



### Law and Analysis

South Carolina Rule of Civil Procedure 12(b)(6) allows dismissal of actions based upon failure to state a claim upon which relief may be granted.

The Act "applies to any rental management company acting on behalf of an owner or other person or entities otherwise engaged in renting or managing of residential property for vacation rental as defined in the article." S.C. Code Ann. § 27-50-230(3). Plaintiffs and Defendant agree that Defendant's lease agreements are vacation rentals under the Act. Plaintiffs assert the lease agreements are subject to the Master Deed, which prohibits commercial activities within the Sand Dunes Horizontal Property Regime Units.

Plaintiffs assert that the following provisions in the Lease Agreements violate the Act: "Landlord shall use Landlord's very best efforts to sell the Unit subject to any reservation made by Tenant for the succeeding twelve months after the date of the listing" and "this agreement may be cancelled not less than sixty days' notice by either party with effect from the next succeeding December 31<sup>st</sup> each year." Plaintiffs assert this is a violation of the Act's provision of a minimum time frame of ninety days following the sale of a unit upon which subject vacation rentals shall be honored. However, the Act does not prohibit the contractual extension of the time frame and it does not address the cancellation of a vacation rental management agreement. The Court finds these allegations do not amount to a violation of the Act.

Plaintiffs also assert Defendant violated sections 27-50-240(A) and (D) of the Act, which address the validity of vacation rental agreements and the rental management company's duty to inform each owner of the owner's obligations under this section of the Act. Defendant asserts that it is not only in compliance with the Act, but that neither section is applicable to the claims asserted. Section 240(A) addresses vacation rental agreements, while the subject lease

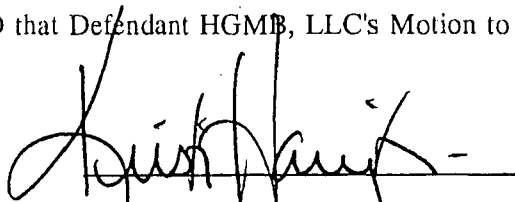
agreements are "vacation rental management agreements." Further, Section 240(D) relates to Defendant's duty to inform Sand Dunes Horizontal Property Regime unit owners of the owner's obligations under section 240, which is unrelated to the lease agreements or the relief sought by Plaintiffs. The Court finds that these allegations do not amount to a violation of the Act.

Plaintiffs also claim the lease agreements violate the Master Deed's residential use restriction. However, Defendant asserts that the lease agreements are vacation rental management agreements that apply to the residential vacation rentals and do not violate the Master Deed. The Court finds these allegations do not amount to a violation of the Master Deed.

Plaintiff asserts Defendant has engaged in unfair and deceptive conduct which amounts to a violation of the South Carolina Unfair Trade Practices Act (SCUTPA). Defendant argues Plaintiffs' claim must fail as they have not set forth unfair conduct nor pled damages beyond speculation. To recover under SCUTPA, the Plaintiff must prove a (1) violation of the act, (2) proximate cause, and (3) damages. *Charleston Lumber Co., Inc. v. Miller Housing Corp.*, 318 S.C. 471, 482, 459 S.E.2d 431, 438 (S.C. Ct.App. 1995). The Court finds Plaintiff's allegations do not give rise to a SCUTPA claim as they have failed to plead deceptive conduct or damages.

Based on the above, it is therefore,

ORDERED, ADJUDGED, AND DECREED that Defendant HGMB, LLC's Motion to Dismiss is granted.



The Honorable Kristi Lea Harrington  
Presiding Judge, Fifteenth Judicial Circuit

May 26, 2016

Conway, South Carolina

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SEP 16 2016

SC Court of Appeals

FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2014CP263477

Bradley Bennett,  
Oceanfront Guru Real  
Estate Sale & Development,  
Inc., and Oceanfront Guru  
Vacation Rentals

HGMB, LLC

FILED  
HORRY COUNTY  
16 JUN -2 AM  
CLERK OF COURT

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for:  Plaintiff  Defendant  
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRCP;  Rule 41(a), SCRCP (Vol. Nonsuit);  
 Rule 43(k), SCRCP (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j) SCRCP;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order; (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

Defendant HGMB, LLC's Motion to Dismiss is granted.

This order  ends  does not end the case.

Additional Information for the Clerk: \_\_\_\_\_

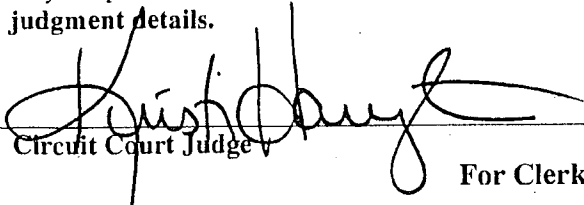
INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	N/A

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

  
Circuit Court Judge

2151

5/26/2016

Judge Code

Date

**For Clerk of Court Office Use Only**

This judgment was entered on \_\_\_\_\_, and a copy mailed first class or placed in the appropriate attorney's box on \_\_\_\_\_, to attorneys of record or to parties (when appearing pro se) as follows:

\_\_\_\_\_  
ATTORNEY(S) FOR THE PLAINTIFF(S)

\_\_\_\_\_  
ATTORNEY(S) FOR THE DEFENDANT(S)

\_\_\_\_\_  
Court Reporter Teresa Bautz

\_\_\_\_\_  
Melanie Huggins-Ward - Clerk of Court

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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