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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY

COURT OF COMMON PLEAS

CARMEN T. MULLEN, JUDGE

CASE NO. 2012-CP-07-3746

72606

APPELLATE CASE NO. 2014-000-827

Albert and Eileen
LaFleur.....Appellants

v.

Coral Resorts, LLC, Hilton Head Hospitality, LLC d/b/a Hilton Head Guest Services,
Sunrise Vacation Properties, Ltd., Sherri J. Smith, Patrick Budnik, Stephen Deutsch,
Katherine Swisher, and Reba Management, Inc.....Respondents

APPELLANTS' MOTION FOR EXPEDITED HEARING

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Zachary S. Naert
South Carolina Bar No. 78163
Naert and DuBois, LLC
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ATTORNEYS FOR APPELLANTS
Albert and Eileen LaFleur

Appellants hereby Move for and request Expedited Hearing of this appeal in accordance with the directive of the Lower Court, as set forth in the Motions Hearing Transcript, dated June 5, 2014, attached hereto as Exhibit A and incorporated by reference herein, insofar as the Lower Court, upon Motion of the Respondents, has Stayed not only the instant action under appeal, *LaFleur v. Coral Resorts, et al*, but also all other cases "currently pending and to be filed" against Respondents pursuant to that Order of Chief Justice Jean H. Toal, dated May 8, 2014, attached hereto as Exhibit B and incorporated by reference herein, until such time as this appeal concludes.

Based upon the foregoing, Appellants respectfully request expedited hearing of this appeal so as to allow the proceedings of the Lower Court, which have been stayed by the Lower Court pending this appeal, to proceed to trial by jury.

NAERT AND DUBOIS, LLC



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Attorneys for Appellants

June 20, 2014
Hilton Head Island, South Carolina

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) FOURTEENTH JUDICIAL CIRCUIT

ALBERT R. LAFLEUR and)
EILEEN M. LAFLEUR,)
)
PLAINTIFFS,)
)
VS.)
) 2012-CP-07-3746
CORAL RESORTS, LLC, ET AL,)
)
DEFENDANT.)
_____)

JOHN KING and LAURA KING,)
)
PLAINTIFFS,)
)
VS.) 2013-CP-07-2967
)
CORAL RESORTS, LLC, ET AL,)
)
DEFENDANT)
_____)

JOHN J. MEILERT,)
)
PLAINTIFF,)
)
VS.) 2013-CP-07-1966
)
CORAL RESORTS, LLC, ET AL,)
)
DEFENDANT)
_____)

DIANE TOBIN,)
)
PLAINTIFF,)
)
VS.) 2013-CP-07-3051
)
CORAL RESORTS, LLC, ET AL,)
)
DEFENDANT)
_____)

Ex. A

PATRICIA FREELY,)
)
 PLAINTIFF,)
)
 VS.) 2013-CP-07-2410
)
 CORAL RESORTS, LLC, ET AL,)
)
 DEFENDANT)

CHARLES and JANET SMITH,)
)
 PLAINTIFFS,)
)
 VS.) 2014-CP-07-0334
)
 CORAL RESORTS, LLC, ET AL,)
)
 DEFENDANT)

SONDRA ELLINGER,)
)
 PLAINTIFF,)
)
 VS.) 2013-CP-07-2892
)
 CORAL RESORTS, LLC, ET AL,)
)
 DEFENDANT)

DENNIS and MARGARET MCCLOSKEY,)
)
 PLAINTIFFS,)
)
 VS.) 2013-CP-07-2835
)
 HILTON HEAD ISLAND DEVELOPMENT)
 COMPANY, LLC, ET AL,)
)
 DEFENDANTS)

ALEXANDER HAILL and
REBECCA KEY,

PLAINTIFFS,

VS.

CORAL RESORTS, LLC, ET AL,

DEFENDANT

2013-CP-07-2890

SILVIA and CLETUS MOORE,

PLAINTIFFS,

VS.

HILTON HEAD ISLAND
DEVELOPMENT COMPANY, LLC,

DEFENDANT

2013-CP-07-3013

STEVEN and DEBRA SCHNEIDER,

PLAINTIFFS,

VS.

CORAL RESORTS, LLC, ET AL,

DEFENDANT

2013-CP-07-3271

FOSTER WATKINS and
JANICE WATKINS,

PLAINTIFFS,

VS.

HILTON HEAD ISLAND
DEVELOPMENT COMPANY, LLC, ET AL,

2014-CP-07-256

DEFENDANT)
_____)

SHIRLEY M. JAMES and)
DAVID L. JAMES,)

PLAINTIFFS,)

VS.)

2014-CP-07-489)

HILTON HEAD ISLAND)
DEVELOPMENT COMPANY, LLC, ET AL,)

DEFENDANT)
_____)

NORBERT BRETON and)
CLAUDETTE BRETON,)

PLAINTIFFS,)

VS.)

2014-CP-07-0370)

CORAL RESORTS, LLC, ET AL,)

DEFENDANT)
_____)

JAMES WILSON and)
DEBORAH WILSON,)

PLAINTIFFS,)

VS.)

2014-CP-07-0361)

CORAL RESORTS, LLC, ET AL,)

DEFENDANT)
_____)

JENNIFER MCQUARRIE and)
MICHAEL STRANGIE,)

PLAINTIFFS,)
)
 VS.) 2014-CP-07-0364
)
 CORAL RESORTS, LLC, ET AL,)
)
 DEFENDANT)
)
 _____)

MICHAEL ADAMS and SHONNIE ADAMS,)
)
 PLAINTIFFS,)
)
 VS.) 2014-CP-07-1198
)
 CORAL RESORTS, LLC, ET AL,)
)
 DEFENDANT)
)
 _____)

WILLIAM MADDEN and)
 DONNA MADDEN,)
)
 PLAINTIFFS,)
)
 VS.) 2014-CP-07-0488
)
 HILTON HEAD ISLAND)
 DEVELOPMENT COMPANY, LLC, ET AL,)
)
 DEFENDANT)
)
 _____)

CARIE OLSEN and MATHEW OLSEN,)
)
 PLAINTIFFS,)
)
 VS.) 2014-CP-07-0490
)
 CORAL RESORTS, LLC, ET AL,)
)
)

DEFENDANT)

PHILLIP BILLINGS and)
JOLANE BILLINGS,)

PLAINTIFFS,)

VS.)

2014-CP-07-0577)

HILTON HEAD ISLAND)
DEVELOPMENT COMPANY, LLC, ET AL,)

DEFENDANT)

GREGOR GURBACKI,)

PLAINTIFF,)

VS.)

2014-CP-07-01197)

CORAL RESORTS, LLC, ET AL,)

DEFENDANT)

WILLIAM and EVELYN DAVENPORT,)

PLAINTIFFS,)

VS.)

2013-CP-07-2967)

HILTON HEAD ISLAND)
DEVELOPMENT COMPANY, LLC, ET AL,)

DEFENDANT)

MICHAEL JACKSON and)
BARBARA JACKSON,)

PLAINTIFFS,)

VS.) 2014-CP-07-00882
)
CORAL RESORTS, LLC, ET AL,)
)
DEFENDANT)
_____)

KEITH W. HICKMAN and)
PAULA D. HICKMAN,)
)
PLAINTIFFS,)
)
VS.) 2014-CP-07-01196
)
CORAL RESORTS, LLC, ET AL,)
)
DEFENDANT)
_____)

MOTIONS HEARING

held before the Honorable J. Ernest Kinard, Jr.
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Beaufort County Courthouse
Beaufort, South Carolina.
on Thursday, June 5, 2014, Commencing at 9:31 a.m.

SUSAN "MIA" PERRON, CVR-CM-M
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 31865
Charleston, South Carolina 29417-1865
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EXHIBITS

[None]

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PROCEEDINGS

1
2 THE COURT: Now, I got a letter from somebody in
3 the Callison firm.

4 McDaniel, are you --

5 MS. SHUTT: It was me, Your Honor. Nikki Shutt.

6 THE COURT: Shutt? All right.

7 -- saying that everything should be stayed
8 because of various appeals to the Court of Appeals,
9 and maybe we could just stay it on a telephone
10 conference or what-have-you. I mean, if the Court of
11 Appeals has got things applicable, that kills
12 jurisdiction. But we need to move the case on. So
13 what about all that?

14 MS. SHUTT: Your Honor, may it please the Court.
15 I'm Nikki Shutt, on behalf of the defense.

16 Would you like for everyone to stand and enter
17 their names?

18 THE COURT: Well, the court reporter does not
19 know everybody, so you need to do that.

20 MS. SHUTT: Thank you, Your Honor.

21 MS. MCDANIEL: Kathleen McDaniel, for the
22 defendants.

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1 MR. SOWELL: Bill Sowell, for Sunrise Vacation
2 Properties another individual defendants.

3 MS. DURANT: Beth Durant, for Sunrise and other
4 individual defendants.

5 MR. LAUGHLIN: Drew Laughlin, Your Honor. I
6 represent the Homeowners Associations. There are four
7 of them that are involved in most of the cases.

