

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM HORRY COUNTY  
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

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Case No.: 2009-CP-26-5743

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Hotel and Motel Holdings, LLC,

Respondent,

v.

BJC Enterprises, LLC, Wendy J. Bellamy,  
Americana, Inc., a/k/a Americana Motel of  
Myrtle Beach, Inc., Mozingo & Wallace  
Architects, LLC, Kersi S. Shroff, and  
Shroff Management, Inc.,

Defendants,

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BJC Enterprises, LLC, Wendy J. Bellamy,  
Americana, Inc., a/k/a Americana Motel of  
Myrtle Beach, Inc.,

Appellants,

v.

First Palmetto Savings Bank, F.S.B.,  
Jack Jones, Donald D. Godwin, and  
Bhupendra Patel,

Respondents

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PETITIONER HOTEL OWNERS' REPLY TO THE  
RETURN OF RESPONDENTS HOTEL AND MOTEL AND  
FIRST PALMETTO SAVINGS BANK

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Petitioners BJC Enterprises, LLC, Wendy J. Bellamy, and Americana, Inc.

(hereafter "Hotel Owners") submit this Reply to the Return of Respondents H&M and

**RECEIVED**  
JUN 04 2012  
SC Court of Appeals

First Palmetto. This Reply is to also supplement Hotel Owners' Petition filed on May 25, 2012 in light of the entry of the May 29, 2012 Order of the Honorable G. Edward Welmaker, which denied Petitioners' motion to stay. A certified copy of Judge Welmaker's Order of May 29, 2012 was forwarded to the Court of Appeals by Federal Express on May 29, 2012.

Respondent H&M claims that in December, 2011, it requested a hearing on the foreclosure claims in this case, not the claim and delivery cause of action. This request was actually made by Respondent's December 14, 2011 letter to Judge Seals requesting that he hold a bench trial "of the above-referenced foreclosure action". (Petition, p. 14). The "action" consisted of three foreclosure claims and one claim and delivery claim. Hotel Owners did not nor should they have been expected to interpret that December 14, 2011 request to be a request to sever the foreclosure claims from the claim and delivery cause of action, which properly required the filing of a motion by Respondents pursuant to Rule 42(b), SCRCF. Even though Hotel Owners did not understand Respondent's request to encompass the severing of the claims, Hotel Owners still objected to the Court moving forward as to the "action" due to the automatic stay imposed because of the appeal of the grant of summary judgment on Petitioners' counterclaims as well as the appeal of denial of a jury trial on the claim and delivery action. (Petition, p. 19). Respondents disagreed with Hotel Owners' position regarding the stay. Judge Seals then allowed the parties to submit authority before making his decision on the stay issue. (Petition, p. 28). Both Hotel Owners and Respondents briefed the stay issue and thereafter, Judge Seals, by way of email on December 22, 2011, decided he would go

forward with the trial of the foreclosure claims on January 9, 2012. (Petition, pp. 31-41; 42-46; and p. 47).

Because all of this took place informally and without Respondent H&M ever even filing a motion to sever the claims or to proceed with trial, Hotel Owners, within ten (10) days of Judge Seals' December 22, 2011 email, filed their Motion to Stay and/or Reconsider.<sup>1</sup> This 1/3/12 Motion to Stay and/or Reconsider has never been heard by Judge Seals or any other Judge as erroneously represented by Respondent H&M's counsel to Judge Welmaker on May 29, 2012 and which formed the basis of his Order.<sup>2</sup> It is undisputed that Judge Seals never heard the January 3, 2012 motion to reconsider. The only judge to hear any matters after the filing of the 1/3/2012 motion and before Judge Welmaker's trial on Tuesday of this week, was the Honorable Steven H. John dealing with a continuance sought by Petitioners' counsel due to her medical issues.

Hotel Owners' counsel, Ms. Cook, began experiencing severe medical issues in the middle of February, 2012 and filed on March 1, 2012 a motion for continuance of the trial scheduled to begin March 5, 2012. (See Motion for Continuance attached as Exhibit A to this Reply). Judge John heard that motion on March 5, 2012 and the issue of the severance of the foreclosure claims from the claim and delivery claim and the imposition of the automatic stay during appeal was never presented or argued to Judge John nor did he address the issue in his Order filed March 20, 2012. (See Exhibit B, which is the March 5, 2012 Transcript of Record, and Exhibit C, which is the March 20, 2012 Order

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<sup>1</sup> The Seals' email was issued on 12/22/11 and the tenth day following that email was Sunday, 1/1/12. Monday, 1/2/12, was a state and federal holiday with the Horry County Court closed on that day. Petitioner Hotel Owners filed and served their motion to reconsider on Tuesday, January 3, 2012, which is within the time allowed pursuant to Rule 6(a), SCRPC.

<sup>2</sup>See findings 1 and 3 of Judge Welmaker's May 29, 2012 Order.

of Judge John granting in part and denying in part the continuance in this matter). Pursuant to the 3/20/12 Order, the trial of the foreclosure claims was continued until April 16, 2012. Hotel Owners timely filed a Motion to Reconsider the Continuance Order where Hotel Owners did raise the issue of the severance of the foreclosure claims, the automatic stay during appeal, and the Court's failure to hear, as of that date, the January 3, 2012 Motion of Reconsideration of Judge Seals' email denial of the stay. (See Exhibit D, which is the Motion to Reconsider Continuance). In fact, Respondent H&M stated as a grounds to deny Hotel Owners' motion to reconsider seeking a continuance of the trial until after May 28, 2012 that Hotel Owners could not raise for the **first time** in a motion to reconsider the stay issue. (See Exhibit E, which is Respondent H&M's Return in Opposition to Motion for Reconsideration attached hereto). This is an acknowledgement by Respondent H&M that the issue of the severance of the foreclosure claims and the automatic stay was not argued or ruled on by Judge John in March although represented differently by Respondents before Judge Welmaker on May 29, 2012.

Judge John, in his order ruling on Petitioners' motion to reconsider the continuance did grant a continuance of this case from the April 16, 2012 trial date to May 29, 2012. However, notice that that Order had actually been executed by Judge John and enrolled by the Horry County Clerk of Court was not forthcoming until Petitioners' counsel received the same at the trial on May 29, 2012. Therefore, Petitioner Hotel Owners could not appeal Judge John's April 19, 2012 Order or March 20, 2012 Order until receipt of the signed filed Order or written notice the Order had been filed. Respondent H&M argued and Judge Welmaker found these two orders of Judge John

severing the foreclosure and claim and delivery claims were not appealed and became the law of the case. However, the time for appeal of the April 19, 2012 and March 20, 2012 Orders of Judge John on the continuance motion does not expire until June 8, 2012. The time for appeal of both the orders is 10 days from receipt of written notice of the entry of the order. Rules 52(c) and 59(f), SCRPC. Even though Judge Welmaker found the Horry County Clerk of Court had mailed Judge John's April 19, 2012 Order to all counsel, the undisputed testimony of William Short (counsel for Third-Party Defendant First Palmetto), Susan MacDonald (counsel for Defendants Kersi S. Shroff and Shroff Management, Inc.), and Petitioner Hotel Owners' counsel showed that none had ever received a filed and signed copy of the April 19, 2012 Order nor written notice that the same had been entered by the Clerk. It is also notable that Respondent H&M's counsel, when asked on the record if she had received a signed filed copy of the Order, stated that she did not know. It is telling that as Exhibit B to the Memorandum in Opposition to the Stay presented to Judge Welmaker on May 29, 2012, H&M's counsel attached only a copy of the April 10, 2012 email from Judge John's law clerk indicating that he intended to sign the attached order when he returned from vacation.<sup>3</sup> The email and proposed order was sent to all counsel of record, but there is no evidence that the signed enrolled Order or written notification that the Order had been signed and enrolled was ever sent to any counsel in this case other than a stamp by an Associate Clerk of Court on the inside cover of the Court's case file. The clerk readily admitted that she had placed a stamp and filled out the stamp on the Court jacket cover, but could not recall actually placing the Order in the mail to all counsel although that was her normal practice. (See Exhibit F which is the

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<sup>3</sup> This 4/10/12 email and proposed Order were also introduced without objection as Plaintiff H&M's Exhibit 1 at the hearing on Tuesday.

April 10, 2012 law clerk email and attached proposed order and Exhibit G which is the signed and filed April 19, 2012 Order). Therefore, Petitioners' right to appeal Judge John's Orders, which Respondents and Judge Welmaker have cited as the basis of the severance of the foreclosure claims from the claim and delivery claim, has not yet expired and will not expire until June 8, 2012.

Irrespective of the severance issue and jury trial issue as it relates to the automatic stay of these proceedings in the Circuit Court, it is clear that the appealed order granting summary judgment on the Hotel Owners' counterclaims does affect the foreclosure claims. Thus, pursuant to Rules 205 and 241, SCACR, this case is stayed during the appeal. H&M's right to foreclose is based on the same and common underlying factual determination of whether there has been a breach under the 2008 Note and validity of that debt as does the Hotel Owners' counterclaims.

The enforceability of the 2008 Note by H&M is the factual and legal basis for Plaintiff's entitlement to foreclose. Likewise, Hotel Owners' counterclaims are based on the same factual determinations that H&M and First Palmetto breached the 2008 Note and caused the failure of payment, among other claims, defeating Plaintiff's right to foreclose. Clearly, there are common factual issues in Plaintiffs' claims and Hotel Owners' counterclaims; liability under the underlying 2008 Note. Thus, the appeal of the counterclaims affects the enforceability of the 2008 Note by H&M which forms the basis of its foreclosure claims. In order to be entitled to foreclosure and sale of property, the debt for which the mortgages were given must first be established. S.C. Code Ann. §29-3-630 (2007). The Court of Appeals has exclusive jurisdiction of these matters during the appeal. N.C. Federal S & L v. DAV, 298 S.C. 14, 381 S.E.3d 903, 905 (1989)

(Where the Supreme Court stated that the enforceability of the note which the is subject of the foreclosure action and the validity of a purported oral agreement in Defendants' counterclaim, which if performed would have avoided Defendant's default under the note, affect the enforceability of the Note).

The Court of Appeals' ruling with regard to the viability of Petitioners' counterclaims and the Petitioners' right to try those counterclaims which also constitute affirmative defenses to the foreclosure does affect the trial of the foreclosure matters. If the Court of Appeals rules that the granting of summary judgment was erroneous, Hotel Owners may present their evidence and a jury may find that the actions of Respondents H&M and First Palmetto, along with others, caused the failure of payment which is the basis of the claimed default entitling First Palmetto and then H&M, as its assignee, to foreclose and defeat assignee H&M's right to collect and/or establishing an amount of damages in favor of Petitioner Hotel Owners in a sufficient sum to set off any amount that might be found to be due Respondents and thereby extinguishing the debt which would underlie Respondent's right to foreclose. Petitioners have sought set off as a remedy in this case.

The facts and posture of this case are analogous to those in N.C. Federal S&L v. DAV, 298 S.C.14, 381 S.E.2d 903 (1989), Gardner v. Travis, 316 S.C. 315, 450 S.E.2d 54 (Ct. App. 1994), and Jones v. Barco, Inc., 250 S.C. 522, 159 S.E.2d 279 (1968). This case is clearly distinguishable from South Carolina National Bank v. Devine Blossom, 321 S.C. 110, 467 S.E.2d 767 (Ct. App. 1996) cited by Respondents as in that case the foreclosure claim had already been tried and there were no common issues of fact

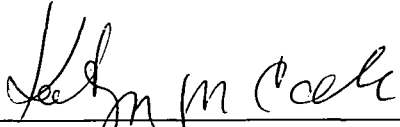
between the debt in foreclosure and the debtor's right to a post foreclosure statutory appraisal relating to what deficiency might be due as a result of the sale.

CONCLUSION

It is the same contract, the 2008 Note and other Loan Documents, that both Plaintiff and Defendants claim the other has breached. Thus, it is clear that the matters that must be decided in the foreclosure claims are affected by the determination of the appeal granting summary judgment and dismissal of Defendants' counterclaims. If the Court of Appeals rules that the lower court erred in granting summary judgment and striking Defendants' counterclaims, Defendants are entitled to have the fact finder determine if and who among the parties breached the Loan Documents, the amount owed to which party, and the validity of the debt. Depending on the fact finder's determination of those issues, it can then be determined whether an order of foreclosure is due the Plaintiff or an award of actual and punitive damages, and setoff is due Defendants. Pursuant to Rules 205 and 241(a), SCACR, the lower court may not proceed with and does not have jurisdiction over the foreclosure claims as those claims are affected by the appeal of Petitioners' counterclaims.

Respectfully Submitted,

May 31, 2012



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Cook & Roy LLC  
Post Office Box 4086  
N. Myrtle Beach, SC 29597  
(843)663-1200  
Fax: (843)663-0364  
Email: [kcook@cookandroy.com](mailto:kcook@cookandroy.com)  
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Audra M. Byrd, Esq.  
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Donald Godwin, and Jack Jones

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William W. "Trey" DesChamps, III, Esq.  
DesChamps Law Firm  
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Attorney for Respondent Bhupendra Patel

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Myrtle Beach, SC 29578  
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Architects, LLC

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Nelson Mullins Riley & Scarborough, LLP  
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(843) 946-5654  
Attorneys for Defendants Kersi S. Shroff and  
Shroff Management, Inc.

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY )

FIFTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2009-CP-26-5743

Hotel and Motel Holdings, LLC, )

Plaintiffs )

v. )

BJC Enterprises, LLC, Wendy J. Bellamy, )  
Americana, Inc., a/k/a Americana Motel of )  
Myrtle Beach, Inc., Mozingo & Wallace )  
Architects, LLC, Kersi S. Shroff, and )

Defendants )

Defendants BJC Enterprises, LLC and )  
Americana, Inc. a/k/a Americana Motel )  
of Myrtle Beach, Inc.'s Motion for )  
Continuance )

BJC Enterprises, LLC, Wendy J. Bellamy, )  
and Americana, Inc. a/k/a Americana Motel )  
of Myrtle Beach, Inc., )

Third-Party Plaintiffs )

v. )

First Palmetto Savings Bank, F.S.B., )  
Jack Jones, Donald D. Godwin, and )  
Bhupendra Patel, )

Third-Party Defendants )

HORRY COUNTY  
12 MAR - 1 PM 12:40  
MELANIE HUGHES-WABD  
CLERK OF COURT

YOU WILL PLEASE TAKE NOTICE that Defendants BJC Enterprises, LLC and Americana, Inc. a/k/a Americana Motel of Myrtle Beach, Inc., by and through their undersigned attorney, hereby move before the Court of Common Pleas for the Fifteenth Judicial Circuit in Conway, South Carolina for an order continuing the above-captioned action currently scheduled to begin on Monday, March 5, 2012. The grounds for this motion are as follows:

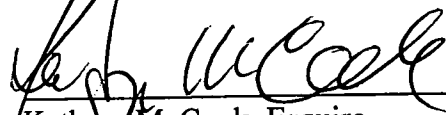
1. Due to medical issues suffered by Defendants' counsel, Kathryn M. Cook, her physicians' have ordered her not to return to work until further notice. See Exhibits A and B attached hereto.

2. Ms. Cook underwent testing last week and is undergoing medical testing again this week to determine the cause of her condition, the results of which are not yet known.
3. It is expected that the medical issues she is experiencing may require her to undergo further testing and treatment during the week of March 5, 2012 and thereafter.

Based on the foregoing, Defendants BJC Enterprises, LLC and Americana, Inc. request the case be continued and not placed back on the trial roster until their attorney has received medical clearance from her physicians.

Respectfully Submitted,

Cook & Roy, LLC



Kathryn M. Cook, Esquire  
SC Bar No.: 1371  
Attorney for Defendants BJC  
Enterprises, LLC, and Americana,  
Inc.

