**THE STATE OF SOUTH CAROLINA**
**In The Supreme Court**

Paula Fullbright and Mark Fullbright, Plaintiffs,

v.

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

Appellate Case No. 2016-001765

AND

Paul Chenard and Rebecca Chenard, Plaintiffs,

v.

Hilton Head Island Development Co., L.L.C., 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 Co., L.L.C., Sunrise Vacation Properties, Ltd., Sherri J. Smith, Patrick Budnik, and Robert Lauderman, d/b/a Coral Resorts, Defendants.

Linda Renchkovsky, Plaintiff,

v.

Coral Resorts, L.L.C. and Sunrise Vacation Properties, Ltd., d/b/a Coral Resorts, Defendants.

Robert Curry, Jr. and Monica R. Curry, Plaintiffs,

v.

Hilton Head Island Development Co., L.L.C., 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, L.L.C. and Sunrise Vacation Properties, Ltd., d/b/a Coral Resorts, Defendants.

Phillip Ross and Kimberly Ross, Plaintiffs,

v.

Hilton Head Island Development Co., L.L.C., Sunrise Vacation Properties, Ltd., Sherri J. Smith, David Watson, and Sheldon Stanhope, Defendants.

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**DEFENDANT'S PETITION FOR REHEARING**

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## PREAMBLE TO PETITION FOR REHEARING

Defendant Spinnaker Resorts, Inc., d/b/a Spinnaker Resorts South Carolina, Inc. ("Spinnaker") here petitions the Supreme Court (the "Court"), pursuant to Rule 221(a), SCACR, to rehear certain matters as set forth below, arising from the Court's Opinion No. 27720 ("Opinion"), in the instant case, filed May 17, 2017, wherein the Court answered certain certified questions, on certification from the United States District Court for the District of South Carolina, by Hon. Patrick Michael Duffy, United States District Judge.

The Opinion presented the Court's answers to the following three certified questions:

1. Does the South Carolina Real Estate Commission have exclusive jurisdiction to determine whether a violation of the South Carolina Vacation Time Sharing Plans Act (the Timeshare Act) has occurred?
2. Is the South Carolina Real Estate 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 South Carolina Real Estate Commission's determinations as to whether the Timeshare Act was violated binding on courts of the judicial branch?

Spinnaker, respectfully, believes that the Court, in answering Certified Question 3, overlooked or misapprehended certain points as below set forth. While Spinnaker respectfully disagrees with the Court's rulings on Certified Questions 1 and 2, Spinnaker does not believe that it is appropriate here to reargue, or "rehash", the Court's answers to those two certified questions.

## POINTS RAISED BY SPINNAKER ON PETITION FOR REHEARING

In answering Certified Question 3 in the negative, on page 16 of the opinion the Court held that the South Carolina Real Estate Commission's determinations as

to whether the Timeshare Act was violated "are not binding on courts unless they have been subjected to judicial review and found to be lawful". Fullbright v. Spinnaker, Op. No. 27720 (S.C. Sup. Ct. filed May 17, 2017).

By this petition, Spinnaker respectfully asserts that the Court overlooked and misapprehended a vital and serious issue, which is the question of the intent of the legislature, as expressed in the Timeshare Act, on the issue of the extent to which, if at all, determinations by the Real Estate Commission are binding on the courts of the judicial branch.

It is understandable that the Court took into consideration its perception of certain perceived facts, which the Court summarized in Footnote 3 of the Opinion (p. 5), as indicative of a possible perception of some fundamental unfairness to the Plaintiffs. Fullbright v. Spinnaker, Op. No. 27720 (S.C. Sup. Ct. filed May 17, 2017). However, the Court's perception was at least factually incomplete and this petition also seeks to correct that factual misperception, bearing on the Court's negative determination as to Question 3.

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Spinnaker also submits its memorandum in support of this petition for rehearing.

