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Supreme Court of South Carolina
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AUG 29 2016

S.C. SUPREME COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION



A TRUE COPY
ATTEST: ROBIN L. BLUME, CLERK

BY: 
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Paula Fullbright and Mark Fullbright,)
)
Plaintiffs,)
)
v.)
)
Spinnaker Resorts, Inc. d/b/a Spinnaker)
Resorts South Carolina, Inc.,)
)
Defendant.)
_____)

Civil Action No. 9:15-cv-1666
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AUG 29 2016
S.C. SUPREME COURT

**ORDER GRANTING LIMITED RELIEF FROM STAY AND CERTIFYING
QUESTIONS OF LAW TO THE SUPREME COURT OF SOUTH CAROLINA**

On May 17, 2016, this Court entered an order denying without prejudice Defendant’s second motion to dismiss Plaintiffs’ amended complaint pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure. In addition, the Court stayed this case pending the Court’s possible certification of relevant legal questions to the Supreme Court of South Carolina in other cases involving claims arising under the South Carolina Vacation Time Sharing Plans Act (“the Time Sharing Act”), S.C. Code Ann. §§ 27-32-10 to -450.¹

On June 30, 2016, Defendant filed a motion for limited relief from the stay to allow it to file a motion to certify questions to the South Carolina Supreme Court. In its motion, Defendant asserts

¹ Currently pending before the Court are the following cases involving claims arising under the Time Sharing Act: Chenard v. Coral Resorts LLC et al., Civil Action No. 9:14-cv-3347; Nichols v. Coral Resorts, LLC et al., Civil Action No. 9:14-cv-3838; Renckovsky v. Coral Resorts, LLC et al., Civil Action No. 9:14-cv-4495; Curry v. Hilton Head Dev. Co. LLC et al., Civil Action No. 9:15-cv-534; Olenick v. Coral Resorts, LLC et al., Civil Action No. 9:15-cv-629; Ross v. Hilton Head Island Dev. Co., LLC, et al., Civil Action No. 9:15-cv-2446; and Carmichael v. Hilton Head Dev. Co., et al., Civil Action No. 9:16-cv-1641 (collectively referred to as the “Coral Resorts cases”). The Court is certifying, by separate order, related legal questions in the Coral Resorts cases.

that this case raises the same general issues present in the Coral Resorts cases, but also, that this case raises a narrow issue as to the exclusivity of the South Carolina Real Estate Commission's ("REC") authority to determine whether and when a timeshare plan is or was "registered" pursuant to the Time Sharing Act. On July 18, 2016, Plaintiffs filed a response opposing Defendant's motion.

After review, the Court grants Defendant's motion for limited relief from the stay (ECF 42). Moreover, the Court agrees with Defendant that it is appropriate to certify legal questions in this case (as well as in the Coral Resorts cases) to the state Supreme Court. Therefore, the Court now issues this order certifying the following questions of law to the state Supreme Court pursuant to South Carolina Appellate Court Rule 244.²

QUESTIONS OF LAW

1. Does the REC have exclusive jurisdiction to determine whether a vacation time sharing plan is or was properly registered pursuant to the Time Sharing Act? See Tench v. S.C. Dep't of Labor, Licensing & Regulation, No. 1998-ALJ-11-0041-IJ, 1998 WL 320770 (S.C. A.L.C., May 27, 1998).

² South Carolina Appellate Court Rule 244 provides in pertinent part:

(a) Scope of Certification. The Supreme Court in its discretion may answer questions of law certified to it by any federal court of the United States or the highest appellate court or an intermediate appellate court of any other state, when requested by the certifying court if there are involved in any proceeding before that court questions of law of this state which may be determinative of the cause then pending in the certifying court when it appears to the certifying court there is no controlling precedent in the decisions of the Supreme Court.