8 MS. PARLICEK: Jacqueline Parlicek here, on
9 behalf of the defendants.

10 MR. JOHNSON: Brian Johnson, on behalf of
11 defendants Reba Management and Dean Pearce.

12 MR. OVERSTREET: David Overstreet, on behalf of
13 Attorney Michael Barfield.

14 MR. DUBOIS: Joseph DuBois, on behalf of the
15 plaintiff.

16 MR. NAERT: And Zack Naert, on behalf of
17 plaintiffs, Your Honor.

18 MR. DUBOIS: Your Honor, we've also got our
19 paralegal Sarah Malphrus present, as well as a few of
20 our clients.

21 THE COURT: All right.

22 MS. SHUTT: Thank you, Your Honor. May it

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1 please the Court.

2 There are currently two cases pending with the
3 Court of Appeals. They're both sealed, so I hesitate
4 to talk about them in open court.

5 THE COURT: That's fine, other than that they
6 are sealed and that there are appeals from them.

7 MS. SHUTT: They are, Your Honor. One is --

8 THE COURT: And they permeate the whole
9 proceedings?

10 MS. SHUTT: They do, Your Honor. Unfortunately
11 they're a common thread. The issue in them is a
12 common thread through the entire thing.

13 One was filed in the LaFleur case and the other
14 was filed by Narret Dubois [phonetic] personally.
15 Both contain -- or pertain to private information that
16 are the subject of lower court orders.

17 THE COURT: All right.

18 MR. DUBOIS: Your Honor, in response, plaintiff
19 would suggest that what is at issue in those cases are
20 a very specific set of documents and whether those
21 documents are public or private documents.

22 What happened as records in those documents are

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1 facts and those facts are certainly applicable to many
2 of the issues in the lawsuit. Whether those documents
3 come out today or not, we certainly don't need to
4 introduce them into the record today. Has no bearing
5 on many of the issues. Additionally, there are so
6 many other issues that have absolutely no bearing on
7 any of that documents. Namely, whether these people
8 were defrauded has nothing --

9 THE COURT: Yeah. But that's what's going to be
10 decided at a trial, isn't it?

11 MR. DUBOIS: Yes, Your Honor.

12 THE COURT: Okay. Well --

13 MS. SHUTT: And, Your Honor, again, it's hard to
14 talk about these things in open court.

15 I mean, I guess if -- you know, the information
16 contained in these two appeals have permeated the
17 entire cases. It is alleged in each of the
18 complaints, Your Honor.

19 This week, Your Honor, I opened up my mail on
20 Monday and found a letter in the LaFleur case from
21 plaintiff's counsel. It had you copied on it, Your
22 Honor, and had other attorneys here who are not even

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1 involved in the LaFleur case, with a disk with
2 thousands of pages of documents which again published
3 these materials against court order.

4 So I am very concerned that it's impossible to
5 argue some of these cases without --

6 THE COURT: All right. Well, let's let -- let's
7 tell the Court of Appeals to give you an expedited
8 hearing on it.

9 MS. SHUTT: We'll be happy to, Your Honor.

10 And we actually have motions to dismiss now
11 pending in both of those. So it's possible that they
12 will be resolved sooner rather than later, Your Honor.

13 MR. DUBOIS: Your Honor, it took us so long to
14 get here today.

15 THE COURT: Well, I understand that, but you're
16 the one that filed the appeal that is impeding it.

17 Bottom line: once something is at the Court of
18 Appeals, if it impacts the cases they are stayed.

19 Now, there may be some things that I can handle.
20 I'm not interested in dodging anything, you know.
21 But, I mean, there may be some things I can handle --

22 MR. DUBOIS: Yes, Your Honor.

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1 THE COURT: -- that will not be stayed. And
2 we'll talk about it.

3 MR. DUBOIS: Yes, Your Honor.

4 As I understand the rules of procedure at the
5 Court of Appeals, those cases are under seal and
6 they're under seal because the defendants filed
7 motions to do so. And the automatic rule is that
8 pending any kind of a ruling on those motions, there's
9 an automatic stay. That's the only reason there's an
10 automatic stay, and that's the only reason that those
11 cases are sealed currently, is that the motions
12 haven't been decided. Whether they have merit or not
13 certainly hasn't been adjudicated.

14 But, again, Your Honor, what this is is yet
15 another delay tactic by these defendants to try to
16 push off the trials that have been now -- one of the
17 cases was filed in October of 2012. It was originally
18 set to be heard for trial in May. This is yet another
19 delay tactic, Your Honor.

20 The problem with these appeals is there was no
21 choice but to file an appeal on these issues. Those
22 issues request that --

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1 THE COURT: Well, then you get it resolved.
2 That's no problem. Just tell them, we need to get it
3 resolved.

4 MR. DUBOIS: Yes, Your Honor.

5 And certainly we would be agreeable to an
6 expedited Court of Appeals hearing on all of this.
7 That's not an issue. We certainly can request that.

8 But, again, there's just so many motions and so
9 much information that really has very little, if
10 anything, to do with these Court of Appeals issues.
11 Certainly, we could proceed on all of those.

12 THE COURT: All right. Now, I read three of
13 these things. I haven't read four of them. Or any of
14 this. I mean, let's be realistic. We've got over a
15 hundred motions here.

16 How far are we from trial?

17 MS. SHUTT: Your Honor, I think the closest one
18 to trial is the LaFleur case. And we have a
19 scheduling order that we put in place, Your Honor,
20 back in December of 2013. But it is one of the cases
21 on appeal, Your Honor.

22 And in this -- in LaFleur, like all of the other

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1 cases, the motions to dismiss have never been heard
2 and, therefore, Your Honor, no answers have even been
3 filed. While there has been some discovery that has
4 taken place, you know, we haven't even been able to
5 answer yet because there is so much improper material
6 in the complaint, it has been stricken --

7 THE COURT: All right. Well --

8 MS. SHUTT: Thank you, Your Honor.

9 MR. DUBOIS: Plaintiff's response would be very
10 close. We don't need much discovery at all. We have
11 -- Ms. Shutt is correct. We supplied them with many
12 thousands of pages. And I believe we handed a copy of
13 it up to Your Honor, as well. We've supplied them
14 with many thousands of pages of documents. We've been
15 investigating this company for years. We have many
16 people that are willing to come to court to testify.
17 Certainly, we would want to do some very rudimentary
18 discovery, which has not yet taken place. We haven't
19 taken the first deposition of any the defendants'
20 agents. But --

21 THE COURT: Well, have y'all mediated the case?

22 MR. DUBOIS: We have mediated the case.

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1 THE COURT: Have already mediated?

2 MR. DUBOIS: Nine of the cases were mediated,
3 unsuccessfully, in the summer.

4 THE COURT: All right. Now, while one of your
5 cases is an '12 case, I'm meeting with lawyers
6 tomorrow on an '07 case, some class action they gave
7 me. It involves a bunch of stucco cases in Hilton
8 Head, every I guess every fourth house in Hilton Head.
9 So when I meet with them tomorrow, that's going to --
10 those are going to have to be tried before this gets
11 tried. I mean, it's just one of me. There you go.
12 And I don't know anything about it. It actually was
13 assigned to Judge Baxley, who sold out. I mean, I
14 don't blame him, you know. Retired as a circuit judge
15 and took the position of chief counsel for Santee
16 Cooper. In addition to paying him a couple of hundred
17 thousand, they give a house to stay in and free access
18 to -- but, anyway, he cut the cases loose and here
19 they are. So I'll know after tomorrow when these will
20 be scheduled. They have to be scheduled first.

21 And I'm not trying these things one by one, I
22 can tell you that. We might try one but the rest of

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1 them are going to be combined, somehow, after we get
2 into it a little bit.

3 Now, just to get straight on the record. .When I
4 went through the plaintiffs' various motions, one of
5 the motions in there was to disqualify Callison Tighe,
6 the whole firm. All right. Nobody in the firm has
7 talked to me about it. I'll give you my total
8 involvement with any of the attorneys involved in this
9 case. I don't recognize any of the plaintiffs' names.
10 I have no connection, to my knowledge, with any of the
11 named defendants.

12 He's not here. Bobby Hood was here last time.
13 Somebody --

14 MR. JOHNSON: Brian Johnson, on behalf of Bobby
15 Hood.

16 THE COURT: I've got no connection other than
17 Bobby, Sr., is, of course, you know, a casual friend.
18 I see him at conventions and things. Might have eaten
19 supper with him at a convention. I ate supper at one
20 of the conventions with my wife and his wife, but I
21 don't even know his wife's name. I wouldn't recognize
22 her if I saw her on the street. Now, if I saw her at

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1 a convention with him, I would know that's his wife.
2 But I've never visited him. And I know his brothers
3 and his sister, who is president of the defense trial
4 lawyers. And one of my law clerks went to work for
5 the firm but they fired him later, so that's no
6 conflict. That's with Hood.

