, Judge, and Your
9 Honor, I think it's fair to say that you were not pleased with
10 us at the last hearing, and there's absolutely no way that we
11 would intentionally violate your Order going forward. We are
12 not -- we are not suicidal, Your Honor, and that is the reason
13 why this was handled the way it was, because we genuinely
14 believe that Horry County could come and get whatever they
15 wanted whenever they wanted, and they simply haven't. And
16 again, that's no insult toward Mr. Thompson. I don't -- it
17 occurred to me, based upon the fact that he had never tried to
18 come and get any documents that he was entitled to that
19 perhaps he forgot about that term in the Order. But again, I
20 think it goes to prejudice too, Your Honor, that if they were
21 interested in obtaining any documents they could have come and
22 gotten them whenever they pleased, so -- and again, Your
23 Honor, I don't -- I don't make representation to the Court
24 that aren't true, and that's exactly why this was handled the
25 way it was, because I understood that we had a way to handle

1 this that made it easier on the parties, I believe, to handle
2 this discovery.

3 And Your Honor, I think that discovery -- the responses
4 had been sent or extensive and lengthy, and Judge, that was
5 why we did this, was because it would be a lot easier that way
6 to handle it, and Horry County did not avail themselves of
7 that procedure, and we don't complain about that, Your Honor,
8 but I don't think it's fair to say that we weren't
9 cooperative. We were so cooperative in discovery that we put
10 a term in the Order that we wanted in the Order, along with
11 their agreement, that they could come get whatever they wanted
12 whenever they wanted. I think it's hard to say there's
13 willful violation of anything when you are that open-book
14 about something.

15 So that's -- that's what happened, Your Honor, and I --
16 if you have any questions I'm happy to answer them, but that
17 is exactly how this happened.

18 THE COURT: All right. Mr. Thompson.

19 MR. THOMPSON: Your Honor, if I would, I would like to
20 hand up to the Court as an exhibit a transcript of the July
21 23, 2012 hearing before Your Honor. This transcript will show
22 in there - I don't mean to burden the Court by reading that.
23 Mr. Kincannon consented to answering our discovery requests,
24 the written discovery, the Interrogatories and Requests to
25 Produce.

1 My Affidavit that I've filed with the Court, Your Honor,
2 states that five days after August 22nd, 2012, when the
3 discovery responses were due, the answers to interrogatories,
4 the answers to the requests for production, and answers to
5 supplemental requests, and the supplemental interrogatories.
6 Five days after that on -- I granted Mr. Kincannon an
7 extension to answer because he e-mailed me and told me that
8 his girlfriend had been involved in an accident, he had it
9 calendared as being due on August the 27th. I told him no, it
10 was due August the 22nd. I gave him to August 28th, which is
11 what he asked for in his e-mail to me. We never got
12 responses. Having not received them I said -- I sent him and
13 Mr. Rutherford a letter dated September 5, 2012, saying,
14 provide these answers, these responses to interrogatories and
15 requests to produce by September the 7th, or that I was going
16 to file a rule to show cause motion.

17 As of the date of my Affidavit, which is September the
18 12th, 2012, we still had not received any responses
19 whatsoever. That puts him in violation of your Order, one.
20 As a result of that I filed a Motion for Sanctions, and on
21 September 20th I forwarded the Rule and Order to Show Cause to
22 Deputy Clerk Rhonda Lilly on September 12/13th. They
23 responded with Mark Neill, the new attorney who has now filed
24 a Notice of Appearance, and he hand-delivered those inter --
25 the Answers to Interrogatories and Requests for Production and

1 the Supplemental on, I believe it was -- it was either
2 Thursday morning or Thursday afternoon. I was dealing with a
3 Federal Court case and were some Federal filings. I had some
4 (unintelligible)

5 I haven't had a chance to look at that, as I say. They
6 are extremely thick. I did have a chance to go through the --
7 their answers, and I would like to show the Court that because
8 even though we haven't gotten ---

9 THE COURT: Excuse me for interrupting you, but what is
10 it you are asking me to do? What is it you want me to do?

11 MR. THOMPSON: Your Honor, I filed a Rule for
12 Sanctions. I think, at the very least, we are entitled to
13 attorneys' fees and cost from August the 27th, when we started
14 dealing with that.

15 THE COURT: How much for that?

16 MR. THOMPSON: Also -- Your Honor, I'll have to get an
17 affidavit for that. I do not have all that together.

18 Your Honor, you also have the authority, under Rule 37,
19 to do as much as hold them in default, strike their Answer,
20 strike their Counterclaim. There's also an issue already,
21 Your Honor, with them being in default of responding to our
22 Amended Answer, and Your Honor, we would ask for, at the very
23 minimum, attorneys' fees and cost, that I can get to the
24 Court, but we would also request that their answer and
25 counterclaim be stricken.

1 **THE COURT:** Who is filing Answer and Counterclaim, or
2 is it a late Answer and Counterclaim?

3 **MR. THOMPSON:** What it was, Your Honor, is after Your
4 Honor required them, in the July 30, Order to respond to --
5 well, they had to once they lost the Motion to Dismiss. They
6 filed an Answer and Counterclaim, to which I filed an Amended
7 Answer, and they didn't ---

8 **THE COURT:** You mean you filed an Amended Complaint.

9 **MR. THOMPSON:** Amended Complaint. I'm sorry. That's
10 correct.

11 **THE COURT:** Right.

12 **MR. THOMPSON:** And they did not timely respond to that.

13 **THE COURT:** Okay. I've got you.

14 **MR. THOMPSON:** So those are the things I'm asking for.
15 But in addition, Your Honor, just a cursory review of
16 their responses show that they are incomplete already, so if
17 Your Honor allows that we are going to be back here again
18 trying to get them to fully respond to these discovery
19 requests that they haven't done.

20 **THE COURT:** All right.

21 **UNKNOWN:** Your Honor, may I address the Court?

22 **THE COURT:** No. No.

23 **UNKNOWN:** Thank you, sir.

24 **THE COURT:** Yes sir.

25 **MR. KINCANNON:** Your Honor, first of all, I would take

1 issue with what Mr. Thompson said about being in default, and
2 I understood we are going to address that shortly. I don't
3 believe we are in default under any possible reading of the
4 Rules or under what he filed.

5 Mr. Thompson sent an amended -- he didn't just file an
6 Amended Complaint. In response to our Answer and Counterclaim
7 Mr. Thompson filed three documents. He filed an Amended
8 Summons, which stated that we had thirty days to respond
9 before we would be held in default. He filed Amended
10 Complaint, and he filed a Reply. He didn't just file an
11 Amended Complaint. If he had just filed an Amended Complaint
12 then the timeline would have been fifteen days. He also filed
13 an Amended Summons saying that they would not move to hold us
14 in default for thirty days. So when that -- when he sent that
15 Summons that said thirty days, rather than the fifteen -
16 summons has -- if he takes the position now that there were
17 only fifteen days to respond then his Summons is erroneous,
18 and the Summons stating thirty days is why it was calendared
19 for thirty days.

20 But beyond that, Your Honor, I'll tell you this too. He
21 filed a Reply in addition to an Amended Complaint. There's no
22 reason to file a Reply if you file an Amended Complaint. If
23 you file an Amended Complaint then the other party files a new
24 answer and counterclaim, and then you file new reply. Because
25 he filed a Reply in addition to an Amended Complaint Rule 15

1 actually has two different sections that apply to it. Under
2 Rule 15(A) there are thirty days to file an amended answer and
3 counterclaim when a reply is filed. Under Rule 15(A) also
4 there are fifteen days to reply to an amended complaint, but
5 the summons that he filed along with the amended complaint
6 stated that there were thirty days to respond to the amended
7 complaint.

8 So Mr. Thompson, I think -- and again, I don't wish to
9 speak ill of him, Your Honor, but it's a bit of a game, I
10 think, because his Summons states -- Summons attached to the
11 Amended Complaint states - and it's addressed to me and Mr.
12 Rutherford, so it clearly was amended because Mr. Rutherford
13 wasn't in the case in the beginning - to the both of us, that
14 we had thirty days to respond before they would move to hold
15 us in default, and then on -- literally, before even the time
16 had run Mr. Thompson filed a Motion for Default. Mr.
17 Thompson's Motion for Default was not -- was not timely filed.
18 A Motion for Default cannot be filed before one is actually in
19 default, and it was filed on the last day, but not after, so
20 we take the position that his Motion to hold us in default was
21 not timely.

