

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable J. Derham Cole

Appellate Case No. 2017-001349

Albert R. LaFleur and Eileen LaFleur, Appellants,

v.

Coral Resorts, LLC, Hilton Head Hospitality, LLC d/b/a
Hilton Head Guest Services, Sunrise Vacation Properties,
Ltd., Sherri J. Smith, Patrick Budnik, Steven Deutsch,
Katherine Swisher, and Reba Management, Inc.,
Respondents.

And

John J. Meilert, Appellant,

v.

Coral Resorts, LLC, Coral Holdings, LLC, Sunrise
Vacation Properties, Ltd., Sherri J. Smith, Port O'Call
Owners Association, Inc., Coral Reef Owners
Association, Inc., Island Links Owners Association, Inc.,
and Reba Management, Inc., Respondents.

And

Dennis and Margaret McCloskey, Appellants,

v.

Hilton Head Island Development Company, LLC d/b/a
Coral Resorts, LLC, Hilton Head Hospitality, LLC d/b/a
Hilton Head Guest Services, Sunrise Vacation Properties,
Ltd., Coral Sands Owners Association, Inc., Sherri J.
Smith, and Sydney Karp, Respondents.

And

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SC Court of Appeals

Alexander Hail and Rebecca Key, Appellants,

v.

Coral Resorts, LLC, Coral Sands Owners Association, Inc., Sunrise Vacation Properties, Ltd., Reba Management, Inc., Sherri J. Smith, Robert Lauderman, Frank McKinney, Lachell Taylor, Steve Deutsch, Phil Luchese, and Port O'Call Owners Association, Inc., Defendants,

Of which Coral Resorts, LLC, Coral Sands Owners Association, Inc., Sunrise Vacation Properties, Ltd., Reba Management, Inc., Sherri J. Smith, Robert Lauderman, Frank McKinney, Lachell Taylor Steve Deutsch, and Port O'Call Owners Association, Inc., are Respondents.

And

John King and Laura King, Appellants,

v.

Coral Resorts, LLC, Port O'Call Owners Association, Inc., Island Links Owners Association, Inc., Sunrise Vacation Properties, Ltd., Reba Management, Inc., Coral Holdings, LLC, and Sherri J. Smith, Respondents.

And

James Wilson and Deborah Wilson, Appellants,

v.

Coral Resorts, LLC, Hilton Head Island Development Company, LLC, Island Links Owners Association, Inc., Port O'Call Owners Association, Inc., Sunrise Vacation Properties, Ltd., Reba Management, Inc., K. Michael Barfield, B. Dean Pierce, Sherri J. Smith, Sheldon Stanhope, Phil Lucchesse, and John Beard, Respondents.

And

Carie Olson and Matthew Olsen, Appellants,

v.

Coral Resorts, LLC, Hilton Head Hospitality, LLC d/b/a Hilton Head Guest Services, Reba Management, Inc., Sunrise Vacation Properties, Ltd., Island Links Owners Association, Inc., Sherri J. Smith, Christopher Ryan

Byrd, Sheldon S. Stanhope, and Matthew Hunter French,
Defendants,

Of which Coral Resorts, LLC, Hilton Head Hospitality,
LLC d/b/a Hilton Head Guest Services, Reba
Management, Inc., Sunrise Vacation Properties, Ltd.,
Island Links Owners Association, Inc., Sherri J. Smith, Sheldon
S. Stanhope, and Matthew Hunter French are
Respondents.

And

Gregory Gurbacki, Appellant,

v.

Coral Resorts, LLC, Reba Management, Inc., Sherri J.
Smith, B. Dean Pierce, Sunrise Vacation Properties,
Ltd., K. Michael Barfield, Island Links Owners
Association, Inc., Steve Deutsch, and Patrick Pfuhl,
Defendants,

Of which Coral Resorts, LLC, Reba Management, Inc.,
Sherri J. Smith, B. Dean Pierce, Sunrise Vacation
Properties, Ltd., K. Michael Barfield, Island Links
Owners Association, Inc., Steve Deutsch, and Patrick
Pfuhl, Defendants,

And

Michael Adams and Shonnie Adams, Appellants,

v.

Coral Resorts, LLC, Reba Management, Inc., Patrick
Budnik, Spencer Fulkert, Sherri J. Smith, Lori Lucas,
Dean Pierce, Sunrise Vacation Properties, Ltd., Coral
Holdings, LLC, K. Michael Barfield, Hilton Head Island
Development Company, LLC, Island Links Owners
Association, Inc., and Coral Sands Owners Association,
Inc., Defendants,

Of which Coral Resorts, LLC, Reba Management, Inc.,
Spencer Fulkert, Sherri J. Smith, Lori Lucas, Dean
Pierce, Sunrise Vacation Properties, Ltd., Coral
Holdings, LLC, K. Michael Barfield, Hilton Head Island
Development Company, LLC, Island Links Owners
Association, Inc., and Coral Sands Owners Association,
Inc., are Respondents.

And

Dale Tratnack and Suzanne Tratnack, Appellants,

v.

Coral Resorts, LLC, Sunrise Vacation Properties, Ltd.,
Reba Management, Inc., Island Links Owners
Association, Inc., B. Dean Pierce, K. Michael Barfield,
Sherri J. Smith, and Spencer Fulkert, Respondents.

And

Duane Wellman and Sharifa Wellman, Appellants,

v.

Coral Resorts, LLC, Reba Management, Inc., Dustin
Finnell, Spencer Fulkert, Sherri J. Smith, Dean Pierce,
Sunrise Vacation Properties, Ltd., Coral Holdings, LLC,
K. Michael Barfield, Hilton Head Island Development
Company, LLC, and Coral Sands Owners Association,
Inc., Respondents.

