

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

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APR 01 2015

SC Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Common Pleas Court Judge

Trial Court Case No.: 2013-CP-26-00980
Appellate Court Case No.: 2014-001152

RAWCLIFFE RESORTS, INC.,

Respondent.

v.

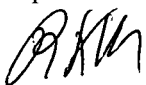
MATT BECKER AND ASSOCIATES, INC. d/b/a OCEAN BREEZE
VACATIONS, MATT BECKER AND KAREN CLARK BECKER,

Appellants.

APPELLANTS' PETITION FOR LEAVE OF COURT TO FILE MOTION FOR NEW TRIAL
PURSUANT TO RULE 60 (b), SCRPC

NOW COME THE APPELLANTS, by and through the undersigned and would respectfully
show and allege unto this Honorable Court as follows:

1. That the undersigned is the attorney for the Appellants in the above-captioned matter;
2. That this is an appeal arising out of a finding by the Trial Court that Appellants were in Contempt of a prior Consent Order Granting Temporary Injunction, which specifically enjoined Appellants from implying access to amenities owned by Respondent in advertising their vacation rental business relating to units at the Sand Dunes Resort in Myrtle Beach, South Carolina;

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3. That Appellants were found in contempt due, in part, to a theory advanced by Respondent that only Appellants, Ms. Ball, the renter, and her family had access to the unit when a generic envelope containing wristbands purporting to give access to amenities owned by Respondent were delivered;
4. That no direct evidence was presented linking Appellants to the delivery of the wristbands, and that the circumstantial evidence presented depends on the limited access theory presented by Respondent;
5. That Appellants have discovered new evidence which was not available and could not through the exercise of due diligence be discovered in the time period prescribed for filing a motion for new trial under Rule 59, SCRCP;
6. That the information now discovered contradicts the testimony offered on behalf of Respondent Rawcliffe Resorts, Inc. by its Chief Executive Officer and its Facilities Director at the Contempt Hearing held February 10, 2014;
7. That the Facilities Director, David Rivera testified, when questioned about an agent of Respondent gaining access to units which are not part of Respondent's rental program, that: "If it's the... if they [*sic*] in the rental program, I might go in there. If they're not in the rental program, we have no access to get in." (R. p. 136, lines 23-25); "If they're not in the rental program, we have no way to get in because they got the keys. They [*sic*] got their own keys." (R. p. 136, lines 10-12);
8. That Mr. Rivera, when further questioned about whether he ever accessed a unit looking for "evidence", Mr. Rivera stated that he doesn't remember. (R. p. 136, lines 12-25);
9. That Mr. Rawcliffe, the Chief Executive Officer of Respondent, indicated that the HOA and the management company, RAM, is supposed to have a key to all the units in the

resort and would have access to units in the case of an emergency or for pest control, but for no other purposes. (R. p. 120, line 8- p. 121, line 17);

10. That Mr. Rawcliffe had earlier testified that a number of the members of the Board of Directors for the HOA are employees of Respondent Rawcliffe Resorts, Inc. (R. p. 119, line 12- p.120, line 7)
11. That on March 18, 2015, Appellants forwarded a letter to Counsel which had previously been sent to the individual unit owners from the HOA Board of Directors dated January 9, 2015, advising that the HOA had changed the locks on the unit doors to ensure that the HOA had access to the units in compliance with the Master Deed for the Resort and including Three (3) pages of the Master Deed which allegedly support their action;
12. That on March 4, 2015, in a case entitled *Sand Dunes Oceanfront Tower Homeowners' Association, Inc. v. Bennett, et al.*, 2015-CP-26-00357, a hearing on cross motions for Temporary Injunctions was held before the Master in Equity for Horry County, the Honorable Cynthia Graham-Howe, wherein counsel for the HOA indicated that the locks placed on the individual units were accessible to Respondent Rawcliffe Resorts, Inc.;
13. That further, in that same hearing, counsel for the HOA indicated that the HOA had given Respondent the keys to access the units;
14. That furthermore, counsel for the unit owners indicated that on at least one occasion, Respondent had access to a unit when the owner of the unit did not, due to the keys provided by the HOA to the owner not working;
15. That counsel for the HOA stated that the actions taken by the HOA were an attempt to return the matter to the *status quo* after the individual owners had changed the locks to the entrance of their individual units, implying that the HOA, and by virtue of the sharing

of the keys, Respondent had always had access to all the units contained in the resort, including those not participating in Respondent's rental program;


