

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

Appellate Case No. 2016-001766

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DEC 21 2016

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.

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.

S.C. SUPREME COURT

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Charles Olenick and Karen Maniscalco, Plaintiffs,

v.

S.C. SUPREME COURT

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.

**PLAINTIFFS' RETURN IN OPPOSITION TO
MOTION TO FILE *AMICUS CURIAE* BRIEF**

Plaintiffs hereby submit their return in opposition to the Motion for Leave to File *Amicus Curiae* Brief, dated December 6, 2016, filed by the American Resort Development Association ("ARDA").

Standard for Amicus Curiae Briefs

Pursuant to Rule 213, SCACR, an *amicus curiae* may be filed only by leave of the appellate court granted upon a motion of an applicant (1) identifying the interest of the applicant and (2) stating the reasons why an *amicus curiae* brief is desirable.

Should leave to file an *amicus curiae* be granted, Rule 213, SCACR, provides that the *amicus curiae* brief be limited to argument of the issues on appeal as presented by the parties. Rule 213, SCACR, additionally provides that the *amicus curiae* brief shall comply with the requirements of Rules 208(b) and 211, SCACR.

Finally, if leave to file an *amicus curiae* brief is granted, the Court will specify the period in which a response to the brief may be filed. See Rule 213, SCACR.

Legal Argument

In its motion, ARDA asserts that it is a trade association representing the vacation ownership and resort development industries, and that it has nearly 750 corporate members, ranging from privately held firms to publicly traded corporations, including timeshare resort developers, management companies, and owners associations in South Carolina. Based upon same, ARDA claims an interest in the instant matter before the Court.

In response, Plaintiffs would add that ARDA is presently represented by legal counsel that has previously had direct involvement on behalf of the Defendants in one of the lawsuits presently before the Court, *Nichols et al v. Coral Resorts, LLC, et al*, 9:14-cv-03838-PMD.

In its Motion, ARDA is represented by legal counsel of Nexsen Pruet, LLC, including Angus Macauley, Jr., Esquire. Mr. Macauley was - until recently - counsel in one of the six (6) Coral Resorts lawsuits presently before the Court, namely for Defendants Port O' Call Owners Association, Inc. and company executive B. Dean Pierce in *Nichols et al v. Coral Resorts, LLC et al*, 9:14-cv-03838-PMD, although such Defendants are now dismissed.

Further, Plaintiffs would add that ARDA is here represented by Nexsen Pruet, LLC, and that such law firm previously represented Defendant Spinnaker Resorts, Inc. in its hearing before the South Carolina Real Estate Commission on August 20, 2015, such hearing requested by Defendant Spinnaker Resorts, Inc. following the commencement of the lawsuit captioned *Fullbright v. Spinnaker Resorts, Inc.*, 9:15-cv-1476-PMD on April 2, 2015.^{1,2} As

1 See Final Order in the matter of Bluewater by Spinnaker (TSP. 1112), dated September 15, 2015, available at ECF 42-2 ("Bluewater was represented by Molly Cherry, Esq. and Barry Johnson, Esq.").

2 See also August 20, 2015 South Carolina Real Estate Commission meeting minutes, available at <http://www.llr.state.sc.us/POL/REC/Minutes/August%2019,%202015.pdf>

the Court is aware, the *Fullbright* case is being considered by the Court in conjunction with the six (6) *Coral Resorts* cases.

Plaintiffs further assert that the Defendants, Coral Resorts, LLC and Hilton Head Island Development Company, LLC, are present or former members of ARDA. See attached ARDA Corporate Member directory, dated December 13, 2016, listing Palmera, LLC f/k/a Hilton Head Island Development Company, LLC d/b/a Coral Resorts. See also letter from Shane Lancaster, Chief Operating Officer, Palmera, LLC, to Coral Sands timeshare owners advising that Hilton Head Island Development Company, LLC has transferred its rights as the Developer/Declarant of the Coral Sands timeshare resort to Palmera, LLC.

Plaintiffs further assert that Spinnaker Resorts, Inc., is also a members of ARDA. See attached ARDA Corporate Member directory, dated December 13, 2016, listing Spinnaker Resorts, Inc.

In its Motion, ARDA asserts that an *amicus curiae* brief is desirable because the issues presented to the Court directly affect the legal environment in which ARDA's South Carolina members operate and will likely impact the legal environment in which ARDA's national membership operates. Further, ARDA asserts that this Court has never addressed the issues raised in this matter. Finally, ARDA asserts that the holdings in this matter will apply to all future cases involving the Timeshare Act, many of which will involve ARDA's members.

ARDA further asserts that ARDA has an interest in determining to what extent, if any, South Carolina's Timeshare Act permits individual timeshare owners to invoke the

("Molly Cherry, Attorney - Nexsen Pruet Law Firm - addressed the Commission to file a Motion for Private Hearing for the three (3) timeshare plans on the agenda: (TSP. 1112;

Timeshare Act as a means of enforcing an alleged injury unrelated to the sale or registration of timeshare interests.

ARDA further asserts that Plaintiffs in this matter invoke the Timeshare Act, although, they allege injury specific only to them and injury unrelated to the sale or registration of a timeshare interest.

In response, Plaintiffs assert that while the Court's interpretation of the Timeshare Act may impact timeshare developers and timeshare sales companies, ARDA takes no position on the sufficiency of Defendants' responsive brief to address the legal issues before the Court, namely the three certified questions. Plaintiffs assert that Defendants' responsive brief fully intimates the doomsday scenario for the timeshare industry and South Carolina's economy following any decision contrary to Defendants' arguments. Any potential *amicus curiae* brief would be unnecessarily duplicative.