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**DEFENDANT'S MEMORANDUM IN SUPPORT OF PETITION FOR REHEARING**

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**MEMORANDUM**

Law Applicable to a Petition for Rehearing

Rule 221(a) of the South Carolina Appellate Court Rules allows a petition for rehearing and requires that it "shall state with particularity the points supposed to have been overlooked or misapprehended by the court." Rule 221(a), SCACR. The foundational case law for a petition for rehearing is found in *Arnold v. Carolina Power & Light Co*, in which the South Carolina Supreme Court outlined the purpose of such a petition, stating it ". . . is to aid the Court in deciding correctly a case heard by it . . . . not to have presented points which lawyers for the losing parties have overlooked or misapprehended, and . . . not to have the case tried in this Court a second time." *Arnold v. Carolina Power & Light Co.*, 168 S.C. 163, 168 167 S.E. 234, 239 (1933). Furthermore, the *Arnold* Court noted that, although such petitions are frequently made, they are not often granted because they "contain nothing but a rehash" of what the losing party has said before, matters which the court has already considered well and disposed of." *Id.*

More recently, in *Kennedy v. South Carolina Retirement System*, the South Carolina Supreme Court denied a petition for rehearing where the petitioners argued that the petition should be granted because the petitioning party asserted that there was a significant argument not previously considered by the Court. *Kennedy v. South Carolina Retirement Sys.*, 349 S.C. 531, 533, 564 S.E.2d 322, 324 (2001). When, in fact, the so-called significant argument was a new argument which petitioner had never made in the previous proceedings, nor was any evidence found on the record on appeal to support the new argument. *Id.* The *Kennedy* Court,

further, observed that appellants have the responsibility to identify errors on appeal, and that a case cannot be tried on one theory and then attacked on appeal with another theory. *Kennedy*, 349 S.C. at 533, 564 S.E.2d at 324.

## INTRODUCTION

Spinnaker did not previously overlook any points material to this petition for rehearing, nor does Spinnaker seek to rehash the points made in its brief or in oral argument. Further, Spinnaker does not seek to introduce a novel argument through this petition that was not previously presented.

Rather, by this petition Spinnaker respectfully asserts that the Court chose to give plain meaning to one part of the Timeshare Act, but not to other parts of the Timeshare Act. In so doing, the Court considered what it determined were, in effect, the Defendants' *ad hominem* expressions of policy considerations, and concluded that those were overcome by the plain language of the third sentence of section 27-32-130 of the Timeshare Act. In so doing, Spinnaker respectfully asserts, the Court only partially took into account the statutory public policy concerns of the legislature in constructing the Timeshare Act, and therefore overlooked or misapprehended the weight attached to the legislature's statutory concerns.

To state that another way, Spinnaker respectively asserts that the obvious intent of the legislature with the Timeshare Act is to protect the purchasers and the timeshare industry, by a series of regulatory filings, approvals, examinations, licenses, hearings and prosecutions, and a streamlined process for purchaser claim resolution, through the agency of the Real Estate Commission. The Opinion renders

void the special and unique benefits that the legislature conferred upon purchasers and members of the timeshare industry, through the Timeshare Act, by means of the special expertise of the Real Estate Commission to regulate, enforce and implement the industry's required "unique practices and procedures." S.C. Code Ann. §§ 27-32-405(f) (2013). Thus, the Court appears to have overlooked or misapprehended the intent of the legislature, because the Opinion negates the above-referenced purpose of the Timeshare act, and eliminates the special and unique benefits that it confers to purchasers and members of the timeshare industry. The Opinion also negates the functional capacity of the Real Estate Commission because it allows purchasers to bypass the Real Estate Commission's regulatory capacity and authority of implementation and enforcement of the Timeshare Act as mandated by the legislature:

> 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....

S.C. Code Ann. §§ 27-32-130 (2003). Beginning with the most fundamental, and the threshold, step in all timeshare regulatory matters, the matter of registration of a timeshare plan. Thus, by answering the three certified questions in the negative, especially Question 3, the Court's Opinion has made the Real Estate Commission functionally irrelevant in timeshare matters.

## I. The Court overlooked and misapprehended the intent of the legislature because it did not interpret the statute as a whole.

The foundational point of contention on which the Court focused during the oral argument, and subsequently in its Opinion, was the last sentence of the provision in section 27-32-130, which states, "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." S.C. Code Ann. §§ 27-32-130 (2003). The Court's Opinion observed that this sentence was to be interpreted on its own, independently of the rest of the statutory structure created nearly 40 years ago by the legislature to regulate the timeshare industry. Under such a filtered method of statutory interpretation, the Court rendered the third sentence of -130, in a vacuum, to be an unambiguous statement with a plain meaning. In doing so, the Court overlooked the meaning of -130 within the context of the plain meanings of other applicable portions of the Timeshare Act, as found in section 27-32-405 (entitled the "Purpose" of the Timeshare Act) and in sections -180 ("Registration of Persons . . . .") and -190 ("Registration of (Timeshare) Plans . . . .").

