

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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AUG 05 2019  
SC Court of Appeals

APPEAL FROM HORRY COUNTY  
William H. Seals, Jr., Circuit Court Judge

Appellate Case No. 2019-001134

City of Myrtle Beach, For Itself and a Class of Similarly Situated Plaintiffs, ..... Respondents,

v.

Horry County, ..... Appellant.

**RESPONDENTS' SUPPLEMENTAL RETURN AND MEMORANDUM  
IN OPPOSITION TO APPELLANT'S PETITION FOR SUPERSEDEAS**

The City of Myrtle Beach ("City"), on behalf of itself and all other similarly situated plaintiffs ("Respondents"), hereby submits this supplemental return and memorandum in opposition to the Petition for a Writ of Supersedeas ("Petition") of Appellant Horry County ("County").

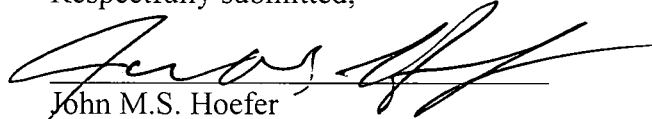
The primary thrust of the County's Petition is that the circuit court erred in not requiring that the City post a bond in the amount of \$28 Million under Rule 65(c), SCRCF. See Petition at 8-13. As Respondents explained in their original return and memorandum in opposition to the Petition, notwithstanding its belief that no security is required under Rule 65(c), the City and the other municipalities in Horry County which have enacted local hospitality and accommodations taxes under S.C. Code Ann. §§ 6-1-500, *et seq.*, and 6-1-700, *et seq.* ("Local Taxes"), the collection of which the County unsuccessfully sought to have enjoined by the circuit court but has not sought to have superseded by this Court, have agreed to escrow their collections of the

Local Taxes during the pendency of this litigation to provide security to the County. *See* Resp'ts' Return & Mem. in Opp'n to Appellant's Pet. for Supersedeas at pp.28-29. And as indicated in the Affidavit of City Manager John Pedersen located in the Second Supplemental Appendix filed concurrently with this supplemental return, the City has caused to be purchased an \$8.815 Million surety bond to eliminate any financial risk the County has identified in the Petition. Second Supp. App'x at 60-61. The City intends on filing a motion with the circuit court to lift the stay of further proceedings in that court imposed under its July 18, 2019, order (see App'x at 24) for the sole purpose of filing this bond.

By obtaining this bond, the City does not concede such a bond can be required of a municipality. The City thus reserves all arguments that the circuit court's order was proper in all respects. However, the County's argument regarding the sufficiency of the security is now moot.

For the reasons discussed herein and in Respondents' original return and memorandum in opposition, this Court should deny the Petition.

Respectfully submitted,



John M.S. Hoefer

Chad N. Johnston

**WILLOUGHBY & HOEFER, P.A.**

930 Richland Street

Post Office Box 8416

Columbia, South Carolina 29202

(803) 252-3300

R. Walker Humphrey, II

**WILLOUGHBY & HOEFER, P.A.**

133 River Landing Drive, Suite 200

Charleston, South Carolina 29492

(843) 619-4426

*Attorneys for Respondents*

Columbia, South Carolina  
August 5, 2019

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**SUPPLEMENTAL APPENDIX II**

John M.S. Hoefler  
Chad N. Johnston  
**WILLOUGHBY & HOEFER, P.A.**  
930 Richland Street  
Post Office Box 8416  
Columbia, South Carolina 29202  
(803) 252-3300

R. Walker Humphrey, II  
**WILLOUGHBY & HOEFER, P.A.**  
133 River Landing Drive, Suite 200  
Charleston, South Carolina 29492  
(843) 619-4426

*Attorneys for Respondents*

SUPPLEMENTAL APPENDIX INDEX

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**OTHER MATERIALS OR DOCUMENTS**

1. Affidavit of John Pedersen (August 5, 2019) .....060

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William H. Seals, Jr., Circuit Court Judge

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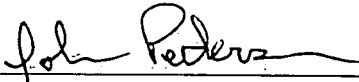
**AFFIDAVIT OF JOHN PEDERSEN**

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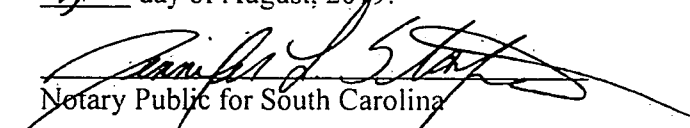
Personally appeared before me, John Pedersen, who being duly sworn, affirms and swears as follows:

1. I am in excess of eighteen years of age and competent to give this affidavit.
2. I am currently City Manager of the City of Myrtle Beach and have served as such since November 3, 2014.
3. In my position as City Manager, I have caused a bond in the amount of \$8,815,000.00 to be purchased as a surety for the preliminary injunction ordered by the trial court on June 21, 2019, as modified on July 10, 2019 and July 17, 2019, respectively, in the above-captioned matter.
4. A copy of the surety bond purchased by the City of Myrtle Beach will be filed with the Horry County Clerk of Court.