And

Richard Smoose and Nancy Jo Smoose, Appellants,

v.

Coral Resorts, LLC, Reba Management, Inc., Wayne
Heath, Sheldon Stanhope, Sherri J. Smith, Dean Pierce,
Sunrise Vacation Properties, Ltd., K. Michael Barfield,
Hilton Head Island Development Company, LLC, Island
Links Owners Association, Inc., Coral Sands Owners
Association, Inc., and Timeshare Guarantee, Inc.,
Defendants,

Of which Coral Resorts, LLC, Reba Management, Inc.,
Sheldon Stanhope, Sherri J. Smith, Dean Pierce, Sunrise
Vacation Properties, Ltd., K. Michael Barfield, Hilton
Head Island Development Company, LLC, Island Links
Owners Association, Inc., Coral Sands Owners
Association, Inc., and Timeshare Guarantee, Inc. are
Respondents.

MOTION FOR COSTS

Respondents Coral Resorts, LLC, Coral Holdings, LLC, Hilton Head Hospitality, LLC d/b/a Hilton Head Guest Services, Hilton Head Island Development Company, LLC, Sun & Seas Vacations, LLC, Reba Management, Inc., Timeshare Guarantee, Inc., and B. Dean Pierce¹ (“these Respondents”) hereby give notice and move the South Carolina Court of Appeals, pursuant to Rule 222, SCACR, for an order taxing all costs permitted under Rule 222(b), SCACR, including the set attorney’s fee as provided. See Rule 222 (a), SCACR (“[C]osts shall be taxed against the appellant when the appeal is dismissed or judgment on appeal is affirmed.” (emphasis added)) This Motion is accompanied by a sworn, itemized statement of costs, as required by Rule 222(d), SCACR, as well as an itemized report of time spent by counsel for these Respondents in addressing Appellants’ appeal. (**Exhibit A.**) In addition to the time spent by counsel for these Respondents’ counsel in addressing Appellants’ appeal of the circuit court’s orders in the twelve cases that are the subject of Appellants’ appeal, counsel for these Respondents also spent an inordinate amount of time and effort in the underlying litigation as a direct result of Appellants’ counsel’s² refusal to acknowledge the automatic stay of the underlying litigation caused by Appellants’ taking their appeal from the circuit court’s orders entered on March 7, 2016, August 31, 2016, and May 19, 2017—as detailed herein below.³

¹ The Notice of Appeal filed by Appellants with this Court, as well as C-Track, notes Shane Lancaster is a party to this appeal and that he is represented by counsel for these Respondents. This is an error, as counsel for these Respondents do not represent Mr. Lancaster in any of the matters that are the subject of this appeal.

² These Respondents note that Attorney Kathleen C. Barnes, Esq. has only served as counsel for Appellants in this appeal and has not appeared on behalf of the Appellants in any of the matters pending before the circuit court.

³ Although the attorney’s fees incurred by these Respondents in responding to this appeal are more than \$1,000.00, counsel for these Respondents believe they are only permitted to seek the amount of attorney’s fees set forth in the Supreme Court’s July 24, 1997 Order setting the amount of attorney’s fees recoverable in an appeal at \$1,000.00. If this Court determines the facts as to this appeal warrant awarding award counsel for these Respondents the full amount of fees set forth in **Exhibit A**, and that it has discretion to do so, counsel for these Respondents respectfully

The factual basis for this Motion is that on June 12, 2017, Appellants served their Notice of Appeal, appealing from the circuit court's orders entered in twelve cases on March 7, 2016, August 31, 2016, and May 19, 2017. On September 5, 2017, Appellants moved to withdraw their appeal. This Court issued the remittitur on November 21, 2017.

"Pursuant to Rule 205, [SCACR,] the service of a notice of appeal gives the appellate court exclusive jurisdiction over the appeal." *Metts v. Mims*, 384 S.C. 491, 498, 682 S.E.2d 813, 817 (2009) (finding appeal from the circuit court's contempt order did not affect the circuit court's jurisdiction to address matters pertaining to the merits of the underlying litigation because such matters were unaffected by the contempt order from which the appeal was taken). "[T]he service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order[s] . . . on appeal and to automatically stay the relief ordered in the appealed order[s]" Rule 241(a), SCACR. "The lower court . . . retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal." Rule 241(a), SCACR. "The appellate court retains jurisdiction until the remittitur is sent to the lower court." *Lancaster v. Georgia-Pac. Corp.*, 403 S.C. 136, 137, 742 S.E.2d 867, 868 (2013).

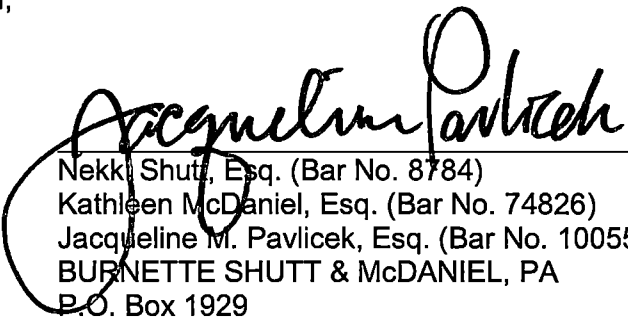
Notwithstanding the fact that the circuit court orders from which Appellants took their appeal touched upon practically every aspect of the litigation between the parties in the twelve separate cases pending before the circuit court, counsel for Appellants in the underlying litigation filed amended pleadings with the circuit court and adamantly disagreed with and objected to these Respondents' counsel's repeated endeavors to inform them about the effect of the automatic stay caused by Appellants' service of the Notice of Appeal. (**Exhibit B**, E-mail Correspondence; **Exhibit C**, Correspondence from James E. Smith, Jr., Esq.; **Exhibit D**, Correspondence from

request that this Court order Appellants to pay the full amount set forth in **Exhibit A**, \$2,256.00, which does not include fees incurred for time spent addressing counsel for Appellants' refusal to recognize the automatic stay in the underlying litigation. Upon request from this Court, counsel for these Respondents are happy to provide this Court with an itemized statement of the time spent by counsel for these Respondents directly related to such actions before the circuit court.