7 Biff practices in Columbia. I think he's
8 seventeen out of thirty-nine on cases he's already
9 been in front of -- but I have no connection with
10 them, other than I know lots of members of his firm
11 because I've been chief -- I've been a judge twenty-
12 six years. I've been in Columbia half the time. And
13 I've been chief judge for ten years over there. So
14 his firm has appeared many times. Laughlin is about,
15 what, three for five down here and he's -- I don't
16 know the rest of them.

17 Now, on Callison Tighe, since you have that
18 motion, I called Justice Toal yesterday. The two
19 senior partners in Callison Tighe were law-school
20 classmates of mine. That's Mike Tighe and Reese
21 Williams. They are friends but, you know they're just
22 friends. We were all married in law school. We had

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1 our fiftieth law-school reunion a couple months back.
2 Over the last fifty years, I think I had Mike Tighe to
3 Camden one time when his son, Haygood -- and he had a
4 daughter. I don't remember her name -- was pretty
5 young. Might have eaten supper with them twice over
6 fifty years.

7 And the same basic thing for Reese Williams,
8 except their firm does put on things in Columbia like
9 the annual barbeque. And I'm one of the judges that
10 go to virtually all the functions of the Richland
11 County Bar. Sometimes I'll be the only judge there.
12 But that's neither here nor there. And one or both of
13 them are usually there. And talk to them. Eaten
14 supper with Reese and his wife once or twice over
15 fifty years. Actually came down here -- I have a
16 house down here -- one weekend maybe four years ago
17 when I saw them at some bar party and they said they
18 were going -- were coming to Beaufort and I said,
19 well, just stay with us rather than rent a hotel room.
20 But they haven't talked to me about the case. They're
21 not personally involved in the case.

22 And I see no reason to recuse. But I put that

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1 on the record so you can make any motions you want to.

2 MR. DUBOIS: Thank you, Your Honor.

3 THE COURT: The Chief says she doesn't have
4 anybody else she can give the case to, one, and if I
5 can be fair and impartial, fine. Recognize it would
6 be a little harder for me to disqualify the firm if I
7 didn't know anybody. But, I mean, you know, if
8 they've done something so egregious they need to be
9 shelved, that would happen.

10 MR. DUBOIS: Yes, Your Honor. I appreciate your
11 candor.

12 THE COURT: And that's all I know about any of
13 the parties.

14 And then I have no connection with either of
15 y'all that I'm aware of. I've been chief judge down
16 here three times, and I've been here forever, and
17 y'all have rarely appeared. So, I mean, I don't have
18 any -- I'm not saying you haven't appeared. I'm only
19 saying it's not like I've got an ongoing relationship
20 with y'all, either. That's for them, not, you know --

21 MR. DUBOIS: Yes, Your Honor.

22 And in response, what plaintiff would suggest is

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1 when we realized that Chief Justice Toal had assigned
2 the case to Your Honor, Zack and I talked and we were
3 very excited to have such a learned judge preside over
4 the case.

5 Our motion certainly doesn't speak to any of
6 those issues, but rather the representation within
7 these lawsuits by Callison Tighe insofar as they
8 represent, at times, various defendants that have very
9 conflicting -- contractually conflicting relationships
10 with indemnification clause.

11 And that's the basis for our motion, although I
12 certainly appreciate the information. And, again, when
13 we heard you were the judge, we were very excited.

14 THE COURT: All right. So which motions do
15 y'all want to take up today, that I can help you with,
16 that aren't stayed?

17 MS. SHUTT: Your Honor --

18 THE COURT: Are these arbitration things stayed
19 or not?

20 MS. SHUTT: Well, Your Honor, I think that is
21 something we probably could bring up because it
22 doesn't involve, I think, some of these issues, even

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1 though there's an amended complaint pending but it
2 hasn't -- that includes it. But the other stuff
3 doesn't. But I think that's something we could take
4 up.

5 The motions to dismiss, Your Honor, they all
6 have the thread running through them.

7 THE COURT: Well, I can't hear those.

8 MS. SHUTT: Okay.

9 THE COURT: Well, now, let me -- how many
10 magistrates court cases are there?

11 MS. SHUTT: There were three, Your Honor. And I
12 understand they have been transferred to this Court.

13 MR. DUBOIS: Yes, Your Honor.

14 There was actually another issue that -- there's
15 a million issues, Your Honor. But one of the issues
16 is one of the magistrates court cases that we tried to
17 file since the assignment to you has been refused by
18 the clerk of that court. And I advised the clerk that
19 I would take that up with Your Honor. We don't have
20 the ability henceforth to file cases in magistrates
21 court. And that's a new burden on a lot of our
22 clients who don't have a lot of money involved in the

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1 case. And that's now been an opportunity for justice
2 that's been foreclosed. So I thought I would bring
3 that to your attention.

4 THE COURT: Well, you can do an order directing
5 that it be filed there but then it gets transferred
6 right back up here. So how do you -- you can just
7 file it here. But I don't know. It cost you a little
8 more money.

9 MR. DUBOIS: The filing fees are a little
10 different.

11 The other problem is is I'm just not sure what
12 would happen with those cases, because obviously in
13 magistrates court there's no discovery. You get a
14 fairly quick trial and it's a reasonably priced item
15 for not just our clients. But as I understand that
16 order, this would apply to pro se litigants, as well,
17 who we don't even have any contact with.

18 And I'm also just not sure what happens with
19 those magistrates court cases, if Your Honor is going
20 to preside over those or --

21 THE COURT: I have no choice but to preside over
22 them.

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1 MR. DUBOIS: Sure.

2 We can do -- we can do an order for Your Honor
3 to sign and at least direct the clerk to enter it into
4 a filing system. And then I guess --

5 THE COURT: You have the right to file, but then
6 it will immediately be transferred up here pursuant to
7 Justice Toal's order.

8 MR. DUBOIS: That's right.

9 MS. SHUTT: And may I offer a suggestion about
10 that? I was thinking about that after plaintiffs'
11 counsel brought that up.

12 I mean, maybe it's possible for us, Your Honor,
13 to say, you know, you can file a magistrates court
14 case so you would have the little filing fee but it's
15 transferred here, but as to magistrate court cases
16 there will be no discovery. And so we can certainly
17 stipulate to that and that way --

18 THE COURT: Well, that's just a rule.

19 MS. SHUTT: So that could be -- we're happy to
20 stipulate to that if the other side would like to do
21 that.

22 MR. DUBOIS: We would prefer to go ahead and

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1 schedule it at trial as soon as possible. I don't
2 think there's any delay necessary if there's no
3 discovery. I believe they responded -- I mean, filed
4 an answer.

5 I think they filed a motion to dismiss. We
6 could hear those and then go forward with the trial.

7 THE COURT: Well, you know, chances are no
8 motion to dismiss is going to be granted. So we can
9 just try -- try all three of them .

10 MR. DUBOIS: Yes, Your Honor.

11 THE COURT: It won't take but a day, will it?

12 MR. DUBOIS: I agree.

13 [Off the record momentarily]

14 THE COURT: I'm here the week of August the 11th
15 in common pleas, which is pretty quick. We could try
16 all those that week, if you want to.

17 MR. DUBOIS: Yes, Your Honor.

18 THE COURT: But they all have to be combined,
19 now. We're not trying --

20 MS. SHUTT: Your Honor, I think we have two
21 issues with that. The first is, Your Honor, the same
22 issues apply, as the Court of Appeals is trying to

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1 resolve --

2 THE COURT: All right. Well, if --

3 MS. SHUTT: So until that is resolved --

4 THE COURT: If that's in there, then we can't
5 try it until the Court of Appeals rules.

6 MS. SHUTT: Yes, Your Honor.

7 THE COURT: But we'll schedule it as soon as the
8 Court of Appeals rules. Try those first, knock them
9 out, and get a feel for how everything is going
10 anyway.

11 MR. SOWELL: One thing, Your Honor, just to note
12 before we get too far down the road: we will object
13 to consolidating the cases for trial.

14 THE COURT: I understand, but that's overruled.

15 MR. SOWELL: Thank you.

16 THE COURT: I can't possibly try thirty-five
17 cases, you know.

18 MR. SOWELL: Well, I think what I would suggest,
19 you try one as a test case, so to speak.

20 THE COURT: I know. We are going to try the
21 magistrates court cases -- that's one, even though
22 there are three of them -- over your strenuous

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1 objection.

2 MR. SOWELL: Over my objection. Thank you.

3 MR. DUBOIS: Your Honor, another issue that ties
4 in with these magistrate court cases, while the Court
5 is still on that, a lot of these cases that arose from
6 contracts reportedly entered into after about the
7 middle of 2012 contain arbitration clauses. And now
8 as part of that contract, there are some rules about
9 what the arbitrations will be -- guided by what rules
10 will apply.

11 And I would suggest that there are sort of three
12 groups of rules that may apply, and we would ask the
13 Court to decide which. And one is the commercial
14 rules, another is the consumer rules, and then the
15 third is some sort of Frankenstein hybrid of those
16 that's actually in the contract.