Post Office Box 4086  
North Myrtle Beach, SC 29597  
Phone: 843-663-1200  
Fax: 843-663-0364  
Email: kcook@cookandroy.com

North Myrtle Beach, South Carolina

Date: February 29, 2012

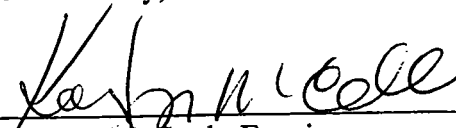
**RULE 11 CERTIFICATION**

The attorney(s) below hereby certifies that either:

- A. He/She has communicated, orally or in writing, with opposing counsel and has attempted in good faith to resolve the matter contained in the motion; or
- B. Such consultation would serve no useful purpose, or could not be timely held; or
- C. Due to the nature of the motion, there is no duty to consult opposing counsel in that this is a motion:
  - a. To Dismiss
  - b. For Summary Judgment
  - c. For New Trial
  - d. For Judgment NOV

HORRIS COUNTY  
12 MAR - 1 PM 12:40  
MELANIE HUGGINS-WARD  
CLERK OF COURT

Cook & Roy, LLC

  
Kathryn M. Cook, Esquire  
SC Bar No.: 1371  
Attorney for Defendants BJC  
Enterprises, LLC, and Americana,  
Inc.  
Post Office Box 4086  
North Myrtle Beach, SC 29597  
Phone: 843-663-1200  
Fax: 843-663-0364  
Email: kcook@cookandroy.com

February 29, 2012

North Myrtle Beach, South Carolina.



MedPlus South Strand Family Practice  
2347 Hwy 17 South Business  
Garden City, SC 29576  
843-357-2443

Certificate To Return To Work/School

Name: Keathryn Cook has  
been under my care from 2-22-12 to  
And will be able to return to work/school on  
\_\_\_\_\_.

Limitations/Remarks: No work  
until further notice

Dr: J. Westbrook Date: 2-22-12

**CARDIOLOGY**

NEIL W. TRASK, M.D., FACC, FACP  
JOSEPH L. TRASK, M.D., FACC, FACP  
MARK P. KARAVAN, M.D., FACC  
JERRY E. WATSON, M.D., FACC, FSCAI  
D. BOWEN TRULLICK, M.D., FACC  
ANNE M. EVERMAN, M.D.  
WILLIAM A. JACKSON, M.D., FACC  
RANDALL N. GOODROE, M.D.  
JIMMY L. KONIOS, M.D.  
ROBERTA R. ALSWORTH, FACC  
CHRISTY HAWKINS, FACC

**GASTROENTEROLOGY**

J. R. THOMPSON, M.D.  
GARY A. VUKOV, M.D.  
TIMOTHY J. CORNNELL, M.D.  
ANDREW N. PEARSON, M.D.  
MEGHAN MALONE, M.D.

**OFFICE MANAGER**

SHIRLEY FENDERGRASS

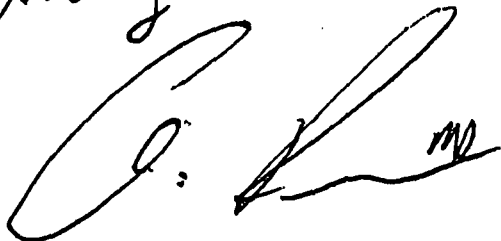
2-29-12

To Whom it may concern:

This letter is in reference to Kathryn Cook  
(DOB 10/31/1958). Due to patient's clinical condition  
and overall health it is my professional opinion

that she should be excused from pending trial and  
should be excused until I am able to clear her  
medically.

Sincerely,



(Pearson)

STATE OF SOUTH CAROLINA )

COUNTY OF HORRY )

Hotel and Motel Holdings, LLC, )

Plaintiffs )

v. )

BJC Enterprises, LLC, Wendy J. Bellamy, )

Americana, Inc., a/k/a Americana Motel of )

Myrtle Beach, Inc., Mozingo & Wallace )

Architects, LLC, Kersi S. Shroff, and )

Shroff Management, Inc., )

Defendants )

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and Americana, Inc. a/k/a Americana Motel )

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Third-Party Plaintiffs )

v. )

First Palmetto Savings Bank, F.S.B., )

Jack Jones, Donald D. Godwin, and )

Bhupendra Patel, )

Third-Party Defendants )

Defendants )

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT  
CIVIL ACTION NO.: 2009-CP-26-5743

CERTIFICATE OF SERVICE


HORRY COUNTY  
12 MAR - 1 PM 12:40  
MELANIE HUGGINS-WARD  
CLERK OF COURT

As an employee with the law firm of COOK & ROY, LLC, counsel for Defendants/Third-Party Plaintiffs BJC Enterprises, LLC, Wendy J. Bellamy, Americana, Inc., a/k/a Americana Motel of Myrtle Beach, Inc., I certify that I have served the Honorable William H. Seals, Jr., and all counsel of record with a copy of the pleadings herein specified below, by email, postage prepaid, to the following:

- Pleadings: 1. Motion for Continuance of Trial Scheduled for March 5, 2012

Counsel Served:

1. The Honorable William H. Seals, Jr.  
Circuit Court Judge At-Large Seat 6  
208 W. Dozier Street  
Marion, SC 29571
2. R. Wayne Byrd, Esq.  
Audra M. Byrd, Esq.  
Turner Padgett Graham & Laney, P.A.  
PO Box 2116  
Myrtle Beach, SC 29578  
Attorneys for the Plaintiff Hotel & Motel Holdings, LLC and  
Third-Party Defendants Jack Jones and Donald Godwin
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Attorney for Third-Party Defendant First Palmetto Savings Bank,  
FSB
4. William W. DesChamps, Jr., Esq.  
William W. DesChamps, III, Esq.  
DesChamps Law Firm  
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Attorney for Third-Party Defendant Bhupendra Patel
5. Scott B. Umstead, Esquire  
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Attorneys for Defendant Mozingo & Wallace Architects, LLC
6. Susan P. MacDonald, Esquire  
Nelson Mullins Riley & Scarborough, LLP  
Post Office Box 3939  
Myrtle Beach, SC 29578-3939  
Attorneys for Defendants Kersi S. Shroff and Shroff Management,  
Inc.

  
Tenna Turman, Legal Assistant to  
Kathryn M. Cook, Esq.

North Myrtle Beach, South Carolina

Date: ~~February 29~~, 2012

March 1

COPY

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT  
CIVIL ACTION NO.: 2009-CP-26-5743

Hotel and Motel Holdings, LLC, )  
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v. )

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Myrtle Beach, Inc., Mozingo & Wallace )  
Architects, LLC, Kersi S. Shroff, and )  
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Defendants )

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First Palmetto Savings Bank, F.S.B., )  
Jack Jones, Donald D. Godwin, and )  
Bhupendra Patel, )

Third-Party Defendants )

HORRY COUNTY  
12 MAR -5 PM 1:46  
MELANIE HUGHES-WARD  
CLERK OF COURT

AFFIDAVIT OF KATHRYN M. COOK

The undersigned Affiant, having been duly sworn, states as follows:

1. I am the attorney for Defendants BJC Enterprises, LLC and Americana Motel of Myrtle Beach, Inc. in this action.
2. I have personal knowledge of or am stating matters upon my best information of the facts set forth herein.

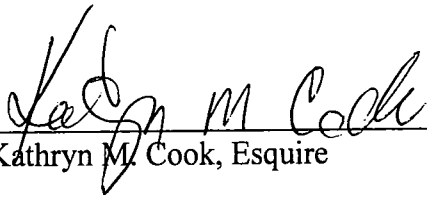
3. I was retained in November, 2009 by BJC Enterprises, LLC and Americana Motel of Myrtle Beach, Inc. (hereafter "BJC/Americana") to represent Defendants after Donald Godwin allegedly purchased an interest from Jack Jones, the sole owner of Plaintiff Hotel and Motel Holdings, LLC, in October, 2009. Plaintiff H&M then asserted a "conflict" to get Defendant BJC/Americana's then attorneys, Henrietta Golding and the McNair Firm, removed from the case due to representation of Donald Godwin in unrelated matters.
4. I have practiced law for the past 27 years in South Carolina being admitted to practice in state and federal courts in South Carolina, the Fourth Circuit Court of Appeals, and the United States Supreme Court, but not in the United States Bankruptcy Court.
5. I have previously served as President of the South Carolina Women Law Association, the South Carolina Bar House of Delegates, and the South Carolina Bar Board of Governors, was appointed by the South Carolina Supreme Court to serve on the South Carolina Commission of Specialization and Continuing Legal Education for 6 years, and was appointed by the South Carolina Supreme Court to serve on the South Carolina Commission on Lawyer Conduct for the past 15 years.
6. I take my commitment to the profession, the practice of law, to my clients, to the courts, and to justice very seriously, and obviously of late to the detriment of my health.
7. I hereby incorporate the information contained in the Motion for Continuance filed and served on March 1, 2012 and attach the same as Exhibit A herein.
8. As a result of the medical procedure I underwent on Wednesday, February 29, 2012, Dr. Pearson, of Cardiology/Gastroenterology Associates of Myrtle Beach, P.A.,

located a mass growing in my gastrointestinal tract under my duodenum and adjacent to my pancreas which has been sucking the blood supply from my other bodily systems and organs in order to grow.


9. This mass and its use of my blood supply now explains the severe anemia from which I have been suffering since 2009 and many of the symptoms I have been experiencing for the past two and a half years.
10. It is hoped that after the removal of this mass, many, if not all, of the symptoms from which I have been suffering, some of which have been attributed to my diagnosis of multiple sclerosis in June, 2011, will be gone and/or alleviated.
11. I am scheduled to have an endoscopic ultrasound at 6:00 a.m. on Wednesday, March 7, 2012, by Dr. Megan Malone, of Cardiology/Gastroenterology Associates of Myrtle Beach, P.A., at Grand Strand Regional Medical Center.
12. It is my understanding that this procedure is to “map” the exact size and location of this mass and its involvement with other organs so as to determine the best method to remove the same.
13. Depending on the results of this mapping, the mass may be able to be removed laproscopically by local surgeons in Myrtle Beach. If not, the removal will be performed by conventional surgery for which I am being referred to a specialty practice at MUSC or Duke.
14. It is the intention of my doctors and myself to have this surgery performed within the next 10 to 14 days.
15. While I have not been given an estimate of recovery time as of yet, other than recovery from laproscopic surgery will be less time consuming than conventional

surgery, I would not expect the same to be more than 90 days and hopefully, not that long.

16. I am otherwise healthy as I have undergone almost every other test and bodily system workup possible in the last 14 days.
17. I have been comforted to learn that no physician believes that this mass is cancerous as I have been told that if it was, I would already be dead.
18. Defendants BJC and Americana are entitled to have the counsel of their choosing represent them in this complex litigation where there are four lower court orders that are already the subject of appeal before the South Carolina Court of Appeals.
19. This case is the most complicated litigation I have handled in my 27 year career from a factual, legal issue, evidentiary, and procedural standpoint.
20. My associate, James Lewis, although a fine young man, is not equipped after three years of practice to handle this case and is not the attorney hired by the Defendants to represent them.
21. While Mr. Lewis has been involved in observing certain depositions, mediations, and other matters that have taken place in this case, that observation was merely to observe my work and in order to help him become the fine trial attorney in the future that I know he will be. He is not equipped to handle this case on behalf of Defendants BJC and Americana.
22. I respectfully request on behalf of Defendants BJC, Americana, and myself, and to serve the ends of justice, that Court the grant a continuance of this case until I can recover from surgery which will hopefully require a delay of no more than 90 to 120 days.

  
Kathryn M. Cook, Esquire

SWORN to before me this 5<sup>th</sup> day  
of March, 2012.

  
Notary Public for South Carolina  
My Commission expires: 4-17-2013

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT  
CIVIL ACTION NO.: 2009-CP-26-5743

Hotel and Motel Holdings, LLC, )  
 )  
Plaintiffs )

v. )

BJC Enterprises, LLC, Wendy J. Bellamy, )  
Americana, Inc., a/k/a Americana Motel of )  
Myrtle Beach, Inc., Mozingo & Wallace )  
Architects, LLC, Kersi S. Shroff, and )  
Defendants )

Defendants BJC Enterprises, LLC and  
Americana, Inc. a/k/a Americana Motel  
of Myrtle Beach, Inc.'s Motion for  
Continuance

BJC Enterprises, LLC, Wendy J. Bellamy, )  
and Americana, Inc. a/k/a Americana Motel )  
of Myrtle Beach, Inc., )

Third-Party Plaintiffs )

v. )

First Palmetto Savings Bank, F.S.B., )  
Jack Jones, Donald D. Godwin, and )  
Bhupendra Patel, )

Third-Party Defendants )

HORRY COUNTY  
12 MAR - 1 PM 12:40  
MELANIE HUGGINS-MAZD  
CLERK OF COURT

YOU WILL PLEASE TAKE NOTICE that Defendants BJC Enterprises, LLC and Americana, Inc. a/k/a Americana Motel of Myrtle Beach, Inc., by and through their undersigned attorney, hereby move before the Court of Common Pleas for the Fifteenth Judicial Circuit in Conway, South Carolina for an order continuing the above-captioned action currently scheduled to begin on Monday, March 5, 2012. The grounds for this motion are as follows:

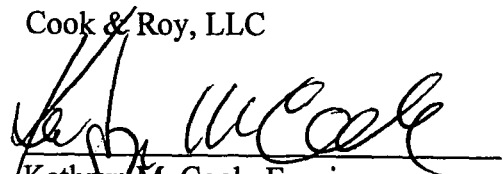
1. Due to medical issues suffered by Defendants' counsel, Kathryn M. Cook, her physicians' have ordered her not to return to work until further notice. See Exhibits A and B attached hereto.

2. Ms. Cook underwent testing last week and is undergoing medical testing again this week to determine the cause of her condition, the results of which are not yet known.
3. It is expected that the medical issues she is experiencing may require her to undergo further testing and treatment during the week of March 5, 2012 and thereafter.

Based on the foregoing, Defendants BJC Enterprises, LLC and Americana, Inc. request the case be continued and not placed back on the trial roster until their attorney has received medical clearance from her physicians.

Respectfully Submitted,

Cook & Roy, LLC



Kathryn M. Cook, Esquire

SC Bar No.: 1371

Attorney for Defendants BJC  
Enterprises, LLC, and Americana,  
Inc.

Post Office Box 4086

North Myrtle Beach, SC 29597

Phone: 843-663-1200

Fax: 843-663-0364

Email: [kcook@cookandroy.com](mailto:kcook@cookandroy.com)

North Myrtle Beach, South Carolina

Date: February 29, 2012

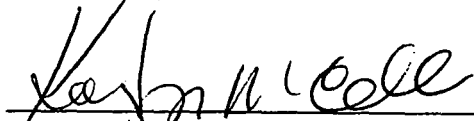
**RULE 11 CERTIFICATION**

The attorney(s) below hereby certifies that either:

- A. He/She has communicated, orally or in writing, with opposing counsel and has attempted in good faith to resolve the matter contained in the motion; or
- B. Such consultation would serve no useful purpose, or could not be timely held; or
- C. Due to the nature of the motion, there is no duty to consult opposing counsel in that this is a motion:
  - a. To Dismiss
  - b. For Summary Judgment
  - c. For New Trial
  - d. For Judgment NOV

HORRUM COUNTY  
12 MAR - 1 PM 12:40  
MELANIE HUGGINS-WARD  
CLERK OF COURT

Cook & Roy, LLC



Kathryn M. Cook, Esquire  
SC Bar No.: 1371  
Attorney for Defendants BJC  
Enterprises, LLC, and Americana,  
Inc.

Post Office Box 4086  
North Myrtle Beach, SC 29597  
Phone: 843-663-1200  
Fax: 843-663-0364  
Email: kcook@cookandroy.com

February 29, 2012

North Myrtle Beach, South Carolina.