Joseph DuBois, Esq.) After Respondents' counsels' endeavors proved futile, counsel for Respondents determined it was necessary to move the circuit court for orders enforcing the stay. (See e.g., **Exhibit E** [exhibits omitted for sake of brevity].) Furthermore, in order to ensure these Respondents were protected from any risk of default in the underlying litigation, Respondents ultimately filed responses to Appellants' amended pleadings that counsel for Appellants filed with the circuit court while this appeal was pending before this Court. Given Appellants' counsel's obstinacy in the underlying litigation regarding the automatic stay, such was the only prudent course of action.

Accordingly, counsel for these Respondents respectfully requests that this Court issue an order taxing costs against Appellants pursuant to Rule 222, SCACR.

Respectfully submitted,



Nekki Shutt, Esq. (Bar No. 8784)
Kathleen McDaniel, Esq. (Bar No. 74826)
Jacqueline M. Pavlicek, Esq. (Bar No. 100556)
BURNETTE SHUTT & McDANIEL, PA
P.O. Box 1929
Columbia, South Carolina 29202-1929
Tel. (803) 850-0912
Fax (803) 904-7910
NShutt@BurnetteShutt.Law
KMcdaniel@BurnetteShutt.Law
JPavlicek@BurnetteShutt.Law

**ATTORNEYS FOR RESPONDENTS CORAL
RESORTS, LLC, CORAL HOLDINGS, LLC,
HILTON HEAD HOSPITALITY, LLC D/B/A HILTON
HEAD GUEST SERVICES, HILTON HEAD ISLAND
DEVELOPMENT COMPANY, LLC, SUN & SEAS
VACATIONS, LLC, REBA MANAGEMENT, INC.,
TIMESHARE GUARANTEE, INC., AND B. DEAN
PIERCE**

Columbia, South Carolina
December 6, 2017

Exhibit A

Date	Quantity	Price	Note	Total	User
9/1/2017	0.3	\$270.00	Receive and review e-mail from opposing counsel (Barnes) asking about consenting to motion to withdraw; respond that we cannot consent to bear our own attorneys fees and taxable costs, but subject to that, we will consent; communicate back and forth.	\$81.00	Nekki Shutt
8/30/2017	0.4	\$270.00	Receive and e-mail from opposing counsel (Barnes) with proposed consent motion to withdraw appeal; received results of research on recovery of costs on appeal.	\$108.00	Nekki Shutt
8/30/2017	0.7	\$200.00	Receive and review e-mail from opposing counsel (Barnes) seeking consent for withdrawal of appeal to SC Court of Appeals. Review applicable appellate court rules. Provide recommendation regarding strategy and possible recovery of costs.	\$140.00	Jacqueline Pavlicek
8/7/2017	0.1	\$270.00	Received opposing counsel first request for an extension of time to file initial brief with SC Court of Appeals; defense consent not sought.	\$27.00	Nekki Shutt
8/7/2017	0.2	\$200.00	Receive and review Plaintiffs' motion for extension (1st).	\$40.00	Jacqueline Pavlicek
7/16/2017	4	\$200.00	Review circuit court orders in 12 cases on appeal and compare them with Plaintiffs' motions and pleadings to evaluate potential substantive issues Plaintiffs may raise on appeal.	\$800.00	Jacqueline Pavlicek
7/10/2017	0.1	\$115.00	Receive and review correspondence from opposing counsel informing the Court of the receipt of the transcript; calendar deadline for Appellant's Initial Brief.	\$11.50	Jason Williamson
6/26/2017	0.1	\$200.00	Receive and review correspondence from Court of Appeals to Plaintiffs' appellate counsel providing appellate case no. (Appellate Case No. 2017-001349) and caption.	\$20.00	Jacqueline Pavlicek
6/22/2017	0.1	\$270.00	Received update on status of appeal from JMP; Plaintiffs have ordered transcript.	\$27.00	Nekki Shutt
6/21/2017	0.2	\$200.00	Address initial review of appeal and potential strategy regarding appellate procedural issues.	\$40.00	Jacqueline Pavlicek
6/20/2017	0.3	\$200.00	Continue formulating appellate strategy and researching potential legal issues.	\$60.00	Jacqueline Pavlicek
6/20/2017	0.1	\$270.00	Received notice from the court electronically that opposing counsel filed the notice of appeal to the Court of Appeals with circuit court.	\$27.00	Nekki Shutt
6/19/2017	0.1	\$270.00	Work with JMP on appeal by Plaintiffs to Court of Appeals	\$27.00	Nekki Shutt
6/19/2017	2.4	\$200.00	Continue formulating strategy regarding appeal taken by Plaintiffs. Review various court filings to evaluate potential procedural issues such as appealability, stay, and preservation. Begin examining potential substantive issues Plaintiffs may raise on appeal.	\$480.00	Jacqueline Pavlicek
6/16/2017	0.1	\$200.00	Receive and review e-mail from co-counsel regarding Plaintiffs' appeal, respond.	\$20.00	Jacqueline Pavlicek
6/16/2017	1.2	\$200.00	Receive and review Plaintiffs' Notice of Appeal and orders being appealed, served June 12, 2017. Begin formulating appellate strategy.	\$240.00	Jacqueline Pavlicek
6/16/2017	0.1	\$270.00	Received and reviewed email from co-counsel regarding Plaintiffs' appeal; respond.	\$27.00	Nekki Shutt
	10.8			\$2,256.50	