17 Now, we obviously take the position, based on a
18 number of reasons, not the least of which is the
19 filing fees and other fees that are associated with
20 this arbitration being lower for consumer rules, but
21 also that we actually represent consumers. These
22 people are consumers. They're not a commercial entity

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1 in any way -- that we would take the position that
2 consumer rules certainly should apply, especially
3 since the defendants drafted this arbitration clause
4 with these Frankenstein rules.

5 Now, one of the issues that's sort of tied with
6 that is my reading of the consumer rules provides that
7 if a person files an arbitration -- excuse me -- if a
8 person files a magistrates court case in their
9 jurisdiction now appropriate, they're not bound by the
10 arbitration rules. They can file a small claims court
11 lawsuit, as I read the consumer rules, that's the
12 case. It avoids even further the delay and expenses,
13 filing fees, that an arbitration usually will have.

14 Now, I believe that the defendants take the
15 position that the commercial rules, that perhaps their
16 hybrid rules would apply. The effect of all that,
17 though, leaves not only some of my clients, but also
18 people that don't even have an attorney, to be forced
19 into an expensive commercial arbitration scheme that
20 not only takes a lot of money to file for filing fees
21 and other fees, but under any sort of fair sense it
22 delays them getting a fair hearing on their case,

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1 which, again, is always strenuously objected to. To
2 my knowledge, they've never -- the defendants have
3 never tried one of these cases.

4 So that's just an issue that's tied with a
5 magistrates court case. We would certainly hope that
6 the judge would issue an order that says that the
7 consumer rules apply and if anybody fits into the
8 magistrates court paradigm, that under those consumer
9 rules they can do rather than having to do an
10 arbitration.

11 THE COURT: All right.

12 MS. MCDANIEL: Your Honor, may it please the
13 Court. Kathleen McDaniel, for the defendant.

14 Your Honor, it appears to us that the plaintiffs
15 -- there are now approximately thirteen cases that are
16 subject to contracts that have arbitration provisions
17 in them. It's the defendants position that all of
18 those disputes should be compelled to arbitration and
19 that the lawsuits that are now pending should be
20 dismissed.

21 It appears that the most communications from the
22 plaintiff's attorneys, that they are no longer

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1 opposing arbitration but they're concern is what are
2 the rules going to be that would apply to that
3 arbitration. Mr. Dubois is correct. The arbitration
4 provision in these particular contracts does
5 specifically provide for the commercial rules of the
6 American Arbitration Association to apply.

7 The determination of what does an arbitration
8 provision mean, what is the interpretation of it, what
9 rules should apply, all of that is within the scope of
10 what the arbitrator is to determine. That is not a
11 question for this Court to determine.

12 In the case of Durham County vs. Richard and
13 Associates, a fourth circuit case from 1984, the Court
14 -- the fourth circuit determined that question of
15 interpretation of an agreement to arbitrate are for
16 the arbitrator and not for the Court.

17 Determining which rules apply, based on the
18 language of the arbitration provision, that is an
19 interpretation of the agreement to arbitrate and
20 should be determined by the arbitrator.

21 And, in fact, the Durham County case quotes a
22 United States Supreme Court case, Moses County

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1 Memorial Hospital vs. Mercury Construction Company,
2 460 U.S. 1, 1983, which state that the arbitration
3 Act, meaning the federal Arbitration Act, establishes,
4 as a matter of federal law, any doubts concerning the
5 scope of arbitratable issues should be resolved in
6 favor of arbitration, whether the problem at hand is
7 the construction of the contract language itself or an
8 allegation of waiver or delay or -- arbitrability.

9 So, Your Honor, even the U.S. Supreme Court has
10 held that construction of the contract language itself
11 is for the arbitrator. And, again, determining which
12 rules is based on the language of the arbitration
13 provision.

14 So we think that that is a question for the
15 arbitrator to consider and not this Court. However,
16 if the Court does want to consider this point, the
17 consumer arbitration rules, it's actually consumer
18 related disputes supplementary procedures, refers
19 specifically to standardized consumer goods or
20 services that are for personal or household use.
21 Consumer goods or services is not a defined term in
22 those rules. However, if we look to our own

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1 commercial --

2 THE COURT: Well, it's commercial and the
3 arbitrator decides everything. That's all.

4 MS. MCDANIEL: Thank you, Your Honor.

5 THE COURT: But y'all need to agree on an
6 arbitrator, don't you?

7 MS. MCDANIEL: Your Honor, in the arbitration
8 provision does set forth a way to handle that. We
9 have initiated arbitration in at least -- in one case.
10 That case is moving along. We have submitted conflict
11 checks --

12 THE COURT: All right. I saw where Mr. Dubois
13 wanted to know any conflicts that the arbiter had.
14 Well, they have to put that on the record.

15 MS. MCDANIEL: That's correct, Your Honor. And
16 we have submitted our portion of that information to
17 the plaintiffs.

18 THE COURT: So y'all can basically agree on
19 that, even though looking at the file there's not a
20 history of much agreement between y'all. I'm not
21 faulting anybody. It's just --

22 MS. MCDANIEL: Well, I don't anticipate us

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1 having any difficulty finding an agreeable arbitrator.

2 MR. DUBOIS: I do, Your Honor. And here's why.
3 We are yet to determine even who all was involved in
4 these transactions. Unfortunately, many of our
5 clients don't have the names of the salespeople. They
6 weren't getting a business card or sometimes they
7 contacted people and they just weren't made aware of
8 the name. Now, I believe the defendants should not
9 have a problem turning that information over so we
10 could run a conflict check.

11 But the reality is I don't think these fifty and
12 eighty people -- and probably everybody in Beaufort
13 County has represented somebody from that company at
14 one point. Certainly we're looking outside the
15 county, in a realistic sense. Now, their contract
16 indicates that the arbitrator has to be from Beaufort
17 County. And there's yet another problem.

18 Now, all we ask for is just to know who we're
19 facing, and then we can pick an arbitrator. And
20 that's not an overly complex issue.

21 MS. MCDANIEL: Your Honor, the issue of picking
22 an arbitrator, who the conflicts are, all of that has

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1 to be handled by the AAA once things are properly
2 initiated there.

3 But just to point out, the arbitration provision
4 actually states that the parties shall select an
5 arbitrator from the list of South Carolina approved
6 arbitrators. It's not limited to arbitrators in
7 Beaufort. The arbitration just needs to --

8 THE COURT: Well, y'all agree on somebody. It
9 would be better to get somebody outside of Beaufort
10 County.

11 MS. MCDANIEL: We will -- I'm sure we'll be able
12 to agree on someone.

13 THE COURT: Get somebody from Charleston or
14 Conway. They deal with these things all the time.

15 MS. MCDANIEL: Thank you, Your Honor.

16 MR. SOWELL: Your Honor, may I --

17 THE COURT: Hold it just one second. Punch her
18 on the shoulder.

19 MS. MCDANIEL: I'm sorry.

20 THE COURT: Are you going to prepare an order?

21 MS. MCDANIEL: Yes, Your Honor, I will prepare
22 an order.

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1 But I also want to clarify one thing. Are you,
2 in fact, compelling all of the cases -- and I can name
3 the cases -- that are subject to arbitration? Shall
4 we compel those to arbitration and dismiss them from
5 this Court?

6 THE COURT: Well, except for the magistrates
7 court cases, in that --

8 MR. NAERT: Your Honor, if I may. Opposing
9 counsel has already obtained an order from Judge
10 Duker. He's staying the lawsuits that are subject to
11 arbitration because we have to come back to the Court
12 to confirm the award.

13 Also, by the own terms of defendants' contract,
14 they say that if we cannot agree upon an arbitrator
15 that we have to petition Your Honor, the Court,
16 Beaufort County --

17 THE COURT: I know. But I'm telling you to get
18 together on that. I told you to get somebody from
19 Charleston or Conway.

20 MS. MCDANIEL: Well, we would like to have
21 someone from Beaufort County, Your Honor. And their
22 contract --

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1 THE COURT: Well, that's fine. Then you get
2 somebody from Beaufort County. But you check them out
3 after you've got them, put them on the -- you know,
4 find out all the conflicts they have.

5 MS. MCDANIEL: We'll certainly do that, Your
6 Honor.

7 And just to clarify for the record: the cases
8 that have not yet been compelled to arbitration -- we
9 know that the Pile case has been compelled to
10 arbitration. The additional ones, and I'll just
11 shorthand the plaintiff's names, are Tobin, Ettlenger,
12 Breton, Moore, Watkins, Smith, McQuarria, M-C-Q-A-U-A-
13 R-I-A, James, Madden, Billings, Jackson and Davenport.
14 And so, Your Honor, I will include in the order that
15 those will be compelled to arbitration?

16 THE COURT: All right. Copy them with the
17 order. I won't sign it until they've had a chance to
18 look at it and object to anybody that they don't think
19 should be in there.