22 But, Your Honor, beyond that, the Summons states thirty
23 days. There's no prejudice here. And that's the reason for
24 this. I think -- I think Horry County, Your Honor, is trying
25 to find whatever way they can to win the case. I can't say

1 that I necessarily blame them, Your Honor, but in this
2 situation we feel that this isn't fair, and the reason is
3 because we gave them every opportunity to get whatever
4 documents they would like, and in fact, the reason that it
5 says in the transcript that I said we would file within -- you
6 know, said within thirty days of discovery is because that was
7 what we did at the hearing, but then afterwards, Your Honor, I
8 spoke to Mr. Thompson on the phone, which he hasn't disputed,
9 and I explained to him that that -- we talked, and we
10 discussed adding that other term, and the other term was
11 added, Your Honor, specifically to allow a discovery method
12 that would not overly burden either party. That's simply the
13 reason for it, Judge, and so that's the reason it was done
14 that way.

15 So far as the e-mail goes, I already -- I already
16 explained to the Court, but I'll tell you again, I was
17 standing next to a wrecked car, with my fiance in it, trying
18 to recall everything that was on my calendar, and I simply
19 made a mistake, Judge, because it originally was calendared
20 for the 22nd of August, but after we agreed to that term that
21 would allow them to get whatever they wanted otherwise, then
22 there was no need to change it, and that was just my
23 recollection at the time, and frankly I think Mr. Thompson
24 forgot about it, and I forgot about that last term too that
25 day when I was standing on the side of the road, Judge.

1 But, Your Honor, we have absolutely no intent to violate
2 any Order of this Court, and all we want to do is have the
3 ability to have our day in court here.

4 And Judge, I would like to address one more issue. Mr.
5 Thompson has repeatedly claimed that we are attempting to
6 delay. Judge, we are not, and ---

7 **THE COURT:** Well, this thing -- it is -- it took from
8 February to July to just get a motion hearing ---

9 **MR. KINCANNON:** Yes ---

10 **THE COURT:** ---Even when there was a continuance
11 granted when one shouldn't have been granted in March, because
12 Mr. Viers was no longer entitled to Legislative protection,
13 and your clients asserted that they were.

14 **MR. KINCANNON:** Yes sir, and if I could just briefly
15 address that, Your Honor.

16 In September of last year was when we -- when my clients
17 began understanding that they were going to have trouble
18 paying this Seven Dollar per passenger fee. We approached
19 Horry County in September and attempted to talk to them about
20 what to do about it, and we went round and around with them
21 and got -- we were told that they would negotiate with us if
22 we paid one more month, we did, and then they really didn't,
23 Judge.

24 **THE COURT:** That -- you argued that back in July.

25 **MR. KINCANNON:** I -- I -- I understand that, Your

1 Honor, but I ---

2 THE COURT: I mean, I've heard that one.

3 MR. KINCANNON: --- I want to -- I just want to make
4 the point, Judge, that they filed in November, didn't -- and
5 then did nothing with the case for a substantial period of
6 time.

7 THE COURT: No, they tried hard, from February to July
8 to get a motion hearing.

9 MR. KINCANNON: Yes sir, and let me -- and if I could
10 briefly discuss that, Judge. Can I -- again, I don't wish to
11 cause trouble for Mr. Thompson. The problem that has arisen
12 in this case is one that the Court I don't believe is aware
13 of, or it may be as a result of the Motion for
14 Disqualification.

15 Mr. Thompson's firm represented my client in negotiating
16 the agreements that are being sued over with Horry County.
17 The reason that this case has become such a problematic affair
18 is because I was retained to address a Federal issue on the
19 Johnson Act, a State -- statutory issue. At this point in
20 time, Judge, we believe the problem was the advice Thompson
21 and Henry gave to my clients with regard to signing these
22 documents to begin with. Our position -- our litigating
23 position would be, if we were able to actually assert it,
24 given all the difficulties in the case, that Thompson and
25 Henry, the law firm, told our clients to sign some documents

1 that we don't believe they should have signed. We believe
2 they are invalid for a number of reasons, and our position is,
3 if Horry County wins this case then we should have a claim
4 against Thompson and Henry for this.

5 The reason the Motion for Disqualification, and a reason
6 for the turbulence on our side, Judge, with regard to counsel,
7 is because I have -- I did not sign onto the case to attack a
8 lawyer, it's just not why I signed on to this case, and Your
9 Honor, I informed my clients that I was not interested in
10 pursuing a claim against Mr. Thompson or his firm, and I
11 informed him that as well. That's a part of the problem here,
12 Your Honor, is because this case -- the tenor of the case has
13 changed dramatically, given the fact that Thompson and Henry
14 represented my clients in signing these Agreements, and is now
15 representing Horry County in suing over them.

16 And Judge, again, I didn't want to make an issue of
17 this, and in fact I haven't. I mentioned it to Mr. Thompson,
18 Mr. Thompson told me that there was no conflict, and that was
19 the end of it. My clients now have shown documents that
20 demonstrate, without any question whatsoever, that Thompson
21 and Henry did represent them, advised them with regard to
22 signing these documents, actually represented my clients
23 against Horry County, or Your Honor, it's a contract
24 negotiation, but represented them in that.

25 And Judge, the fact that this case has changed so is why

1 a lot of these things have happened that appear to be just
2 frivolous delays but they are not, Your Honor. The case is
3 very different, and frankly, it's been extremely difficult for
4 my clients to find an attorney who is willing to handle this
5 new aspect of the case that has just come up since the case
6 was filed, because Thompson and Henry were not the lawyers in
7 the case originally; it was only Horry County's lawyers that
8 handled it first. Thompson and Henry came in later. That
9 issue popped up. I'm not able to handle it, Your Honor. It's
10 not the sort of case I could handle, and not one that I would
11 want to, and it's not within my representation agreement with
12 my client, and I've informed them that they need to try to
13 find someone, and that's why Mr. Rutherford came in
14 originally, but then the problem became that Mr. Thompson said
15 that, well his firm didn't represent my clients in the
16 negotiating. Well, it turns out they did.

17 Again, I don't blame Mr. Thompson. Mr. Thompson was not
18 the lawyer at his firm that handled the issue, but it is an
19 issue that's come up, Judge, and it's -- that is why, of a
20 large measure, a lot of these issues have arisen, is because
21 I'm not wanting or interested in filing a lawsuit against
22 Thompson and Henry, so I hope ---

23 And I apologize to the Court for not making all of this
24 clear sooner, but it is -- again, this is a lot of the reason
25 why these issues have come about, because we believe this case

1 originally was simply about the enforceability of the Seven
2 Dollar per passenger fee. But it has changed dramatically,
3 Judge. Now it's an issue about lawyers and clients, and
4 things of that nature in addition to all that, and that's just
5 not within my area, not something I can handle.

6 And again, if the Court has any questions I'll be happy
7 to answer them. Thank you.

8 **THE COURT:** All right. I've heard enough. Thank you.

9 All right. I am going to find that the Defendants have
10 willfully violated the Court's Order that he did -- well, it
11 was filed back in July. They failed to respond as required,
12 so I find them in willful violation of that Order. I'm going
13 to strike their Answer and Counterclaim, hold the Defendants
14 in contempt; the Plaintiff is entitled to attorneys' fees from
15 August the 22nd, 2012 until today for bringing this Rule to
16 Show Cause. That will be determined at the trial of the case
17 when it's scheduled for a hearing.

18 All right.

19 **MR. KINCANNON:** Your Honor, may I ask a question - and
20 I apologize for troubling you.

21 **THE COURT:** Yes sir.

22 **MR. KINCANNON:** I'm not certain what's left then in the
23 case.

24 **THE COURT:** Probably not a whole lot, since I strike
25 the Answer and hold the Defendants in default.

1 MR. KINCANNON: All right, sir.

2 THE COURT: All right. I don't know, but it will just
3 be scheduled for trial when it reaches it's normal priority as
4 a default matter, and we'll see at that time.

5 Anything further?

6 MR. THOMPSON: Nothing, Your Honor. I believe you
7 covered it all.

8 THE COURT: Okay.

9 MR. THOMPSON: Other -- there is one thing, Your Honor.
10 They have not paid the Receiver's bill. Mr. Neill represented
11 to the Court on just the general purposes so you will know,
12 Mr. Neill represented to the Court, I believe on Friday
13 morning, that Mr. Singleton's bill had been paid, the
14 Receiver. That was in that e-mail that went to -- it was a
15 Friday letter. Mr. Singleton said as of late Friday afternoon
16 that he had not been paid, so that was a misrepresentation to
17 the Court, whether it was from Mr. Neill or whether it was
18 from Mr. Neill's client to him, but I did get a call from Mr.
19 Singleton this morning, said he just received the check in the
20 mail this morning, so I wanted to bring to the Court that
21 misrepresentation that was made to the Court.