16. Appellants believe that this newly discovered evidence contradicts the testimony given by Mr. Rivera and Mr. Rawcliffe concerning whether Respondent and its agents had access to the unit in question in this case and further creates reasonable doubt as to whether the generic wristbands produced at the Contempt Hearing, which is the subject of this Appeal, were produced by Appellants, where it was erroneously presumed that only Appellants and the renter, Ms. Ball, had access to the unit.
17. Appellants have attached a copy of the proposed Motion for Relief From Judgment Pursuant to Rule 60 (b)(2), SCRCPC with exhibits to this Petition, which more fully sets forth the newly discovered evidence and the grounds for the motion.
18. Appellants request that this Court grant Appellants the right to file the attached motion and supporting documents therefor in the Trial Court and remand jurisdiction to the Trial Court to hear Appellants' Rule 60 (b) Motion.

I SO MOVE AND PETITION

[SIGNATURES CONTAINED ON FOLLOWING PAGE]

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MULLINS LAW FIRM, P.A.



RANDALL K. MULLINS, SC Bar No.: 06466
JARROD E. OWNBEY, SC Bar No.: 75417
ATTORNEYS FOR THE APPELLANTS
Post Office Box 585
North Myrtle Beach, SC 29597
(843) 272-8902 Telephone
(843) 272-3075 Facsimile
mullinslawfirm@aol.com

Dated: 3/30/2015
North Myrtle Beach, South Carolina

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MATT BECKER AND ASSOCIATES, INC. d/b/a OCEAN BREEZE
VACATIONS, MATT BECKER AND KAREN CLARK BECKER,

Appellants.

PROOF OF SERVICE

I certify that I have served a copy of the Appellants' Petition for Leave of Court to File Motion for New Trial Pursuant to Rule 60(b), SCRPC via regular U.S. Mail addressed to the following:

James L. Hills, Esquire
Jennifer D. Hills, Esquire
5001 N. Kings Highway, Suite 210
Myrtle Beach, SC 29577

MULLINS LAW FIRM, P.A.

~~RANDALL K. MULLINS~~ SC Bar No.: 06466
~~JARROD E. OWNBEY~~ SC Bar No.: 75417
ATTORNEY FOR THE APPELLANTS
Post Office Box 585
North Myrtle Beach, SC 29597
(843) 272-8902 Telephone
(843) 272-3075 Facsimile

Dated: March 31, 2015
N. Myrtle Beach, South Carolina

Post Office Box 585
North Myrtle Beach
South Carolina 29597

Telephone 843.272.8902
Facsimile 843.272.3075
Mullinslawfirm@aol.com
Mullinslawfirm.com

March 31, 2015

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SC Court of Appeals

The Honorable Jenny Abbott Kitchlings
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

RE: Rawcliffe Resorts, Inc. v. Matt Becker and Associates, Inc., et al.
Appellate Court Case No.: 2014-001152
Trial Court Case No.: 2014-
MLF File No.: 2013-357

Dear Clerk Kitchlings:

Enclosed please find the original and one (1) copy of Appellants' Petition for Leave of Court to File Motion for New Trial Pursuant to Rule 60(b), SCRCF in the above-referenced matter. Also enclosed is the proposed Motion for Relief from Order of Contempt Pursuant to Rule 60(b), SCRCF, as well as a copy of the transcript from the hearing in the Horry County Court of Common Pleas with regard to this matter. Lastly, I have also enclosed our firm's check in the amount of \$25.00 for payment of the filing fee. I am simultaneously serving a copy of this Petition and proposed Motion on Respondent's counsel, as evidenced by the enclosed Proof of Service.

Thank you for your assistance.

With warmest regards, I remain

Very truly yours,

MULLINS LAW FIRM, P.A.


Jarrod E. Ownbey

JEO/klc

Enclosures

cc: James L. Hills, Esquire
Jennifer D. Hills, Esquire
Matt and Karen Becker, via electronic mail only