Exhibit B

Jacqueline M. Pavlicek

From: Jacqueline M. Pavlicek
Sent: Monday, June 19, 2017 9:36 PM
To: Zach S. Naert, Esq.
Cc: amacaulay@nexsenpruet.com; jeanmarie.jennings@hoodlaw.com; Jason Williamson; Kathleen M. McDaniel; David W. Overstreet, Esquire (david.overstreet@earhartoverstreet.com); tclark@sowellgray.com; robert.blain@earhartoverstreet.com; Nekki Shutt; James Emerson Smith (james@jamesmithpa.com); laura@jamesmithpa.com; DuRant, Bess (bdurant@sowellgray.com); Amy L. Abercrombie; Thornwell Biff F. Sowell, III (bsowell@sowellgray.com); Drew Laughlin (drew.laughlin@laughlinandbowen.com); Ashley Haworth; Brian Johnson (brian.johnson@hoodlaw.com); Joseph Dubois, Esq.; bobbyjr.hood@hoodlaw.com; steven.kropski@earhartoverstreet.com
Subject: Re: Stay pending resolution of 6/12/17 appeal

Zach,

The Plaintiffs are appealing orders with rulings on issues touching on practically every aspect of the litigation in twelve cases. As it stands, every opinion I am aware of addressing Rule 205, SCACR, supports my position. If you are aware of any authority indicating appealing from orders such as these does not result in a stay of the underlying litigation, please provide it.

It does not matter that Plaintiffs are not appealing the supreme court's orders, although copies of those orders were included in the notice of appeal correspondence to the court, if only to provide historical context for the court.

Jacqueline M. Pavlicek, Esq.
Attorney

Burnette Shutt & McDaniel, PA	P 803.850.0912
<u>912 Lady Street - 2nd Floor (29201)</u>	D 803.904.7914
<u>PO Box 1929</u>	F 803.904.7910
<u>Columbia, SC 29202</u>	E jpavlicek@burnetteshutt.law

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On Jun 19, 2017, at 9:04 PM, Zach S. Naert, Esq. <zach@lowcountrylegal.com> wrote:

Your previous email states that we appealed the Supreme Court Orders consolidating the cases, but a review of the Appeal states otherwise.

We disagree with your assertion that the Court of Appeals has exclusive jurisdiction over the entirety of these cases and look forward to receiving your timely Answers.

I presume that you will likewise refuse to discuss the Scheduling Orders requested by Judge Cole based upon the same assertion. We will of course copy you on our proposed Scheduling Orders.

Sent from my Verizon Wireless 4G LTE DROID

On Jun 19, 2017 8:35 PM, "Jacqueline M. Pavlicek" <jpavlicek@burnettshutt.law> wrote:

Dear Zach,

The Plaintiffs' appellate filings speak for themselves. The stay went into effect as soon as the Plaintiffs served their notice of appeal. It does not matter whether an appeal has been taken from the supreme court's orders.

Jacqueline M. Pavlicek, Esq.

Attorney

Burnette Shutt & McDaniel, PA
912 Lady Street - 2nd Floor (29201)
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Columbia, SC 29202

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On Jun 19, 2017, at 7:19 PM, Zach S. Naert, Esq. <zach@lowcountrylegal.com> wrote:

Are you saying that we appealed those three supreme court orders from years ago consolidating the lawsuits?

Sent from my Verizon Wireless 4G LTE DROID

On Jun 19, 2017 4:40 PM, "Jacqueline M. Pavlicek" <jpavlicek@burnettshutt.law> wrote:

Gentlemen,

We are in receipt of the notice of appeal served on June 12, 2017, in the LaFleur, Meilert, McCloskey, Haill/Key, King, Wilson, Olsen, Gurbacki, Adams, Tratnack,

Wellman, and Smoose matters. The orders that were included as being challenged in this appeal include the supreme court's orders assigning the matters to Judges Kinard, Dennis, and Cole, as well as Judge Cole's 3/7/16, 9/6/16, and 5/19/17 orders. As a result of this, the appellate court now has exclusive jurisdiction over these matters until the appellate court issues the remittitur in the appeal. See Rule 205, SCACR.

Notwithstanding the foregoing, we have received notice that you have filed amended pleadings in these twelve matters. Please note that we will not be filing responsive pleadings/motions until an appropriate time after the appellate court has issued the remittitur in this appeal. If you believe these matters are not stayed as a result of the appeal, please let us know your basis for such a belief.

Best,

Jacqueline M. Pavlicek
6-19-17



BURNETTE SHUTT MCDANIEL
Moving law forward.

Jacqueline M. Pavlicek, Esq., CIPP/US
Attorney

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Exhibit C

JAMES E. SMITH, JR., P.A.
ATTORNEYS AT LAW

JAMES E. SMITH, JR. *†‡
JAMES@JAMESSMITHPA.COM

DYLAN W. GOFF
DYLAN@JAMESSMITHPA.COM

OF COUNSEL:
NINA NELSON SMITH

*ALSO ADMITTED IN NC
†ALSO ADMITTED IN GA
‡ALSO ADMITTED IN NY

1422 LAUREL STREET
COLUMBIA, SOUTH CAROLINA 29201

June 21, 2017

SHANNON S. STUCKEY
(1969-2000)

