

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Thomas Kemmerlin, Jr., Special Referee

Case No. 2004-CP-07-2036
Court of Appeals Unpublished Opinion No. 2012-UP-217

Forest Beach Owner's Association, Inc.,
and Trevor Howard,

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SEP 27 2012
SC Court of Appeals

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S.C. Supreme Court

Respondents,

vs.

Carolyn S. Austin, formerly known as
Carolyn S. Bair, Petitioner.

MOTION TO BE RELIEVED AS COUNSEL

Thomas A. Pendarvis
Catherine B. Kerney
PENDARVIS LAW OFFICES, P.C.
500 Carteret St., Suite A
Beaufort, South Carolina 29902
843.524.9500 tel
843.524.9501 fax
Thomas@PendarvisLaw.com
Carey@PendarvisLaw.com

Attorneys for Petitioner, Carolyn S. Austin

PLEASE TAKE NOTICE THAT pursuant to Rule 240, SCACR, Rule 11(b), SCRCP, and Rule 1.16(b)(5) and (6), RPC, Rule 407, SCACR, Thomas A. Pendarvis, J.D., Catherine B. Kerney, J.D., and PNDARVIS LAW OFFICES, PC, as present counsel for Petitioner, Carolyn S. Austin, formerly known as Carolyn S. Bair, hereby move the Court, on good cause shown, for an Order granting Thomas A. Pendarvis, J.D., Catherine B. Kerney, J.D., and the firm of PNDARVIS LAW OFFICES, P.C., leave to withdraw as counsel for Petitioner, Carolyn S. Austin, formerly known as Carolyn S. Bair in the above-captioned action.

This motion is based upon the irreconcilable differences between counsel and the Petitioner, the client's failure to substantially fulfil her obligations regarding payment for legal services, the South Carolina Rules of Civil Procedure, the South Carolina Rules of Professional Conduct, the South Carolina Rules of Appellate Procedure, any other law as may be applicable and may be supported by the pleadings, filings in this matter, as well as such other evidence or argument as the Court may allow, and the Affidavit of Thomas A. Pendarvis filed herewith. Although Petitioner has been given reasonable prior warning her counsel would withdraw unless Petitioner fulfilled her obligations, those obligations remain unfulfilled. Given that the Supreme Court has not granted or denied the Petition for Certiorari and that no hearing has been set on Petitioner's Petition for Certiorari or any other proceeding is pending, withdrawal can be accomplished without material adverse effect on Petitioner's interests. Sufficient time remains for Petitioner to engage other counsel.

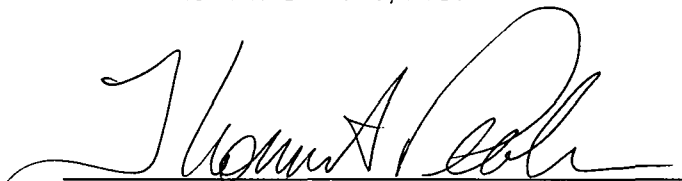
CONCLUSION

For the foregoing reasons, Petitioner respectfully moves for an Order granting

Thomas A. Pendarvis, J.D., Catherine B. Kerney, J.D., and the firm of PNDARVIS LAW OFFICES, P.C., leave to withdraw as counsel for Petitioner, Carolyn S. Austin, formerly known as Carolyn S. Bair in the above-captioned action.

Respectfully submitted,

PNDARVIS LAW OFFICES, P.C.

A handwritten signature in black ink, appearing to read "Thomas A. Pendarvis", written over a horizontal line.

Thomas A. Pendarvis (S.C. Bar # 64918)
Catherine B. Kerney (SC Bar # 81429)
500 Carteret St., Suite A
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Attorney for Petitioner, Carolyn S. Bair

Beaufort, South Carolina

September 25, 2012

THE STATE OF SOUTH CAROLINA

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and Trevor Howard, Respondents,

vs.

Carolyn S. Austin, formerly known as
Carolyn S. Bair, Petitioner.