MedPlus South Strand Family Practice  
2347 Hwy 17 South Business  
Garden City, SC 29576  
843-357-2443

Certificate To Return To Work/School

Name: Kathryn Cook has  
been under my care from 2-22-12 to \_\_\_\_\_  
And will be able to return to work/school on  
\_\_\_\_\_.

Limitations/Remarks: No work  
until further notice

Dr: J. [Signature] Date: 2-22-12

**CARDIOLOGY**

- NEIL W. TRASK, M.D., FACC, FACP
- JOSEPH L. TRASK, M.D., FACC, FACP
- MARK P. KARAVAN, M.D., FACC
- JERRY E. WATSON, M.D., FACC, FSCAI
- D. BOWEN TRULLICK, M.D., FACC
- ANNE M. EVERMAN, M.D.
- WILLIAM A. JACKSON, M.D., FACC
- RANDALL N. GOODROE, M.D.
- JIMMY L. KONIOS, M.D.
- ROBERTA R. ALSWORTH, PA-C
- CHRISTY HAWKINS, PA-C

2-29-12

To Whom it may concern:

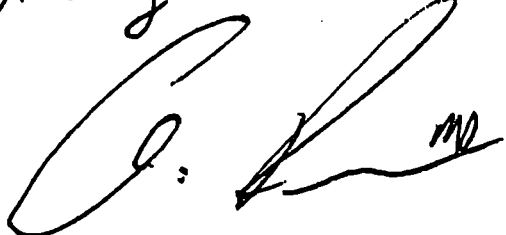
**GASTROENTEROLOGY**

- J. E. THOMPSON, M.D.
- GARY A. VUKOV, M.D.
- TIMOTHY J. CORNNELL, M.D.
- ANDREW N. PEARSON, M.D.
- MEGHAN MALONE, M.D.

This letter is in reference to Kathryn Cook  
(DOB 10/21/1958). Due to patient's clinical condition  
and overall health it is my professional opinion

OFFICE MANAGER  
SHIRLEY PENDERGRASS

that she should be excused from pending trial and  
should be excused until I am able to clear her  
medically.

Sincerely  


(Pearson)

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT  
CIVIL ACTION NO.: 2009-CP-26-5743

Hotel and Motel Holdings, LLC, )  
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Plaintiffs )

v. )

BJC Enterprises, LLC, Wendy J. Bellamy, )  
Americana, Inc., a/k/a Americana Motel of )  
Myrtle Beach, Inc., Mozingo & Wallace )  
Architects, LLC, Kersi S. Shroff, and )  
Shroff Management, Inc., )

Defendants )

BJC Enterprises, LLC, Wendy J. Bellamy, )  
and Americana, Inc. a/k/a Americana Motel )  
of Myrtle Beach, Inc., )

Third-Party Plaintiffs )

v. )

First Palmetto Savings Bank, F.S.B., )  
Jack Jones, Donald D. Godwin, and )  
Bhupendra Patel, )

Third-Party Defendants )  
Defendants )

CERTIFICATE OF SERVICE


HORRY COUNTY  
12 MAR - 1 PM 12:40  
MELANIE HUGGINS-WARD  
CLERK OF COURT

As an employee with the law firm of COOK & ROY, LLC, counsel for Defendants/Third-Party Plaintiffs BJC Enterprises, LLC, Wendy J. Bellamy, Americana, Inc., a/k/a Americana Motel of Myrtle Beach, Inc., I certify that I have served the Honorable William H. Seals, Jr., and all counsel of record with a copy of the pleadings herein specified below, by email, postage prepaid, to the following:

- Pleadings: 1. Motion for Continuance of Trial Scheduled for March 5, 2012

Counsel Served:

1. The Honorable William H. Seals, Jr.  
Circuit Court Judge At-Large Seat 6  
208 W. Dozier Street  
Marion, SC 29571
2. R. Wayne Byrd, Esq.  
Audra M. Byrd, Esq.  
Turner Padgett Graham & Laney, P.A.  
PO Box 2116  
Myrtle Beach, SC 29578  
Attorneys for the Plaintiff Hotel & Motel Holdings, LLC and  
Third-Party Defendants Jack Jones and Donald Godwin
3. William H. Short, Esq.  
Haynsworth Sinkler Boyd, PA  
PO Box 11889  
Columbia, SC 29211  
Attorney for Third-Party Defendant First Palmetto Savings Bank,  
FSB
4. William W. DesChamps, Jr., Esq.  
William W. DesChamps, III, Esq.  
DesChamps Law Firm  
PO Box 2402  
Myrtle Beach, SC 29578  
Attorney for Third-Party Defendant Bhupendra Patel
5. Scott B. Umstead, Esquire  
4226 Mayfair Street, Suite 100  
Myrtle Beach, SC 29578  
Attorneys for Defendant Mozingo & Wallace Architects, LLC
6. Susan P. MacDonald, Esquire  
Nelson Mullins Riley & Scarborough, LLP  
Post Office Box 3939  
Myrtle Beach, SC 29578-3939  
Attorneys for Defendants Kersi S. Shroff and Shroff Management,  
Inc.

  
Tenna Turman, Legal Assistant to  
Kathryn M. Cook, Esq.

North Myrtle Beach, South Carolina

Date: ~~February 29~~, 2012

March 1

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT  
CIVIL ACTION NO.: 2009-CP-26-5743

Hotel and Motel Holdings, LLC, )  
 )  
Plaintiffs )

v. )

BJC Enterprises, LLC, Wendy J. Bellamy, )  
Americana, Inc., a/k/a Americana Motel of )  
Myrtle Beach, Inc., Mozingo & Wallace )  
Architects, LLC, Kersi S. Shroff, and )  
Shroff Management, Inc., )

Defendants )

BJC Enterprises, LLC, Wendy J. Bellamy, )  
and Americana, Inc. a/k/a Americana Motel )  
of Myrtle Beach, Inc., )

Third-Party Plaintiffs )

v. )

First Palmetto Savings Bank, F.S.B., )  
Jack Jones, Donald D. Godwin, and )  
Bhupendra Patel, )

Third-Party Defendants )  
Defendants )

CERTIFICATE OF SERVICE

HORRY COUNTY  
12 MAR -5 PM 1:46  
MELANIE HUGGINS-WARD  
CLERK OF COURT

As an employee with the law firm of COOK & ROY, LLC, counsel for Defendants/Third-Party Plaintiffs BJC Enterprises, LLC, Wendy J. Bellamy, Americana, Inc., a/k/a Americana Motel of Myrtle Beach, Inc., I certify that I have served the Honorable William H. Seals, Jr., and all counsel of record with a copy of the pleadings herein specified below, by email, to the following:

Pleadings: 1. Affidavit of Kathryn M. Cook

- Counsel Served:
1. The Honorable Steven H. John  
Judge of 15<sup>th</sup> Judicial Circuit  
1301 2<sup>nd</sup> Avenue, 3A30  
Conway, SC 29526
  2. R. Wayne Byrd, Esq.  
Audra M. Byrd, Esq.  
Turner Padgett Graham & Laney, P.A.  
PO Box 2116  
Myrtle Beach, SC 29578  
Attorneys for the Plaintiff Hotel & Motel Holdings, LLC and  
Third-Party Defendants Jack Jones and Donald Godwin
  3. William H. Short, Esq.  
Haynsworth Sinkler Boyd, PA  
PO Box 11889  
Columbia, SC 29211  
Attorney for Third-Party Defendant First Palmetto Savings Bank,  
FSB
  4. William W. DesChamps, Jr., Esq.  
William W. DesChamps, III, Esq.  
DesChamps Law Firm  
PO Box 2402  
Myrtle Beach, SC 29578  
Attorney for Third-Party Defendant Bhupendra Patel
  5. Scott B. Umstead, Esquire  
4226 Mayfair Street, Suite 100  
Myrtle Beach, SC 29578  
Attorneys for Defendant Mozingo & Wallace Architects, LLC
  6. Susan P. MacDonald, Esquire  
Nelson Mullins Riley & Scarborough, LLP  
Post Office Box 3939  
Myrtle Beach, SC 29578-3939  
Attorneys for Defendants Kersi S. Shroff and Shroff Management,  
Inc.
  7. Michael Conrady, Esq.  
Campbell Law Firm, PA  
PO Box 684  
Mt. Pleasant, SC 29465



Tenna Turman, Legal Assistant to  
Kathryn M. Cook, Esq.

North Myrtle Beach, South Carolina  
Date: March 5, 2012

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF Horry)	FIFTEENTH JUDICIAL CIRCUIT
	2009-CP-26-5743

HOTEL AND MOTEL HOLDINGS, LLC, )  
 )  
 Plaintiff, )

-VS-

) TRANSCRIPT OF RECORD

BJC ENTERPRISES, LLC, WENDY J. )  
 BELLAMY, AMERICANA, INC., )  
 ET AL, )  
 Defendants. )

) March 5, 2012  
 Conway, South Carolina

B E F O R E:

HONORABLE STEVEN H. JOHN, CIRCUIT JUDGE.

A P P E A R A N C E S:

AUDRA M. BYRD, ESQUIRE  
 ATTORNEY FOR PLAINTIFF

JAMES E. LEWIS, JR., ESQUIRE  
 ATTORNEY FOR DEFENDANTS, BJC ENTERPRISES, LLC  
 AND WENDY J. BELLAMY

WILLIAM H. SHORT, JR., ESQUIRE  
 ATTORNEY FOR DEFENDANT, FIRST PALMETTO SAVINGS  
 BANK

DIXIE COX EUBANK  
 OFFICIAL REPORTER  
 FIFTEENTH JUDICIAL CIRCUIT

1           **THE COURT:** All right, Counsel, I appreciate the  
 2 fact that you have been waiting for some period of time.  
 3 Though I am the Chief Administrative Judge of the Court of  
 4 Common Pleas, I am assigned to a term of General Sessions  
 5 Trial Court this particular week. That is my primary duty  
 6 and responsibility this week.

7           All the cases I disposed of were on the trial roster.  
 8 It was my responsibility to take care of those matters  
 9 before I went to this being now a special term of the Court  
 10 of Common Pleas, Fifteenth Judicial Circuit, to hear the  
 11 motion for continuance in the matter of Hotel and Motel  
 12 Holdings, LLC, versus BJC Enterprises, LLC, Wendy J.  
 13 Bellamy, Americana, Inc., et al. The case number is  
 14 2009-CP-26-5743, and it is a motion for a continuance.

15           All right, Counsel, be glad to hear from you.

16           **MR. LEWIS:** Your Honor, good afternoon. My name is  
 17 James Lewis. I'm here for Kathryn Cook this afternoon  
 18 regarding this motion for continuance in this matter.

19           Your Honor, this is a complex foreclosure action with  
 20 many parties, third parties, and third party claims,  
 21 numerous defenses, numerous counterclaims, and, in fact,  
 22 four orders are currently pending before the Court of  
 23 Appeals with regard to this matter.

24           With regard to this motion for continuance, on  
 25 February 22nd Ms. Cook received a doctor's note from a Dr.

1 Turic which advised her due to some medical issues that she  
2 was not to continue to work. The following day, her  
3 assistant, Tina, sent an e-mail to Judge Seals and counsel  
4 advised of the health issues, and she, in fact, had another  
5 case that was pending before Judge Howe. That matter was  
6 continued.

7 She also at that time on that date advised that it  
8 may be necessary to cancel -- or not to cancel, but to push  
9 this matter back as well and get a continuance for the H and  
10 M and BJC case.

11 On February 29th, she received another doctor's note  
12 from a Dr. Pearson which was to excuse her from trial until  
13 she was cleared medically. That note, while it was dated on  
14 February 29th, was actually received by our office the  
15 following day on March 1st.

16 At that time, on March 1st, we filed a motion for  
17 continuance at roughly 12:40 P.M. We did not yet have the  
18 note from Dr. Pearson, and advised the Court that we would  
19 attach that exhibit, which was Exhibit B, as soon as we  
20 could. We sent that e-mail to Your Honor, Judge Seals, and  
21 the counsel of record as well.

22 Ms. Byrd and Mr. Short objected to the motion for  
23 continuance regarding that, Your Honor. In fact, Kiff's  
24 motion is filed due to serious medical issues that she has  
25 and she is undergoing, and she has undergone extensive

1 medical testing with regard to those medical issues, Your  
2 Honor.

3           The same has been laid out in further detail in an  
4 affidavit which has been clocked with the court, and if Your  
5 Honor would allow I would like to hand up to you.

6           **THE COURT:** All right. I will be glad to receive it  
7 from you. Thank you, sir.

8           Did you provide copies to opposing counsel?

9           **MR. LEWIS:** Yes, Your Honor, I have.

10          **THE COURT:** Thank you.

11          **MR. LEWIS:** To summarize the affidavit, Kiff states  
12 that she has been in law practice for twenty-seven years and  
13 has extensive experience. On February 29th, unfortunately  
14 after an endoscopic procedure a mass was located. She had  
15 been suffering from some anemia for sometime. It was not  
16 known why she was suffering from that, but the doctors  
17 believe that this mass has been using Ms. Cook's blood to,  
18 in fact, grow. It is believed to be non-cancerous and, in  
19 fact, I believe the doctor stated that due to the size of it  
20 if it was cancerous Ms. Cook would no longer be with us at  
21 this juncture.

22          She has another ultrasound scheduled for March 7th  
23 with Dr. Megan Malone at Grand Strand Regional Medical  
24 Center. The purpose of that procedure is to determine, Your  
25 Honor, whether or not they will be able to remove it

1 endoscopically, I believe is the term for it, or whether or  
2 not she will have to go to MUSC or Duke to remove the mass,  
3 Your Honor.

4 Ms. Cook intends the surgery to be completed between  
5 ten to fourteen days, and it is estimated her recovery time  
6 is ninety days. Again, this is a complex case, Your Honor,  
7 and the defendants are entitled to counsel of their  
8 choosing, and they did choose Ms. Cook for this matter, Your  
9 Honor.

10 My personal involvement in this matter has been much  
11 more observational. In fact, this is the first -- we've  
12 had, it seems, dozens of motions and hearings in this  
13 matter, Your Honor, and this is the first one that I have  
14 argued on my own, and it's unfortunately due to Ms. Cook's  
15 health situation.

16 Compared to Ms. Cook, I would naturally be relatively  
17 inexperienced. I've been in practice less than three years,  
18 Your Honor, and Ms. Cook has been in practice for twenty-  
19 seven years, a vast more legal and life experience than I.

20 Your Honor, I believe in this nature due to the  
21 circumstances with Ms. Cook's health, I believe good and  
22 sufficient cause has been shown to allow for a continuance  
23 in this matter.

24 The State has recognized Hundley v. Rite Aide, Your  
25 Honor, has recognized the authority of the Court to grant

1 continuances and determine the order in which cases shall be  
2 heard, and this adjudicative power of the Court carries with  
3 it the power to control the order of its business and to  
4 safeguard the rights of the litigants in this matter.

5 I do believe it was proposed by Ms. -- Ms. Byrd that  
6 Ms. Bellamy's bankruptcy counsel could handle this matter or  
7 -- and I could assist him or I could handle this matter.  
8 Your Honor, due to my relative amount of inexperience,  
9 especially when compared to Ms. Cook and the fact that the  
10 bankruptcy attorney, I think, has only been on board for a  
11 few weeks with Ms. Bellamy, I do believe that there would be  
12 the potential prejudice to Ms. Cook's clients in that  
13 regard, and furthermore the bankruptcy attorney is located  
14 in Mt. Pleasant and again has very minimal experience in  
15 what has been a very complex matter, Your Honor, and  
16 further, he hasn't been retained for any state court action  
17 and notified us of that in an e-mail. I do believe that's  
18 all I have for Your Honor.

19 **THE COURT:** Tell me when you believe you, or  
20 bankruptcy counsel, or some other counsel, or Ms. Cook is  
21 prepared to try this case, when.