20 MS. MCDANIEL: And, Your Honor, just as to the
21 question of whether the arbitration-related matters
22 should be stayed or dismissed, it's our position that

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1 they should, in fact, be dismissed. They should have
2 never been brought in this court in the first place.
3 They should have been --

4 THE COURT: Well, as I understand it, Judge
5 Dukes has issued an order saying it's stayed. Hey,
6 that's the law of the case right now. I'm not
7 touching it. So it's just stayed.

8 MS. MCDANIEL: All right.

9 MR. NAERT: Your Honor, if I may.

10 There are two separate issues. One issue is
11 that for at least a couple of the lawsuits, there are
12 some contracts that have arbitration provisions and
13 some contracts that do not. So we would argue that
14 the contracts that do not have arbitration provisions,
15 those claims would be allowed to remain in this court.

16 Also, the Pile lawsuit was only against one
17 defendant, and that was Coral Resorts and all those
18 claims related to the contract. All these other
19 lawsuits have numerous defendants involved and there
20 are many claims that have nothing to do with the
21 contract in any way whatsoever and are not subject to
22 that arbitration clause. They relate in no way

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1 whatsoever to the contract or the arbitration clause.
2 And those are namely the causes of action against the
3 homeowners association and against Dean --

4 So we do not believe that those causes of action
5 for those lawsuits should be compelled to arbitration.

6 THE COURT: All right.

7 MS. MCDANIEL: Your Honor, I think we perhaps
8 need to -- before I object to Mr. Naert's points
9 there, we need to clarify whether -- it's our
10 understanding that even if they are -- were filed in
11 magistrates court, that those cases would also be
12 compelled to arbitration.

13 THE COURT: If they've got the clauses in the
14 contract --

15 MS. MCDANIEL: Yes. Thank you, Your Honor.

16 MR. SOWELL: And they do.

17 MS. MCDANIEL: Right. They do.

18 MR. SOWELL: So that's the reason that I was
19 sort of nudging Ms. McDaniel, is the notion that those
20 three cases would be tried on a consolidated basis
21 would not be the case.

22 MR. NAERT: Your Honor, there are no currently-

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1 filed magistrates court cases with arbitration
2 clauses.

3 THE COURT: See, I don't know any of that.
4 Y'all get it straight.

5 If there are no clauses -- arbitration clauses
6 in the magistrates filed cases, the trials proceed.
7 If there are clauses, they go to attention.

8 MS. MCDANIEL: Thank you, Your Honor.

9 MR. SOWELL: May I? I want to make one more
10 remark about consolidation, because I looked it up and
11 I don't want to waste my time or yours.

12 But the main case on this question about the
13 propriety of consolidation of trial in a United States
14 Supreme Court case. It's an old case called Johnson
15 vs. Manhattan Railway Company. It's found at 289 U.S.
16 479. It is a 1933 United States Supreme Court case,
17 but it is the case that is most often cited. And it
18 is cited for the proposition that, quote,
19 consolidation is permitted as a matter of convenience
20 and economy and administration but does not merge the
21 suits into a single cause or change the rights of the
22 parties or make those who are parties in one suit

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1 parties in another, end quote. And we believe that
2 principle has been affirmed by the South Carolina
3 Supreme Court, as if it needed to be. But In Re
4 Asbestosis cases, which is found at 266 S.C.2nd 773,
5 it's a 1980 South Carolina Supreme Court case.

6 So, Your Honor, just to make sure the record is
7 perfectly clear, we object to consolidation with those
8 cases for trial because we believe our due process
9 rights would be denied.

10 THE COURT: Well, due process rights are out the
11 window.

12 I've consolidated lord knows how many, and I've
13 heard these. This is just simple little old
14 magistrate court cases. I have tried them with
15 fifteen different parties, and I've honestly never had
16 any problem explaining it to the jury about the
17 difference and so forth.

18 If it comes out that the positions are totally
19 antagonistic and so forth, they won't be consolidated.
20 But I don't know any of that at this point.

21 MR. SOWELL: Understood. Understood.

22 THE COURT: So there you go.

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1 MR. SOWELL: So the question is is are you
2 ruling on consolidation today or are you suspending
3 that consideration until you read the cases?

4 THE COURT: Until you file something saying why
5 they shouldn't be consolidated, you know, with some
6 merit to it.

7 Basically, my intent is I'm not trying thirty-
8 five cases. I don't really care. Life is too short.

9 MR. SOWELL: I understand.

10 THE COURT: So little old magistrates court
11 cases can be tried with the same jury in the same day.
12 Three different trials, if you want to, but that's
13 another matter.

14 MR. SOWELL: I understand.

15 THE COURT: But I don't know anything about the
16 magistrates court cases. Haven't read the files. But
17 there has to be something really out of the ordinary
18 as to why they couldn't be consolidated.

19 MR. SOWELL: Typically, what you would have is a
20 motion to consolidate. There's been no motion to
21 consolidate.

22 THE COURT: I understand that. Except the

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1 Supreme Court says they're all consolidated in front
2 of me. So there you go.

3 MR. SOWELL: So my question is are you ruling
4 today?

5 THE COURT: I am saying it's my intent to
6 consolidate. You have the right to move as to why
7 your particular case shouldn't be consolidated. You
8 do have that right. I mean, I'm not signing any order
9 consolidating them today. I'm only saying try the
10 little old magistrates court cases, find out how the
11 landscape shapes, and move on.

12 MR. SOWELL: The reason I ask is if they aren't
13 consolidated, I think we would have a right to take an
14 appeal on the ground that it affects the mode of
15 trial, which is one of the --

16 THE COURT: If you want to delay it again for
17 years, you can do it. But you haven't given me any
18 reason why they shouldn't be consolidated other than
19 to stand there and say, we don't want to consolidate
20 it. I'm giving you that right.

21 MR. SOWELL: You want us to file some sort of
22 written --

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1 THE COURT: Hey, there you go.

2 MR. SOWELL: Thank you.

3 MS. MCDANIEL: Your Honor, if I may address
4 Mr. Naert's concerns about successive contracts, with
5 respect to that, on the arbitration provisions? In
6 these cases, it is a fact that several of the disputes
7 that are subject to arbitration, there have been
8 multiple purchases over time by the plaintiffs.
9 However, each of those successive purchases, when you
10 purchase your first time share interest and you go to
11 purchase the second one, the equity from that initial
12 one is transferred to the second purchase. The
13 original contract is cancelled. You end up with a
14 totally new purchase and the previous purchase no
15 longer exists.

16 So once you get to the end of those successive
17 contracts, the plaintiffs are left owning only one
18 time share that is subject to one contract that has
19 the arbitration provision in it. So despite the fact
20 that there may have been historically previous
21 purchases, those previous purchases are essentially
22 wiped clear and subsumed by the final purchase that is

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1 subject to arbitration.

2 And then there is a good amount of case law that
3 states that third parties are subject to arbitration
4 provisions, even if they are not signatories to that
5 arbitration agreement, to the extent that the dispute
6 arises out of a transaction that they were involved
7 in.

8 All of these cases revolve around time share
9 purchased by the plaintiff. All of the defendants
10 have been named because the plaintiffs feel that they
11 had some connection with that purchase. So these --
12 even though not all the named defendants are
13 signatories to the agreement to arbitrate, they should
14 be included in the arbitration as included third
15 parties.

16 THE COURT: All right. And the arbitrator can
17 sort through that. And if they don't like that, they
18 can bring it back to Court.

19 MS. MCDANIEL: Thank you, Your Honor.

20 And I apologize. One last point that I failed
21 to mention is that we have had some difficulty,
22 particularly in the Powell case. Judge Dukes did

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1 compel that matter to arbitration back in December.
2 The plaintiffs did not initiate arbitration at all.
3 We have had to do that ourselves. And we would ask
4 that the Court, in the cases that are compelled to
5 arbitration, that the plaintiffs be required to
6 initiate arbitration by filing a demand for
7 arbitration with the American Arbitration Association
8 within thirty days of the date of your order.

9 THE COURT: Well, I thought you had already done
10 it yourself in some cases.

11 MS. MCDANIEL: We've only done it in one case,
12 Your Honor.

13 MR. NAERT: Your Honor, the reality is that if
14 all of our clients are required to pay the filing fee,
15 they're not going to be able to afford it. The filing
16 fee is I think either \$775 or nearly \$1,000, plus two
17 or \$300 on the back end. And the reality is, not many
18 of our clients are going to be able to afford this.

19 And that's why it's so important that we ask
20 Your Honor to decide upon which set of rules apply,
21 either their Frankenstein rules in their contract, the
22 commercial rules, or the consumer rules. Because

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1 under the consumer rules, the consumer is only
2 supposed to pay \$200 and the business pays all the
3 fees after that. So these terms are so onerous and so
4 burdensome upon our clients, that they're not going to
5 be able to, after already having waived their right to
6 a jury and a public trial, to obtain an attorney and
7 pay these fees under these commercial dispute rules.
8 I don't foresee our clients being able to afford to
9 pay those fees.

