

# Naert and DuBois, LLC

## Attorneys at Law

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December 7, 2016

**VIA FAX at (803) 734-1499 and USPS**

**RECEIVED**

Honorable Daniel E. Shearouse  
Clerk, South Carolina Supreme Court  
P.O. Box 11330  
Columbia, SC 29211

DEC 08 2016

**S.C. SUPREME COURT**

Re: Paul Chenard, et al v. Coral Resorts, et al.  
Appellate Case No. 2016-001766

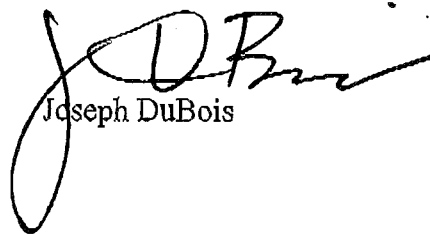
Dear Mr. Shearouse:

Please allow this letter to serve as the Plaintiffs' response to Defendants' letter dated December 6, 2016.

Enclosed please find the original and six (6) copies of a *Motion to Allow the Filing of Plaintiffs' Reply Brief*, along with a certificate of service. If you would, please file this motion for the Court's consideration. Pursuant to Rule 240(d), SCACR, insofar as this motion concerns a certified question Plaintiffs assert that no motion filing fee is required.

Thank you for your assistance with this matter.

Sincerely,



Joseph DuBois

Enclosures

Cc: Nekki Shutt, Esquire (via email)  
Kathleen M. McDaniel, Esquire (via email)  
Jacqueline M. Pavlicek, Esquire (via email)  
Bess J. DuRant, Esquire (via email)  
Thornton F. Sowell, III, Esquire (via email)  
James Smith, Esquire (via email)

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

CERTIFIED QUESTIONS FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
Beaufort Division

Patrick Michael Duffy, United States District Judge

**RECEIVED**

DEC 08 2016

Appellate Case No. 2016-001766

**S.C. SUPREME COURT**

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., Sheri 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.

Robert Curry, Jr. and Monica R. Curry, Plaintiffs,

v.

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

Charles Olenick and Karen Maniscalco, Plaintiffs,

v.

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

Phillip Ross and Kimberly Ross, Plaintiffs,

v.

Hilton Head Island Development Company, LLC, Sunrise Vacation Properties, Ltd., Sherri J. Smith, David Watson, and Sheldon Stanhope, Defendants.

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**PLAINTIFFS' MOTION TO ALLOW FILING OF REPLY BRIEF**

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Plaintiffs file this motion seeking the Court's allowance of the filing of Plaintiffs' Reply Brief following receipt of Defendants' letter to the Clerk of Court, dated December 6, 2016, wherein Defendants assert that Plaintiffs' Reply Brief is deficient regarding (a) being filed out of time, (b) its length, and (c) the copy served upon Defendants not being bound.

*Filing Date*

In response Plaintiffs assert that insofar as Defendants' Brief was filed on November 18, 2016, pursuant to Rule 263(a), SCACR Plaintiffs' Reply Brief should have been filed on November 28, 2016. *See* Rule 263(a), SCACR (noting that the day of the act, event, or default after which the designated period of time begins to run is not to be included). Plaintiffs filed their Reply Brief on November 30, 2016, two days outside of time. Plaintiffs assert that their Reply Brief was diligently prepared, filed, and served and that such lateness was an inadvertent error predicated upon counsel's incorrect employment of the "mailbox rule."

*Length of Brief*

Plaintiffs assert that Plaintiffs' Reply Brief, filed November 30, 2016, is twenty-four (24) pages in length. Plaintiffs assert that the page-length provision of Rule 242(g), SCACR (the total length of the reply shall not exceed fifteen (15) pages) does not apply to Certified Questions of Law but rather to Certiorari to the Court of Appeals. Plaintiffs assert that Rule 208(b)(5), SCACR is the applicable standard regarding the maximum length of the subject brief (reply briefs shall not exceed twenty-five (25) pages).

*Binding*

Regarding service of unbound copies of the Reply Brief upon the Defendants, Plaintiffs assert that such service was not done to impose unnecessary costs upon Defendants but rather to allow counsel for Defendants to scan same for digital storage and use, as is done by the Clerk of Court and as has become common practice among the bar.

Plaintiffs further assert that such service of unbound copies of the Reply Brief complies with Rule 262(b), SCACR insofar as such rule indicates only that a "copy" shall be served, but contains no further requirements as to binding. *See* Rule 262, SCACR (service shall be made by delivering a copy at last known address).

*Basis for Relief*

Plaintiffs respectfully assert that the Court may provide the requested relief pursuant to Rule 262(b), SCACR (time may be extended by the appellate court) and Rule 208(E)(5), SCACR (upon motion the appellate court may grant a party permission to exceed page limitations).

*Conclusion*

Plaintiffs respectfully assert that any alleged non-compliance with the South Carolina Appellate Court Rules are the result of inadvertence, the number of lawsuits at issue in this and the related appellate action (*Fullbright v. Spinnaker Resorts, Inc.*, Appellate Case No. 2016-001765), the number of essentially equitable arguments presented by Defendants requiring Plaintiffs' rebuttal, and an intervening long holiday weekend during the relevant responsive time period.

Accordingly, Plaintiffs respectfully request that the Court allow the filing of their *Reply Brief* previously filed with the South Carolina Supreme Court Clerk of the Court on November 30, 2016.

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA  
In The Supreme Court

CERTIFIED QUESTION FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
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Patrick Michael Duffy, United States District Judge

Appellate Case No. 2016-001766

Paul Chenard, et al,

Plaintiffs,

v.

Hilton Head Island  
Development Company, LLC  
d/b/a Coral Resorts, et al,

Defendants.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date indicated he served counsel for the Defendants with a copy of the Plaintiffs' Motion to Allow Filing of Reply Brief by mailing copies of the same by United States Mail with first class postage prepaid to the following addresses:

Nekki Shutt, Esquire  
Callison Tighe and Robinson  
PO Box 1390  
Columbia, SC 29202-1390

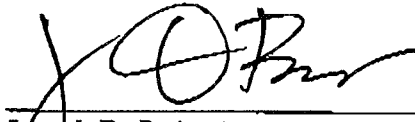
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December 7, 2016