22 **MR. LEWIS:** Your Honor, I believe in Ms. Cook's  
23 affidavit she is estimating ninety to a hundred and twenty  
24 days with the surgery time and her recovery time factored  
25 in. Your Honor, I can't really speak for bankruptcy counsel

1 on how long it would take to get prepared for this matter,  
2 Your Honor.

3 For myself, again, I have attended depositions. I  
4 have attended some motions on this, but I believe it would  
5 take me several weeks to be up to -- up to speed on all of  
6 the intricate issues of this litigation, Your Honor.

7 **THE COURT:** All right. Thank you very much.

8 Before I turn to counsel that are present, I received  
9 e-mail communication that was forwarded to counsel of record  
10 on behalf of William DesChamps, III, indicating that on  
11 behalf of the third party defendant, Bhundra Patel, that  
12 they do not oppose the continuance.

13 I also received an e-mail from Attorney Susan  
14 MacDonald, that was forwarded to all counsel of record,  
15 indicating that on behalf of her client she did not oppose  
16 the continuance in this matter.

17 All right, very good. All right, counsel of record  
18 that are here, if you would state your name for the Court  
19 and the party you represent, I'll be glad to hear from you.

20 **MS. BYRD:** Yes sir, Your Honor. I am Audra Byrd,  
21 and I am here on behalf of the Plaintiff, Hotel and Motel  
22 Holdings, LLC.

23 We, on behalf of my client, we want to first note we  
24 are sympathetic to Ms. Cook's medical issues, and we don't  
25 want to appear insensitive. However, Your Honor, we would

1 like to note that in the motion there was no indication of  
2 any time period within which Ms. Cook would -- would be, if  
3 at all, able to proceed with this or any other matter, Your  
4 Honor.

5         On behalf of our clients, there are really three  
6 reasons for which we oppose the motion for a continuance.  
7 The first is, Your Honor, these properties that are the  
8 subject of the foreclosure action are in need of significant  
9 repair. However, because of the cloud on title, there is no  
10 source from which to undertake those repairs or even to pay  
11 ordinary expenses such as insurance or taxes.

12         Additionally, Your Honor, as each day passes, the  
13 debt on this -- on these properties increases at a rate of  
14 Twelve Hundred Dollars per day, and just to give you an  
15 idea, since the last scheduled trial date, which was January  
16 9th, until today, the debt has increased by the amount of  
17 Sixty Eight Thousand, Five Hundred Dollars, which is a  
18 significant amount, Your Honor, and I think the most  
19 significant reason for our opposition to this continuance is  
20 that this is the sixth time that this case has been set for  
21 trial.

22         The first time the case was set for trial was Oc- --  
23 I'm sorry, December of 2010. The Defendants made a motion  
24 for a continuance. Thereafter, this case was scheduled for  
25 trial on April 2011. We appeared for trial to proceed. At

1 that time the Defendants again requested a continuance,  
2 which was granted.

3           Thereafter in May of 2011, this was set for a date  
4 certain trial to begin on June the 6th, 2011. We appeared  
5 before the Court ready to go to trial on June the 6th, 2011.  
6 Again at that time the Defendants requested a continuance on  
7 the grounds that there were pending motions, and the  
8 continuance was again granted.

9           On the same day, Judge Seals notified counsel that he  
10 had obtained jurisdiction from Chief Justice Toal to cancel  
11 a term of court in Florence to hear this matter on the week  
12 of July the 7th. Thereafter at the end of June, Ms. Cook  
13 notified counsel and the Court that she was required to take  
14 a medical leave of absence for approximately six weeks.

15           In August of 2011, Ms. Cook notified the Court and  
16 counsel that she was back at work and ready to proceed with  
17 the case. On August the 24th, 2011, we had a hearing in  
18 Beaufort with Judge Seals where he ordered us to conduct  
19 another round of mediation and that if we were not able at  
20 that time to get the case settled that he would set this  
21 foreclosure for hearing.

22           We had the mediation on September the 11th. We  
23 notified the Judge. Judge Seals responded to us and said  
24 that he would set this matter during his next term, which  
25 was October the 10th, 2011, and if that wouldn't work, then

1 the next term would be January the 9th, 2012.

2 Attorney Cook responded that January 2012 would be  
3 best because she had protection during the week of October  
4 the 10th, and in December of 2011 Judge Seals then set this  
5 matter for trial at January the 9th. Ten days before the  
6 trial was set to begin, Ms. Bellamy, a Defendant in this  
7 action, filed for bankruptcy. Therefore, the case was  
8 stayed and the foreclosure for January the 9th was canceled.

9 On behalf of Hotel and Motel Holdings, we filed a  
10 motion to lift the stay in the bankruptcy court. A hearing  
11 was held on that motion at the end of January, and by Order  
12 dated February the 7th, 2012, the bankruptcy court lifted  
13 the stay in this matter and we notified Judge Seals of the  
14 stay being lifted, and he set this matter to be heard  
15 beginning today, Your Honor.

16 In the course of the bankruptcy proceedings, Ms.  
17 Bellamy has requested that the Court allow her to obtain an  
18 attorney, who she was permitted to retain. It's Michael  
19 Conrady out of Mt. Pleasant, and it's our opinion, Your  
20 Honor, that this is -- while we believe that through the  
21 course of litigation the case became complex through third  
22 party claims and counterclaims.

23 However, through numerous dispositive motions, Your  
24 Honor, the only thing that's left in this case is the  
25 foreclosure matter and the defenses, and we think that two

1 attorneys are capable of going forward, and we just would  
2 ask that this case proceed to trial, Your Honor.

3 **THE COURT:** Okay. Thank you very much.

4 Yes sir.

5 **MR. SHORT:** Your Honor, Bill Short on behalf of  
6 First Palmetto Savings Bank. We are a third party  
7 defendant. The claims against us are on appeal by Ms. Cook.

8 Your Honor, we believe, that as Ms. Byrd indicates,  
9 that not only has this matter been called for day-certain  
10 trials and then continued, it's as described by both parties  
11 a mortgage foreclosure.

12 If Ms. Cook's request for continuance is granted and  
13 the case is pushed, this case in June of this year will be  
14 three years old for a mortgage foreclosure. All the other  
15 defenses, the substance of what Ms. Cook has claimed against  
16 both H and M and my client, First Palmetto, are issues that  
17 are now on appeal and are not germane to the foreclosure,  
18 and we believe, Your Honor, understanding Ms. Cook's health  
19 issues, that the case needs to be set with no opportunity  
20 for further continuance or delay and the case tried.

21 **THE COURT:** Thank you very much.

22 All right, counsel, any reply to what you just heard?

23 **MR. LEWIS:** Just briefly, Your Honor.

24 Ms. Byrd's contention about the property being in  
25 need of significant repair, I don't argue that they don't.

1 I mean, they do need to be repaired, but I don't know  
2 whether or not a ninety day or a hundred and twenty day  
3 continuance for Ms. Cook to get well and be able to try this  
4 case to the best of her ability, I don't know whether or not  
5 that extra ninety days is really going to make too much of a  
6 difference.

7           Again, this case has been going on for a long time,  
8 Your Honor, and I understand that and I do empathize with  
9 opposing counsel and the opposing parties in this matter,  
10 and again, you know, as far as the debt ringing up, our  
11 folks want to get this done and moving along too, Your  
12 Honor.

13           This is a completely unforeseen circumstance with Ms.  
14 Cook's health. If you know -- I'm sure you know Ms. Cook  
15 well, Your Honor. She's not one to shy away from going to  
16 trial and zealously advocating her client's position.

17           This case, you know, again I would just state -- I  
18 have no problem setting it for a time certain, but I would  
19 request that we -- Ms. Cook said that she would need at the  
20 top end a hundred and twenty days with surgery and her  
21 recovery period. I would request that we at least push --  
22 push this matter, continue this matter to that point if  
23 we're going to set it for a time certain, Your Honor.

24           **THE COURT:** All right, thank you.

25           I meant to ask you a question, Counsel. The history

1 of this case, including the fact that it is Docket Number  
2 2009-CP-26-5743, and as indicated, will be three years old  
3 in June of this year, do you have any disagreement with the  
4 history as set forth by Ms. Byrd as to the numerous times  
5 it's come to the Court, the numerous times it's come up for  
6 trial, the numerous times it's been continued? Do you have  
7 any disagreement with that history?

8           **MR. LEWIS:** Your Honor, I can't -- I can't argue  
9 about the dates. I mean, the dates speak for themselves,  
10 but regarding the early motions for continuance, Your Honor,  
11 this case, there were -- several Judges could not hear the  
12 matter due to a conflict of interest, I believe.

13           Judge Hyman was not able to hear the matter, and  
14 Judge Culbertson, it was decided, would hear the matter for  
15 a period of time. A receivership -- I don't even believe a  
16 receiver was appointed in this matter until -- until late in  
17 2010, so while I do understand that this has a history,  
18 there has been continuances, Your Honor, I believe that's --  
19 a lot of those were for circumstances outside of the control  
20 of Defendants in this matter.

21           Again, as Ms. Byrd said, the matter was, in fact,  
22 mediated again in June of last year with the expectations  
23 that maybe we could get together and get this thing settled  
24 up, and unfortunately that didn't come to fruition, Your  
25 Honor.

1           Yeah, I can't -- I can't dispute the fact that this  
2 case was actually filed when it was filed, but Ms. Bellamy  
3 had issues with her first counsel. She went to see Ms.  
4 Golding, and there was a conflict of interest there, and  
5 then Ms. Cook didn't come on line until much later after the  
6 fact, Your Honor, so this case has had a bunch of unique  
7 circumstances that go with it.

8           It's not just a case that was started, and it's not  
9 just a simple mortgage foreclosure, Your Honor. A great  
10 deal of issues in this case with numerous defenses, a very  
11 unique and complicated factual scenario and, Your Honor,  
12 it's much more complicated than just the Defense going and  
13 asking for a continuance because they're not ready to go.  
14 That's not the case, Your Honor.

15           **THE COURT:** All right. And just so the record is  
16 clear, the matter -- the action was filed on June 4th, 2009.

17           The Court is in agreement with the history as related  
18 in this matter by Ms. Byrd as to the number of times it has  
19 come before the Court and the number of times it has been  
20 continued. If I'm not mistaken, I think the issue about  
21 Judge Hyman, there might have been some representational  
22 issue and I think he might have recused himself.

23           The matter with Judge Culbertson was brought to the  
24 attention by Ms. Cook due to who his law clerk was at that  
25 period of time, and she requested that he recuse himself due

1 to who his law clerk was at that point in time. Obviously  
2 that is no longer the case. That law clerk has not been his  
3 for some period of time, so obviously that doesn't -- is not  
4 an issue anymore, but that was the reason Judge Culbertson  
5 was not involved in the matter at that time when it came  
6 before him.

7           It has come before the Court a number of times. I,  
8 in fact, had issued an order of continuance and set it for  
9 one of the days certain with the understanding from the  
10 parties that they were going to go forward on the date that  
11 is set forth in the order.

12           I appreciate and understand the client that has  
13 retained Ms. Cook has the right to secure legal  
14 representation and in most circumstances the legal  
15 representation of their choosing. The Court must also take  
16 into consideration the interest of justice, the interest of  
17 the other party, the length of time the case has been  
18 pending, the numerous times that it has had an opportunity  
19 to go forward and it did not go forward.

20           I am going to continue it from this particular week.  
21 It will not go forward this week. I am setting it for the  
22 first case for trial the week of April 16th, the week of  
23 April 16th. Judge Culbertson and Judge Seals are here for  
24 Common Pleas Court. They can decide which one of them will  
25 try the case. It's going forward the very first case. It's

1 going before the jury trials that week. It is going to be  
2 the first case tried April 16th, 2012.

3       The interests of justice demand that the Court take  
4 this action. I appreciate Ms. Cook's position. I  
5 appreciate her condition. Justice demands that this matter  
6 be resolved. Despite any number of things that might be  
7 attached to it, it is a mortgage foreclosure case. It is  
8 not in the Court's mind, an examination of the file, unduly  
9 complicated.

10       Counsel that is present, along with the bankruptcy  
11 counsel, if Ms. Cook is not able to go forward and try the  
12 case first up April 16th, they have plenty of time between  
13 today, March 5th, 2012, and April 16th, 2012, to get ready  
14 to try this case, to subpoena the number of witnesses  
15 whoever they may need, to talk to the witnesses, to look at  
16 the file, examine the matters, to do whatever is necessary  
17 to get ready for trial. There is more than sufficient time  
18 between now, March 5th, 2012, and April 16th, 2012, to go  
19 forward.

20       The matter is ordered to go forward the first case  
21 April 16th, 2012, whether or not Ms. Cook is able, due to  
22 her medical condition, to be present. The Court takes this  
23 extraordinary position because the interest of justice of  
24 all the parties in this matter so demand. Justice has been  
25 long delayed to all the parties in this case. A resolution

1 must be had. The property is in deterioration. The  
2 property is losing value every single day. The debt is  
3 rising every single day. This matter must end. It will  
4 end.

5 Ms. Byrd, do an Order to that effect. Forward it to  
6 me for my signature. You need to e-mail it to my law clerk,  
7 please, using WORD, please, WORD, and obviously send a copy  
8 to all counsel at the same time. Thank you very much.

9 MS. BYRD: Thank you, Your Honor.

10 MR. SHORT: Thank you, Your Honor.

11 MR. LEWIS: Thank you, Your Honor.

12 THE COURT: And I expect them to have the Order by  
13 Friday at twelve noon.

14 MS. BYRD: Yes sir.

15 THE COURT: Thank you.

16 (Conclusion of Requested Transcript of Record.)

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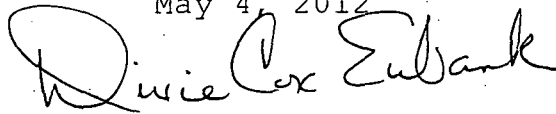
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C E R T I F I C A T E

1  
2  
3 I, the undersigned, DIXIE COX EUBANK, Official Court  
4 Reporter for the Fifteenth Judicial Circuit of the State of  
5 South Carolina, do hereby certify that the foregoing is a  
6 true, accurate and complete Transcript of Record of all the  
7 proceedings had and evidence introduced in the hearing of  
8 the captioned case, relative to appeal, in the Court of  
9 Common Pleas for Horry County, South Carolina, on the 5th  
10 day of March, 2012.

11 I DO FURTHER CERTIFY that I am neither of kin,  
12 counsel nor interest to any party hereto.

13 May 4, 2012

14 

15 DIXIE COX EUBANK

16 CIRCUIT COURT REPORTER

17 FIFTEENTH JUDICIAL CIRCUIT

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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS

Civil Action No. 2009-CP-26-05743

HOTEL & MOTEL HOLDINGS, LLC,

Plaintiff,

vs.

BJC ENTERPRISES, LLC, ET AL.,

Defendants.

**ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR CONTINUANCE OF TRIAL**

BJC ENTERPRISES, LLC, ET AL.,

Third Party Plaintiffs,

vs.

FIRST PALMETTO SAVINGS BANK,  
F.S.B., JACK JONES, DONALD D.  
GODWIN, AND BHUPENDRA PATEL,

Third Party Defendants.

FILED  
HORRY COUNTY  
12 MAR 20 AM 10:10  
MELANIE HUGGINS-WARD  
CLERK OF COURT

This matter comes before the Court upon the Motion of Defendants BJC Enterprises, LLC ("BJC") and Americana Motel, Inc. ("Americana") seeking an Order of this Court continuing the trial of this matter. A hearing on the Motion was held before this Court on March 5, 2012, at the Horry County Courthouse. Present at the hearing for Plaintiff Hotel & Motel Holdings, LLC ("H & M") was Audra M. Byrd. Defendants BJC and Americana were represented at the hearing by James E. Lewis, Jr. William H. Short, Jr. appeared on behalf of First Palmetto Savings Bank, F.S.B. ("First Palmetto"). Prior to the hearing on this matter, Susan P. MacDonald and William W. DesChamps, III, counsel for Defendant Kersi S. Shroff and Third-Party Defendant Bhupendra Patel, respectively, advised the Court that they had no objection to the proposed continuance. After review of the Motion, the Court's file, and hearing

arguments of counsel, the Motion for Continuance of Trial is GRANTED in part and DENIED in part.

#### RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

This commercial foreclosure action was originally brought by First Palmetto. The lis pendens relating to the properties was filed on June 4, 2009, and thereafter, the Summons and Complaint were filed with the Court on June 11, 2009. Subsequently, an Amended Summons and Complaint were filed with the Court wherein H & M was substituted as the plaintiff. In its Amended Complaint, H & M asserted three causes of action: (1) foreclosure of real property mortgage, (2) claim and delivery, and (3) appointment of a receiver.

Thereafter, Defendants answered the Amended Complaint and later filed an Amended Answer, Counterclaims and Third-Party Complaint. In the Amended Answer, Defendants asserted various counterclaims against H & M including breach of contract, fraud, breach of contract accompanied by a fraudulent act, civil conspiracy, conversion, interference with contractual relationship, intentional infliction of emotional distress/outrage, and violation of the South Carolina Unfair Trade Practices Act.

In response to the counterclaims, H & M filed and served a Motion for Summary Judgment, and a hearing on the Motion was held before the Court on Thursday, May 12, 2011. By Order filed with the Horry County Clerk of Court on June 6, 2011, this Court granted the Motion for Summary Judgment as to Defendants' Counterclaims. Similarly, the Court granted various dispositive motions filed by the third party defendants, and currently, the only pending, affirmative claim set for a bench trial on March 5, 2012, is the foreclosure cause of action.

2012  
A.H.J.

CONTINUANCE HISTORY OF THE CASE

This case has been set for trial or appeared on the trial roster on six occasions. Initially, the matter appeared on the trial roster in December of 2010. On December 1, 2010, Defendants BJC, Americana, and Wendy J. Bellamy filed a Motion for Continuance. Thereafter, the case appeared on the trial roster for the term of Court beginning April 11, 2011. During the roster meeting held on Monday, April 11, 2011, Defendants again requested a continuance of the trial, which was granted. Thereafter, by Order filed with the Clerk of Court on May 11, 2011, the case was set for a date certain trial to begin on June 6, 2011.

On June 6, 2011, Defendants again requested a continuance of the trial on the grounds that there were pending motions for reconsideration that had not been ruled upon by the Court. As a result, the case was again continued. Subsequently, the Honorable William H. Seals, Jr. advised all counsel that he had obtained jurisdiction from Chief Justice Jean Hoefler Toal to cancel a term of Court in Florence County and hear this matter during the week of July 11, 2011.

In late June of 2011, Attorney Kathryn M. Cook, counsel for BJC and Americana, informed the Court that due to medical issues, it was necessary for her to take a leave of absence for approximately six weeks. On July 7, 2011, the Court ordered a continuance of the trial scheduled for July 11, 2011. In mid-August of 2011, Attorney Cook advised the Court of her return to work, and during a motion hearing in this matter on August 24, 2011, Judge Seals requested the parties attempt once more to resolve the matter through mediation. If the parties were not successful, Judge Seals agreed to hear the foreclosure matter as soon as practicable. On September 21, 2011, the parties attended another mediation session, which was unsuccessful.

Thereafter, Judge Seals agreed to hear the matter during his next term of Court in Horry County beginning on October 10, 2011. Judge Seals further informed counsel that if the week of

3  
A.H.J.

October 10, 2011, was unsuitable, his next term of Court in Horry County would be January 9, 2012. In response, Attorney Cook advised the Court that she had been previously granted protection for October 13, and she had another trial scheduled during the week of October 10, 2011, before the Horry County Master in Equity. As a result, the Court set this case for trial to begin on January 9, 2012.

On December 28, 2011, Defendant Wendy J. Bellamy filed for Chapter 13 Bankruptcy, and the Court and counsel were notified of the same on or about January 5, 2012. As a result of the automatic stay, the foreclosure trial set for January 9, 2012, was cancelled. Thereafter, H & M filed a motion for relief from the automatic stay with the Bankruptcy Court, and a hearing on the Motion was held on January 26, 2012. By Order dated February 7, 2012, the Honorable John Waites, Chief United States Bankruptcy Judge, lifted the automatic stay and ordered the present foreclosure could proceed. Through its counsel, H & M notified the Court of the Bankruptcy Court's order, and the trial of this matter was scheduled to begin on March 5, 2012.

Prior to the trial of this matter, on March 1, 2012, Defendants BJC and Americana served a Motion for Continuance. In support of their Motion, Defendants assert that because of medical issues, Attorney Cook was ordered by her physicians not to return to work until further notice. Additionally, the Motion indicated that Attorney Cook had undergone medical treatment during the weeks of February 20 and February 27, 2012, and that further medical treatment was required. In their Motion, Defendants requested an indefinite continuance until such time as Attorney Cook was cleared to resume work as ordered by her physicians. Counsel for H & M, along with counsel for First Palmetto objected to the continuance, asserting there was no indication of when Attorney Cook would return to work, the properties were continuing to deteriorate and the debt was increasing a rate of approximately \$1200.00 per day. Additionally,

4/2/12  
A. H. H.

counsel argued that during the course of the Bankruptcy Court proceedings, Defendant Wendy J. Bellamy, the managing member of BJC and majority shareholder of Americana, had requested approval to obtain and had retained an attorney, Michael Conrady. H & M and First Palmetto assert that Attorney Conrady and/or Attorney Lewis are capable of handling the foreclosure hearing.

By Affidavit filed with the Court on March 5, 2012, Attorney Cook confirmed the factual basis for the Motion and provided the Court with further information regarding her medical condition and expected recovery time. In her Affidavit, Attorney Cook expressed her opinion that she would be able to return to work in approximately 90 – 120 days, and she requested a continuance of the trial of this matter for that length of time. Attorney Cook further stated that her associate, Attorney Lewis, was not the attorney hired by the defendants and was not able to handle the defense of this matter on behalf of BJC and Americana.

#### STANDARD OF REVIEW

Under Rule 40 of the South Carolina Rules of Civil Procedure, upon the call of a case to trial, counsel may request that the action be continued. Rule 40(i)(1). “If good and sufficient cause for continuance is shown, the continuance may be granted by the court. Ordinarily such continuances shall be only until the next term of court.” Id.

“The granting or denial of a motion for a continuance is within the sound discretion of the trial judge whose ruling will not be disturbed on appeal absent an abuse of discretion resulting in prejudice to the appellant.” State v. Babb, 299 S.C. 451, 454, 385 S.E.2d 827, 829 (1989). When considering a motion for continuance, the trial court must consider the particular facts and circumstances of each case. Id. A continuance is not a matter of right but rather one of discretion. Trotter v. Trane Coil Facility, 393 S.C. 637, 649, 714 S.E.2d 289, 295 (2011).

5087  
A.H.J.

Trotter v. Trane Coil Facility, 393 S.C. 637, 650, 714 S.E.2d 289, 295 (2011). The trial court “necessarily exercises wide discretion in managing a case, and decisions denying a request for a continuance are ‘rarely’ overturned.” Id. at 650, 714 S.E.2d at 295 (citing Morris v. State, 371 S.C. 279, 283, 639 S.E.2d 53, 56 (2006)).

#### LEGAL ANALYSIS AND CONCLUSIONS

As noted above, this case has been pending since June of 2009, and the record clearly establishes that the matter has been scheduled for trial on numerous occasions. On four occasions, the case was set for a date certain trial: June 6, 2011, July 7, 2011, January 9, 2012, and March 5, 2012. Each time the case has been scheduled for trial, the defendants have requested a continuance or necessitated a continuance through their conduct. The interests of justice require that this matter be tried without further delay.

The Court is sensitive to Attorney Cook’s health issues and the defendants’ right to have counsel of their choice. However, Attorney Lewis is an attorney practicing in the same firm as Attorney Cook, and he is a member in good standing of the South Carolina Bar. Moreover, this case is a contested foreclosure action, and Attorney Lewis (or the attorney appointed by the Bankruptcy Court) is capable of handling the defense of this matter. In very similar circumstances, the South Carolina Supreme Court has affirmed the trial court’s refusal to grant a continuance based on the illness of counsel. King v. Smith, 148 S.C. 419, 146 S.E. 237 (1929).

#### CONCLUSION

After a careful review of the Motion, the Court’s file, and the relevant case law, and hearing arguments from counsel, this Court concludes it has properly considered the Motion for Continuance.

**NOW, THEREFORE,**

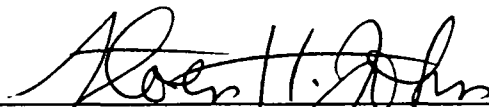
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**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Defendants' Motion for Continuance is GRANTED in part, and the trial of this matter is continued past the March 5, 2012 term of Court;

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendants' Motion for Continuance is DENIED to the extent Defendants request an indefinite continuance;

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the trial of this case shall begin on April 16, 2012, and this matter shall be the first case tried during the April 16, 2012 term of Court for Horry County.

AND IT IS SO ORDERED this 16<sup>th</sup> day of March, 2012.

  
\_\_\_\_\_  
**THE HONORABLE STEVEN H. JOHN**  
Chief Administrative Judge for the  
Fifteenth Judicial Circuit

Conway, South Carolina

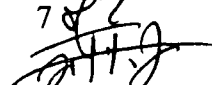
782  


EXHIBIT D

STATE OF SOUTH CAROLINA )

COUNTY OF HORRY )

Hotel and Motel Holdings, LLC, )

Plaintiffs )

v. )

BJC Enterprises, LLC, Wendy J. Bellamy, )

Americana, Inc., a/k/a Americana Motel of )

Myrtle Beach, Inc., Mozingo & Wallace )

Architects, LLC, Kersi S. Shroff, and )

Shroff Management, Inc., )

Defendants )

BJC Enterprises, LLC, Wendy J. Bellamy, )

and Americana, Inc. a/k/a Americana Motel )

of Myrtle Beach, Inc., )

Third-Party Plaintiffs )

v. )

First Palmetto Savings Bank, F.S.B., )

Jack Jones, Donald D. Godwin, and )

Bhupendra Patel, )

Third-Party Defendants )

IN THE COURT OF COMMON PLEAS

FIFTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2009-CP-26-5743

HORRY COUNTY  
12 APR -2 PM 2:40  
MELANIE HUGGINS-WARD  
CLERK OF COURT

Defendants' Motion for Reconsideration of  
Order Granting in Part and Denying in Part  
Motion for Continuance of Trial

TO: AUDRA M. BYRD, ESQ. and R. WAYNE BYRD, ESQ., Attorneys for Plaintiff Hotel and Motel Holdings, LLC and Third-Party Defendants Donald D. Godwin and Jack Jones; SUSAN P. MACDONALD, ESQ., Attorney for Defendants Kersi S. Shroff and Shroff Management, Inc.; SCOTT B. UMSTEAD, ESQ., Attorney for Mozingo & Wallace Architects, LLC; WILLIAM H. SHORT, ESQ., Attorney for Third-Party Defendant First Palmetto Savings Bank, F.S.B.; and WILLIAM W. DESCHAMPS, JR., ESQ., Attorney for Third-Party Defendant Bhupendra Patel

YOU WILL PLEASE TAKE NOTICE that the undersigned will move before the Honorable Steven H. John at the Horry County Courthouse in Conway, South Carolina, within

ten (10) days hereafter, or as soon thereafter as counsel may be heard, for reconsideration of his Order Granting in Part and Denying in Part Motion for Continuance of Trial signed March 16, 2012, filed with the Court of Common Pleas of Horry County, South Carolina, on March 20, 2012, and received by Defendants' counsel on March 23, 2012. A copy of that Order is attached hereto. This Motion for Reconsideration is made pursuant to Rule 52(b) and Rule 59(e) of the South Carolina Rules of Civil Procedure. The grounds for this motion to reconsider include, but are not limited to, that the Court erred as follows:

1. In finding that Defendants BJC and Americana must go forward without counsel of their choosing. This case has been very complex, involving multiple parties, motions, counterclaims, cross-claims, and appeals. The Court noted in its Order that Defendants have a right to counsel of their choosing, yet the Court still ordered the case to go forward without Ms. Cook, the attorney selected and hired by Defendants and the attorney that has represented Defendants throughout the 3 ½ years of litigation in this case.

Defendants have a right to the counsel of their choosing and denial of this right to counsel by the Court has denied Defendants BJC and Americana due process. This Court erroneously stated that Attorney Lewis could handle the trial of this case, despite the fact that Attorney Lewis has only practiced law for approximately 3 years, has not tried a case, and was not hired by Defendants for this matter. The Court also stated that Bellamy's Bankruptcy Attorney could handle the trial of this case, despite the fact that he has not been hired to represent Defendants in any state court action and specifically has not been hired by Defendants Americana or BJC for representation in any matter at all. To have either Attorney Lewis or the Bankruptcy Attorney in this case to the exclusion of Attorney Cook, Defendants' choice of counsel, would serve to work

a grave injustice on Defendants. The Court abused its discretion in requiring Defendants to go to trial without Ms. Cook as counsel for all the reasons previously stated.

2. In finding that the interests of justice require that this matter be tried without further delay. This ruling is clearly erroneous and an abuse of discretion. The interests of justice dictate that Defendants have a right to the counsel of their choice. Defendants signed a fee agreement with Cook & Roy, LLC and **specifically Kathryn M. Cook, Esq.** Further, Defendant Bellamy's Bankruptcy Attorney has not been hired for this case or any other case in state court and has never represented and currently does not represent Defendants BJC and Americana. Likewise, Attorney Lewis was not hired for this case. He has less than 3 years of practice experience, and despite being a fine attorney, has not tried a case. Most of his work has not involved trial practice. Defendants BJC and Americana would suffer great hardship in having Attorney Lewis represent them rather than Ms. Cook, as Ms. Cook has 27 years of trial experience and is a more seasoned and capable attorney, not to mention the fact that Attorney Cook is the attorney that was chosen and hired by Defendants. Further, most of Attorney Cook's practice is litigation and Attorney Lewis would not be accompanied by a senior and/or supervisory attorney in this matter, all to the detriment of Defendants. The interests of justice require this case be continued until Ms. Cook is released by her physicians to return to work on May 28, 2012, which is only 42 days after the date for which this Court has already agreed to continue the matter.

3. In finding that the case of King v. Smith, 148 S.C. 419, 146 S.E. 237 (1929) is instructive and that Attorney Lewis is capable of handling the defense of the case. In the King case, Judge Bonham denied a motion for continuance due to that fact that Plaintiff was in poor health and there was a question as to whether Plaintiff would be available or even alive for the

next term of court. That is not the situation in this case and Plaintiff's counsel did not argue this position. Furthermore, in the King case, Judge Bonham found that another attorney and partner in the firm of Mauldin & Love, Mr. Love, would be able to stand in for trial and the Court found Mr. Love to be "a trial lawyer of great experience...highly regarded as a practitioner of much ability...and that he had associated another attorney who likewise stands very high in the profession of the law." King at 239. That is not the case here: Attorney Lewis is inexperienced as a trial lawyer and has not associated in another attorney. Thus, King is not instructive and to the extent that the Court relied on the same, such reliance was an abuse of discretion.

4. In finding that Defendants requested an indefinite period of time for continuance. Ms. Cook's affidavit, which was filed with and submitted to the Court, indicated a delay of 90 to 120 days would be necessary. Attorney Lewis, arguing the motion for continuance on behalf of Ms. Cook, also noted that 90 to 120 days would be needed for a continuance. The Court erroneously ruled on the motion for continuance on the grounds that an indefinite continuance was sought.

