

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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JUL 14 2014

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

SC Court of Appeals

12866

The Honorable Carmen T. Mullen, Circuit Court Judge

Case No. 2012-CP-07-3746
Appellate Case No. 2014-000827

Albert R. LaFleur and Eileen M. 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, Steven Deutsch,
Katherine Swisher, and Reba Management, Inc.,.....Respondents.

RESPONDENTS' JOINT MOTION TO STRIKE

Respondents respectfully move for this Court to strike Appellants' Reply to Respondents' Return to East Coast Newspapers, Inc.'s Motion to Intervene (Reply to Newspapers' Motion to Intervene) for the reasons set forth herein.

RELEVANT PROCEDURAL HISTORY

On May 22, 2014, Respondents Coral Resorts, LLC, Hilton Head Hospitality, LLC d/b/a/ Hilton Head Guest Services, and Reba Management, Inc. filed a Motion to Seal in this appeal. (Mot. to Seal, filed May 22, 2014). Appellants did not file a return to the Motion to Seal within 10 days of the date of the Motion to Seal as would have been permitted pursuant to Rule 240(e), SCACR. Appellants also did not file any motions for an extension or to file out of time.

On or about June 10, 2014, East Coast Newspapers, Inc. d/b/a The Island Packet and the Beaufort Gazette (the Newspapers) filed a Motion to Intervene for the Purpose of Challenging the Sealing of the Record. (Mot. to Intervene, dated June 10, 2014). On June 20, 2014, Respondents moved for an extension to file a Return to the Newspapers' Motion to Intervene, pursuant to Rule 240, SCACR. (Mot. for Extension, filed June 20, 2014). This Court granted Respondents' motion for an extension. (Or., filed June 23, 2014). The Respondents then filed a timely Joint Return to the Newspapers' Motion to Intervene, pursuant to Rule 240(e), SCACR. (Joint Return, filed June 25, 2014). The Appellants did not file a return to the Newspapers' Motion to Intervene. *See* Rule 240(e), SCACR. The Appellants also did not file any motions for an extension or to file out of time.

Notably, the Newspapers never filed a reply to the Respondents' Joint Return to the Newspapers' Motion to Intervene.

Without any authority to do so, on June 7, 2014, the Appellants filed what they termed a "Reply" to the Respondents' Joint Return to the Newspapers' Motion to Intervene, notwithstanding the facts that they were not the movant, never moved for leave of this Court to file such a Reply, and never moved for an extension or for leave to file out of time. Based upon these facts, the Respondents request that this Court strike the Appellants' "Reply."

ARGUMENT

Pursuant to Rule 240, SCACR, Respondents move this Court to strike the Appellants' Reply to the Respondents' Joint Return to East Coast Newspapers, Inc.'s Motion to Intervene. As set forth herein, the Appellants' Reply is not in compliance with

the South Carolina Appellate Court Rules because they do not have a right to file a reply and even if they do, their reply is untimely.

As set forth in Rule 240(f), SCACR, a **movant** may file a reply to a return within five days from the date of service of a return. The Appellants were not the movants—the Newspapers were. *See* Black’s Law Dictionary 1111 (9th ed. 2009) (defining “movant” as “[o]ne who makes a motion to the court”). Because the Appellants were not ones who made the Motion to Intervene, their Reply is procedurally improper and in contravention of the clear language set forth in Rule 240(f), SCACR.