22 THE COURT: All right. Well, that's fine, and that's
23 an non-issue.

24 Thank you, Mr. Thompson. If you would prepare an order
25 that basically finds the Defendants in willful violation of

1 the Court's Order, strikes their Answer and Counterclaim,
2 holds them in default, and once -- and when this matter is
3 scheduled -- I mean, just put in there that you are entitled
4 to judgment against the Defendants for the attorneys' fees and
5 cost incurred from August 22nd when the responses were due
6 until today for the bringing of this Rule to Show Cause.

7 MR. THOMPSON: Thank you, Your Honor.

8 MR. KINCANNON: Thank you, Judge.

9 THE COURT: Oh, okay. They agreed on the 28th. From
10 August 28th, 2012.

11 MR. THOMPSON: I believe that's correct, Your Honor.

12 THE COURT: My Law Clerk just told me that the
13 responses ---

14 MR. THOMPSON: It was actually the 27th, is what I
15 wrote down. I may have said the 28th, but I wrote down the
16 27th. That was when we started filing (unintelligible)

17 THE COURT: All right. Then we'll put from August the
18 27th, 2012 until today.

19 MR. THOMPSON: Thank you, Your Honor.

20 MR. KINCANNON: Thank you, Judge.

21 THE COURT: Thank you.

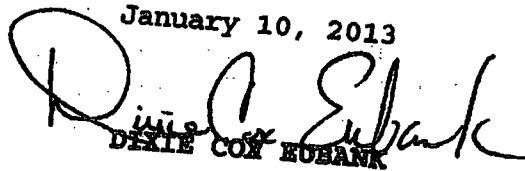
22 -----END OF REQUESTED TRANSCRIPT OF RECORD-----
23
24
25

C E R T I F I C A T E

I, the undersigned, DIXIE COX EUBANK, Official Court Reporter for the Fifteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the MOTION HEARING of the captioned case, relative to appeal, in the COURT OF COMMON PLEAS NON-JURY for HORRY COUNTY, SOUTH CAROLINA, on the 15th day of October, 2012.

I DO FURTHER CERTIFY that I am neither of kin, counsel nor interest to any party hereto.

January 10, 2013


DIXIE COX EUBANK

CIRCUIT COURT REPORTER
FIFTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

ORDINANCE NO.: 09 - 08

AN ORDINANCE PURSUANT TO AND CONSISTENT WITH SOUTH CAROLINA CODE OF LAWS SECTION 3-11-100, ET SEQ. (GAMBLING CRUISE ACT) SO AS TO AUTHORIZE AND DEFINE APPROPRIATE LOCAL LEGISLATIVE ACTION REGARDING ANY GAMBLING VESSEL BEING ANCHORED, BERTHED, NAVIGATING, VOYAGING OR CRUISING WITHIN THE BOUNDARIES OF HORRY COUNTY.

WHEREAS, during its 2005 session, The South Carolina General Assembly and the Governor took steps necessary and appropriate to enact into the State statutory laws the Gambling Cruise Act; and

WHEREAS, consistent with that legislation and pursuant to the delegation of authority given to Horry County through the laws of the State, it is the purpose of this Ordinance and the decision of the Horry County Council to assume the power to regulate gambling aboard gambling vessels while such vessels are outside the territorial waters of the State, when such vessels embark or disembark passengers within Horry County for voyages that depart from the territorial waters of the State, sail into United States or international waters, and return to the territorial waters of the State without an intervening stop.

NOW, THEREFORE, by the power and authority granted to the Horry County Council by the Constitution of the State of South Carolina and the powers granted to the County by the General Assembly of the State, it is ordained and enacted.

1. **Establishment of Surcharge:** Pursuant to South Carolina Code Section 3-11-400(C)(2), Horry County hereby does assess upon every gambling vessel berthed within the boundaries of the unincorporated waters of this County a surcharge derived from the gross proceeds of a vessel's gambling activities in an amount not to exceed and equal to Seven & no/100 (\$7.00) Dollars per boarding passenger per gambling cruise. Horry County waives its authority to assess any surcharge of each ticket sold per gambling cruise.

2. **Payment of Surcharge:** On or before the 20th day of each month, every gambling vessel subject to these regulations shall make payment to the Horry County Treasurer in full for the surcharge referenced herein that has been created and accumulated in the proceeding month. Quarterly verification of the three-month total surcharge due to Horry County shall be provided by the gambling vessel's production of a duplicate, signed copy of its IRS Form 720 (Quarterly Federal Excise Tax Return - Line 29) provided to the Internal Revenue Service.

3. **Penalties:** Any gambling vessel subject to these regulations that willfully violates any provision of this ordinance shall be subject to the maximum civil penalty provided by South Carolina statutory law. Specifically, each willful violation shall subject the gambling vessel to a penalty of One Hundred (100.00) Dollars per passenger for each violation - with an aggregate total in civil penalties of not more than Fifty Thousand (50,000.00) Dollars per vessel for a twenty-four (24) hour period in which the willful violation continues. In addition to this civil penalty, a violation of any provision of this ordinance by a gambling vessel shall vest in Horry County the authority to seek injunctive relief against any individual charged with the responsibility of operating or managing the daily business of a gambling vessel.

4. **Retroactive Surcharge Payment:** Pursuant to Horry County Ordinance 174-06, passed June 26, 2007 and effective July 1, 2007, every gambling vessel operating at that time in Horry County's territorial waters was to have paid to Horry County a surcharge derived from the gross proceeds of the vessel's gambling activities in an amount equal to One and 4/10 (1.40%) Percent and Five (5%) Percent of each ticket sold per gambling cruise. No sum of any amount has been paid by any gambling vessel as mandated by that local legislation. So as to resolve that "failure to pay" issue and, secondly, so that the gambling vessels might avoid the possibility of injunctive relief being sought by Horry County as outlined in the prior ordinance, and, lastly, in consideration of the gambling vessels and Horry County mutually agreeing to dismiss, with prejudice, the litigation pending in the Horry County Court of Common Pleas (Civil Action #2007-CP-26-5108), Horry County does hereby waive any and all surcharges that may have accrued between July 1, 2007 and December 31, 2007. As additional consideration for the resolution of the pending litigation, the two (2) operating gambling vessels (SunCruz and Diamond Girl II) shall make an independent, immediate payments to Horry County in the following amounts: Ventures South Carolina, LLC d/b/a SunCruz Casinos - Three Hundred Thousand (\$300,000.00) Dollars and Southern Cruise Lines, Inc. d/b/a Diamond Girl II - One Hundred Thousand (\$100,000.00) Dollars. These independent, immediate payments shall constitute and be credited as each vessel's advance payment of the surcharges at the Seven (\$7.00) Dollar level that has accrued and will continue to accrue on and after January 1, 2008. Beyond this immediate payment, no additional payment will be required by either vessel until, at the earliest, April 20, 2008. At that time, and consistent with the passenger calculations evidenced by the IRS Form 720 for January, February and March, 2008, either additional monies will be due from the vessels if the passenger count at \$7.00 per passenger exceeds the advance payment made or, alternatively, the vessels will owe no additional monies until the monies derived from the 2008 surcharges has exceeded the advance payment. But in no event shall a gambling vessel fail to make a monthly report of its passenger count regardless of whether additional money or additional credit is due.

5. Term / Sunset: (A) Notwithstanding the periodic surcharge adjustment referenced hereinafter, the imposition of the surcharge referenced above in Section 1 (without regard to the surcharge amount due at any particular time) shall terminate at the end of the one hundred twentieth (120) month (10 years) following the passage of this ordinance. This commitment made by Horry County in this Ordinance, that is referenced in Section 4 is in consideration of and contingent upon the mutual agreement of Horry County and Ventures South Carolina, LLC d/b/a SunCruz casinos and Southern Cruise Lines, Inc. d/b/a Diamond Girl II to dismiss, with prejudice, the litigation pending in the Horry County Court of Common Pleas (Civil Action #2007-CP-26-5108), is contractual in nature and no change in this commitment shall be taken by any subsequent council during this legislation's ten (10) year existence that is contrary to or inconsistent with the terms recited herein unless Horry County first obtains the written consent of Ventures South Carolina, LLC d/b/a SunCruz Casinos and Southern Cruise Lines, Inc. d/b/a Diamond Girl II. (B) At the end of the sixtieth (60) month following the passage of this ordinance, Horry County Council may consider an equitable, upward adjustment to the surcharge of Seven (\$7.00) Dollars based upon the circumstances and situation then and there existing, taking into consideration such financial information and other relevant matters as may be available for review either through applicable state law or voluntary submission by the gambling vessel owner/operators. However, in no event, shall the upward adjustment, if any, exceed an additional Three (\$3.00) Dollars during the second five (5) year term of this ordinance.

