

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM Horry County
Court of Common Pleas

The Honorable Larry B. Hyman, Jr.
Circuit Court Judge

Opinion No. 27930
Heard September 24, 2019-Filed November 20, 2019
Appellate Case No. 2018-001910

SKYDIVE MYRTLE BEACH, INC.Petitioner

v.

Horry County.....Respondent

RESPONDENT Horry County's RETURN
TO PETITION FOR REHEARING

Michael W. Battle, (SC Bar # 584)
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-and-

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Respondent Horry County respectfully opposes Petitioner Skydive Myrtle Beach Inc.'s (SDMB) Petition for Rehearing.

ARGUMENT

SDMB cites three reasons to the Court for granting its petition for rehearing. Horry County contends that SDMB reasons are not applicable to the facts of the case and their conclusions are incorrect.

1. SDMB claims Horry County's Space Use Permit was an illegal contract which is unenforceable due to violation of the Anti-Head Act, 49 U.S.C.A. § 40116 (West). SDMB claims that pursuant to federal law, an airport "may not levy or collect a tax, fee, head charge or other charge on (1) an individual traveling in air commerce; . . . or (4) the gross receipts from that air commerce or transportation. 49 USC § 40116(b). The lease agreement referenced in the Court's opinion terminated on January 31, 2014. That lease does not charge a head tax or fee based on gross receipts. That lease states that the rent for the right to use 6800 square feet of space is \$1200 per month. [R p 335]

SDMB claims the lease agreement was not sufficient to replace the May 2012 agreement citing *Robert Harmon & Bore, Inc. v. Jenkins*, 282 S.C. 189, 194, 318 S.E.2d 371, 374 (Ct. App. 1984). The case cited by SDMB is distinguishable on its facts and on its application of the law. The Court of Appeals in *Jenkins* found the essential terms and conditions of a lease agreement include a definite agreement as to the extent and boundary of the property to be leased, a definite agreement as to the terms of the lease, and a definite agreement as to the rental and the time and manner of its payment. *Id.* The lease agreement referenced by this Court clearly stated each of the essential terms set forth in *Robert Harmon & Bore, Inc. v. Jenkins, supra*. The Court's reasons for finding

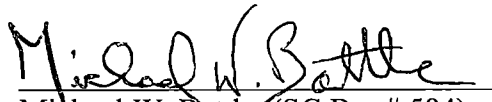
that the lease agreement replaced the May 12th agreement are clearly stated in the Court's opinion and the body of the lease agreement.

2. SDMB claims the Court's order is *res judicata* or collateral estoppel in connection with SDMB's remaining ongoing litigation. Horry County contends the Court's finding that SDMB did not have a right to possess Hangar 7 under the May 12th agreement because of the validity of the Lease Agreement referenced by the Court is controlling law on SDMB in any forum. The effect of the Court's order is self-evident.
3. SDMB's claims about the impact of Randy Haldi's statements don't make sense. The history of communications about the termination of the lease agreement referenced by the Court are contained in David Bannard's letter to Robert Eastman dated April 28, 2014. [R. p 33 -334] Randy Haldi's alleged statements were not contained in the record and were not raised prior to SDMB's Petition for Rehearing. Further, Mr. Haldi's alleged statements do not disavow the validity of the lease agreement referenced by the Court.

CONCLUSION

For the forgoing reasons, Respondent Horry County requests that Petitioner SDMB's Petition for Rehearing be denied and dismissed.

December 27, 2019


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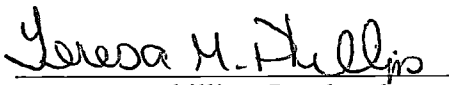
v.

Horry CountyRespondent

PROOF OF SERVICE

Teresa M. Phillips certifies that she is a Paralegal with Battle Law Firm, LLC, attorneys for Respondent Horry County and that she has mailed Response of Respondent Horry County's Return to Petition for Rehearing to the address shown this 27th day of December, 2019, with proper postage attached thereto.

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