

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. 2016-001765

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JUN 12 2017

Paula Fullbright and Mark Fullbright, Plaintiffs,

v.

S.C. SUPREME COURT

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

**PLAINTIFFS' RETURN IN OPPOSITION TO
DEFENDANT'S PETITION FOR REHEARING**

Plaintiffs hereby submit their Return in Opposition to Defendant Spinnaker Resorts, Inc. d/b/a Spinnaker Resorts South Carolina, Inc.'s Petition for Rehearing of Opinion No. 27720, filed May 17, 2017, as the Court requested of Plaintiffs by letter dated June 2, 2017.

Background

Opinion No. 27720 answered three certified questions posed by the South Carolina District Court, Honorable Patrick Michael Duffy presiding, concerning the interpretation of the South Carolina Vacation Time Sharing Plans Act, S.C. Code Section 27-32-10, et seq. ("Timeshare Act") relating to Plaintiff timeshare purchasers' claims for Defendant's violations of the Timeshare Act.

Standard for Petitions for Rehearing

Pursuant to Rule 221, SCACR, Petitions for Rehearing shall state with particularity the points supposed to have been overlooked or misapprehended by the Court.

Defendant's Petition for Rehearing

Defendant's Petition for Rehearing, filed with the Court on May 31, 2017, seeks rehearing and reconsideration of Opinion No. 27720 based upon the following points alleged by Defendant to have been misapprehended by the Court:

1. That the Court misapprehends the legislative intent as to the Timeshare Act because it did not interpret the Timeshare Act as a whole, but instead only interpreted the third sentence of Section 130 in isolation;
2. That the Court misapprehends the legislative policy of the Timeshare Act in its expression of the purpose of the Timeshare Act;
3. That the Court misapprehends the legislative intent regarding Real Estate Commission registration requirements and determinations as to the Timeshare Act, rendering such Real Estate Commission determinations unreliable; and
4. That the Court misapprehends the assertions in the Defendant's Brief that the Fullbrights were not a party to the Real Estate Commission's meeting on August 20, 2015, in that because the Fullbrights' attorney was present in the public gallery, the Fullbrights are therefore bound by the Real Estate Commission's retroactive timeshare registration determination that arose from such meeting.

In response, Plaintiffs generally assert that Defendant's Petition for Rehearing is simply an attempt to re-litigate its position again, rather than to bring to the Court's attention any material fact or principle of law that has been either overlooked or misapprehended by the Court.

Each of the first three points referenced in Defendant's Petition relating to Defendant's assertions regarding public policy and legislative intent were previously asserted, argued, considered, decided, and referenced by the Court in its Opinion and, therefore, such

points should serve as no basis for granting a rehearing as requested by Defendant.

Defendant essentially argues that the Timeshare Act's purpose, policy, and intent is solely to protect "the economic health and continued stability of the vacation time sharing industry." See Section 405(M). However, Defendant fails to recognize and reconcile such language with other provisions of the Timeshare Act favoring Plaintiffs' position, including Section 405(E), which provides that the the Timeshare Act provides timeshare purchasers with "significant and unique consumer protections not available to purchasers of real property."

In its Opinion, the Court referenced, recited, and interpreted these several considerations, ultimately focusing its attention on the plain language of Section 130, which specifically provides that:

The Real Estate Commission is responsible for the enforcement and implementation of this chapter and the Department of Labor, Licensing and Regulation, at the request of the Real Estate Commission, shall prosecute a violation under this chapter. The commission shall promulgate regulations for the implementation of this chapter, subject to the State Administrative Procedures Act. The provisions of this section do not limit the right of a purchaser or lessee to bring a private action to enforce the provisions of this chapter.

(Emphasis added). Thus, Defendant's assertion that the Court misapprehended such policy considerations is inaccurate - the Court simply disagrees with Defendant's self-serving interpretation of same.

Further, as to Defendant's fourth point, regarding its assertion that Plaintiffs Fullbright were somehow parties to the Real Estate Commission's August 20, 2015 meeting and should be bound thereby is absolutely contrary to centuries-old United States common

law regarding personal jurisdiction.

Plaintiffs hereby respond to each of Defendant's four assertions specifically as set forth below.