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VIA E-MAIL JCOLEJ@SCCOURTS.ORG AND FIRST CLASS U.S. MAIL

The Honorable J. Derham Cole
P.O. Box 1744
Spartanburg, SC 29304

Re: Plaintiffs' Notice of Appeal filed in the following matters:
LaFleur v. Coral Resorts, LLC et al. – C/A No. 2012-CP-07-03746
Meilert v. Coral Resorts, LLC et al. – C/A No. 2013-CP-07-03746
McCloskey v. Hilton Head Island Dev. Co. et al. – C/A No. 2013-CP-07-02835
Hail/Key v. Coral Resorts, LLC et al. – C/A No. 2013-CP-07-02890
King v. Coral Resorts, LLC et al. – C/A No. 2013-CP-07-02967
Wilson v. Coral Resorts, LLC et al. – C/A No. 2014-CP-07-00361
Olsen v. Coral Resorts, LLC et al. – C/A No. 2014-CP-07-00490
Gurbacki v. Coral Resorts, LLC et al. – C/A No. 2014-CP-07-01197
Adams v. Coral Resorts, LLC et al. – C/A No. 2014-CP-07-01198
Tratnack v. Coral Resorts, LLC et al. – C/A No. 2014-CP-07-02632
Wellman v. Coral Resorts, LLC et al. – C/A No. 2014-CP-07-02772
Smoose v. Coral Resorts, LLC et al. – C/A No. 2014-CP-07-02839

Dear Judge Cole:

On behalf of the defense team and as we have done in the past, I wanted to bring a recent development to Your Honor's attention. On June 12, 2017, Plaintiffs served their Notice of Appeal from this Court's March 7, 2016, September 6, 2016, and May 19, 2017 Orders. A copy of the Plaintiffs' Notice of Appeal is attached for the Court's convenience. As a result of Plaintiffs taking this appeal, this litigation is stayed and the appellate court now has exclusive jurisdiction over the litigation until the appellate court issues the remittitur. Rule 205, SCACR.

Additionally, as you are aware, the Supreme Court issued its opinion regarding the certified questions on May 17, 2017. The Defendants filed a Petition for Rehearing, which is currently before the Supreme Court. Accordingly, the matter before the Supreme Court has not yet ended.

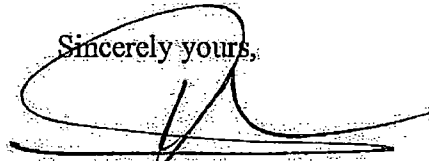
While these appeals are pending before the appellate courts, counsel for the Defendants will continue their endeavors to work with Plaintiffs' counsel to address any issues.



By copy of this letter, I am informing opposing counsel of this communication and providing them with a copy of the enclosed Orders.

With kindest personal regards, I am

Sincerely yours,



James E. Smith, Jr.

Enclosure/Attachment: (Notice of Appeal)

cc: Meghan M. Meehan (via e-mail) Thornwell F. Sowell, III (via e-mail)
Nekki Shutt (via e-mail) Bess J. DuRant (via e-mail)
Kathleen McDaniel (via e-mail) Drew A. Laughlin (via e-mail)
Jacqueline Pavlicek (via e-mail) Robert H. Hood, Jr. (via e-mail)
David Overstreet (via e-mail) Brian Johnson (via e-mail)
Steven Kropski (via e-mail) Jean Marie Jennings (via e-mail)
Robert Blain (via e-mail) Zach Naert (via e-mail and U.S. Mail)
Angus Macaulay (via e-mail) Joseph DuBois (via e-mail and U.S. Mail)

Exhibit D

Naert and DuBois, LLC

Attorneys at Law

Joseph DuBois, Esq.
Zach S. Naert, Esq.
Michael Bennett, Esq.

22 New Orleans Road, Suite 1
Post Office Box 7228 (29938)
Hilton Head Island, South Carolina 29928

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June 27, 2017

The Honorable J. Derham Cole
180 Magnolia Street, 2nd Floor
Spartanburg, SC 29306

Re: Albert LaFleur, et al. v. Coral Resorts, LLC, et al.

Dear Judge Cole:

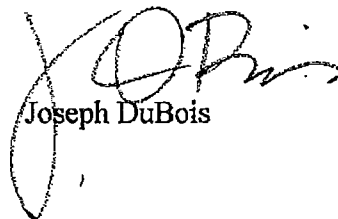
I write in response to Mr. Smith's letter dated June 21, 2017 seeking a stay of the entirety of the above-referenced cases. Plaintiffs dispute that the cases on appeal are stayed. Rather, the only matters stayed are those affected by the appeal. The Notice of Appeal clearly states that the Plaintiffs appeal only two issues: (1) the ruling that strikes allegations of the Complaint related to the cause of action for violation of the Timeshare Act and (2) the Form 4 Order granting Plaintiff's motion to compel discovery of customer complaints but omission of that ruling in the Court's August 31, 2016 order. All other causes of action and issues are not affected by the appeal and, therefore, are not stayed.

Under Rule 241(a), SCACR, "the service of a notice of appeal in a civil matter acts to automatically *stay matters decided in the order*, judgment, decree or decision on appeal, and to automatically *stay the relief ordered in the appealed order*, judgment, or decree or decision." Rule 241(a), SCACR (emphasis added). Under Rule 205, SCACR, "Upon service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal . . . *Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal.*" (emphasis added). The Defendants omit from their letter to the Court the emphasized sentence from Rule 205, which plainly states the lower court may proceed with matters while a case is on appeal, so long as the matters are not affected by the appeal. The only matters that may be affected by the appeal in this case are the cause of action for violations of the Timeshare Act and whether Defendants must produce records of customer complaints. "Under Rule 205, the lower court is deprived of the power to proceed with matters that are affected by the appeal . . ." *Tillman v. Oakes*, 398 S.C. 245, 255, 728 S.E.2d 45, 51 (Ct. App. 2012). Therefore, "the existence or nonexistence of a stay under Rule 241 does not control the [lower] court's power to proceed with the action and address matters not affected by the appeal." *Id.* at 255, 728 S.E.2d at 51; *see also* Rule 241(a), SCACR ("The lower court . . . retains jurisdiction over matters not affected by the appeal . . ."). "Rather, the lower court's power to proceed is determined by whether the issue sought to be litigated in the lower court during the appeal is a matter affected by the appeal under Rules 205 and 241(a)." *Tillman*, 398 S.C. at 255,

728 S.E.2d at 51. Because the only matters affected by the appeal are the cause of action for violation of the Timeshare Act and discovery of customer complaints, the Court has power to proceed with all other issues. Therefore, the parties and the Court may proceed with discovery and litigation as to the remaining causes of action.

