

# Naert and DuBois, LLC

## Attorneys at Law

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December 8, 2016

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

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

**RECEIVED**

**DEC 13 2016**

**S.C. SUPREME COURT**

Re: Fullbright v. Spinnaker Resorts  
Appellate Case No. 2016-001765

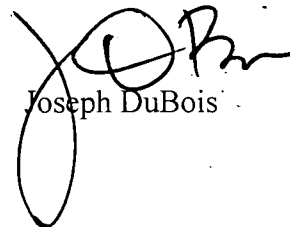
Dear Mr. Shearouse:

Please allow this letter to serve as the Plaintiffs' response to Defendant's letter dated December 7, 2016, a copy of which I have enclosed.

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. Please also find enclosed the \$25.00 motion filing fee.

Thank you for your assistance with this matter.

Sincerely,



Joseph DuBois

Enclosures

Cc: Barry Johnson, Esquire (via email)  
Michael D. Finn, Esquire (via email)  
Patrick Andrew Kennedy, Esquire (via email)  
J. Andrew Meyer, Esquire (via email)

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S.C. SUPREME COURT

JOHNSON & DAVIS, PA  
ATTORNEYS AND COUNSELORS AT LAW

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BARRY L. JOHNSON  
BARRY@JD-PA.COM

December 7, 2016

Hon. Daniel E. Shearouse, Clerk of Court  
South Carolina Supreme Court  
PO Box 11330  
Columbia, SC 29211

Re: *Paula Fullbright and Mark Fullbright v. Spinnaker Resorts, Inc., d/b/a Spinnaker Resorts South Carolina, Inc.*  
Appellate Case No.: 2016-001765  
J&D, PA File No.: S15-6153

Dear Mr. Shearouse:

We are in receipt of Plaintiffs' Reply Brief in the above-referenced matter. I am writing to bring to the Supreme Court's attention the fact that Plaintiffs' Reply Brief fails to meet the requirements of the South Carolina Appellate Court Rules in the following respects:

1. Plaintiffs' Reply Brief has been filed out of time. Rule 242(g), SCACR, requires that a reply brief be filed within 10 days from the date of service of Defendants' Brief.

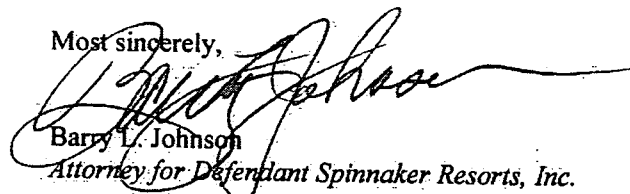
Defendant's Brief was served on November 18, 2016, putting the deadline for Plaintiffs' Reply Brief as November 28, 2016. Plaintiffs' Reply Brief was not mailed until November 30, 2016, making Plaintiffs' Reply Brief untimely. Plaintiffs have filed no motion to file Plaintiffs' Reply Brief out of time.

2. Plaintiffs' Reply Brief is 22 pages in length, exceeding the limit of 15 pages found in Rule 242(g). Plaintiffs have filed no motion to exceed the page limit.

Plaintiffs' untimely filing alone should be a basis for striking Plaintiffs' Reply Brief from the record in this matter, but Defendants also take exception to Plaintiffs' remaining filing deficiency. We trust this matter to the Court's sound discretion. If you need the Defendant to file something more formal, please let me know.

Thanking you, and with best wishes, I am

Most sincerely,

  
Barry L. Johnson  
Attorney for Defendant Spinnaker Resorts, Inc.

BLJ:ger

**JOHNSON & DAVIS, PA**

Hon. Daniel E. Shearouse, Clerk of Court  
December 7, 2016

Page 2

cc: Naert & Dubois, LLC

Attn: Zach S. Naert, Esquire  
Joseph DuBois, Esquire

Michael D. Finn, Esquire

Patrick Andrew Kennedy, Esquire

Kathleen McDaniel, Esquire

Nekki Shutt, Esquire

Spinnaker Resorts, Inc.

Attn: Basil Matthews, Comptroller

FAWP\Spinnaker\Fullbright\Fullbright\Certification of Questions to Supreme Court\South Carolina S.Ct. Certified Questions-Fulbright\Correspondence\Drafts\20161207\_Ltr to Supreme Court.  
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THE STATE OF SOUTH CAROLINA  
In The Supreme Court

S.C. 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

Appellate Case No. 2016-001766

Paula Fullbright and Mark Fullbright.....Plaintiffs,

v.

Spinnaker Resorts, Inc. d/b/a Spinnaker Resorts South Carolina, Inc.....Defendant.

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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 Defendant's letter to the Clerk of Court, dated December 7, 2016, wherein Defendant asserts that Plaintiffs' Reply Brief is deficient regarding (a) being filed out of time and (b) its length.

*Filing Date*

In response Plaintiffs assert that insofar as Defendant's 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-two (22) 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).

#### *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 (*Chenard, et al v. Coral Resorts, et al*, Appellate Case No. 2016-001766), the number of essentially equitable arguments presented by Defendant 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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*Attorneys for Plaintiffs*

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THE STATE OF SOUTH CAROLINA  
In The Supreme Court

S.C. SUPREME COURT

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

Patrick Michael Duffy, United States District Judge

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Appellate Case No. 2016-001765

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Paula Fullbright and Mark Fullbright.....Plaintiffs,

v.

Spinnaker Resorts, Inc. d/b/a Spinnaker Resorts South Carolina, Inc.....Defendant.

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**CERTIFICATE OF SERVICE**

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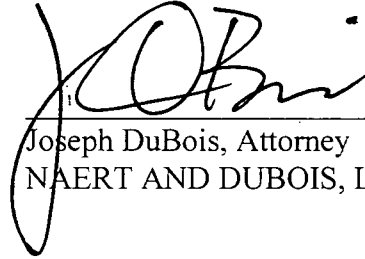
The undersigned hereby certifies that on the date indicated he served counsel of record with a copy of the Plaintiffs' Motion to Allow Filing of Reply Brief by mailing copies of the same by United States Mail with first class postage prepaid to the following addresses:

Barry L. Johnson, Esquire  
10 Pinckney Colony Road  
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Michael D. Finn, Esquire  
Finn Law Group  
10720 72nd Street, Suite 305  
Largo, FL 33777

Patrick Andrew Kennedy, Esquire  
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J. Andrew Meyer, Esquire  
Leavengood, Dauval, Boyle, and Meyer PA  
3900 First Street North, Suite 100  
St. Petersburg, FL 33703

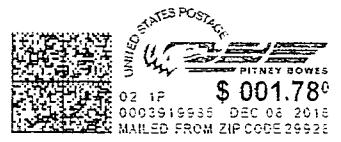


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Joseph DuBois, Attorney  
NAERT AND DUBOIS, LLC

December 8, 2016

Narr + DuBois LLC  
Post office Box 7228  
HHI SC 29938



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