Defendant's Allegations and Plaintiffs' Responses

1. That the Court misapprehends the legislative intent as to the Timeshare Act because it did not interpret the Timeshare Act as a whole, but instead only interpreted the third sentence of Section 130 in isolation.
2. That the Court misapprehends the legislative policy of the Timeshare Act in its expression of the purpose of the Timeshare Act.
3. That the Court misapprehends the legislative intent regarding Real Estate Commission registration requirements and determinations as to the Timeshare Act, thereby rendering Real Estate Commission determinations unreliable.

In its first three points, Defendants assert that the Court misapprehends the legislative intent and policy regarding the Timeshare Act as a result of the Court not reviewing the entirety of the Timeshare Act, including Sections 20, 180, 190, and 405, but instead focusing solely on the third sentence of Section 130. Defendant further asserts that the Court misapprehends that its interpretation of the Timeshare Act will render Real Estate Commission determinations unreliable, to the detriment of timeshare developers.

In response, Plaintiffs assert that the Court does not misapprehend the legislative intent of the Timeshare Act as set forth within said Act, that it did consider the entirety of the Timeshare Act, including Sections 20, 180, 190, and 405, and including Section 405(E)'s statement as to timeshare purchasers being afforded significant and unique consumer protections not available to purchasers of other forms of real property, as evidenced by its referencing such Sections in its Opinion.

Plaintiffs further respond that the Court's Opinion does not render Real Estate

Commission determinations unreliable, but properly affords timeshare purchasers claiming violations of the Timeshare Act the opportunity for judicial review of such determinations which are alleged to be in violation of the Timeshare Act, as is specifically contemplated by Section 130 of the Timeshare Act and supported by the South Carolina Constitution's requirements relating to administrative agency determinations affecting private rights. See S.C. Const, art. I, § 22.

4. That the Court misapprehends the assertions in the Defendant's Brief that the Fullbrights were not a party to the Real Estate Commission's meeting on August 20, 2015, in that because the Fullbrights' attorney was present in the public gallery, the Fullbrights are therefore bound by the Real Estate Commission's retroactive timeshare registration determination made that day.

Plaintiffs respond that such is simply incongruous with long-settled common law regarding personal jurisdiction, such requiring that a litigant be made a party to the action and afforded notice and an opportunity to be heard regarding same. See Pennoyer v. Neff, 95 U.S. 714 (1878). Plaintiffs were not a named party and received no notice of the meeting, although their undersigned attorney did attend a portion of the such meeting, which was open to the general public.¹ Accordingly, Plaintiffs were not parties to the proceedings and cannot be bound by any determinations arising from same.

Conclusion

As set forth above, Defendant's assertions that the Court misapprehends South Carolina timeshare law as to the four points presented is simply an attempt to re-litigate these issues once more following an unfavorable result. Plaintiffs assert that such attempt is outside of the purview of Rule 221 of the South Carolina Appellate Court Rules, and,

accordingly, Plaintiffs respectfully request that Defendant's Petition for Rehearing be denied.

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

¹ At the outset of the meeting Defendant moved to close the proceedings to the general public, but after consideration such motion was denied by the Real Estate Commission.

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COURT
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Appellate Case No. 2016-001765

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

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

CERTIFICATE OF SERVICE

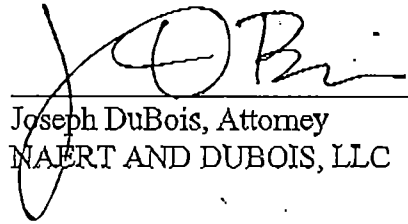
The undersigned hereby certifies that on the date indicated he served counsel of record with a copy of the Plaintiffs' Return in Opposition to Defendant's Petition for Rehearing by mailing copies of the same by United States Mail with first class postage prepaid to the following addresses:

Barry L. Johnson, Esquire
10 Pinckney Colony Road
The Victoria Bldg., Suite 200
Bluffton, SC 29909

Michael D. Finn, Esquire
Finn Law Group
10720 72nd Street, Suite 305
Largo, FL 33777

Patrick Andrew Kennedy, Esquire
Finn Law Group
10720 72nd Street, Suite 305
Largo, FL 33777

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



Joseph DuBois, Attorney
NAERT AND DUBOIS, LLC

June 12, 2017