Evidencing that the Court overlooked or misapprehended the Timeshare Act and the role of the Real Estate Commission and the judicial courts in such matters, it is noteworthy that in this narrow interpretation of the statutory structure to regulate the timeshare industry, by focusing solely on the last sentence of -130, out of the entire Timeshare Act, the Court's Opinion, by citing other cases, actually affirmed that a statute, such as the Timeshare Act, must be interpreted as a whole, which the Court did not do in its Opinion.

Thus, as the Court observed in the Opinion,

(1) "when examining statutes 'the cardinal rule of statutory construction is to ascertain and give effect to the intent of the legislature.'" *Brown v. Bi-Lo, Inc.*, 354 S.C. 436, 439, 581 S.E.2d 836, 838 (2003); Fullbright v. Spinnaker, Op. No. 27720 (S.C. Sup. Ct. filed May 17, 2017).

(2) "A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design, and policy of the lawmakers." *State v. Henkel*, 413 S.C. 9, 14, 774 S.E.2d 458, 461 (2015); Fullbright v. Spinnaker, Op. No. 27720 (S.C. Sup. Ct. filed May 17, 2017).

(3) "Moreover, it is well settled that statutes dealing with the same subject matter are *in pari materia* and must be construed together, if possible, to produce a single, harmonious result." *Beaufort County v. S.C. State Election Comm'n*, 395 S.C. 366, 371, 718 S.E.2d 432, 435 (2011); Fullbright v. Spinnaker, Op. No. 27720 (S.C. Sup. Ct. filed May 17, 2017).

Further relevant case law is provided in two other South Carolina Supreme Court decisions, *Broadhurst*, and *Unisun*. In the former, "All of the rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute." *Broadhurst v. City of Myrtle Beach Election Comm'n*, 342 S.C. 373, 379 537 S.E.2d 543, 549

(2000). The latter observes that "Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention." *Unison Ins. Co. v. Schmidt*, 339 S.C. 362, 366, 529 S.E.2d 280, 284 (2000).

The Court so narrowly based its Opinion on a reading of the third sentence of -130 that it overlooked or misapprehended the meaning and import of the Timeshare Act as a whole, and thus acted contrary to statutory construction requirements.

## II. The Court's Opinion Overlooked or Misapprehended the Import of the Legislature's Policy Concerns In Its Expression of the Purpose of the Timeshare Act.

Additionally, on page 3 of the Opinion, the Court noted that it was to be guided by the principle that "determinations of public policy, however, are chiefly within the province of the legislature, whose authority on those matters we must respect." Fullbright v. Spinnaker, Op. No. 27720 (S.C. Sup. Ct. filed May 17, 2017).

In the case at hand, on page 10 of the Opinion, the Court noted, credited, and then set aside what it called the "Defendants' concerns." *Id.* In effect, the Court's focus and apprehension of the "Defendants' concerns" merely treated them as *ad hominin* concerns. However, the "Defendants' concerns" are absolutely consistent with the legislature's statutory policy considerations found in the Timeshare Act in section 27-32-405, for the economic stability of the timeshare industry. By its analysis on page 7 of the Opinion, however, the Court held that the plain language of those policy considerations, and the regulatory scheme based in

the Real Estate Commission to enforce and implement the Timeshare Act by registering both timeshare persons and timeshare plans, must give way to what the Court determined was the plain language of -130. Fullbright v. Spinnaker, Op. No. 27720 (S.C. Sup. Ct. filed May 17, 2017). This has the unintended effect of "throwing the baby out with the bath water", because nothing determined by the Real Estate Commission now has any validity unless and until reviewed and approved by the judicial courts, years after the timeshare industry and/or purchasers have invested large sums of money in reliance on the Real Estate Commission. That is plainly not the legislative intent.

To discern the legislative plan, purpose and intent, the two most-relevant components of -405, which must be read in concert with -130, are -405(f) and -405(m). S.C. Code Ann. §§ 27-32-405(f) (2013); S.C. Code Ann. §§ 27-32-405(m) (2013).

The legislature stipulated in -405(f) that "[t]he process involved in the purchase and sale of interests in a vacation time sharing plan is unlike traditional residential real estate property, and due to the provisions of this act, require unique practices and procedures."

In the plain language of -405(m) the legislature laid out its public policy concerns: "The economic health and continued stability of the vacation time sharing industry should be subject to the clear identification of various procedures involved in the purchase and sale of an interest in a vacation time sharing plan and the timeshare closing itself." Those "procedures" are clearly identified throughout the Timeshare Act, wherein the Real Estate Commission was vested by the legislature

with the responsibility for the enforcement and implementation of the Timeshare Act:

> 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.