As to the certified questions in the Supreme Court, that action also involves only the cause of action for violation of the Timeshare Act. Therefore, it does not prevent the parties and the Court from proceeding with matters as to the other causes of action. As the Court is aware, this litigation has gone on for many years and a stay of the entire case would only further prolong these cases. Plaintiffs request the Court continue with the matters not affected by the appeal, as expressly permitted by the Appellate Court rules.

Sincerely,



Joseph DuBois

cc: Kathleen Barnes, Esquire
Nekki Shutt, Esquire
Kathleen McDaniel, Esquire
Jacqueline Pavlicek, Esquire
Biff Sowell, Esquire
Bess DuRant, Esquire
Drew Laughlin, Esquire
Angus Macaulay, Esquire
James Smith, Esquire
Bobby Hood, Esquire
Brian Johnson, Esquire
Rich Dukes, Esquire
David Overstreet, Esquire
Steve Kropski, Esquire

Exhibit E

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF BEAUFORT)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
)	
Albert R. LaFleur and Eileen LaFleur,)	C/A No.: 2012-CP-07-3746
)	
Plaintiffs,)	
)	
v.)	DEFENDANTS' JOINT NOTICE OF
)	MOTIONS AND JOINT
Coral Resorts, LLC, Hilton Head)	MOTIONS TO ENFORCE STAY
Hospitality, LLC d/b/a Hilton Head Guest)	AND FOR A PROTECTIVE ORDER
Services, Sunrise Vacation Properties,)	
Ltd., Sherri J. Smith, Patrick Budnik,)	
Steven Deutsch, and Katherine Swisher,)	
)	
Defendants.)	

TO: JOSEPH DuBOIS AND ZACH NAERT, Attorneys for Plaintiffs:

YOU WILL PLEASE TAKE NOTICE that ten days after the service hereof, or as soon thereafter as counsel may be heard, Defendants in the above-referenced matter, by and through their undersigned attorneys, will move this Court as follows:

1. For an order enforcing the stay caused by Plaintiffs' June 12, 2017 service of their Notice of Appeal from this Court's Orders entered on March 7, 2016, September 6, 2016, and May 19, 2017.¹ (**Exhibit A**, Notice of Appeal, Orders, and Proof of Service.) The Orders from which Plaintiffs have taken their appeal contain this Court's rulings on Defendants' motions filed pursuant to Rule 12(b)(1), 12(b)(6), 12(f), SCRCP, which address the contents of Plaintiffs' Second Amended Complaint, and rulings touching on discovery in this litigation. The rulings contained in said Orders touch on practically every aspect of this litigation. As a result of Plaintiffs serving their Notice of Appeal from these Orders, the appellate court has exclusive jurisdiction over all matters affected by Plaintiffs' appeal. Rules 205 and 241, SCACR. This amounts to a

¹ This is the LaFleurs' second appeal. On April 18, 2014, the LaFleurs served their Notice of Appeal from several of this Court's Orders. See *LaFleur v. Coral Resorts, LLC et al.*, Appellate Case No. 2014-000827 (available on C-Track). The South Carolina Court of Appeals dismissed Plaintiffs' first appeal on July 24, 2014, and the Court of Appeals issued the remittitur on August 11, 2014.

stay of proceedings before this Court. That Plaintiffs may ultimately choose to contest this Court's rulings on discrete issues contained in this Court's Orders has no bearing on the extent of the stay imposed as a result of Plaintiffs taking their appeal.

2. For a protective order staying all deadlines impacted by Plaintiffs' service of their Notice of Appeal from this Court's Orders entered on March 7, 2016, September 6, 2016, and May 19, 2017, including but not limited to, all deadlines to file pleadings and/or motions responding to Plaintiffs' Third Amended Complaint, filed on June 19, 2017, and all discovery-related deadlines. Since serving their Notice of Appeal, Plaintiffs filed their Third Amended Complaint and Plaintiffs' counsel have, through e-mail correspondence, provided the Court with a proposed scheduling order and disputed the effect and extent of the stay caused by Plaintiffs appeal of this Court's March 7, 2016, September 6, 2016, and May 19, 2017 Orders. (**Exhibit B**, E-Mail from Joseph DuBois to Hon. J. Derham Cole, sent June 27, 2017 (with attachments).) As such, a protective order will confirm that Defendants are protected as a matter of law from such deadlines while Plaintiffs' appeal is pending before the South Carolina Court of Appeals.

3. For such other and further relief as this Court deems necessary to enforce the stay caused by Plaintiffs' service of their Notice of Appeal from this Court's Orders entered on March 7, 2016, September 6, 2016, and May 19, 2017.

These motions are based upon the pleadings filed in this matter, the Rules of Court, all state and federal statutes, memoranda of law, and any other information this Court accepts or is submitted by Defendants as part of a hearing on this matter.