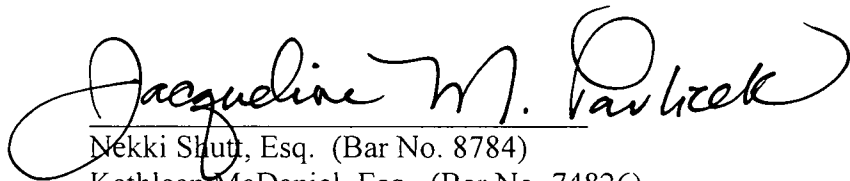
Moreover, even if the Appellants had the right to file a Reply to Respondents’ Joint Return to East Coast Newspapers, Inc.’s Motion to Intervene, their Reply is untimely. Rule 240(f), SCACR, allows a movant to file a reply to a return within five days from the date of service of a return. Respondents filed and served their Joint Return on June 25, 2014. Pursuant to Rule 240(f), SCACR, a reply to the Joint Return (or an extension request) was due to be filed by July 2, 2014. *See* Rule 263, SCACR (setting forth the manner in which the time prescribed by the South Carolina Appellate Court Rules is calculated). The Appellants mailed their Reply on or about July 7, 2014,¹ which is clearly outside of the time set forth in Rule 240(f), SCACR. Moreover, the Appellants failed to move for an extension to file their Reply or for leave to file their Reply out of time. Thus, even if it was procedurally proper for the Appellants to file a Reply to Respondents’ Joint Return to East Coast Newspapers, Inc.’s Motion to Intervene, which the Respondents reiterate it was not, the Appellants’ Reply is untimely.

¹ The Appellants’ Reply is undated.

Additionally, Respondents assert this Court should strike the Appellants' Reply because it contains references to the contents of a proceeding that an appellate court of competent jurisdiction has ruled non-public and has sealed. Respondents assert the Appellants' reference to this highly sensitive, sealed information in a Reply that they had no right to file in an interlocutory appeal that is not properly before this Court is improper. (*See* Joint Mot. to Dismiss, filed June 4, 2014). Further, it appears the Appellants failed to alert this Court of the highly sensitive contents of their Reply in an appellate case that is subject to a pending motion to seal.

CONCLUSION

For the reasons set forth herein, Respondents respectfully ask this Court to strike the Appellants' improper, untimely filing denominated as a Reply to Respondents' Return to East Coast Newspapers, Inc.'s Motion to Intervene.



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Columbia, South Carolina
July 15, 2014

AND

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Columbia, South Carolina
July 15, 2014

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Albert R. LaFleur and Eileen M. LaFleur,.....Appellants.

v.

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Sunrise Vacation Properties, Ltd., Sherri J. Smith, Patrick Budnik, Steven Deutsch,
Katherine Swisher, and Reba Management, Inc.,.....Respondents.

CERTIFICATE OF SERVICE

I do hereby certify I have served a copy of the following as indicated herein below, by mailing a copy of the following document by first class U.S. Mail postage pre-paid on the date below to the following:

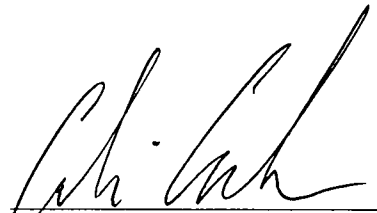
DOCUMENT SERVED: Respondents' Joint Motion to Strike

PARTIES SERVED:

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SC Court of Appeals

VIA HAND DELIVERY

The Honorable Jenny Abbot Kitchings, Clerk
SOUTH CAROLINA COURT OF APPEALS
Calhoun Building
1015 Sumter Street
Columbia, South Carolina 29201

**Re: Albert R. Lafleur and Eileen M. LaFleur v. Coral Resorts, LLC, Hilton Hilton Head Hospitality, LLC d/b/a Hilton Head Guest Services, Sunrise Vacation Properties, Ltd., Sherri J. Smith, Patrick Budnik, Steven Deutsch, Katherine Swisher, and Reba Management, Inc.
Appellate Case No.: 2014-000827
Our File No.: 5387.015**

Dear Madam Clerk:

Enclosed for filing, please find an original and seven (7) copies of the Respondents' Joint Motion to Strike, along with a Certificate of Service in the above-referenced matter. Please file the original and six of the copies, clock-in the seventh copy, and return it to us via the courier delivering same.

By copy of this letter, I am serving all counsel of record with a copy of the same.

If you have any questions or need anything further regarding this matter, please do not hesitate to contact me at my office.

With kind regards, I remain

Very truly yours,


Jacqueline M. Pavlicek, Esquire

JMP:cnc

Enclosures

cc: Nekki Shutt, Esquire (w/o enclosure)
Kathleen M. McDaniel, Esq. (w/o enclosure)
Thornwell F. Sowell, Esq. (w/enclosure)
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