THE STATE OF SOUTH CAROLINA
In The Supreme Court

Appellate Case No. 2016-001766

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 Budnick, and Robert Lauderman, 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.

REPLY TO RETURN IN OPPOSITION TO MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF

The American Resort Development Association ("ARDA"), respectfully files this Reply to Plaintiffs' Return in Opposition to Motion For Leave to File Amicus Curiae Brief ("Plaintiffs' Return").

I. INTRODUCTION

This Court's standard practice is to accept the filing of amici briefs. *See, e.g.*, *Savannah Riverkeeper v. South Carolina Dep't of Health and Envtl. Control*, 400 S.C. 196, 207, 733 S.E.2d 903, 908 (2012) (Kittredge, J., dissenting) ("In hindsight, I believe it was error to deviate from our standard practice of accepting amici briefs."). At bottom, Plaintiffs' Return argues that this Court should deviate from this practice for two reasons. Neither is persuasive.

II. ARGUMENT

First, Plaintiffs generally explain that ARDA's present counsel, and present counsel's law firm, has significant previous experience representing the interests of timeshare entities. *See* Plaintiffs' Return, p. 3. Plaintiffs are correct. More specifically, Plaintiffs submit that ARDA's present counsel represented two Defendants in the instant matter who were subsequently dismissed. *Id.* Again, Plaintiffs are correct. The two Defendants were dismissed from the instant matter in March of 2016.

Plaintiffs also state that a different Nexsen Pruet attorney, in a different Nexsen Pruet office, represents a different timeshare entity, in a different case presently before this Court. *Id.* pp. 3-4. There too, Plaintiffs are correct. Finally, on page 4 of their Return, "Plaintiffs further assert that Spinnaker Resorts, Inc. is [sic] also a members [sic] of ARDA." Yet again, Plaintiffs are correct. As noted in its Motion, "ARDA's membership includes timeshare resort developers, management companies, and owner associations in South Carolina." *See* ARDA's Motion for Leave to File Brief of Amicus Curiae, p. 3.

From these wholly innocuous facts, Plaintiffs draw precisely zero conclusions. Instead, Plaintiffs have seemingly created a list of reasons why ARDA *would* select its present counsel and why this Court *should* grant ARDA's Motion. Simply put, ARDA agrees.[1]

To the extent Plaintiffs ask this Court to draw an adverse inference from these statements, any such inference plainly points in the opposite direction. ARDA's counsel is not currently involved in the instant litigation and its previous experience in timeshare litigation does not create

[1] On page 4 of their Return, Plaintiffs state: "ARDA disclosed neither of the foregoing [that ARDA's present counsel represented former Defendants or that some of ARDA's members are Defendants in this case] in its Motion, [therefore] Plaintiffs assert that ARDA's motion should be denied for not complying with Rule 213, SCACR." To the extent this sentence even constitutes an argument, it is entirely specious. Nothing in Rule 213, SCACR, or any other Rule or Order of this Court, required ARDA to "disclose" its members or "disclose" the names of its attorneys' former clients.

a "conflict of interest."[2] To the contrary, these facts creates a ***unity*** of interest combined with significant experience. In sum, Plaintiffs' primary "argument" against the filing of an *amicus curiae* brief is not actually an argument at all and should be ignored. *See McCall v. Finley*, 294 S.C. 1, 4, 362 S.E.2d 26, 28 (Ct. App. 1987) (explaining that "whatever doesn't make any difference, doesn't matter").

Second, Plaintiffs argue that an *amicus curiae* brief would be "unnecessarily duplicative" because "ARDA takes no position on the sufficiency of Defendants' responsive brief to address the legal issues before the Court." *See* Plaintiffs' Return, p. 4. As an initial matter, nothing in Rule 213, SCACR, or in any other Rule or Order of this Court, required ARDA to "take a position" on Defendants' brief or any other brief. Instead, the Rule requires only that ARDA "identify" its interest and "state the reasons" why its' brief is desirable. *See* Rule 213, SCACR. ARDA clearly satisfied both prongs of the Rule.

Regardless, ARDA's proposed brief will not be "duplicative." Instead, it will elaborate and expand upon the standing argument underlying all three of the certified questions and discussed briefly in Respondents' merits brief.

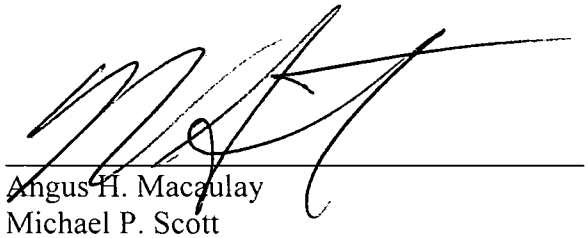
Notably, even if ARDA's argument was not related to the issues in the certified questions—and it is—arguments regarding subject matter jurisdiction and standing *could* be raised for the first time by an amici. *See Eagle Container Co., LLC v. County of Newberry*, 366 S.C. 611, 631-32, 622 S.E.2d 733, 743 (Ct. App. 2005) ("Generally, amicus curiae cannot inject new issues into a case; however, courts will consider issues presented by an amicus curiae when the court could have raised the issue *sua sponte*." (citing 4 Am. Jur. 2d *Amicus Curiae* § 7)) *reversed on other grounds by Eagle Container Co., LLC v. County of Newberry*, 379 S.C. 564, 666 S.E.2d 892

[2] Plaintiffs' Return does not use the phrase "conflict of interest," but it is heavily implied.

(2008). In any event, even if ARDA's brief were "unnecessarily duplicative" this Court simply could, and rightly would, ignore it. *See McCall, supra.*

III. CONCLUSION

For the reasons set forth here and in ARDA's Motion for Leave to File Brief of Amicus Curiae, this Court should GRANT ARDA's Motion.



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PROOF OF SERVICE

I certified that I have served the REPLY TO RETURN IN OPPOSITION TO MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF on the following by causing a copy to be mailed via U.S. Mail, postage prepaid, to Counsel for the Plaintiffs on December 21, 2016, at the addresses shown below:

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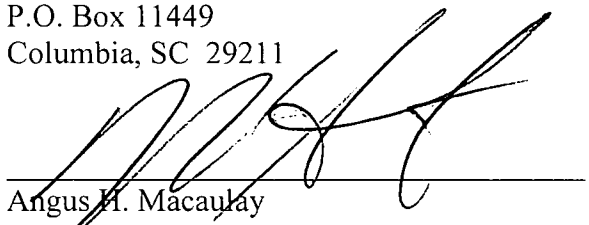

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