10 THE COURT: What about all of that?

11 MS. MCDANIEL: Well, Your Honor, in fact,
12 there's nothing onerous about arbitration here. The
13 Time Share Act specifically provides an option or --
14 well, it's not an option, in fact. It requires
15 arbitration where the plaintiffs file to recover from
16 the time share -- Vacation Time Share Recovery Fund.
17 So that is a statutory requirement of arbitration in
18 those cases.

19 So if arbitration were onerous, I don't believe
20 that our legislature would have mandated it for time
21 share owners in those situations.

22 Your Honor, costs should not be determinative of

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1 the right determined by the arbitration agreement.

2 MR. DUBOIS: Just to inform the Court: the
3 South Carolina Real Estate Commission, Department of
4 Labor and Licensing and Regulation are not -- that
5 process doesn't now exist. We have requested that
6 process many, many times. They simply do not do that.
7 They have never done that. There is no funds
8 available in the time share recovery fund. We've
9 investigated that fully. So that entire argument --

10 MS. MCDANIEL: Your Honor, that's why the
11 statute decides what the Real Estate Commission does.
12 But that is not something that's in this record or
13 before this Court.

14 THE COURT: All right. Well, just prepare an
15 order, send it to them, and they can object to it.

16 MR. DUBOIS: Thank you, Your Honor.

17 When you mentioned a moment ago about Judge
18 Dukes' ruling, it reminded me of another ruling that
19 Judge Dukes has made in this case that unfortunately
20 was never set down in an order. And I can tell the
21 history of that. But what that order was was from a
22 discovery hearing that Judge Dukes held in October of

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1 2013 wherein Judge Dukes, after hearing lengthy,
2 lengthy arguments -- and we've got the transcripts,
3 Your Honor -- under 1-E ordered the defendants to turn
4 over their unredacted complaints of similar fraudulent
5 sales practices. It's at page 96 of your transcript.

6 Now, that -- a proposed order was submitted to
7 Judge Dukes in order to memorialize his oral ruling
8 from the bench that day. And on the day that Judge
9 Dukes had set out the deadline for responses to that
10 proposed order, the defendants filed a motion to refer
11 all these cases to the business court. And as you
12 know, that's how the cases all ended up on Your
13 Honor's desk.

14 Now, as I understand it, that is the law of the
15 case, as well, just the same as if Judge Dukes ordered
16 this or that as far as this arbitration. So what we
17 would ask the Court to do is to either direct Judge
18 Dukes to memorialize that oral ruling, or I can hand
19 you up a proposed order and Your Honor can sign it.

20 What it is is it's going to get to the bottom of
21 how many complaints these people have ever gotten. I
22 think they've always maintained in all these cases

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1 that these are just a -- I believe this is from the
2 last hearing -- a small but vocal subset. And maybe
3 that's true. But maybe it's not. And if it's not,
4 and they turn over those records --

5 THE COURT: If the record reflects that Judge
6 Dukes ordered it, then we'll memorialize it. That's
7 all.

8 MS. MCDANIEL: Your Honor, may it please the
9 Court.

10 I don't think that's an accurate recitation of
11 what happened, Your Honor. Again, Your Honor, putting
12 discovery before the motions to dismiss and before
13 we've even done any answering in the case -- we're not
14 trying to put off this case. It is plaintiff's
15 counsel filed two appeals now, which is the -- you
16 know, the gravamen of why these other things are going
17 to be stayed. So to get into discovery before we've
18 heard the motions to dismiss and before we have even
19 answered, Your Honor, I think is premature.

20 There was some discussion, as Mr. Dubois alluded
21 to, but it was all just discussion. Judge Dukes
22 indicated some rudimentary thoughts. He did not ask

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1 for an order to be drafted. Darren DuBois submitted
2 an order and we asked for time to respond to the order
3 and ultimately said, Your Honor, you know, this is
4 premature; you know, we don't think that this -- that
5 he should be --

6 THE COURT: Well, at some point you're going to
7 have to give that information.

8 MS. MCDANIEL: Some point, Your Honor?

9 THE COURT: At some point you're going to have
10 to give him that information. That's relevant to the
11 case.

12 MS. MCDANIEL: Well, Your Honor, I --

13 THE COURT: I'm not ordering it today. But if
14 you say he was just, like I'm commenting now about
15 this is going to be consolidated. You know --

16 MS. MCDANIEL: Okay. So no order today, Your
17 Honor? You're reserving judgment on that point?

18 THE COURT: Right.

19 MR. DUBOIS: Your Honor, I just want, for the
20 record, to clarify. And I'm not trying to put words
21 into Judge Dukes's mouth: do what you can, because I
22 think it's discoverable. Page 96 of the transcript.

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June 5, 2014

1 And I'll hand that up, Your Honor --

2 THE COURT: I said the same thing. You're going
3 to be able to discover it. Maybe not today, because
4 it's not in front of me, but eventually they're going
5 to have to give you that information.

6 MR. SOWELL: Your Honor, just to be clear,
7 you're not issuing an order today on the question --

8 THE COURT: I am not.

9 MR. SOWELL: -- of consolidation?

10 THE COURT: No. I'm just telling you that's my
11 intent.

12 MR. SOWELL: I understand. But no order is
13 being issued.

14 THE COURT: No.

15 MR. SOWELL: Thank you.

16 THE COURT: I haven't even read the cases.

17 MR. SOWELL: Thank you.

18 THE COURT: What else can I help y'all with
19 today?

20 MR. DUBOIS: Your Honor, we've got a couple of
21 motions for partial summary judgment, if the Court
22 will take up now. It's true they have not filed an

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1 answer. They've filed many, many, many motions to
2 dismiss but they've not yet answered. Regardless,
3 it's been longer than thirty days from the day that we
4 filed these actions. Our motions refer to summary
5 judgment we filed in several cases, but they would
6 apply to many, many cases. And I'll get into it in
7 more detail. But the paperwork is wrong. Under the
8 Time Share Act, their paperwork is wrong. And what we
9 would ask is that the Court recognize that their
10 paperwork is wrong. And part of the Time Share Act
11 says --

12 THE COURT: All right. I mean, I read your
13 things on that. They have a right to answer that. We
14 aren't there yet.

15 But it's just like -- if your position is
16 correct, it's like if the speed limit is thirty-five
17 and you go thirty-six, charge the jury that that's
18 negligence per se, you know.

19 MR. DUBOIS: Yes, Your Honor.

20 THE COURT: Same thing. If the time Share Act
21 says you must do X, Y and Z, and you don't do Y, then
22 that's a violation of the Act.

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1 But I can't rule on that today. They
2 strenuously object because they haven't answered yet;
3 right?

4 MS. SHUTT: Yes, Your Honor.

5 THE COURT: The judge has been around. That's
6 all.

7 MR. DUBOIS: I understand.

8 What we're asking for, Your Honor, is an order
9 from the Court directing that that's an established
10 fact. Because the reality is we can answer --

11 THE COURT: Well, they have the right to answer.
12 When are y'all going to answer?

13 MS. SHUTT: Your Honor, we can't answer until we
14 get the motions to dismiss heard, and we can't argue
15 those until the Court of Appeals rules.

16 THE COURT: That's right. Okay.

17 I guess that's all I can help y'all with until
18 the Court of Appeals rules.

19 But if there's something I can help y'all with,
20 I can come down here sometimes.

21 MR. DUBOIS: Yes, Your Honor.

22 We have another issue perhaps you can help us

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1 with. Mr. LaFleur, his case was the first that we
2 filed in October of 2012. Defense counsel noticed
3 him, properly noticed him, and started to take his
4 deposition. And they did so. And I terminated his
5 deposition three times and then Judge Dukes kept
6 ordering Mr. LaFleur to come back to deposition.
7 Well, when we last left, I terminated for a third
8 time. We're up to over six hours for just Mr.
9 LaFleur's deposition. The questions have ranged from
10 everything concerning the time share -- he bought a
11 time share -- time share purchase to his mental health
12 to his personal finances. This isn't an employment
13 law case. This isn't a case where you need to ask him
14 anything other than tell us about this time share
15 transaction. But, yet, six hours plus, they've delved
16 into how he found these attorneys and everything else
17 under the sun. His relationship with other litigants,
18 all of these things.

19 One thing that we would look to the Court for is
20 some guidance and direction, perhaps some sort of an
21 order, because as you can see, there's a lot of people
22 that need to be deposed and there's a lot of

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1 defendants that need to be deposed. We're not
2 interested in going over the life story of every one
3 of the defendants' agents. What we want to do is know
4 about these transactions.

5 I think based on the number of cases, the number
6 of depositions that may be forthcoming -- I couldn't
7 even get them to come from seven hours. They want
8 seven hours with these people. I don't think it takes
9 more than an hour.

10 But what we look to Your Honor is for guidance.
11 These are people that filed a lawsuit, correct. But
12 they're people. They have lives. All of this is very
13 expensive. There's simply no need to abuse these out-
14 of-state litigants, largely, in the course of this
15 lawsuit. So we would ask that the Court set some
16 reasonable guidelines for the depositions to come.