Plaintiffs respectfully assert that the purpose of an *amicus curiae* brief is to allow for interested non-parties to provide the Court with additional information and arguments relevant to and helpful in deciding the issues before the Court. Insofar as (1) ARDA is presently represented by counsel who formerly represented Defendants; (2) ARDA is an organization comprised of Defendants; and (3) ARDA disclosed neither of the foregoing in its Motion, Plaintiffs assert that ARDA's motion should be denied for not complying with Rule 213, SCACR.

Further, because the arguments already asserted in Defendants' responsive brief speak mainly to the potential industry harm arising from a ruling adverse to Defendants, an *amicus curiae* brief from ARDA would be unnecessarily duplicative.

Accordingly, Plaintiffs respectfully request that the Court deny ARDA's Motion for
Leave to File *Amicus Curiae* Brief.

Respectfully submitted,



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Corporate Member Directory

Current as of Tuesday, December 13, 2016 (paged view)

Membership Guide

Join ARDA

VIP Membership

Member Directories

Corporate

New

Trustee

Chairman's League

Fractional/PRC

LTRB

Advertising/Resale

ARDA-WIN Advantage

Producers Club

Code Of Ethics

- Company
- North American Directory Services
- North Highland Worldwide Consulting
- Oakridge COA
- Oaks VOA
- Occidental Vacation Club
- Old Republic National Title
- Operadora New Life, S.A. de C.V./Premier by
- Orkin Pest Control, LLC
- Osceola County Property Appraiser
- Owen Bird Law Corporation
- Owners Link
- Pabor Designs
- Palm Springs Marquis Villas Owners Assoc
- Palm Springs Tennis Club Resort
- Palmera Vacation Club
- Paniolo Greens Interval Owners Association
- Paradise Vacation Club
- Paramount Marketing Consultants, Inc.
- Patton Hospitality Management
- Pavaso, Inc.
- PayPal
- Pend Oreille Shores Resort Homeowners Association
- Peppertree Maggie Valley
- Perspective Group

Note: Timeshare companies may be listed under the organization's parent name, so if you don't see the name you are looking for and would like to verify, please contact ARDA's membership department at (202) 371-6700 or membership@arda.org



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Re: How your vacations were meant to be.

The team at Palmera has listened and learned from owners like you. Soon, we will be announcing a new way of serving you called Palmera Vacation Club. As a valued Coral Sands Owner, we wanted you to be among the first to know.



You are receiving this letter, because Hilton Head Island Development Company, LLC, the Developer of Coral Sands and the Declarant under the Master Deed for that Owners Association, has transferred its rights as the Developer/Declarant to Palmera, LLC. As a current Owner at Coral Sands, apart from seeing Palmera, LLC on official documents, you will not notice any difference in your ownership experience. And, Elite Resort Group will still be there to ensure your experience is a great one.

Palmera Vacation Club is inspired by the vacation experiences that made Hilton Head Island America's favorite island resort. The Club takes advantage of our unequalled experience and relationships here, to put what you want from a vacation at your fingertips.

We will use the same inspiration and our industry relationships to offer you quality vacation experiences at other selected resorts in the United States and throughout the world. You'll be receiving more details about how you can become a Club member in the coming weeks. In the meantime, to learn more, just visit us at <http://www.palmeravacationclub.com/info.html>.

Sincerely,

Shane Lancaster

Shane Lancaster
Chief Operating Officer
Palmera, LLC



Corporate Member Directory

Current as of Tuesday, December 13, 2016 (paged view)

Membership Guide	Company
Join ARDA	<u>Sedona Summit Resort Owners Association</u>
VIP Membership	<u>Sell A Timeshare</u>
Member Directories	<u>Sena Hospitality Design, Inc.</u>
Corporate	<u>Seychelle Media</u>
New	<u>SFX Preferred Resorts</u>
Trustee	<u>Sheepscot Harbour Vacation Club</u>
Chairman's League	<u>Sigmatex-Lanier Textiles</u>
Fractional/PRC	<u>Silver Beach Club Association</u>
LTRB	<u>Silver Lake Resort</u>
Advertising/Resale	<u>Silverpoint Vacations S.L.</u>
ARDA-WIN Advantage	<u>Simcoe Condominium Corporation No. 38</u>
Producers Club	<u>Simmons Hospitality Group</u>
Code Of Ethics	<u>Sirenis Premium Travelers International Inc.</u>
	<u>Ski and Sea International</u>
	<u>Smith Barney</u>
	<u>Smugglers' Notch Resort</u>
	<u>Snowbird Ski & Summer Resort</u>
	<u>Somerpointe Resorts</u>
	<u>Southern Journeys LLC</u>
	<u>Southern Sun Group</u>
	<u>SPI Software</u>
	<u>Spicebush at Sea Pines</u>
	<u>* Spinnaker Resorts, Inc.</u>
	<u>SPM Resorts, Inc.</u>

Note: Timeshare companies may be listed under the organization's parent name, so if you don't see the name you are looking for and would like to verify, please contact ARDA's membership department at (202) 371-6700 or membership@arda.org



Spinnaker Resorts, Inc.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date indicated he served counsel for the Defendants with a copy of the *Plaintiffs' Return in Opposition to Motion to File Amicus Curiae Brief* by mailing copies of the same by United States Mail with first class postage prepaid to the following addresses:

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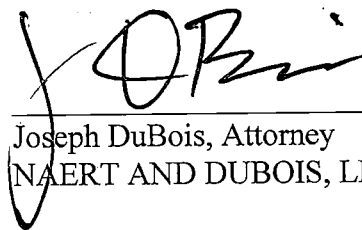
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December 15, 2016