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S.C. SUPREME COURT

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

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.

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.

**PLAINTIFFS' BRIEF IN REPLY TO
ARDA'S AMICUS CURAIE BRIEF**

Joseph DuBois, SC Bar # 71192
Zach S. Naert, SC Bar # 78163
Naert & DuBois, LLC
22 New Orleans Rd #1
Post Office Box 7228 (29938)
Hilton Head Island, SC 29928
Tel: (843) 686-5500
Fax: (843) 686-5501
joe@lowcountrylegal.com
zach@lowcountrylegal.com
Attorneys for Plaintiffs

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STATEMENT OF ISSUES FOR REVIEW

1. Does the South Carolina Real Estate Commission (the "Commission") have exclusive jurisdiction to determine whether a violation of the South Carolina Vacation Time Sharing Plans Act, S.C. Code Ann. §§ 27-32-10, *et seq.* (the "Timeshare Act"), has occurred?
2. Is the Commission's determination of a violation of the Timeshare Act a condition precedent to a purchaser bringing a private cause of action to enforce the provisions of the Timeshare Act?
3. Are the Commission's determinations as to whether the Timeshare Act was violated binding on courts of the Judicial Branch?

STATEMENT OF THE CASE

Plaintiffs incorporate by reference their previously filed statements of the case.

ARGUMENT

In its brief, ARDA attempts to insert into the Court's analysis an additional fallback argument concerning Plaintiffs' standing that it claims Defendants will assert throughout the remainder of these lawsuits.

In attempting to insert this additional issue before the Court, ARDA states that its "goal in advancing its standing argument is to place the issue before the Court with the aim of this Court setting forth its views on the issue for consideration by the District Court in this case and the Courts of this State in future cases." [ARDA Brief, 2].

In response, Plaintiffs assert that such insertion of additional issues is improper for a non-party to the case, violative of the applicable appellate court rules, and that such attempt should be admonished and disregarded by the Court.

I. ARDA'S BRIEF VIOLATES RULE 213, SCACR, AND SHOULD BE DISREGARDED

A. Amicus Curiae Briefs are Limited to the Issues on Appeal

Rule 213, SCACR, provides that:

The [*amicus curiae*] brief shall be limited to argument of the issues on appeal as presented by the parties and shall comply with the requirements of Rules 208(b) and 211.

Thus, in submitting an *amicus curiae* brief, ARDA is bound and required to argue only the issues that are before the Court.

B. The Issues on Appeal are the Three Certified Questions

In the instant cases, the issues before the Court are the three certified questions posed by the South Carolina District Court, set forth fully in the Section captioned Statement of Issues for Review. Notably, none of the three certified questions concern Plaintiffs' standing.

C. ARDA's Brief Attempts to Introduce a New, Fourth Issue

In its brief, ARDA asserts that "[e]ven assuming . . . an individual can bring a claim under the [Timeshare Act], which a South Carolina trial court can then resolve - have these particular Plaintiffs, by way of their actual pleadings, demonstrated that they specifically have standing to bring this claim?" [ARDA Brief, 1].

The majority of ARDA's brief then attempts to analyze this new, fourth issue before coming to the anticipated conclusion that Plaintiffs lack standing to bring a claim for a violation of the Timeshare Act.

D. The Appropriate Remedy is to Disregard ARDA's Brief

Plaintiffs assert that the appropriate response to ARDA's brief and its attempt to insert a separate, fourth issue into these cases is to admonish and disregard same.

II. AS TIMESHARE PURCHASERS, PLAINTIFFS HAVE STANDING TO BRING CLAIMS FOR VIOLATIONS OF THE TIMESHARE ACT

In its brief, ARDA asserts that the Plaintiffs lack standing to bring suit for violation of the Timeshare Act. Plaintiffs unquestionably have standing in these cases. Despite that such issue is not further before the Court, and thus such argument should be entirely disregarded as in violation of the appellate court rules, Plaintiffs hereby respond to same.

A. Standing Defined

Regarding legal standing, this Court has expressed that:

The linchpin of [standing] analysis is that the plaintiff must have a personal stake in the litigation, meaning he is the real party in interest. In other words, the party seeking relief must have a real, material, or substantial interest in the litigation, not a merely nominal or technical one.

Georgetown County League of Women Voters v. Smith Land Company, 393 S.C. 350, 713 S.E.2d 287, 291 (dissent) (2011), citing *Sea Pines Association for the Protection of Wildlife v. SCDNR*, 345 S.C. 594, 550 S.E.2d 287 (2001).