6. Severability: If any Section, Subsection, or part of this Ordinance shall be deemed or found to conflict with a provision of South Carolina law, or other preemptive legal principle, then that Section, Sub-section or part of this Ordinance shall be deemed ineffective, but remaining parts of this Ordinance shall remain in full force and effect.

7. Conflict with Preceding Ordinances: If a Section, Sub-section or provision of this Ordinance shall conflict with the provisions of a Section, Sub-section or part of a preceding Ordinance of Horry County, then the preceding Section, Sub-section or part shall be deemed repealed and no longer in effect.

8. Effective Date: Upon final Third Reading passage of this ordinance, the effective date will be January 1, 2008.

AND IT IS SO ORDAINED, ENACTED AND ORDERED.

Dated this 5th day of February, 2008

SURCHARGE AGREEMENT

THIS SURCHARGE AGREEMENT (this "Agreement") is made and entered into as of this 5 day of May, 2010, by and among **SUNCRUZ CASINO CRUISES, LLC**, a South Carolina limited liability company ("SCC") and **HORRY COUNTY**, a body politic (the "County").

WHEREAS, SCC is currently seeking to conduct a gambling cruise-line operation within the county limits of Horry County, South Carolina pursuant to the South Carolina Gambling Cruise Act (the "Business") and Horry County Ordinance No. 09-08 (the "Ordinance"); and

WHEREAS, the Ordinance provides for, among other things, the payment of a surcharge to the County in the initial amount of Seven and 00/100 (\$7.00) Dollars per passenger for an initial term of five years from the Ordinance's passage; and

WHEREAS, the parties hereto desire to clarify the applicability of such surcharge and term provisions to the operation of SCC's cruise-line business.

NOW THEREFORE, in consideration of the mutual agreements and covenants contained herein, including, without limitation, the recitals set forth above, which are hereby made a part, the parties hereto agree as follows:

1. Upon the passage of Resolution 47-10, the parties hereto agree that all provisions of the Ordinance shall be binding upon SCC (with the exception of Section 4 - such Section to be deleted as to SCC) and that on or before the 20th day of each month SCC shall pay to the County Treasurer a surcharge of Seven and 00/100 Dollars per boarding passenger, per cruise for the previous calendar month. The parties hereto acknowledge and agree that the initial surcharge referenced herein shall not be increased by the County prior to December 31, 2012 (such date being five (5) years from the effective date of the Ordinance). After such date the County may consider an equitable, upward adjustment of the applicable surcharge based upon facts and circumstances then and there existing. Provided, however, any such upward adjustment shall not exceed an additional Three and 00/100 (\$3.00) Dollars during the second five-year period of the Ordinance, expiring December 31, 2017.

2. All notices, instructions and requests required or permitted to be given under the provisions hereof shall be deemed to have been fully given if delivered, or mailed, by registered or certified mail, postage prepaid or overnight courier as follows:

If to SCC:

SunCruz Casino Cruises, LLC
c/o Robert I. Weisberg, Member
4465 Mineola Avenue
Little River, SC 29566

If to County

Horry County
c/o John L. Weaver, County Administrator
(Post Office Box 1236, Conway, SC 29528)
Government and Justice Center
1301 Second Avenue
Conway, SC 29526

3. This Agreement shall be construed and enforced in accordance with the laws of the State of South Carolina.

4. This Agreement may be executed by the parties in any number of counterparts and each shall be deemed an original but all of which together shall constitute one and the same instrument.

5. The recitals set forth at the top of this first page Agreement are incorporated into this Agreement and made a part hereof.

IN WITNESS WHEREOF, the parties have executed this Surcharge Agreement as of the date first written above.

SCC:

SUNCRUZ CASINO CRUISES, LLC
a South Carolina limited liability company

By: Robert I. Weisberg
Robert I. Weisberg
Its: Managing Member

COUNTY:

HORRY COUNTY,
a South Carolina county politic

By: John L. Weaver
John L. Weaver
Its: Administrator

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Horry County, a Body Politic,

Plaintiff,

vs.

Aquasino Partners of South Carolina, LLC,
Suncruz Casino Cruises, LLC, Ventures South
Carolina, LLC, Suncruz Casinos, LLC, and
Highland Park Real Estate Development
Corporation,

Defendants.

IN THE COURT OF COMMON PLEAS
OF THE FIFTEENTH JUDICIAL CIRCUIT
Civil Action No: 2011-CP-26-9457

INITIAL REPORT OF
ESCROW AGENT

HORRY COUNTY
12 AUG 30 PM 4:01
MELANIE HUGGINS, MARC
CLERK OF COURT

WHEREAS, the undersigned was, by Order of the Honorable Benjamin J. Culbertson, dated July 27, 2012, appointed Escrow Agent in the above case;

NOW, COMES the undersigned Escrow Agent, who files this Initial Report as to the status of the case and the performance of his duties through the date written hereinbelow:

1. The undersigned was duly appointed as Escrow Agent by Order dated July 27, 2012.
2. The Defendants have complied with Paragraph 2 on Page 5 of the Order by designating a primary contact person and have furnished the undersigned with sufficient contact information.

3. The Defendants have submitted directly to Horry County regular remittance information and passenger count forms, along with payment, the last payment being received by Horry County on August 29, 2012.

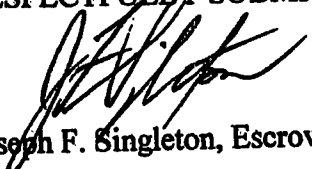
4. The Defendants have not yet supplied the United States Coast Guard information, and the Escrow Agent has not made any determination concerning the accuracy of the passenger count at this time, inasmuch as regular payments and information are being provided.

5. The Escrow Agent anticipates that after further information concerning the Coast Guard report has been provided, that he can verify the numbers presented by the Defendants, as well as the funds remitted to the County as being accurate.

6. The Escrow Agent does not anticipate filing a detailed statement of the funds paid at this time unless requested to do so by one of the parties hereto.

7. The Escrow Agent further certifies that at this time the Defendants have not failed to comply with Items 2 and 3 on Pages 5 and 6 of the Order, and that no further action is mandated of the Escrow Agent at this time.

RESPECTFULLY SUBMITTED,


Joseph F. Singleton, Escrow Agent

August 30, 2012
Conway, South Carolina.

C/A #: 20 11 -CP-26- 9457

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Horry County, a Body Politic,

Petitioner(s)

vs.

Aquasino Partners of South Carolina, LLC,
Suncruz Casino Cruises, LLC, Ventures South
Carolina, LLC, Suncruz Casinos, LLC, and
Highland Park Real Estate Development
Corporation,

Defendant.

IN THE COURT OF COMMON PLEAS
OF THE FIFTEENTH JUDICIAL CIRCUIT
Civil Action No: 2011-CP - 26- 9457

AFFIDAVIT OF
PHILLIP C. THOMPSON

FILED
HORRY COUNTY
2012 SEP 12 PM 3:10
MELANIE HUGGINS-WARD
CLERK OF COURT

PHILIP C. THOMPSON, first being duly sworn, deposes and states as follows:

1. The undersigned was admitted to the South Carolina Bar in May of 1996 and has continuously practiced in the State of South Carolina since that time.
2. That I am the attorney for the Plaintiff in this action.
3. That by email dated August 27, 2012, J. Todd Kincannon, attorney for the Defendants, requested that he be granted an extension of time to answer the discovery in this matter due to a personal emergency. The extension was granted with a new deadline of August 28, 2012. (See Exhibit "A" attached.)
4. That by letter dated September 5, 2012, I notified J. Todd Kincannon and J. Todd Rutherford, Attorneys for the Defendants that they had missed the Court Ordered deadline of August 22, 2012 and the extended deadline of August 28, 2012. I also demanded answers by September 7, 2012. (See Exhibit "B" attached.)

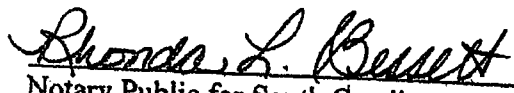
5. That as of this date, the Defendants have not answered the discovery.

FURTHER THE AFFLIANT SAYETH NOT.



