

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

Paul Chenard and Rebecca Chenard,)
)
Plaintiffs,)

v.)

Hilton Head Island Development)
Company, LLC d/b/a Coral Resorts)
and Sunrise Vacation Properties, Ltd.)
d/b/a Coral Resorts,)
Defendants.)

James Nichols and Irene Nichols,)
)
Plaintiffs,)

v.)

Hilton Head Island Development)
Company, LLC, Sunrise Vacation)
Properties, Ltd., Sherri J. Smith,)
Patrick Budnik, and Robert Lauderman)
d/b/a Coral Resorts,)
Defendants.)

Linda Renchkovsky,)
)
Plaintiff,)

v.)

Coral Resorts, LLC, and Sunrise Vacation)
Properties, Ltd. d/b/a Coral Resorts,)
Defendants.)



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Civil Action No. 9:14-cv-3347

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AUG 29 2016

S.C. SUPREME COURT

Civil Action No. 9:14-cv-3838

Civil Action No. 9:14-cv-4495

Robert Curry, Jr. and Monia R. Curry,)
)
 Plaintiffs,)
)
 v.)
)
 Hilton Head Island Development)
 Company, LLC, d/b/a Coral Resorts and)
 and Sunrise Vacation Properties, Ltd.)
 d/b/a Coral Resorts,)
)
 Defendants.)

Civil Action No. 9:15-cv-534

Charles Olenick and Karen Maniscalco,)
)
 Plaintiffs,)
)
 v.)
)
 Coral Resorts, LLC and Sunrise Vacation)
 Properties, Ltd. d/b/a Coral Resorts,)
)
 Defendants.)

Civil Action No. 9:15-cv-629

Phillip Ross and Kimberly Ross,)
)
 Plaintiffs,)
)
 v.)
)
 Hilton Head Island Development)
 Company, LLC, Sunrise Vacation)
 Properties, Ltd., Sherri J. Smith,)
 Dave Watson, and Sheldon Stanhope,)
)
 Defendants.)

Civil Action No. 9:15-cv-2446

**ORDER CERTIFYING QUESTIONS OF LAW
 TO THE SUPREME COURT OF SOUTH CAROLINA**

On March 30, 2016, the Honorable Sol Blatt, Jr. issued orders in the above-captioned cases granting in part and denying in part various motions to dismiss filed by Defendants. One issue before the Court concerned Plaintiffs' claims pursuant to the South Carolina Vacation Time Sharing Plans Act

("Time Sharing Act"), S.C. Code Ann. §§ 27-32-10 to -450. More specifically, Defendants argued in their motions that the South Carolina Real Estate Commission ("REC") has exclusive jurisdiction to make determinations concerning alleged violations of the Time Sharing Act and therefore this Court lacks subject matter jurisdiction to consider claims arising under the Act. The Court denied Defendants' motions and noted that although the Time Sharing Act does provide that the REC is responsible for implementation and enforcement of the Act, the Act also specifically contemplates a private right of action to enforce the Act. Specifically, section 27-32-130 (the "enforcement and implementation chapter") provides:

The Real Estate Commission is responsible for the enforcement and implementation of this chapter and the Department of Labor, Licensing and Regulation, at the request of the Real Estate Commission, shall prosecute a violation under this chapter. The commission shall promulgate regulations for the implementation of this chapter, subject to the State Administrative Procedures Act. **The provisions of this section do not limit the right of a purchaser or lessee to bring a private action to enforce the provisions of this chapter.**

S.C. Code Ann. § 27-32-130 (emphasis added).

Despite ultimately denying Defendants' motions on this issue, the Court noted the lack of precedent as well as the need to avoid potential inconsistency. Accordingly, in the interest of judicial economy, the Court requested that Defendants (and Plaintiffs, if they desired) submit proposed questions of law for certification to the Supreme Court of South Carolina. All parties submitted proposed questions, and upon review, the undersigned determined that additional briefing would be helpful. Accordingly, the Court issued an order on June 2, 2016, asking the parties to address issues regarding the interplay between the federal court actions and other actions currently pending in state court,¹ as well as any relevant abstention doctrines. After reviewing the parties' submissions, the Court

¹ As the Court noted in its June 2 order, a number of lawsuits raising similar claims against some of the same Defendants are currently pending in state court, and the state Supreme Court has consolidated those cases and assigned them to the Honorable J. Derham Cole, Sr. It appears that

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 violation of the Time Sharing Act has occurred? 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. Is the REC's determination of a violation of the Time Sharing Act 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).

some of the defendants in that case have raised the same jurisdictional issue presented here.

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.