Attorney Cook has now successfully undergone surgery without any complications thus far. Attorney Cook was released from MUSC on March 27, 2012 and is recovering at home with a follow up visit at MUSC scheduled for April 10, 2012. Defendants' counsel now anticipates that she will be released to return to work as of May 28, 2012, which is only 42 days longer than the continuance granted by the Court and is within the 120 days originally requested by Defendants. See Exhibit A, attached hereto.

5. In finding that the case should go forward on April 16, 2012, despite the fact that several orders are pending on appeal, including an order denying Defendants' right to a jury trial, which affects the mode of trial and thus stays the trial of Plaintiff's claims until the appeal is

ruled on. It is well settled in South Carolina that an action for claim and delivery is legal in nature, requiring a jury trial if requested. In this case, Defendants requested a jury trial, Judge Seals struck the request for jury trial, and that Order is currently on appeal before the South Carolina Court of Appeals. Additionally, in a suit with mixed legal and equitable issues, a trial of the legal issues must be had first. The Court granted summary judgment in favor of H&M with regard to Defendants' counterclaims and granted summary judgment in favor of First Palmetto with regard to Defendants' Third-Party claims. These orders granting summary judgment are immediately appealable and are part of the interlocutory appeal pending before the Court of Appeals which also stays this action.

6. In finding that six (6) continuances were necessitated by Defendants BJC and Americana, and specifically:

A. In finding that after the matter appeared on the trial roster in December of 2010, the trial was continued due to a motion for continuance filed by Defendants BJC, Americana, and Bellamy. A review of the file indicates that Defendants did file a motion to continue on December 1, 2010, but Judge Culbertson denied that motion on December 8, 2010.

In reality, the case was simply not ready for trial: Defendants filed their Amended Answer, Counterclaims, and Third-Party Complaint on June 9, 2010, Plaintiff Hotel and Motel Holdings, LLC (hereafter "H&M") filed an answer to the counterclaims on July 2, 2010, Bhupendra Patel (hereafter "Patel") filed an Answer to the Third-Party Complaint on July 14, 2010, First Palmetto Savings Bank, F.S.B. (hereafter "Bank") filed an Answer to the Third-Party Complaint on July 23, 2010, and Jack Jones and Donald Godwin filed an Answer to the Third-Party Complaint on November 15, 2010. A review of the file, as conducted at the hearing for the motion for continuance, reveals these dates and indicates that Jack Jones and Donald Godwin

filed a responsive pleading only one month prior to the matter appearing for the first time on a trial roster. Thus, the pleadings and issues were not even joined until November 15, 2010.

Additionally, Defendants' Answer, Counterclaims, and Third-Party Complaint demanded a jury trial, necessitating mediation in Horry County. Judge Culbertson ordered that mediation be conducted within sixty (60) days of December 6, 2010, which was done. In sum, this matter was not continued in December, 2010 based upon a motion for continuance filed by Defendants and the Court abused its discretion in finding otherwise; rather, the matter was simply not ready for trial through no fault of any party.

B. In finding that Defendants requested a motion for continuance at the Roster Hearing on April 11, 2011 without further factual findings, in essence inferring that Defendants sought a continuance in a dilatory fashion. As previously stated, the pleadings were not joined until November 15, 2011. Review of the file indicates that Ms. Cook had an Order of Protection issued by the Court on January 4, 2011 for April 12, 2011, the second day of the trial week. Additionally, numerous motions were pending before the Court on April 11, 2011, including Defendants' Motion for Protective Order regarding depositions, filed on December 9, 2010, Third-Party Defendants Jack Jones's and Donald Godwin's Motions to Strike Conspiracy Claim, filed on July 19, 2010, and Third-Party Defendant Patel's Motion to Dismiss Conspiracy Claim, filed on August 19, 2010. These motions were dispositive in nature and greatly impacted the procedural posture of the case and the Court agreed that the motions had to be heard prior to a trial on the merits. Again, the case was not yet ready for trial, but not as a result of Defendants' actions or inactions, but because motions filed as early as July 19, 2010 had not been scheduled by the Court for hearing. While Defendants may have requested the continuance, the case was continued because pending motions had to be heard prior to trial. Those motions were heard on

April 14, 2011 and the Court's Orders concerning those motions were filed on April 20, 2011 and April 21, 2011. Defendants, as was their right, filed a motion to reconsider on May 5, 2011, which was heard on May 12, 2011, but no order was filed on Defendants' motion to reconsider until November 30, 2011, six months after the hearing.

C. In finding that Defendants requested a motion for continuance on June 6, 2011 without further factual findings. Between the Court's April 14, 2011 hearing and the June trial date, Plaintiff H&M filed two motions for summary judgment and Third-Party Defendant First Palmetto Savings Bank filed a motion for summary judgment. The rulings on those pending motions did not occur until June 6, 2011. The motions to reconsider were filed on the same day, June 6, 2011. These motions were pending before the Court, specifically Defendants' motions to reconsider with regard to the Court's grant of summary judgment to H&M on Defendants' counterclaims and the Court's grant of summary judgment with regard to Defendants' Third-Party claims against First Palmetto Savings Bank, F.S.B. The grants of summary judgment were critical and the motions to reconsider the rulings on the same were likewise critical, as the rulings regarding summary judgment substantially altered the procedural posture of the case and judicial economy was served in continuing the trial to hear the pending motions to reconsider. The Court needed to hear and decide those pending motions before proceeding to trial.

D. In finding that Defendants stated that the week of October 10, 2011 was unsuitable for trial. Judge Seals provided various proposed dates for trial after a third round of court-ordered mediation was held, unsuccessfully, on September 21, 2011. Counsel all agreed that January 9, 2012 suited everyone's schedule. Defendants were not dilatory in finding the October 10, 2011 case unsuitable for trial; rather they merely selected from a set of proposed trial dates set forth by Judge Seals.

The reasons outlined above, either when considered individually or on the whole, necessitate that the Court reconsider its Order Denying in Part Defendants' Motion for Continuance and continue the trial until at least May 28 when Attorney Cook will be released by her physicians. For the Court not to grant such a continuance in the first instance was an abuse of discretion. Counsel expressly reserves the right to supplement this motion with a memorandum in support of the same.

Respectfully Submitted,

Cook & Roy, LLC



Kathryn M. Cook, Esq.

SC Bar No.: 1371

James E. Lewis, Jr.

SC Bar No.: 77698

Post Office Box 4086

North Myrtle Beach, SC 29597

Phone: 843-663-1200

Fax: 843-663-0364

Email: [kcook@cookandroy.com](mailto:kcook@cookandroy.com)

Attorney for Defendants/Third-Party  
Plaintiffs BJC Enterprises, LLC and  
Americana, Inc. a/k/a American Motel of  
Myrtle Beach, Inc.

Date: April 2, 2012

North Myrtle Beach, SC



David B. Adams, MD, FACS  
Professor and Head

Gastrointestinal and  
Laparoscopic Surgery  
25 Courtenay Drive Suite 7100A  
MSC 290  
Charleston SC 29425-2500  
Appointments 843 792 7929  
Office 843 792 9393  
Fax 843 876 4878  
www.musc.edu

March 20, 2012

RE: Kathryn Cook  
DOB: 10-08-1958

To Whom It May Concern:

Kathryn Cook is a patient of record here at the Medical University of South Carolina. Due to Ms. Cook's medical condition, she has been placed on medical leave effective March 12, 2012. She is scheduled to have an operative procedure at our hospital on March 22, 2012. Upon her discharge from the hospital, she will need at least 8 weeks of post-operative rest and recovery. We are hopeful she will be able to return to work on or about May 28, 2012, dependent on her post-operative course.

Should you have any questions or need additional information, please don't hesitate to contact my office.

Sincerely,

A handwritten signature in dark ink, appearing to read "D. Adams", is written over the word "Sincerely,".

David B. Adams, MD, FACS  
Professor and Chief  
Gastrointestinal and Laparoscopic Surgery

DBA/sbs

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS

Civil Action No. 2009-CP-26-05743

HOTEL & MOTEL HOLDINGS, LLC,

Plaintiff,

vs.

BJC ENTERPRISES, LLC, ET AL.,

Defendants.

**ORDER GRANTING IN PART AND  
DENYING IN PART MOTION FOR  
CONTINUANCE OF TRIAL**

BJC ENTERPRISES, LLC, ET AL.,

Third Party Plaintiffs,

vs.

FIRST PALMETTO SAVINGS BANK,  
F.S.B., JACK JONES, DONALD D.  
GODWIN, AND BHUPENDRA PATEL,

Third Party Defendants.

FILED  
HORRY COUNTY  
12 MAR 20 AM 10:10  
MELANIE HUGGINS-WARD  
CLERK OF COURT

This matter comes before the Court upon the Motion of Defendants BJC Enterprises, LLC ("BJC") and Americana Motel, Inc. ("Americana") seeking an Order of this Court continuing the trial of this matter. A hearing on the Motion was held before this Court on March 5, 2012, at the Horry County Courthouse. Present at the hearing for Plaintiff Hotel & Motel Holdings, LLC ("H & M") was Audra M. Byrd. Defendants BJC and Americana were represented at the hearing by James E. Lewis, Jr. William H. Short, Jr. appeared on behalf of First Palmetto Savings Bank, F.S.B. ("First Palmetto"). Prior to the hearing on this matter, Susan P. MacDonald and William W. DesChamps, III, counsel for Defendant Kersi S. Shroff and Third-Party Defendant Bhupendra Patel, respectively, advised the Court that they had no objection to the proposed continuance. After review of the Motion, the Court's file, and hearing

arguments of counsel, the Motion for Continuance of Trial is GRANTED in part and DENIED in part.

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

This commercial foreclosure action was originally brought by First Palmetto. The lis pendens relating to the properties was filed on June 4, 2009, and thereafter, the Summons and Complaint were filed with the Court on June 11, 2009. Subsequently, an Amended Summons and Complaint were filed with the Court wherein H & M was substituted as the plaintiff. In its Amended Complaint, H & M asserted three causes of action: (1) foreclosure of real property mortgage, (2) claim and delivery, and (3) appointment of a receiver.

Thereafter, Defendants answered the Amended Complaint and later filed an Amended Answer, Counterclaims and Third-Party Complaint. In the Amended Answer, Defendants asserted various counterclaims against H & M including breach of contract, fraud, breach of contract accompanied by a fraudulent act, civil conspiracy, conversion, interference with contractual relationship, intentional infliction of emotional distress/outrage, and violation of the South Carolina Unfair Trade Practices Act.

In response to the counterclaims, H & M filed and served a Motion for Summary Judgment, and a hearing on the Motion was held before the Court on Thursday, May 12, 2011. By Order filed with the Horry County Clerk of Court on June 6, 2011, this Court granted the Motion for Summary Judgment as to Defendants' Counterclaims. Similarly, the Court granted various dispositive motions filed by the third party defendants, and currently, the only pending, affirmative claim set for a bench trial on March 5, 2012, is the foreclosure cause of action.

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A.H.G.

### CONTINUANCE HISTORY OF THE CASE

This case has been set for trial or appeared on the trial roster on six occasions. Initially, the matter appeared on the trial roster in December of 2010. On December 1, 2010, Defendants BJC, Americana, and Wendy J. Bellamy filed a Motion for Continuance. Thereafter, the case appeared on the trial roster for the term of Court beginning April 11, 2011. During the roster meeting held on Monday, April 11, 2011, Defendants again requested a continuance of the trial, which was granted. Thereafter, by Order filed with the Clerk of Court on May 11, 2011, the case was set for a date certain trial to begin on June 6, 2011.

On June 6, 2011, Defendants again requested a continuance of the trial on the grounds that there were pending motions for reconsideration that had not been ruled upon by the Court. As a result, the case was again continued. Subsequently, the Honorable William H. Seals, Jr. advised all counsel that he had obtained jurisdiction from Chief Justice Jean Hofer Toal to cancel a term of Court in Florence County and hear this matter during the week of July 11, 2011.

In late June of 2011, Attorney Kathryn M. Cook, counsel for BJC and Americana, informed the Court that due to medical issues, it was necessary for her to take a leave of absence for approximately six weeks. On July 7, 2011, the Court ordered a continuance of the trial scheduled for July 11, 2011. In mid-August of 2011, Attorney Cook advised the Court of her return to work, and during a motion hearing in this matter on August 24, 2011, Judge Seals requested the parties attempt once more to resolve the matter through mediation. If the parties were not successful, Judge Seals agreed to hear the foreclosure matter as soon as practicable. On September 21, 2011, the parties attended another mediation session, which was unsuccessful.

Thereafter, Judge Seals agreed to hear the matter during his next term of Court in Horry County beginning on October 10, 2011. Judge Seals further informed counsel that if the week of

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A.H.J.

October 10, 2011, was unsuitable, his next term of Court in Horry County would be January 9, 2012. In response, Attorney Cook advised the Court that she had been previously granted protection for October 13, and she had another trial scheduled during the week of October 10, 2011, before the Horry County Master in Equity. As a result, the Court set this case for trial to begin on January 9, 2012.

On December 28, 2011, Defendant Wendy J. Bellamy filed for Chapter 13 Bankruptcy, and the Court and counsel were notified of the same on or about January 5, 2012. As a result of the automatic stay, the foreclosure trial set for January 9, 2012, was cancelled. Thereafter, H & M filed a motion for relief from the automatic stay with the Bankruptcy Court, and a hearing on the Motion was held on January 26, 2012. By Order dated February 7, 2012, the Honorable John Waites, Chief United States Bankruptcy Judge, lifted the automatic stay and ordered the present foreclosure could proceed. Through its counsel, H & M notified the Court of the Bankruptcy Court's order, and the trial of this matter was scheduled to begin on March 5, 2012.

Prior to the trial of this matter, on March 1, 2012, Defendants BJC and Americana served a Motion for Continuance. In support of their Motion, Defendants assert that because of medical issues, Attorney Cook was ordered by her physicians not to return to work until further notice. Additionally, the Motion indicated that Attorney Cook had undergone medical treatment during the weeks of February 20 and February 27, 2012, and that further medical treatment was required. In their Motion, Defendants requested an indefinite continuance until such time as Attorney Cook was cleared to resume work as ordered by her physicians. Counsel for H & M, along with counsel for First Palmetto objected to the continuance, asserting there was no indication of when Attorney Cook would return to work, the properties were continuing to deteriorate and the debt was increasing a rate of approximately \$1200.00 per day. Additionally,

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A. H. H.

counsel argued that during the course of the Bankruptcy Court proceedings, Defendant Wendy J. Bellamy, the managing member of BJC and majority shareholder of Americana, had requested approval to obtain and had retained an attorney, Michael Conrady. H & M and First Palmetto assert that Attorney Conrady and/or Attorney Lewis are capable of handling the foreclosure hearing.

By Affidavit filed with the Court on March 5, 2012, Attorney Cook confirmed the factual basis for the Motion and provided the Court with further information regarding her medical condition and expected recovery time. In her Affidavit, Attorney Cook expressed her opinion that she would be able to return to work in approximately 90 – 120 days, and she requested a continuance of the trial of this matter for that length of time. Attorney Cook further stated that her associate, Attorney Lewis, was not the attorney hired by the defendants and was not able to handle the defense of this matter on behalf of BJC and Americana.

#### STANDARD OF REVIEW

Under Rule 40 of the South Carolina Rules of Civil Procedure, upon the call of a case to trial, counsel may request that the action be continued. Rule 40(i)(1). “If good and sufficient cause for continuance is shown, the continuance may be granted by the court. Ordinarily such continuances shall be only until the next term of court.” Id.

“The granting or denial of a motion for a continuance is within the sound discretion of the trial judge whose ruling will not be disturbed on appeal absent an abuse of discretion resulting in prejudice to the appellant.” State v. Babb, 299 S.C. 451, 454, 385 S.E.2d 827, 829 (1989). When considering a motion for continuance, the trial court must consider the particular facts and circumstances of each case. Id. A continuance is not a matter of right but rather one of discretion. Trotter v. Trane Coil Facility, 393 S.C. 637, 649, 714 S.E.2d 289, 295 (2011).