PHILIP C. THOMPSON

Sworn to before me this 12 day of
SEPTEMBER, 2012.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 8-21-18

Phil Thompson

From: Todd Kincannon [todd@thekincannonfirm.com]
Sent: Monday, August 27, 2012 6:49 PM
To: Phil Thompson
Subject: RE: Discovery in Suncruz

Thank you, Phil. I appreciate it.

Todd Kincannon

NOTE NEW ADDRESS BELOW
****PLEASE UPDATE RECORDS****



THE KINCANNON FIRM
P.O. BOX 7901
COLUMBIA, SC 29202
THEKINCANNONFIRM.COM
OFFICE: 877.99.COURT
FAX: 888.704.2010

From: Phil Thompson [mailto:PThompson@thompsonlaw.com]
Sent: Monday, August 27, 2012 3:30 PM
To: Todd Kincannon
Subject: RE: Discovery in Suncruz

Sorry to hear about the accident, but glad she is going to be OK.

Regarding the discovery, it was actually due last Wednesday, August 22, 2012 (see attached order). However, tomorrow will be fine.

Philip C. Thompson
Philip C. Thompson, Esquire
Thompson & Henry, P.A.
100 Second Avenue, 3rd Floor (29526)
P.O. Box 1740
Conway, South Carolina 29528
Tel. No. (843) 248-5741

Fax No (843) 248-6396

pthompson@thompsonlaw.com

The information contained in this electronic message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication in error, please immediately notify us by telephone or by reply email and delete the original message from your current viewing screen and trash bin.

TREASURY DEPARTMENT CIRCULAR 230 DISCLOSURE: To ensure compliance with requirements imposed by the Treasury Department, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing, or recommending to another party any transaction or matter addressed herein.

From: Todd Kincannon [<mailto:todd@thekincannonfirm.com>]

Sent: Monday, August 27, 2012 3:20 PM

To: Phil Thompson; Phil Thompson

Subject: Discovery In Suncruz

Phil,

I have today marked as the due date of discovery. I was prepping it and my fiance was just in a serious car accident. I am wondering if you can give me an extension until tomorrow. Thankfully she's gonna be fine but issues with other driver and automobile as you can imagine.

Todd

THOMPSON
& HENRY, P.A.

ATTORNEYS AT LAW
1300 SECOND AVENUE, THIRD FLOOR
POST OFFICE BOX 1740
CONWAY, SOUTH CAROLINA 29528

PHILIP C. THOMPSON
PTHOMPSON@THOMPSONLAW.COM

TELEPHONE
(843) 248-5741
FACSIMILE
(843) 248-6396

VIA EMAIL ONLY TO:

September 5, 2012

todd@thekincannonfirm.com

J. Todd Kincannon, Esquire
The Kincannon Firm
Post Office Box 7901
Columbia, South Carolina 29202

trutherford@sc.rr.com

J. Todd Rutherford, Esquire
Rutherford Law Firm
Post Office Box 1452
Columbia, South Carolina 29202

Re: Horry County, a Body Politic v. Aquasino Partners of South Carolina, LLC, et al.
Civil Action No.: 2011-CP-26-9457

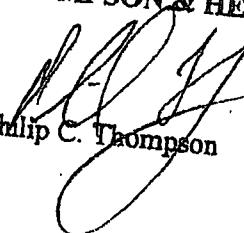
Dear Counselors:

By Order dated July 30, 2012, the Defendants were ordered to provide Horry County with the Defendants' Answers and Responses to Plaintiff's First Interrogatories to Defendants dated November 10, 2011, Plaintiff's First Requests for Production to Defendants dated November 10, 2011 and Plaintiff's Supplemental Interrogatories and Requests for Production of Documents dated May 29, 2012, not later than August 22, 2012. On August 27, 2012, Todd Kincannon sent me an email that he had that date marked as the due date of discovery and asked for an extension until August 28, 2012. By email of the same date, I granted that extension.

We are now over a week past that date and I still have not received any discovery responses. Please provide me with complete responses to the discovery requests ordered to be answered by August 22, 2012 by the end of this week. If I have not received them by Friday, September 7, 2012, I will have no option but to file an Order and Rule to Show Cause and/or a Motion for Sanctions under Rule 37 SCRCP.

With kindest regards, I am

Very truly yours,
THOMPSON & HENRY, P.A.


Philip C. Thompson

PCT/rfb

cc: Arrigo P. Carotti, Esquire. Sam Graves, Esquire.

Exhibit B
Page 1 of 1

0000383

NEILL LAW FIRM

MARK D. NEILL
PHONE: (843) 651-8580
FACSIMILE: (843) 651-8586
MNEILL@NEILLLAWFIRM.COM

WWW.NEILLLAWFIRM.COM

671 JAMESTOWNE DRIVE
SUITE 207
POST OFFICE BOX 2810
MURRELLS INLET, SC 29576

October 5, 2012

Sent Via Email: bculbertsonJ@sccourts.org
& Regular Mail

Honorable Judge Benjamin H. Culbertson
P.O. Box 479
401 Cleland Street
Georgetown, SC 29442

Re: Horry County vs. Aquasino, Partners of South Carolina, LLC, et al.
Case No: 2011-CP-26-9467

Dear Judge Culbertson:

I recently received correspondence from Philip Thompson, counsel for Plaintiff, Horry County indicating that his Motion for Sanctions and Order and Rule to Show Cause may be scheduled sometime on or about October 15, 2012. I filed a Notice of Appearance and an Answer to Amended Complaint on behalf of the Defendants on September 21, 2012 and am currently in the process of removing Defendants' previous counsel. I currently have protection from the Court October 11th through October 22, 2012 as I will be out of the country on vacation to celebrate my wedding anniversary. I have attached a copy of the Order of Protection for your reference.

I would respectfully request that no hearings be scheduled during this time.

If you have any questions, please do not hesitate to contact me.

With kindest regards, I am

Sincerely,



Mark Neill

MDN/lah
Enclosures

Cc: Philip C. Thompson, Esq., Sent Via Fax: 248-6396 & Email
Todd Kincannon, Esq., Sent Via Fax: 888-704-2010 & Email
Linda Johnson/Non Jury Scheduler/Via Email: Johnson@horrycounty.org

STATE OF SOUTH CAROLINA)
COUNTIES OF HORRY)
AND GEORGETOWN)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

IN RE:

MARK D. NEILL
Attorney at Law

ORDER OF PROTECTION

COPY

FILED
HORRY COUNTY
12 JUL 25 PM 12:30
CLERK OF COURT

It appearing unto this Honorable Court that Mark D. Neill, Attorney at Law, has requested an Order of Protection for the following dates: October 11 - 22, 2012.

It further appears that the protection that Mr. Neill is requesting should be granted, for good cause shown, an Order protecting him from all appearances in all court proceedings on the following dates: October 11 - 22, 2012, in the Court of Common Pleas of the Fifteenth Judicial Circuit.

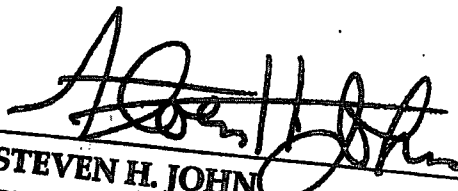
It is therefore

ORDERED that Mark D. Neill, Esquire be and is hereby granted protection from all court appearances in the Court of Common Pleas of the Fifteenth Judicial Circuit on October 11 - 22, 2012.

IT IS FURTHER ORDERED, that the Attorney at law referenced herein shall provide notice of this Order of Protection to all counsel of record or any pro se appearing in any cases that this attorney has pending before the Court.

IT IS SO ORDERED.

7/23/2012
Conway, South Carolina


STEVEN H. JOHN
Chief Administrative Judge
Court of Common Pleas
Fifteenth Judicial Circuit

NEILL LAW FIRM

MARK D. NEILL
PHONE: (843) 651-8580
FACSIMILE: (843) 651-8586
MNEILL@NEILLLAWFIRM.COM

WWW.NEILLLAWFIRM.COM

671 JAMESTOWNE DRIVE
SUITE 207
POST OFFICE BOX 2810
MURRELLS INLET, SC 29576

October 12, 2012

Sent Via Email: bculbertsonJ@sccourts.org

Honorable Judge Benjamin H. Culbertson

P.O. Box 479

401 Cleland Street

Georgetown, SC 29442

Re: Horry County vs. Aquasino, Partners of South Carolina, LLC, et al.
Case No: 2011-CP-26-9467

Dear Judge Culbertson:

The above referenced matter is currently scheduled to appear before you on Monday, October 15th. I once again would respectfully request that the hearing be rescheduled because I will be out of the country and have an Order of Protection protecting me from appearing. In the event the hearing does proceed forward, it is my understanding Todd Kincannon, who is the current attorney of record for the Defendants, will be present.