S.C. Code Ann. §§ 27-32-130 (2003). Notably, the legislature – not the judicial branch – created the means and methods to regulate the timeshare industry, and the legislature did not delegate this responsibility anywhere but to the Real Estate Commission.

## III. The Court's Opinion Renders Unreliable the Determinations of the Real Estate Commission as to Violations of the Timeshare Act, including the Registration Requirements and, Therefore Overlooks or Misapprehends the Intent of the Legislature Regarding the Determinations as to Same by the Real Estate Commission.

As mentioned above in this petition, there is a vital and serious, and open, issue, which is, first, the question of who has jurisdiction to determine the validity of the registration of a timeshare plan under the Timeshare Act and then, second, the extent to which determinations by the Real Estate Commission on such issues are binding on the courts of the judicial branch.

Under the Opinion, unfortunately, it appears that registrations of timeshare plans, state-wide, can now be challenged at any time in the judicial courts on a *de novo* basis, without regard either to the plain responsibility and authority of the Real Estate Commission, or to statutes of limitation, repose, etc. In the underlying trial court case of Spinnaker with the Fullbrights, the only pivotal issue is that of the validity of registration of the Bluewater timeshare plan, and that pivotal issue is

presented to the court by way of a class action suit seeking to unwind every sale made in Spinnaker's Bluewater project since 2006, with sales values exceeding $50,000,000.00. The Court's Opinion on Certified Question 3 throws open the floodgates to expensive, disruptive, multitudes of litigation claims, which can only have a significant destabilizing effect upon the timeshare industry. This is just not consistent with the plain language in -405 expressing the legislature's intent, as a matter of public policy, (1) " . . . favoring the economic health and continued stability of the vacation time sharing industry . . ." and (2) protecting consumers and the public interest by making the time sharing industry " . . .subject to the clear identification of various procedures involved in the purchase and sale of an interest in a vacation time sharing plan and the timeshare closing itself." S.C. Code Ann. §§ 27-32-405 (2013)

The only place in South Carolina where the legislature has provided any process to obtain approval of timeshare plan registrations is the Real Estate Commission. The Timeshare Act, -20, provides for the necessity to obtain Real Estate Commission approval before first selling time share plan units or intervals, and explains how to do it. Significantly, at that point in any and every timeshare plan process, no sales have occurred, so no purchasers have become involved, nor are any of their private rights involved. Thus, regarding timeshare plan registration, there are no purchasers to notice regarding the Real Estate Commission's consideration of such matters; nevertheless, the Real Estate Commission publishes online its notices, agendae and minutes of its meetings.[1] The Real Estate

[1] http://www.llr.state.sc.us/POL/REC/Minutes/August%2019,%202015.pdf

Commission does notify the public of its board meetings but does not keep the records of 2015 public at this time, though the link in footnote 2 shows the prototypical method that such notice is given since the Real Estate Commission began these practices online.[2]

The legislature provided for insulating the authority in the Real Estate Commission, to determine registrations of timeshare plans, by its regulatory structure providing that after a timeshare plan is submitted to the Real Estate Commission for registration approval, the Commission has thirty days to seek more information or documentation from the applicant. S.C. Code Ann. §§ 27-32-190(a)(2) (2003). Within that time frame the applicant's plan remains un-approved for sales, etc. If the Commission, in a particular case, does not seek more information or disapprove a proposed timeshare plan within that thirty days, then that plan is automatically approved by operation of statute – which is the precise design of the legislature, and consonant with the policy considerations of the legislature as laid out in -405(f). *Id.*

This is exactly what happened in the Fullbrights' case who, nevertheless, are suing Spinnaker over the timeshare plan registration. The registration of Spinnaker's timeshare plan registration was a *fait accompli'* by operation of statute in 2006, many years before the Fullbrights allege that they purchased a timeshare interest in Spinnaker's Bluewater Timeshare Project. The Fullbrights do not, and did not, have any private rights affected by that registration, nor to be protected by the Real Estate Commission or the judicial courts regarding that registration.

