

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

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DEC 15 2017
SC Court of Appeals

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.

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.

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.

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 whom 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.

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.

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.

Carie Olsen 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 whom 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 areRespondents.

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

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 whom 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.

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.

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.,Defendants,

Of whom Coral Resorts, LLC, Reba Management, Inc., 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., are.....Respondents.

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 whom 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.

APPELLANTS’ RETURN TO RESPONDENTS’ MOTION FOR COSTS

Pursuant to Rule 240(e), SCACR, Appellants submit this Return to Respondents’ motion for costs in the above-captioned appeal. Rule 222(a) provides: “*Unless otherwise ordered by the appellate court* or agreed by the parties, costs shall be taxed against the appellant when the appeal is *dismissed* or judgment on appeal is affirmed.” Rule 222(a), SCACR (emphasis added). The Rule does not provide for a mandatory award of costs but gives the Court discretion to determine when costs are appropriate given the procedure of each particular case. Neither the withdrawal of the appeal nor the appellate procedural history of this case warrant an award of attorney’s fees.

On June 11, 2017, Appellants filed the Notice of Appeal and specified the issues raised on appeal. (Not. of Appeal p. 5). These cases have a long procedural history in circuit court and have been pending for three-to-five years. Appellants specified the issues for appeal in the Notice of Appeal to avoid staying all of the cases as to issues that could not be affected by the appeal. See 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.”); Rule 241(a), SCACR (“The lower court . . . retains jurisdiction over matters not affected by the appeal”); *Tillman v. Oakes*, 398 S.C. 245, 255, 728 S.E.2d 45, 51 (Ct. App. 2012) (“Under Rule 205, the lower court is deprived of the power to proceed with matters that are affected by the appeal [T]he 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.”).

On July 5, 2017, Appellants notified the Court they received the transcript of the lower court proceedings. On August 1, 2017, Appellants served their first motion for an extension to serve and file the initial brief. (Mot. for Ext.). On September 1, 2017, Appellants served a motion to withdraw the appeal. (Mot. to Withdraw). As stated in the motion, Respondents consented to Appellants motion to withdraw the appeal but refused to consent to having each party bear their own costs. (Mot. p. 4). On November 3, 2017, the Court issued an Order granting the motion to withdraw the appeal. The appeal was pending for only four months and Respondents did not submit one filing or letter to the Court before the order granting withdrawal.

The motion for costs is Respondents’ only filing in the appellate court. Respondents’ argument for why costs should be awarded is that they sought to enforce an appellate stay in the circuit court. This does not support an award of attorney’s fees in this case. Appellants plainly stated the issues on appeal in the notice of appeal. While this is not customary, Appellants did this for the purpose of *avoiding* the very issue that Respondents raised in circuit court—an attempt to completely stay these cases when certain causes of action would not even have been at issue on appeal. Respondents argue the merits of the stay issue in their motion for costs.

Respondents’ filing of one letter and a two-page motion in circuit court does not justify the imposition of an attorney’s fee in the appellate court when the appeal was pending for only four

months, Respondents never filed anything in the appellate court, and Respondents consented to the motion to withdraw the appeal.

Further, the Court did not dismiss or affirm the case. Rule 222(a), SCACR (referring to taxing costs “when the appeal is dismissed or judgment on appeal is affirmed”). The Court granting a consent motion to withdraw the appeal. Therefore, there is no basis to award costs.

Finally, Appellants oppose any request or suggestion by Respondents that they may seek an attorney’s fee in excess of the amount set by order of the Supreme Court, which is \$1,000.00. Rule 222(b), n.1, SCACR; Toal, et al., Appellate Practice in South Carolina, 395 (3d ed. 2016) (“The amount of attorneys’ fee that may be awarded is established by order of the Supreme Court and is currently set at \$1,000.00.”). Respondents cite to no law that would permit an attorney’s fee in excess of the amount ordered by the Supreme Court.

Appellants request the Court deny Respondents’ motion for costs as granting the motion in this case would essentially make costs available on every appeal no matter how quickly an appellant withdrew the appeal.

Dated: December 13, 2017

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The Honorable J. Derham Cole

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PROOF OF SERVICE

The undersigned certifies that a copy of *Appellants' Return to Respondents' Motion for Costs* has been served upon the below-listed counsel of record for Respondents, by mailing a copy of the same, postage prepaid, in the United States Mail, addressed as shown below this 13 day of December, 2017.

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Dated: December 13, 2017

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BARNES

LAW FIRM | LLC

Kathleen C. Barnes

Admitted: Georgia | South Carolina

December 13, 2017

The Honorable Jenny Abbott Kitchings
Clerk of Court for the Court of Appeals
Post Office Box 11629
Columbia, SC 29211

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DEC 15 2017

SC Court of Appeals

Re: *Albert R. LaFleur and Eileen LaFleur, et al. v. Coral Resorts, LLC, et al.*
Appellate Case No. 2017-001349

Dear Mrs. Kitchings:

Enclosed for filing please find the original and seven copies of *Appellants' Return to Respondents' Motion for Costs* in the above-referenced appeal and proof of service of the Return. Please file the documents and return the file-stamped copies to me in the enclosed self-addressed, stamped envelope. By copy of this letter, I am serving counsel of record. If you have any questions, please do not hesitate to contact me. Thank you.

With kind regards, I am,

BARNES LAW FIRM, LLC



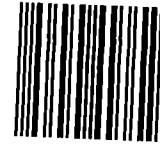
Kathleen C. Barnes

cc: Angus H. Macaulay
Nekki Shutt
Kathleen McDaniel
Jacqueline M. Pavlicek
Robert H. Hood, Jr.
Brian E. Johnson
Jean Marie Jennings
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James Emerson Smith, Jr.
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Bess Jones Durant
Drew A. Laughlin
David W. Overstreet
Steven R. Kropski
Joseph DuBois (via email)



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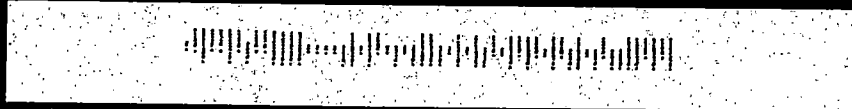


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Hampton, SC 29924

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The Honorable Jenny Abbott Kitchings
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