17 THE COURT: Well, in my twenty-six plus years,
18 I've never had a deposition stopped more than two
19 times.

20 Now, just on an unrelated matter: in my weekly
21 conversation with Justice Pleicones -- we just go back
22 a long ways. He either calls me or I call him. And

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1 this was last week. I said, anything happening. He
2 said, I'm just looking at the proposed order sent to
3 me by one group of attorneys wanting us to pass a rule
4 limiting deposition time to seven hours like they have
5 in federal court.

6 I didn't even know they had a rule in federal
7 court limiting it to seven hours because I haven't
8 been in federal court in twenty-eight years.

9 So he said, what do you think. I said, well,
10 you know, I don't believe you need more than an hour
11 and a half on any deposition. That's me.

12 So how much more time do y'all need? One? Two?

13 While you don't like it, they're entitled to
14 explore a little bit, like financial condition --

15 MS. SHUTT: Mental competency, Your Honor.

16 THE COURT: That may be why he brought the law
17 suit, not for real reasons but because he couldn't pay
18 the regime fees or whatever y'all have on time share.
19 They're entitled to explore that, too.

20 As you have ascertained, they would like to get
21 y'all. So that's all. They can explore it a little
22 bit. It's just like in the wreck cases the attorneys

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1 ask -- I don't let them go into it -- why did you go
2 to the lawyer before you went to the doctor, you know.
3 They can ask that question. I don't let them go into
4 it, but that's apparently all they're doing.

5 MR. DUBOIS: Well, they filed a federal lawsuit
6 against us personally. I know --

7 THE COURT: Well, I don't know about that.

8 MR. DUBOIS: I know they want to get us. I
9 really do.

10 THE COURT: Well, I just gathered they wanted to
11 get you --

12 MR. DUBOIS: Yes, Your Honor.

13 THE COURT: -- like you want to get them.

14 MR. DUBOIS: Yes, Your Honor.

15 THE COURT: But it's the clients that are at
16 issue and not the lawyers.

17 MR. DUBOIS: Yes, Your Honor.

18 That's also the law of the case, is Judge
19 Dukes --

20 THE COURT: But back to this. No more than one
21 more hour.

22 And you can't stop it. You can object, the

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1 Court will rule on it later.

2 MS. SHUTT: Your Honor, I just have to say, you
3 know, as to Mr. LaFleur, it was improperly terminated
4 three times.

5 THE COURT: Well, I understand that.

6 MS. SHUTT: And Judge Dukes keeps reordering
7 them -- him to reset.

8 Fifty-one -- the last time I checked, fifty-one
9 motions have been filed in Mr. LaFleur's case.
10 Twenty-six subpoenas have been issued by plaintiff's
11 counsel, as I recall. So for them to say -- makes it
12 sound like a small thing. It's not a small thing,
13 Your Honor.

14 And since -- you know, that was just when we --
15 it was just my firm taking the deposition when it got
16 terminated. Completely polite and all appropriate
17 questions, Your Honor. Since that time, all of these
18 other parties have been added, Your Honor, and they
19 have not had an opportunity to ask Mr. LaFleur any
20 questions related to their clients.

21 So, you know, I'm happy for -- related to my
22 client, for it to be limited to one more hour. That's

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1 all we need. But all these additional parties, Your
2 Honor, they need an opportunity to ask Mr. LaFleur
3 questions related to their clients.

4 THE COURT: Fifteen minutes.

5 MS. MCDANIEL: Per party, Your Honor?

6 THE COURT: Yeah. That's plenty. Because
7 they'll have the whole other deposition to read, and
8 their questions are just limited to any connection
9 with their clients.

10 MS. SHUTT: And, Your Honor, of course, LaFleur
11 is stayed because there's an appeal pending the
12 plaintiff's counsel, Your Honor, so I'm not sure we
13 have jurisdiction today to even talk about what the
14 lawyers --

15 THE COURT: Then we don't have jurisdiction to
16 talk about it.

17 MS. SHUTT: Okay.

18 THE COURT: Good luck.

19 MR. DUBOIS: Any direction as to any of the
20 other clients? Obviously, we have almost fifty that
21 are compacted by this consolidation. Just a
22 reasonable set number of hours. I think seven is

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1 ridiculous but --

2 THE COURT: Seven is ridiculous, in my opinion.
3 I mean, the cases -- not to minimize the damage that
4 your clients feel like they have sustained, but this
5 isn't the Irish sweepstakes or anything. Nobody is
6 going to retire on this litigation, except maybe the
7 plaintiff's attorneys they hope.

8 But it doesn't take that long. You've got a lot
9 of people that are entitled to ask questions, though,
10 other than Callison Tighe. So just limit them to two
11 hours unless there's something else that pops up.

12 MR. OVERSTREET: Your Honor, may I speak
13 briefly?

14 THE COURT: Sure.

15 MR. OVERSTREET: I represent Mr. Barfield. We
16 haven't been involved in any discovery yet. We're
17 only in six of the cases. But given the fact that
18 there are four or five defendants, or whatever, I
19 would ask that at this early stage before our
20 dispositive motions have been heard that Your Honor
21 would consider just allowing the civil procedure rules
22 to apply to depositions and Rule 30 instead of, you

LaFleur, et al vs. Coral Resort, et al
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1 know, hamstringing this in that regard.

2 THE COURT: Well, the thing is, we -- not that
3 you will abuse anything, but litigants aren't used to
4 being hammered for two and three and four hours over
5 something that covers ten questions. That's all. Two
6 hours is plenty of time.

7 MR. OVERSTREET: For all of -- for all the
8 defendants?

9 THE COURT: That's plenty of time. You can ask
10 for more time if something comes up that requires
11 delving into further.

12 MS. SHUTT: Your Honor, I would just point out
13 in the LaFleur case alone, about 10,000 documents have
14 been produced by plaintiff's counsel -- by plaintiffs.
15 So, you know --

16 THE COURT: Well, if they do, then you're going
17 to question them about all the documents --

18 MS. SHUTT: Right.

19 THE COURT: -- it just takes a little longer.

20 MS. SHUTT: Well, and so that's why, Your Honor,
21 if you say -- it's also the same --

22 THE COURT: All right. I'm not doing an order.

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1 Try to limit it to two hours.

2 MS. SHUTT: And I would just say, Your Honor,
3 with this many attorneys -- so let's just say, one,
4 two, three, four five attorneys for five different
5 parties, and there are more in some cases, plus 10,000
6 documents, you know, I think that two hours is
7 virtually impossible.

8 THE COURT: Well, try to do it in two. If it
9 takes a little longer -- I'm not ordering that. Just
10 giving you some guidelines.

11 MR. DUBOIS: Thank you, Your Honor.

12 MS. SHUTT: Thank you, Your Honor.

13 MR. DUBOIS: It's almost 15,000 pages of
14 documents. The reality is, most of them are
15 complaints against this company. These people don't
16 know anything about those. They have a similar story
17 but there's certainly no need to be questioned about
18 ten years of complaints.

19 Be that as it may, we did also ask the Court to
20 order publication. There's a couple of -- at least
21 maybe one salesman that's been evading service. I
22 don't mean to say that he's been purposefully evading

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1 service. But we've been unable to serve him. It's
2 Mr. Sowell's client, a man named Bill Lechezie
3 [phonetic]. He lives in Hilton Head. We know where
4 he lives. Won't come to the door for our process
5 server, and we've tried with the sheriff to no luck,
6 either. What we would ask is for an order of
7 publication.

8 I don't know if Mr. Sowell has had an update on
9 whether he can accept service or not. Maybe he has.

10 THE COURT: Well, we will ask him.

11 MR. SOWELL: I may not.

12 THE COURT: He is not authorized to accept
13 service, so if you can't serve him through normal
14 sheriff's department channels, you can have an order
15 of publication if you file the appropriate affidavit
16 and so forth, which you may have already done. I
17 don't know.

18 MR. NAERT: Yes, Your Honor, we have.

19 THE COURT: All right.

20 MR. SOWELL: You filed a motion.

21 MR. NAERT: Yes, we filed a motion for
22 publication with the subpoena from the sheriff and the

LaFleur, et al vs. Coral Resort, et al
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1 private process server that they could not serve
2 Mr. Bill Lechezie [phonetic].

3 THE COURT: I saw that somewhere, so how about
4 just sending me another one so I don't have to dig
5 through all the files.

6 MR. NAERT: Yes, Your Honor.

7 There's one issue that is not addressed in the
8 defendants index. They have filed a motion to quash I
9 believe every subpoena we've ever sent in every
10 lawsuit. Every subpoena we've ever sent.

11 I would tell the Court that I believe it is
12 absolutely relevant. All of the information is
13 discoverable, I do firmly believe. I kindly ask that
14 all these motions be dismissed.

15 THE COURT: What?

16 MS. SHUTT: Your Honor, I think Mr. Naert is
17 referring to subpoenas in the LaFleur case which,
18 again, is on appeal and has been stayed, Your Honor.
19 So I think, again, putting discovery, until we have
20 actually gotten motions to dismiss heard, and answers,
21 is premature.