AFFIDAVIT OF THOMAS A. PENDARVIS

Thomas A. Pendarvis
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500 Carteret St., Suite A
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Carey@PendarvisLaw.com

Attorneys for Petitioner, Carolyn S. Austin

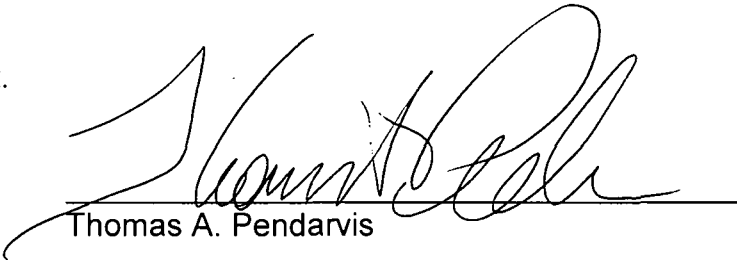
Personally appeared before me, Thomas A. Pendarvis, who, being duly sworn, says:

1. My name is Thomas A. Pendarvis, and I am and the member-owner of the firm of PENDARVIS LAW OFFICES, P.C. during all relevant time periods.
2. The testimony in this Affidavit relates to matters of fact, of which I have personal knowledge and I am competent to testify as I am over the age of eighteen years and am not affected by anything which would affect my ability to testify.
3. I am an Attorney for the Petitioner, Carolyn S. Austin, in regard to the above-reference appeal.
4. A Petition for Certiorari has been filed with and remains pending before the Supreme Court of South Carolina.
5. Petitioner has failed substantially to fulfill her obligations to pay for legal services that have been provided by me and my law firm with regard to this appeal.
6. Continuing this representation without Petitioner making the payments due will result in an unreasonable financial burden on me and my law firm.
7. Irreconcilable differences have developed in regard to my representation of Petitioner.
8. My efforts to reconcile differences with Petitioner have been unsuccessful.
9. I am no longer willing to continue voluntarily to represent Petitioner in this action.
10. Because the Supreme Court has not granted or denied the Petition for Certiorari and that no hearing has been set on Petitioner's Petition for Certiorari or any other proceeding is pending, withdrawal can be accomplished without material adverse effect on Petitioner's interests.
11. Sufficient time remains for Petitioner to engage other counsel.

12. My law firm and I stand ready to take the steps to the extent reasonably practicable to protect Petitioner's interests in any transition of my firm's representation on this appeal to other counsel retained by Petitioner.

13. I respectfully request this Honorable Court grant the Motion to Be Relieved As Counsel.

The Affiant further sayeth not.

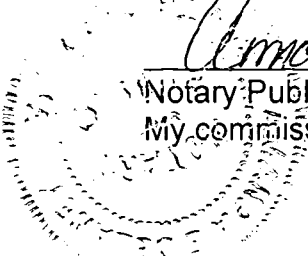

Thomas A. Pendarvis

SWORN to before me this

25th day of September, 2012



Notary Public for South Carolina
My commission expires: 2/24/2020



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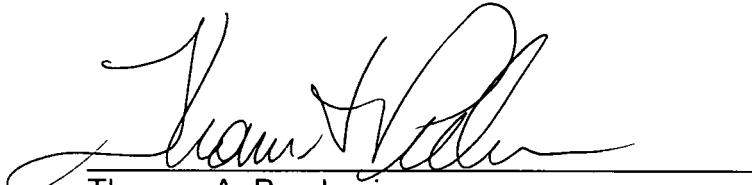
PROOF OF SERVICE

I certify that I have served the MOTION TO BE RELIEVED AS COUNSEL on counsel for Respondents and on Petitioner, Carolyn S. Austin, formerly known as Carolyn S. Bair, by depositing a copy of the same in the United States Mail, postage prepaid, on the 25th day of September, 2012 addressed as follows:

Russell P. Patterson, J.D.
PO Box 8047
Hilton Head Island, SC 29938

Carolyn S. Austin
PO Box 4869
Hilton Head Island, SC 29938

PENDARVIS LAW OFFICES, P.C.



Thomas A. Pendarvis

Beaufort, South Carolina

September 25, 2012

65692

PENDARVIS LAW OFFICES, PC



September 25, 2012

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SC Court of Appeals

Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
PO Box 11629
Columbia SC 29211

Re: *Forest Beach Owner's Association, Inc. and Trevor Howard v.
Carolyn S. Austin, f/k/a Carolyn S. Bair*
Case No. 2004-CP-07-2036

pm 9-25-12
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Dear Ms. Kitchings:

S.C. Supreme Court

Enclosed for filing, please find an original and seven (7) copies of a MOTION TO BE RELIEVED AS COUNSEL and AFFIDAVIT OF THOMAS A. PENDARVIS in connection with the above matter. Also enclosed please find an original and one copy of a PROOF OF SERVICE together with our firm check in the amount of \$25.00 for the filing fee.

Please return clocked copies of the foregoing in the stamped, self-addressed envelope enclosed for your convenience.

Should you have any questions, please feel free to contact our office.

With kind regards, I remain

Sincerely,

PENDARVIS LAW OFFICES, P.C.

Thomas A. Pendarvis

TAP/lat
Enclosures

cc: Russell P. Patterson, J.D. (w/ enclosures)
Carolyn S. Austin (w/ enclosures)