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[2] http://www.llr.sc.gov/calendar.asp

The Opinion as written makes it not reasonably possible for the timeshare industry, consumers/owners (including the far-and-away large majority who are very satisfied with their timeshare unit/interval purchases), or the banking industry, to rely on decisions of the Real Estate Commission. This conclusion is inevitable because of the holding in the Opinion on page 16, to wit, that the South Carolina Real Estate Commission's determinations as to whether the Timeshare Act was violated "are not binding on courts unless they have been subjected to judicial review and found to be lawful". Fullbright v. Spinnaker, Op. No. 27720 (S.C. Sup. Ct. filed May 17, 2017). The Opinion raises the specter of whether the developer of every timeshare plan, following approval by the Real Estate Commission, in the past, present and future, and before advertising, marketing, encumbering, selling, leasing, or conveying a timeshare interest therein, must consider bringing a time-consuming, and expensive declaratory judgment action in the judicial branch for judicial review and a determination that the Real Estate Commission acted lawfully. The financial industry's willingness to lend money for timeshare plan projects is questionable, as a matter of common sense, under the Opinion as to Certified Question 3. There is nothing in these affects and possible affects of the Courts Opinion on Certified Question 3 that affords any economic stability and predictability to the timeshare industry, an industry of which the legislature has determined to promote the economic stability.

Under the plain intent of the Timeshare Act statute as a whole, such a result is not consistent with the "purpose, design and policy of the lawmakers" and, therefore, the Court's interpretation of an isolated phrase in -130 of the Timeshare

Act, resulted in an Opinion that is out of context for the Timeshare Act as a whole, and is not a "practical, reasonable and fair interpretation consonant with the purpose, design and policy of the lawmakers". *Henkel*, 413 S.C. at 14, 774 S.E.2d at 461. Respectfully, the Court should revise its holding to comply with the holding of *Unison*, "Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention." *Unison Ins. Co.*, 339 S.C. at 366, 529 S.E.2d at 284.

Respectfully, Spinnaker asserts that the Court, in its holding on Certified Question 3, overlooked and/or misapprehended the intent of the legislature in the Timeshare Act as a whole, of which the third sentence of -130 is a tiny part, to the current effect that the Real Estate Commission has been rendered functionally irrelevant, except as a stepping stone, in the matter of every past, present and future timeshare plan in South Carolina, to go to the judicial courts for their blessings of the delegated work of the South Carolina Real Estate Commission.

## IV. The Court Overlooked and Misapprehended the Assertions in the Defendants Brief that the Fullbrights were not a Party to the Real Estate Commission's Meeting on August 20, 2015.

In footnote 3 of the Opinion the Court asserts that the parties are in agreement that the Fullbrights were not in attendance at the meeting of the Real Estate Commission held on August 20, 2015. Spinnaker respectfully asserts that it is not in agreement to that recitation of the facts. Fullbright v. Spinnaker, Op. No. 27720 (S.C. Sup. Ct. filed May 17, 2017). To correct the record on this, Spinnaker respectully asserts (1) that the Fullbrights, themselves, are not known by Spinnaker

to have attended the Real Estate Commission's August 20 meeting, but that (2) the attorney for the Fullbrights, Mr. Joseph DuBois, attended the entirety of the Real Estate Commission's meeting on that day, and obviously had notice of the meeting, yet nevertheless failed to make known to the Real Estate Commission either his presence at the meeting, or his interest in the subject matter of the meeting, or to request to have the Fullbrights to be made parties to the proceedings, or to request a continuance of the proceedings, or to participate in any way in the proceedings. Thereafter, despite these opportunities to appear before, and to be heard by, the South Carolina Real Estate Commission, Mr. DuBois and his clients later made two failed attempts, to the Administrative Law Court, to appeal the August 20, 2015 decision of the Real Estate Commission. It is noteworthy that the Fullbrights and Mr. DuBois did not then or thereafter appeal to the courts of the judicial branch their dissatisfaction with the result of the Real Estate Commission's August 20, 2015 hearing (which recognized the validity as of March 15, 2006 of Spinnaker's Bluewater Timeshare Plan Registration, under the authority of -190(A)(2)), nor the refusal of the Administrative Law Court to give the Fullbrights appellate standing regarding those Commission determinations. Hence Spinnaker's phrasing, in argument to this Court, ". . . no Plaintiff became or attempted to become a party to the proceedings heard and decided by the commission on August 20, 2015." Brief of Defendant at 4, Fullbright v. Spinnaker, No. 2016-001765 (S.C. Sup. Ct. Nov. 16, 2016).