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A.H.J.

Trotter v. Trane Coil Facility, 393 S.C. 637, 650, 714 S.E.2d 289, 295 (2011). The trial court “necessarily exercises wide discretion in managing a case, and decisions denying a request for a continuance are ‘rarely’ overturned.” Id. at 650, 714 S.E.2d at 295 (citing Morris v. State, 371 S.C. 279, 283, 639 S.E.2d 53, 56 (2006)).

#### LEGAL ANALYSIS AND CONCLUSIONS

As noted above, this case has been pending since June of 2009, and the record clearly establishes that the matter has been scheduled for trial on numerous occasions. On four occasions, the case was set for a date certain trial: June 6, 2011, July 7, 2011, January 9, 2012, and March 5, 2012. Each time the case has been scheduled for trial, the defendants have requested a continuance or necessitated a continuance through their conduct. The interests of justice require that this matter be tried without further delay.

The Court is sensitive to Attorney Cook’s health issues and the defendants’ right to have counsel of their choice. However, Attorney Lewis is an attorney practicing in the same firm as Attorney Cook, and he is a member in good standing of the South Carolina Bar. Moreover, this case is a contested foreclosure action, and Attorney Lewis (or the attorney appointed by the Bankruptcy Court) is capable of handling the defense of this matter. In very similar circumstances, the South Carolina Supreme Court has affirmed the trial court’s refusal to grant a continuance based on the illness of counsel. King v. Smith, 148 S.C. 419, 146 S.E. 237 (1929).

#### CONCLUSION

After a careful review of the Motion, the Court’s file, and the relevant case law, and hearing arguments from counsel, this Court concludes it has properly considered the Motion for Continuance.

**NOW, THEREFORE,**

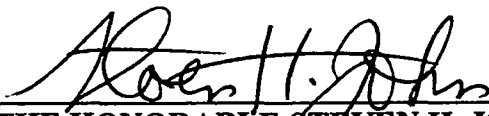
6067  
D. H. J.

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Defendants' Motion for Continuance is GRANTED in part, and the trial of this matter is continued past the March 5, 2012 term of Court;

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendants' Motion for Continuance is DENIED to the extent Defendants request an indefinite continuance;

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the trial of this case shall begin on April 16, 2012, and this matter shall be the first case tried during the April 16, 2012 term of Court for Horry County.

AND IT IS SO ORDERED this 16<sup>th</sup> day of March, 2012.

  
\_\_\_\_\_  
**THE HONORABLE STEVEN H. JOHN**  
Chief Administrative Judge for the  
Fifteenth Judicial Circuit

Conway, South Carolina

7/2  
attg

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF HORRY )  
 )  
 Hotel and Motel Holdings, LLC, )  
 )  
 Plaintiffs )  
 )  
 v. )  
 )  
 BJC Enterprises, LLC, Wendy J. Bellamy, )  
 Americana, Inc., a/k/a Americana Motel of )  
 Myrtle Beach, Inc., Mozingo & Wallace )  
 Architects, LLC, Kersi S. Shroff, and )  
 Shroff Management, Inc., )  
 )  
 Defendants )  
 )  
 BJC Enterprises, LLC, Wendy J. Bellamy, )  
 and Americana, Inc. a/k/a Americana Motel )  
 of Myrtle Beach, Inc., )  
 )  
 Third-Party Plaintiffs )  
 )  
 v. )  
 )  
 First Palmetto Savings Bank, F.S.B., )  
 Jack Jones, Donald D. Godwin, and )  
 Bhupendra Patel, )  
 )  
 Third-Party Defendants )  
 Defendants )  
 )

IN THE COURT OF COMMON PLEAS  
 FIFTEENTH JUDICIAL CIRCUIT  
 CIVIL ACTION NO.: 2009-CP-26-5743

CERTIFICATE OF SERVICE

HORRY COUNTY  
 12 APR -2 PM 2:40  
 MELANIE HUGHES-WARD  
 CLERK OF COURT

As an attorney with the law firm of COOK & ROY, LLC, counsel for Defendants/Third-Party Plaintiffs BJC Enterprises, LLC, Wendy J. Bellamy, Americana, Inc., a/k/a Americana Motel of Myrtle Beach, Inc., I certify that I have served all counsel of record with a copy of the pleadings herein specified below, by email, to the following:

- Pleadings: 1. Defendants' Motion for Reconsideration of Order Granting in Part and Denying in Part Motion for Continuance of Trial

Counsel Served:

1. The Honorable Steven H. John  
Judge of 15<sup>th</sup> Judicial Circuit  
1301 2<sup>nd</sup> Avenue, 3A30  
Conway, SC 29526
2. R. Wayne Byrd, Esq.  
Audra M. Byrd, Esq.  
Turner Padgett Graham & Laney, P.A.  
PO Box 2116  
Myrtle Beach, SC 29578  
Attorneys for the Plaintiff Hotel & Motel Holdings, LLC and  
Third-Party Defendants Jack Jones and Donald Godwin
3. William H. Short, Esq.  
Haynsworth Sinkler Boyd, PA  
PO Box 11889  
Columbia, SC 29211  
Attorney for Third-Party Defendant First Palmetto Savings Bank,  
FSB
4. William W. DesChamps, Jr., Esq.  
William W. DesChamps, III, Esq.  
DesChamps Law Firm  
PO Box 2402  
Myrtle Beach, SC 29578  
Attorney for Third-Party Defendant Bhupendra Patel
5. Scott B. Umstead, Esquire  
4226 Mayfair Street, Suite 100  
Myrtle Beach, SC 29578  
Attorneys for Defendant Mozingo & Wallace Architects, LLC
6. Susan P. MacDonald, Esquire  
Nelson Mullins Riley & Scarborough, LLP  
Post Office Box 3939  
Myrtle Beach, SC 29578-3939  
Attorneys for Defendants Kersi S. Shroff and Shroff Management,  
Inc.



James E. Lewis, Jr.

North Myrtle Beach, South Carolina  
Date: April 2, 2012

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY )

Civil Action No. 2009-CP-26-05743

HOTEL & MOTEL HOLDINGS, LLC, )

Plaintiff, )

vs. )

BJC ENTERPRISES, LLC, ET AL., )

Defendants. )

**RETURN IN OPPOSITION TO MOTION  
FOR RECONSIDERATION OF ORDER  
GRANTING IN PART AND DENYING IN  
PART MOTION FOR CONTINUANCE OF  
TRIAL**

---

BJC ENTERPRISES, LLC, ET AL., )

Third Party Plaintiffs, )

vs. )

FIRST PALMETTO SAVINGS BANK, )  
F.S.B., JACK JONES, DONALD D. )  
GODWIN, AND BHUPENDRA PATEL, )

Third Party Defendants. )

---

TO: DEFENDANTS BJC ENTERPRISES, LLC and AMERICANA MOTEL, INC., AND  
THEIR ATTORNEY, KATHRYN M. COOK, ESQUIRE

COMES NOW Plaintiff Hotel & Motel Holdings, LLC ("H & M"), by and through its undersigned counsel, and hereby submits this Return in Opposition to the Motion for Reconsideration of Order Granting in Part and Denying in Part Motion for Continuance of Trial. For the reasons set forth below, as well as those previously presented to the Court during the hearing on March 5, 2012, counsel would show that the Motion for Reconsideration should be denied. In addition, H & M references and incorporates herein the memorandum in opposition to the Motion for Reconsideration filed by First Palmetto Savings Bank, F.S.B. in this action.

## ARGUMENT

Defendants seek to alter or amend the March 16, 2012 Order (“the Order”) of the Honorable Steven H. John pursuant to Rules 52(b) and 59(e) of the South Carolina Rules of Civil Procedure. However, Defendants have failed to state grounds sufficient to obtain relief from the Order. The six grounds asserted in support of Defendants’ Motion have been previously argued, ruled upon, and are not sufficient to obtain relief from the Order of this Court. Therefore, the Motion for Reconsideration should be denied.

### I. DEFENDANTS HAVE FAILED TO STATE SUFFICIENT GROUNDS FOR RECONSIDERATION.

In their Motion for Reconsideration, Defendants reargue issues which the Court heard and considered thoroughly during the hearing on March 5, 2012. None of the issues in Defendants’ Motion provide a basis for reconsideration of the Court’s Order.

A party cannot raise an issue for the first time in a Rule 59(e) motion to reconsider if that issue could have been raised at trial. See Johnson v. Sonoco Prods. Co., 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009); MailSource, LLC v. M.A. Bailey & Associates, Inc., 356 S.C. 370, 274, 588 S.E.2d 639, 641 (Ct. App. 2003); Gurganious v. City of Beaufort, 317 S.C. 481, 454 S.E.2d 912, 916 (Ct. App. 1995); see also, McMillan v. S.C. Dep’t of Agric., 364 S.C. 60, 67, 611 S.E.2d 323, 327 (Ct. App. 2005) (issue not preserved “because it cannot be raised for the first time in a motion to alter or amend.”).

Defendants have simply restated in their Motion for Reconsideration the same arguments previously made in their Motion for Continuance. The Court has already considered and rejected these arguments in granting in part and denying in part their Motion for Continuance. Despite the Court’s clear ruling, Defendants simply reassert the same arguments made in their Motion for Continuance.

As a result, the defendants have failed to state a sufficient basis for reconsideration of the Order of this Court. Therefore, the Motion for Reconsideration should be denied.

II. THE FORECLOSURE CLAIM IS NOT STAYED BY THE APPEALS PENDING IN THE COURT OF APPEALS, AND THE COURT HAS PREVIOUSLY RULED ON THE ISSUE.

Defendants assert the Court erred in finding that the foreclosure matter must go forward “despite the fact that several orders are pending on appeal.” [Mot. for Reconsideration at p. 4]. First, the Order made no finding with regard to the orders currently on appeal in the South Carolina Court of Appeals. There is no reference to any appeal whatsoever in the Order. Quite simply, this issue was not raised by the defendants either in their Motion or during the hearing on their Motion for Continuance. Therefore, Defendants cannot now seek reconsideration of the Order of this Court on these grounds.

Second, Defendants have previously requested a stay of the foreclosure hearing pending a determination of their appeals. The parties extensively briefed the applicability of the automatic stay provided in the South Carolina Appellate Court Rules, and the Honorable William H. Seals, Jr. ruled that the automatic stay was inapplicable to the foreclosure claim and the hearing would proceed. As such, it is improper for the defendants to seek reconsideration of the Order on this basis.

III. THE COURT’S FINDINGS REGARDING THE CONTINUANCE HISTORY OF THIS CASE ARE ACCURATE AND SUPPORTED BY THE RECORD.

In their Motion for Reconsideration, Defendants allege that the Court erred in finding that six continuances were necessitated by Defendants. However, the Order of this Court makes no such finding. Instead, the Order provides in relevant part: “On four occasions, the case was set for a date certain trial: June 6, 2011, July 7, 2011, January 9, 2012, and March 5, 2012. Each time the case has been scheduled for trial, the defendants have requested a continuance or

necessitated a continuance through their conduct.” [Order, March 16, 2012, at p. 6]. Thus, the Court made no finding regarding the first time this case appeared on the trial roster in December of 2010. The Court simply noted in its recitation of the procedural history of this case the indisputable fact that the matter appeared on the December, 2010 trial roster, and Defendants filed a Motion for a Continuance.

Defendants further argue that the Court erred in finding that Defendants filed a motion for continuance on April 11, 2011, “without further factual findings, in essence inferring that Defendants sought a continuance in a dilatory fashion.” [Mot. for Reconsideration at p. 6]. As an initial matter, there is no indication or inference in the Court’s finding that Defendants acted dilatorily. It would be impractical and unreasonable for the Court to provide an interminable narrative of three years of litigation in every order it issues. Instead, the Order contains an accurate summary of the relevant dates and facts. Further, H & M vigorously denies that the case was not ready for trial on April 11, 2011. In fact, H & M, its counsel and their witnesses were present for the roster meeting on that date and prepared to move forward. If the defendants desired additional factual findings on this issue, they were required to present those facts or arguments to the Court, which they failed to do. Nonetheless, the Order contains no finding to the effect that Defendants acted in a dilatory fashion.

Similarly, with regard to the June 6, 2011 trial date, Defendants allege the Court erred in failing to include additional factual findings regarding the motions pending at the time. Again, the Court cannot possibly include the entire procedural history of this case in every order. Nonetheless, the Clerk of Court’s file, and thus the record, will clearly reflect what motions were pending on any given date. This type of information is superfluous and irrelevant to the issues before the Court. Moreover, it is standard practice for the Court to decide all pending motions

just before the start of trial, and the fact that motions are pending provides no basis for a continuance. As noted in the Order, this case was set for a date certain trial to begin on June 6, 2011. Therefore, if Defendants wished to have certain motions heard prior to that date, it was their responsibility to ensure the motions were scheduled in a timely manner.

Finally, Defendants argue that the Court erred in finding that “the week of October 10, 2011 was unsuitable for trial.” [Mot. for Reconsideration at p. 7]. This assertion is simply inaccurate; the Order includes no such finding.

Based on the foregoing, the Court’s findings regarding the continuance history of this case are accurate and well-supported by the record. As such, the errors asserted by Defendants are insufficient grounds for reconsideration of the Court’s prior Order.

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CONCLUSION

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For the reasons set forth above, Hotel & Motel Holdings, LLC respectfully requests the Court deny Defendants’ Motion for Reconsideration. Defendants have failed to articulate any basis for reconsideration of the Court’s prior Order.

Respectfully submitted,

TURNER PADGET GRAHAM & LANEY P.A.

By: *Audra M. Byrd*  
R. Wayne Byrd (S.C. Bar #1068)  
WByrd@TurnerPadget.com  
Audra M. Byrd (S.C. Bar #76719)  
ABYrd@TurnerPadget.com  
Post Office Box 2116  
Myrtle Beach, South Carolina 29578  
Telephone: (843) 213-5500  
Facsimile: (843) 213-5555  
ATTORNEYS FOR PLAINTIFF HOTEL &  
MOTEL HOLDINGS, LLC

APRIL 9, 2012

**CERTIFICATE OF SERVICE**

I hereby certify that on this 9th day of April, 2012, the foregoing RETURN IN OPPOSITION TO MOTION FOR RECONSIDERATION OF ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR CONTINUANCE OF TRIAL has been served upon counsel of record, by depositing a copy of it in the United States mail, postage prepaid and properly addressed as follows:

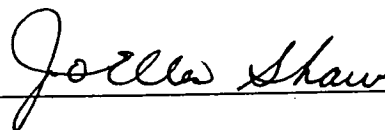
Kathryn M. Cook, Esquire  
Cook & Roy, LLC  
Post Office Box 4086  
North Myrtle Beach, SC 29597

William H. Short, Jr., Esquire  
Haynsworth Sinkler Boyd P.A.  
Post Office Box 11889  
Columbia, SC 29211

Susan P. MacDonald, Esquire  
Nelson Mullins Riley & Scarborough, LLP  
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Post Office Box 3939  
Myrtle Beach, SC 29578

Scott B. Umstead, Esquire  
Scott B. Umstead, PA  
4226 Mayfair Street, Suite 100  
Myrtle Beach, SC 29577

William W. DesChamps, Jr., Esquire  
William W. DesChamps, III, Esquire  
DesChamps Law Firm  
1551 21st Avenue North, # 14  
Myrtle Beach, SC 29577



Jo Ellen Shaw

**Byrd, Audra M.**

**From:** John, Steven H. Law Clerk (Abbey Gail Cain) <SJohnLC@sccourts.org>  
**Sent:** Tuesday, April 10, 2012 2:28 PM  
**To:** James Lewis  
**Cc:** Byrd, Audra M.; Byrd, R. Wayne; Short, Bill; Trey DesChamps; [wwd@deschampsllaw.com](mailto:wwd@deschampsllaw.com); [scottu@sc.rr.com](mailto:scottu@sc.rr.com); [susan.macdonald@nelsonmullins.com](mailto:susan.macdonald@nelsonmullins.com)  
**Subject:** RE: Hotel and Motel Holdings, LLC V. BJC Enterprises, et.al. C.A. No.: 2009-CP-26-5743  
**Attachments:** Hotel Motel v. BJC and First Palmetto-ORDER.pdf

Counselors,

Although Judge John is on vacation he intends to sign this Order when he returns. In the meantime he wants to give you all as much advance notice as possible.