Attached hereto for your consideration at the hearing are the Affidavits of Robert Weisberg and Spiro Naos. Weisberg and Naos are the managing partners of Defendants Aquasino Partners of South Carolina, LLC, Highland Park Real Estate Development Corporation, and Suncruz Casino Cruises, LLC. As you will see in the Affidavits, Weisberg and Naos had no idea that they were in violation of the Court's Order. They had not been provided with the discovery requests and were not told of Mr. Singleton's outstanding bill.

After I forwarded the information to Weisberg and Naos, they have been extremely cooperative in gathering the requested information and documentation. I have delivered discovery responses to Philip Thompson and Mr. Singleton's bill has been paid.

I feel as though Weisberg and Naos have been figuratively "in the dark" as to the proceedings in the lawsuit and it would be extremely unfair for their companies to be sanctioned. I filed a motion for an Order of Substitution on behalf of my clients to remove Mr. Kincannon. I also filed a Motion to Relieve the Thompson and Henry, P.A. lawfirm as counsel for Horry County since it was the Thompson and Henry, P.A. lawfirm which represented Weisberg and Naos in drafting the agreements with the County presently in dispute.

Weisberg and Naos are planning to attend the hearing on Monday morning. They certainly do not consent to their attorney-client privilege being waived. I would ask that if they are required to or need to object to any statements made about them or their companies, that their responses are not deemed a waiver of the attorney-client privilege.

Again, due to the unusual circumstances in this matter, I would respectfully request that the hearing be continued until after I return from my vacation. My request is not for the purpose of delaying the proceedings, but arises out of earnest concern for my clients' legal rights.

With kindest regards, I am

Sincerely,


Mark Neill

MDN/lah

Enclosures

Cc: Philip C. Thompson, Esq., Sent Via Fax: 248-6396 & Email

Linda Johnson/Non Jury Scheduler/Via Email: Johnson@horrycounty.org

Lisa Hnizdil

From: Lisa Hnizdil [lhnizdil@neilllawfirm.com]
Sent: Friday, October 12, 2012 11:03 AM
To: 'bculbertsonj@sccourts.org'
Cc: 'pthompson@thompsonlaw.com'; 'Johnson, Linda'; 'Mark Neill'
Subject: Horry County vs. Aquasino Partners of SC, LLC, et al.
Attachments: image2012-10-12-104222.pdf; Affidavit of Robert Weisberg 10-11-12.pdf; Affidavit of Spiro Naos 10-11-12.pdf; Exhibit A for Affidavits.pdf

Dear Judge Culbertson – Attached for your review, please find correspondence and the Affidavits of Robert Weisberg and Spiro Naos regarding the above matter and the hearing scheduled for Monday, October 15, 2012. Thank you.



LISA A. HNIZDIL

Litigation Paralegal

Neill Law Firm, PA

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Murrells Inlet, SC 29576

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Mark D. Neill

From: Culbertson, Benjamin H.
[bculbertsonj@sccourts.org]
Sent: Friday, October 05, 2012 12:53 PM
To: Todd Kincannon; Phil Thompson; Lisa Hnizdil
Cc: Johnson, Linda; Mark Neill; Culbertson,
Benjamin H. Law Clerk (Megan Moricle);
Carotti, Arrigo; Graves, Sanford; Todd
Rutherford
Subject: RE: Horry County vs. Aquasino Partners of SC
LLC, et al. Case NO: 2011-CP-26-9467

The hearing will go forward as scheduled. The request for a continuance is denied.

Sincerely,
Benjamin H. Culbertson

From: Todd Kincannon [mailto:todd@thekincannonfirm.com]
Sent: Friday, October 05, 2012 11:38 AM
To: Phil Thompson; Lisa Hnizdil; Culbertson, Benjamin H.
Cc: Johnson, Linda; Mark Neill; Culbertson, Benjamin H. Law Clerk (Megan Moricle); Carotti, Arrigo; Graves, Sanford;
Todd Rutherford
Subject: RE: Horry County vs. Aquasino Partners of SC LLC, et al. Case NO: 2011-CP-26-9467

Judge Culbertson,

I will certainly attend any and all hearings. I must advise the Court that the Defendants have informed me that they no longer wish me to represent them, which was the reason for Mr. Neill's retention. However, I have not been relieved as counsel. For similar reasons, Mr. Rutherford has prepared a motion for relief as well.

Todd Kincannon

From: Phil Thompson [mailto:PTThompson@thompsonlaw.com]
Sent: Friday, October 05, 2012 11:03 AM
To: Lisa Hnizdil; bculbertsonj@sccourts.org
Cc: Todd Kincannon; 'Johnson, Linda'; 'Mark Neill'; Culbertson, Benjamin H. Law Clerk (Megan Moricle); Carotti, Arrigo;
Graves, Sanford; Todd Rutherford
Subject: RE: Horry County vs. Aquasino Partners of SC LLC, et al. Case NO: 2011-CP-26-9467

Judge Culbertson,

I just received Mr. Neill's email with his attached letter requesting a continuance of the hearings scheduled in this matter on October 15, 2012, based upon Judge John's Order granting Mr. Neill protection that week. While it is certainly in your discretion to grant or deny his request, I

would respectfully request that it be denied and the hearings go forward on October 15, 2012. Under the holding of *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997), a copy of which is attached hereto, it is not an abuse of discretion to deny a request for a continuance when one of the attorneys of record cannot attend. Similar to the facts in Jackson, there are two other lawyers of record, Mr. Kincannon and Mr. Rutherford. They, or at the very least Mr. Kincannon, have knowledge of this case. Mr. Kincannon has been involved since the very beginning of this case. The facts that give rise to the need for the hearings (failure to comply with your Honor's order requiring the Defendants to respond to discovery, which Mr. Kincannon consented to at the July 23, 2012 hearing) occurred, in part, if not all, before Mr. Neill filed his notice of appearance. Therefore, Mr. Kincannon may have more knowledge of those facts and may be better able to explain them than Mr. Neill.

As your Honor is well aware, this case is old and it took quite some time to schedule a hearing and get an answer from the Defendants. Our initial discovery requests were served on them at the same time the pleadings were served on them, November 15, 2011, almost 11 months ago. Our supplemental discovery was served on them on or about May 25, 2012. These significant delays and lack of discovery prevent the Plaintiff from obtaining the information we need to prepare our case for trial, and given the age of this case, it could start appearing on a trial roster in a couple of months.

Therefore, the Plaintiff respectfully requests that Mr. Neill's request for a continuance be denied.

With kindest regards,

Philip C. Thompson

Philip C. Thompson, Esquire

Thompson & Henry, P.A.

1300 Second Avenue, 3rd Floor (29526)

P.O. Box 1740

Conway, South Carolina 29528

Tel. No. (843) 248-5741

Fax No (843) 248-6396

pthompson@thompsonlaw.com

The information contained in this electronic message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication in error, please immediately notify us by telephone or by reply email and delete the original message from your current viewing screen and trash bin.

TREASURY DEPARTMENT CIRCULAR 230 DISCLOSURE: To ensure compliance with requirements imposed by the Treasury Department, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing, or recommending to another party any transaction or matter addressed herein.

From: Lisa Hnizdil [<mailto:lh nizdil@neilllawfirm.com>]

Sent: Friday, October 05, 2012 10:20 AM

to: pculbertsonj@sccourts.org

Cc: Phil Thompson; Todd Kincannon; 'Johnson, Linda'; 'Mark Neill'

Subject: Horry County vs. Aquasino Partners of SC LLC, et al. Case NO: 2011-CP-26-9467

Dear Judge Culbertson – Attached please find correspondence for your review regarding the above matter. Thank you.



LISA A. HNIZDIL

Litigation Paralegal

Neill Law Firm, PA

Post Office Box 2810

Murrells Inlet, SC 29576

Phone: 843.651.8580

Fax: 843.651.8586

lhizdil@neilllawfirm.com

www.NeillLawFirm.com

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Lisa Hnizdil

From: Culbertson, Benjamin H. [bculbertsonj@sccourts.org]
Sent: Friday, October 12, 2012 12:16 PM
To: Lisa Hnizdil
Cc: pthompson@thompsonlaw.com; 'Johnson, Linda'; 'Mark Neill'; Culbertson, Benjamin H. Law Clerk (Megan Moricle)
Subject: RE: Horry County vs. Aquasino Partners of SC, LLC, et al.

