

# JOHNSON & DAVIS, PA

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September 16, 2016

Hon. Costa Pleicones, Ch. Justice  
South Carolina Supreme Court  
Attn: Hon. Daniel E. Shearouse, Clerk of Court  
P. O. Box 11330  
Columbia, South Carolina 29211

-and-

Hon. Patrick Michael Duffy, U.S. District Judge  
(e-submitted)

Re: Paula Fullbright and Mark Fullbright, Plaintiffs v. Spinnaker Resorts,  
Inc. d/b/a Spinnaker Resorts South Carolina, Inc.

South Carolina Supreme Court Appellate Case Number: 2016-001765; and  
U.S. District Court Case No.: 9:15-CV-1476\_PMD (D.S.C., Beaufort Div.)

Concerning: Certified Questions in the Captioned Matter

Your Honors:

Our firm represents the defendant, Spinnaker Resorts, Inc. d/b/a Spinnaker Resorts South Carolina, Inc., in this matter.

We are in receipt of Judge Duffy's order, filed August 24, 2016 (U.S.D.Ct., Dkt. 44, "Certification Order") certifying certain questions to the South Carolina Supreme Court. We are also in receipt of the letter, dated August 30, 2016, from Hon. Daniel E. Shearouse, Clerk of the South Carolina Supreme Court, acknowledging that court's receipt of Judge Duffy's certified questions.

Judge Duffy's Certification Order also lists certain factual matters related to the certified questions. Only limited discovery (related to jurisdiction) has been conducted in the U.S. District Court, so the factual context of the certified questions is somewhat incomplete.

We write, pursuant to Rule 244, SCACR, in order, respectfully, to notify the courts that the defendant and its counsel believe that additional materials are necessary for the South Carolina Supreme Court fully to evaluate the certified questions.

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As noted by Judge Duffy, in Findings of Fact No. 3 (Certification Order), “In a final order dated September 15, 2015, the REC (FN1) 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.)”

The REC’s referenced order was the result of a lengthy hearing held on August 20, 2015, from which a transcript with exhibits was prepared by a court reporter. In addition, Plaintiff Paula Fullbright, and/or both Plaintiffs, appealed the referenced order of the REC to the South Carolina Administrative Law Court, which dismissed her/their appeal.

Admittedly, these additional materials were not all directly before the certifying court, as actual documents, due to the limited discovery. However, the subject matter of these additional requested materials was referenced in defendant’s Notice of Second Motion and Motion to Dismiss the Amended Complaint with Memorandum in Support (U.S.D.Ct., Dkt 35, at pp. 3 and 4 of Memorandum). Thus, defendant believes that the additional requested materials should be considered by the South Carolina Supreme Court under the provisions of Rule 244, SCACR and the doctrine of judicial notice.

These additional requested materials include only the following:

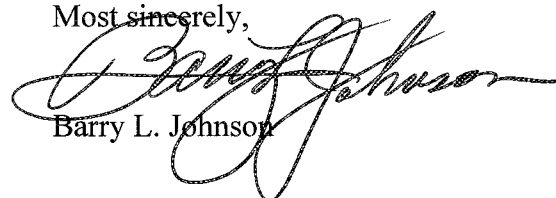
1. The Request for Contested Case Hearing Form, before the South Carolina Administrative Law Court (“ALC”) by Paula Fullbright, a Plaintiff herein, from the referenced order of the South Carolina Real Estate Commission.
2. The Plaintiffs’ Motion for Leave to Intervene and Notice of Request for Contested Case Hearing before the ALC.
3. The order of the ALC, filed December 2, 2015, dismissing the appeal of Plaintiffs.

In the alternative, defendant respectfully requests that the above-referenced motion with memorandum (U.S.D.Ct., Dkt. 35) be included among the materials to be considered by the South Carolina Supreme Court.

Please advise if we may be of any further assistance to the courts regarding these certified questions and the relevant facts.

Thanking you, and with best wishes, I am

Most sincerely,



Barry L. Johnson

**JOHNSON & DAVIS, PA**

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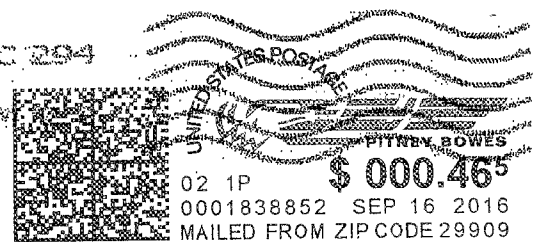
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