[Signatures on following page.]

s/Jacqueline Pavlicek

Nekki Shutt (SC Bar No. 8784)
Kathleen McDaniel (SC Bar No. 74826)
Jacqueline Pavlicek (SC Bar No. 100556)
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**ATTORNEYS FOR DEFENDANTS CORAL
RESORTS, LLC, AND HILTON HEAD
HOSPITALITY, LLC D/B/A HILTON HEAD
GUEST SERVICES**

Columbia, South Carolina

July 6, 2017

s/Bess Jones DuRant

Thornwell F. Sowell, III (SC Bar No. 5197)
Bess Jones DuRant (SC Bar No. 77920)
SOWELL GRAY ROBINSON STEPP &
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bdurant@sowellgray.com

**ATTORNEYS FOR DEFENDANTS
SUNRISE VACATION PROPERTIES, LTD.,
SHERRI J. SMITH, PATRICK BUDNIK,
STEVEN DEUTSCH, AND KATHERINE
SWISHER**

Columbia, South Carolina

July 6, 2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable J. Derham Cole

Appellate Case No. 2017-001349

Albert R. LaFleur and Eileen LaFleur, Appellants,

v.

Coral Resorts, LLC, Hilton Head Hospitality, LLC d/b/a
Hilton Head Guest Services, Sunrise Vacation Properties,
Ltd., Sherri J. Smith, Patrick Budnik, Steven Deutsch,
Katherine Swisher, and Reba Management, Inc.,
Respondents.

And

John J. Meilert, Appellant,

v.

Coral Resorts, LLC, Coral Holdings, LLC, Sunrise
Vacation Properties, Ltd., Sherri J. Smith, Port O'Call
Owners Association, Inc., Coral Reef Owners
Association, Inc., Island Links Owners Association, Inc.,
and Reba Management, Inc., Respondents.

And

Dennis and Margaret McCloskey, Appellants,

v.

Hilton Head Island Development Company, LLC d/b/a
Coral Resorts, LLC, Hilton Head Hospitality, LLC d/b/a
Hilton Head Guest Services, Sunrise Vacation Properties,
Ltd., Coral Sands Owners Association, Inc., Sherri J.
Smith, and Sydney Karp, Respondents.

And

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SC Court of Appeals

Alexander Haill and Rebecca Key, Appellants,

v.

Coral Resorts, LLC, Coral Sands Owners Association, Inc., Sunrise Vacation Properties, Ltd., Reba Management, Inc., Sherri J. Smith, Robert Lauderman, Frank McKinney, Lachell Taylor, Steve Deutsch, Phil Luchese, and Port O'Call Owners Association, Inc., Defendants,

Of which Coral Resorts, LLC, Coral Sands Owners Association, Inc., Sunrise Vacation Properties, Ltd., Reba Management, Inc., Sherri J. Smith, Robert Lauderman, Frank McKinney, Lachell Taylor Steve Deutsch, and Port O'Call Owners Association, Inc., are Respondents.

And

John King and Laura King, Appellants,

v.

Coral Resorts, LLC, Port O'Call Owners Association, Inc., Island Links Owners Association, Inc., Sunrise Vacation Properties, Ltd., Reba Management, Inc., Coral Holdings, LLC, and Sherri J. Smith, Respondents.

And

James Wilson and Deborah Wilson, Appellants,

v.

Coral Resorts, LLC, Hilton Head Island Development Company, LLC, Island Links Owners Association, Inc., Port O'Call Owners Association, Inc., Sunrise Vacation Properties, Ltd., Reba Management, Inc., K. Michael Barfield, B. Dean Pierce, Sherri J. Smith, Sheldon Stanhope, Phil Lucchesse, and John Beard, Respondents.

And

Carie Olson and Matthew Olsen, Appellants,

v.

Coral Resorts, LLC, Hilton Head Hospitality, LLC d/b/a Hilton Head Guest Services, Reba Management, Inc., Sunrise Vacation Properties, Ltd., Island Links Owners Association, Inc., Sherri J. Smith, Christopher Ryan

Byrd, Sheldon S. Stanhope, and Matthew Hunter French,
Defendants,

Of which Coral Resorts, LLC, Hilton Head Hospitality,
LLC d/b/a Hilton Head Guest Services, Reba
Management, Inc., Sunrise Vacation Properties, Ltd.,
Island Links Owners Association, Inc., Sherri J. Smith, Sheldon
S. Stanhope, and Matthew Hunter French are
Respondents.

And

Gregory Gurbacki, Appellant,

v.

Coral Resorts, LLC, Reba Management, Inc., Sherri J.
Smith, B. Dean Pierce, Sunrise Vacation Properties,
Ltd., K. Michael Barfield, Island Links Owners
Association, Inc., Steve Deutsch, and Patrick Pfuhl,
Defendants,

Of which Coral Resorts, LLC, Reba Management, Inc.,
Sherri J. Smith, B. Dean Pierce, Sunrise Vacation
Properties, Ltd., K. Michael Barfield, Island Links
Owners Association, Inc., Steve Deutsch, and Patrick
Pfuhl, Defendants,

And

Michael Adams and Shonnie Adams, Appellants,

v.

Coral Resorts, LLC, Reba Management, Inc., Patrick
Budnik, Spencer Fulkert, Sherri J. Smith, Lori Lucas,
Dean Pierce, Sunrise Vacation Properties, Ltd., Coral
Holdings, LLC, K. Michael Barfield, Hilton Head Island
Development Company, LLC, Island Links Owners
Association, Inc., and Coral Sands Owners Association,
Inc., Defendants,

Of which Coral Resorts, LLC, Reba Management, Inc.,
Spencer Fulkert, Sherri J. Smith, Lori Lucas, Dean
Pierce, Sunrise Vacation Properties, Ltd., Coral
Holdings, LLC, K. Michael Barfield, Hilton Head Island
Development Company, LLC, Island Links Owners
Association, Inc., and Coral Sands Owners Association,
Inc., are Respondents.