3. Are the REC's determinations as to compliance with and/or violation(s) of the Time Sharing Act 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. In the above-captioned cases, Plaintiffs entered contracts to purchase timeshare interests in real estate on Hilton Head Island, South Carolina. In the process of purchasing their timeshare interests, Plaintiffs executed contracts and Public Offering Statements, all of which Defendants contend the REC previously approved.

2. Plaintiffs filed the above-captioned cases in this Court, alleging various claims related to their timeshare purchases, and the following causes of action are currently pending: (1) fraud/intentional misrepresentation; (2) violation of the Time Sharing Act; (3) violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. §§ 39-5-10 to -180; (4) negligent misrepresentation; (5) breach of fiduciary duty; (6) declaratory judgment; (7) negligent hiring; (8) negligent training; (9) negligent supervision; and (10) negligent retention. Defendants do not contest Plaintiffs' ability to pursue any of the above claims except the claims arising under the Time Sharing Act.

3. With regard to Plaintiffs' Time Sharing Act claims, Plaintiffs generally allege: (1) that the registration for the relevant vacation time sharing ownership plan(s) lapsed, expired, or became unregistered when Plaintiffs purchased their interests; (2) that the time sharing plan documents utilized in Plaintiffs' transactions were deficient under the Time Sharing Act and/or were not approved by the REC; (3) that Defendants failed to maintain certain information in their business records as required by the Time Sharing Act; (4) that certain representations allegedly made during Plaintiffs' timeshare sales transactions ran afoul of the Time Sharing Act; and (5) that there were certain issues with the closings for the timeshare interests. Plaintiffs ultimately seek to void their purchases pursuant to the Time

Sharing Act.

4. Defendants contend that the REC is the only entity charged with investigating alleged violations of the Time Sharing Act and that the South Carolina Department of Labor, Licensing and Regulation, at the request of the REC, is the only entity with the authority to prosecute alleged violations of the Time Sharing Act.


CONCLUSION

This Court has determined that the above-captioned cases involve novel questions of South Carolina law, the answers to which may be determinative of Plaintiffs' claims arising under the Time Sharing Act. Because there appears to be no controlling precedent on those questions, the Court hereby certifies the foregoing questions to the South Carolina Supreme Court 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.

The above-captioned cases shall be 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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--Case Participants: Joseph DuBois (ana@lowcountrylegal.com, joe@lowcountrylegal.com), Bess Jones DuRant (bdurant@sowellgray.com, cskalama@sowellgray.com, dcarmichael@sowellgray.com, moken@sowellgray.com, tclark@sowellgray.com), Kathleen McColl McDaniel (carlicochran@callisontighe.com, jasonwilliamson@callisontighe.com, kathleenmcdaniel@callisontighe.com), Jacqueline Marie Pavlicek (pavlicek@callisontighe.com), Nekki Shutt (amyabercrombie@callisontighe.com, carlicochran@callisontighe.com, jasonwilliamson@callisontighe.com, nekkishutt@callisontighe.com), Zachary Steven Naert (zach@lowcountrylegal.com), Thornwell Forrest Sowell, III (bsowell@sowellgray.com, cskalama@sowellgray.com, dcarmichael@sowellgray.com, tclark@sowellgray.com), Honorable Patrick Michael Duffy (duffy_ecf@scd.uscourts.gov)
--Non Case Participants: eswalm (nan_williams@scd.uscourts.gov)
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U.S. District Court

District of South Carolina

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ORDER This Court has determined that the above-captioned cases involve novel questions of South Carolina law, the answers to which may be determinative of Plaintiffs' claims arising under the Time Sharing Act. Because there appears to be no controlling precedent on those questions, the Court hereby certifies the foregoing questions to the South Carolina Supreme Court 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. The above-captioned cases shall be stayed pending further action from the Supreme Court of South Carolina. Signed by Honorable Patrick Michael Duffy on 08/24/2016.(egra,)

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Thornwell Forrest Sowell, III bsowell@sowellgray.com, cskalama@sowellgray.com,
dcarmichael@sowellgray.com, tclark@sowellgray.com

Nekki Shutt nekkishutt@callisontighe.com, amyabercrombie@callisontighe.com

Joseph DuBois joe@lowcountrylegal.com, ana@lowcountrylegal.com

Kathleen McColl McDaniel kathleenmcdaniel@callisontighe.com, carlicochran@callisontighe.com,
jasonwilliamson@callisontighe.com

Bess Jones DuRant bdurant@sowellgray.com, cskalama@sowellgray.com,
dcarmichael@sowellgray.com, moken@sowellgray.com, tclark@sowellgray.com

Zachary Steven Naert zach@lowcountrylegal.com

Jacqueline Marie Pavlicek pavlicek@callisontighe.com

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