B. Plaintiffs Have Standing

Plaintiffs are purchasers of timeshare properties from Defendants. As such, they are fundamentally different and distinct from the plaintiffs in the line of environmental law cases that ARDA cites in support of its assertion that Plaintiffs lack standing despite the unqualified language in S.C. Code § 27-32-130 of the Timeshare Act providing for a timeshare purchaser's private right of action to enforce violations of the Timeshare Act.

Plaintiffs attended timeshare presentations offered by Defendants and thereafter purchased timeshares from Defendants. Necessarily, Plaintiffs provided money to Defendants in exchange for the offered timeshare properties.

Pursuant to their Timeshare Act causes of action, Plaintiffs seek judgment against Defendants for violation of the Timeshare Act, the voiding of the subject timeshare purchase contracts, and refund of all consideration paid to Defendants pursuant to the subject contracts. *See* S.C. Code § 27-32-120(c).

Thus, Plaintiffs, as parties to contracts with Defendants and having paid money to Defendants, have a personal stake in the outcome of this litigation. Further, due to their loss of money to Defendants as a result of the timeshare transaction, Plaintiffs have suffered particularized and concrete financial losses to Defendants. Plaintiffs have standing in these cases.

CONCLUSION

In its brief, ARDA attempts to expand the Court's review to include an additional issue relating to standing that is not presently before the Court. Such expansion is expressly prohibited by the SCACR, and ARDA's brief should thus properly be disregarded.

Further, should the Court give consideration to ARDA's standing-related argument, such argument necessarily fails insofar as Plaintiffs, timeshare purchasers that entered into timeshare purchase transactions with Defendants, are the expected and intended parties to bring an action for violation of the Timeshare Act.

Accordingly, for all the reasons discussed herein, as well as those arguments previously presented, the Court should answer all three certified questions in the negative.

Respectfully submitted,



Joseph Dubois, SC Bar # 71192

Zach S. Naert, SC Bar # 78163

Naert & DuBois, LLC

22 New Orleans Rd #1

Post Office Box 7228 (29938)

Hilton Head Island, SC 29928

Tel: (843) 686-5500

Fax: (843) 686-5501

joe@lowcountrylegal.com

zach@lowcountrylegal.com

Attorneys for Plaintiffs

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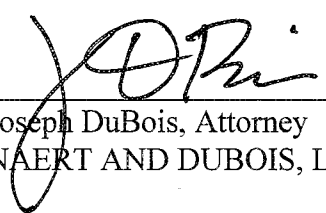
v.

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

Defendants.

CERTIFICATE OF COMPLIANCE WITH RULE 211(b), SCACR

The undersigned hereby certifies that the Plaintiffs' Brief in Reply to ARDA's *Amicus Curiae* Brief complies with Rule 211(b), SCACR.



Joseph DuBois, Attorney
NAERT AND DUBOIS, LLC

January 25, 2017

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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' Brief in Reply to ARDA's *Amicus Curiae* 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

Kathleen McColl McDaniel, Esquire
Callison Tighe and Robinson
PO Box 1390
Columbia, SC 29202-1390

Jaqueline M. Pavlicek, Esquire
Callison Tighe and Robinson
PO Box 1390
Columbia, SC 29202-1390

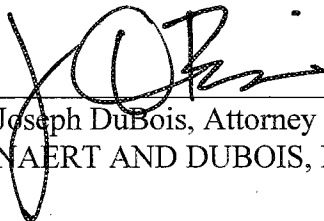
Bess J. DuRant, Esquire
Sowell Gray Stepp and Laffitte
PO Box 11449
Columbia, SC 29211

Thornton F. Sowell, III, Esquire
Sowell Gray Stepp and Laffitte
PO Box 11449
Columbia, SC 29211

James E. Smith, Jr., Esquire
James E. Smith, Jr., PA
1422 Laurel Street
Columbia, SC 29201

Angus H. Macaulay, Esquire
Nexsen Pruet, LLC
P.O. Drawer 2426
Columbia, SC 29202

Michael P. Scott, Esquire
Nexsen Pruet, LLC
P.O. Drawer 2426
Columbia, SC 29202



Joseph DuBois, Attorney
NAERT AND DUBOIS, LLC

January 26, 2017



Naert and DuBois, LLC
22 New Orleans Road, Suite 1
Post Office Box 7228 (29938)
Hilton Head Island, SC 29928

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

506