And

Dale Tratnack and Suzanne Tratnack, Appellants,

v.

Coral Resorts, LLC, Sunrise Vacation Properties, Ltd.,
Reba Management, Inc., Island Links Owners
Association, Inc., B. Dean Pierce, K. Michael Barfield,
Sherri J. Smith, and Spencer Fulkert, Respondents.

And

Duane Wellman and Sharifa Wellman, Appellants,

v.

Coral Resorts, LLC, Reba Management, Inc., Dustin
Finnell, Spencer Fulkert, Sherri J. Smith, Dean Pierce,
Sunrise Vacation Properties, Ltd., Coral Holdings, LLC,
K. Michael Barfield, Hilton Head Island Development
Company, LLC, and Coral Sands Owners Association,
Inc., Respondents.

And

Richard Smoose and Nancy Jo Smoose, Appellants,

v.

Coral Resorts, LLC, Reba Management, Inc., Wayne
Heath, Sheldon Stanhope, Sherri J. Smith, Dean Pierce,
Sunrise Vacation Properties, Ltd., K. Michael Barfield,
Hilton Head Island Development Company, LLC, Island
Links Owners Association, Inc., Coral Sands Owners
Association, Inc., and Timeshare Guarantee, Inc.,
Defendants,

Of which Coral Resorts, LLC, Reba Management, Inc.,
Sheldon Stanhope, Sherri J. Smith, Dean Pierce, Sunrise
Vacation Properties, Ltd., K. Michael Barfield, Hilton
Head Island Development Company, LLC, Island Links
Owners Association, Inc., Coral Sands Owners
Association, Inc., and Timeshare Guarantee, Inc. are
Respondents.

PROOF OF SERVICE

I do hereby certify I have served a copy of the following as indicated herein below, by mailing a copy of the following documents by first class U.S. Mail postage pre-paid on the date below to the following:

**DOCUMENTS SERVED: MOTION FOR COSTS
ITEMIZED STATEMENT OF COSTS**

PARTIES SERVED:

Zachary Steven Naert, Esq.
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Angus H. Macaulay, Esq.
NEXSEN PRUET, LLC
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Columbia, SC 29202-2426

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David W. Overstreet, Esq.
Steven R. Kropski, Esq.
Robert Blain, Esq.
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PO Box 22528
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Kathleen C. Barnes
BARNES LAW FIRM, LLC
PO Box 897
Hampton, SC 29924



Ashley Hawthorth, Case Assistant
BURNETTE SHUTT & McDANIEL, PA

Columbia, South Carolina

December 6, 2017



BURNETTE SHUTT MCDANIEL

Moving law forward.

Jacqueline M. Pavlicek, Esq., CIPP/US

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December 6, 2017

VIA HAND-DELIVERY

The Honorable Jenny Abbot Kitchings, Clerk

SOUTH CAROLINA COURT OF APPEALS

Calhoun Building

1015 Sumter Street

Columbia, South Carolina 29201

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SC Court of Appeals

Re: *LaFleur v. Coral Resorts, LLC et al.; Meilert v. Coral Resorts, LLC et al.; McCloskey v. Hilton Head Island Dev. Co. et al. Haill/Key v. Coral Resorts, LLC et al.; King v. Coral Resorts, LLC et al.; Wilson v. Coral Resorts, LLC et al.; Olsen v. Coral Resorts, LLC et al.; Gurbacki v. Coral Resorts, LLC et al.; Adams v. Coral Resorts, LLC et al.; Tratnack v. Coral Resorts, LLC et al.; Wellman v. Coral Resorts, LLC et al.; Smoose v. Coral Resorts, LLC et al.*

Circuit Court Case Nos.:

2012-CP-07-03746

2013-CP-07-02967

2014-CP-07-01198

2013-CP-07-03746

2014-CP-07-00361

2014-CP-07-02632

2013-CP-07-02835

2014-CP-07-00490

2014-CP-07-02772

2013-CP-07-02890

2014-CP-07-01197

2014-CP-07-02839

Appellate Case No.: 2017-001349

Our File No.: 5387.015

Dear Madam Clerk:

Enclosed for filing, please find an original and seven copies of the Motion for Costs and Itemized Statement of Costs in the above-referenced matter. Please file the original and the six copies, clock-in the seventh copy, and return it to me via courier delivering the same.

By copy of this letter, I am serving all counsel of record with a copy of the same.

If you have any questions or need anything further regarding this matter, please do not hesitate to contact me at my office.

With kind regards, I remain

Very truly yours,

Jacqueline M. Pavlicek, Esquire

JMP:ah

Enclosures

cc: Thornwell F. Sowell, III, Esq. (w/enclosure via U.S. Mail)
Drew A. Laughlin, Esq. (w/enclosure via U.S. Mail)
Bess Jones DuRant, Esq. (w/enclosure via U.S. Mail)
David A. Overstreet, Esq. (w/enclosure via U.S. Mail)
Steven R. Kropski, Esq. (w/enclosure via U.S. Mail)
Robert Blain, Esq. (w/enclosure via U.S. Mail)
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Robert H. Hood, Jr., Esq. (w/enclosure via U.S. Mail)
Brian E. Johnson, Esq. (w/enclosure via U.S. Mail)
Jean M. Jennings, Esq. (w/enclosure via U.S. Mail)
Kathleen C. Barnes, Esq. (w/enclosure via U.S. Mail)
Joseph DuBois, Esq. (w/enclosure via U.S. Mail)
Zachary Steven Naert, Esq. (w/enclosure via U.S. Mail)