(b) Procedure. The certification order shall be signed by the presiding judge or the chief judge, and forwarded to the Supreme Court by the clerk of the certifying court under its official seal. A certification order shall set forth the questions of law to be answered, all findings of fact relevant to the questions certified, and a statement showing fully the nature of the controversy in which the questions arose. . . .

Rule 244(a)-(b), SCACR.

2. Is a determination by the REC's that the Time Sharing Act has been violated a condition precedent to a purchaser bringing "a private action to enforce the provisions of" the Act? See S.C. Code Ann. § 27-32-130; see generally Dema v. Tenet Physician Servs. Hilton Head, Inc., 383 S.C. 115, 678 S.E.2d 430 (2009).

3. Is the REC's determination that Defendant's Bluewater by Spinnaker resort ("Bluewater") was issued a registration as of September 2, 2014, and that the registration was retroactive to March 15, 2006, binding on courts within the judicial branch, or may those courts overrule, amend, or otherwise disagree with the REC's findings?

FINDINGS OF FACTS RELEVANT TO THE QUESTIONS OF LAW

1. On June 24, 2014, Plaintiffs attended a timeshare sales presentation and entered into a membership and lease agreement to purchase a timeshare membership and lease a timeshare property at Defendant's Bluewater by Spinnaker resort ("Bluewater") on Hilton Head Island, South Carolina.

2. Plaintiffs filed this purported class action on April 2, 2015, and they filed an amended complaint on May 20, 2015, alleging that Defendant violated the Time Sharing Act by, *inter alia*, failing to comply with the Act's registration requirements at the time of the sales transaction.

3. In a final order dated September 15, 2015, the REC stated that "Bluewater was issued a time sharing plan order of registration pursuant to S.C. Code Ann. § 27-32-190(A)(2)(a) (1976, as amended) with an effective date of September 2, 2014." The REC further held that the "September 2, 2014, Bluewater time sharing plan order of registration shall be retroactive to March 15, 2006." (See attached order at 4.)


CONCLUSION

This Court has determined that this case involves novel questions of South Carolina law, the answers to which are determinative of Plaintiffs' claims arising under the Time Sharing Act. Because there appears to be no controlling precedent on those questions, the Court hereby grants Defendant's motion for limited relief from the stay (ECF 42) and certifies the foregoing questions to the Supreme Court of South Carolina pursuant to South Carolina Appellate Court Rule 244.

Therefore, it is hereby **ORDERED** that the Clerk of Court, under its official seal, forward to the Supreme Court of South Carolina a copy of this Order along with copies of any records that the Supreme Court may thereafter request.

This case shall remain stayed pending further action from the Supreme Court of South Carolina.

IT IS SO ORDERED.



PATRICK MICHAEL DUFFY
United States District Judge

August 24, 2016
Charleston, South Carolina

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Subject:Activity in Case 9:15-cv-01476-PMD Fullbright et al v. Spinnaker Resorts Inc
Order on Motion for Miscellaneous Relief

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U.S. District Court

District of South Carolina

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Case Name: Fullbright et al v. Spinnaker Resorts Inc

Case Number: 9:15-cv-01476-PMD

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Docket Text:

ORDER This Court has determined that this case involves novel questions of South Carolina law, the answers to which are determinative of Plaintiffs claims arising under the Time Sharing Act. Because there appears to be no controlling precedent on those questions, the Court hereby grants Defendants motion for limited relief from the stay (ECF 42) and certifies the foregoing questions to the Supreme Court of South Carolina pursuant to South Carolina Appellate Court Rule 244. Therefore, it is hereby ordered that the Clerk of Court, under its official seal, forward to the Supreme Court of South Carolina a copy of this Order along with copies of any records that the Supreme Court may thereafter request. This case shall remained stayed pending further

action from the Supreme Court of South Carolina. Signed by Honorable Patrick Michael Duffy on 08/24/2016. (egra,)

9:15-cv-01476-PMD Notice has been electronically mailed to:

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UNITED STATES DISTRICT COURT
District of South Carolina
Clerk's Office
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