Thanks,  
 Abbey

---

**From:** James Lewis [<mailto:james@cookandroy.com>]  
**Sent:** Monday, April 09, 2012 3:10 PM  
**To:** John, Steven H. Law Clerk (Abbey Gail Cain)  
**Cc:** [abyrd@turnerpadgett.com](mailto:abyrd@turnerpadgett.com); [wbyrd@turnerpadgett.com](mailto:wbyrd@turnerpadgett.com); Short, Bill; Trey DesChamps; [wwd@deschampsllaw.com](mailto:wwd@deschampsllaw.com); [scottu@sc.rr.com](mailto:scottu@sc.rr.com); [susan.macdonald@nelsonmullins.com](mailto:susan.macdonald@nelsonmullins.com)  
**Subject:** RE: Hotel and Motel Holdings, LLC V. BJC Enterprises, et.al. C.A. No.: 2009-CP-26-5743

Yes. We would be ready for trial on May 29.

---

**From:** John, Steven H. Law Clerk (Abbey Gail Cain) [<mailto:SJohnLC@sccourts.org>]  
**Sent:** Monday, April 09, 2012 2:39 PM  
**To:** James Lewis  
**Cc:** [abyrd@turnerpadgett.com](mailto:abyrd@turnerpadgett.com); [wbyrd@turnerpadgett.com](mailto:wbyrd@turnerpadgett.com); Short, Bill; Trey DesChamps; [wwd@deschampsllaw.com](mailto:wwd@deschampsllaw.com); [scottu@sc.rr.com](mailto:scottu@sc.rr.com); [susan.macdonald@nelsonmullins.com](mailto:susan.macdonald@nelsonmullins.com)  
**Subject:** RE: Hotel and Motel Holdings, LLC V. BJC Enterprises, et.al. C.A. No.: 2009-CP-26-5743

Mr. Lewis,

In your Motion for Reconsideration you state that you would like for the above trial to be pushed past May 28<sup>th</sup>. Does this mean that you will be ready for trial on May 29, 2012? Judge John would like a direct yes or no.

Please respond immediately.

Thank you,  
 Abbey

---

**From:** John, Steven H. Law Clerk (Abbey Gail Cain)  
**Sent:** Tuesday, April 03, 2012 9:53 AM  
**To:** 'James Lewis'; John, Steven H.; '[abyrd@turnerpadgett.com](mailto:abyrd@turnerpadgett.com)'; '[wbyrd@turnerpadgett.com](mailto:wbyrd@turnerpadgett.com)'; 'Short, Bill'; 'Trey DesChamps'; '[wwd@deschampsllaw.com](mailto:wwd@deschampsllaw.com)'; '[scottu@sc.rr.com](mailto:scottu@sc.rr.com)'; '[susan.macdonald@nelsonmullins.com](mailto:susan.macdonald@nelsonmullins.com)'  
**Subject:** RE: Hotel and Motel Holdings, LLC V. BJC Enterprises, et.al. C.A. No.: 2009-CP-26-5743

Counselors,

Because this Friday is Good Friday, Judge John is extending the deadline for the replies to Monday, April 9<sup>th</sup>. A hard copy must be delivered to our office via mail or hand delivery by 12:00 noon.

Thank you,  
Abbey

---

**From:** John, Steven H. Law Clerk (Abbey Gail Cain)  
**Sent:** Monday, April 02, 2012 3:52 PM  
**To:** 'James Lewis'; John, Steven H.; [abyrd@turnerpadgett.com](mailto:abyrd@turnerpadgett.com); [wbyrd@turnerpadgett.com](mailto:wbyrd@turnerpadgett.com); Short, Bill; Trey DesChamps; [wwd@deschampsllaw.com](mailto:wwd@deschampsllaw.com); [scottu@sc.rr.com](mailto:scottu@sc.rr.com); [susan.macdonald@nelsonmullins.com](mailto:susan.macdonald@nelsonmullins.com)  
**Subject:** RE: Hotel and Motel Holdings, LLC V. BJC Enterprises, et.al. C.A. No.: 2009-CP-26-5743

Counselors,

Judge John wants any replies from opposing counsel clocked with the Clerk of Court and a copy sent to our office by this Friday, April 6<sup>th</sup> at 1:00.

Also, Mr. Lewis, is a hard copy of this document being sent to our office via mail or hand delivery?

Abbey

---

**From:** James Lewis [<mailto:james@cookandroy.com>]  
**Sent:** Monday, April 02, 2012 3:38 PM  
**To:** John, Steven H.; John, Steven H. Law Clerk (Abbey Gail Cain); [abyrd@turnerpadgett.com](mailto:abyrd@turnerpadgett.com); [wbyrd@turnerpadgett.com](mailto:wbyrd@turnerpadgett.com); Short, Bill; Trey DesChamps; [wwd@deschampsllaw.com](mailto:wwd@deschampsllaw.com); [scottu@sc.rr.com](mailto:scottu@sc.rr.com); [susan.macdonald@nelsonmullins.com](mailto:susan.macdonald@nelsonmullins.com)  
**Subject:** Hotel and Motel Holdings, LLC V. BJC Enterprises, et.al. C.A. No.: 2009-CP-26-5743

Ladies and Gentlemen:

Attached, please find Defendants' Motion to Reconsider the Order Granting in Part and Denying in Part Defendants' Motion for Continuance in the above referenced matter. I have sent hard copies as well.

Please do not hesitate to contact me if you have any questions.

Sincerely,

James E. Lewis, Jr.

Mailing Address:  
Cook & Roy, LLC  
P.O. Box 4086  
North Myrtle Beach, South Carolina 29597  
Physical Address:  
10409 North Kings Highway  
Myrtle Beach, South Carolina 29572  
Contact Information:  
Phone: (843) 663-1200  
Fax: (843) 663-0364

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS  
  
Civil Action No. 2009-CP-26-05743

HOTEL & MOTEL HOLDINGS, LLC,

Plaintiff,

vs.

BJC ENTERPRISES, LLC, ET AL.,

Defendants.

---

BJC ENTERPRISES, LLC, ET AL.,

Third Party Plaintiffs,

vs.

FIRST PALMETTO SAVINGS BANK,  
F.S.B., JACK JONES, DONALD D.  
GODWIN, AND BHUPENDRA PATEL,

Third Party Defendants.

---

**ORDER OF CONTINUANCE**

This matter comes before the Court upon the Motion of Defendants BJC Enterprises, LLC (“BJC”) and Americana Motel, Inc. (“Americana”) seeking an Order of this Court continuing the trial of this matter. A hearing on the Motion was held before this Court on March 5, 2012, at the Horry County Courthouse and was denied in part and granted in part at that time. The Defendants BJC Enterprises LLC, Wendy Bellamy, and Americana, Inc. promptly filed a Motion for Reconsideration and Plaintiff Hotel and Motel Holdings, LLC filed a Return in Opposition to Motion for Reconsideration. In response to a direct email question from the Court to counsel, Attorney James E. Lewis communicated to the court that he will be ready for trial on May 29, 2012. The Court has considered the matters presented and in the interest of fairness to the parties will continue the matter for the seventh time to be the first case up for trial for the

May 29, 2012 term of common pleas court. The trial has been continued to give Attorney James E. Lewis additional time to be prepared to try this case in Attorney Cook's absence. The case shall be tried during the May 29, 2012 term of court with or without the presence of Attorney Kathryn M. Cook.

IT IS SO ORDERED.

---

The Honorable Steven H. John  
Chief Administrative Judge  
Fifteenth Judicial Circuit

April \_\_, 2012  
Conway, South Carolina

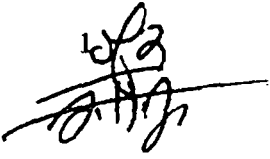
STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF HORRY )  
 )  
 HOTEL & MOTEL HOLDINGS, LLC, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 BJC ENTERPRISES, LLC, ET AL., )  
 )  
 Defendants. )  
 )  
 \_\_\_\_\_ )  
 BJC ENTERPRISES, LLC, ET AL., )  
 )  
 Third Party Plaintiffs, )  
 )  
 vs. )  
 )  
 FIRST PALMETTO SAVINGS BANK, )  
 F.S.B., JACK JONES, DONALD D. )  
 GODWIN, AND BHUPENDRA PATEL, )  
 )  
 Third Party Defendants. )

IN THE COURT OF COMMON PLEAS  
 Civil Action No. 2009-CP-26-05743

**ORDER OF CONTINUANCE**

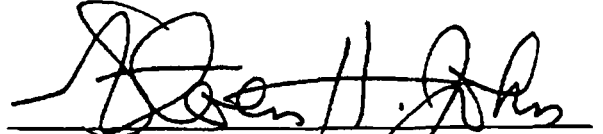
FILED  
 HORRY COUNTY  
 12 APR 19 PM 1:03  
 MELANIE J. JONES-WARD  
 CLERK OF COURT

This matter comes before the Court upon the Motion of Defendants BJC Enterprises, LLC ("BJC") and Americana Motel, Inc. ("Americana") seeking an Order of this Court continuing the trial of this matter. A hearing on the Motion was held before this Court on March 5, 2012, at the Horry County Courthouse and was denied in part and granted in part at that time. The Defendants BJC Enterprises LLC, Wendy Bellamy, and Americana, Inc. promptly filed a Motion for Reconsideration and Plaintiff Hotel and Motel Holdings, LLC filed a Return in Opposition to Motion for Reconsideration. In response to a direct email question from the Court to counsel, Attorney James E. Lewis communicated to the court that he will be ready for trial on May 29, 2012. The Court has considered the matters presented and in the interest of fairness to the parties will continue the matter for the seventh time to be the first case up for trial for the



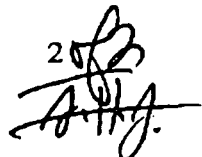
May 29, 2012 term of common pleas court. The trial has been continued to give Attorney James E. Lewis additional time to be prepared to try this case in Attorney Cook's absence. The case shall be tried during the May 29, 2012 term of court with or without the presence of Attorney Kathryn M. Cook.

IT IS SO ORDERED.



The Honorable Steven H. John  
Chief Administrative Judge  
Fifteenth Judicial Circuit

April 12, 2012  
Conway, South Carolina



THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM HORRY COUNTY  
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

---

Case No.: 2009-CP-26-5743

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Hotel and Motel Holdings, LLC,

Respondent,

v.

BJC Enterprises, LLC, Wendy J. Bellamy,  
Americana, Inc., a/k/a Americana Motel of  
Myrtle Beach, Inc., Mozingo & Wallace  
Architects, LLC, Kersi S. Shroff, and  
Shroff Management, Inc.,

Defendants,

**RECEIVED**

JUN 04 2012

BJC Enterprises, LLC, Wendy J. Bellamy,  
Americana, Inc., a/k/a Americana Motel of  
Myrtle Beach, Inc.,

Appellants,

**SC Court of Appeals**

v.

First Palmetto Savings Bank, F.S.B.,  
Jack Jones, Donald D. Godwin, and  
Bhupendra Patel,

Respondents

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CERTIFICATE OF SERVICE

---

I certify that I have served the Petitioner Hotel Owners' Reply to the Return of Respondents Hotel and Motel and First Palmetto Savings Bank on the Clerk of the Court of Appeals via Federal Express and all parties by depositing a copy of the same in the United States Mail, postage prepaid, and via email on June 1, 2012, addressed to their attorneys of record, to the following:

R. Wayne Byrd, Esq.  
Audra M. Byrd, Esq.  
Turner Padgett Graham & Laney, P.A.  
PO Box 2116  
Myrtle Beach, SC 29578  
(843) 213-5500  
Attorneys for the Respondents Hotel and Motel Holdings, LLC,  
Donald Godwin, and Jack Jones

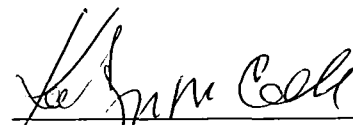
William W. DesChamps, Jr., Esq.  
William W. "Trey" DesChamps, III, Esq.  
DesChamps Law Firm  
PO Box 2402  
Myrtle Beach, SC 29578  
(843) 448-2391  
Attorney for Respondent Bhupendra Patel

William H. Short, Esq.  
Haynsworth Sinkler Boyd, PA  
PO Box 11889  
Columbia, SC 29211  
(803) 540-7823  
Attorney for Respondent First Palmetto Savings Bank, FSB

Scott B. Umstead, Esquire  
4226 Mayfair Street, Suite 100  
Myrtle Beach, SC 29578  
(843) 913-4610  
Attorneys for Defendant Mazingo & Wallace  
Architects, LLC

Susan P. MacDonald, Esquire  
Nelson Mullins Riley & Scarborough, LLP  
Post Office Box 3939  
Myrtle Beach, SC 29578-3939  
(843) 946-5654  
Attorneys for Defendants Kersi S. Shroff and  
Shroff Management, Inc.

June 1, 2012

  
\_\_\_\_\_  
Kathryn M. Cook, Esq.  
SC Bar No. 1371  
Cook & Roy LLC

Post Office Box 4086  
N. Myrtle Beach, SC 29597  
(843)663-1200  
Fax: (843)663-0364  
Email: [kcook@cookandroy.com](mailto:kcook@cookandroy.com)  
Attorneys for Appellants

Kathryn M. Cook  
Roger P. Roy, Jr.  
James E. Lewis, Jr.

**COOK & ROY, LLC**

P.O. Box 4086  
North Myrtle Beach, South Carolina 29597

Phone: (843) 663-1200  
Fax: (843) 663-0364

June 1, 2012

Via Federal Express 8003 5062 0210

Jenny Abbott Kitchings, Clerk  
Court of Appeals  
1205 Pendleton Street  
Columbia, SC 29201

Re: Hotel & Motel Holdings, LLC v. BJC Enterprises, LLC, Wendy J. Bellamy, Americana, Inc., a/k/a American Motel of Myrtle Beach, Inc., et al  
Case No.: 2009-CP-26-5743  
Court of Appeals Tracking No.: 2011198106  
Cook & Roy File No.: 6847.09.0783

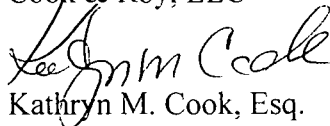
Dear Ms. Kitchings:

Enclosed please find an original and two (2) copies of the Petitioner Hotel Owners' Reply to the Return of Respondents Hotel and Motel Holdings, Inc. and First Palmetto Savings Bank with regard to the above-referenced matter. I request that this Reply be sent to the appropriate or designated Judge of the South Carolina Court of Appeals for consideration along with the previously filed Petition for Writ of Supersedeas. I would ask that you please return a clocked copy of the Reply to me in the enclosed envelope.

If you have any questions with regard to this matter, please do not hesitate to contact me. Thank you for your cooperation.

Sincerely,

Cook & Roy, LLC

  
Kathryn M. Cook, Esq.

**RECEIVED**

JUN 04 2012

**SC Court of Appeals**

KMC:tlt

Enclosures

CC(w/enclosures): R. Wayne Byrd and Audra M. Byrd, Esq.  
William W. DesChamps, Jr. and William W. "Trey" DesChamps, III, Esq.  
William H. Short, Esq.  
Scott B. Umstead, Esq.  
Susan P. MacDonald, Esq.  
Michael Conrady, Esq.