The Court's Opinion, on page 12, cites the South Carolina Constitution, that "No Party shall be finally bound by a judicial or quasi-judicial decision of an

administrative agency affecting private rights except on due notice and an opportunity to be heard..., and he shall have in all such instances the right to judicial review." S.C. Const. Art. I, § 22.; Fullbright v. Spinnaker, Op. No. 27720 (S.C. Sup. Ct. filed May 17, 2017). The Fullbrights were, in fact, afforded due notice and an opportunity to be heard by the presence of a member of their counsel team, in the form of Mr. DuBois, at the Real Estate Commission meeting on August 20, 2015. Mr. DuBois did not do anything at that meeting, other than to greet other lawyers and to observe, but because of his presence at the hearing he and the Fullbrights were afforded adequate notice and an opportunity to be heard, even if such was required, which Spinnaker thinks was not the case because no "private rights" of the Fullbrights were involved. These facts plainly point to the conclusion that the decision of the Real Estate Commission at the August 20, 2015 meeting was, and is, binding on the Fullbrights.

Thus, and respectfully, the Court has misperceived – misapprehended – the truth of the matters asserted in footnote 3 of the Opinion.

## CONCLUSION

An older lawyer once said regarding matters of litigation and appeals, "The mills of the legal gods grind slowly, but they grind exceedingly fine." Spinnaker respectfully calls upon the Court to grind back through its analysis and ruling on Certified Question 3 with a finer grindstone. Spinnaker believes that such a finer grinding would demonstrate that the "one size fits all" Opinion of the Court on Certified Question 3 leaves no room for any enforcement action by a purchaser under the last sentence of -130 in timeshare plan registration matters, which are

uniquely within the purview of the Real Estate Commission and the determinations of which occur before any lawful advertising or selling or leasing of timeshare plan interests. Matters more derivative of common law or other civil business laws, such as allegations of fraudulent misrepresentation, negligent misrepresentation, breach of contract, constructive fraud, etc., would likely be more suited to the judicial courts to resolve than for the Real Estate Commission to resolve. Such distinctions could well be made by this Court as it completes its answer to Certified Question 3, as a way of giving more precise guidance to the U.S. District Court, to other courts with pending timeshare plan cases, to the timeshare industry and its lenders, and to the purchasing public. With Coral Resorts having over 60 cases in litigation and/or arbitration, and Spinnaker having this Fullbrights case, there are literally years of work for the judicial courts that, likely, could be substantially reduced by a finer grinding of the Timeshare Act, as related to Certified Question 3. It remains for the Court to clarify, as part of its answer of Certified Question 3, that vital and serious, and open, issue, which is, first, the question of who has jurisdiction to determine the validity of the registration of a timeshare plan under the Timeshare

Act and then, second, the extent to which determinations by the Real Estate Commission on such issues are binding on the courts of the judicial branch.

Respectfully submitted,

Barry L. Johnson (S.C. Bar #2185)
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Dated: May 31, 2017

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

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S.C. SUPREME COURT

**THE STATE OF SOUTH CAROLINA**
**In The Supreme Court**

Paula Fullbright and Mark Fullbright, Plaintiffs,

v.

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

Appellate Case No. 2016-001765

AND

Paul Chenard and Rebecca Chenard, Plaintiffs,

v.

Hilton Head Island Development Co., L.L.C., 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 Co., L.L.C., Sunrise Vacation Properties, Ltd., Sherri J. Smith, Patrick Budnik, and Robert Lauderman, d/b/a Coral Resorts, Defendants.

Linda Renchkovsky, Plaintiff,

v.

Coral Resorts, L.L.C. and Sunrise Vacation Properties, Ltd., d/b/a Coral Resorts, Defendants.

Robert Curry, Jr. and Monica R. Curry, Plaintiffs,

v.

Hilton Head Island Development Co., L.L.C., 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, L.L.C. and Sunrise Vacation Properties, Ltd., d/b/a Coral Resorts, Defendants.

Phillip Ross and Kimberly Ross, Plaintiffs,

v.

Hilton Head Island Development Co., L.L.C., Sunrise Vacation Properties, Ltd., Sherri J. Smith, David Watson, and Sheldon Stanhope, Defendants.

Appellate Case No. 2016-001766

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**PROOF OF SERVICE**

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I certify that I have served the Defendant's Petition for Rehearing and Defendant's Memorandum in Support of Petition for Rehearing, and Proof of Service, by depositing a copy of each in the United States Mail, postage prepaid, on May 31, 2017, addressed to:

Zach S. Naert, Esquire
Joseph DuBois, Esquire
NAERT & DUBOIS, LLC
PO Box 7228
Hilton Head Island, SC 29938

Michael D. Finn, Esquire
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May 31, 2017

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