Mr. Neill:

Again, your request for a continuance is denied. The primary concern I have is the continued delays in bringing pending matters in this case before the court. Your clients retained Mr. Viers in addition to Mr. Kincannon and, due to Mr. Viers' claim of legislative protection, the last hearing was continued from February until June. In fact, your clients requested legislative protection after Mr. Viers was suspended from the practice of law. The hearing was to be held in June but, your clients stated that they were going to retain Mr. Rutherford (in addition to ongoing representation by Mr. Kincannon) to replace Mr. Viers. Mr. Rutherford, likewise, claimed legislative protection and the hearing was continued until July. When the hearing finally came for hearing in July, only Mr. Kincannon appeared and none of the attorneys who obtained continuances for legislative protection were representing your clients. Therefore, the court is concerned with your clients' constant association of attorneys in what appears to be stalling tactics. Mr. Kincannon is still counsel of record for your clients, has not been relieved as attorney of record for your clients and, as I understand, will be appearing on their behalf.

I apologize for not being more accommodating but, given the 6 month continuance in the last motion hearing, the hearing currently scheduled will go forward.

Sincerely,

Benjamin H. Culbertson

Circuit Court Judge
P.O. Box 479 (zip code 29442)
401 Cleland St. (zip code 29440)
Georgetown, SC
Phone: (843) 545-3030
Fax: (843) 545-3282
Email: bculbertsonj@sccourts.org

From: Lisa Hnizdil [<mailto:lh nizdil@neilllawfirm.com>]
Sent: Friday, October 12, 2012 11:03 AM
To: Culbertson, Benjamin H.
Cc: pthompson@thompsonlaw.com; 'Johnson, Linda'; 'Mark Neill'
Subject: Horry County vs. Aquasino Partners of SC, LLC, et al.

Dear Judge Culbertson – Attached for your review, please find correspondence and the Affidavits of Robert Weisberg and Spiro Naos regarding the above matter and the hearing scheduled for Monday, October 15, 2012. Thank you.



LISA A. HNIZDIL

Litigation Paralegal
Neill Law Firm, PA
Post Office Box 2810
Murrells Inlet, SC 29576

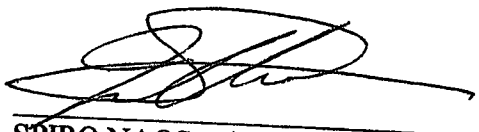
Phone: 843.651.8580
Fax: 843.651.8586
lh nizdil@neilllawfirm.com
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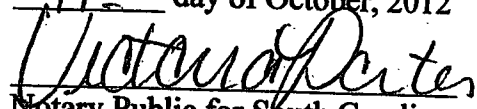
4. I had no idea that we were ordered to provide requested information and documentation. The Motion to Compel filed on May 30, 2012 referenced Interrogatories and Requests for Production that I had never seen or heard about.
5. I was aware that the Judge ordered that we start making payments again to the County. In accordance with the Judge's order, we made a payment on July 31, 2012 for the week ending July 29th. We have continued to make payments to the County every Tuesday from that date forward.
6. We also discovered that an Amended Complaint had been filed on August 31, 2012. Again, I had not previously seen or heard about the Amended Complaint.
7. On September 21, 2012, Attorney Mark D. Neill filed a notice of appearance on behalf of Aqasino Partners of South Carolina, LLC, Highland Park Real Estate Development Corporation and Suncruz Casino Cruises, LLC. He also filed an Answer and Counterclaim to the Amended Complaint.
8. After Mr. Neill became involved, we received a copy of the interrogatories and requests for production of documents that we were supposed to answer as ordered by the Court. I have made earnest efforts to answer the requests.
9. I also received a copy of correspondence from Philip C. Thompson to Mr. Neill dated September 28, 2012. It is attached hereto as Exhibit "A."
10. I object to the fact that the law firm of Thompson and Henry, P.A. is representing the County in this lawsuit. Thompson and Henry, P.A. represented us when we were negotiating the surcharge agreements with Horry County back in the spring of 2010. The agreements are at the heart of the parties' dispute.

11. In the correspondence attached as Exhibit "A," Mr. Thompson attached an affidavit in which he stated he "notified J. Todd Kincannon and J. Todd Rutherford, Attorneys for Defendants that they had missed the Court Ordered deadline of August 22, 2012 and the extended deadline of August 28, 2012. It also demanded answers by September 7, 2012."
12. Again, I was not aware that we were under a deadline and Court Order to produce information and documentation. I am extremely frustrated, angered, and frankly scared that the companies are now in jeopardy of being held in default or in contempt of the Court's order.
13. We would not knowingly act in a way that was in contempt of any Court Order and would respectfully request the Court allow our new Counsel to provide the requested responses and that we be allowed to file our Answer to the Amended Complaint.

FURTHER AFFIANT SAYETH NOT:


SPIRO NAOS

SWORN to before me this
11th day of October, 2012


Notary Public for South Carolina

My commission expires: 8/28/22

**THOMPSON
& HENRY, P.A.**

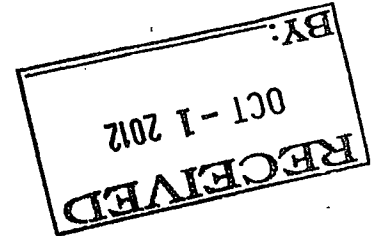
ATTORNEYS AT LAW

1300 SECOND AVENUE, THIRD FLOOR
POST OFFICE BOX 1740
CONWAY, SOUTH CAROLINA 29528

PHILIP C. THOMPSON
P.THOMPSON@THOMPSONLAW.COM

TELEPHONE
(843) 248-5741
FACSIMILE
(843) 248-6396

September 28, 2012



Mark D. Neill, Esquire
Neill Law Firm
Post Office Box 2810
Murrells Inlet, South Carolina 29576

Re: Horry County, a Body Politic v. Aquasino Partners of South Carolina, LLC, et al.
Civil Action No.: 2011-CP-26-9457

Dear Mark:

Enclosed you will find two letters that I have sent to Rhonda Lilly with the attachments that went along with them. I am providing this to you based upon your letter of September 20, 2012 with the enclosed Notice of Appearance. This documentation has already been sent to Todd Rutherford and Todd Kincannon. I am also enclosing herewith, my letter of the same date wherein I sent Mr. Kincannon and Mr. Rutherford the Escrow Agent's interim bill in the amount of One Thousand Nine Hundred Seventy-Five and 00/100 (\$ 1,975.00) Dollars that your clients are to pay pursuant to paragraph one under the Plaintiff's Application for Appointment of a Receiver in the Order dated July 27, 2012. Please have your clients forward payment directly to Mr. Singleton pursuant to the Order.

You will also find enclosed herewith Plaintiff's Reply to the Defendants' Counterclaim for Declaratory Judgment that was contained in Defendants' untimely filed Answer to the Plaintiff's Amended Complaint. As noted in the introductory paragraph of the Reply, the Plaintiff specifically reserves its rights under the default documents that we have filed and submitted to the Court to seek default against your clients and intend to do so. This Reply is provided out of an abundance of caution, but by no means is it intended to be any indication whatsoever as an acceptance of the Defendants' untimely filed Answer to the Plaintiff's Amended Complaint.

With kindest regards, I am

Very truly yours,

THOMPSON & HENRY, P.A.


Philip C. Thompson

PCT/rfb

cc: Arrigo P. Carotti, Esquire
Sam Graves, Esquire
Joseph F. Singleton, Esquire



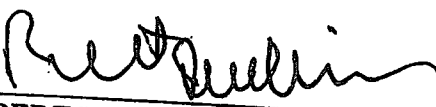
0000396

4. In reviewing these documents, we learned for the first time of the Order filed on July 30, 2012.
5. I had no idea that we were ordered to provide requested information and documentation. The Motion to Compel filed on May 30, 2012 referenced Interrogatories and Requests for Production that I had never seen or heard about.
6. I was aware that the Judge ordered that we start making payments again to the County. In accordance with the Judge's order, we made a payment on July 31, 2012 for the week ending July 29th. We have continued to make payments to the County every Tuesday from that date forward.
7. We also discovered that an Amended Complaint had been filed on August 31, 2012 that we were not aware of.
8. We also did not know that we were Ordered to pay fees to Joseph F. Singleton for acting as the Court Appointed Escrow Agent.
9. On September 21, 2012, our new counsel, Attorney Mark D. Neill filed a notice of appearance on behalf of Aqasino Partners of South Carolina, LLC, Highland Park Real Estate Development Corporation and Suncruz Casino Cruises, LLC. He also filed an Answer and Counterclaim to the Amended Complaint.
10. Only after Mr. Neill became involved, did we receive a copy of the discovery requests that we were supposed to answer. Since receiving the requests, we have diligently tried to answer the requests as best as we can and as quickly as possible.
11. We also received a copy of correspondence from Philip C. Thompson to Mr. Neill dated September 28, 2012. It is attached hereto as Exhibit "A." That is the first time that we learned that a bill in the amount of \$1,975.00 had been sent to our prior counsel, Mr.