22 We certainly did file motions in some of them,

LaFleur, et al vs. Coral Resort, et al
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1 but certainly not all of the subpoenas.

2 THE COURT: All right. Can't do anything until
3 the Court of Appeals rules.

4 MR. DUBOIS: Your Honor, there's two motions
5 that I suppose will be heard at a later date. I just
6 wanted to go over them. One is motion to certify
7 class in Mr. Watkins' case. Mr. Watkins is here
8 today. That absolutely concerns issues that are on
9 appeal, as well as a motion to deem admitted, request
10 to admit. That also does concern issues on appeal, so
11 I suppose those need to be heard at a later date.

12 THE COURT: All right.

13 MS. SHUTT: Your Honor, Watkins is subject to
14 binding arbitration, so this would be something that
15 the arbitrator would pick up.

16 There is an anti-class provision, which was
17 endorsed by the U.S. Supreme Court. So, again, that
18 would be for an arbitrator to determine, to interpret,
19 Your Honor.

20 THE COURT: Okay.

21 MR. DUBOIS: Your Honor, the problem with that
22 is -- take it up at a later date, Your Honor.

LaFleur, et al vs. Coral Resort, et al
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June 5, 2014

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THE COURT: Got it.

All right. Y'all have a nice day.

MS. SHUTT: Thank you so much, Your Honor.

[HEARING CONCLUDES AT 10:30 P.M.]

LaFleur, et al vs. Coral Resort, et al
Motions Hearing
June 5, 2014

C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the hearing before the Honorable J. Ernest Kinard, Jr., on Thursday, June 5th, 2014.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 6th day of June, 2014.

Mia Perron

Mia Perron, CVR-CM-M

Circuit Court Reporter

9th Judicial Circuit

MIA PERRON, CVR-CM-M

COPY

The Supreme Court of South Carolina

John J. Meilert		Plaintiff,
	v.	
Coral Resorts, LLC et al., 2013-CP-07-1966;		Defendants.
Patricia Feeley		Plaintiff,
	v.	
Coral Resorts, LLC et al., 2013-CP-07-2410;		Defendants.
Dennis and Margaret McCloskey		Plaintiffs,
	v.	
Coral Resorts, LLC et al., 2013-CP-07-2835;		Defendants.
Alexander Hail and Rebecca Key		Plaintiffs,
	v.	
Coral Resorts, LLC et al., 2013-CP-07-2890;		Defendants.
John King and Laura King		Plaintiffs,
	v.	
Coral Resorts, LLC et al., 2013-CP-07-2967;		Defendants.
Sondra Ettliger		Plaintiff,
	v.	
Coral Resorts, LLC et al., 2013-CP-07-2982;		Defendants.

Ex. B

Sylvia and Cletus Moore		Plaintiffs,
	v.	
Coral Resorts, LLC et al., 2013-CP-07-3013;		Defendants.
Diane Tobin		Plaintiffs,
	v.	
Coral Resorts, LLC et al., 2013-CP-07-3051;		Defendants.
Steven and Debra Schneider		Plaintiffs,
	v.	
Coral Resorts, LLC et al., 2013-CP-07-3271;		Defendants.
Albert R. LaFleur and Eileen LaFleur		Plaintiffs,
	v.	
Coral Resorts, LLC et al., 2013-CP-07-3746;		Defendants.
Foster and Janice Watkins		Plaintiffs,
	v.	
Coral Resorts, LLC et al., 2014-CP-07-0256;		Defendants.
Charles Smith and Janet Smith		Plaintiffs,
	v.	
Coral Resorts, LLC et al., 2014-CP-07-0334;		Defendants.
James Wilson and Deborah Wilson		Plaintiffs,
	v.	
Coral Resorts, LLC et al., 2014-CP-07-0361;		Defendants.

Jennifer Mc Quarrie and Michael Strangie

v.

Coral Resorts, LLC et al.,
2014-CP-07-0364;

Plaintiffs,

Defendants.

Norbert Breton and Claudette Breton

v.

Coral Resorts, LLC et al.,
2014-CP-07-0370;

Plaintiffs,

Defendants.

Donna Madden and William Madden

v.

Coral Resorts, LLC et al.,
2014-CP-07-0488;

Plaintiffs,

Defendants.

Shirley M. James and David L. James

v.

Coral Resorts, LLC et al.,
2014-CP-07-0489;

Plaintiffs,

Defendants.

Carie Olsen and Matthew Olsen

v.

Coral Resorts, LLC et al.,
2014-CP-07-0490;

Plaintiffs,

Defendants.

Phillip Billings and JoLane Billings

v.

Coral Resorts, LLC et al.,
2014-CP-07-0577;

Plaintiffs,

Defendants.

Wendell Pile and Audre Pile

v.

Coral Resorts, LLC
2013-CP-07-0645;

Plaintiffs,

Defendant.

William Davenport and Evelyn Davenport	Plaintiffs,
v.	
Coral Resorts, LLC et al., 2014-CP-07-0880;	Defendants.
 Michael Jackson and Barbara Jackson	Plaintiffs,
v.	
Coral Resorts, LLC et al., 2014-CP-07-0882;	Defendants.
 Michael Adams and Shonnie Adams	Plaintiffs,
v.	
Coral Resorts, LLC, Reba Management, Inc. et al., 2014-CV-0710300299;	Defendants.
 Gregory Gurbacki	Plaintiff,
v.	
Coral Resorts, LLC et al., 2013-CV-0710300349;	Defendants.
 Keith v. Hickman and Paula D. Hickman	Plaintiffs,
v.	
Coral Resorts, LLC et al., 2014-CV-0710300530.	Defendants.

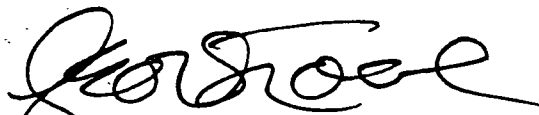
ORDER

The above matters are pending in Beaufort County. Pursuant to the provisions of S.C. Const. art. V, § 4, I find that consolidating the above cases and assigning a single circuit court judge to dispose of all matters arising out of the Coral Resorts litigation currently pending and to be filed in the state

court system will promote the efficient and expeditious disposition of this litigation by uniform rulings and will conserve the resources of the parties, their counsel, and the judiciary. Therefore,

IT IS ORDERED that the cases listed above are consolidated and assigned to the Honorable J. Ernest Kinard, Jr. Judge Kinard is assigned exclusive jurisdiction over all similar cases presently filed or to be filed in the state court system involving the Coral Resorts litigation, whether such cases are originally filed in the circuit or magistrate court. Judge Kinard shall decide all matters pertaining to these cases, and pursuant to this assignment shall set deadlines as he deems appropriate, and shall retain jurisdiction over these cases regardless of where he may be assigned to hold court and may schedule such hearing as may be necessary at any time without regard as to whether there is a term of court scheduled.

IT IS SO ORDERED.



Jean H. Toal
Chief Justice of South Carolina

Columbia, South Carolina
May 8, 2014

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS
CARMEN T. MULLEN, JUDGE
CASE NO. 2012-CP-07-3746

APPELLATE CASE NO. 2014-000-827

Albert and Eileen LaFleur.....Appellants

v.

Coral Resorts, LLC, Hilton Head Hospitality, LLC d/b/a Hilton Head Guest Services,
Sunrise Vacation Properties, Ltd., Sherri J. Smith, Patrick Budnik, Stephen Deutsch,
Katherine Swisher, and Reba Management, Inc.....Respondents


CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on June 20, 2014, in Hilton Head Island, South Carolina, I served a copy of the Motion for Expedited Hearing by depositing the same in the United States Mail, postage prepaid, and addressed as follows:

Nekki Shutt, Esquire and Kathleen McDaniel, Esquire
Callison Tighe & Robinson, LLC
P.O. Box 1390
Columbia, SC 29202

Thornwell Sowell, III, Esquire and Bess J. DuRant, Esquire
Sowell Gray, Stepp & Lafitte, LLC
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Columbia, SC 29211

NAERT AND DUBOIS, LLC



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June 20, 2014

Ms. Jenny Kitchings
Clerk of the South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

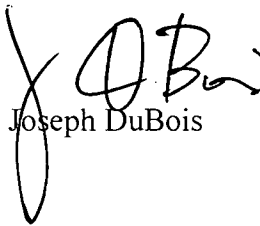
Re: Albert R. LaFleur and Eileen LaFleur v. Coral Resorts. LLC et al
2014-000-827

Dear Ms. Kitchings:

Please find enclosed for filing the original and six (6) copies of Appellants' Motion for Expedited Appeal and Certificate of Service in the above referenced matter, as well as a check in the amount of \$25.00 for the filing fee.

With kindest regards, I am,

Sincerely yours,



Joseph DuBois

Enclosures

Cc: Nekki Shutt, Esquire and Kathleen McDaniel, Esquire
Thornwell F. Sowell, III, Esquire