FURTHER THE AFFIANT SAYETH NAUGHT.

  
\_\_\_\_\_  
John Pedersen

Sworn to and subscribed before me this  
5<sup>th</sup> day of August, 2019.

  
\_\_\_\_\_  
Notary Public for South Carolina

My Commission Expires: April 1, 2023  
[NOTARIAL SEAL]



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**CERTIFICATE OF SERVICE**

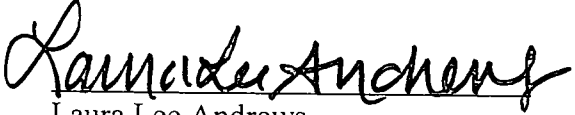
This is to certify that I, a paralegal with the law firm Willoughby & Hoefler, P.A., have caused to be served this day one (1) copy of Respondent City of Myrtle Beach's **Supplemental Return and Memorandum in Opposition to Appellant's Petition for Supersedeas and Second Supplemental Appendix** by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows::

Henrietta U. Golding, Esquire  
**Burr & Forman, LLP**  
P.O. Box 336  
Myrtle Beach, SC 29578

James K. Gilliam, Esquire  
**Burr & Forman, LLP**  
P.O. Box 336  
Myrtle Beach, SC 29578

Adam R. Artigliere, Esquire  
**Burr & Forman, LLP**  
P.O. Box 447  
Greenville, SC 29602

William Grayson Lambert, Esquire  
**Burr & Forman, LLP**  
P.O. Box 11390  
Columbia, SC 29211

  
Laura Lee Andrews

---

Columbia, South Carolina  
This 5<sup>th</sup> day of August, 2019

# WILLOUGHBY & HOEFER, P.A.

ATTORNEYS & COUNSELORS AT LAW

MITCHELL M. WILLOUGHBY  
JOHN M.S. HOEFER  
RANDOLPH R. LOWELL\*\*  
TRACEY C. GREEN  
CHAD N. JOHNSTON  
ELIZABETH ZECK\*  
ELIZABETHANN L. CARROLL  
JOHN W. ROBERTS  
R. WALKER HUMPHREY, II\*\*\*  
ANDREW R. HAND\*\*\*\*  
J. JOSEPH OWENS

ELIZABETH S. MABRY  
J. PATRICK HUDSON  
OF COUNSEL

JOSEPH H. FARRELL, III  
SPECIAL COUNSEL

\*ALSO ADMITTED IN TEXAS  
\*\*ALSO ADMITTED IN WASHINGTON, D.C.  
\*\*\*ALSO ADMITTED IN CALIFORNIA  
\*\*\*\*ALSO ADMITTED IN NORTH CAROLINA

August 5, 2019

## VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201

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RE: City of Myrtle Beach, For Itself and a Class of Similarly Situated Plaintiffs, Respondents, *v.* Horry County, Appellant; Appellate Case No. 2019-001134

Dear Ms. Kitchings:

On behalf of Respondents, enclosed for filing please find the original and six (6) copies of the Respondents' Supplemental Return and Memorandum in Opposition to the Appellant's Petition For Supersedeas and Respondents' Second Supplemental Appendix in the above-referenced appeal.

I would appreciate very much your acknowledging receipt of the enclosed documents by file stamping the extra copy of same and returning it to me via my courier.

By copy of this letter, I am serving counsel for Appellant and enclose a certificate of service to that effect. If you have any questions or need additional information, please do not hesitate to contact me.

OFFICES:

COLUMBIA | 930 RICHLAND STREET, COLUMBIA, SC 29201 | 803.252.3300 FAX 803.256.8062  
CHARLESTON | 133 RIVER LANDING DRIVE, SUITE 200, CHARLESTON, SC 29492 | 843.619.4426 FAX 843.619.4490

The Honorable Jenny Abbott Kitchings

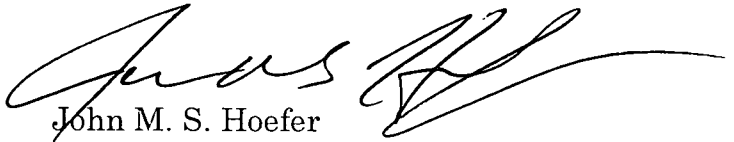
August 5, 2019

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Very truly yours,

**WILLOUGHBY & HOEFER, P.A.**



John M. S. Hoefer

cc: Henrietta U. Golding, Esquire  
James K. Gilliam, Esquire  
Adam R. Artigliere, Esquire  
W. Grayson Lambert, Esquire