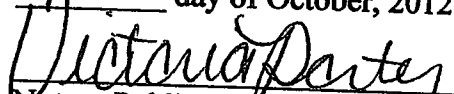
Kincannon and Mr. Rutherford, for Mr. Singleton's fees. Now that we know the monies are owed, we will immediately have Mr. Singleton's bill paid.

12. I do not understand how the Thompson and Henry, P.A. lawfirm can represent the County against us in this lawsuit. It was Thompson and Henry, P.A. which represented us when we were negotiating the surcharge agreements with Horry County back in the spring of 2010. Now, the Thompson and Henry lawfirm is claiming, on behalf of the County, that we violated those agreements.
13. I want this Court to know that we would not knowingly act in a way that was in contempt of any Court Order. We are very concerned that mistakes made by prior counsel will result in the companies being held in contempt. We respectfully request the Court allow our new Counsel to take over for us in the lawsuit and that we be allowed to provide the requested responses and file our Answer to the Amended Complaint.

FURTHER AFFIANT SAYETH NOT:


ROBERT WEISBERG

SWORN to before me this
11th day of October, 2012


Notary Public for South Carolina

My commission expires: 8/28/22

**THOMPSON
& HENRY, P.A.**

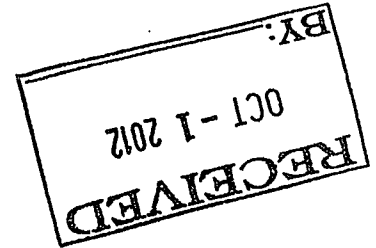
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FACSIMILE
(843) 248-6396

September 28, 2012



Mark D. Neill, Esquire
Neill Law Firm
Post Office Box 2810
Murrells Inlet, South Carolina 29576

Re: Horry County, a Body Politic v. Aquasino Partners of South Carolina, LLC, et al.
Civil Action No.: 2011-CP-26-9457

Dear Mark:

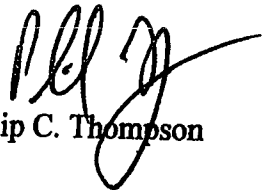
Enclosed you will find two letters that I have sent to Rhonda Lilly with the attachments that went along with them. I am providing this to you based upon your letter of September 20, 2012 with the enclosed Notice of Appearance. This documentation has already been sent to Todd Rutherford and Todd Kincannon. I am also enclosing herewith, my letter of the same date wherein I sent Mr. Kincannon and Mr. Rutherford the Escrow Agent's interim bill in the amount of One Thousand Nine Hundred Seventy-Five and 00/100 (\$ 1,975.00) Dollars that your clients are to pay pursuant to paragraph one under the Plaintiff's Application for Appointment of a Receiver in the Order dated July 27, 2012. Please have your clients forward payment directly to Mr. Singleton pursuant to the Order.

You will also find enclosed herewith Plaintiff's Reply to the Defendants' Counterclaim for Declaratory Judgment that was contained in Defendants' untimely filed Answer to the Plaintiff's Amended Complaint. As noted in the introductory paragraph of the Reply, the Plaintiff specifically reserves its rights under the default documents that we have filed and submitted to the Court to seek default against your clients and intend to do so. This Reply is provided out of an abundance of caution, but by no means is it intended to be any indication whatsoever as an acceptance of the Defendants' untimely filed Answer to the Plaintiff's Amended Complaint.

With kindest regards, I am

Very truly yours,

THOMPSON & HENRY, P.A.


Philip C. Thompson

PCT/rlb
cc: Arrigo P. Carotti, Esquire
Sam Graves, Esquire
Joseph F. Singleton, Esquire

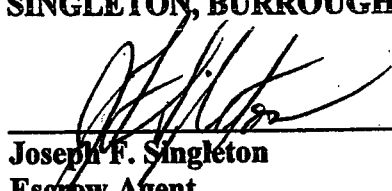


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<u>Week ending September 9, 2012:</u>	\$15,785	2,255
<u>Week ending September 16, 2012:</u>	\$17,738	2,534
<u>Week ending September 23, 2012:</u>	\$13,979	1,997
<u>Week ending September 30, 2012:</u>	\$13,230	1,890
<u>Week ending October 7, 2012:</u>	\$12,845	1,835
<u>Week ending October 14, 2012:</u>	\$13,328	1,904
<u>Week ending October 21, 2012:</u>	\$11,998	1,714
<u>Week ending October 28, 2012:</u>	\$6,790	970
<u>Week ending November 4, 2012:</u>	\$6,713	959
<u>Week ending November 11, 2012:</u>	-0-	-0-
<u>Week ending November 18, 2012:</u>	\$2,772	396
<u>Week ending November 25, 2012:</u>	<u>\$7,427</u>	<u>1,061</u>
TOTAL:	\$226,933.00	32,805

RESPECTFULLY SUBMITTED,

SINGLETON, BURROUGHS & YOUNG, P.A.



 Joseph F. Singleton
 Escrow Agent
 Post Office Drawer 1244
 1303 Third Avenue
 Conway, South Carolina 29528-1244
 (843) 248-4229
jsingleton@horrylaw.com

4 day of December, 2012.
 Conway, South Carolina.

C/A #: 20 11 -CP-26- 9457

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No: 2011-CP-26-9457

Horry County, A body politic,.....Respondent.
v.

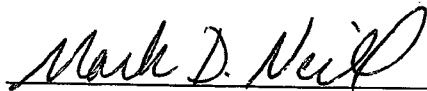
Aquasino Partners of South Carolina LLC, Suncruz Casino Cruises, LLC,
Ventures South Carolina, LLC, Suncruz Casinos, LLC and Highland Park
Real Estate Development Corporation,.....Defendants.

Of whom,

Aquasino Partners of South Carolina, LLC, Suncruz Casinos Cruises, LLC
and Highland Park Real Estate Development Corporation Appellants.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Final Brief complies with Rule 211(b), SCACR.



Mark D. Neill, Esquire

The Neill Law Firm

P.O. Box 2810

Murrells Inlet, South Carolina 29576

(843) 651-8580

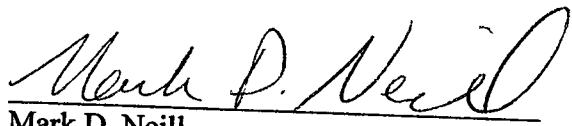
Attorney for Appellants, Aquasino Partners of South
Carolina, LLC, Suncruz Casinos Cruises, LLC, and
Highland Park Real Estate Development Corporation

Dated: 10/23, 2013
Murrells Inlet, South Carolina.

RECEIVED
OCT 24 2013
SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



Mark D. Neill

The Neill Law Firm

P.O. Box 2810

Murrells Inlet, South Carolina 29576

(843) 651-8580

Attorney for Appellants, Aquasino Partners
of South Carolina, LLC, Suncruz
Casinos Cruises, LLC, and Highland Park
Real Estate Development Corporation

Dated: 10/22, 2013
Murrells Inlet, South Carolina.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

Case No: 2011-CP-26-9457

Horry County, A body politic,.....Respondent.
v.

Aquasino Partners of South Carolina LLC, Suncruz Casino Cruises, LLC,
Ventures South Carolina, LLC, Suncruz Casinos, LLC and Highland Park
Real Estate Development Corporation,.....Defendants.

Of whom,

Aquasino Partners of South Carolina, LLC, Suncruz Casinos Cruises, LLC
and Highland Park Real Estate Development Corporation Appellants.

PROOF OF SERVICE

I certify that I have served a copy of Appellants' Final Brief, by depositing a copy of it in the United States Mail, postage prepaid, on October 23, 2013, addressed to counsel for Respondent, Blake A. Hewitt, P.O. Box 7965, Columbia, SC 29202. Counsel was previously served with the Record On Appeal in this matter.



Mark D. Neill, Esquire

The Neill Law Firm

P.O. Box 2810

Murrells Inlet, South Carolina 29576

(843) 651-8580

Attorney for Appellants, Aquasino Partners of South
Carolina, LLC, Suncruz Casinos Cruises, LLC, and
Highland Park Real Estate Development Corporation

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OCT 24 2013

SC Court of Appeals